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## Religious Liberty and Democratic Politics

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# 1996 SIEBENTHALER LECTURE

## RELIGIOUS LIBERTY AND DEMOCRATIC POLITICS<sup>1</sup>

*by Kent Greenawalt*

### I. INTRODUCTION

Some time ago, President Clinton talked to a gathering of religious journalists about abortion. He said that he did not believe that the biblical passages often cited by those who are "pro-life" indicate clearly that abortion is wrong and should be prohibited. The reasons many people have for wanting abortion to be prohibited, or for allowing abortion, relate to their religious convictions. These people, for the most part, regard it as perfectly appropriate that religious perspectives help determine public policy on abortion in the United States. Others object. They say that the religious views of some people should not be imposed on others. Who is right? Is this a question of simple right or wrong, or are matters much more complex?

My main subject is the use of religious convictions in the making of public political decisions. Abortion is the most controversial illustration, but it by no means stands alone. Welfare provisions, capital punishment, treatment of animals, environmental protection, military policy, and a host of other political issues may be tied to religious understandings. Should these understandings influence public policy?

Let me clarify a crucial point at the outset. None of us can wholly compartmentalize our convictions. Strong religious convictions *will influence* political opinions; people cannot help themselves. But that does not mean people should self-consciously rely on religious convictions to settle political questions. Perhaps they should develop opinions and formulate views in some other way. By comparison, if a child grows up feeling

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1. This is the text of a Siebenthaler Lecture delivered on February 23, 1996. It summarizes ideas developed at fuller length in *Private Consciences and Public Reasons* (New York, Oxford University Press 1995). That book contains references and more detailed analysis. Remarks closely similar to those found here were distributed in a pamphlet, called *Religious Liberty, Nonestablishment, and Political Discourse*, of the Judaic Studies Program of the University of Cincinnati. I am very grateful for the warm hospitality of the faculty and students during my visit at Salmon P. Chase College of Law.

strong hostility toward her parents, that also will influence her political judgment, but she should try to address political issues in other terms. Should she treat her religious views similarly, or is it all right to rely on them self-consciously?

If what follows, I draw many distinctions. The most fundamental ones are between private citizens and public officials and between one's actual bases for judgment and one's stated reasons. Very briefly, I think private individuals should regard themselves as free to rely upon and state religious reasons; public officials acting in their official capacity should rarely state religious reasons as their bases for political decisions, and they should be more hesitant even to rely on religious reasons than private citizens. The particular restraints vary depending upon the kind of official.

The restraints I have primarily in mind are definitely not direct legal restraints; those would themselves be unconstitutional in the main. The restraints are not even the indirect restraints of invalidating legislation based on religious grounds. Rather, I am talking about *self-restraint*, supported by mutual expectations.

## II. THE RELIGION CLAUSES

I want first to say a few words about the free exercise and establishment clauses of our constitution. The First Amendment says, "Congress shall make no law respecting an establishment of religion, or prohibiting the force exercise there of . . . ."

What have these legal constraints to do with my primary topic? Perhaps certain religious grounds for political decisions will actually violate one of the religion clauses. Even if no violation of constitutional law occurs, perhaps values that underlie the clauses will tell us something about appropriate behavior. When people say, for example, that the pro-life position on abortion offends separation of church and state, do they mean that if the position were enacted into law, the establishment clause would actually be violated, or do they mean only that some spirit of separation is offended? Do they even know which they mean?

Let us begin with the free exercise clause. Most importantly, people in the United States are free to believe what they choose, to express their beliefs, and, with limited exceptions, to worship as they wish. As many of you know, the last six years has seen a storm of controversy about standards for free exercise claims. In 1990, the Supreme Court decided whether members of the Native American Church had a constitutional

right to use peyote as a sacrament in their worship services.<sup>2</sup> Rejecting the claim, the court said that if a law has a valid secular purpose, it can be applied across the board. Those with religious reasons to disobey are no better off than those disobeying for other reasons.

