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Religious Liberty, the Modern State, and Secularism: Principles and Practice

Samuel Gregg

Liberales Institut

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RELIGIOUS LIBERTY, THE MODERN STATE, AND SECULARISM: PRINCIPLES AND PRACTICE

Samuel Gregg

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Introduction

The subject of religious liberty, the modern state, and secularism is, almost by definition, closely associated with the question of the character and limits of state authority. In the ancient pre-Christian world, Judaism has always implied some limits upon the authority of temporal rulers, even though the ancient Israelites' religious beliefs and practices had been intimately woven into the life of the Davidic-Solomonic Kingdom and the successor kingdoms of Israel and Judea. It was, however, with the advent of Christianity that the question of religious liberty – in the sense of the limits on state coercion when it comes to the religious beliefs and practices of individuals and organizations – started to assume profound political and institutional significance.¹

Jesus Christ's famous words recorded in the Gospel of St Luke, "render to Caesar what belongs to Caesar – and to God what belongs to God" (Lk. 20:25), were literally revolutionary in their implications for how most people (including non-Christians) subsequently understood the state. With good reason, Luke's Gospel records that Christ's "answer took [his questioners] by surprise" (Lk. 20:26). For, as observed by the nineteenth century English historian Lord Acton, "in religion, morality, and politics, there was only one legislator and one authority" in the pre-Christian ancient world: the *pólis* (πόλις) and later the Roman state.² Separation of the temporal and spiritual was incomprehensible to pagan minds because a distinction between the "temporal" and "spiritual" did not exist in the pre-Christian world. As Rodger Charles notes:

... in saying that God had to be given his due as well as Caesar, [Christ] asserted the independence of the spiritual authority from the political in all matters of the spirit, of faith, worship and morals. This was a new departure in the world's experience of religion. In the pagan world, the State had controlled religion in all its aspects. The kingdom of God that Christ had announced was spiritual, but it was to have independence as a social organization so that the things of God could be given at least equal seriousness to those of Caesar. ...When events led to conflict with the State on this issue, and the Christians faced martyrdom, the political effects in

1 Parts of this paper draw upon a paper presented by the author to the Mont Pelerin Society Regional Meeting in Istanbul, Turkey, 1 October 2011.

2 Lord Acton, *Essays on Freedom and Power*, G. Himmelfarb (ed.), (Boston: Crossroad, 1948), 45.

theory and in practice did much to determine the shape of European political culture and through it that of the modern world.³

Throughout the Greco-Romano world, the widespread ascription of divine characteristics to the *pólis* and the Roman state was often paid lip-service. Recognizing the strength of Jewish resentment concerning the token emperor-worship required of all the Empire's subjects, the Roman authorities generally exempted Jews from such acts. Yet there were times when the pagan synthesis of religion and state caused immense difficulty for people in the ancient world. People were not, for instance, able to appeal to a divine law that transcended the *pólis* or the state.

By universalizing the Jewish belief that those exercising legal authority were as subject to Yahweh's law as everyone else, Christianity achieved the hitherto unthinkable: the state's de-sacralization. Certainly, Christianity was respectful of the Roman state's authority. The writings of St. Paul and St. Peter, for instance, underlined the divine origin of the state's legal authority.⁴ Nevertheless, Judaism and Christianity also quietly insisted that Caesar was not a god and may not behave as if he was god. Though Jews and Christians would pray *for* earthly rulers, it was anathema for Jews and Christians (and, later, Muslims) to pray *to* such rulers. While Jews and Christians regarded the state as the custodian of social order, they did not consider the state itself to be the ultimate source of truth and law.⁵ Thus, as one theologian writes, Jews and Christians viewed the state as an order that found its limits in a faith that worshiped not the state, but a God who stood over the state and judged it.⁶ When Constantine effectively allowed religious liberty to the Christian Church in his Edict of Milan (313 A.D.), he did not subject Christianity to himself. Instead Constantine effectively declared that Caesar was no longer god.⁷

3 Rodger Charles, S.J., *Christian Social Witness and Teaching*, vol.1, *From Biblical Times to the Late Nineteenth Century* (Leominster: Gracewing, 1998), 36.

4 See, for instance, Rm 13:1-6; 1 Pt 2:13-17.

5 Joseph Ratzinger, *Values in a Time of Upheaval* (San Francisco: Ignatius Press, 2006), 59.

6 Joseph Ratzinger, *Salt of the Earth* (San Francisco: Ignatius Press, 1996), 240.

7 The preceding two paragraphs draw upon Samuel Gregg, "Catholicism and the Case for Limited Government," in Philip Booth (ed.), *Catholic Social Teaching and the Market Economy* (London, IEA, 2007), 250-269.

This set the stage for on-going confrontations between the state and religious believers and organizations across the globe which persists until today.⁸ At the heart of many such issues has been the issue of the religious freedom of individuals and organizations vis-à-vis the state. This embraces questions such as the legitimacy of religious belief as a foundation for activity in the public square, blasphemy laws, religious tests for public office, religious education in private and public settings, state-funding of religious activities, etc. It need hardly be said that denial of religious liberty has resulted in the systematic and sporadic coercion of millions over the centuries, the worst in terms of sheer numbers being that inflicted by Communist regimes throughout the twentieth century.

