

RELIGIOUS CONVICTION AND POLITICAL PARTICIPATION†

*Michael W. McConnell**

Thank you to the organizers for including me in this event. It is wonderful to see so many old friends and meet new ones, and I include all the members of the panel here. All of us have had conversations on this general subject for going on a decade or two now.

I would like to begin by clarifying the question before us. We have all heard the complaint, on various issues, that “religion” is being improperly interjected into political discussion. This is an old charge, and it has cropped up in very different contexts. Now, the charge is often made with respect to such charged social issues as same-sex marriage or stem cell research. Not long ago it was made by opponents of civil rights in the South when the Rev. Dr. Martin Luther King, Jr. called on ministers to be more religiously aware and engaged on that issue.¹ Over 150 years ago, Southern supporters of slavery were indignant that Northern abolitionists would bring religious arguments to bear against the practice of slavery.² You may recall that William Lloyd Garrison's newspaper, *The Liberator*, featured a cross and a biblical quotation on the top of the front page.³

People say that to present a religious argument in support of a public policy position is inappropriate—that there is something wrong with citizens advocating or legislators enacting laws that are based upon religious rationales, premises, or arguments. This comes both in a constitutional law version and in a political theory version. The constitutional law version is that it violates the Constitution, and

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¹ See generally Dr. Martin Luther King, Jr., Letter from Birmingham City Jail (Apr. 16, 1963), in *THE WORLD TREASURY OF MODERN RELIGIOUS THOUGHT* 606, 606–21 (Jaroslav Pelikan ed., 1990).

² See generally, WILLIAM LEE MILLER, *ARGUING ABOUT SLAVERY* (1998).

³ See *The Liberator Files*, <http://www.theliberatorfiles.com> (last visited Jul. 10, 2008).

specifically the Establishment Clause of the First Amendment,⁴ for laws to be passed if their primary rationale is based upon a religious premise, such as the existence of God or divine commands or theological considerations, including interpretations of sacred texts and the pronouncements of religious authorities.

The political theory version, which I take it is Professor Audi's position, is that as a matter of democratic theory, such arguments and such laws are inconsistent with good democratic practice, and that good democratic citizens would refrain from making such arguments. Now, Professor Audi graciously qualifies his position with what he calls an "excusability clause," which means that a person who offers a religious argument for a public policy position may not necessarily be a bad citizen. But I think it is clear that, excuses aside, he maintains that argumentation of this sort is bad for the republic and contrary to good democratic citizenship.

It is important to note that we are bracketing the question of laws that are actual infringements upon anyone's religious liberty in the sense of being classic establishments, such as taxes for the support of religion or requiring school prayer for the support of religion. The issue today concerns laws that would otherwise be legitimate exercises of political power in service of the public good, such as laws regarding spending public funds on stem cell research, laws about slavery, or environmental legislation. The question is whether it is democratically illegitimate to support or oppose such laws on the basis of religious premises.

Now, Professor Audi's argument is very complicated, and he says it is often misunderstood. I fear I am often in this camp of misunderstanding. There are a lot of qualifications and curlicues and so forth in the argument. My position, I think, is simpler and perhaps less subject to being misunderstood. My position is that as a matter both of constitutional law and of democratic theory, all citizens have an equal right to offer whatever arguments they consider persuasive in support of the public good, and the rest of us have an equal right to hear those arguments and to accept or reject them according to whether we find them persuasive. Thus, there are no epistemological, theological, or philosophical pre-screening devices for democracy. None. Now, why do I say this? I would like to offer two arguments here today, one based upon history and one based upon democratic theory.

The history is important because, although Professor Audi does not stress this, Professor John Rawls, whose argument this is, argues that this idea of an exclusion of religious and other comprehensive ideologies

⁴ U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion . . .").

as a basis for public policy is based upon an uncontroversial, widely shared premise of American public life.⁵ It seems to me that that is patently false as a matter of history. In fact, expressly religious arguments in matters of politics have been with us all along. It would be impossible to tell the story of American political life without reference to religiously engaged, motivated advocates.

This is from the very beginning: the American Revolution was defended by ministers and other religious people in religious terms.⁶ King George III, when asked what was the cause of the American Revolution, blamed it on the “black regiment,” by which he did not mean the African-American soldiers who fought on the American side. He was referring to the Congregationalist, Puritan ministers in their black robes who were among the principal apologists for liberty in America.