The decision was attacked by a wide spectrum of religious groups and by constitutional scholars; and Congress has voted to re-establish the previous constitutional test, a version of the compelling interest test.<sup>3</sup>

What has free exercise to do with the problem of how political decisions are made? One point is obvious. Many people, including a high percentage of Christians, Jews, and Muslims, see their religious convictions as having *some* political implications. One aspect of the *full* exercise of their religion is the acting upon these implications. Thus, for someone who thinks God disapproves homosexual behavior and wants human societies to restrict this behavior, acting on this belief in the political sphere is experienced as part of the exercise of religion.

Another point is less obvious. If some people act on their religious convictions, that *may* thwart the free exercise of people with other religious convictions. Thus, if enough people vote their religious conviction that drug use is sinful, that can impair the free exercise of people whose religion calls for the use of drugs. Here we perceive a crucial difference. Only some uses of religious convictions genuinely thwart the free exercise of others. Other uses do not. I shall return shortly to this difference.

The establishment clause forbids the government's establishing any particular religion in the manner in which the Anglican Church is made the Church of England. Beyond this, it forbids the preferring of some religions or churches over others. According to modern Supreme Court interpretation, government cannot prefer all religions to no religion or antireligion. This last principle is controversial; many think a general preference for religion should be permissible. After the last term of the Supreme Court, establishment clause doctrine is in disarray;<sup>4</sup> but it re-

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2. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). In 1986, it had sustained application of the Air Force's rule that personnel must not wear headgear indoors against an Orthodox Jewish clinical psychologist who wore a yarmulke. *Goldman v. Weinberger*, 475 U.S. 503 (1986). To most observers, the government's interest in forcing Dr. Goldman to remove his yarmulke seemed much less than compelling; but the Court emphasized deference to military authorities.

3. Religious Freedom Restoration Act of 1993, 107 Stat. 1488, codified at 42 U.S.C.A. § 2000bb-2000bb-4 (Law. Co-op. Supp. 1994).

4. See *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S. Ct. 2510 (1995); *Capitol Square Review and Advisory Board v. Pinette*, 115 S. Ct. 2440 (1995); see generally Kent Greenawalt, *Quo Vadis: The Status and Prospects of "Tests" Under the Religion Clauses*, 1995 SUPREME COURT REVIEW 323.

mains true that the outright promotion of religion is not permitted.

What are the implications for political decision and discourse of the establishment clause? Suppose a law was overwhelmingly based on religious grounds *and* was designed to promote that religious understanding; *and* all this was announced in the preamble to the statute. That would be an establishment of that religious point of view. Some writers have concluded that *whenever* officials, or citizens, promote particular political positions because of religious grounds, this involves an actual or potential breach of the establishment clause.<sup>5</sup> These writers do not suppose that the courts can correct all these wrongs, but nevertheless the Constitution has been violated.

A more moderate position is that each reliance on a religious ground offends some spirit of nonestablishment. On this view, the values underlying the establishment clause press toward nonreligious political judgment and discourse. We can see, then, that the most expansive idea of free exercise might allow citizens and officials to use religious grounds whenever they find them to be relevant. The most expansive idea of nonestablishment might discourage use of religious grounds. How can we work our way out of this dilemma?

### III. RELIGIOUS IMPOSITIONS AND OTHER USES OF RELIGIOUS GROUNDS

The first step is to distinguish between religious impositions and other uses of religious grounds in political judgment. This is the difference I mentioned earlier. Suppose that out of Christian convictions, someone proposes that all nonChristians be taxed, with the benefits going to Christian churches. This step would straightforwardly prefer the Christian religion; it would discourage the practice of other religions. It would constitute a religious imposition. Such legislation is at odds with the religion clauses. When legislators and citizens have a similar *motivation* to adopt laws that are not so obviously preferential, they offend at least the spirit of the religion clauses.

On the other hand, suppose a legislator proposes to restrict factory farming. She thinks on religious grounds that higher animals deserve more consideration from human beings than they have received. She does not wish to promote her religious beliefs or discourage anyone's religious practice. She wants only to give animals a more decent life. If the legislation is adopted, no one's religious beliefs and practices will be directly

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5. See, e.g., Edward B. Foley, Book Review Essay: Tillich and Camus, Talking Politics, 92 Colum. L. Rev. 854 (1992).

affected. This use of religious grounds does not involve an imposition. Here no one's free exercise is affected and no religious views are established.

