

Religious Politics

A closer look at the relationship between government and religion

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Introduction

Traditionally, Americans suppose a clear separation between Church and State. This interpretation of the First Amendment derives from the language found in the Bill of Rights to the United States Constitution. The phrase “separation between church and state” does not appear in the Constitution or the Amendment, but it has been quoted in opinions by the United States Supreme Court.¹ There is a division of government and religion in existence, but that dividing line remains unclear. The common belief held today is that the First Amendment declares government and religion should be two entirely separate entities. While the two can (and do) coexist, it quickly becomes dangerous if the head of the country is deeply rooted in his faith and incorporates that faith into his presidency, as George W. Bush is and does.

Every President chooses language with care when addressing the American public, but never before has there been the extent of religious speech that President Bush has used in his past term and a half in office. God is infused in his Court appointments and findings, his public policy, and his dialogues with secular groups, non-secular groups, as well as the general public. President Bush is a religious man and knows that he uses religious vernacular. What he may not realize, however, is the divisive impact that such language can have. Some people are able to embrace such secular verbiage, while others are pushed away by its use.

¹ *Reynolds v. United States*, 98 U.S. 145 (1878).

The origin of the First Amendment was at the first session of the First Congress in 1789² when Representative Madison proposed the Bill of Rights. Upon ratification by the states, it became a part of the Constitution. The two clauses applied to religion are found in that First Amendment which states, “Congress shall make no law respecting an establishment of religion...or prohibiting the free exercise thereof...”³ These are commonly referred to as the Establishment Clause and the Free Exercise Clause. Originally, the Amendment was “explicitly rejected because many rightly feared that it would authorize the federal government to *disestablish* state churches. That is why the framers selected the word “respecting” when describing what Congress could not do.”⁴ The words themselves seem clear, but it is difficult to determine the intentions and implications of those particular clauses as the Framers saw them.

While one cannot decipher the framers original interpretation precisely, it is fair to assume that the Clause was created to prohibit a government national religion from being established and perhaps, to keep the government from having jurisprudence in religious issues. There are those who believe in original intent, similar to those called constructionists, who take the verbiage literally. Then, there are those who believe the First Amendment is subject to interpretation so as to be relevant to American society today.

I will examine the First Amendment to determine if the original intentions were different than how we interpret the separation of Church and State in the 21st Century

² Whitfield, Stephen J. Separation anxiety: from Founders to Fundamentalists...

³ U.S. Constitution *First Amendment*

⁴ Kevin Seamus Hasson, Right To Be Wrong: Religion and freedom in a pluralistic America (San Francisco: EncounterBooks, 2005), 136.

America. I am going to test that by examining the current Presidential administration against literature and research about the Bill of Rights. Citizens of the United States are faced with certain issues similar to those of when the Bill of Rights was written. There is still a need for equality and tolerance, as the framers articulated, but given the current state of the country, the interaction between politics and religion must be different than it once was. There are certain issues that are clearly in the realm of religion, some in the realm of politics, but it cannot all be so cut and dry. There are certain issues that are controversial both for government and for religions. Who should address what and why? There are government freedoms and individual rights, both are interpreted by the courts but also by religious convictions.⁵ It is necessary to go back to the rights guaranteed to us by the Constitution and find the true relationship between the church and state. While there is no obvious solution to the question of the relationship between church and state, it appears that the First Amendment is necessary, establishing a separation between the two. However, a common perception seems to be that wall between church and state is infallible. This is inaccurate, because while the Government and Religion should remain separate, it is necessary for the two to maintain a relationship that allows for some interaction and a cohesive division.

In order to examine my hypothesis that there needs to be some inclusion of religion in government and government in religion while still maintaining a wall of separation, Chapter One will outline the history of the two relevant Clauses from the Bill of Rights. In 1789, it was clear that the Bill of Rights was needed. Since that time, there

⁵ *Roe v. Wade* 410 U.S. 113 (1973).

have been amendments and landmark court cases to help define and redefine those same additions.

Chapter Two will focus on findings of the Supreme Court. The appointments and nominations of judges determine the outcomes of the court and how those outcomes of the cases will be reached. Thus it is necessary to examine the people behind the decisions in addition to the actual cases and outcomes. Certain landmark cases will be highlighted in order to understand current precedent.

Chapter Three examines recent political conduct impacting issues of church and state. President Bush campaigned in 2001, promising to introduce faith based initiatives while in office. As President, he established an office for that very reason. The office exists at a basic level, to encourage faith based organizations to seek federal funding if it is to combat social problems in a secular manner. Opposition has protested the President's initiative citing that it is a direct violation of the Constitution's First Amendment. Chapter Three delves into what progress has been made in President Bush's "Compassion in Action."⁶ The chapter will also explore the government entanglement in religion which President Bush's initiative tolerates.

There are countless issues debated in religious circles, just as in political or governmental groups. Often, the subject of debate can be classified as either that of religious nature, or political. However, on certain occasions, it is unclear under what genre the debate falls. Prime examples of this are abortion, the death penalty and homosexuality, which is the focus of Chapter Four.

⁶ Fact Sheet: Compassion in Action: Producing Real Results for Americans Most in Need," The White House. 9 March 2006, <www.whitehouse.gov/news/releases/2006/03> (15 April 2006).

