

Readings and Sermon on Separation of Church and State
Aiken UU Church, November 6, 2005
Holley Ulbrich

1. "Lord, Hear Our Prayer," from *A Temporary State of Grace*
David Blanchard

Last month there was an ecumenical celebration in which I chose not to participate. Normally, we religious liberals seem game to sample the smorgasbord of all sorts of spiritual traditions. A hint of Hinduism, a jot of Judaism, a bit of Buddhism, an iota of Islam, a pinch of paganism. But this particular event made my stomach a little queasy. It was billed as "The week of prayer for Christian Unity."

On the surface it sounds innocuous enough. The history of the institutional Christian church has been one of endless schisms and divisions, resulting in dozens of denominations that claim to be "the one true faith."

That of course is how the original two denominations of our religious heritage either emerged or were evicted from the established churches of the early nineteenth century. Their heresies disturbed the unity of the religious monopoly helped by the state-supported Congregational Church, established by the Pilgrims seeking religious freedom. (For themselves alone, apparently.) Our own history makes a case against the shape of conformity that unity tends to take when it becomes an institutional objective.

A little unity might be a novel approach by religious people in general, but when Christians start talking about it, I get nervous. A letter came from a group of clergy in town asking for my help in censoring TV programming. It closed with the promise that "when Christians take a stand together, there's no stopping us." That's what I'm afraid of.

If a good dose of Christian disunity allows women to keep control of their reproductive rights, allows public education to be free of religious practices, allows art and literature to be free of censorship, keeps the definition of private and personal morality out of the hands of the church, and continues to promote the confusion and questioning that allows new visions of truth to emerge, then I'm all for it.

Perhaps you might keep their disharmony in your prayers, or I will keep it in mine.

2. From *Religion, Culture, and Sex Equality: India and the United States*
Martha Nussbaum

The liberty to pursue religious belief, membership and activity in one's own way is among the central human capabilities or rights that have been recognized by constitutions the world over. Religion is for many people a major vehicle of cultural expression, of community affiliation, and of the search for the ultimate meaning of life. Modern constitutional democracies typically aim not at establishing religion, giving it a position of privilege in the state, but rather at creating spaces or opportunities for religion, in order to leave to citizens the choice whether to pursue the pertinent functions through religion or through secular activity... But the very defense of religious freedom as central involves the recognition that religious functioning often has high value for people: religious conceptions are among the reasonable ones that we want to make room for, as expressions of human powers.

Because religion is so important to people, there is also a strong argument from respect for autonomy that supplements these considerations of intrinsic value. When we tell people that they cannot define the ultimate meaning of life in their own way—even if we are sure we are right and that their way is not a very good way—we do not show full respect for them as persons. Obviously, no state can allow all citizens to search for the ultimate meaning of life in always, especially when these ways involved harm to others. But secular humanism frequently errs in the opposite direction, taking a dismissive and disrespectful stance to religion even when no question of harm has arisen...

Finally, there is a less obvious argument against the secular humanist position that religion shall have no special privileges in a modern state. It is an argument from minority religion. In any modern secular society, the so-called secular norms... derive from a majority religious tradition. Thus in the United States, where the norm of separation of church and state has been accepted for a long time, secular society has nonetheless been organized largely along Christian lines. Sunday is the day off from work, and people who worship on Saturday are likely to lose their jobs. Wearing a cross around one's neck is regarded as appropriate military apparel; wearing a yarmulke is not. Drug laws permit the use of alcohol, prominent in Christian ceremonies, but not peyote, prominent in Native American ceremonies. Thus the member of a minority religion has legitimate reason to feel that a so-called secular legal system is really a Christian legal system, and that the only way to guarantee equal respect for members of minority religions will be to attach special privileges to the free exercise of religion, ...[so that] people win the right to take Saturday off, to wear a yarmulke in the army, to use peyote in a sacred ceremony... the secular humanism I have described is unthinking and superficial; a more genuine secularism would be more critical of the dominant culture and the burden it imposes on minorities.

I didn't know that this sermon was going to be quite so timely. I wasn't expecting the state attorney general to issue a statement this week backing the fervent Jesus prayers against the court decision on prayer at city and county council meetings. Thank you, Henry McMaster, for getting everyone's attention.