People often miss this distinction. They may simply assume that any use of religious grounds involves an imposition. Or they may condemn use of religious grounds that oppose political positions they favor and welcome religious grounds that support their own positions. Some of those who complain about the religious sources of pro-life positions had no difficulty with religious grounds for civil rights or against capital punishment. If we are going to come to grips with this subject in a serious way, we must resist the easy conclusion that religion is fine when it supports our views and illegitimate when it opposes them. The beginning of wisdom is to recognize that religious impositions and motives to impose are wrong; they are not appropriate in our liberal democracy. It is other uses of religious grounds that require more careful examination.

I shall use the factory farming example. It is less controversial than abortion, but troubling enough to draw our attention. Most animals that we eat for meat live pretty awful lives, caged without the ability to move; but should we care very much about this? Do pigs and chickens count for a great deal or should we regard their lives as essentially for our own purposes? Some people inform themselves on this subject without respect to religious convictions. Others draw from religious beliefs. That does not mean any neat connection exists between most religions and any particular positions. Some Christians, for example, believe that the Bible establishes that animals are for human dominion; if so, we don't have to worry about factory farming, except for assuring the health of human beings. Other Christians think that we are called to care seriously for all creatures. From this perspective, aspects of factory farming are much more disturbing. Maybe a higher price for meat would be worth paying in order to give the animals we kill more freedom to move about and engage with other animals. When they face this issue, is it all right for citizens and legislators to make up their minds on religious grounds and to defend their choices in these terms, *or* should people try to rely on nonreligious bases of decision?

#### IV. SOME BASIC POSITIONS AND PERSPECTIVES OF JUDGMENT

Political philosophers disagree. Here, in a nutshell, are some of the major positions. Some say that people and officials are completely free to rely on whatever grounds seem compelling to them. An opposing position is that people in a liberal democracy should make decisions on bases that are widely shared and accessible to all citizens. At least at this point in

history, the ideas that the government should show equal concern for citizens and not discriminate against people because they belong to an inferior race are fundamental tenets of all liberal democracies. These ideas would be good starting points for political decisions. The notion that Genesis establishes that animals are subject to dominion for human use would not. A somewhat different position claims that religious grounds in particular are improper bases for political positions because of the establishment clause and the fundamental idea of religious plurality. Then there are various intermediate positions. One is that everything depends on the kind of religious understanding involved. Views that are not too dogmatic and sectarian, that are open to competing points of view, play a useful role in politics. Views that are narrow and dogmatic, that leave nothing for dialogue with others, do not belong in the politics of a liberal democracy. A different intermediate position distinguishes ordinary political issues from constitutional issues and issues of basic justice.<sup>6</sup> For ordinary issues, religious grounds are appropriate; but for constitutional issues people should rely on reasons that would have persuasive force for all reasonable citizens.

How can we judge between the positions that are offered? The two crucial variables are fairness and the health of our political life. The fairness argument *against* using religious grounds is that it is unfair to adopt coercive legislation on bases that one cannot expect a significant portion of the population to accept. Thus, it would be unfair to restrict factory farming, because some people make religious judgments that many farmers and consumers reasonably do not accept. The fairness argument on the other side is that it is not fair to prevent people from relying on grounds that they find most convincing.

When one turns to the quality of political life, one may worry that large injections of religion will cause conflict and dissension, and feelings of exclusion. Certainly the wars at the time of the Reformation show that religion can be a terribly divisive force, and the modern world is far from free of violence related to religion. On the other hand, our society is a lot different from Europe in the 16th and 17th centuries. An open airing of religious positions may enhance understanding of political possibilities and of the relevance of religion for society. These various arguments stand in powerful opposition; choosing between them is not easy. When we look more closely, we see that the strength of these arguments

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6. This is the position of John Rawls, most fully developed in *Political Liberalism* (New York, Columbia University Press 1993).

varies depending on the persons and behavior on which one focuses. It is this truth that underlies my position.

#### V. HISTORY, CULTURE, PRACTICES, AND EXPECTATIONS

I am going to discuss judges, legislators, ordinary citizens, and religious groups. I should say at the outset that I do not think basic premises of liberal democracy settle exactly how far religious convictions should count in political life. Much depends on the history and cultural life of particular societies.

