CHRISTIANITY AND POLITICAL LEGITIMACYIN UNITED STATES HISTORY

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Introduction

The fundamental issue in American history is not whether political legitimacy is somehow dependent on religion, especially Christianity, but whether and how a legitimate political system can exercise respect for religion and protect religion from state intrusion.

The topic of this paper might better be stated as a question: is there a relation between Christianity and political legitimacy in United States history? If this question is read to suggest that there might be some way in which political legitimacy in the United States

depends on Christian religion, then the response has to be to deny this: there is no question that the institutions of American political order rest on foundations understood and treated as grounded in nature and independent of any and all specific religious influence. While the Declaration of Independence speaks of "the Laws of Nature and Nature's God" and asserts that "all men are endowed by their Creator with certain inalienable Rights," including "Life, Liberty and the Pursuit of Happiness," and while the conceptions and values expressed here may be traced back to origins in Christian thought within the culture of the West, these words express no specific Christian connection. While this is religious language — religious in the sense of the Enlightenment Deism of their author, Thomas Jefferson — it goes right alongside the assertion that the truths laid out, notably the existence of such rights and the equality of all, are "self-evident" and that the legitimacy of governments rests on "the Consent of the Governed." Similarly, in the Preamble to the Constitution of the United

States it is “We, the People of the United States” who establish the Constitution, and the goals of this Constitution are presented as self-evidently good goals of the political community as such: to “establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.” God is not mentioned in the Constitution, and there is no reference anywhere in it, in any way, to any kind of dependence on Christianity. The legitimacy of the government of the United States, in Constitutional terms, rests on the will of the people of the United States, guided by truths that should be self-evident to all, whatever their religion.

Yet this is not to say that there is no respect for religion in American society or American political institutions; far from it. The truths that should be self-evident to all are, after all, placed in us by the laws of nature, and created by God. It is just that in the American conception and in American history, the

question is not whether a legitimate political order depends in some way on Christianity or some other institutional religion. The answer to that is a clear negative. But when one turns the question around, asking how a legitimate politics deals with Christianity and with other religions, then the answer is quite different, drawing us into a rich and ongoing experience. Americans want nothing to do with any form of theocracy, for reasons I shall try to suggest below, but American constitutional law seeks to protect religion from governmental intrusion, while the patterns of American social life show the integral connection between religious life and the prosperity of civil society. These are the themes I address in the following pages.

Religion in the Public Square:

A Continuing American Constitutional Debate

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These are the opening

words to the First Amendment to the Constitution of the United States, and they provide the basis for what has become a continuing debate in American society over the place of religion in relation to the public square. The single sentence that constitutes the First Amendment continues, after the words quoted above, as follows: “or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” President Franklin D. Roosevelt in 1941 defined “four freedoms” — freedom of speech, freedom of religion, freedom from want, and freedom from fear — and in the same vein, the First Amendment may be described as guaranteeing “four constitutional freedoms”: freedom of religion, freedom of speech, freedom of the press, and freedom of assembly. All these have been historically understood as rights given in nature, and so the effect of the First Amendment is not to establish these “four constitutional freedoms,” but to stipulate that Congress may not legally restrict them.

This last point deserves to be emphasized, because the treatment of rights is different in other political systems: in the American system, the Constitution does not itself create these rights, including that of free practice of religion; they are taken as established in nature, and the Constitution stipulates that they may not be legally abridged or restricted. This perspective extends also to the position the United States has consistently taken with regard to human rights in the international sphere: by contrast with those countries which have maintained that there are no rights other than those recognized constitutionally by their governments, the United States has insisted that there is a body of rights that belong to all persons by natural endowment. In the case of the rights recognized by the original ten amendments to the United States Constitution, the Bill of Rights, the historical evidence shows that at least some members of the Congress at the time they were proposed regarded these as so self-evident that there was no need to write them specifically into law — as they had not been written in the

Constitution itself. The right to religious freedom, stipulated in the First Amendment, is one of these fundamental, self-evident rights understood as given in nature to all humankind.

But the language of the First Amendment regarding religion raises a question of interpretation, for it not only prohibits the Congress from legal regulation of the free practice of religion; it also says the Congress may not pass any law "respecting an establishment of religion." How are these two provisions related? Why raise the question of establishment of religion at all?

