The “No Religious Test” Clause and Profoundly Religious Politics

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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?

To see all posts in this series visit: No Religious Test for Public Office

A first challenge of the U. S. Constitution’s “no religious test for public office” is the ambiguity of the term “religion.” A second is how profoundly religious all politics is.

I maintain that this constitutional clause is crucial. But we will best be able to defend and explain it by working through these two challenges. Let me take them one at a time.

What is Religion?
People often use the term “religion” to refer to a group’s set of beliefs and practices about the supernatural. This is how sociologists sometimes define the term. Call it the substantivist approach. It refers to something organized and marked off, like Christianity, Islam, or Hinduism.
Yet there’s also a functionalist definition, observes political theologian William Cavanaugh. This is religion understood according to the function it plays in someone’s life. The functionalist approach allows for a broader range of ideologies and allegiances to qualify as religion, such as nationalism, Marxism, capitalism, and so forth. Thus, if a professing Christian spends most of her life devoted to the stock market—Cavanaugh’s illustration—then her functional religion is capitalism, “not metaphorically, but really.”[1]

Defined functionally, everyone is religious. Everyone possesses what Ronald Dworkin calls “a deep, distinct, and comprehensive worldview” that governs their lives.[2] Dworkin therefore calls himself a religious atheist. Whether or not people are conscious of their worldview, or can articulate it, is another matter. To put a biblical spin on the idea, everyone has a god or God. Everyone worships. Everyone ascribes greatest *worth*—borrowing from the Old English word for worship, *worth-scipe*—to something. And we bend our entire lives in public and private around pursuing that thing. We are political creatures, to borrow from Aristotle, because we are first and foremost worshipping creatures.

**All Politics Is Religious**

Which brings us to the second challenge: all our politics is religious. Governments serve gods. Every time, all the time. It’s not enough to say the public square *shouldn’t* be naked (a moral claim). It *can’t* be naked (a descriptive claim). Any and every position a person might adopt in the public square relies upon a certain conception of morality and man, justice and injustice, God and the universe. That is the case whether we are talking about abortion, same-sex marriage, tax law, or funding national parks. Even the claim, “My position on policy ‘x’ makes no claims about the supernatural” is making a supernatural claim. It says, “There is no heavenly requirement for us here. Thus sayeth me.” The supposedly atheological is in fact theological.

Therefore, Senator Diane Feinstein, sitting on the Senate Judiciary Committee, might presume to be theologically neutral when criticizing a Roman Catholic judicial nominee: “Your [religious] dogma lives loudly within you.” The appropriate response would be, “Senator, do you assume your dogma doesn’t live loudly within you? That your worldview doesn’t determine your own policy positions?” It is in her interest to say no. The presumption of religious neutrality slants the public square against those who worship a big-G and toward those who worship nameless little-g gods. Such a square, therefore, isn’t neutral, but prejudiced. Neutrality is a bluff. We are all sectarians (and conversations in the public square will become more honest when everyone names their “sect”). Cavanaugh argues that the idea of religion as we think about it today is a modern, Western construction devised for the purpose of creating the religion/politics divide, thereby legitimating certain practices, de-legitimating others, and yielding the liberal’s preferred political configuration. Whoever gets to define which issues are “religious” gets to rigs the game.

**Separation of Church and State? Yes**

Those, as I said, are two challenges that bedevil our discussions about the constitution’s “no religious test” clause. Should we therefore conclude that the clause participates in liberalism’s bluff? That it is an ideological power play?

Not at all.
In another Senate Judiciary Committee meeting, Senator Richard Durban asked Judge William Pryor whether he was “asserting an agenda of [his] own, a religious belief of [his] own, inconsistent with separation of church and state.”[3] Here the senator conflated the separation of religion and politics with the separation of church and state. In my mind, we cannot separate religion and politics; but we must separate church and state. The former speaks to phenomenology, the latter to institutional authority and jurisdiction.

No, Donald Trump should not possess the authority to declare the doctrines of my faith, or to determine suitable candidates for baptism in my church. Nor do I, as an elder of my church, possess coercive authority to bind members and non-members alike according to our beliefs or the origin of our beliefs. It pertains to our status as a member of any religious group, church, house of worship, cult, movement, or hockey team. It pertains to institutional affiliation and authority. The separation of church and state, in other words, should not be construed as pertaining to our beliefs or the origin of our beliefs. It pertains to our status as a member of any religious group, church, house of worship, cult, movement, or hockey team. It pertains to institutional affiliation and authority. The First Amendment captures this nuance wonderfully. It doesn’t say “Congress shall make no law establishing religion.” Every law, even a law against murder, establishes someone’s religion. Rather, it judiciously says, “Congress shall make no law respecting an establishment of religion.” That is, Congress possesses no authority to identify, organize, and define a set of religious doctrines and their adherents. Which, inversely, means no particular church or religious group should seek to establish itself as a church or as a group among the general population of a nation. Nor should they seek to wield the sword over a nation.

“No Religious Test” Clause? Yes
By this vein of thinking, it should be abundantly clear that the Constitution’s “no religious test for public office” clause is a crucial piece of the separation of church and state. Contrary to Ben Carson, who would oppose a Muslim from holding office; contrary to Bernie Sanders, who discounted a Christian appointee who, privately, affirmed that Islam possess a deficient theology; contrary to Diane Feinstein, who fears Christian dogma, the state possesses no authority or competence to render judgment on the confessions or confessors of any house of worship.

No religious test, then, for public office? Absolutely not, so long as what we mean is, no religious test, by which a person is declared fit or unfit according to his or her formal affiliation with one religious group or another.


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