The relevance of history and culture is most apparent if one asks whether people *now* should feel restrained about employing religious grounds in political judgments. We can think of self-restraint in using religious grounds as involving a kind of reciprocal concession: "I won't use my religious grounds to coerce you if you, in turn, will not use your religious grounds to coerce me." Suppose virtually everyone in a society now uses religious grounds freely in reaching political conclusions. Telling some people that they should stop would not be fair; they would then forfeit their own use of religious grounds but be exposed to the widespread use of others. If we ask what can reasonably be expected of people here and now, we have to ask about present practices and expectations.

Suppose we ask a different question: what would be desirable attitudes about using religious grounds in the United States if we could develop them over time? For this inquiry, present practices and expectations are less central. One might say, "People have long relied on religious grounds in politics, but our political life would be fairer, and more healthy if they stopped doing so." Still, I think much depends on what our culture is like, especially the range of its religious positions and the attitudes members of different religious groups have toward each other. Suppose very few people took religion seriously any longer, what may be the condition in the Netherlands and some Scandinavian countries. It would hardly make sense to tell people they should discipline themselves not to rely on religious grounds; since such reliance would have slight influence in any event. Or, suppose people of different religious views were nearly all open minded and anxious to grasp insights from other religious positions. The realm of politics might seem one domain of fruitful discourse among people with various religious views. On the other hand, if many religious views were held fairly dogmatically, and distrust and tension were considerable, removing religion from politics might seem desirable. Our conclusions about what political life should be like must be made in light of cultural conditions.



## VI. DISCOURSE AND JUDGMENT

Before I turn to our liberal democracy, I want to make one other general observation, providing a personal illustration. The observation is that outsiders and individuals themselves can monitor their discourse much more easily than they can monitor their bases of judgment. When I attended college (Swarthmore, a private college), the Student Council allocated money to student organizations from a central fund. Each year the Christian Fellowship received some money, to invite speakers, etc. One year a majority of members of the Fellowship decided to adopt a statement of faith; subscribing to the statement was a condition of membership, although nonmembers could attend activities. There was controversy within the fellowship over whether there should be any such statement and over how inclusive it should be. What resulted was a statement that I thought could be subscribed to by everybody who genuinely considered themselves to be Christians.

Members of the Student Council divided sharply over whether funds should be given to any organization with an exclusive membership. Those of us who belonged to the Fellowship favored funding; we urged that that such an organization might limit membership to people who subscribed to its principles. Opponents of funding happened to be people who did not have very positive views about religion, but they did not attack religion. They argued that funded student organizations should not have exclusive memberships.

I remember feeling that *arguments* about the value of religion and Christianity were really inapt, but I did not have a strong view that I should try to decide about funding without referring to my own views about religion, or indeed without reference to my sense of loyalty to other members of the Fellowship. I suspected that negative views about religion influenced opponents of funding, and I did not feel I should try to disregard my own positive feelings.

Telling whether someone else is reasoning publicly in terms of religious grounds is much easier than telling whether they are self-consciously influenced by such grounds. Engaging in a discourse that does not employ religious grounds is much easier than barring such grounds from one's considered judgment. These realities lead me to favor greater restraints on discourse than judgment. I shall address shortly the worrisome argument that such a difference encourages dishonesty and concealment.

## VII. JUDGES

Among public officials, judges are the most constrained in their bases for decision. Since appellate judges justify their results in formal opinions, we know precisely what grounds they use to *defend* their decisions. Generally, they provide reasons based on legally authoritative sources, like statutes and prior cases. Sometimes however, they must give meaning to basic concepts like fairness and equality. Then they may engage in reasoning that is broader in scope. What one does not find, however, is argument that depends on any source of insight that the judges do not think is available and forceful for lawyers or members of society in general. One does not find religious grounds. Judges rarely say behavior is wrong because it violates one particular authoritative religious point of view. Matters were different in the 19th Century, when the common law was said to be Christian; but we now find essentially nonreligious arguments for why actions or laws are acceptable or unacceptable.

