

The following chapter, “The Strange Second Life of Confessional States,” is my contribution to Paul R. Dehart and Carson Holloway, eds., *Reason, Revelation, and the Civic Order: Political Philosophy and the Claims of Faith* (DeKalb, IL: Northern Illinois University Press, 2014). Nicholas Wolterstorff says about the book,

Religion is typically regarded by contemporary political philosophers as a problem. It's a problem for the state, since religion threatens oppression and violence; and it's a problem for political theorists themselves, since religion is held to be irrational and its intrusion into political thought would corrupt the pure rationality of acceptable political theory. The authors of this collection, while agreeing that religion can be a problem, argue persuasively that it is also a resource, both for our life together and for our theorizing, a resource that we neglect at our peril. It's a bold and courageous book, contesting the pieties of our present day. It fills a huge gap in the literature.

The book also includes chapters by Dehart, Holloway, Robert C. Koons, Peter Augustine Lawler, Ralph C. Hancock, James R. Stoner, Micah Watson, Francis J. Beckwith, Luigi Bradizza, and R.J. Snell.

## Chapter 4

# THE STRANGE SECOND LIFE OF CONFSSIONAL STATES

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I

Liberal political thinkers who wish to push faith out of the public square conjure up the frightening apparition of a confessional state. In reality, a certain sort of confessional state is just what Liberal political theory proposes and has very nearly achieved: A Liberal confessional state, which, being Liberal, must describe itself as something else. Officially, Liberalism is “neutral” about things like religion, not only among different religions but even between having and not having a religion. As the majority held in *McCreary County v. ACLU*, a Ten Commandments case:

Given the variety of interpretative problems, the principle of neutrality has provided a good sense of direction: the government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause.<sup>1</sup>

I have argued the inauthenticity of “neutrality” at length in other places, so here I present only the gist, before trying to press further.<sup>2</sup> A religion is a system of life and thought based on commitments taken to be supreme and unconditional. We may loosely speak of a religion’s supreme and unconditional commitment as its god, with a lower case “g.” One need not be a theological relativist to recognize that different religions propose different such commitments, and that they follow different gods. The god of Christianity and Judaism, for example, is the Creator: The First Being, God with a capital “G.” By contrast, Theravada Buddhism, which is also a religion, denies the reality of all supernatural beings. A Theravada Buddhist’s supreme and unconditional commitment, in this sense his god, is escape from suffering. Now if the distinguishing mark of religion is a supreme and unconditional commitment, and the supreme and unconditional commitment need not be to a supernatural being, then it follows that so-called secular creeds too are religions. To say that Theravada Buddhism with its flight from suffering is a religion, but that Utilitarianism with its pursuit of aggregate pleasure is not a religion, is arbitrary. Rather we should say that Utilitarianism is one of those religions that does not call themselves a religion and gets away with it. True, when people speak of religions, they often mean only particular sorts of religions, and there may be a great many helpful distinctions among systems of life and belief—theistic versus nontheistic, fideistic versus non-fideistic, particularistic versus non-particularistic, organized versus unorganized versus disorganized, and

so on. Taking the terms generally, though, “religions versus nonreligions” is not one of these helpful distinctions; it clouds the issues.<sup>3</sup>

Concerning the question “What might actually deserve supreme and unconditional commitment?”, there is no such thing as neutrality. I do not mean that everyone has a complete and conscious answer but only that everyone lives as though certain answers might be true and as though others are surely not. As Aristotle pointed out, every human action is performed for the sake of a particular good, and at the apex of aspiration is a good taken to be worthwhile for its own sake rather than just for the sake of something else.<sup>4</sup> Whenever anyone, whether a private individual or a legislator, makes a choice to do X, for the sake of P, rather than Y, for the sake of Q, he is at least partly specifying what he thinks important. He is eliminating certain candidates for commitment from consideration and allowing others to remain in the race.

One may anticipate protests. “You are assuming that everyone is consistent,” someone says. “Don’t some people choose inconsistently?” But no one is completely inconsistent; there is always a drift toward pursuing some things in preference to others.

Another objector responds, “So you say, but what if someone deliberately sets out to be inconsistent?” Well, someone might. But wouldn’t that too be a commitment? Anyone who undertook such a resolution would have a reason for doing so. He might say, for example, “I refuse to be chained to any god. If the price of my freedom from supreme and unconditional commitments is utter inconsistency, I gladly pay it.” This would merely demonstrate that his supreme commitment was to freedom, conceived in this perverse way.

Yet another objector protests, in a Kantian spirit, “We should never choose acts as mere means to other goods such as happiness; acts are moral only if they are right in themselves.” But to choose as Kant recommends is not to choose apart from a supreme commitment; it is only to identify the supreme commitment as moral duty.

Someone might even protest, “But what if my supreme and unconditional commitment *is* to neutrality?” Such a commitment is no commitment at all, because choice, by its nature, is never neutral. One may as well swear loyalty to square circles. A so-called commitment to neutrality is always a cloak for some other commitment that refuses to let itself be seen.

Since genuine neutrality is impossible, the way neutralist doctrine actually functions in law and policy is inevitably to generate a bias. It gives the advantage to religions that do not call themselves religions, at the expense of religions that do. To put it another way, it discriminates against transparency. My second grade public school teacher, who probably read the Bible, led us at lunch in giving thanks for our food. My fifth grade public school teacher, who probably read Jeremy Bentham, taught us in civics class to believe in the Greatest Happiness of the Greatest Number, which to me at that age, God forgive me, sounded plausible. These two pieties, biblical and Benthamite, were equally reflective of supreme commitments; they merely reflected different ones, and each one excluded the other. To mention but a single point of difference, Benthamite morality denies that there is such a thing as an intrinsically evil act, holding that the end justifies the means, but biblical morality insists that there is such a thing as an intrinsically evil act, proclaiming that we must not do evil so that good will result.<sup>5</sup> Yet what do neutralists

say? That the second grade teacher's piety is "religious" and has no place in the classroom, while the fifth grade teacher's piety is "nonreligious" or "secular" and may stay.

