

## Religious Expression in the Marketplace of Ideas: Why the Fuss?

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Religion and politics: what's all the fuss about? Why are we even having this discussion? Is it fair to conclude that religious people are ostracized, as some scholars claim,<sup>1</sup> from political participation and political debate? Is religious expression, broadly defined, unwelcome in the marketplace of ideas? Addressing these questions will take us to the genesis of the Constitution's religious liberty clauses, and from there to an examination of the factors that have affected the level of political participation by religious people—concentrating particularly upon evangelical Christians<sup>2</sup>—throughout the nation's first 150 years and then in the twentieth century.

If it is true that religious people are politically active, then why is there such concern in the recent academic literature? I hypothesize that, although religious believers are becoming ever more active in politics and political debate, many academic and cultural elites dismiss religious-based argument from dialogic politics. If I am correct, then the frequency of political activism by religious believers does not mean that they are taken seriously, or even welcome in the marketplace, by many academic and cultural elites.

### THE DEVELOPMENT OF RELIGIOUS LIBERTY IN THE UNITED STATES

Although historians and constitutional scholars often diverge when interpreting the founding of the nation,<sup>3</sup> there is a general consensus that many men

and women braved dangerous passage to America to escape religious persecution. They also agree that, once they came to the New World, many of these same religious refugees persecuted others who practiced different religious traditions. The persecuted rapidly became the persecutors.<sup>4</sup>

The history books are replete with examples of religious intolerance by those in colonial America and even after the successful revolution against Great Britain. Although many of those who settled the Atlantic coast colonies were seeking greater religious freedom for themselves, they felt no compulsion to extend that freedom to others. They often required religious tests for public office, compelled citizens to swear their allegiance to the Christian faith, forced religious dissenters to flee, and even executed religious heretics.<sup>5</sup> Donald Swanson writes:

The religious cruelties and lack of religious freedoms that existed in the Old World provided a primary impetus for the migration to the New World. When the minority sects arrived in the New World and found themselves in a position of dominance, many of them could not resist the temptation to set up their own systems of church-state integration.<sup>6</sup>

There was a strange mixture of sentiment for religious liberty and at the same time (and generally by the same people), a tendency to merge church and government. The Puritans in Massachusetts are an excellent example of this apparent paradox. In principle, they insisted upon a church free from state domination, but in reality they could only accept religious freedom if church conformed to the expectations of those holding political power. Max Sevelle and Darold Wax note:

For what the framers of the Westminster Confession and of the Cambridge Platform intended was exclusively the freedom of their own Congregational churches from interference by the state. For them there was only one true church: that was the Congregational Church as they knew it; for them, this church (or these churches) represented God's own idea of how churches should be constituted for the worship of Him. Any other ideology, any other way of worship, would be a gross misinterpretation of God's wishes; to tolerate other forms would be to tolerate devilish threats to the work of God Himself.<sup>7</sup>

Yet during this period of religious intolerance, and as a direct result of the persecution, one finds planted the seeds of religious liberty and toleration. These seeds would eventually bloom into the freedoms guaranteed by the first amendment. Although they fell short of the liberties finally secured by the Constitution's establishment clause and free exercise clause, these state and

colonial laws provided the foundation for the first amendment. For instance, Roger Williams' charter to found Rhode Island recognized the complete separation of church and state.<sup>8</sup>

In 1649, the Maryland Assembly passed the toleration act that provided "no person professing to believe in Jesus Christ shall be in any way troubled in his religion."<sup>9</sup> Unable to find asylum anywhere in the colonies but Rhode Island, the Quakers moved west and settled primarily in Pennsylvania where religious liberty was granted to all who would acknowledge God.<sup>10</sup>

The movement toward constitutionally recognized religious liberty received its greatest boost as a result of the conflict over the established church in Virginia. Because of the persecution suffered at the hands of the Congregationalists in New England, Baptists formed a number of communities in the south. In Virginia, however, only the Anglican Church was legally recognized. Baptists, Quakers, and Presbyterians actively opposed the establishment of the Anglican Church and the impact of such an establishment upon their own religious efforts. The question eventually became not only one of disestablishment of the Anglican Church, but how far disestablishment should go, and whether such disestablishment meant total separation of government from any particular church.<sup>11</sup> The question was resolved when the state legislature considered two competing bills for religious liberty: Patrick Henry's bill, which would have required Virginians to support financially their own churches, and Thomas Jefferson's bill which permitted no state-initiated financial support. Jefferson's bill, the far more separationist of the two proposed pieces of legislation, prevailed and became law in 1786.<sup>12</sup>

