



New freedom of public religion

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The civic catechisms of our day still celebrate Thomas Jefferson's experiment in religious freedom. Religion must be "a concern purely between our God and our consciences," Jefferson wrote in 1802. Politics must be conducted with "a wall of separation between church and state." "Public Religion" is a threat to civil society and thus must be discouraged.

These Jeffersonian maxims remain for many today the cardinal axioms of a unique American logic of religious freedom: religious privatization is the bargain we must strike to attain religious freedom for all, and a wall of separation is the barrier we must build to contain religious bigotry for good.

Separation of church and state was certainly part of American law when many of today's civic opinion-makers were in school. In 1940 and 1947, the U.S. Supreme Court for the first time used the First Amendment religion clauses to declare local laws unconstitutional. In more than thirty cases from 1947 to 1985, the court purged public schools of their traditional religious teachings and cut religious schools from their traditional state patronage.

After forty years of such cases, it is no surprise that many now think that Jefferson's words are enshrined in the First Amendment itself. It is often disconcerting for readers to discover that the First Amendment is much more restrained and ambiguous: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

During the past two decades, the Supreme Court has abandoned much of its earlier separationism and reversed some of its harshest cases. In a dozen cases, the court has upheld government policies that support the public access, activities, and funding of religious groups—so long as these groups are voluntarily convened and so long as nonreligious groups are treated the same way.

Hence, religious counselors could be funded as part of a broader federal family-counseling program. Religious student groups could have equal access to public classrooms and state funds that were available to nonreligious student groups. Religious schools were just as entitled to participate in a state-sponsored school-voucher program as other private schools.

The Supreme Court has defended these holdings on wide-ranging constitutional grounds and has not yet settled on a consistent new logic. One common teaching of these recent cases, however, is that public religion must be as free as private religion—not because the religious groups in these cases are in fact nonreligious, nonsectarian, or part of the cultural mainstream. To the contrary, these public groups and activities deserve to be free because they are religious, because they engage in sectarian practices, and because they sometimes take their stands above, beyond, and against the cultural mainstream.

A second teaching of these cases is that the freedom of public religion sometimes requires the support of the state. Today's state is not the distant, quiet sovereign of Jefferson's day, from which separation was both natural and easy. Today's state is an intensely active sovereign from which complete separation is impossible.

Few religious bodies now can avoid contact with the modern welfare state's pervasive regulations; both confrontation and cooperation with government are virtually inevitable.

When a state's regulation imposes too heavy a burden on a particular religion, the free-exercise clause provides a pathway to relief. When a state's appropriation imparts too generous a benefit to individual religions, the establishment clause provides a pathway to dissent. However, when a general government scheme provides public religious groups and activities with the same benefits afforded to all other eligible recipients, constitutional objections now are rarely availing.

A third teaching of these cases is that freedom of public religion also requires freedom *from* public religion. Government must strike a balance between coercion and freedom; the state cannot force citizens to participate in religious ceremonies and subsidies they find odious.

Still, it is one thing to outlaw Christian prayers and broadcast Bible readings from public schools; after all, students are compelled to be there. It is quite another thing to ban moments of silence and private religious speech in these same public schools.

A final teaching of these cases is that freedom of public religion is no longer tantamount to establishment of a common religion. Government support of a common civil religion might have been defensible in earlier times of religious homogeneity, but it is no longer in these times of religious pluralism.

Today, our public religion must thus be a collection of particular religions, not the combination of religious particulars. It must be a process of open religious discourse, not a product of ecumenical distillation. All religious voices, visions, and values must be heard and deliberated in the public square.

Some conservative Protestants and Catholics today have seized on this new insight better than most. Their recent rise to prominence in public and political processes should not be met with reflexive incantation of Jefferson's mythical wall of separation.

The rise of the Christian right should be met with the equally strong rise of the Christian left, of the Christian middle, and of sundry Jewish, Muslim, Hindu, Buddhist, and other religious groups who test and *contest* its premises, prescriptions, and policies. That is how a healthy democracy works.

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