This bias is enshrined in judge-made law. According to the U.S. Supreme Court, to survive judicial scrutiny a governmental action must satisfy a three-pronged test: (1) It must have a "secular" legislative purpose. (2) It must not have the principal or primary effect of either advancing or inhibiting "religion." (3) It must not foster an excessive government entanglement with "religion."<sup>6</sup> Yet because the Court denies that so-called secular systems of life and belief are religions, the way the three-pronged test actually plays out is like this: (1) A statute may not be motivated by concerns originating in the Jewish or Christian systems of life and belief, but it may be motivated by concerns arising in, say, the "Queer Nation" system of life and belief. (2) It must not have the principal or primary effect of advancing things that Jews or Christians believe, but it may have the principal and primary effect of advancing things that, say, Marxists believe. (3) It must not foster an excessive involvement with the institutions of Church or Synagogue, but it may foster any degree of involvement whatsoever with the institutions of, say, Planned Parenthood.

Some of the results of neutralism are almost comical. The first so-called Humanist Manifesto, in 1933, insisted that secular humanism is a religion; the second, in 1973, was silent on the point; the third, in 2000, not only denied that secular humanism is a religion, but slammed people who said that it was.<sup>7</sup> For the rules of state patronage have changed. Once upon a time, a religion that wanted to hold the levers of power had to call itself religious. Now it must say it is not. I would agree with secular humanists that, strictly speaking, secular humanism is not "a" religion, but I would do so only because it is a coalition of religions, of various anti-theistic creeds.

Then what do I suppose? That laws and policies be *free* from bias? That would be logically impossible. Rules are necessarily biased; bias is in the nature of a rule. The rules of baseball are biased toward skill, because skillful competition is what baseball is about; the rules of education, toward knowledge, because the extension of knowledge is what education is about. Rules can and should be fair, but the notion that fairness means lack of bias is merely neutralism in different words. But surely *laws* should be unbiased, shouldn't they? Certainly not. They should be biased toward the common good, along with its corollaries, justice and the greatest possible protection of conscience. Lady Justice is blindfolded not because she has no criterion but because she is blind toward all other criteria; she uses her scales, not her eyes.

Could we admit that the common good, justice, and protection of conscience are biases, but deny that they are *religious* biases? If only this were true, but it is not. Some religions accept the trifecta, others reject it. In certain religions, like Santería and Voodoo, the supreme concern is to gain individual power; they would not accept it. The fact that many world religions propose loftier moralities is a tribute to the power of natural law, but of course some religions deny natural law. Insofar as natural law appeals to human reason, it is common ground, but this does not make it neutral ground, for some people refuse to stand on it. One can, after all, reject universal reason, as fundamentalists and postmodernists do. There is such a thing as motivated irrationality.

What about the Liberal creeds? Do they accept the trifecta? Even today they still say they do, yet today the agreement is nominal, for they have refashioned all the words. “Justice” has been redefined in terms of achieving desired ends by any means; “common good” in terms that deny the reality of intrinsic evils; “protection of conscience” in terms of allowing people to do what they desire, rather than in terms of not forcing them to do what they think wrong. The greatest redefinition concerns truth, now commonly viewed as a “social construction,” for whatever one can get away with enforcing counts as true.

If we admit that rules cannot be neutral, then aren't we authorizing the tyranny of some religion, or coalition of religions, over others? We are certainly conceding the inevitability of religious influence, even of unequal religious influence, on public policy. Shall we protest this inequality? Why? What sane person would suppose that Satanism or Thuggee should have the same influence as Christianity or Judaism? But whether the influence of a religion will be irenic or tyrannical depends on the nature of that religion—on just what supreme and unconditional commitment it proposes, and how it understands it. Take the early Christian writers, who gave *Christian* reasons for respecting non-Christian conscience. “God does not want unwilling worship, nor does He require a forced repentance,” says Hilary; “human salvation is procured not by force but by persuasion and gentleness,” says Isidore; “no one is detained by us against his will,” says Lactantius, “for he is unserviceable to God who is destitute of faith and devotedness . . . nothing is so much a matter of free-will as [the virtue of true] religion, in which, if the mind of the worshipper is disinclined to it, [the virtue of true] religion is at once taken away, and ceases to exist.”<sup>8</sup> According to Hilary, Isidore, and Lactantius, the foundation for toleration lies not in an impossible suspension of judgment about the good and the true but precisely in following the good and the true. God really does desire only willing worship. Faith really cannot be coerced. True religion really is destroyed by compulsion. According to the document *Dignitatis Humanae*, considered authoritative doctrine by the Catholic Church, just to the extent that some generations of Christians have departed from such principles, they have violated the spirit of their faith.<sup>9</sup>

In Islam, the matter stands differently. In his venerable commentary to al-Misri's classic work of Shafi'i jurisprudence, *Reliance of the Traveller*,<sup>10</sup> 'Umar Barakat writes that “*Jihad* means to war against non-Muslims, and is etymologically derived from the word *mujahada*, signifying warfare to establish the religion.” To be sure, he adds “As for the greater jihad, it is spiritual warfare against the lower self (*nafs*), which is why the Prophet (Allah bless him and give him peace) said as he was returning from jihad, ‘We have returned from the lesser jihad to the greater jihad.’” On the other hand, according to 'Umar Barakat the scriptural basis for jihad lies in verses like “Fighting is prescribed for you” and “Slay them wherever you find them,”<sup>11</sup> as well as haditha<sup>12</sup> such as the following: “I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and perform the prayer, and pay zakat. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them. And their final reckoning is with Allah.”<sup>13</sup> Plainly, Islamic scriptures like the latter refer not to war against the lower self but to war to compel religious belief. If they supply the very basis for jihad, as 'Umar Barakat asserts, then it would appear that the “lesser” jihad is the *central* meaning of jihad even if it is in some sense lesser—and that it cannot be set aside.

