

RELIGIOUS LIBERTIES: THE ROLE OF RELIGION IN PUBLIC DEBATE†

*Diane S. Sykes**

Good afternoon, everyone. I am Diane Sykes from the Seventh Circuit Court of Appeals in Chicago, and it is my great privilege to welcome you here today to the Federalist Society Religious Liberties Practice Group panel discussion at the annual convention.

Our topic today is the role of religion in public debate. University of Chicago Law Professor Geoffrey Stone recently argued¹ that the Supreme Court's decision in *Gonzales v. Carhart*,² the partial-birth abortion case, and the President's veto of legislation expanding federal funding for embryonic stem cell research³ represent the interjection of sectarian religious belief into matters of public policy. This sparked renewed debate over the role of religion in public discourse.

Our panel this afternoon will discuss the place of religious language and ideas in public debate, including whether there are legitimate constitutional or philosophical limits to religious discourse in public debate; whether religious participants in public debate should be required to translate their views into publicly available reasoning; and whether there are non-theological, publicly available arguments in opposition to, for example, such matters as abortion, same-sex marriage, or embryonic stem cell research.

† This panel discussion was presented as part of the Federalist Society for Law & Public Policy Studies 2007 National Lawyers Convention, November 15, 2007. The panelists included: the Honorable Michael W. McConnell, United States Court of Appeals for the Tenth Circuit; Professor Robert Audi, University of Notre Dame; Professor Kent Greenawalt, Columbia Law School; Dr. James W. Skillen, President, The Center for Public Justice; moderated by the Honorable Diane S. Sykes, United States Court of Appeals for the Seventh Circuit.

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¹ Posting of Geoffrey Stone to The Faculty Blog (The University of Chicago Law School), *Our Faith-Based Justices*, http://uchicagolaw.typepad.com/faculty/2007/04/our_faithbased_.html (Apr. 20, 2007, 15:01 EST).

² 127 S. Ct. 1610 (2007).

³ President's Message to the House of Representatives Returning Without Approval the "Stem Cell Research Enhancement Act of 2005," 42 WEEKLY COMP. PRES. DOC. 1365 (July 19, 2006), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_presidential_documents&docid=pd24jy06_txt-24.pdf; President's Message to the Senate Returning Without Approval the "Stem Cell Research Enhancement Act of 2007," 43 WEEKLY COMP. PRES. DOC. 833-34 (June 20, 2007), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_presidential_documents&docid=pd25jn07_txt-13.pdf.

To discuss this important topic this afternoon, we are privileged to be joined by four distinguished scholars in law and philosophy. Starting on the far right—your far left—Dr. James Skillen became Executive Director of The Center for Public Justice in 1981 and in 2000 became its President. The Center for Public Justice is a non-partisan organization engaged in public policy development and civic education.⁴ Its work centers on doing justice from a Christian-Democratic perspective by recognizing different religions and points of view and keeping the public square open to people of all or no faiths. The Center is concerned with the subject of what should constitute a just political community. It explores the full scope of responsibility that belongs to citizens and all branches of government. Dr. Skillen received his B.A. in philosophy from Wheaton College, a divinity degree from Westminster Theological Seminary, and an M.A. and Ph.D. in political science from Duke University.

Next to him, Professor Robert Audi is the David E. Gallo Professor of Business Ethics, Professor of Management, and Professor of Philosophy at the University of Notre Dame. He is the author of many books and articles on ethics, epistemology, the theory of human action, and related areas. His most recent works include *Moral Value and Human Diversity*,⁵ an introductory treatment to normative ethics and the theory of value, with applications to business, education, government and the media, and *Religious Commitment and Secular Reason*,⁶ which offers a theory of the ethical basis of church-state separation and a theory of the relation between religion and politics. He has served as president of the American Philosophical Association, Central Division, Editor-in-Chief of *The Cambridge Dictionary of Philosophy*,⁷ and Editor of the *Journal of Philosophical Research*.⁸ He received his B.A. from Colgate University and his M.A. and Ph.D. from the University of Michigan.

On my left is the Honorable Michael McConnell, known to many in this audience. He was appointed by President George W. Bush to the United States Court of Appeals for the Tenth Circuit in 2002. Judge McConnell brought to the bench seventeen years of scholarship and teaching in the field of constitutional law and related subjects at the University of Chicago Law School and later at the University of Utah. In addition to serving our nation as a Circuit Judge, Judge McConnell

⁴ The Center for Public Justice, About the Center, <http://www.cpjustice.org/about.html> (last visited Feb. 14, 2008).

⁵ ROBERT AUDI, *MORAL VALUE AND HUMAN DIVERSITY* (2007).

⁶ ROBERT AUDI, *RELIGIOUS COMMITMENT AND SECULAR REASON* (2000).

⁷ *THE CAMBRIDGE DICTIONARY OF PHILOSOPHY* (Robert Audi ed., 2d ed. 1999); *THE CAMBRIDGE DICTIONARY OF PHILOSOPHY* (Robert Audi ed., 1995).

⁸ *JOURNAL OF PHILOSOPHICAL RESEARCH* 1992 (Robert Audi ed. 1993).

continues to teach part-time as Presidential Professor at the S.J. Quinney College of Law at the University of Utah and is a visiting professor at Harvard and Stanford Law Schools. Judge McConnell has written widely on the subject of freedom of religion and constitutional history and theory. He is co-author of *Religion and the Constitution*⁹ and co-editor of *Christian Perspectives on Legal Thought*.¹⁰ Judge McConnell received his B.A. from Michigan State University and his J.D. from the University of Chicago Law School. He served as a law clerk to Chief Judge J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit and for Associate Justice William J. Brennan of the United States Supreme Court. He has also served as an Assistant General Counsel in the Office of Management and Budget and as an Assistant to the Solicitor General of the United States.

And finally, Professor Kent Greenawalt is University Professor at Columbia Law School, where he teaches constitutional law and jurisprudence. He has taught at Princeton University and has been a visiting fellow at Cambridge and Oxford. His scholarship focuses on the areas of church and state, freedom of speech, civil disobedience, and criminal responsibility. He is the author of *Religion and the Constitution: Free Exercise and Fairness*;¹¹ *Does God Belong in Public Schools?*;¹² *Private Consciences and Public Reasons*;¹³ and *Religious Convictions and Political Choice*.¹⁴ Professor Greenawalt received his B.A. from Swarthmore, a bachelor's degree in philosophy from Oxford, and an LL.B. from Columbia Law School. He served as law clerk to Associate Justice John Marshall Harlan of the United States Supreme Court and as Deputy Solicitor General of the United States.

Welcome to all of our panel members.

⁹ MICHAEL W. MCCONNELL, JOHN H. GARVEY & THOMAS C. BERG, *RELIGION AND THE CONSTITUTION* (2d ed. 2006).

¹⁰ *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (Michael W. McConnell et al. eds., 2001).

¹¹ 1 KENT GREENAWALT, *RELIGION AND THE CONSTITUTION: FREE EXERCISE AND FAIRNESS* (2006).

¹² KENT GREENAWALT, *DOES GOD BELONG IN PUBLIC SCHOOLS?* (2005).

¹³ KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASONS* (1995).

¹⁴ KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988).