Judges may employ references to religious morality to indicate traditions in this country, say about abortion or homosexual acts; but judges do not claim that the morality of Christianity, or any other religion, is correct because the religion is correct. Opinions claim to rely on bases for decision that would be authoritative for any judge; no directly religious ground has this status. Present practices preclude judges from advancing directly religious grounds for decision.

What of the *actual bases* for decision. The ideal of judging is that judges rely on the arguments that they present in opinions, more or less. I say more or less, because most opinions are not fully candid in at least three respects. Typically opinions make cases seem easier than they are. First, they rely heavily on traditional legal sources even when those sources are indecisive. Second, they overstate the force of arguments in favor of the result the judges reach. That is, the opinions make their own side seem stronger than the judges really think it is, and they make the opposing side seem weaker than the judges really think it is. Finally, opinions for an entire court, or for more than one judge, submerge and conceal differences of view among judges joining the opinion. So, opinions are not fully candid. But, still the arguments they state are usually the arguments that persuade the judges.

On very rare occasions, judges may find all the legal and other arguments of general force to be indecisive. They may find they need to rely on some more personal source of insight to tip the balance. Is this ever appropriate? If it is appropriate, may a judge rely on a religious position as the more personal source of insight? The first point is arguable. Perhaps judges should always strain to be guided by public reasons, reasons

that they recognize have force for all judges and that they would feel comfortable putting into an opinion. I think they should strive hard to be guided by public reasons, but that when they find these reasons to be evenly balanced, they may give some weight to more personal reasons they would not put in an opinion. An example would be, "I can't explain why, but I feel deeply that a seventh month old fetus counts just as much as a new born baby." In those rare instances when judges rely on personal reasons they would not put in opinions, I believe they may treat their own religious beliefs as they would other personal sources of judgment.

To sum up, the public discourse of judges in legal opinions should not include religious reasons, *or* "personal" nonreligious reasons. This is the present practice. Judges should very rarely allow themselves to give weight to unstated personal reasons or religious reasons.

#### VIII. LEGISLATORS

Other public officials present more serious issues. I will concentrate on legislators. Some documents containing legislative justifications are formal in the way that judicial opinions are formal. Of course, legislators often self-consciously change the law, so legislation does not need to be tied to existing law in the manner that judicial decisions are tied to existing law. Straightforward arguments that the law is unjust or ineffective and needs to be changed are fully appropriate. Still, in things like preambles to statutes and committee reports, we find justifications and arguments that are claimed to have general power; in that respect, those resemble judicial opinions.

The troublesome questions concern arguments offered by individual legislators inside and outside the legislatures, and their actual bases for judgment. Should a legislator proposing a bill to restrict factory farming say on the legislative floor: "The Bible calls on us to give greater consideration to animals than we have done so far. If we are to be faithful to God's will, we should enact this legislation." Should a legislator explain his or her position in that manner to constituents? Should legislators make up their own minds on such grounds, even if they do not reveal them publicly?

At least at a national level, I believe we have reached a general understanding that legislators should not make such religious arguments. They represent all their constituents, members of diverse religions. They should not present as crucial arguments grounds that are applicable only to members of certain religions. This practice is not as securely established or uniformly followed as the practice regarding opinion writing; but such overtly religious arguments about particular laws and policies

are not frequently offered by members of Congress.

I think this practice respects the religious diversity of our population. Since religious tensions remain significant in the United States, this practice also reduces political and religious conflict in a desirable way. This restraint involves only a minor impairment of the religious liberty of legislators. They have chosen a public role and they often say less than everything that they think about particular issues. Moreover, the number of legislators in the country is small in comparison with the number of citizens. If legislators forego public religious arguments about political issues, that entails only a slight diminution of people's freedom to act upon religious understandings.

How legislators should make up their minds is troubling. Unlike judges, they may often find that public reasons are indecisive. Legislators should focus primarily on public reasons, but we should not expect them systematically to disregard personal reasons and religious grounds.

As my Student Council example illustrated, purging one's discourse is much simpler than purging one's judgment; *and* it is much simpler to tell whether others are restraining their discourse than whether they are restraining their judgment. The primary restraint on legislators should be conceived as a restraint on public discourse, not on judgment.