1

History of the First Amendment

To better comprehend the relationship between Church and State and what it ought to be, it is necessary to understand what the First Amendment actually says and how it came to be a part of the U.S. Constitution.

Prior to the ratification of the Constitution, the United States relied on the Articles of Confederation to exist as a national government. The document was similar to the Constitution only in that it laid out guidelines for the individual states and its relationship to the federal government because until that point, there was no strong federal authority; the power was basically in the hands of the states.

In contrast, the Constitution became the highest law in the United States, setting up a framework for American Democratic government. It established the three branches of government in existence today: the Legislative (Article I), Executive (Article II), and Judicial (Article III).

Article I of the Constitution establishes a bicameral legislature composed of a House of Representatives and a Senate (Article I, Section 1). The composition of the House of Representatives is set out in section 2 and the composition of the Senate is set out in section 3 of Article 1. All state legislatures, with the exception of the Utah legislature which is unicameral, are also composed of a House of Representatives and a Senate. The United States Constitution does not require that state legislatures be bicameral.

Under Article II, section 1 the executive power is given to the President of the United States. The President serves many functions to the country, but regardless of the situation, the power of the President is subject to the Constitution. “The President shall be commander in chief of the Army and Navy of the United States, and the militia of the several states...he shall have power to grant reprieves and pardons...except in cases of impeachment.”¹ He nominates and appoints officers to both the House and Congress. Once a bill has been passed by Congress, it is sent to the President who then can sign it to enact it as a law or veto it. Congress can, however, override the President’s veto. Thus, there is a Constitutional tension in place due to the role of Congress and the job of the President. Therefore, it is necessary for the President and Congress work together in order to accomplish anything.

Article III of the Constitution establishes the Judiciary branch of the government which creates the Supreme Court and empowers the Supreme Court to establish lower courts (Federal District Courts and Court of Appeals). The Supreme Court holds judicial power over all cases where the constitutionality of an issue is in question. It determines if things such as laws, Presidential conduct, and policies are Constitutional. This creates a system that allows one branch (Judicial) to check over the other two branches (Executive and Legislative).

Establishing the Constitution was neither easy nor was it quick. The Constitutional Convention opened in May, 1787. The committee of delegates debated governance issues such as the powers of the President and amendment procedures, as well as what was necessary and what could be left out. The final draft of the Constitution was written September 15, 1787, two days before it was signed. At the end of that month,

¹ *United States Constitution* Article I, Section 2.

Congress approved the Constitution and sent it to the States. Gradually, each State ratified the new Constitution (with the exception of Rhode Island who ratified in 1790)².

Two years after the Constitution had been signed, the Bill of Rights was proposed. Many people assumed it would be a part of the Constitution, but when it was not, they pushed for the establishment of the Bill of Rights. It was a safeguard of sorts to spell out the rights and immunities of individual citizens. Twelve articles making up the Bill of Rights were sent to the States from Congress. Two years after the proposal, on December 15, 1791, the Bill was ratified, excluding only two of the original twelve.

The First Amendment of the Bill of Rights states that “Congress shall make no law respecting an establishment of religion...or prohibiting the free exercise thereof...”³

While there are many different ways to read these clauses, it is clear that the U.S. government is not to have its own Church. Religions have abided by laws of the government, but run themselves without the government owning them. Most, if not all religions have internal governance systems.

² www.usconstitution.net

³ United States Constitution

2

Court Appointments and Court Findings

The French political observer Alexis de Tocqueville commented on the structure of the Supreme Court compared to other nation's history and jurisprudence. "The representative system of government has been adopted in several states of Europe, but I am unaware that any nation of the globe has hitherto organized a judicial power in the same manner as the Americans...A more imposing judicial power was never constituted by any people."¹

The philosophies and opinions of the members of the Supreme Court at any given point in time inescapably shape the Opinions of the Court. The most recent landmark cases debating religious liberties have been tried in courts under the leadership of Chief Justice Warren, Chief Justice Burger, Chief Justice Rehnquist, and most recently, President Bush's appointed Chief Justice Roberts. In general, the judicial appointments are reflections of the President who appointed each Chief.

One distinct exception to the aforementioned generalization is Chief Justice Warren. He was appointed to the position by President Dwight D. Eisenhower, who later expressed his disappointment in the surprisingly liberal Chief Justice. He was a Republican yet produced fairly democratic opinions. The President once commented that nominating Warren "was the biggest damned fool mistake I've ever made in my life."² Chief Justice Warren is remembered for his work for equality, particularly racial equality.

¹ "The Court and Constitutional Interpretation," <http://www.supremecourtus.gov/about/constitutional.pdf> <http://www.supremecourtus.gov> (12 April 2006).

² "Wikipedia: the Free Encyclopedia," http://en.wikipedia.org/wiki/Earl_Warren <<http://en.wikipedia.org>> (13 April 2006)

He led the Court only for 15 years before he announced his resignation during Lyndon B. Johnson's Presidency.³ Abe Fortas was President Johnson's first choice, but the Senate did not confirm the nomination. In order to avoid a vacancy in the Court, Chief Justice Warren postponed his resignation until Nixon was in office and nominated Warren Earl Burger.