The answer is found in the difference between two positions manifest in the legal systems of the various American states and held within the American populace as a whole. Both positions agreed on a critical point: that religion is essential to the stability of society and the political order. They also agreed on the good of broad religious tolerance. But they disagreed on whether establishment or non-establishment was the best way to support

religion overall within the frame of the social and political order. The first position was, says American constitutional law scholar Steven D. Smith, "supported by received wisdom and tradition," and thus he calls it the "traditionalist" position: it favored a religious establishment. Timothy Dwight, one of the early presidents of Yale University, located in Connecticut, a state with an established religion, put the pro-establishment of religion position simply and straightforwardly: "[N]o free government has ever existed for any time without the support of religion …. But religion cannot exist, and has never existed for any length of time, without public worship." A fuller statement of this position comes from the Massachusetts Constitution of 1780, which was in effect at the time of the First Amendment:

As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality: and as these cannot be generally diffused through a Community, but by the

institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore to promote their happiness and to secure the good order and preservation of their government, the people of the Commonwealth have a right to invest the Legislature [with authority to provide for mandatory church attendance and support of churches from public funds].

Opposed to this pro-religious establishment position was a second position, which Smith calls "voluntarist": while accepting the necessity of religion for the health of society and the good order of politics, "… it insisted that governmental support was not essential, and indeed might be harmful, to the cause of religion." This position rejected religious establishment but favored the free exercise of religion by voluntary choice. It was the historical position of three states: Maryland, Pennsylvania, and Rhode Island, all of whose founders and earliest settlers when they were English colonies were members of religious groups that were officially dissenters relative

to the established Anglican Church in England. For them, not to establish religion but rather to establish religious toleration in law was the route to protecting the faiths associated with these three colonial societies: Roman Catholic in the case of Maryland, Quaker in the case of Pennsylvania, and Baptist in the case of Rhode Island. It will be noted that such religious toleration extended not only to Protestant groups but to Catholics, and not only to Christians but to Jews: one of the oldest Jewish synagogues in the United States is located in Newport, Rhode Island.

The language of the First Amendment regarding religion was crafted to meet the concerns of both the traditionalist and the voluntarist positions regarding religion. Had it included only provision for the free exercise of religion, it would have looked like an endorsement of the voluntarist position; had it undertaken to establish religion at the federal level, it would have looked like an endorsement of the traditionalist position, but at the same time it would have raised the

question of which religion to establish, since different faiths had different strengths in the various states. The solution was to deny Congress any right to legislate on religious establishment at the federal level, while leaving the possibility of establishment open to the states, and at the same time officially to endorse protection of the free exercise of religion — that is, voluntary choice. Viewed this way, the First Amendment's treatment of religion supported the fundamental point on which both the traditionalists and the voluntarists agreed, that a religious foundation is necessary for the health and good order of society and its government, while sidestepping the contended matter of legal religious establishment by leaving it jurisdictionally to the states.

By the time of the First Amendment even religious establishment had ceased to imply non-toleration of other forms of religion than the officially supported one. Rather, establishment had come to do principally with three things: financial support from the state

toward the established religious body and its institutions, including schools and other activities undertaken by the church in question; use of the recognized church's clergy at official state functions; and provision of legislation designed to the end of promoting regular attendance at religious services. In states with established churches, other religious bodies within the state were not the subject of persecution; they simply did not receive financial support from the state's government, and their clergy were not expected to preside at public days of prayer, or to offer prayers at public ceremonies. But the non-established religious bodies, like the established church, received whatever benefit came from the laws aimed at promoting church attendance — for example, laws requiring Sunday closing of businesses so that people would not have to work and would be free to attend worship services, laws that in many cases remained in force well into the twentieth century in certain parts of the United States. Financial support of the non-established religious bodies came from

voluntary contributions, just as in states without a religious establishment all religious bodies depended on such voluntary financial support. Thus the voluntary model of free exercise of religion already permeated society throughout the original thirteen states even though some of them provided for public support of religion and others did not.

Undergirding all this was the assumption that the exercise of religion — regular participation in the worship of God, which at the time meant attendance at services including prayers of supplication, intervention and repentance, hymns of praise, and sermons heavily focused on moral behavior, and what the Massachusetts Constitution called "… instruction in piety, religion, and morality" — is essential to the well-being of the American political community, and indeed, of any well ordered political community. This was a view that all the European societies that had fed into the American population would have shared at the time. The difference between the United States and those European societies at the time

of the Declaration of Independence, the Constitution, and the First Amendment was that the United States, by legally protecting the free exercise of religion, embraced what was already the actual substance of religious life in the country, religious pluralism.