Does this proposal endorse dishonesty and concealment? No one expects legislators to reveal all their grounds for decision. If this is not expected, their failure to develop religious arguments that carry considerable weight with them is not really dishonest. The issue of concealment is more difficult. Some people believe that citizens should know as completely as possible the bases on which legislators decide. Such knowledge can help the citizens decide what to do at the next election. This is a telling point, but not telling enough to justify wide political speech cast in religious terms. I *do* believe legislators appropriately mention that religious grounds matter to them, and certainly they should not lie about that. What they should not do is to make full religious arguments in the public political forum.

I have talked about legislators using their own religious convictions. There is another question. Should they follow constituent opinion that is based on religious convictions? Suppose most constituents have religious reasons for thinking fetal research is wrong. Should that affect a legislator's vote? The answer depends on how ordinary citizens should make up their own minds and discuss issues. I will discuss that subject in a moment.

### IX. THE EXECUTIVE BRANCH

Many functions of chief executives and other administrators are legislative. In these functions executives should be guided by essentially the same principles as legislators in using religious grounds. In some other functions, executives are more like courts, interpreting and enforcing existing law; in these functions the guiding principles should be similar to those for judges.

### X. CITIZENS

Ordinary citizens are not trained to restrain their judgments and discourse in the manner of judges or legislators. For many of them, religious convictions have implications for political issues, and acting to realize these implications is an aspect of the exercise of their religion. Many of those who believe that God ensouls the embryo at the time of conception feel that working for restrictive laws on abortion is an aspect of carrying out God's will. *Most* citizens play little direct role in political processes beyond voting, and many do not even vote. Votes for candidates merge impressions about many issues. Asking citizens to distill the judgments they would have if they put their religious convictions aside on each of these issues is asking a great deal, and it is unrealistic to think that most citizens could be very successful. Certainly most citizens would be skeptical that others would be successful, and the most conscientious among them in sticking to public reasons would suspect that they were unfairly foregoing grounds of judgment others were using. People should be encouraged to give a priority to public reasons, but they should feel free to be influenced by religious grounds.

What of discourse by ordinary citizens? Most of their discourse takes place with family, friends, co-workers, and members of groups to which they belong. What any one person says has very little effect on political life as a whole. Asking citizens to censor themselves in their private conversations would work a serious inhibition, with limited positive effect. The issue is closer when citizens write to members of Congress or to newspapers. Perhaps then they should aim for nonreligious discourse. Most letters are not read with any care; politicians are interested in the bottom line. The arguments made in newspapers have greater significance. It *is* desirable for most such letters to be cast in terms of public reasons, but this forum is also an occasion for the expression of diverse points of view. This forum is not significant enough to justify a principle of self-restraint that citizens should restrict themselves to public reasons.

In a discussion on another occasion, Richard Saphire raised the prob-

lem of speakers at public school board meetings, and similar community meetings, who forcefully make religious arguments. Based on conversations with some of these people, Professor Saphire believes they would find it virtually impossible to formulate their views in any nonreligious form, but he also believes the effect of such discourse is divisive. These meetings raise a more serious problem than letters to legislators or newspapers. I am inclined to the view that even in such situations, citizens should feel free to express what matters most to them, but I do not hold this view with confidence.<sup>7</sup>

In sum ordinary citizens should feel much freer to rely on religious grounds than are public officials. Since legislators *should* be able to rely on views that are properly formed, legislators may give weight to constituents views that rest partly on religious bases.

What about what I call quasi-public citizens, citizens who play a largely public role but are not in the government? Presidents of major nonreligious organizations are important public figures, and they represent diverse constituencies. They should be guided by principles similar to those for legislators, and that is how they generally perform their roles. This is how major columnists should mainly regard their responsibilities when they comment on pressing political issues, but the argument that they should feel free to express their unique personal perspectives is stronger than it is for the heads of major nonreligious organizations.