The saliency of these questions is unlikely to disappear in the present or in the future. There is even considerable evidence that undue restrictions on religious liberty are on the rise today. In 2011, for example, the Pew Forum's Report *Rising Restrictions on Religion* claimed that:

- More than 2.2 billion people, nearly a third (32%) of the world's total population of 6.9 billion, live in countries where either government restrictions on religion or social hostilities involving religion rose substantially between mid-2006 and mid-2009. By contrast, only about 1% of the global population experienced reductions in restrictions.
- Over the three-year period studied, incidents of either government or social harassment were reported against Christians in 130 countries (66%) and against Muslims in 117 countries (59%). Buddhists and Hindus, who together account for roughly one-fifth of the world's population and who are more geographically concentrated than Christians or Muslims, faced harassment in fewer places; harassment was reported against Buddhists in 16 countries (8%) and against Hindus in 27 countries (14%).

8 It is true that throughout the centuries, there have been instances when Christian churches and ecclesial communities have associated themselves with the exercise of temporal power to varying degrees, precisely because they paid insufficient attention to the differences and distinctions between the temporal and spiritual orders that Christian Revelation and reason itself suggests and, when developed, elucidates. Yet despite these cases, the vital distinction between the claims of God and Caesar, with its implicit limiting of state power, has persisted in Christian religious belief and actions, even in those instances where the state effectively assumed headship of the church.

- Restrictions on religion are particularly common in the 59 countries that prohibit blasphemy, apostasy or defamation of religion.
- Six of the 14 countries where government restrictions on religious freedom rose substantially were in the Middle East-North Africa region: Algeria, Egypt, Libya, Qatar, Syria and Yemen.
- Other groups that experienced difficulties ranged from older faiths such as Sikhs and Zoroastrians, to newer ones such as Baha'is and Rastafarians. These along with other tribal and folk religions reported problems in 84 countries. Harassment of Jews was reported in 75 nations.⁹

This paper abstracts itself from the broader issues concerning religious liberty vis-à-vis the state per se. Instead, it focuses on a very specific issue: religious liberty, the modern state, and secularism.

Religion and Religious Liberty

Before, however, considering this matter, we need to define what we mean by "religion" and, consequently, "religious liberty." Such definitions are important because they help to clarify why such liberty is important and what particular liberties are being claimed. One starting point for such a definition is to ask what distinguishes religious convictions from, for example, philosophical, political or ideological beliefs.

Contrary to what is often proposed, the difference is not to be found in the regular assertion that religion is to be contrasted with reason. Such distinctions often involve not-so-covertly assuming that religious faith is something intrinsically irrational. But such assumptions are themselves unreasonable. The fact that something cannot be explained by unaided human reason alone does not mean it is therefore irrational. One can go further and argue that if the existence of the laws of nature depends upon the creative intelligence of a being not limited by mere potentiality – which, philosophically and logical-

9 See Pew Forum on Religion in Public Life, *Rising Restrictions on Religion*, August 2011. <http://pewforum.org/Government/Rising-Restrictions-on-Religion%282%29.aspx> Though social hostility towards religious groups and government repression of legitimate religious liberties are different phenomena, they often go hand-in-hand. Moreover, each can fuel the intensity of the other.

ly speaking, is hardly an unreasonable proposition – it is not contrary to nor beyond reason to expect that human history might well include communications from that intelligent Creator or uncaused First Cause to created rational beings: communications that themselves may go beyond or even be contrary to the laws of nature.¹⁰

Here it is worth adding that some religions understand themselves as entirely compatible with reason. Christianity – at least its orthodox expressions – considers itself, for example, to be presenting a public revelation in the sense of a communication from the Divine to the human that has unfolded over time and in the form of specific historical events, the facts of which were witnessed, recorded, and consequently presented to others for their free assent. Christianity regards this divinity as a rational being (“In the beginning was the λόγος” [*Logos*])¹¹ from which human reason is ultimately derived, and thus as something about which human reason can consequently understand a great deal, even independent from a specific revelation, as a matter of natural theology.

This is not to deny that some religions do have a low regard for reason, either as *logos* or *recta ratio*. In some religions, God is often understood as *Voluntas* (pure Will) operating above or beyond reason. In the ancient pagan religions, for example, the deities were portrayed as and clearly understood by their adherents as willful, capricious beings who meddled in human affairs for the sake of their own hedonistic amusement rather than any rational concern for the well-being of mortal creatures. Latin Christians even coined the word *pagan* from the classical Latin word *pagus*, which meant rural dweller, but took on the connotation of “country-bumpkin,” precisely because they considered clinging to the old pre-Christian religious beliefs as characteristic of a close-minded parochialism and reflecting an irrational comprehension of the Divine, humanity, and the universe as a whole.

If, then, the religion-reason contrast fails, perhaps religion may be best understood primarily as a cultural matter. In one sense, this is appropriate insofar as all religions contain and are at the source of ways of acting, different practices, protocols, institutions, and the employment of symbols. They almost all embrace a collective memory. Some religions (especially those with

10 This argument is developed in depth in John Finnis, “Religion and State,” in *The Collected Essays of John Finnis*, vol.V, *Religion and Public Reasons* (Oxford: Oxford University Press, 2011), 80–84. See also the similar thoughts on this matter expressed by the philosopher and MPS member, the late Anthony Flew in *There is a God: How the World’s Most Notorious Atheist Changed his Mind* (New York: HarperOne, 2007), 74–158.

11 John 1.1.

strong tribal or folk dimensions) and various adherents of different religions may even be said to regard such things as more important than the religion's actual beliefs and doctrines. Yet it is clear that most religions make demands upon their adherents that go beyond those of a club, university, political party, or any number of cultural formations and associations. Religions understand themselves to be *more* than just groups of like-minded people doing similar things and engaging in particular practices over a period of time. In the case of most religions, all these rituals, customs, and expectations are derivative of something different and more fundamental than, for instance, a shared appreciation for art or consciousness of common ethnic and linguistic bonds.