When running for Presidential office, Richard Nixon stressed the importance of having a constructionist voice heard in the Supreme Court. A person who holds a constructionist view (generally referred to as a strict constructionist) believes that there is no need for extra interpretation of the Constitution. The intentions are stated in the document and it means exactly what it says. Before joining the Supreme Court, Burger was known for his speeches criticizing his predecessor. Nixon took note of this and quickly nominated and appointed Burger as Chief Justice. Under Burger, the Court focused on judicial reform; he was an avid supporter of the separation of powers as well as checks and balances.⁴ After seventeen years on the bench, Burger retired, allowing a spot for William Rehnquist to fill.

President Ronald Reagan was in office when Burger stepped down. William Rehnquist was an associate justice at the time, appointed by President Nixon. He was known for having a broader view of state powers. This appealed to President Reagan, who quickly nominated and swore Rehnquist in as the new Chief Justice. The Rehnquist court was not welcomed immediately by the general public, because the Chief Justice was a known conservative, who had on more than one occasion, been accused of racism.

³ ibid

⁴ "Wikipedia: the Free Encyclopedia.," http://en.wikipedia.org/wiki/Warren_Burger
<<http://en.wikipedia.org>> (13 April 2006)

Rehnquist struggled against the liberals, but gained respect for leniency towards state aid for religion as well as a surprising consistent vote to protect gay rights and freedom of speech.⁵ In his later years, the Chief Justice was in failing health, which brought about the question of who President Bush would choose as Rehnquist's successor. In September of 2005, Rehnquist passed away leaving a vacancy to be filled. President Bush had nominated John Roberts to replace Sandra Day O'Connor as an associate justice. With news of Rehnquist's passing, President Bush withdrew Robert's nomination for the associate position and instead nominated him for the Chief Justice position.

Roberts is one of the youngest Chief Justices in the history of the Supreme Court. He began his political career as an attorney in a private law practice in Washington, and then served for the administrations of President George Bush Sr. and President Ronald Reagan. Prior to accepting his position on the high court, he served as a member of the U.S. Court of Appeals for the District of Columbia Circuit.⁶

Upon President Bush's nomination, the subject of Roberts' religion became an issue among politicians, members of the media, and the general public. As a practicing Catholic, Roberts was scrutinized for the possibility of having a religious bias. He is the fourth Catholic Chief Justice of the Supreme Court, joining Antonin Scalia, Clarence Thomas, and Anthony Kennedy.⁷ Due the potential issues with Roberts' Catholic faith, Catholic groups around the country braced themselves against anyone or anything that

⁵ "Wikipedia: the Free Encyclopedia.," http://en.wikipedia.org/wiki/William_Rehnquist <<http://en.wikipedia.org>> (13 April 2006)

⁶ "Conservative, popular judge named for court," *Christian Century* 122 (2005): 13.

⁷ "Catholics on watch for faith 'test' of nominee," *Christian Century* 122 (2005): 14

could use his faith against him in his nomination. The controversy has been compared to John Kerry's campaign for President as a Catholic.⁸

Though he has not held his position long, it does not appear that Roberts is trying to change or reinterpret previously set precedents. From reading his opinions, it seems that his opinions are somewhat broad, but he has no obvious intention of rewriting the law. As President Bush stated in his address to the nation, "Roberts had profound respect for the rule of law and for the liberties guaranteed to every citizen.... [Roberts] would strictly apply the Constitution and laws, not legislate from the bench."⁹

Constitutional law has been questioning the definition of religion and its relationship to government starting officially in 1879's Federal Supreme Court Case, *Reynolds v. United States*,¹⁰ because Religion is a topic that continues to be debated before the high court. *Reynolds* was the first attempt to define religion in order to understand the First Amendment of the United States Constitution. The Free Exercise Clause and Establishment Clause were set up to protect religion in certain ways. It is debatable to what extent religion is covered, but it is clear that they are a safeguard for religion and religious institutions. This protection has come in to question, while trying to define a religion, as in *Reynolds v. United States*. Religions are only protected by the Constitution if they can be considered genuine or bona fide.¹¹ Cases presented to the Supreme Court do not have simple answers, nor do they present simple problems, which is why the Court has had, and currently has such difficulty defining religion in terms of

⁸ *ibid*

⁹ "Conservative, popular judge named for court," *Christian Century* 122 (2005): 13.

¹⁰ "Findlaw," <http://laws.findlaw.com/us/403/602.html> <<http://www.findlaw.com>> (5 April 2006).

¹¹ Lee Epstein, ed. *Constitutional Law for A Changing America: Rights, Liberty and Justice*. 4th ed. (Washington D.C.: Congressional Quarterly Inc, 2001), 103.

the First Amendment. Supreme Court Chief Justice Morrison R. Waite explains, “The word religion is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted”¹². Defining a religion remained an unclear task even after landmark cases had occurred and precedents had been set.

Davis v. Beason (1880) attempts to clarify a bit by stating,

The term “religion” has reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character and of obedience to his will... With man’s relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.

This explanation of the term “religion” does not allow for any set guidelines or strategies for the Court to use, but it does narrow the scope to explain what religion *can* be and religion’s place in current society.

