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Charles R. Strain

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RELIGIOUS FREEDOM AND THE CULTURAL CAPTIVITY OF RELIGION IN AMERICA: AN ARGUMENT FOR RELIGIOUS PLURALISM

*Charles R. Strain**

Stanley Hauerwas has one overriding concern: the cultural captivity of the Christian communities in America. The primary agent of this captivity, the captor supreme, is the state. Its means of capture is a benevolent tolerance of religious beliefs that, paradoxically, produces religious indifference. As such, the "political arrangements" that we call at their highest level "the United States of America," and at a more focused level "the separation of Church and State," present an intractable challenge to committed Christians. Above all, Hauerwas wishes to hold those individuals who have the audacity to name themselves Christians to the seriousness of their calling. To those who tout the American experiment in religious freedom, he wants to make it abundantly clear that this freedom is not an ultimate good. Indeed, in religious terms, it may be decidedly ambiguous. The state does not possess, and therefore cannot confer, the pearl of great price. The state cannot confer the treasure of eternal life, enlightenment, or release from the karmic cycle. Additionally, it cannot confer amazing grace. However, the state can, in subtle ways, lull us into a fatal smugness, so much so that we no longer know when we have qualified our loyalty to God in the name of the state.

The burden of Hauerwas's argument is that the First Amendment's sanctioning of religious beliefs, in distinction to religious conduct, privatizes religion and reduces it to the opinions of individuals held in the sanctity of their hearts. The First Amendment thus protects religion by removing it from its context — a disciplined religious community — where religion may make a difference. Hauerwas uses a telling analogy: The Free Exercise Clause is to privatized religion as the Free Speech Clause is to talk radio shows;

* Professor of Religious Studies and Director of the Master of Arts in Liberal Studies Program, DePaul University. Professor Strain is also the coauthor, along with Dennis McCann, of *Polity and Praxis: Towards A Program for American Practical Theology*, published in 1985.

anything can be said or believed because none of it is to be taken seriously. Everything becomes a matter of opinion.

The argument is disturbing for one who wishes to nurture the transforming power of religious communities. However, the argument has several problems. First, the privatization of religion has been shaped by many more cultural forces than the First Amendment. The state is not the sole agent of cultural captivity. After all, privatized religion is far more reflective of the ethos of a consumer society than it is of Madison's vision in the *Memorial and Remonstrance*.¹ Furthermore, privatized religion does not necessarily eviscerate committed action, nor does it always reflect a vision of secular, enlightened individualism. To regain a sense of the inaugurating power of a genuinely inner religious vision, read once more the trial of Ann Hutchinson for the moment when she tells John Winthrop's theocratic court that she has gathered a group of committed Christians outside the structures of authorized Puritan religious life because of an "immediate revelation."²

Hauerwas is more telling when he argues that the relocation of Christian belief into the individual's heart cleared a public space which the "nonconfessional God" of "the religion of the nation" proceeded to occupy.³ I referred to *Lynch v. Donnelly*⁴ (the Pawtucket crèche case) at an earlier conference of this Church/State Center as a case in point. Because we go round and round with this issue each year at this time, permit me to restate my earlier point. In *Lynch*, the language of religious accommodation is used to affirm religious symbols which are seen as part of a national heritage.⁵ Justice O'Connor refers to "the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society."⁶ These purposes do more than co-opt religious symbols. As an authentic and specific Christian symbol, the crèche proclaims that confidence in the future is grounded in a God who chooses to be

1. James Madison, *Memorial and Remonstrance Against Religious Assessments*, reprinted in *THE MIND OF THE FOUNDER: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON* (Marvin Meyers ed., rev. ed. 1981).

2. See THOMAS HUTCHINSON, *THE HISTORY OF THE PROVINCE OF MASSACHUSETTS BAY* 482-520 (1972).

3. Stanley Hauerwas & Michael Baxter, C.S.C., *The Kingship of Christ: Why Freedom of "Belief" Is Not Enough*, 42 DEPAUL L. REV. 107, 119-20 (1992).

4. 465 U.S. 668 (1984).

5. *Id.* at 673.

6. *Id.* at 693 (O'Connor, J., concurring).

revealed in the mystery of human birth. Sandwiched between a reindeer, clown, teddy bear, and an elephant, the crèche is effectively destroyed as a religious symbol. *Lynch* confirms Hauerwas's conviction that religious communities must maintain the integral connection of belief and action centered in specific religious symbols.