This becomes more apparent when we ask ourselves what makes religion different from all other cultural formations. In the end, it might be suggested, religion and religious belief is best defined in terms of one's search for and conclusions concerning *the truth about the transcendent*. The word "religion" is itself derived from the Latin *religio*. Broadly-speaking, this meant "reverence for the gods, respect for what is sacred, or the bond between man and the gods." In other writings, penned by figures ranging from pagans such as Cicero to Christians such as St. Augustine, such reverence, respect and bonds are clearly understood as implying the living of one's life in accordance with knowledge of the truth about such things. In this sense, we can say that religion is *directly* concerned with the truth about the divine (including the question of whether or not there is a divinity) and the meaning of that truth for human choice and action in a way that, for instance, political beliefs and ideological convictions as well as non-religious forms of human organization are not.

Of course, particular political or ideological convictions may imply, reflect, or demand commitment to specific religious positions (such as Marxism's deep commitment to and reliance upon atheism, or National Socialism's not-so-disguised promotion of a type of paganism) from its adherents. But political philosophies such as liberalism, socialism, and conservatism or projects such as the promotion of cultural and national identities are not *immediately* concerned with attempting to know and then express the truth about the transcendent in the ways that atheism, Christianity, Islam, Judaism, Hinduism, or Buddhism most certainly are. Note that this understanding of religion does not in itself require the assent of the mind and the will to any specific religious claim. An atheist is one who has presumably thought seriously about and found unconvincing one or more religions' claims to embody a divine revelation as well the many arguments for the existence of a Divinity which have and continue to be made on the basis of reason unaided by revelation. But what the atheist or agnostic *can* share with the religious believer is an understanding of the *point*

of considering whether there is some ultimate, more-than-human source of value and meaning, of using one's intellect to discern the truth of this question, and then trying to order one's life on the basis of one's judgments about this matter. For what is at stake is *knowledge of the truth* and our ability to arrange our lives on the basis of what we discern to be the truth, consistent with the freedom of others to do the same.

This understanding of religion's nature, it may be argued, provides a particularly strong basis for religious liberty as an *immunity from coercion* in respect of religious belief, expressions of religious belief, and other acts of putting one's religious belief into practice that are compatible with law exclusively motivated by concern to uphold just public order: i.e., the rights of others, public peace, and public order.¹² For if religion is conceptualized in this manner, then religious liberty must be about seeking to guarantee that all are *free to consider* whether or not there is an ultimate transcendent being/s whose existence provides a compelling explanation of life, and then to assent to the conclusions of their reason. This is crucial for the *integrity* of one's religious belief or non-belief.¹³ As St. Augustine wrote: "If there is no assent, there is no faith, for without assent one does not really believe."¹⁴ Put another way, coercion for the sake of religious belief (including atheism or agnostic convictions) destroys people's understanding of the point of free inquiry into such matters.¹⁵

But religious liberty goes beyond this insofar as it also provides people with the *freedom to act* according to their conclusions about this subject. The freedom to go to synagogue, church, temple, mosque, or nowhere on a given day; or to fast or not fast at particular times of the year; to dress in particular ways; to educate one's children in a certain fashion; to formally change one's religion, convert to another religion, or even create one's own religion; to abandon

12 This understanding of religious liberty may be found in the European Convention on Human Rights, Article 9 (1), but is expressed even more clearly in the Second Vatican Council's Declaration on Religious Liberty *Dignitatis Humanae* (1965). http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html

13 Note that this conception of religious liberty is not based on "a right to self-respect," as Ronald Dworkin interprets the American Constitution's First Amendment (Ronald Dworkin, *Justice in Robes* [Harvard: HUP, 2006], p. 134). It is primarily based on respect for the truth.

14 St Augustine, *De Fide, Spe et Caritate*, 7

15 This is one of the central points made by Benedict XVI in his now famous 2006 Regensburg address. See Benedict XVI, "Faith, Reason and the University: Memories and Reflections," Aula Magna of the University of Regensburg, Tuesday, 12 September 2006. http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html

the religion to which a person has nominally or really adhered – all such liberties allow *all* people to order their lives on the basis of their answers to these questions, consistent with the rights of others and public order. In these instances, the believer will regard the protection of religious liberty as upholding his freedom to fulfill his duties towards the Deity or gods. Nevertheless, the same legal protection of religious liberty means that agnostics and non-believers cannot be forced to worship anyone or anything, or perform actions inconsistent with their non-belief or agnosticism about the transcendent. Thus, legal recognition of religious liberty confers upon believer, non-believer, and agnostic alike certain immunities from coercion, regardless of their actual beliefs.

Religious liberty is not of course an absolute. It *is* subject to the legitimate demands of public order, and distinguishing legitimate from illegitimate demands is part of the business of philosophy, law and politics.¹⁶ If, for instance, a religion regards violence against its members, potential adherents of that religion, or anyone else as permissible or even obligatory, then there are good reasons for governments and legal systems which acknowledge the right to religious freedom to prevent such actions. To do so would be *consistent* with the state's responsibility to protect religious liberty, rather than contrary.¹⁷

16 In *Dignitatis Humane*, the Second Vatican Council framed "legitimate demands" in terms of the requirements of natural law (understood in Aristotelian-Thomistic terms). It was able to do so because the Council's statement about religious liberty was itself based on natural law principles (as well as Christian Revelation in the form of Sacred Scripture and Tradition) rather than pragmatic arguments, strictly autonomist claims, premises derived from skepticism or a commitment to religious indifferentism.