The push for religious liberties culminated in the opening clauses of the first amendment. They require that "*Congress shall make no law respecting an establishment of religion*" (the so-called "establishment" or "no establishment" clause) "*nor prohibiting the free exercise thereof*" (the so-called "free exercise clause").<sup>13</sup>

Not surprisingly, the first amendment's religious liberty clauses have engendered substantial debate. The bulk of the attention given to the religious liberty clauses by jurists, scholars, legislative leaders, and the public is reserved for the establishment clause.<sup>14</sup> This makes sense. The establishment clause is one part of the Constitution that demands clarification. What precisely does it mean that Congress can pass no law "respecting an establishment" of religion?

The various analyses of the establishment clause fall into two larger groups: a broad interpretation and a narrow interpretation. The broad interpretation would read the clause to mean: "Congress shall make no law *respecting religion*."

Sometime ago, I watched an episode of the television drama *Picket Fences*. In this strange program, cows were carrying human fetuses to term for

mothers who were unable to have children. Once law enforcement officials discovered that “Old MacDonald had a cow”—and the cow was giving birth to a son—all sorts of legal and ethical questions were debated in this little Wisconsin community. At the end of the episode, the sheriff’s daughter was left confused about her faith. She went to see the wisest person in town—Judge Bone. She asked the judge whether or not he believed in God. The judge cut her off. He told her that there was no way she was going to get him to *establish religion* by offering an opinion in his chambers with respect to the existence of God. This illustrates how broadly one might take the language in the first amendment: no law “touching” religion.

Alternatively, the narrow interpretation of the clause would require that “Congress make no law establishing a religion.” In the *Picket Fences* illustration, the judge might have argued two things. First, he was not “establishing” anything by offering an opinion about his faith. He was simply giving his thoughts as the wisest person in town about the existence of God. Second, his comments, even if offered in chambers, would not elevate any single religion.

Important perspectives in this regard can be derived from studying the intentions of the framers of the Constitution respecting the establishment clause. My analysis of the framers’ intentions has led me to three conclusions: first, the historical debate regarding how best to interpret the religion clauses will not be resolved directly. The quest to discover the original intent behind the first amendment religion clauses is attractive. The historical debate carries with it an automatic explanation for the Supreme Court’s incoherent case results.<sup>15</sup> Separationists, those who favor the broader interpretation of the establishment clause, and accommodationists, proponents of the more narrow reading, believe they can use history to explain the court’s inconsistent analysis. Unfortunately, their varied interpretations of the historical data are 180 degrees apart. The framers of the first amendment could not have required simultaneously strict separation of church and state—no law “touching” religion—and meant merely to secure the federal government from establishing a *national church*.<sup>16</sup>

Second, the prohibition against “establishment” only affected the national government. It would not impact upon the states until the 1940s when the court interpreted the fourteenth amendment’s due process clause to incorporate the first amendment and to make it binding on the states.<sup>17</sup> At the time of the Revolution, ten of the thirteen states had established churches. In fact, one state, Massachusetts, maintained an official relationship with the Congregational Church until 1833.<sup>18</sup>

Third, the prohibition against “establishment” did not affect the interaction between religion, religious people, and politics. There is serious dispute in the scholarly literature over whether or not the Framers wanted to terminate “financial” accommodation by government toward religion. As I suggest-

ed above, some argue that the first amendment was designed to end anything *touching* religion. Clearly, they hold, the Constitution would permit no financial support for religion.<sup>19</sup> Others argue that Congress not only *intended* to offer financial support for religion, they quite frequently did just that—for example, government-supported chaplaincy programs and funds for missionaries to “educate and civilize” Native Americans.<sup>20</sup> The best evidence suggests that regardless of the framers’ position with respect to “financial” accommodation, they did not want to terminate “ideological” support for religion. Law professor Douglas Laycock argues that the ideological accommodation of religion was not a good thing, but he acknowledges that it reflected the Protestant Christian consensus in eighteenth-century America:

In 1791, almost no one thought that government support of Protestantism was inconsistent with religious liberty, because almost no one could imagine a more broadly pluralistic state. Protestantism ran so deep among such overwhelming numbers of people that almost no one could see that his principles on church taxes might have implications for other kinds of government support for religion. The exclusion of non-Protestants from pronouncements for religious liberty was not nearly so thorough or so cruel as the exclusion of slaves from pronouncements that all men were created equal, but both blind spots were species of the same genus.<sup>21</sup>