However, Hauerwas would have us choose between polarized alternatives: George Will versus Pope Pius XI. Who would not resist this choice? The only other alternative seems to be an anemic liberal tolerance, a bland civility which accents all positions because it is either agnostic about all claims to religious truth, or, as in the case of liberal Protestantism, because it sees an essential congruence between the democratization and the christianization of America. There are several problems with this way of posing alternatives. First, to dismiss the Free Exercise Clause may be of little consequence for those who, whatever their convictions, are fatefully born into the mainstream of American life. Those who place the order of the state as a supreme value find the specter of anarchy, as Justice Scalia did recently in *Employment Division v. Smith*,⁷ not in mainstream religions, but in those culturally defined as alien, as other. The Court allowed the "specter of anarchy" to prevail despite both the centrality of the peyote ritual in the sacramental life of the Native American Church and the evidence before the Court that members of that church, with its rigidly disciplined use of peyote, constituted no more threat to the respect for laws regarding controlled substances than a priest consuming sacramental wine did during Prohibition. To look only at the need for the Christian community to maintain its integrity, and to ignore legal means for meeting the needs of others, like the Native American Church, is un-Christian. We need to prevent the Court, by rational persuasion, from veering in George Will's direction as it did in *Smith*.

Second, central to this counter-argument to Hauerwas is the conviction that there are rival visions of the relationship of religious conduct to the social order at work in the Court. *Wisconsin v. Yoder*⁸ represents such an alternative vision and a commitment to a pluralistic society which is not nearly so domesticated as Hauerwas would have us believe. The tradition of voluntary communities as the mainstays of democratic life is an idea that was brought to our

7. 494 U.S. 872, 888 (1990).

8. 406 U.S. 205 (1972).

awareness first by Alexis de Tocqueville.⁹ However, in cases like *Wisconsin v. Yoder*, the Court sustains vital pluralism, encouraging vigorous interaction and contestation over the meaning of the good life in both the public and the private arena. In a more recent case, *Bob Jones University v. United States*,¹⁰ Justice Powell, in a concurring opinion which disagreed strongly with the Court's rationale, demonstrated that it is possible to set appropriate limits to governmental accommodation of religious social contributions through the provision of tax exemptions which do not lead to a domestication of religious life, but encourage the opposite. Powell stated:

In my opinion, . . . [the Court's argument] ignores the important role played by tax exemptions in encouraging diverse, indeed often sharply conflicting, activities and viewpoints. As Justice Brennan has observed, private, nonprofit groups receive tax exemptions because "each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society." Far from representing an effort to reinforce any perceived "common community conscience," the provision of tax exemptions to nonprofit groups is one indispensable means of limiting the influence of governmental orthodoxy on important areas of community life.¹¹

Powell is arguing again about an issue of governmental accommodation. However, the point I am making is that this opinion reflects a vigorous support of pluralism in conduct, as in belief, within carefully stated limits as were transgressed by Bob Jones University. Arguably, this pluralism is the true intent of the First Amendment.

Hauerwas, in his praise of Pius XI's imperial vision, carries his laudable commitment to the integrity of religious communities to some very disturbing conclusions. We must keep in mind, however, that it is not Pius's vision of the Kingship of Christ, but rather Father Metzger and Thomas Merton's vision that he finally commends. These rival visions should not be confused. Apart from vigorous religious communities that nurture the kind of resistance presented by Metzger and Merton, the state may become the kind of co-opting idolatrous power that Hauerwas condemns. Yet, apart from the freedom to debate and to enact our rival theological understandings, it will not be the Hauerwases whose visions will prevail, but rather some narrow dogmatism. Whether it is secular or religious in character matters little.

My own religious reason for supporting the Free Exercise Clause

9. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 509-24 (J.P. Mayer ed., 1969).

10. 461 U.S. 574 (1983).

11. *Id.* at 609 (Powell, J., concurring).

can be stated in the words of Tao Te Ching, "The name which can be named is not the Eternal Name."¹² I can think of a hundred similar aphorisms from my own Christian tradition and from other traditions. If we accept this affirmation as a radical limit to our claims to know ultimate truth, then the presence of other traditions free to name other names, to call upon the Eternal Name in different tongues, is absolutely vital to the integrity of the separate traditions. Religious communities can surely generate prophetic self-criticism from within, but there is nothing like the presence of others, living out their lives with religious integrity, to cause us to question our own religious lives with the kind of seriousness that Hauerwas demands.

12. LAO-TZU, TAO TE CHING (D.C. Lau trans., 1963).