17 There may well be other supplementary reasons (immediate concerns, for example, about civil peace) for the state to tolerate a plurality of religious beliefs and religiously-motivated actions within its borders. The difficulty with relying, however, upon pragmatic rationales is twofold. First, pragmatism provides no *principled* basis to protect the religious liberty of others if a religious or non-religious group with little respect for religious liberty becomes the majority and establishes political dominance over that society. Being "pragmatic" in such circumstances could easily lead to the conclusion that suppressing one or more other religions is "the pragmatic thing to do." Second, the absence of a principled defense of religious liberty can make it easier for the state to act in ways that unreasonably suppress the religious liberty of individuals and organizations. Almost all Communist states (with the exception of Albania), for instance, were formally committed by their constitutions to religious liberty. Yet the same regimes regularly invoked pragmatic concerns ("reasons of state") to suppress the religious liberty of individuals and organizations – to the point of harassing, imprisoning, torturing and executing hundreds of thousands of people. Today, the same rationales are employed against particular religious groups in modern-day Communist states such as China, Vietnam, and North Korea. By contrast, if religious liberty is based on the idea of religion outlined in this paper, then at least the burden of proof for legitimate coercion by the state of religious believers in countries that take the rule of law and legal justice seriously is much higher.

Religion and the Modern State

What, then, is the state? The state, properly-speaking, is an organization that claims to exercise the rights of sovereignty – including a monopoly of legal coercion that trumps other forms of authority – over a particular territorial unit. In this sense, the Roman state shares the same qualities as the *pólis* of Athens in the fourth century B.C., the eighteenth-century Kingdom of Prussia, or the twenty-first century Commonwealth of Australia.

Defining the *modern* state, however, is more complicated. The idea of a nation-state often involves identifying a sovereign state with a particular ethnic, linguistic, cultural, tribal, or religious identity, and usually some combination of most of these factors within a defined set of territorial boundaries. These ties are often complimented by common political and moral commitments. Over time, the identification of that sovereign entity with a nation (in the broadest sense of that word) rather than other entities becomes indistinguishable.

One characteristic of the modern state is that it is largely associated with the formation of post-medieval societies. To be sure, states with no clear national identity (such as the Habsburg Empire) lasted for several hundred years after the sixteenth-century. But the emergence of modern states in Europe generally began in the late-Middle Ages and is also closely intertwined with the emergence of modernity and the modern state.

Hence the modern French state which began emerging as early as the fourteenth-century involved the French monarchy (1) steadily extending its sovereignty over a set of territories and (2) consolidating that authority by primarily identifying itself and the state with an ethnic-linguistic-cultural identity known as France rather than the hitherto prevailing primary identity of Christendom. This process involved the establishment of an increasingly-centralized public administration, the consolidation of legal systems, systematic efforts to break down regional and civic autonomies and loyalties, the promotion of a common language, and efforts by governments to establish a monopoly of education in the name of solidifying and prioritizing national identity over other allegiances.

In some cases, the formation of modern states was also associated with the centralized provision of public works and forms of transportation within their borders, designed in part to consolidate ease of movement within those boundaries. This was especially important when it came to another feature of modern

nation-states: the waging of war in which sovereign interests (as opposed to simply those of the rulers) are regarded as providing legitimacy for the use of military action as well as a basis for popular support for such policies.

On a happier note, the formation of modern states often involved the abolition of economic barriers between different regions of that country. Free trade was established between Scotland and England, for instance, by the 1707 Act of Union that created the United Kingdom of Great Britain. Likewise, much of the way for the establishment of the modern German nation-state in 1871 was paved by the 1833 customs unions that abolished tariff barriers between most of the sovereign states in which the German language and sense of identity prevailed.

Unfortunately, the growth of modern states has also created new rationales for protectionist policies. It is no coincidence that the age of mercantilism, which accelerated in the second half of the sixteenth century, paralleled the growth of modern European states. Political and economic conflicts between nation-states are often a result or facilitator of economically-nationalist policies. Even less happily, the creation and building of modern states has sometimes involved the more-or-less forced integration and assimilation of different linguistic and cultural groups over long periods of time. This occasionally resulted in the expulsion of groups deemed incapable of being part of that sovereign entity because its customs, language, and/or religion were considered incompatible with national identity or unity.

At different points of their history, many modern states have also been the focus of, and often enabler of, *nationalism* in ways that the *pólis*, for instance, was not. By nationalism, we mean those instances in which there is a powerful identification by a group of individuals with the state in a way which implies some hostility to other nations. This can have a specific ethnic-linguistic dimension (in which case the state becomes closely identified with a particular ethnic or linguistic group) to the detriment or exclusion of other ethnic and linguistic groups living in or close to the same national territory. Historically-speaking, nationalism's emergence closely tracks the emergence of modernity and the rise of the nation-state, especially after the French Revolution. Such nationalism can have a religious element to it inasmuch as it can become closely associated with a particular religion. But nationalism can also embody negative views of various religions – either because adherence to certain religions is regarded as incompatible with belonging to the nation, or because of a type of nationalism that views all religions as an obstacle to national unity.

When it comes to religion, the growth of nation-states has involved many secular governments attempting to assert increasing control over religious belief, practice and institutions. Between the Edict of Milan and the sixteenth-century, an uneasy and never-quite settled relationship existed between the state and the Christian Church in the West, not least because of the considerable autonomy enjoyed by the Church, which monarchs were constantly attempting to limit. Modern states, however, went much further than medieval societies in their efforts to subordinate the autonomy of religious organizations. In a number of nation-states such as England and the Scandinavian nations, the monarch claimed to be the unrivaled and uncontested head of the Church, answerable to God alone within the boundaries of their state. To varying degrees, national identity in such nations became partly associated with membership of the national church. In Catholic states, the spiritual allegiance of the Catholic Church to the Pope in his capacity as Bishop of Rome and successor of St Peter made this goal of subordination harder for monarchs to achieve. Nonetheless, temporal Catholic rulers such as Louis XIV and the Spanish Habsburg and Bourbon monarchs did not hesitate to claim a certain, albeit limited authority over the Church within their realms. In Russia, the links between the Orthodox Church, the Tsar, and Russian identity remained formal and exceptionally strong until the twentieth century – so much so that *caesaropapism* became a tendency deeply ingrained in the consciousness of some Russian Orthodox believers.