Was this pluralism limited to forms of Christianity? To be sure, for some Protestants even the acceptance of Roman Catholicism as a player on a level playing field was difficult, but the acceptance of other manifestations of Christian pluralism was also difficult for some persons to accept. One way this difficulty was resolved, ironically, was in the creation of more and more pluralism. Already during the Colonial period the Methodist movement had split the Anglican Church, the Baptist movement had drawn adherents from the older main-line denominations throughout the colonies, and the Presbyterians and Congregationalists had split over the role of religious revivalism and the proper way of interpreting the Bible. The 'Great Awakening' of the early-to-mid-eighteenth century stands

as the symbolic focus of this religious ferment during the late colonial period. The ferment continued in the early national period, reaching a peak in what is called 'The Second Great Awakening' or the 'Great Revival'. The result was the proliferation of Christian denominations, each defined by voluntary affiliation of their adherents, often with 'believer's baptism' as the ritual of entry (as opposed to 'infant baptism', the rite of entry universal among the established churches), and also often with moral tests to ascertain true adherence to the new denomination's teachings. The themes set in place here continue to define American religious life.

Whatever their status relative to the proponents of religious establishment at the time of the First Amendment, then, clearly the religious voluntarists have won, overall, in their view of how religious affiliation should be treated in American life. No states have established churches any more. The proliferation of religious multiplicity continues, with the rise of evangelical,

apocalyptic, and other new forms of Christianity as well as the influx of new immigrants with their own forms of religion (including Latin American forms of Catholic and Protestant Christianity, various kinds of Hinduism and Buddhism, and significant bodies of Shî'î, Sunnî and Sûfî Muslims). Nor has voluntarism hurt the breadth and depth of religious membership and practice in the United States; quite the contrary. The United States is, by any standard, a conspicuously religious country, and this is especially striking by contrast with European societies, many of which have maintained established churches but nonetheless have seen religious affiliation and participation dwindle.

The whole story, though, is not limited to the triumph of the idea of voluntary association in religion over the idea of religious establishment. The rest of the story lies in the respect extended to religion historically as the basis of social values, stability, and the public welfare. Respecting religion while keeping the government's hands off it (as provided for in

the First Amendment) is a quite different approach to the separation of religion and the state from that found, for example, in the French concept of *laïcisme*, whereby government is rigorously to exclude religious influences from matters having to do with the sphere of political life. The concept of secularity in the United States, by contrast, accepts the idea that religion is a valuable, indeed a necessary, part of civil society, and the separation of church and state is, as witnessed by the language of the First Amendment, historically about the protection of religion from encroachment by the federal government, not about the protection of the federal government from religion. This is fundamentally different from the example of France, the Soviet Union, and other societies whose versions of a secular state have treated religious influence as a danger to the state.

The constitutional prohibition of congressional interference with the free practice of religion was extended to the level of state law by the Fourteenth Amendment.

This Amendment includes the following language:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment was one of three constitutional amendments proposed and adopted in the aftermath of the American Civil War. Known collectively as 'the Reconstruction amendments', they directly addressed the status of the former slaves, aiming specifically at keeping the states that had been members of the Confederacy from introducing legislation that would amount to a *de facto* perpetuation of black slavery under other names. There is no evidence that, at the time this amendment was proposed in 1868 and ratified later that year, anyone considered that it might apply to the matter of religious practice. Indeed, explicit application of the

language quoted above from this amendment to matters involving religion and its relation to government did not occur until the 1940's, when a series of Supreme Court decisions effectively 'incorporated' the First Amendment treatment of religion into the Fourteenth. ('Incorporated' is the term of art used by legal scholars to describe the Court's reasoning.) State establishment of religion was no longer the issue, since such establishments had long since ceased to exist. Now the language of the First Amendment was used to a different end, to define a principle of 'strict separation' between church and state in the United States.