Even before I served on Clemson city council, I heard a lot of complaints about zoning. It's a constraint on my freedom, a limitation of my property rights...and so it goes, until the guy next door decides to use his freedom and his property rights to put a nuisance in your back yard. Then you run to the Planning Commission, the Zoning Board of Appeals, the City Council to demand that enforcement of zoning to protect your property rights. That kind personal experience is a wakeup call that regulations don't just protect your neighbor from you, they also protect you from your neighbor. And so it is with the first amendment, specifically the part that reads "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The first amendment goes on to add "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." But those first sixteen words are my text today. No, it doesn't say separation of church and state, a phrase coined by Thomas Jefferson in 1802, but that was clearly how those words were to be understood. The first amendment protects government from religion and religion from government. It also protects our liberal religion from the religious right, and protects the religious right from us. The first amendment protect the rights of conscience and religious expression of Jews, Muslims, Scientologists, Mormons, Hindus, atheists, Wiccans, Jehovah's Witnesses, snake-handling Pentecostals, and native Americans who use peyote to achieve religious ecstasy. That wall of separation is what keeps these minority religious views, including ours, from being bulldozed by the dominant Christian culture.

Some citizens are unhappy to find that the first amendment prohibits the use of tax dollars to promote a particular religious viewpoint, whether it's funding for faith-based charities that evangelize their captive clientele, telling parishioners how to vote base on their beliefs, proselytizing at the Air Force Academy, or giving accommodations tax dollars to publicize the Fellowship of Christian Athletes' Rally in the Valley where attendees are asked to commit their lives to Christ. Until last December I served on Clemson City Council. In July 2003, the Accommodations Tax Advisory Committee recommended how to spend \$75,000 in tax revenue for various tourism-related activities. FCA applied, but the committee did not recommend them for funding. I missed the meeting where one council member moved to provide \$500 for FCA to publicize their annual Rally in the Valley at which they invite people to commit their lives to Christ. It was approved. In 2004, the committee recommended and the Council funded not only FCA but also a program at Holy Trinity Episcopal Church for Episcopalians across the state on the history of the Episcopal Church. The committee admitted openly that it was taking its cues from the actions of city council the previous year. I protested, I solicited supporting legal opinions, and I lost on a 4-2 vote.

The first amendment not only forbids the use of tax monies for sectarian purposes, it also puts at risk the tax-exempt status of religious groups that cross that line of separation and engage in partisan politics and lobbying. And right as we speak, it protects non-Christians from having their public officials pray during

public meetings in public places “in the name of Jesus.” Wiccan priestess Darla Wynn won her case against the Great Falls city council, at a legal cost of \$60,000, and the good Christian citizens of Great Falls responded by decapitating her parrot, blinding her dog, skinning her cat and vandalizing her home. The city of Anderson and the Oconee County Council are firmly resisting their constitutional duty on public prayer.

The first amendment’s establishment and freedom of religion cause is something that should be just as dear to the heart of Jerry Falwell and Pat Robertson as it is to Bill Sinkford and William Sloane Coffin and Martin Marty. While preachers can’t check their politics at the church door, or their religion at the door to the County Council chambers, the first amendment strongly implies that they should set them aside before they enter either the pulpit or the public meeting. Who crosses the line? Catholic priests and bishops who refused communion to John Kerry because of his views on abortion. The Baptist preacher in Waynesville, North Carolina who kicked out parishioners who didn’t vote as he told them to. The Assembly of God minister who is a member of Oconee County Council, prays to Jesus at the beginning of Council meetings, and thunders at ACLU as communistic and atheist. We can’t do any of those things as UUs, partly because we respect the first amendment, but partly because it would violate our own first, third, fourth, and fifth principles.

First principle. Respecting the inherent worth and dignity of all people, including those who see things differently from us. Third principle, acceptance of diversity. That includes political and ideological diversity. Fourth principle, a free and responsible search for truth and meaning. If it’s free, then someone else may find a different truth and meaning than I do. And the fifth principle, the right of conscience and the use of the democratic process within our congregations and in society at large. The words “right of conscience” were actually part of Madison’s original draft of the first amendment, which addressed only freedom of religion. The absence of such that guarantee was the primary obstacle to ratifying the new constitution. Right of conscience is our freedom to worship or not according to our own understanding. It is freedom for religion. Democratic process is the way in which we obtain *e pluribus unum*, unity in a society that is pluralistic in many respects, including religion. Our fifth principle is just a religious affirmation of the first amendment.

