Religion and the American Constitutional Settlement

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The Constitution of the United States provides that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” During the ratification debates, a framer of the Constitution explained that this clause prohibits examination of “one’s belief of certain doctrines...for the purpose of determining whether his religious opinions are such, that he is admissible to a publick office.” Last year, this provision, known as the No Religious Test Clause, became part of the public discourse when Senator Bernie Sanders (D-VT) announced that he would vote against the confirmation of a Christian presidential nominee because of his belief that Muslims “have a deficient theology.” In response to criticism, Sanders said that he was merely questioning whether the nominee’s beliefs would prevent him from being fair. A few months later, Senator Dianne Feinstein (D-CA) questioned the fitness of Amy Barrett for a federal judgeship because “the dogma lives loudly” within her. Feinstein argued that she had legitimately questioned whether the nominee would be able to apply law that contradicted her beliefs. And in 2015, presidential candidate Ben Carson said he was opposed to the idea of a Muslim president because Islam is “inconsistent with the values and principles of America.”

In what ways has the No Religious Test clause harmed or benefitted our nation and federal government? To what extent do these recent cases reflect a growing discomfort in some quarters with public life being influenced by people who consider themselves bound to follow the teachings of their faith? How much of a factor is it that the religious beliefs of some leaders and potential leaders purport to be true to the exclusion of other beliefs? In the context of a society that faces deep political, cultural, and religious divides, what is the importance and relevance today of a “no religious test for public office” clause within the Constitution?

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It is human nature for individuals to reach different conclusions about what is true, and to be convinced that one’s beliefs, being true, deserve to prevail over false beliefs. The diversity of our opinions and our zeal in advancing them, wrote James Madison, has “divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.” This dilemma is thus “sown in the nature of man,” and the resolution to it of late-18th century Americans was the disestablishment of religion: first, through the No Religious Test Clause of Article VI of the Constitution, and later, the Establishment Clause of the First Amendment.

Today it is commonly thought that disestablishment was a deist or Enlightenment project aimed at achieving national cohesion by suppressing religion. That view is ahistorical, however. As Eric
Voegelin observed, although the debate of the American Revolution “was already strongly affected by the psychology of Enlightenment,” it “also had the good fortune of coming to its close within the institutional and Christian climate of the ancien régime.” Disestablishment did not reflect a war on religion but was rather a political settlement reached by antagonistic religious factions. Madison, the author of the First Amendment, described this arrangement as “an entire abstinence of the government from interference [with religion] in any way whatever, beyond the necessity of preserving public order, and protecting each sect against trespasses on its legal rights by others.” This settlement reflected the practical conditions of the time: none of the factions was powerful enough to establish itself over the others, and none was willing to risk a constitutional arrangement that permitted established religion out of fear that another sect might dominate them in the future. Arguing in the North Carolina Convention for ratification of the Constitution, future Supreme Court justice James Iredell explained that Article VI was “calculated to secure universal religious liberty, by putting all sects on a level—the only way to prevent persecution.”

Thus, it was neither the goal nor the effect of disestablishment to remove God from the hearts of the people or religion from public life. Indeed, America’s founding documents affirm that the rights members of society owe one another are derived from our duty to a sovereign God. “Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe,” wrote Madison; and “every man who becomes a member of any particular Civil Society [must] do it with a saving of his allegiance to the Universal Sovereign.” The founding generation saw religion as indispensable to the maintenance of their society and their form of government. In his farewell address, George Washington proclaimed that “reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle,” that “necessary spring of popular government.” Fifty years after the Constitution was ratified, Alexis De Tocqueville could still write that “religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions.” The American constitutional arrangement is thus “secular” in the sense that there is no established religion, but not in any sense that the European continent would recognize. Tocqueville wrote that in France, he “had seen the spirit of religion and the spirit of freedom almost always move in contrary directions. Here I found them united intimately with one another: they reigned together on the same soil.” To be sure, Professor Gerard Bradley explains, “since the public realm is constituted by more than one religious group, attempts to persuade fellow citizens on issues of public policy must find a basis of appeal wider than only the language and authority of one tradition.” But “it does not follow,” the Supreme Court has written, “that a statute violates the Establishment Clause because it happens to coincide or harmonize with the tenets of some or all religions.” Hence, religious groups can make religious arguments in favor of a policy, so long as that policy can also be justified in terms of the public good. This means that not every faction will get everything it wants: an evil it must tolerate in exchange for the protections of the constitutional arrangement.