The greatest irony is that the First Amendment religion clauses themselves were advocated by religious people, especially Baptist ministers, but others as well, for expressly religious purposes and on religious rationales while the defenders of establishment of religion in America tended to offer secular arguments.⁷ Even Thomas Jefferson—not, I think, the most religious of our founders—begins his bill for the establishment of religious freedom in Virginia with an express theological proposition: “Whereas Almighty God hath created the mind free.”⁸ Then he goes on to argue that establishment is contrary to the “plan of the Holy author of our religion,” referring evidently to Jesus Christ.⁹ So, if it were true that offering religious arguments in favor of public policy somehow delegitimizes the policy, the very First Amendment in the American Constitution would be delegitimized. And all through American history this continues.

The anti-slavery movement was almost exclusively a movement of religious people. The opposition to polygamy, the Catholic Social Labor Movement, Prohibition, most of the anti-war movements in American history, the civil rights movement, you name it; it is hard to find a major social movement, whether you agree with it or not, that does not involve religious advocacy. So, to suggest that secularization of our public discourse is a shared premise or an uncontroversial shared point for

⁵ See JOHN RAWLS, *THE LAW OF PEOPLES* 149 (1999) [hereinafter RAWLS, *LAW OF PEOPLES*]; JOHN RAWLS, *POLITICAL LIBERALISM*, *passim* (1993) [hereinafter RAWLS, *POLITICAL LIBERALISM*].

⁶ ALICE M. BALDWIN, *THE NEW ENGLAND CLERGY AND THE AMERICAN REVOLUTION* 98, 154–67 (1965).

⁷ See Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 *Wm. & Mary L. Rev.* 2105, 2206 (2003).

⁸ A Bill For Establishing Religious Freedom (1786), *reprinted in* MICHAEL W. MCCONNELL, ET AL., *RELIGION AND THE CONSTITUTION* 69 (2002).

⁹ *Id.*

American public life is simply a historical falsehood.

Let us turn, then, to theory. For theory, I begin in the same place that John Rawls begins, with what he calls the fact of reasonable pluralism.¹⁰ This means it is a fact of life in the United States and in other modern pluralistic democracies that there exist a wide number of differing reasonable worldviews. We do not all share the same premises, and these disagreements are ineradicable. Even in principle, if we could talk forever and produce the best possible evidence for our positions, we would still disagree. We would still have people who are fundamentally of different orientations. We would still have libertarians. We would still have statists. We would still have environmentalists. We would still have feminists. We would still have people who believe in critical legal studies. We would have traditionalists. We would have any number of points of view. That is a fact of life. So, that is the first point.

The second point is that it is hopelessly utopian to think that public policy—including public policy with respect to coercion, such things as preventing people from owning slaves or taxing them more for support of social welfare programs—can be based upon shared premises. There might be a conglomeration of premises that add up to a majority, but you are never going to have unanimity. We will always have differences of opinion. And not only is it utopian, but it is downright silly to think that democratic theory, which is, after all, all about how to resolve differences, would presuppose any sort of unanimity.

How do we proceed as a democratic, pluralistic society in the face of ineradicable reasonable differences of opinion? I would submit that there is only one possible basis that is consistent with the equality of all citizens, and that is that everyone has an equal right to advocate for the public good according to the premises that they find persuasive. Some of those people are going to offer premises that others of us may find to be completely implausible, maybe even crazy, but they can put them forward. We can listen to them. It is our right to disagree, but it is not our right, and it is not the right of judges wearing robes, and it is not the right of political scientists in seminar rooms, to serve as gatekeepers for what arguments can be made.

And so, when Professor Audi concludes by saying that he is talking about using the appropriate civic voice—I am not going to stand here and defend inappropriate civic voices. I will respond that in a democracy it is the citizens who are the proper judges of what civic voices we find appropriate. There are no theological, philosophical, ideological, or epistemic limitations that are properly imposed in advance.

Thank you.

¹⁰ RAWLS, *POLITICAL LIBERALISM*, *supra* note 5, at 36–37, 63–65; *see also* RAWLS, *LAW OF PEOPLES*, *supra* note 5, at 11–12.