The concept of 'strict separation' comes from Justice Hugo Black's opinion in one of the landmark cases involving the relation of government to religion, *Everson v. Board of Education*, decided in 1947. This court case had to do with whether publicly funded school buses could be used to transport students to religious schools, and its particulars need not concern us here. What is important for the

development of the American debate over the place of religion relative to the state is Justice Black's use of Thomas Jefferson's words characterizing the Establishment Clause of the First Amendment as "… building up a wall of separation …" between church and state. This was not the only language from the era of the First Amendment that Black might have chosen: James Madison described it as drawing "… a line of separation between the rights of religion and Civil authority …" — a very different characterization of what the First Amendment was intended to do. Not only is a 'line' a less formidable barrier than a 'wall', but the idea of separating 'the rights of religion' from 'Civil authority' clearly implies the aim of protecting religion from encroachment by the state, while Jefferson's language does not. A great deal of legal debate after *Everson* has had to do with whether Jefferson's or Madison's language in fact better captured the original intent of the First Amendment. Use of Jefferson's language shifted the legal debate to the idea of governmental 'neutrality' regarding religion

and, perhaps unintentionally, opened the door to the idea that religion should be excluded from the public square entirely — an idea that I argued above fits the French model of separation between church and state but not the historical American pattern of showing governmental respect for and protection of the free exercise of religion by keeping government's hands off matters of religion.

What is the upshot of all this? Constitutional scholar Christopher F. Mooney argues as follows:

[T]he concept of separation (whether by line or wall) does not provide its own principle of limitation. Church-state separation (or neutrality) is not an absolute but an instrumental principle. Its purpose is to promote and support our nation's commitment to religious freedom, and it is defensible only so long as it does so. The question therefore is not whether there should be separation, but what its meaning should be in a given situation …. The meaning of the concept (and our commitment to it as a nation) has to be drawn

from Supreme Court decisions, rather than the meaning of the decisions from the concept.

Critics argue that the result has been legal inconsistency and arbitrariness; Steven Smith, cited above, provides a sampling of critical opinions in the introductory chapter of his book. Another legal scholar, Noah Feldman, has taken aim in particular at the different treatment given displays of the Ten Commandments on public land, where some such displays have been allowed and others not. But Smith, I think, strikes the right note when he states as his own position that "… religious freedom, like many other matters of personal and political concern, is inherently a prudential matter that cannot plausibly be confined to or regulated by theory." The resulting practice may be messy, but so long as the fundamental values at stake are honored, this may represent the best resolution to a controverted problem.

Saying No to Theocracy

What is abundantly clear in the history of American attitudes toward the relation between religion and the social and political order is that it shall not be theocratic: that is, no specific religion shall have the right of rule or veto in the public sphere. A form of theocracy, rule by the clergy, was in fact tried in the Massachusetts Bay Colony on its founding and for some time afterwards. Its founders and most of its early inhabitants were from the strict disciplinarian wing of the English Puritan movement. Theologically they held to John Calvin's conception of the relation of divine law and Christian grace, and their conception of the function of public law adhered closely to Calvin's description of the 'third use' of the law, which he called 'the principal use'. On this conception, for believers, the law has two functions: it enables them "… daily to learn with greater truth and certainly what that will of the Lord is which they aspire to follow, and to confirm them in this knowledge …," and secondly, the law acts as 'a whip to the flesh' exciting believers to obedience. What of nonbelievers? For them

the law's first two 'uses' apply: to convict them of their sinfulness and "… by means of its fearful denunciations and the consequent dread of punishment, to curb those who, unless forced, have no regard for rectitude and justice."

The Massachusetts Puritan clergy, taking the role of the highest magistrates, enacted and enforced legislation aimed to enforce divine law, with the purpose of creating a model society, the only one on earth which conformed strictly to the biblical model. This would be 'a city upon a hill' which the rest of the world (they particularly had in mind sinful Europe, and especially the England they had left behind to come to America) could view and, recognizing its excellence, seek to emulate. This conception of America has endured through American history as a broader theme in conceiving the purpose of American society and its place in the world, but how and why it was able to make this claim has changed markedly from what the theocrats of Massachusetts Bay assumed.

The Puritans of Massachusetts Bay endowed American society with a sense of a special identity and purpose in the world, but it has to be said that they misconstrued what that meant for the particular structure of society, and they soon overreached themselves in their effort to enforce their conception of the right to rule and the application of their understanding of divine law. One problem was the nature of America itself. Nathaniel Hawthorne's novel *The Scarlet Letter* illustrates the dilemma: the Massachusetts Bay Puritans thought they could create an ideal society in America because America, as they saw it, was an untouched wilderness, a blank slate on which they would be free to construct that ideal society. But the society they constructed was an insular one, surrounded by unconverted wilderness, and that wilderness turned out to favor other virtues: personal freedom, initiative, integrity, action. The Massachusetts Bay theocracy could not withstand the spread of society into the America around it, where these virtues triumphed.