Supreme Court Cases concerning religion center on the Establishment Clause and Free Exercise Clause, but there are numerous issues that are brought about by those seemingly simple clauses currently in question. The Free Exercise Clause taken in a literal sense means that religious denominations can practice any kind of religion in any way desired. The common perception of the Clause now is not the literal approach. It is not known what the Framers specific intentions were when they used the term “free exercise”. “...religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, not an opinion.”¹³

¹² Ibid, 104.

¹³ Letter to Danbury Baptist Association, 1802, quoted in *Reynolds v. United States* (1879).

Within the cases presented to the Supreme Court, there appear to be five common issues that continue to arise within these cases. The first of which is government aid to religious schools. *Everson v. Board of Education* was the groundbreaking case that the Supreme Court stated it was not a violation of the Establishment Clause for the government to provide funding for transportation to religious schools. The reasoning behind it was that the funding was not going directly to benefit the parochial school or to give them direct benefits; rather, it was an allowance for students to get to school. *Everson* set the standard (though rather vague at times) to allow government aid programs to private schools, as it was not a violation of the constitution. This was easy to uphold in cases similar to *Everson*, but it could not provide a consistent, coherent interpretation of the First Amendment.

Since 1971, the Lemon test (*Lemon v. Kurtzman*) has been used to determine the constitutionality of religious issues.¹⁴ The results from this test and the cases which it was applied have not been consistent in the approach; that is the Court does not regularly take a separationist view, but also does not consistently result in an accommodationist view. There are some consistencies through the decisions since *Lemon*, but even those are perhaps only commonalities due to the lack of consistent uniformity. One topic that has been brought up more than once is that of school vouchers towards transportation for example. Historically, the Court has been more likely to allocate government money towards transporting students to schools, even nonpublic schools, because it does not directly give the money to the school. The Court often grants the money to causes like transportation and textbooks because it is clear where the money is going and at the same time, does not promote nor does it hinder that religion of the school. Cases have been

¹⁴“ Findlaw,” <http://laws.findlaw.com/us/403/602.html> <<http://www.findlaw.com>> (5 April 2006).

tried asking for government money to help pay salaries of teachers at religious schools, but the Court has not generally supported this notion because the teachers are encouraging religion and teaching from a biased perspective. It is important to note that in the past, the Court has been more likely to grant funds to higher education such as colleges and universities rather than primary and secondary schools. This could be because students have developed a deeper sense of self and have their own views by college age, whereas the younger students are impressionable.

Along the same lines is the issue of the religious use of public school facilities and funds. These debates came up around the same time as *Lemon* in 1948's *Illinois ex rel. McCollum v. Board of Education*. The debate was over on-site programs and whether it was constitutional to use government funding.¹⁵ The Court ruled 8-1 that to fund it, the government would be getting entangled in church relations. [Note Table 2.1 from Eptstein and Walker's *Constitutional Law for a Changing America*. It consists of the landmark cases from *Everson* through the year 2000 and their explanations.]

Justice Douglas concluded that the prohibition against religious establishment “does not say that in every and all respects there shall be separation between Church and State.”¹⁶ This, once again returns to dissecting the First Amendment to understand how it should be applied today. The nature of that ‘wall’ separating Church and State cannot will not be understood and accepted unanimously.

Regardless of the current President, justices or elected officials, the intentions of the First Amendment are not clear. Supreme Court cases have set precedent to help

¹⁵ *ibid*

¹⁶ *ibid*

comprehend the amendment, opinions and dissents have been published to explain the decisions and interpretations set forth by the Court.

Case	Outcome (Opinion Type)	Aid Upheld	Aid Struck	Standard Used
<i>Everson v. Bd. Of Ed.</i> (1947)	Accommodation (majority, 5-4)	Transportation reimbursements		Neutrality, child benefit, secular purpose
<i>Bd. Of Ed. v. Allen</i> (1968)	Accommodation (majority, 6-3)	Textbook loans		<i>Abington</i>
<i>Lemon v. Kurtzman</i> (1971)	Separation (majority, 8-0)		Reimbursements for teacher salaries, textbooks, instructional materials	<i>Lemon</i>
<i>Early v. DiCenso</i> (1971)	Separation (majority, 8-1)		Teacher salary supplements	<i>Lemon</i>
<i>Tilton v. Richardson</i> (1971)	Accommodation (judgment, 5-4)	Funds for secular buildings (colleges and universities)		<i>Lemon</i>
<i>Levitt v. CPEARL</i> (1973)	Separation (majority, 8-1)		Reimbursements for administering and grading tests and examinations required by the states	<i>Lemon</i>
<i>CPEARL v. Nyquist</i> (1973)	Separation (majority, 6-3)		Grants for maintenance and building repair, tax benefits, tuition reimbursements	<i>Lemon</i>
<i>Meek v. Pittenger</i> (1975)	Mixed (majority/judgment, 6-3)	Textbook loans	Counseling, testing, speech therapy; loans of “instructional materials and equipment”	<i>Lemon</i>
<i>Roemer v. Maryland Public Works Bd.</i> (1976)	Accommodation (judgment, 5-4)	General-purpose funds to colleges and universities for secular purposes		<i>Lemon</i>
<i>Wolman v. Walter</i> (1977)	Mixed (majority/judgment, 6-3)	Diagnostic, health, therapeutic, and testing services; textbooks	Instructional materials, equipment; field trips	<i>Lemon</i>

