Welcome to the discussion board. We invite you to use this space to post reflections, comments, or questions in response to this month's web forum commentary, "Religion and the Constitution Confounded: Treating the First Amendment as a Theological Statement," by Bishop Thomas J. Curry. You may review the essay at http://marty-center.uchicago.edu/webforum.

Re: September 2003 Discussion

Author: Winnifred Sullivan (---.uchicago.edu)
Date: 09-03-03 10:44

Interpretations of the religion clauses of the First Amendment have long been acknowledged to be so saturated with politics and with political readings of history as to be almost incoherent. Thomas Curry stands out as one who has insisted on fidelity to history and honesty about the political and theological commitments of those involved. His often-cited first book, "First Freedoms," made an important contribution to our understanding of the historical circumstances surrounding passage of the religion clauses of the First Amendment, both in the states and in the Constitutional Convention. In his recent "Farewell to Christendom," the main theological argument of which he presents here, Curry offers the reflections of a mature observer of the American church-state scene, in a prophetic challenge to Americans to realize the radical promise of those clauses. The religion clauses did not give Americans religious liberty, he says. The religion clauses, rather, guaranteed Americans that government would not get in the way of that what is a natural liberty. As for the two principal camps in the interpretation of the religion clauses -- the so-called separationists or Jeffersonians, on the one hand, and the accommodationists, or new religionists, on the other -- Curry says: "a pox on both your houses." Both have betrayed the Constitution. Both have succumbed to the allure of "Christendom," that is, of the European establishment that the founders sought to avoid.

History has indeed proved the radical promise of the religion clauses difficult to fulfill, both for government and for religion, neither of which seems to be able to cure itself of the habit of poaching on the other's territory. That the religion clauses continue to bedevil us is evident from the comic opera in Alabama over the last few weeks concerning a stone monument to the Ten Commandments in the Supreme Court of Alabama, placed there by its Chief Justice. I believe that Curry would agree with the federal court that the monument had to go. And yet. Isn't the real problem with the monument that it is so "in your face"? The monument and its overblown sponsorship, complete with prayer vigils and invocations of the Almighty, are a "culture wars" thumbing of the nose. The monument, had it been ignored, was not really a serious danger to the secularism of government, any more than the congressional chaplaincy or the Christmas tree in the White House.
The laws of this country are riddled with far more invasive religious "monuments." As long as government assumes the responsibility of improving human lives, it will be in the business of defining what is a normal and productive life: what marriage is, where children ought to live and what they should learn, when lives should be terminated and how prisoners and substance abusers are to be rehabilitated. George Bush, and many others, say that recovery from addiction, healing for troubled adolescents and rehabilitation of criminals happen only when a person is healed spiritually, when that person gives himself to God. If that is so -- indeed even if that is only partly or occasionally so -- is it wrong for government to fund programs that provide a place for such recovery? Is it wrong for the government not to fund such programs? Only if we define recovery in wholly secular scientistic terms can we avoid that challenge.

Curry embraces American exceptionalism in this area. Like most commentators on the First Amendment, Curry speaks of the radical American commitment to religious freedom in contrast to early modern and Enlightenment Europe. Rarely do American theorists of the religion clauses seriously consider what the alternatives are today. Perhaps this is not the best of all possible worlds. Virtually all countries are struggling with how legally to handle religious freedom and pluralism. Not all look to the U.S. model. The differences are instructive. One could argue, for example, that the lingering religious "establishment" in Europe today is allowing for creative efforts at the institutionalization of Islam that would be impossible here. Because government can still interact constitutionally with religious communities in most European countries, a legal space exists in which Muslim communities can negotiate with government in areas such as education and the establishment of charitable foundations. Such formal negotiation is impossible in the U.S. because government cannot privilege, and thereby "establish," any religious group.

Curry says that if government does what government should do (in a country where the government is defined by the Constitution as one of limited powers) and religion does what religion should do, letting the chips fall where they may, we would all be better off. No doubt. In an ideal world. But perhaps what American history teaches us is not that we have failed to be faithful to the Constitution but that what we aspired to was impossible. Government, too, like religion, has changed since the end of the eighteenth century. Government is far more pervasive. Legal regulation reaches into all corners of our lives. And religion continues to make comprehensive claims and perform acts that clash with other religions and with government. There is a real sense in which voluntarily renouncing "Christendom" (and here I include its pluralistic alternatives) is impossible in a fallen world. We have to learn how to make "Christendom" more humane and more just.

Reply To This Message

Re: September 2003 Discussion

Author: W. Clark Gilpin (---.uchicago.edu)
Date: 09-04-03 17:27

Bishop Thomas J. Curry has perceptively identified an enduring paradox of the historical relations between government and religion in the United States. Religious liberty is, at one and the same time, a “great American achievement” and a topic of seemingly endless dispute. Our perennial public confusion is not helped by invoking a deceptive metaphor employed in the seventeenth century by Roger Williams and later by Thomas Jefferson: the image of a "wall of separation" between church and state. Historically, if such a wall has existed,
it has proven to be extremely porous in both directions. Americans, Bishop Curry observes, have “the habit of turning the First Amendment into a theological statement.”