The Modern State versus Religious Liberty

With this background in mind, we are now in a better position to address specific challenges to religious liberty presented by the modern state. There are at least three such challenges.

The *first* are efforts by modern states to formally penalize, expel, or even eliminate groups of people whose religious beliefs are regarded as a hindrance to national unity and cohesion. In the post-schism world of sixteenth-century Europe, examples of this manifested itself in the enacting of penal laws against Roman Catholics in England and Scotland, the expulsion of the Huguenots from Louis XIV's France, and Philip III of Spain's exiling of the Moriscos to North Africa in 1609. In each of these cases, a variety of political, economic, and cultural motivations were in play. But in all these instances, the religious beliefs and/or practices of those being persecuted were regarded by the civil

authorities as compromising the loyalty owed by subjects of the realm to these still-relatively new nation-states.

In our own time, many states that regard particular religious groups in similarly hostile ways have often avoided direct confrontation and instead employed administrative and quasi-legal methods to harass and intimidate religious groups. This is how the Nazi regime pursued its campaign against the Christian churches. In other cases, it is often a question of state officials sympathetic to (or intimidated by) particular political movements deciding to turn a blind eye to such movements harassing particular religious groups. A good example is the persistent failure of many state officials in parts of India to act against the often-violent harassment of some Christian minorities by Hindu-nationalists.

A *second* challenge created by nation-states to religious liberty are those instances in which people are formally free to embrace any religion, but only on terms which amount to the state asserting a claim – on the basis of national interest or national unity or an overriding commitment to secularism – to determine what people embracing a particular religion are permitted to believe and/or do.

A good example of this was the treatment of religious believers by the French state during the French Revolution. Formally-speaking, Revolutionary France allowed people to believe what they wished in religious terms: but only in forums approved by the state and in ways that often required members of particular religions to act against key precepts of their faith. The *Constitution civile du clergé* passed by France's National Assembly in 1790, for instance, insisted that Catholic priests and bishops be elected by *all* people within their parish or diocese (an election which, absurdly enough, permitted Jews, Protestants, and non-believers to participate in the process of deciding who would be Catholic priests and bishops). It also claimed to reduce papal authority in the church in France to nothing more than "the right to be informed," even on matters of Catholic doctrine – a position clearly at odds now and then with Catholic teaching. The Civil Constitution even required bishops to swear an oath of loyalty to the *nation* in terms far stronger than the same bishops' requirement to adhere to their faith's religious doctrines.

These measures were partly motivated by the animus of some Revolutionary politicians against Christianity. When it came to religion, many French Enlightenment thinkers (including Voltaire) who were immensely influential upon the Revolutionary generation of French politicians were far less tolerant of those

who disagreed with them than is commonly realized. Nor were they above using legal and political means (including the official censors) to try and intimidate their opponents.¹⁸ But it is revealing that when protests were made to the revolutionary authorities concerning the state's intrusion into matters of religious doctrine, the response was that such measures were necessary in the interests of the "general will," but also *la nation* and *la patrie*. Significantly, those clergy who refused to accept these violations of internal church affairs (most notably by refusing to swear an oath affirming their adherence to the Civil Constitution) were regarded and treated as *traîtres* to the nation between 1790 and 1795.¹⁹

A more contemporary instance of such state subordination of religion is the People's Republic of China. China has four state-approved religions: Buddhism, Taoism, Islam, Protestantism, and Catholicism. In organizational terms, these are subordinated to the government's State Administration of Religious Affairs. Historically-speaking, such arrangements owe much to the long-history of Communist hostility to civil society. But in China's case, it also reflects a long-standing suspicion on the part of the Chinese state towards those religions that point to allegiances beyond China's boundaries or which are associated in

18 The historian R.R. Palmer (himself an admirer of French Enlightenment thinking) points out: "In theory, the philosophers stood for the toleration of all beliefs and the free expression of ideas. In fact, however, the situation was less simple. The philosophers were by no means willing to allow liberty to their opponents. Not even to those who were far from representing the formidable power of the church. Their method was not often the mild persuasion favored by liberals. They talked much of reason, but their sharpest instruments were ridicule and vilification, which enabled them to throw off a man's arguments by defaming his character or belittling his intelligence. La Baumelle went to jail, thanks partly to Voltaire, whose works he had ventured to criticize. Fréron, a conservative and Catholic journalist, was called by Voltaire, in a single work, a scribbler, toad, lizard, snake, spider, viper's tongue, crooked mind, heart of filth, doer of evil, rascal, impudent person, cowardly knave, spy, and hound. He found his journal gagged, his income halved and his career ruined by the concerted attacks of the philosophers. To silence him, at least two of these philosophers, Marmontel and d'Alembert, appealed to the censors whose very existence the enlightened thinkers are supposed to have abhorred. It is not possible, in short, to accept as characteristic of these thinkers the statement often attributed to Voltaire, that, though he disagreed with what a man said, he would fight to the death for his right to say it." R.R. Palmer, *Catholics and Non-believers in Eighteenth-Century France* (New York: Cooper Square Publishers, Inc. 1961), p. 7.