What about that puissant religious alliance, that mighty coalition of systems of life and belief, which travels under the common name of Liberalism? In the name of not being biased, its bias is becoming more belligerent, and its resort to coercion more frequent. Religious adoption agencies are under pressure to place children with homosexual couples; religious hospitals, to perform abortions; religious medical students, to be trained in them; religious doctors and nurses, to participate in them; religious pharmacists, to dispense the lethal drugs; religious charities, to include abortifacient drugs, sterilization, and artificial contraception in their employee “health” plans. If such assaults on conscience go much further, it may become difficult for traditional Catholics, Protestants, and Jews to share in public life at all. Could this be the idea?

Like John Calvin’s Geneva, the Liberal state is a confessional state. It only pretends that it isn’t. This pretense is the basis of its power.

## II

We are not used to speaking of Liberal states in such terms, not only because of the neutralist pretense but also because expressions such “confessional state” were coined in the days before camouflage. The term, however, fits. Consider the late John Rawls, who has proposed what is called “public reason” as a binding norm for all public discussion.<sup>14</sup> One would expect such a term to mean freedom to reason in public; actually it means limits on the reasoning allowed there. In the state that Rawls desires, no one would be permitted to make arguments that depend on a “comprehensive” theory, or at any rate, no one would be permitted to base policies on them. A “comprehensive” theory turns out to mean any considered view of reality that admits the impossibility of neutrality and therefore tries to supply more adequate reasons for doing things than Liberalism can supply. Prohibited from offering more adequate reasons, the citizens of the Liberal state would be limited to incomplete and inadequate reasons. But this is a dodge, for they would be allowed to base their policy proposals on any views of reality that they might wish—so long as these views were not recognized *by Liberalism* as views of reality. In other words, citizens would be allowed to appeal only to those views that Liberalism—by virtue of refusing to admit that they were views—deemed acceptable.

But a state can be “confessional” in more than one sense. Just now we have been using the term “confessional” for a state that seeks to circumscribe public reasoning within the limits of the official coalition of religions, Liberalism. Rather than allowing citizens to reason for their views of reality as both true and consequential for policy, it limits the views of reality from which they may draw such consequences. Insofar as it regulates confessions, this is plainly one kind of confessional state, but let us consider others.

Classification might begin with the observation that, like the decisions of every life, the constitution and laws of every state are based on certain fundamental commitments. At the moment we are not considering what a given state’s commitments happen to be (whether they are high, like the well-being of the commons, or low, like the well-being of the high), but what it does about them. We might call a state that acknowledges and solemnizes its fundamental commitments a *declaratory* confessional state. Because it makes laws, and because laws direct behavior, a state that is *merely* declaratory certainly coerces citizens to act in certain ways, but it does not coerce them to believe in the commitments on which this coercion is based. Such a

state's confession may be more or less ecumenical; it may include only general beliefs shared by a number of religions, or it may privilege the beliefs of a particular religion.

A *coercive* confessional state is a different sort of fish. It does coerce the citizens to believe in a certain way—or at least to act as though they did. For example, it might punish belief in nonapproved religions, or prohibit proselytizing for them. If this state in question is Liberal, it will probably be somewhat more subtle (at first). As we saw earlier, for example, the U.S. Supreme Court declares that laws motivated by religious purposes are invalid,<sup>15</sup> but it does not consider secularist ideologies as religious.<sup>16</sup> Imagine, then, two different mandatory public school sex education programs. One teaches children that they are more than mere animals and can therefore control their impulses by reason. The other teaches them that they *are* mere animals, *cannot* resist their impulses, and must therefore seek outlets in “safe” sex, meaning non-procreative sex. If challenged, the former policy would almost certainly be deemed religious and disallowed, but the latter would almost certainly be deemed nonreligious and allowed. Or imagine two mandatory public school ethics programs. One teaches students that there are universally valid moral laws, discoverable by reason, quite apart from revelation. The other teaches the students “values clarification,” the premise of which is that there is no such thing as a universally valid moral law—that any “value” is as good as any other so long as a person is clear about what it is. Such is the influence of the Supreme Court that a program of the former kind would be much less likely to be developed in the first place, just because of the near certainty of successful legal challenge.

This is a good time to remember another point about coercion: That willingness to coerce people to accept one's beliefs is not a measure of how fervently one believes, but of *what* one believes. A religion fervently convinced, with Hilary of Poitiers, that God does not want unwilling worship, cannot coerce belief, at least not without betraying its commitments. A religion fervently convinced, with the late Osama bin Laden, that Allah urges death to all infidels, certainly will. A religion fervently convinced, with John Rawls, of an absolute right to impose its will, which is “political, not metaphysical,” will act more and more like bin Laden.