#### XI. RELIGIOUS LEADERS AND ORGANIZATIONS

Finally, I want to discuss the place of religious organizations, local churches and synagogues, etc. and their ministers and rabbis, and larger institutions. I shall briefly pose and answer six questions. Those are:

(1) When addressing their own members, should clergy and churches limit themselves to general moral ideas or should they draw specific political conclusions? (2) Should their recommendations extend to supporting or opposing particular parties or candidates? (3) Should clergy, while strongly identified as clergy, run for public office? (4) Should clergy and churches engage in ordinary political activities, such as educational campaigns, lobbying, demonstrations, and other attempts to put strong electoral pressure on officials? (5) In communications to nonmem-

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7. That is, I also find appealing the competing view that citizens should be encouraged to present "public reasons" at such public meetings, and that that encouragement could be formulated as an expectation of how citizens would best comport themselves. Of course, no such formulation is likely to have much effect on how people who believe they are called upon by God to speak in religious terms will express themselves.

bers, should they draw highly specific policy conclusions, or limit themselves to more general recommendations? (6) If they should act in the public arena, should they make specifically religious arguments, or non-religious arguments, or both?

Each of these questions can be faced from within a religious tradition or from the standpoint of independent political theory that does not rely on theological premises. I am adopting the second, nonreligious, perspective here.<sup>8</sup>

Before I tackle the questions, I want to clear up one fairly common misperception. When Jerry Falwell criticized Supreme Court nominee Sandra Day O'Connor, Senator Barry Goldwater accused his organization, The Moral Majority, of "undermining the basic American principles of separation of church and state by using the muscle of religion towards political ends," Goldwater said:

I'm frankly sick and tired of the political preachers across the country telling me as a citizen that if I want to be a moral person, I must believe in "A," "B," "C," and "D." Just who do they think they are and from where do they presume to claim the right to dictate their moral beliefs to me? The great decisions of Government cannot be dictated by the concerns of religious factions. . . . We have succeeded for 205 years in keeping the affairs of the state separate from the uncompromising idealism of religious groups, and we mustn't stop now!<sup>9</sup>

Senator Goldwater's last sentence rings with a version of the American history of religion and politics that we often hear. That version is about as inaccurate as history can be. Churches have been involved in politics throughout this nation's history. It is with this understanding that I approach the six questions.

One, when addressing their own members, should clergy and churches and synagogues limit themselves to general moral ideas or should they draw specific political conclusions? Preaching about morality is undoubtedly appropriate, even if that morality has political implications. Thus, no one could object that ministers stray from their domain if they preach that consenting sexual acts between adult homosexuals are or are not sinful, or that rich people have a duty to aid poor people. Controversy begins when preaching goes beyond morality to cover specific political conclu-

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8. I might add that the entire subject of this talk might be approached in either of these two ways, and that I am adopting throughout the standpoint of independent political theory.

9. Dean Kelley, *The Rationale for the Involvement of Religion in the Body Politic* in *THE ROLE OF RELIGION IN THE MAKING OF PUBLIC POLICY 156-60* (James. E. Wood, Jr. & Derek Davis eds., 1991).

sions. There is a difference between telling people that an active homosexual life is sinful and telling them that they should support criminal sanctions for that behavior. Some have suggested that ministers and churches should limit themselves to moral pronouncements. Much rests on just how and when political conclusions are drawn. If a minister offers conclusions as her own working out of relevant moral principles, but does not suggest that all others of good faith must agree with her, she recognizes the freedom of her members and the limits of any special competence she has. The ease of conclusions and their moral importance also matter. Sometimes political conclusions will flow in a straightforward way from moral judgments. For example, if the minister preaches that an active homosexual life is perfectly acceptable to God and not inferior to a heterosexual life, the conclusion that any criminal sanctions should be repealed follows closely. If a political decision has great moral significance, preaching directly about it is especially appropriate. Desegregation and decisions about war or peace have this significance; so does abortion for many on both sides of the issue. No principle of liberal politics precludes clergy drawing out specific policy conclusions in their communications to members.