Thus, ample evidence shows that religious believers participated in the formation and the administration of early local, state, and national government under the Constitution.<sup>22</sup> Several decades after the founding, Tocqueville acknowledged the importance of religious faith to the American people in his thorough study of American politics.<sup>23</sup> The Supreme Court, approaching the twentieth century, identified America as a “Christian nation.”<sup>24</sup> Even if the United States was intended to be a “secular” nation,<sup>25</sup> political scientist Kenneth Wald notes that America draws from a rich tradition of religious symbolism. This tradition provides a framework for America’s collective goals and aspirations:

At the core of the rich and subtle concept of a civil religion is the idea that a nation tries to understand its historical experience and national purpose in religious terms. In the same way that religion may endow the life of an individual with greater meaning than mere existence, so a civil religion reflects an attempt by citizens to give their nation transcendent value. The nation is recognized as a secular institution, but one that is somehow touched by the hand of God. British author G.K. Chesterton recognized this tendency in the United States, which he referred to as ‘a nation with the soul of a church.’<sup>26</sup>

### THE FALL AND RISE OF POLITICAL ACTIVISM AMONG EVANGELICAL CHRISTIANS

In the late nineteenth and early twentieth centuries, political activism by Protestant Christians reflected the schism between theological liberals and theological conservatives. Broadly speaking, the “liberals” believed in the perfectibility of humankind before the return of Christ. Thus, they plunged into the performance and administration of good works—the “social gospel.”<sup>27</sup> Conservatives while not abandoning their responsibility to care for the poor, hungry, naked, and downtrodden, preferred to reestablish the “fundamentals” of the faith within the church.<sup>28</sup>

It is important to note that both groups were motivated by their respective theological positions. To their credit, their predominant motivation was to better America by articulating values and encouraging public policies that they believed consistent with their understanding of Christ’s admonitions. Their political rhetoric and activism, no matter how strident, did not correlate with an effort to “establish” the Christian faith.<sup>29</sup>

Following World War I, there emerged a substantial disillusionment with the liberal theologian’s claim that humankind can, over time, grow past its penchant for evil.<sup>30</sup> This disillusionment offered an opportunity for conservative Christians to preach their particular message of hope.<sup>31</sup> However, any aspirations the fundamentalists may have harbored that they would shape public debate were crippled by the performance of William Jennings Bryan, (viewed through the lenses of H. L. Mencken) at the 1925 Scopes “Monkey Trial.”<sup>32</sup> As a result, for nearly fifty years, conservative evangelical Christians largely abandoned the political world to concentrate upon a pure, undiluted message of salvation.<sup>33</sup>

What prompted the reawakening of this evangelical and fundamentalist sleeping giant? Some dug in their heels opposing the burgeoning civil rights movement. Others became vocal at the open rebellion of America’s youth in the late 1960s and early 1970s—one popularly characterized by sexual promiscuity and illegal narcotics. A number reacted against the forceful opposition to the war in Viet Nam.<sup>34</sup> However, the watershed event that served as a catalyst for political activism among conservative Christians was the Supreme Court’s 1973 decision, *Roe v Wade*.<sup>35</sup> Like their counterparts in the early part of the twentieth century, conservative Christians in the latter part of the century became simultaneously outraged and frightened by the direction they saw America heading. Their anger and their fear prompted their reentry in grassroots politics.<sup>36</sup>

Thus, conservative evangelicals justify their political activism as consistent with their theology. It is no longer a question of “doing either the gospel” (e.g.,

the functions of the church—worship, discipleship, evangelism, and benevolence) or engaging in the duties of citizenship. Both are seen as part and parcel of doing the gospel.<sup>37</sup> Not surprisingly, there is strong connection between their conservative theology and their political and social conservatism.<sup>38</sup>

After *Roe*, born-again Christians did get involved in politics. They came out in support of one of their own, Democratic candidate Jimmy Carter, during the 1976 election.<sup>39</sup> Sensing an opportunity for victory in 1980, conservative interest groups made overtures toward several Christian leaders. The ensuing relationship between these various members of the “New Right” in American politics helped to catapult names like Jerry Falwell and Pat Robertson into national prominence.<sup>40</sup> Christian television shifted away from what was previously an almost exclusive emphasis upon evangelism and discipleship toward shouldering the responsibility for informing believers about political truth and urging them to get into the game.<sup>41</sup>