Now it is tempting to think of the different kinds of states as forming some kind of ladder, beginning with non-confessional states and ending with states that not only have confessions but enforce them. For several reasons, I think this picture is misleading. For the fact that a state does not solemnly avow its convictional foundations does not mean that it has none; in this sense, although there is such a thing as an *officially* non-confessional state, there is no such thing as a non-confessional state. Moreover, even if the state does not declare its convictional basis, it may still enforce it. For example, it may require citizens to change or violate their consciences on pain of exclusion from degree programs, the professions, charitable activities, and other spheres of public life. Such, in fact, is the Liberal state, for under the auspices of neutralism, it insists that it has nothing to profess; more and more, what it does not profess in words, it professes in acts of force. Perhaps, then, rather than a ladder, what we have is a two-by-two table.

<b>Error! Bookmark not defined.Type I</b>	<b>Type II confessional regimes:</b>
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<p><b>confessional regimes:</b></p> <p>The convictional basis of the state is neither declared nor coerced.</p>	<p>The convictional basis of the state is declared but not coerced.</p>
<p><b>Type III confessional regimes:</b></p> <p>The convictional basis of the state is not declared but coerced.</p>	<p><b>Type IV confessional regimes:</b></p> <p>The convictional basis of the state is both declared and coerced.</p>

Not even a Type I regime, if there could be such a thing, would be religiously neutral. To say that the state should neither declare nor enforce its convictions is to imply that those religions that want it to do so are—at least to this extent—simply wrong. That is not a suspension of judgment; it is a judgment. Besides, just as there would have to be reasons for declaring or enforcing the convictional basis of the state, so there would have to be reasons for not doing so, and although some systems of life and belief would find these reasons acceptable, others surely would not. Of course we need not suppose that all who were committed to the Type I arrangement would have the *same* reasons for it. But even if they had differing reasons, they would have to concur that the reasons for another kind of arrangement were mistaken or had insufficient weight—and no doubt they would “confess” or declare to each other their shared conviction that such was the case. So even though the state does not officially acknowledge and solemnize the confessions that drive it, the culture of governing will.

England under Henry VIII and China under Mao Zedong were Type IV confessional regimes. The fundamental convictions underlying state policy were explicitly acknowledged and solemnly avowed—in the former case, the Protestantism of the Church of England, in the latter case, the eschatology of the Communist Man forming under the Dictatorship of the Proletariat. Moreover, these confessions were enforced. Both in England and in China, those who followed different systems of life and belief suffered persecution, even if they did not upset public order in any way other than by following different systems of life and belief. I certainly do not say that the two regimes were equally rigorous. Henry’s was no picnic but Mao’s was infinitely harsher.

Though claiming to seek a non-confessional state, Liberalism seeks a Type III confessional state. Under its influence, the state increasingly attempts to coerce the consciences of those who follow non-Liberal systems of life and belief, even while pretending to be neutral. To be sure, such a state is not transparently or coherently confessional, in the sense of solemnly avowing its true commitments. Yet it is not without solemn avowals. It is an opaque and incoherent confessional state, solemnly avowing that its discriminatory acts are required by its determination not to discriminate.

At the time of its founding, the American republic was a Type II confessional state, for although it frankly declared its commitments, it declined to compel belief in them. The

convictional basis of the state is most clearly expressed not in our founding legal document, the Constitution, but in our founding political document, the Declaration of Independence. Not only did it identify commitments to natural law and natural rights, but it went on to identify their source, for it said that “the laws of Nature” were the laws of “Nature’s God.” This confession was fairly ecumenical. Though most of the Founders were Protestants, the Declaration did not go so far as to identify Nature’s God with God as Protestants understood Him. It went only so far as to privilege systems of life and belief that shared a view of God that was creational, monotheistic, moral in a Decalogical sense, and providential, with a high view of the inviolable worth of every human being.<sup>17</sup>

Of course the Founders knew that not all systems of life and belief impute these four qualities to the First Being, or believe in the First Being, or for that matter, take such a high view of man. Hinduism is not creational. Animism is not monotheistic. Voodoo is not moral in the Decalogical sense. Buddhism is not providential. Few systems of thought and belief have consistently acknowledged the inviolable worth of every human being. However, the Founders, having a higher view of the possibilities of human reason than fideists or Rawlsians, considered the truth of these principles to be accessible to all men of goodwill, even apart from the biblical revelation from which they drew them. Concerning what Rawls calls “reasonable pluralism,” they would have made a distinction. It may be reasonable *to expect* some people to reject the laws of Nature and Nature’s God. But it is not reasonable *to reject them*.

Let us coin an expression, “Classically Theist religions,” or “CT religions,” for all systems of life and belief, whether biblical or not, that are creational, monotheistic, moral, providential, and impressed by inviolable human worth. Within the bounds of public order, the Founders seem to have intended that both CT and non-CT religions would enjoy free exercise. Obviously this principle has not always been followed consistently—but what would consistently following it require? No one would be forced to believe; no one would be forced to do what the certain judgment of his conscience forbade; and within the bounds of public order, no one would be prevented from doing what his conscience demanded. There might arise cases in which CT and non-CT religions disagreed about which acts lay “within the bounds of public order” and which acts fell outside it. No doubt, in such a case, the Founders would have hoped that the views of CT religions would prevail, but even so, the non-CT religions would be free to press their case, not only privately but even in a legislative context. Precisely this liberty to press their case would be denied to *all* religions under Liberal strictures such as “public reason”—*unless* they happened to be among the lucky ones that Liberal theory does not call religions. The CT policy is “Suffer a hundred flowers to bloom.” The Liberal policy is “Nothing that blooms shall be suffered.”