Bishop Curry is right, I think, to remind us that the First Amendment is “a statement of power not given.” Its self-restrained language declares that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” Curry proposes that contemporary citizens, including justices of the Supreme Court, would do well to exercise a similar restraint and beware of making tacit theological judgments in the very process of determining when a law aids or impedes religion. The First Amendment should remind government, Curry states, “to confine itself to its own limited, secular authority.”

The difficulty of exercising the restraint that Bishop Curry advises, of course, arises from the fact that “religion” and “secular” tend to be mutually defining terms. In attempting to confine government to the secular, any judge is implicitly also designating the domain of the religious. The difficulty of these mutually defining terms shows up in virtually all dictionary definitions of secular: “Pertaining to the world or to things not spiritual or sacred; disassociated from religious teaching or principles; worldly.”

The most deceptive feature of the “wall of separation” metaphor is precisely the impression it leaves that there is a clear and permanent division between sacred and secular, church and state in American life. Instead, the appropriate scope of religious liberty is constantly being clarified in social debate over the nature and relations of such pairs of terms. As James Madison once wrote, “it may not be easy, in every possible case, to trace the line of separation between the rights of religion and the Civil authority with such distinctness as to avoid collisions.” Indeed, the “collisions” are perhaps the very occasions in which careful deliberation may and should clarify and properly extend religious liberty within an increasingly pluralistic society.

Reply To This Message

Re: September 2003 Discussion

Author: Brent Smith (---.proxy.aol.com)
Date: 09-22-03 08:24

While the sacred and the secular describe two dimensions of our world, they are dimensions whose boundaries in a democratic Republic must be recognized by religious folk as always shifting. Those of us in faith communities, called to the religious life, view the wall of separation of church and state out of the side on which our feet are planted. While we may share the designation “Americans,” we may not share presuppositions of the relationship between sacred and secular that comprise our various traditions. For example, my own tradition, Unitarianism, has a mixed history in terms of the relationship between the sacred and secular and, hence, the independence of church and state (a term I picked up from Rich Christianson at Phillips Seminary in Tulsa). Our congregationalist history made the political revolution from monarchy to democracy not only palatable but desirable, and so we plunged into the social improvements that democracy made possible; all the while maintaining our "secular/state privilege" as members of the Standing Order. We could not outrun our Puritan connection with Roger Williams or the self-professed theological connection of Thomas Jefferson. We have maintained that the religious impulse is to be considered separate from its particular manifestation in institutional or faith tradition form. Yet, we have historically considered the relationship between the American experiment and the religious impulse to be so intimate as not to permit us to
see much distinction. A mixed history indeed!

Throughout its history my tradition has evidenced much confusion about the relationship between the realms of the state and the church, and just as much uncertainty about where the sacred leaves off and the secular begins. Maybe your tradition has its own form of confusion! Perhaps part of our discussions on these matters as religionists is to recall to one another the conversations that have made up our traditions, and thus make up the roots of our perspectives; the revelations our traditions represent (in terms of social connectedness) and the ways our particular traditions have ignored the self-interest in our finite attempts to live understand and live out those revelations. If we are trying to live true to our particular faith tradition, then what does each of us see the role of government to be relative to our faith? What is the role of our particular religious community and tradition in a public square where if we pledge allegiance to a Republic we are always pledging to protect the capacity and accessibility of others to ultimate truths we do not hold and, in some instances, are a threat to ours and us? We live in a time when television has replaced the pulpit and chancel as the chief bearer of news and public commentary on both the sacred and secular, and their relationship. What, then, is our role as men and women of faith who are citizens seeing need for a larger, public conversation of this issue?

Re: September 2003 Discussion
Author: Brent Smith (---.proxy.aol.com)
Date: 09-22-03 08:31

While the sacred and the secular describe two dimensions of our world, they are dimensions whose boundaries in a democratic Republic must be recognized by religious folk as always shifting. Those of us in faith communities, called to the religious life, view the wall of separation of church and state out of the side on which our feet are planted. While we may share the identification "Americans," we may not share presuppostions of the relationship between sacred and secular that comprise our various traditions. For example, my own tradition, Unitarianism, has a mixed history in terms of the relationship between the sacred and secular and, hence, the independence of church and state (a term I picked up from Rich Christianson at Phillips Seminary in Tulsa). Our congregationalist history saw the political revolution from monarchy to democracy as not only palatable but desirable, as the continuation of the unfolding of the divine in the world. And so we plunged into the social improvements that democracy made possible, all the while maintaining our "secular/state privilege" as members of the Standing Order. We could not outrun our Puritan connection with Roger Williams or the self-professed theological connection of Thomas Jefferson, and time and our dwindling numbers made remembering this part of our tradition a welcome rediscovery. We have maintained that the religious impulse is to be considered separate from its particular manifestation in institutional or faith tradition form. Yet, we have historically considered the relationship between the American experiment and the religious impulse to be so intimate as not to permit us to see much distinction. A mixed history indeed!