19 These measures also reflected a long pre-Revolutionary history of the French state seeking to subordinate religious belief and organizations to the national authority (often referred to as "Gallicanism"). Just over 100 before the French Revolution, for example, Louis XIV had asserted in the *Declaration of the Clergy of France of 1682* that, among other things, Kings of France had the right to make laws and regulations touching ecclesiastical matters. Similar claims in a variety of other national-settings have periodically emerged, such as "Febronianism" in late-eighteenth-century German states.

the minds of many Chinese with colonialism. As the saying once went: "One more Christian, one fewer Chinese."

Protestant Christians who wish to engage in legally-sanctioned worship must thus belong to churches recognized by the National Committee of the Three-Self Patriotic Movement of the Protestant Churches in China. These churches are subject to various forms of state control quite inconsistent with the understanding of religious liberty outlined above. Likewise, Catholics in China who want to worship publically are forced to belong to the state-administered Chinese Catholic Patriotic Association. Not only does this organization serve to strictly limit Chinese Catholics' religious liberty; it also denies a number of key Catholic doctrines (such as papal primacy). To this extent, it effectively tries to coerce Chinese Catholics into belonging to another faith.

The employment of the words "national" and "patriotic" in the titles of these organizations is not incidental. It reflects the regime's underlying claim that *secular national* interests trump religious liberty at virtually every turn. A similar logic is at work in the Chinese government's treatment of Tibetan Buddhism.

On 3 August 2007, the Chinese government issued a decree stating that all the reincarnations of *tulkus* of Tibetan Buddhism must receive government approval. In issuing this decree, the regime claimed that "The government only administers religious affairs related to the state and public interests and will not interfere in the purely internal religious affairs." But the giveaway line concerning the Chinese state's real motives for acting in this way concerning Tibetan Buddhism is found in the decree itself. "It is," the decree affirms, "an important move to institutionalize management on reincarnation of living Buddhas. The selection of reincarnates must preserve *national unity* and *solidarity of all ethnic groups* and the selection process *cannot be influenced by any group or individual from outside the country*" (emphasis added). In short, the decree has everything to do with the Dalai Lama's significance for Tibetan national identity, his religious status with Tibetan Buddhism, and the sovereign claims of the Tibetan nation vis-à-vis the competing Chinese claim that Tibet forms part of China's sovereign national territory.

The *third* instance of state conflict with religious liberty may be found in the state's efforts to associate national identity with the practice of *a* particular religion. Such cases do not involve those instances in which national identity is often associated (sometimes loosely, sometimes more formally) with the cultural influence of certain religions (such as Lutheranism in Scandinavian countries). Rather, I have in mind cases such as the deep integration of the

state, Russian nationalism, and Orthodoxy that prevailed during long periods of Tsarist rule in Russia. This often created considerable difficulties for many of the Tsar's non-Orthodox, non-ethnic Russian, and non-Christian subjects in the form of usually sporadic (but sometimes systematic and violent) formal and informal state discrimination against and harassment of one or more of these groups at different times.

Securing Religious Liberty in Modern *Secular* States

For the foreseeable future, sovereign states are likely to remain part of the world's geo-political structure. They will continue to exist alongside much older formations, specifically religions such as Islam, Buddhism, and Christianity whose scope and outlook is by definition not limited to national boundaries and which, in many cases, insist that neither the will of the state nor the nation is absolute.

It is also likely that variants of the three above-noted problems posed for religious liberty by the actions and policies of various states will continue to manifest themselves in the near future. It will be especially interesting to see how states in the Middle-East such as Egypt and Tunisia long subject to authoritarian regimes – governments which often sought to legitimize themselves in secular nationalist and/or secular pan-Arab terms – will treat the issue of religious liberty. This matter will not be easily extradited from the cultural, ethnic, and tribal tensions that have long characterized many of these countries, and which we have no reason to believe will suddenly evaporate in the immediate future.

Leaving such speculations aside, there appear to be three ways in which states may seek to resolve, avoid, or suppress the challenges presented by legitimate religious liberty claims to immunity from coercion.

The *first* is for secular states to recognize a particular religion as the national religion or the state church (even to the point of recording a solemn belief about what a given nation considers to be the identity and name of the true religion) while also insisting that religious liberty is a right enjoyed by every member of the political community, regardless of their faith or non-belief. This might be called *soft-establishmentarianism*. An example might be the form of arrangements which exist in contemporary England. Here the Church of England

is the officially established church and benefits from some particular privileges. It exists alongside, however, other religious organizations whose liberties are not constrained by the fact that they are not part of the Church of England. People are also free to change their religious commitments and practices with no interference from either the state or the Church of England.

But establishmentarianism can also manifest itself in the form of an ostensibly secular state upholding and aggressively promoting an official national religion in ways that undermine legitimate religious liberty immunities. In such cases, the government may not overtly seek to force others to convert to the official religion. But such states can make it very difficult – and even, in some instances, a legal offense – for adherents of the official national religion to convert to another religious faith or choose to embrace no religious faith. In *hard-establishmentarian* situations, the state may also exert informal pressures to convert to the official national religion upon those who do not belong to that religion, such as refraining from punishing those who engage in forced conversion practices.

