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February 24, 2012: The First Session of the Conference

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Title: The First Session of the Conference

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2/24/2012—We heard last night a defense of the uniqueness of religion from Professor Michael Stokes Paulsen (University of St. Thomas) from the perspective of a societal commitment to the truth of religion. No other foundation for religious liberty makes sense, according to Paulsen. Eugene Volokh challenged that view on the ground, among others, that if it were really true, we should eliminate our commitment to religious liberty when we change our minds about that, as European countries have changed their minds. Conversely, Andrew Koppelman (Northwestern) defended neutrality on the ground that it has worked really well for religion. Government should not be deciding religious disputes and when society changes so that what was once obvious now is controversial, government should take note and not be continuing to assert that monotheism is true, for example. Chad Flanders responded, in effect, which level of generality is neutral? Justice Scalia is neutral among all monotheisms; John Rawls is neutral among all comprehensive doctrines. Neutrality as a concept is not up to resolving these distinctions. I was listening for the commitments below the words. Paulsen's embrace of the framers belied the fact that there was no tradition of faith exemptions from generally applicable law during our formative period. The Free Exercise Clause protected religious conscience from specific governmental endorsement of rival religious claims—forcing people to pay taxes for religious services, for example. The point was to be free to practice religion or not. The believer was still expected to satisfy normal social roles. So, what lies behind Paulsen's position is a political claim that government is now doing things that are outside its purview. He opposes Obamacare in principle. And that is what the debate should be about. Religious exemption is a side show.