<i>New York v. Cathedral Academy</i> (1977)	Separation (majority, 6-3)		Direct reimbursement for record keeping and testing	<i>Lemon</i>
<i>CPEARL v. Regan</i> (1980)	Accommodation (majority, 5-4)	Reimbursements for meeting state requirements for regents examinations, "pupil attendance reporting" and so forth		<i>Lemon</i>
<i>Mueller v. Allen</i> (1983)	Accommodation (majority, 5-4)	Tax deductions for tuition, textbooks, transportation		<i>Lemon</i>
<i>Grand Rapids School Dist. v. Ball</i> (1985)	Separation (majority, 7-2 and 5-4)		Community Education Program offering courses (chess, home economics, languages) at end of school day; employing private school teachers and using public and private school facilities Shared Time Program offering secular classes to private school children in private school facilities (leased by the state) during regular school hours and taught by public school teachers	<i>Lemon</i>
<i>Aguilar v. Felton</i> (1985)	Separation (majority, 5-4)		Teacher/counselor salaries and supplies/materials for remedial instruction to private school students in private school facilities	<i>Lemon</i>
<i>Witters v. Washington Serv for the Blind</i> (1986)	Accommodation (majority, 9-0)	Disabled student at Christian college cannot be denied state vocational rehabilitation assistance		<i>Lemon</i>
<i>Zobrest v. Catalina Foothills</i>	Accommodation (majority, 5-4)	Disabled student at Roman Catholic		Neutrality, child benefit

<i>School Dist.</i> (1993)		high school can be furnished with a state-funded sign-language interpreter		
<i>Bd. Of Ed. of Kiryas Joel Village School Dist. v. Grant</i>	Separation (majority, 6-3)		School district created to accommodate handicapped children of particular sect	Neutrality
<i>Agostini v. Felton</i> (1997)	Accommodation (majority, 5-4)	Special education classes taught in parochial schools; overruled <i>Aguilar v. Felton</i> , <i>Grand Rapids School District v. Ball</i> (in part)		Accommodationist interpretation of <i>Lemon</i>
<i>Mitchell v. Helms</i> (2000)	Accommodation (judgment, 6-3)	Library services and materials, computer hardware and software, curricular materials. <i>Meed v. Pittenger</i> , <i>Woman v. Walter</i> overruled		<i>Agostini</i> , neutrality

3

Faith-Based Initiative

President Bush announced his plan of faith-based initiatives once in office in 2001. The plan aims to provide government funding to religious groups who provide social services, but would not award those tax dollars to fund religion itself. President Bush finds this explanation to be a safeguard against critics who believe this to be a violation of the First Amendment of the United States Constitution.

Faith-based and community organizations (FBCOs) play an essential part in the social services in the U.S. Due to the current general, but vague understanding of the First Amendment, there are currently safeguards implemented to prevent government entanglement in religion. This is set up as a protection, but it also means that such FBCOs are ineligible to receive any government funding regardless of the purpose for which it would be used. The Office of Faith-Based and Community Initiatives (FBCI) states that President Bush believes “that besides being inherently unfair, such an approach can waste tax-payer dollars and cut off the poor from successful programs.”¹ President Bush’s initiative was set up as a way to aid FBCOs in a secular manner by funding only the tasks that provide social services of secular nature. This is a way for the government to provide help without supporting or delegating the Church or a religion in any fashion. The Office of FBCI lays out four goals which are the focus of the initiative. According to their website, they are:

1. Identifying and eliminating barriers that impeded the full participation of FBCOs in the Federal grants process.

¹ “Faith Based and Community Initiative,” The White House
www.whitehouse.gov/government/fbci/president-initiative (15 April 2006).

2. Ensuring that Federally-funded social services administered by State and local governments are consistent with equal treatment provisions.
3. Encouraging greater corporate and philanthropic support for FBCOs' social service programs through public education and outreach activities
4. Pursuing legislative efforts to extend charitable choice provisions that prevent discrimination against faith-based organizations, protect the religious freedom of beneficiaries, and preserve religious hiring rights of faith-based charities.

According to the White House, Congress has already appropriated \$742 million to programs that “mentor children of prisoners, train re-entering prisoners, treat addicts, discourage at-risk youth from gang activity and provide technical assistance to small organizations seeking to help more people in need.”² President Bush said that since 2001, welfare cases have dropped by over half, drug use among youth is down nineteen percent and as of now, there have been fewer abortions in American than at any point in the last three decades.³ The statistics from the White House say the initiative has been successful at achieving the goal of helping with national social service.

President Bush announced his plan for Faith-Based Initiatives in 2001 and was greeted by some support and many critics. Supporters of the president's initiative are currently lessening in numbers for a few reasons, but President Bush continues to defend and proceed with his plan. The initiative is intended to be a new phase on America's war against poverty. Even without bringing in the issue of the First Amendment, there are problems with the initiative and its effectiveness. Providing funds to these organizations, such as in the faith based program, the government is allowed to give money to help support those living in poverty or in need. However, after looking at President Bush's budget and tax cut plan, it is unclear who President Bush is truly trying to help. He

² “Fact Sheet: Compassion in Action: Producing Real Results for Americans Most in Need,” The White House. 9 March 2006, <www.whitehouse.gov/news/releases/2006/03> (15 April 2006).