The *second* approach is for states to adopt a form of secularism that would allow people to choose their religion but effectively restricts the exercise of religious liberty to religious worship in the sense of prayer and gathering in religious buildings such as mosques, temples, synagogues, and churches. In short, it endorses one dimension of religious liberty, but radically constrains the freedom to act on one's religious convictions. To ensure that we are clear about what is being outlined here, we need to clarify the various meanings of the term "secular." The word *secular* was itself minted by Latin Christians. St. Jerome's Latin New Testament, for example, uses it for Greek words which signify the affairs of this world, sometimes neutrally as the world of time rather than eternity,²⁰ and more generally as the daily life of any human society.²¹ St. Thomas Aquinas used the expression, and often quite without negative connotations.²²

By "secularism," however, I mean a distinct set of beliefs which hold that that *any* religious-motivated action is unacceptable in the public square. Such secularism has nothing to do with maintaining a healthy distinction between

20 II Tim. 1:9; Tit: 1:2.

21 I. Cor. 6: 3–4

22 II Sent. d. 44 exp. textus ad 4. Aquinas also states that in matters which concern the good of the political community [*bonum civile*], Christians should generally obey the directives of the *secular* authorities rather than the ecclesiastical ("*magis obediendum potestati saeculari quam spirituali*").

spiritual and temporal authority. Rather, it is about the state effectively prohibiting or unduly restricting religiously-motivated acts outside the freedom to worship. Taken to its logical conclusion, what might be called "doctrinaire secularism" can easily amount to the not-so-covert promotion of atheism or skepticism as the unofficial national religion. By this, I mean that the state insists that anyone contributing, for example, to political discussion *must* act as if there is no God, or if there is, this *ought* to have no bearing whatsoever upon their choices and actions in this arena. This is, more or less, the view that was expressed at different times by the immensely influential liberal philosopher John Rawls.²³

These are most certainly *not* religiously-neutral positions. Both are derivatives of two of the three variants of atheism (though he does not use the word) identified by Plato: there is no God; or no God which has any concern with human affairs; or any such divine concern with the human is easily appeased by a superficial piety and requires no demanding reform of human vices.²⁴ Needless to say, such claims²⁵ rest on theological and philosophical arguments just as debatable as those underlying, for instance, the three monotheistic faiths.²⁶

23 See, for example, John Rawls, *Political Liberalism* (New York: Columbia University Press 1993/1996), lvi-lviii; and John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review*, 64, 1997: 787 n.57, 798-9.

24 See Laws X 885b, 888c, 901d, 902e-903a, 908b-d, 909a-b. Plato usually speaks of "gods" or "the gods." When, however, his analysis becomes more focused, Plato refers to "God" or "the god" (see 902e, 903d, 910b).

25 Not least among the controversial premises of this type of secularist thought is often one or more of the following sometimes-unspoken claims: (1) All religion is necessarily contrasted with reason; (2) Religion is essentially a historical avatar which, in the interests of a peaceful transition to the better world that will be revealed to us by the positive modern social and empirical sciences, must be accorded some token respect; (3) Self-determination essentially concerns each individual's satisfaction of their desires (understood in an epicurean way), which implies that we must dramatically limit the private and public influence of any religion – or philosophy for that matter – that suggests that authentic self-determination involves one's free conformity to moral truths knowable by reason but which receive confirmation from what different religions regard as direct revelations from the Divinity.

26 Nor do I mean *secularization* in the sense of processes which involve the extension of human understanding and control over fields of life once so little accessible to human science and technology. Many religions, such as Judaism and Christianity (and Islam at particular times of its history), actually encourage secularization of this kind, by insisting on the transcendence of God and the intelligibility of creation, with its consequent accessibility to the *natural* sciences and, accordingly, to technological development. As Great Britain's Chief Rabbi Jonathon Sacks writes: "one of the revolutions of biblical thought was to demythologise ... nature. For the first time, people could see the condition of the world not as something given, sacrosanct and wrapped in mystery, but as something that could be rationally understood and improved upon" (Jonathon Sacks, *Morals and Markets* [London: IEA, 1998], 16).

There is, however, a *third* option, what I will call the secular state's adoption of a position of what might be called *non-confessionalism*. By this, I mean arrangements in which the governments of nation-states refrain from according formal legal recognition to any one religious position and genuinely seek to treat members of all religious groups, including non-believers and agnostics, fairly. This arrangement seeks to guarantee the freedom of all religious communities and non-believers within a free society, consistent with the liberties of others and the legitimate demands of public order.

Understood in this way, non-confessionalism does not mean that a secular state is obliged to deny a nation's religious heritage – something often implied in doctrinaire secularist positions. To pretend, for example, that Islam is not the religion of the overwhelming majority of Saudis or that it has not exerted tremendous influence upon Arab and Turkish history and culture is as ahistorical as trying to deny the influence of Orthodoxy in Russia, Hinduism in India, Lutheranism in Finland, Shinto-ism in Japan, or Buddhism in Thailand. Non-confessionalism is not about the unofficial obliteration of the religious dimension of national memory by the state in the name of religious liberty or secularism.

One prominent example of non-confessionalism is the arrangements established by the First Amendment of the American Constitution which prohibits the making of any law "respecting an establishment of religion" or impeding the free exercise of religion. Similar provisions have been subsequently applied with minor variations in a number of other countries such as Australia, Canada, and New Zealand. In these nations, there is no established religion. There are no religious tests for public office. The exercise of religious liberty is not restricted to interior belief or questions of prayer and worship. Nor is religious liberty regarded as a mandate for the state to free people "from" religion.

Of the three models of secular state positions vis-à-vis religious liberty outlined above, soft-establishmentarianism and non-confessionalism would appear to be most conducive to the exercise of religious liberty. Neither of these approaches will in themselves resolve all conflicts between religious liberty and the demands of the state. They do, however, provide a basis for coherent legal and political policies concerning religious liberty in sovereign states in ways which are less obvious in hard-establishmentarian or doctrinaire-secularist positions. They also do the most justice to the understanding of religion as the search for the truth about the transcendent and the consequent decisions about this subject that inform one's actions.