Pat Robertson got into the game in 1988 when he announced that he was convinced that it was God’s will for him to run for president.<sup>42</sup> Although Robertson did not secure the Republican Party nomination, he became a master at grassroot politics. In six short years since his failed bid for the Republican nomination, Robertson’s Christian Coalition had shaken the foundation of the old, established Republican Party. During the 1994 primary and convention season, the media ran several stories reporting that the “New Christian Right” had captured the G.O.P in several states.<sup>43</sup>

Additionally, Robertson’s *700 Club* still reaches an audience of millions with a daily news summary and copious political commentary. Christians responding to pleas by Robertson on the *700 Club* routinely swamp the Capitol or White House switchboards with calls. His Regent University trains graduate students in government, public policy, media, and produces lawyers who are well-trained and ready to litigate.<sup>44</sup> His American Center for Law and Justice—the ACLJ (ready to do battle with the ACLU)—has proven itself at the highest appellate court levels including victories before the United States Supreme Court.<sup>45</sup>

#### WHY DO RELIGIOUS PEOPLE CONTINUE TO BE CONCERNED? DIGGING BENEATH THE SURFACE

This range of political activism prompts some to say, “What’s the fuss? You’re back in the politics business.” The political activism undertaken by evangelical leaders might be categorized into three types. First, “prophets” participate in political life from outside the system and challenge social and public policies they find to be repugnant. In addition, prophets understand their calling

as providing a challenge to the church if they perceive that believers are becoming too close and comfortable with the world. Second, “politicians” are different from prophets in that they enter fully into the political process and are accountable, directly or indirectly, to the public. Third, “players,” are neither prophets nor kings (politicians) but are would-be kingmakers. The player best describes the activism of evangelicals beginning with phase one (e.g., the formation of the Moral Majority), and phase two (e.g., Pat Robertson’s aborted efforts to become a politician that culminated in the Christian Coalition). Attorney Oliver Thomas argues that, rather than suffer in American public life, religion flourishes. It permeates public life:

In short, the notion of a naked public square devoid of religious influence has no significant basis in fact. Certainly, there are isolated anecdotes and court cases demonstrating that religion does at times receive short shrift in the public arena—the absence of adequate references to religion in social studies textbooks being the most dramatic example. The overwhelming weight of evidence, however, is to the contrary. . . . A more accurate assessment would seem to be that religion enjoys a prominent, and some would argue favored, role in American society.<sup>46</sup>

If one digs beneath the surface, however, one will discover a far more unstable place for religious expression in the public square. There *are* indeed isolated anecdotes and court cases that *do* demonstrate that religion often receives short shrift in the public arena. Furthermore, there is a difference between the kind of religious expression that characterizes those politicians who wear their faith on their sleeves for public consumption—giving evidence of what many call America’s “civil religion”<sup>47</sup>—and authentic religious expression. More religion does not correlate with “taking religion seriously.”<sup>48</sup>

What a growing number of scholars are telling us is that the complex relationship between religion and politics has been damaged. The problem, they maintain, is that the two institutions do not fully interact in contemporary American society. Specifically, religious voices are neutralized and are thus restrained from many parts of American public life. Even though religion permeates the political and social environment, it is abrogated effectively by the actions of many cultural and intellectual elites.<sup>49</sup>

This concern is not a new one. Earlier in this century, Reinhold Niebuhr, John Courtney Murray, and Jacques Maritain were among those who sounded the same alarm.<sup>50</sup> Today, however, the warning comes with increasing intensity. A wide range of scholars from within political science, history, law, sociology, theology, including Mark Tuhnet,<sup>51</sup> Harold Berman,<sup>52</sup> Robert Bellah,<sup>53</sup> R. J. Neuhaus, A. James Reichley,<sup>54</sup> Paul Vitz,<sup>55</sup> Kenneth



Wald, James Davidson Hunter and Os Guinness,<sup>56</sup> Frederick Mark Gedicks,<sup>57</sup> Ronald Thiemann,<sup>58</sup> Franklin Gamwell,<sup>59</sup> Michael Perry, and Stephen Carter argue that the problem is unique and much worse. Even though they may not always tackle the issue from the same perspective and frequently proffer different solutions, each of these experts call upon citizens and policymakers to recognize and restore the relationship between the two venerable institutions.