³ “National Address,” The White House. www.whitehouse.gov/news/releases/2006 (20 April 2006)

recently rejected a provision to provide \$90 billion in breaks and incentives to aid charities.⁴ The budget seems to provide benefits to those who are already wealthy, but neglects those who would have benefited from that previously mentioned aid to charities. President Bush revoked the estate tax which means the same charities will lose the money generated through bequests, almost \$6 billion a year.⁵ This is a counterproductive method of working towards the goal of lessening and eradicating poverty. The President's actions contradict his words of concern for the poor.

In May, 2001 George W. Bush delivered the commencement address at the University of Notre Dame, noting and promoting his faith-based initiative.⁶ The well known Catholic University was a strategic place for President Bush to deliver his speech about his religiously based social services. Throughout his address, he quoted famous Catholic leaders and appealed to the greater Catholic audience. Relating the initiative to the War on Poverty and the welfare reform of 1996, the President announced, "For the task ahead, we must move to the third stage of combating poverty in American. Our society must enlist, equip and empower idealistic Americans in the works of compassion that only they can provide."⁷ This statement is straightforward and does not present even a possibility of breaking down the alleged wall between church and state. Rather than appealing to the audience on an intellectual level (by perhaps using statistics and facts about the potential of the initiative), President Bush called to the audience's chauvinistic side, reminding them of their devotion to the country, but also to their superiority as a nation.

⁴Steve Benen. "Bully Pulpit" Church and State 54 (2001) 4.

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

There are oversights in President Bush's logic in terms of tax cuts and benefits, which makes the initiative as a whole less credible. Logical omissions aside, the issue of the initiative's constitutionality seems to be an ever present concern. Critics see President Bush's plan as a form of his support for religion. In explaining his plans for this phase in the war on poverty, he in turn emphasizes the importance of his own faith as well as the overall importance of religion in his life. One program that President Bush often references as a social service success story is the Teen Challenge International, which is eligible for funding from President Bush's initiative. It is a Christian organization that provides drug treatment to Christians as well as non-Christians. John Castellani, the executive director of Teen Challenge, spoke to the House Government Reform subcommittee about his program and the value of similar religious social service groups upon invitation from President Bush. When asked if clients could be non-Christian, Castellani responded saying yes, but even some Jews had converted to "complete Jews" upon concluding the program. As a representative of the Teen Challenge, Castellani is in effect, announcing that a person is not whole without having Jesus in his or her life.

Teen Challenge does appear to be an effective drug treatment group which produces results, but it does so using Christianity as a guide. There is absolutely no harm in using a religious basis, except when it is utilizing government money. Rabbi David Saperstein of the Religious Action Center for Reform Judaism comments, "They engage in activities aimed at bringing [participants] to Jesus... That's fine, but it shouldn't be done with government money."⁸

Secular programs are not subject to the same non-discrimination laws because such laws could impede on religious doctrine; which, if the government imposed, would

⁸ ibid 5

be a violation of the church and state boundaries according to any interpretation of the First Amendment. This means that if a Christian organization, for example, refuses to hire a non-Christian, it is legally acceptable if it is in accordance with the organization's mission. President Bush's favored Teen Challenge falls into this category as a program that can discriminate in its hiring process because of its mission that requires Christian employees. Religious groups are legally permitted to discriminate in the hiring process, while still using government money obtained by public taxes. By allowing the Teen Challenge to discriminate in favor of Christians, the government is supporting Christianity both monetarily and symbolically by helping keep the organization running.

Regardless of how someone interprets the First Amendment, the government funding going into social services such as the Teen Challenge is unconstitutional for the simple reason that the government is promoting and potentially furthering religion. Attorneys for the Christian Law Association strengthened the argument against this sort of funding: "Using government funds to support faith-based welfare ministries will not work. Fundamentally, the government will always control what it pays for," they added, "public funds become addictive for the ministries and jeopardize the unique spiritual component that has made these programs so successful."⁹ If secular programs are to receive government funding, they should be subject to government laws. The whole point of the First Amendment is to give organizations the opportunity to be independently secular without having to look to the government for instruction. Similarly, the Amendment exists so the government is not based around secular rules or any provisions that refer back to any religion. The two can interact to a certain extent, but they are to

⁹ *ibid*6

exist as two separate functions; there is religion and there is government. The two do not overlap.

In order to maintain a non obtrusive relationship, the government does not need to completely sever ties to everything of a religious nature. Instead, it must maintain neutrality among all religions and belief systems. President George W. Bush's Faith-Based Initiative is not the answer to finding a balanced relationship. When asked about his policies interacting with the First Amendment and the potential for conflict, President Bush responded, "I appreciate that question, because I, in the state of Texas, had heard a lot of discussion about a faith-based initiative eroding the important bridge between church and state."¹⁰ It is fair to say that the President's public speaking abilities are not great, so this may have just been an inadvertent case of mixing up words when he referred to the "bridge". On the other hand, it is quite possible that President Bush said it not in error, but simply to edit Jefferson's "wall of separation" metaphor.