For the foreseeable future, the chief danger to religious liberty arises not from our avowed religions, but from the unavowed and illiberal religions of Liberalism itself. To defend against this danger, four intellectual goals must be achieved, quite apart from whatever political actions must be taken. Perhaps enough has already been said to explode the fallacy of neutralist toleration, which is goal 1; to explain the classical theory of toleration, which is goal 2; and to expose the real nature of the Type III confessional state, which is goal 3. Certainly not enough has been said to explore the nature and limits of the Type II confessional state, which is goal 4.<sup>18</sup>

### III

I commented earlier that a regime's confession may be more or less ecumenical, less or more particular. This raises a question: Just how ecumenical, or, in the other direction, how particular, may such a confession be? One extreme—a *completely ecumenical* confession—is impossible. One cannot be open to everything, whether assassination cults, pederastic cults, what have you. Belief in the possibility of an absolutely ecumenical confession is just neutralism again. Even if one were to refuse to avow any convictional basis for the regime, it would have a convictional basis. Some systems of life and thought would mesh with it, others would not. To govern is to make distinctions. On the other hand, it is certainly possible to associate a nation with a confession that is *somewhat* ecumenical and *somewhat* particular. As we have seen, the Declaration of Independence associated the nation with Classically Theist religions in general, or at least dissociated itself from non-CT religions. Finally, a confession can be *completely particular*. The Founders might have gone further than they did; they might have associated the nation not with CT religions in general, not with Judeo-Christian heritage in general, not with Christianity in general, not even with Protestantism in general, but with, say, Lutheranism.

But let us ask our question not about confessional regimes in general, but about Type II confessional regimes, in which the confession is declared but not coerced—“declared” in the sense that the regime openly admits its convictional basis, “not coerced” in the sense that no one is forced to do or believe what his conscience forbids. Of course, there will be other forms of coercion. Those who drive recklessly, for example, will still be punished, and such a punishment certainly reflects a belief that reckless driving is wrong. But there is a difference between coercively preventing people from doing things they like to do and coercively requiring them to change their beliefs or to do things they consider wrong. The latter is a violation of conscience; the former is not.

From the fact that confessions in general may be more or less ecumenical, more or less particular, it does not follow that the same is true of Type II regimes. With the exception of the most well indoctrinated Liberals, Americans in general do not mind that the convictional basis of their nation's Founding was Classically Theist. On the other hand, the idea that it might have been more particular makes them nervous. Why? I think because they suspect that if the state becomes associated with a particular religion, it will inevitably become coercive—that beyond a certain threshold of particularism, a Type II state turns into a Type III state.

Is this suspicion true? If it is, the reasons for it might be either purely logical (P entails Q), or psychological (people who are P are likely to do Q). Let us first consider whether there is any logical reason for such fear. Does associating the political community with a single religion entail that belief in it be enforced?

The answer is, “It depends”: If the religion in question *requires* civic enforcement of belief, yes; if it *allows* civic enforcement of belief, probably; but if it *forbids* civic enforcement of belief, no. This is the same thing we saw much earlier when we were considering toleration as a virtue; the only difference is that now we are considering it as a policy. To illustrate, consider Ireland and Iran.

Article 44, Section 1, of the 1937 Constitution of the Republic of Ireland begins, “The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honor religion.” So far, it resembles the American founding documents, but then it goes on to say, “The State recognizes the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens.” This confessional language, removed by amendment in 1973, is completely particular; Americans would fear that such language would lead to religious oppression. Yet the rest of the section expresses friendly respect to the other empirically extant CT religions, saying that “The State also recognizes the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution.” By itself this language may not be important—if these extant religions are not guides to faith, what does it mean to “recognize” them? But the language does not stand by itself, for the next section specifies in detail the protections guaranteed to believers of other religions:

1. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
2. The State guarantees not to endow any religion.
3. The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.
4. Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
5. Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
6. The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.<sup>19</sup>

So even though a single religion was singled out as the guardian of faith, the state did not lose its Type II character: A Catholic convictional basis for the state was declared but not coerced. If one bears in mind the teaching of the Catholic Church, this was only to be expected, for as the Second Vatican Council clarified (albeit some three decades later), “the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.”<sup>20</sup>

Contrast the constitution of the Republic of Ireland with the constitution of the Islamic Republic of Iran as adopted in 1979 and amended in 1989. Like the former, the latter associates the nation with a particular religion, for as Article 12 states, “The official religion of Iran is Islam and the Twelver Ja’fari school, and this principle will remain eternally immutable.”<sup>21</sup> From this point on the resemblance disappears. Although the document contains some language suggestive of religious liberty, this language is far more restrictive. Article 13 recognizes Zoroastrians, Jews, and Christians as religious minorities but emphasizes that they are “the only” such recognized minorities. It goes on to state that “within the limits of the law, [they] are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education,” but the meaning of the expression “within the limits of the law” is not explained.<sup>22</sup> The language of Article 14 is in the same vein:

In accordance with the sacred verse “God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes” [60:8], the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.

This would be more cheering if, like the Irish Constitution, the document had specified just what it meant “to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights.” It does not. Moreover, in interpreting such a sentence as “This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran,” one must bear in mind that Shari’ah has historically entertained an extremely broad and elastic conception of what counts as “activity against Islam.” The way these various provisions work is to reduce non-Muslim citizens to a very severe second-class status, excluding them from full participation in public life. It is true that an early Qur’anic sura, from the early period before Muhammad had power, says “there is no compulsion in religion.”<sup>23</sup> But in Islam, suras composed later take precedence over suras composed earlier, when Muhammad had no power—and a later sura admonishes, “Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, [even if they are] of the People of the Book, until they pay the jizya with willing submission, and feel themselves subdued.”<sup>24</sup>

From a logical point of view, what these examples show is that what really determines whether the convictional basis of a regime will be enforced is not whether all its convictions are such that they can be held by persons of more than one religion but *what these convictions are*. What made the difference between Ireland and Iran was that Catholicism requires religious liberty, while as presently constituted, Islam requires jihad.