A second problem was immigration: over time, immigration into the colony brought persons who did not share the religious conceptions of the Puritan theocrats, and these new immigrants either ignored their rules or else sought to change them in the direction of more toleration of diversity.

A third problem was the replacement of the early core population by their children, who turned out in many cases not to share either the religion or the political ideals of the founding generation.

Thus there came to be three groups of people arrayed against the theocratic form of government: those who experienced life in America in terms of liberty, personal initiative, and creating a meaningful life through their own private hard work; those who rejected the religious and political assumptions of the Puritan theocrats from the first; and the children and grandchildren of the founders, who sought to carve out for themselves the meaning of religious life and rejected the idea of a political order embodying religious

control. A very basic form of the goals of the founders remained in the language of the Massachusetts Constitution of 1830 quoted above: religion is the source of core values necessary for the good of society, and public support of religion is a way to ensure the continuing presence of religion and thus those core values. But this language, even while providing for public support of religion and encouragement of public participation in religious activities, was very far removed from the theocratic model of the early Massachusetts Bay colony.

A fourth problem with the Massachusetts Bay Puritan theocracy had to do with the conception of the nature of the ideal society itself. The founders of this theocracy did not really understand the relation between a religious ideal and the mechanisms that unite to make for a successful political community. Theirs, like other utopian conceptions, failed to take account of the complexity of life in community and the ways that the political system must respond to this complexity. They

also missed a fundamental element in the biblical conception of community they were trying to replicate. They believed this biblical conception, as they understood it, was the best and truest form of political community. But they believed this conception, based on the covenant between God and Israel, could be put into place in a frozen, static form, policed by the senior clergy, and in this they were profoundly wrong. Their focus was on the divine law as the basis of that covenant, and they believed that by rigid enforcement of that law a perfect society could be maintained. But their branch of the Puritan movement systematically ignored another element of the biblical concept of the covenant community — the steadfast love (*chesed*) described as the form of the relation binding those who participated in the covenant. Showing *chesed* was how to enact the law. This conception allowed for the infinite permutations of the divine-human relationship as well as the perhaps equally infinite permutations of relations among the members of the covenanted community. Though the theocrats

did not understand or value the importance of this, they actually succeeded far better in sowing the sense of virtue and communal responsibility carried by the biblical *chesed* than in their aim of constructing a frozen-in-time replica of a society based on a utopian version of the biblical model.

An enduring lesson of the failed experiment of the New England Puritan effort at theocracy is that theocracy infringes on liberty. The American experience privileges the value of personal liberty. It is difficult for those who do not value such liberty to accept that on the American conception it is this liberty that makes community possible. Even the theocrats of Massachusetts Bay exemplified this in action, as they left an English society whose laws, customs, and social structures constrained them in order to pursue their own conception of the good and to achieve the freedom to pursue it. They did not, of course, realize this; their theocratic model of government set up a worst-case alternative to the model they had left behind. But the new

immigrants and the children and grandchildren of the founders saw this and sought their own liberty. They were, in the words of a distinguished scholar of American Puritanism, "… left alone with America …," and they knew that personal liberty was the only way to react to it.

Farther south, in the other colonies, Catholic dissenters from the Anglican Church populated Maryland; Quaker dissenters emigrated to Pennsylvania; Jewish and sectarian Christian bodies subject to persecution in Europe established their communities in several of the colonies; and still other varieties of religious experience and expression were brought into American society by waves of immigration — a process that still continues to the present day. Respect for liberty allowed for each of these to create its own life and to make its own way. Liberty was not the antithesis of community, but the necessary foundation for respect for individual and group diversity, which was fundamental to the creation of a new community uniting all of

these diverse people. Ironically for the legalist Puritans who founded the Massachusetts theocracy, another branch of Puritan thought understood the importance of liberty very well and regarded its fullest expression as being rooted in the gift of divine grace. Those who held this view did not prevail within the Puritan movement, but they left an enduring mark which influenced later thinkers like John Locke, and through him the founding fathers of the United States and the early documents expressing the character of this society, including especially the Declaration of Independence and the First Amendment to the Constitution.