Nor was the constitutional settlement grounded in the notion that the creed of each religious sect was as true or as valid as the other. “The sects that exist in the United States are innumerable,” wrote Tocqueville. “They all differ in respect to the worship which is due to the Creator; but they all agree in respect to the duties which are due from man to man.” Madison urged those who “occupy the most honorable and gainful departments” to become “fervent advocates in the cause of Christ.” The terms of the constitutional settlement did not require each sect to agree on the validity of the others’ beliefs, but rather to agree not to use the state to suppress them. “How is it possible to exclude any set of men,” Iredell asked the opponents of the Constitution at the North Carolina
Convention, “without taking away that principle of religious freedom which we ourselves so warmly contend for?” Disestablishment was not established universalism but, in Bradley’s expression, a “Machiavellian Golden Rule.”

Nearly two and a half centuries later, during a Senate confirmation hearing, the following exchange took place between Senator Bernie Sanders (I-VT) and nominee Russell Vought: “I understand you are a Christian...In your judgment, do you think that people who are not Christians are going to be condemned?” “Senator,” Vought answered, “I wrote a post based on being a Christian and attending a Christian school that has a statement of faith that speaks clearly with regard to the centrality of Jesus Christ in salvation.” Sanders responded: “This nominee is really not someone who is what this country is supposed to be about. I will vote no.”

Senator Sanders firmly believes that Christianity does not have a monopoly on salvation, while Russell Vought firmly believes that it does. A legitimate question for Vought would have been: “If you are confirmed, can you deal justly with citizens whom you believe are going to hell?” Instead, as humans tend to do, Senator Sanders tried to use his own power to deny power to a believer in a rival creed. The attempt failed--and a potential constitutional challenge was avoided--when the vice president cast the tie-breaking vote in favor of Vought’s confirmation. That Vought’s nomination was very nearly rejected points to the interesting fact that at the time of the Constitution’s ratification, Article VI protected irreligious sects such as deists and universalists from their more powerful Protestant opponents, whereas today it protects believers from their more powerful irreligious opponents. As politicians hostile to normative religion push up against the boundaries of the No Religious Test Clause, some have begun to worry that irreligion is becoming an official sect. In 1785, Congregationalist minister Jeremy Belknap delivered a poignant reminder to the New Hampshire House of Representatives: “Every species of human government contains the seeds of dissolution, which will some time or other work its ruin.” Anti-Federalist opponents of the No Religious Test Clause feared that the liberty of Protestants would suffer if, say, a “Turk, a Jew, a Roman Catholic, and what is worse than all, a Universalist,” were trusted with public office. Were they right? Is the American project’s seed of dissolution the political settlement which secured religious liberty for all, but also enfranchised those who, like Bernie, are unfriendly to the beliefs deemed by the founding generation to be the “necessary spring of popular government”?

It is reasonable to doubt the viability of a social compact when those subject to it reject its premises. “And can the liberties of a nation be thought secure,” wondered Thomas Jefferson, “when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?” But with the No Religious Test Clause, the framers anticipated Bernie, as well as those who would exclude Catholics, Jews, or Muslims from office on the basis of their beliefs. The “Machiavellian Golden Rule” codified in the Constitution has withstood for two centuries the attempts of factions to benefit from it themselves while violating it for others. The founders seem to have discovered a workable way of peacefully arranging this society of religious and anti-religious zealots such that, while no sect gets everything that it wants (to dominate), neither does it get what it doesn’t want (to be suppressed). And if Americans are uncomfortable with opponents of religion in positions of power, the responsibility lies with them, not the Constitution. As one of its authors wrote: “If we mean to have those appointed to public offices, who are sincere friends to religion, we, the people who appoint them, must take care to choose such characters; and not rely upon such cobweb barriers as test-laws are.”
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