What about Liberalism, then? The problem is that the Liberal state masks coercion under the pretense of neutrality, of having no confession in the first place. It can say until the sun freezes that it does not believe in coercion; yet just because, being neutralist, it cannot recognize its coercion as coercion, it coerces more and more freely. Had the pretense of neutrality been

merely an unfortunate choice of tactic, inessential to the Liberal approach to government, then Liberalism could be reformed. But contemporary Liberal thinkers do not view it as a tactic; they view it as the very definition of Liberalism. Just by doing so, they have made their movement irreformable. A movement can shed accidental traits it has picked up along the way, but it cannot shed its essence, except by coming to an end.

#### IV

Very well. We have seen in principle that a political community *could* associate itself confessionally with but a single religion and yet not coerce conscience. It depends on the religion. The religion itself might be of such a nature as to repudiate coercion of conscience. But there is quite a difference between saying that something is logically possible and saying that it is likely; and there is quite a difference between saying that it is likely and saying that it is a good idea.

How so? Suppose the religion at hand does happen to be one of those that are of such a nature as to repudiate coercion of conscience. Still, people often misunderstand the nature of their own religion. According to the Fathers of the Church, “God does not want unwilling worship, nor does He require a forced repentance,” yet consider how often Christians have in fact demanded unwilling worship in His name! From a Christian point of view, such misunderstandings may even be strongly motivated, for Christians recognize that ever since the Fall, people have liked pushing other people around. Grace transforms us, but grace works little by little, and in this life its sanctifying work is not complete. Besides, there will always be wolves among the flock. This is not a cynical reflection upon Christian teaching; it *is* Christian teaching. Jesus admonishes, “Beware of false prophets, who come to you in sheep’s clothing but inwardly are ravenous wolves. You will know them by their fruits.” St. Peter warns, “there will be false teachers” who bring truth into disrepute. St. Paul speaks of “false brethren” who “spy out our freedom which we have in Christ Jesus, that they might bring us into bondage.”<sup>25</sup>

One may think that the temptation to push people around arises only when the community is religiously fractured—that if only the community were religiously homogenous, the temptation would not arise. But such thinking is itself a temptation. Here is how this line of thought would develop:

First reflection: If there were fewer people to push around, the temptation to push them around would not arise so often.

Second reflection: If only there weren’t so many people of other religions to push around!

Third reflection: We had better push out people of other religions, so we won’t be so tempted to mistreat them.

In fact, the problem is even worse, for the line of thought I have just dramatized deals only with the community’s domestic affairs. One must also reckon with the temptation to push around neighboring communities.

Why should one want to associate the political community with a single religion anyway? If one believes God commands it, as in Islam, then that is the end of the matter. One must. According to Christianity, however, God does not command it. Of course Christianity is a proselytizing religion, but it does not follow that the state must be a partner in evangelization. Yes, if one believes the Church to be the guardian of the truth about that which is worth the supreme and unconditional commitment of human beings, then obviously one will want people to adhere to the Church. But, given the teachings of the Church, one will want people to do so voluntarily. Patristic writers such as Gregory of Nazianzen explained that for the age of the Church, the meaning of the Old Testament punishment of stoning for impiety was to suffer the refutation of one's arguments: "For to those who are like wild beasts true and sound discourses are stones" (*Second Theological Oration*, section 2). Does state patronage make voluntary adherence to the revealed faith more likely? On the contrary, it may make it less likely, because it adulterates the motive of faith with the motive of worldly advancement. England has an officially established religion, yet the fraction of Englishmen who set foot in a church in the course of a year is notoriously low.

These are prudential considerations, not arguments of principle, and of course prudential considerations can cut the other way too. It made sense to establish a homeland outside of Europe for the Jews, considering the Nazi attempts to exterminate them, and such a state naturally makes special accommodations for Judaism, even if many citizens are not observant. It does not take much imagination to think of other special cases in which a highly particularistic confessional regime might be justified. One suspects, though, that they will remain special cases.

Given the differences in their supreme and unconditional commitments, different religions will inevitably view matters differently. Within Christianity, however, there are not only prudential but theological reasons for expecting such special cases to be rare. Consider again the convictional basis of the American Founding. The Declaration of Independence was creational, monotheistic, moral in a Decalogical sense, providential, and committed to a high view of the intrinsic worth of man. Now it is true that these beliefs are held by Christianity; but Christianity does not say that one has to be Christian to hold them. At least Catholicism does not say so, and neither does what might be called High Protestantism. In fact, Catholics and High Protestants hold that every last one of these beliefs can be known to be true by the exercise of reason alone. The supreme example of such arguments is the *Summa Theologiae* of St. Thomas Aquinas, which, though thoroughly scriptural, advances essentially philosophical arguments for all of the points at issue: For the existence of God; for His creation and governance of the universe by eternal law; for the unique dignity of the rational creature that is man; and for the unique privilege of this man, that, rather than being jerked around by instincts, he participates in eternal law in his own finite way via natural law.

To be sure, in the Christian view there is more to be known than what can be known by reason alone. There is also Revelation. But even though it is rational to believe in Revelation (in the sense that there are good reasons for doing so), these good reasons are not demonstrations, like those of mathematics. They require faith, which is a gift of divine grace. Now is it not likely that, in most cases, the project of drawing people into the faith would be jeopardized not just by coercion but also by too strongly expecting of people a faith that they cannot attain without grace?