¹⁰ Steve Benen "Leap of Faith" Church and State. 54 (2001) 2

4

“Life Issues”

It is difficult to compartmentalize issues facing American society into either governmental in nature, or religious in nature. There are certain topics that clearly fall into one category or the other, and some that do not pertain to either. The difficulties occur with certain matters are applicable to both the government’s and the church’s jurisdiction. In such cases, when moral and legal issues merge, both the church and state take action. This is not because both entities are responsible for such topics; rather they both refuse to surrender the power. In order to explore issues overseen by both government and religion, it is best to examine certain “life issues” that have are particularly relevant today in both political and religious climates: abortion, capitol punishment, and the controversy over same sex unions and gay marriages.¹¹

The Right to Life: Abortion

The rhetoric used in Presidential campaigns seems to always include an opinion regarding the legality of abortions, but often also its morality. If abortion wasn’t controversial on the morality level, the government (and its officers) would not invest so much in the debate. President Bush has always been perceived as a Southern, conservative Christian, pro-life Republican. During his 2000 campaign, the President announced that his Supreme Court appointments “would be “strict constructionists,” a term many interpreted to mean conservatives who will reverse decisions upholding

¹¹ Jim Wallis, *God’s Politics* (New York: HarperCollins, 2005) 301.

abortion rights and church-state separation.”¹² The same year, the Democratic Party Platform focused on the moral issue at hand and stated, “Our goal is to make abortion less necessary and more rare...”¹³ The government has to be invested in this morality issue because it revolves around the fate a human life. For that same reason, religion plays a role in the controversy.

The 2000 elections brought about controversy within in the churches. The First Amendment calls for what Jefferson called a wall of separation of church and state. The government must abide by this Amendment. The Church does not. This is explicitly demonstrated in 2000 by the actions of the Roman Catholic Church, the nation’s largest religious denomination.¹⁴ Church leaders urged voter morality, but there were numerous cases when they openly endorsed President Bush and his policies. Members of the Roman Catholic hierarchy “urged Catholics to choose leaders who share our commitment to the fundamental rights of the unborn” because Catholics have a “serious obligation to vote according to moral principles with a conscience formed in line with sound Catholic moral teaching.”¹⁵ A person’s morals should, and do impact their choice in who to support in office. If a person is religious, often they draw their morals from their faith. Partisan politics by a religion are not blatantly unconstitutional, but many people felt it was inappropriate. Brent Petit of the Thibodaux Central Labor Council said, “While I understand and agree with the respect life theme, it should not be an excuse to promote the Republican Party, nor bash the Democrats....While it is a noble mission to oppose abortion, when [priests] use the pulpit to promote or oppose political candidates because

¹² Joseph L. Conn “The Bishop’s Biased Blessing” Church & State (2000) 3.

¹³ Wallis, 300.

¹⁴ Conn, 1.

¹⁵ *ibid*

of their parties' position on this issue, they have stepped over the line...."¹⁶ Often it was just hints of partisan politics, but sometimes there were extreme cases, such as in Washington D.C., when a priest threatened to deny communion to a woman who had Democratic bumper stickers on her car. The priest left a note on her car stating, "If you support the Democratic position of abortion then you have no business receiving Holy Communion since you placed yourself directly in opposition to this essential teaching of faith."¹⁷ No laws were broken by the priest in this story, but he did push the church-state relationship too far. Basic morals are entrenched in the majority of people, whether it is from socialization, or human instinct. Religious people are no different, with the exception that their morals might additionally have faith based derivations.

The abortion debate circles around a few issues. The pro-choice side stresses the importance of a woman's right to choose as well as the additional debate of when life begins. The opposition, anti-abortionists, feels the debate is centered on the right to life. This includes when life begins, but viewed in a different light.

South Dakota is the only state to have ruled abortions illegal and there have been both praises and repercussions for that decision. Anti-abortionists applaud the ruling as they thought the practice was immoral and wrong in the first place. Believers in the right to choose feel their rights have been violated. The bill was passed through the House in the beginning of February, passed through the Senate in the end of February and signed by the Governor March 6, 2006.¹⁸ The ruling was made recently so it is too soon to understand the implications and long term affects that will result from the decision.

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ "Planned Parenthood of Minnesota, North Dakota, and South Dakota."
<http://www.ppmns.org/site/pp.asp?c=gwKTJaN0JyF&b=260351> 25 April, 2006.

The government must rule and regulate the issue of abortions. There are health standards that need to be met, as well as regulations and funding issues that are not possible without the government. Religion, on the other hand, is not needed in the same way. Many people's faith impacts their choices and opinions about abortion, but religion does not provide anything concrete that is necessary. If one understands abortion as strictly a moral issue that is of religious nature, then it is fair to say government entanglement is acceptable, and even necessary to a certain point. As it is a moral issue derived from religious beliefs, then the government should not impose an opinion of if abortion is right or wrong. It should serve the purpose of meeting regulations and safety concerns. It is not that simple because the moral issue is not necessarily just on the basis of religion. If one believes a life starts from conception, then abortion is considered terminating a life. From this perspective, the government is obliged to intervene. However, there is not one universally accepted standpoint; therefore the government must acknowledge that and accommodate.