Two, should the recommendations of clergy and churches to their members extend to supporting or opposing particular parties or candidates? Favoring particular laws and policies is a step beyond advocating moral positions; supporting or opposing candidates and parties is a further involvement in politics. Most Americans probably now feel uncomfortable when religious leaders take this further step; they feel uncomfortable with the suggestion that, overall, one candidate or party is more on God's side than another. These feelings of discomfort are well grounded. But some political issues are of such overriding significance that churches are warranted in opposing candidates who take positions they strongly believe are wrong. Suppose, for example, a white candidate explicitly takes the position that racial segregation should be reinstated. In our present understanding that position seems so blatantly immoral, so contrary to the values of almost all religions, preaching opposition to his election is proper.

Three, should clergy, strongly identified as clergy, run for office? In this country, clergy are not bound to the role of clergy for life. But suppose a minister retains a parish, continues preaching on a regular basis, and runs for important office. When practicing clergy are legislators or high executive officials, the mixing in personnel of politics and religion is too great. People should choose between being fully active ministers and being public officials or political candidates.



Four, should clergy and churches try to reach a larger public by educational efforts, by lobbying, and by participating in direct action such as demonstrations? Many other religious groups now engage in these activities; but over time would it be desirable for these activities to cease or diminish?

We need to narrow this question. Some pieces of legislation directly affect churches or religious practices. As affected institutions, churches should certainly be involved over legislative questions concerning aid to church schools or property tax exemptions for religious property. They should also speak out when matters, such as school prayer, concern religious practices and their appropriate settings.

The harder question concerns broader issues of morals or social justice. Here, the question is whether churches and clergy should move beyond recommendations to members and participate in the political process as one might expect General Motors, or the American Medical Association, to do? There are two powerful arguments for such involvement. One is that churches should not be regarded as different from other non-governmental organizations, and the legislative process is now replete with lobbying by such groups. The other argument is that churches, and larger organizations in which they are dominantly involved, often think seriously about public welfare and conscience; they are a healthy corrective to self-interested pleadings. On the negative side are concerns that religious involvement makes political life harsher and more divisive, and that churches may appear to control the legislative process. The results may include resentment against particular churches or against the arrogance of organized religion.

The worry about "control" is met fairly easily on the national level. There is such diversity of religious views, and such disagreement about political implications, that neither control, nor its appearance, is very likely for most issues. Control may be a pervasive concern within a few states.

The effect of religious involvement in political life is much more complicated. For some issues, like abortion, debate is more strident because religious groups have staked out powerful positions. On many other issues, religious involvement does not have that consequence. Judgments may differ, but mine is that in most cases the ordinary political activities of religious leaders and organizations are an aspect of political good health rather than ill health.

Five, should churches limit themselves to general recommendations or draw highly specific policy conclusions? Effective lobbying usually involves support for or opposition to specific proposals, and may involve

formulating proposals. Just as they may appropriately recommend specific conclusions to members, churches may support those conclusions in a public arena.

I have already suggested that churches should strongly hesitate to endorse particular candidates or parties to their own members. The mixing of religion and government is much worse if this endorsement is made to a general public and the entire citizenry is urged by church leaders to vote for particular parties and candidates. That has happened between some prominent conservative Christian clergy and the Republican Party. There is a disturbing quality when one party or candidate is embraced as being more in tune with the religiously correct view. The special "debt" a candidate or party may have to those who directly helped put them in office and whose support may also be necessary at the next election is also worrisome.

Sixth, if churches and clergy should involve themselves in political issues, should they make specifically religious arguments, or nonreligious arguments, or both? Perhaps religious leaders should try to develop and present reasons that will have force outside their own particular membership; but it seems evident that they need not limit themselves to nonreligious arguments. They have special competence to present a religious understanding, and an aspect of what they present should be understanding should be that understanding.

## XII. CONCLUSION

Let me review the major points I have made. There is a deeply serious question what role religious convictions should play in political judgment and discourse. The question is not primarily a legal one, but it is related to the constitutional values of free exercise and nonestablishment. Full free exercise points toward use of religious convictions along with other bases for judgment; full nonestablishment points towards restraint.

When use of religious convictions involves religious imposition, it is not appropriate. Even when no imposition is involved, public officials should be hesitant to rely on their religious convictions. Private individuals should feel much freer to do so. Restraint in discourse should be greater for legislators, and some other officials, than restraint in judgment. Religious organizations properly play an active role in politics and they make relevant religious arguments, but they should rarely endorse candidates and parties.