How then could such jeopardy be avoided? St. Paul offers the interesting remark that the Torah acted as a custodian (literally, boy-leader, *paidagogos*) to the people of Israel. Just as upper-class boys in his time were escorted to school by a servant, so the descendants of Abraham were escorted to the Messiah by the law of Moses.<sup>26</sup> This raises an interesting question. Could natural law play the same role for Americans that St. Paul thought the law of Moses played for the descendants of Abraham? Could it serve as an escort, leading the people of the nation to something that it cannot attain by itself?

If so, then Christians would have reason, not merely to accept the relatively ecumenical character of the nation's confession, but to prefer it to the alternative. Under the circumstances of the day (and perhaps of most days), a more ecumenical confession might be more conducive to the spread of Christian faith than one which was more specifically Christian.

## V

So it is that, in the West, confessional states are experiencing a strange second life. Or shall we say a third one? For we have witnessed three waves of this sort of thing. The convictional basis of the old sort of regime was usually Lutheranism, Calvinism, or Catholicism. The convictional basis of the next sort was Classical Theism, with its belief in natural law—an umbrella that sheltered not only the three religions just mentioned but also many others, and which, precisely for Classical Theist reasons, protected even the consciences of those who were not CT. The convictional basis of the present sort is Liberalism, which is also a coalition of religions rather than just one. But it is a different coalition. Confessionally speaking, what distinguishes the present Liberal confessional state from the previous confessional state is that the present one rejects Classical Theism, rejects natural law, refuses to acknowledge its commitments, violates conscience, and hides behind the cloak of supposed neutrality.

Because Liberalism itself seeks a confessional state, the question that Liberalism would have us frame—"Is the alternative to Liberalism a confessional state?"—is misleading. The real question for our day is whether we will have the kind of confessional state that we have historically enjoyed, the kind established at the American Founding, which is declaratory but not coercive—or the kind of confessional state that Liberal thinkers now propose for us, which is coercive but not declaratory.

To put the matter another way, the Liberal version of recent religious history is mistaken about two related contests: First regarding the nature of toleration, second regarding the nature of the state. As Liberal thinkers tell the first story, the contest lies between those who support toleration and those who oppose it, with liberal thinkers as the champions of toleration. There are, of course, real foes of toleration. But in the West, the real contest of our time lies between the classical and the neutralist views of toleration. The former view is grounded on a paradox: The reason we put up with some bad and false things is that the nature of the good and true demands doing so. The latter view is grounded on an incoherency: The reason we put up with some bad and false things is that we are indifferent among competing views of good. In a nutshell, proponents of the classical view try to judge wisely while proponents of the neutralist view claim falsely not to judge. By adopting the neutralist pretense—by disguising their

judgments under the cloak of non-judgment—Liberals are able to present themselves as tolerant while in fact practicing bigotry.

And as Liberal thinkers tell the second story, the contest lies between a Type I and a Type IV confessional state, with them as the champions of the former. There are, of course, real proponents of Type IV confessional states. But in the West, the real contest of our times lies between a Type II and a Type III confessional state, with them as the enforcers of the latter. By pretending that they have no confession, Liberals are able to use increasingly strong means to enforce what they deny having.

Even today, most people are still Classical Theists, though very confused ones. The Liberal state is able to rule them by one means alone: Obscuring its real nature. Can this continue?

## Notes

Note: With permission, portions of this chapter are taken from my book *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction* (Wilmington, DE: ISI Books, 2009).

1. *McCreary County, Kentucky, v. American Civil Liberties Union of Kentucky*, 545 U.S. 844 (2005), at 876.

2. See especially Budziszewski, *Line Through the Heart*, chapter 10, “The Illiberal Liberal Religion.” The first two sections of this essay rework the argument of that chapter; the rest of the essay carries the argument further.

3. Compare Reinhold Niebuhr, “The Christian Church in a Secular Age,” in *Christianity and Power Politics* (New York: Charles Scribner’s Sons, 1940), 204–5: “Strictly speaking, there is no such thing as secularism. An explicit denial of the sacred always contains some implied affirmation of a holy sphere. . . . Consequently the avowedly secular culture of today turns out on close examination to be either a pantheistic religion which identifies existence in its totality with holiness, or a rationalistic humanism for which human reason is essentially god or a vitalistic humanism which worships some unique or particular vital force in the individual or the community as its god, that is, as the object of its unconditioned loyalty.” Compare also Paul Tillich, *Systematic Theology* (Chicago: University of Chicago Press, 1951), 1:211: “‘God’ is the answer to the question implied in man’s finitude; he is the name for that which concerns man ultimately. This does not mean that first there is a being called God and then the demand that man should be ultimately concerned with him. It means that whatever concerns a man ultimately becomes god for him, and, conversely, it means that a man can be concerned ultimately only about that which is god for him.”

4. Aristotle, *Nicomachean Ethics*, book 1.

5. Romans 3:8.

6. *Lemon v. Kurtzman*, 403 U.S. 602 (1971), at 612–13.

7. See Paul Kurtz, *Humanist Manifestos I and II* (New York: Prometheus Books, 1973), and “Humanist Manifesto 2000: A Call for a New Planetary Humanism,” *Free Inquiry* 19.4 (Fall 1999).