Viewed in this light, the American experience of theocracy is not only that it got political community wrong and got America wrong; it got religion wrong. Religion itself, at its core, must be about freedom. Thus the protection of religion from government and the protection of government from religion are two sides to a single reality. Theocracy does

not protect religion but destroys it, as surely as it destroys political community.

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Freedom of Religion And the Making of Civil Society

By contrast to social systems in which to be born in the society is not only to be a member of its political community but also to be a members of its dominant religion, under the American approach to religion, religious bodies take shape as voluntary organizations, different in purpose and kind from voluntary organizations created for different reasons but functioning similarly to them in relation to one another, to non-religious voluntary organizations, and to the society as a whole. One can view the result of this directly at the level of the local community, in which participation in various and in many ways overlapping voluntary associations defines the nature of the civil society, provides an ongoing experience of the meaning of citizenship, and forges bonds both among the members of the community and with the larger society of which it is a part.

Church membership may generate participation in non-religious youth organizations, organizations formed to support families, volunteer firefighting companies, local community days, charitable food and fund drives, community groups that organize picking up trash along the highways, and a host of other kinds of local community groups that provide the basis for civil society. Each of these, of course, may also generate membership in one or another religious body. The concept of freedom of association, when extended to religion, leads to drawing religious bodies into the nexus of activities which create and support a vibrant democratic life. Competition among the various religious bodies found in a given community, within American society, often plays out in terms of trying to make the best showing in socially useful activities. A person's choice to associate with one or another religious body may be heavily influenced by the degree to which it engages in the activities needed for the civil society, rather than by doctrine or history, as particularly exemplified by the

growth of large ‘megachurches’ which emphasize their provision of social services and voluntary participation as a means to extending such services, and which collectively represent the fastest-growing form of religious institution in the country.

An important characteristic of the way religious bodies work as voluntary associations in support of civil society is that the legal issues of separation of church and state, issues that at the national level are the focus of the continuing constitutional debate I have described above, rarely arise at the local level. I suggest that this is a result of the voluntary character of association with religious bodies and also the voluntary character of the activities engaged in. Too much religion, or religious influence of the wrong kind, can quickly be answered by withdrawing personal support. The situation is significantly different at the national level, as there the face of religion is not that of one among numerous voluntary associations but that of an institution with a particular history, a

particular kind of doctrine, particular association with various controverted social and legal problems in the larger society, and so on.

An illustrative example is provided by the Bush Administration's attempt to reform the delivery of certain kinds of social service by directly involving religiously based organizations, arguing that they were already engaged in this sort of activity and had proven themselves especially good at it, regularly outperforming comparable government agencies. This caused a firestorm of criticism, not only from persons who saw in it a move toward public support of religious indoctrination but also from religious bodies that were not heavily involved in social service activities, who saw the prospect of federal support for those who were so involved as creating a comparative disadvantage that would work against them. The federal initiative stalled, though at the local level the provision of social services by religiously

based organizations continues as strongly as before.

It would perhaps be going too far to label the opposition to such involvement of religion with government at the national level an expression of opposition to theocracy, but it well illustrates how in the constitutional debate an often-used test of whether a particular connection between religion and government is allowable is the test of ‘entanglement’. When religion and government are judged to be impermissibly ‘entangled’ in a particular law, policy, or bureaucratic practice, this may still be a great distance from a full-fledged theocracy, but it is regarded as an early step on a slippery slope. Again, at the level of local voluntary associations cooperating in generating and sustaining civil society, the question of such ‘entanglement’ is headed off by the voluntary character of the activities in question and by the fact that participation in civil society at that level implies voluntary participation in a variety of associationally defined bodies or groups. If there is any

entanglement, it occurs within the free individual citizen, and that is where it must get sorted out.

In sum, then, the American model for treatment of religion makes voluntary religious association a vital part of civil society at the local level, but at the national level this voluntary associational character tends to be submerged, and religious groups at that level function as institutions which properly may participate in the public sphere but must do so in such a way as not to create problems for the separation of religion and the state or for the free practice of religion — problems collectively termed ‘entanglement’. The same sorts of involvement in the making and sustaining of the local community, including its specifically political life, simply to do not transfer to the national level, and indeed there they become a threat to the assumptions that promote religion’s contribution to the local community.

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Where Do We Go From Here?