Throughout its history my tradition has evidenced much confusion about the relationship between the realms of the state and the church, and just as much uncertainty about where the sacred leaves off and the secular begins. Perhaps part of our discussions on these matters as religionists is to recall to one another the conversations that have made up our various traditions, and thus make up the roots of our perspectives; the revelations our traditions represent (in terms of social connectedness) and the ways our particular traditions
have ignored the self-interest in our finite attempts to understand and live out those revelations. If we are trying to live true to our particular faith tradition, then what does each of us see the role of government to be relative to our faith? What is the role of our particular religious community and tradition (theologically understood) in a public square where if we pledge allegiance to a Republic we are always pledging to protect the capacity and accessibility of others to ultimate truths we do not hold and, in some instances, are a threat to ours and us? We live in a time when television has replaced the pulpit and chancel as the chief bearer of news and public commentary on both the sacred and secular, and their relationship. What, then, is our role as men and women of faith who are citizens seeing a critical need for engaging our country in a public conversation of this issue larger than the narrow perspective of TV?

Re: September 2003 Discussion

Author: Thomas Curry (---.74.148.35.diall.houston1.level3.net)  
Date: 09-29-03 11:23

I am most grateful for the excellent responses to my presentation, "Religion and the Constitution Confounded: Treating the First Amendment as a Theological Statement," and particularly to Professors Winnifred Sullivan and Clark Gilpin for their accurate and perceptive statement of my argument and their careful comments on it.

It appears to me that the nub of the issue raised here is the issue of how to distinguish between the secular and the sacred and the role of government in this process.

My view is that both are inextricably mixed, and government cannot and should not attempt to separate them. The free exercise of religion means that any person is entitled to endow even legitimate secular government activity, with religious, sacred meaning. Parochial schools are both secular and religious. A government social worker engaged in secular social work may see in that work a profound religious significance.

Government needs to restrict itself to what is secular and within its jurisdiction. Modifying the offside rule in soccer might well be a worthy secular pursuit, but it is hardly within the delegated powers of government.

How then is government to determine what is within its jurisdiction? To decide that what is secular as what is not religious is to polarize life between the secular and the sacred and to establish a religion of dualism.

Negative reference is one of the least useful ways of defining anything. True, a Democrat is not a Republican, but that definition tells us very little else.

The question to be addressed pertains to jurisdiction rather than content, i.e., what is the meaning of religious or of sacred? The First Amendment begins with the words, “Congress shall make no law….” The essential question, therefore, is: will a law involve government in matters over which it has no power to adjudicate?

In practice, government deals with this issue regularly. For purposes of setting up public museums, it defines what it means by art, but it rightly refrains from attempting to define the meaning of religious art. It provides tax exemption for non-profit organizations but refrains from defining what are “religious” non-profit organizations.
The federal government allows states to provide secular textbooks to religious schools because the only issue to be addressed there is whether the children learn to read the books. Government can and does contract with churches to provide diverse social services. However, those contracts may not bring the State into jurisdictional matters that involve adjudicating whether the presence of religious symbols or the required participation in activities that the state itself could not sponsor infringe on participants’ conscience. The issue of vouchers is complicated because it raises jurisdictional matters. Can a religious school dismiss a teacher for not adhering to the religious mission of the school if the public pays the teacher’s salary? What the government pays for, the government must define and adjudicate.

My deepest desire is to change the paradigm in which Church-State matters are discussed. Ever since its finalization in the 1947 Everson decision, the present paradigm has been in deep crisis. Because it relied on a metaphor whose imagery led to a reversal of the fundamental purpose of the First Amendment, it was destined to produce only confusion. That Amendment was designed to affirm a negative, to clarify that the new federal government indeed had no jurisdiction in religion. By asserting that the Amendment endowed government with power to separate the spheres of the sacred and the secular and to dictate the terms of that separation, Justice Black subverted its meaning and purpose.

The “wall of separation” metaphor has proved useless for legal and analytical purposes. What scholars need to do now is to abandon the other parts of the paradigm. The First Amendment is not about aiding or hindering religion, because determining these issues is inherently religious. The first sixteen words of the First Amendment do not contain two “clauses,” because what does not exist may not be divided into two parts. Zero divided by two is still zero. As Hamilton so clearly saw, the Amendment prohibits the exercise of a power not given in the first place.

Focusing on what is within the jurisdiction of government will not automatically solve the issue, but it is a worthwhile place to begin and will help lead Church-State discussion out of its present confused state. My book argues that in practice, the Court has been rather successful in doing this. The challenge now is to have theory catch up with the practice. The alternative is to posit an absolute government, one that can define the sacred and the secular and separate the two. The free exercise of religion refers to freedom from government jurisdiction, but within the present paradigm the only way to secure the success of this operation is by the death of the patient. The realm of free exercise from which the government is excluded is itself defined by the same government.