The Right to Live: Capital Punishment

Capital punishment has been always been controversial in the United States. The most well known case as of recently is the execution of the ‘Oklahoma City Bomber,’ Timothy McVeigh. The case was on national news on a nightly basis. He was found guilty of bombing the Oklahoma City Murrah Federal Building, which killed 168 people, including nineteen children.¹⁹ President George W. Bush, known for his advocacy of capital punishment and record number of executions in Texas, was in office for McVeigh’s execution. The case brought publicity to the general public’s opinion and feelings about the death sentence in general, and in regards to McVeigh. While it was agreed that he deserved a fitting punishment, the American public was not able to draw a general consensus that capital punishment was the deserving sentence. It did, however, seem as though less people were distraught over McVeigh’s punishment because he was fully competent, equipped with a competent legal team, and had confessed to the bombing with no remorse.

Even those close to the case were divided about McVeigh’s sentence. Bud Welch is on the board of directors of Crime Victims for a Just Society and the father of a woman killed in the Oklahoma City Bombing. In a 1997 *Time Magazine* article, he states” To me the death penalty is vengeance, and vengeance doesn’t really help anyone in the healing process. Of course, our first reaction is to strike back. But if we permit ourselves to think through our feelings, we might get to a different place. I was taught that even the souls of dastardly criminals should be saved. I think it is necessary, even for the soul of Timothy McVeigh. I think my daughter’s position would be the same as mine.”²⁰ Welch is correct

¹⁹ Wallis, 301.

²⁰ Bud Welch, “A Father’s Urge to Forgive,” *Time*, June 16, 1997.

when he says vengeance is ineffective. He states it is not going to expedite or even help the healing process. Since that is the case, what is the point of killing the killer? Perhaps it is eye for an eye, but that is of religious origin, and if the government is to remain independent from religion, it should not persecute based on a religious belief. If it is not based on this belief, there are a few other explanations. Economically, it is more efficient because it costs less than a lifetime of maximum security time in prison. The wait on death row can take years thanks to the process of appeals, so regardless it will end up costing the government money. Another explanation for the government to sentence someone to death is simply that that is what the government believes is right.

The current government under the leadership of President Bush allows capital punishment in the United States. This appears as though the President believes it is acceptable to terminate a life if it is under certain terms. This is a mistake because it is relying on human impulse. If it were more than an impulse, the President would maintain consistent throughout his policies and governance. To allow capital punishment is to allow the government to terminate a life. To allow abortion is to allow an individual to terminate a life. Truly it is not that simple. There defenses for both issues; when life begins, why life should end, when is a human truly a human? Many justify capital punishment because it is put upon people like McVeigh; people that can be classified as inhumane. “To be against capital punishment does not require us to be against punishment for such a heinous crime. It was not only a moral contradiction to kill McVeigh for his killings; it was also not punishment enough.”²¹ The argument is that they are no longer human beings, if they ever were. It is inconsistent and hypocritical to believe in the death sentence, but object to abortions.

²¹ Wallis, 304.

If a religion has a say in abortion, then it should maintain consistency in its stand on capital punishment. The same goes for the government, its officials, and its leader.

“The tragedy is that in America today, one can’t vote for a consistent ethic of life.

Republicans stress some life issues, Democrats some of the others, while both violate the seamless garment of life on several vital matters. But the consistent life ethic still serves as an invaluable plumb line by which to evaluate all political candidates and parties.”²²

The First Amendment establishes a safeguard for religion from the government. It sets vague guidelines for the government, but does not have any jurisdiction over any religion, though it may affect issues such as terminating a life that can be construed as a religious matter.

²² Ibid 301.

The Right to Love: Same sex unions and gay marriages

The issue of marriage between two people of the same sex has become prominent in the past few decades, so much so that President Bush announced his support for the constitutional amendment to stop gay marriages. Government and Religion both are necessary in this debate, but for different reasons. The government affords legitimate legal protections to married couples. A person's marital status affects his or her taxes. This is as far as the government's role is required in the matter. It is the job of the government to oversee that same sex marriages be afforded the same equal protection of the law, provided it becomes legal.

Once the government provides the protection of equality to a marriage, regardless of its sexual orientation, it leaves the government's realm and becomes a matter of religion. If a religion feels a couple should be granted a marriage in its institution, then the religion should perform the necessary ceremony or do the religion's marriage ritual. If the religion does not feel a marriage is appropriate, then it should be left to that religion's discretion.

This is not a solution to the problem of unequal marital rights but it is a step towards the goal. Church and state can work together in that they can acknowledge the same marriage and do their respective duties. This means they are not totally separate, as a license is necessary for it to be recognized by the government, and if it is a religious union, a certificate of marriage is often required. If the government works around these parameters, there will be no question of government entanglement in religion.

Conclusion

The First Amendment contains two clauses which lead to the American public's general perception that a wall of separation between church and state is guaranteed. These are: the establishment clause and the free exercise clause. There inevitably is a relationship between religion and government in the United States, but it is not as concise and clear as the words themselves in the Amendment.

The intentions of the First Amendment were to provide a safeguard to protect individual religions and to prevent the establishment of a National Church. It does not, however, prevent a relationship between the two from existing in the U.S today. It allows for equality and tolerance alike, as well as maintaining separate identities.

Through understanding the history of the Constitution, particularly the First Amendment, the Supreme Court decisions and appointments, and President Bush's policies and the current climate about controversial life issues, the First Amendment becomes alive and applicable to the 21st century American citizen.

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