Prospects for Fruitful Interaction With the World of Islam

It is not difficult to see how, on the basis of the American understanding and experience of religion, any movement based on the idea of religious supremacy in politics, or even any excessive connection between religious institutions and public institutions, should be suspect. From the standpoint of many Europeans, viewing American society from the perspective of the anti-religious form of secularism, epitomized by French *laïcisme,* American society today is perceived in many ways to be under the sway of conservative Christian beliefs. That the right to such beliefs is respected in American society, and indeed guaranteed in American constitutional law, and that expression of the social and political consequences of those beliefs has a place in American public discourse are taken from the perspective of strict *laïcisme* as itself a form of

giving in to religious control of society, a violation of the proper separation of church and state. Indeed, there are Americans who view the matter similarly and have made similar arguments. But the American tradition of religion and the state is genuinely different, focused on religious freedom and respecting free expression of religious beliefs and their social and ethical implications as an element in a free politics. A perspective that insists on strict exclusion of all matters rooted in religion from the sphere of the nation's political life is, on the terms of the American tradition, wrong because it denudes the nation's political life of the values rooted in religion and of debates about their implications.

But equally is religious domination of political life rejected. The problem is not only the bad historical experience of theocracy or of 'entanglement' between religion and the state, described above; it is also that such domination is profoundly at odds with the fundamental conception of the right relation of religion to the political order found deep in the

American experience. To take some examples: Where relations with the world of Islam are concerned, Americans dislike and mistrust the present-day government of Iran not because it is Muslim, as has been sometimes alleged, and not only because it is deeply hostile to America and has shown this in its actions, but because it is a theocracy that stifles free politics. Americans likewise mistrust calls for the reestablishment of the caliphate not because the people who have made such calls include the group who assassinated Anwar Sadat, the Afghan Taliban, and spokesmen for Al Qaeda, or because of the embrace of terrorism by such groups, but because we reject the conception of religion's relation to politics embodied in such calls. Yet, because we not only respect the free exercise of religion but honor a place for the expression of religious values in the public square, we should also mistrust efforts by Westerners and Muslims alike to forge societies where religion is denied any place in the political life of the society. Holding onto a place for religion while rejecting calls for religious domination

is admittedly difficult, and yet I submit that the history of the United States shows that it is possible.

The issue is not Christianity versus Islam, as radical Islamists who call us 'crusaders' would have it. Indeed, in important respects the fundamental issue between the united States and the radical Islamists is the same as the relation within Islam itself: letting Islam be Islam — forgetting the model of the monolithic Islamic state favored by the radical Islamists and the Iranian theocrats alike, and recalling that in Islam there can be no compulsion in religion. Yet in dealing with ideas, values, and historical experiences, there are some that need to be respected and cherished, but others that need to be repudiated. Religious freedom, Americans believe, must be respected and protected. When contemporary Muslims think about the ideal 'Islamic' society today, I suggest that they should comb their own stream of ideas, values, and historical experiences to think

about what is genuinely reflective of the message of Islam and what is not.

A real problem, I suggest, is to produce a new, and genuinely compelling, theory of the political community on the basis of fundamental Islamic values as expressed in the *Qur'ân* and the *Hadîth*, and as the classic Islamic jurists and philosophers sought to interpret them for ongoing public and private life. Because of the idea that the gates of interpretation (*ijtihâd*) have closed, the theory of society put forward in classic Islamic jurisprudence (*fiqh*) has not been allowed to develop since the twelfth century. An authentic creative Islamic philosophy effectively died at about the same time. The classical jurists' model of Islamic society as the *dâr-ul-islâm* ruled by a successor to the Prophet Muhammad according to an immutable law (as they understood that law at the time) was already an ideal, not the reality, in the age of al-Shaybânî and as-Shâfi'î; had it been the reality, there could have been no politically independent Cordoban or North

African Islamic societies. But for a later version of this theory to become frozen as defining the only acceptable Islamic state — as is the case with contemporary radical Islamists — begs the question of whether there are not other possible conceptions of valid political order within the frame of Islamic teachings, conceptions that do not issue in militant theocracy but perhaps in the kind of respect for religion combined with religious freedom found in the American system and in American history.

This, of course, is for contemporary and future Muslims to sort out. In the meantime, American history provides a model that simultaneously respects and supports religion, values a place for religion in the public square, separates governmental influence from religion, and insists on religious freedom as a fundamental human value. I myself, as an outsider who knows a bit about Islam, do not see any of this as inconsistent with Muslim values. Yet whether this is so, and if so how it should be incorporated in contemporary

Muslim societies, is for the citizens of those societies to determine.