Prospects for Accommodation

The precise form of policies towards religion and religious liberty in modern states that adopt soft-establishmentarian or non-confessionalism need not be uniform. The cultural conditions and histories of different sovereign entities are different. Seeking to impose an abstract one-size-fits-all framework is likely to produce unnecessary conflicts, especially when it comes to those religions that are truly transnational in their character.

A different question, however, is the extent to which the modern state can accommodate themselves to either soft-establishmentarianism or non-confessionalism. This may well have less to do with the specific characteristics of the state itself and more to do with the view adopted by a given state to religion in general and/or the position of religious minorities. Modern states which desire to radically limit religious liberty in order to realize particular national goals; or which regard particular religions as deeply corrosive of national unity; or which are committed to one or more forms of doctrinaire secularism; or hostile in principle to all religions will certainly struggle to accept either non-confessionalism or soft-establishmentarianism.

However various states address the religious liberty issue, what should not be in doubt is the increasing need for them to do so. Among other things, globalization has significantly changed the religious complexion of many nations so that many countries now contain large numbers of people who belong to a different religion other than the one which has traditionally dominated a given nation-state or even geographical region. While we often note that there are several million Muslims living in historically-Christian Europe, it is easy to forget that there are hundreds of thousands of Hindus and Christians living and working in the traditionally Islamic Gulf states. Then there is China, in which we see an on-going and dramatic growth of religious belief and practice accompanied by a decreasing willingness on the part of many Chinese believers to accept the regime's subordinationist strictures concerning religious views and acts.

The other factor that makes religious liberty an even more pressing concern for those concerned with the maintenance and growth of free societies in sovereign nations – indeed, any particular political setting – is the growing religiosity of people across the globe. Having written an obituary for God in

1999,²⁷ the *Economist* found itself backtracking just seven years later as it sought to explain why religiosity was on the rise²⁸ – so much so that its editor-in-chief and one of its senior journalists wrote an entire book on the subject.²⁹ The sociologist Peter Berger has also produced considerable evidence concerning what he calls the desecularization of the world.³⁰ Put simply, the world appears to be becoming more religious rather than less, and there is no reason to assume that either modernization or globalization automatically lead to less-religious societies.

While certain parts of the West (broadly construed) have become less-overtly religious over the past century, they are very much the exception rather than the rule. Even in Europe, the degree of secularization (in the sense of detachment from religious belief and involvement in religious institutions) is arguably much exaggerated and more prevalent in particular European settings than others.³¹ Another factor to consider is that societies can move from becoming somewhat appearing indifferent to religion to being much more overtly religious in very short periods of time. Despite the rather hedonistic tone of much late-Georgian England, for instance, the shift towards a more religious society was already underway before the end of George IV's reign, with the subsequent result that much of English, Scottish, and Irish society became steadily more religious from the 1830s onwards until the outbreak of World

27 See "God," *The Economist* (Millennium issue), 23 December 1999. http://www.economist.com/node/347578?Story_ID=347578

28 "In God's name," *The Economist*, 1 November 2007. http://www.economist.com/node/10015255?story_id=10015255

29 See John Micklethwait and Adrian Wooldridge, *God is Back: How the Global Revival of Faith Is Changing the World* (London: Penguin, 2009).

30 See, for example, Peter Berger (ed.), *The Desecularization of the World: The Resurgence of Religion in World Politics* (Grand Rapids: Eerdmans, 1999).

31 In America, the percentage of the population that describes itself as "atheist" has remained steady at less than 4% of the population since 1944 (See Rodney Stark and Byron Johnson, "Religion and the Bad News Bearers," *Wall St Journal*, 26 August 2011. (http://online.wsj.com/article/SB10001424053111903480904576510692691734916.html?mod=rss_opinion_main)). In most European countries, rates of religious practice have either stabilized or, in some cases, actually increased. Rates of mass attendance in Italy and Spain, for instance, have grown considerably since 1980. It is arguable that we are witnessing in parts of the West is: (1) the collapse of religious practice among society's economically-poorer segments; (2) the slow-motion demise of "liberal Christianity" ("liberal" in the sense of a notable self-distancing from orthodox Christian doctrinal claims and often the effective replacement of such claims with the espousal of progressive political and social causes); and (3) the deterioration of those churches which enjoy the status of being a given country's formally established church.

War I.³² Likewise, the rather secular-nationalist and socialist-modernization agendas that characterized much of the Arab world and culture from the mid-19th century until the early 1970s have been largely eclipsed by at least more overt expressions of commitment to Islam that take a variety of religious, political and cultural forms.

But perhaps above all, accommodation requires the secular state – and therefore those determining its policies regarding religion and religious liberty – to take seriously the internal nature of different religions. There is a regrettable tendency, particularly on the part of Western policy-makers, to treat all religions as the same, to regard all religious traditions as infinitely adaptable sociological and cultural phenomena, and to view their respective religious authorities as akin to temporal politicians. In many such cases, the result is to disregard or fatally misread two of the most important forces at work in a given religion: namely, the question of *authority* – who decides what a religion determines to be true doctrine – and a religion's *theological* understanding of the divinity. The capacity of a religion to accept religious liberty on the terms defined in this paper is heavily dependent upon, for example, whether its dominant theological tradition (as opposed to outlier versions) understands the divine as embodying the characteristics of *Logos* or *Voluntas*, *Caritas* or *Obsequium*. For better or worse, ideas matter – including theological ideas and each religion's conception of religious authority. Until secular-minded lawmakers and others are willing to take such matters seriously, their capacity to secure religious liberty in different contexts, including that of nation-states, will be severely inhibited.

32 See, for instance, Herbert Schlossberg, *The Silent Revolution and the Making of Victorian England* (Columbus: Ohio State University Press, 2000).

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