8. Hilary of Poitiers, “To Constantius,” quoted in Lord Acton, “Political Thoughts on the Church,” in *Essays in Religion, Politics, and Morality*, ed. J. Rufus Fears, vol. 3 of *Selected Writings of Lord Acton* (Indianapolis: Liberty Classics, 1988), p. 24; Isidore of Pelusium, *Epistles*, 2.129, quoted in Margaret A. Schatkin and Paul W. Harkins, trans., *Apologist, Saint John Chrysostom*, vol. 73 of *The Fathers of the Church* (Washington, D.C.: Catholic University of America Press, 1985), p. 83, note 30; Lactantius, *Divine Institutes*, 5.20, trans. William Fletcher (public domain, [www.newadvent.org/fathers](http://www.newadvent.org/fathers)).

9. Second Vatican Council, Declaration on Religious Freedom, *Dignitatis Humanae*, “On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious,” 7 December 1965.

10. Ahmad ibn Naqib al-Misri, *Reliance of the Traveller*, rev. ed. (Beltsville, MD: Amana, 1994, 1997). This is a collaborative work; only a small part comes from the original manual by Ahmad ibn Naqib al-Misri. The quotation from ‘Umar Barakat is found in sec 09.0, p. 599.

11. Al-Baqarah (Qur’an 2), 216, and An-Nisa’ (Qur’an 4), 89. Here and throughout my discussion of *The Reliance of the Traveller*, I am using the translations of Qur’an and *hadith* provided in the English version of the work itself.

12. The Arabic plural is actually *ahadith*, but it is often rendered as *haditha* or *hadiths* in English.

13. The speaker is Muhammad. ‘Umar Barakat remarks that this hadith is recorded by Sahih al-Bukhari and Muslim ibn al-Hajjaj.

14. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

15. “*First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster ‘an excessive government entanglement with religion.’*” *Lemon v. Kurtzman*, 403 U.S. 602 (1971), at 612–13; emphasis added.

16. There have been apparent exceptions to the tendency of our courts to treat secular ideologies as nonreligious. See, for example, *Torcaso v. Watkins*, 367 U.S. 488 (1961), at 495: “We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion.’ Neither of them can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither of them can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” *Ibid.*, note 11: “Among religions in this country which do not teach

what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others.” For the general pattern, however, see *Alvarado v. City of San Jose*, 94 F.3d 1223 (1996), note 2 (internal citations removed):

In *Torcaso*, in the context of ruling on a state statute requiring notaries to profess belief in God as a condition of office, the Supreme Court assumed without deciding that certain non-theistic beliefs could be deemed “religious” for First Amendment purposes. . . . Much has been made of this footnote, which has been explained as follows by Judge Canby, concurring in *Grove*: “The apparent breadth of the reference to ‘Secular Humanism’ . . . is entirely dependent upon viewing the term out of context. In context, it is clear that the Court meant ‘no more than a reference to the group seeking an exemption, which, although non-Theist in belief, also met weekly on Sundays and functioned much like a church. . . . Thus *Torcaso* does not stand for the proposition that “humanism” is a religion, although an organized group of “Secular Humanists” may be.”

See also *Pelozo v. Capistrano School District*, 37 F.3d 517 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995): “neither the Supreme Court, nor this circuit, has ever held that evolutionism or secular humanism are ‘religions’ for Establishment Clause purposes.” I thank Professor David K. DeWolf, Gonzaga University Law School, for calling my attention to these passages.

17. Had the document’s chief draftsman, Thomas Jefferson, been writing for himself alone, he might well have written differently; indeed, its references to Providence were added by the Continental Congress. In a republic, however, the “authors” of a document are not its draftsmen but those who give it authority—in this case, the delegates assembled.

18. A qualification is in order: Perhaps enough has been said, provided that one includes previous publications. The fact that I have written about these matters before allows me to move more quickly in the present essay, zeroing in on what has hitherto been the most tentative aspect of the argument, and fleshing it out a little further.

19. The current text of the Constitution of the Republic of Ireland may be found online at [http://www.taoiseach.gov.ie/eng/Youth\\_Zone/About\\_the\\_Constitution,\\_Flag,\\_Anthem\\_Harp/Constitution\\_of\\_Ireland\\_March\\_20](http://www.taoiseach.gov.ie/eng/Youth_Zone/About_the_Constitution,_Flag,_Anthem_Harp/Constitution_of_Ireland_March_20) . An unofficial variorum text, valid through 1999, showing the original language that was subsequently removed, may be found at [www.johnpghall.pwp.blueyonder.co.uk/constit.htm](http://www.johnpghall.pwp.blueyonder.co.uk/constit.htm) .

20. *Dignitatis Humanae*, section 2. The document goes on to specify the juridical implications of these principles in some detail.

21. Islam is divided between Sunnites and Shi’ites. The most numerous branch of the latter division is Twelver Shi’a, so-called because it adheres to the Twelve Imams, the twelfth of whom is expected to return as the Mahdi. The Ja’fari school is the dominant Shi’a school of Islamic jurisprudence, as contrasted with the four main Sunni schools. Ja’fari is distinguished by its reliance on *ijtihad*, which is the “independent” exercise of *aql*, a general term for the faculty of

reason. Though suspicious of *ijtihad*, the Sunni schools of jurisprudence do allow a role to analogical reasoning, which they call *qiyas*.

22. Text taken from [www.servat.unibe.ch/icl/ir00000\\_.html](http://www.servat.unibe.ch/icl/ir00000_.html), a website maintained by the University of Bern, Switzerland.

23. Al-Baqarah (Qur'an 2), 256.

24. At-Taubah (Qur'an 9), 29–30.

25. Matthew 7:15–16a, 2 Peter 2:1, Galatians 2:4 (RSV).

26. Galatians 3:23–26.