For more than two centuries the first amendment has been interpreted as a bright line. Churches pay no taxes and receive no tax support. Contributions to a religious organization are tax deductible, but only if they refrain from lobbying or from engaging in partisan political activity. Furthermore, the first amendment goes straight to the heart of the separate and shared role of the religious community and the political authority and our own dual responsibilities as citizens and people of faith. It’s an important distinction. Separation of church and state means that the state neither interferes with nor supports sectarian religious activities. Separation of church and state means that we a UU congregation would never think to ask for accommodations tax. Separation of church and state means that we don’t tell the state what to do or our members how to vote, and in return the state gives all churches indirect help by exempting church property from property taxes and giving a income tax deduction for church contributions.

Separation of church and state took longer to be the rule in Massachusetts and Virginia. Some of the tax-supported churches under the Standing Order of Massachusetts prior to 1842 were actually Unitarian. But for more than 160 years, there has been a clear understanding of the division of responsibilities between those who shape our values and those who shape our laws.

The separation of church and state is the only thing that has enabled our particular brand of liberal religion to survive over its bloody history. The bloody part of our history can be traced to the execution

of Servetus for heresy in 1553 in Calvin's Geneva where church and state were one, or even farther to the excommunication of Arius in 325 when the Trinitarian church became the established church of the Roman empire. Our first amendment owes much to the British who, after much bloodshed and hostilities, finally granted the right to exist without interference and without tax support to the Dissenting Churches, the non-Church of England Methodists and Quakers and Baptists and even the Strangers' Church that is part of our own history. Tax support was still reserved for the established church. The Brits stopped executing or even imprisoning people for heresy sometime between the arrival of the Pilgrims in Plymouth and the American Revolution.

So, what are those folks on the other side of the issue thinking? Even as I was enlisting legal help to challenge the council's decision—they finally lost—I had to ask myself, why did four of my council colleagues find that pesky little constitution so annoying? To help me answer that question, I turned to philosopher Martha Nussbaum. She helped me to view the church-state issue by looking through the eyes of Hindu and Muslim women in India. For these women, culture and religion are often tightly entwined. They experience a three-way clash of secular culture and two religious cultures on public issues of importance to women, like divorce law or inheritance law. That clash is between the secular law, Muslim law or custom, and Hindu custom or practice. It's just not as simple as it appears. Religion is something from which these women derive meaning and satisfaction. They don't want their secular state to establish one particular religion, but they don't want state laws to override the practices and beliefs of their faith traditions either. Secular society may see some of their religious beliefs or practices as oppressive and patriarchal, but many of these women embrace those beliefs and practices as part of a larger religious culture that is significant in shaping all aspects of their lives.

I think the problem my city council colleagues had with that wall of separation between the religious and the political is not that different from the women of India who are trying to reconcile their own civil rights as equals with religious traditions that define them as subject to patriarchy. The people who run for the privilege of shaping and enforcing and interpreting our laws come to that campaign and that office with values that are shaped at least in part by their particular religious traditions, just like the Hindu and Muslim officials in India. The values of their faith tradition may lead them to support particular policies and oppose others. How do elected officials split themselves into the public person and the religious person? Quakers are likely to be pacifists. Could a Quaker senator vote for military expenditures, or the draft? Can a Catholic be pro-choice and still be a good Catholic, like John Kerry? Can a Methodist like George Bush disagree with his own denomination on the issues of capital punishment and war? As I question others, I have to ask myself the same question. To what extent was my strong understanding of the first amendment is in fact shaped by my liberal religious history, starting as a Congregationalist and ending as a Unitarian, two of the three religious traditions that have been most adamant about the issue of separation of church and state? The third tradition to uphold this principle, surprising as it may sound to contemporary Southern ears, was the Baptists. But both of the traditions that shaped me also helped to shape my vote.

So why did four of my fellow council members—one Catholic and three Baptists-- affirm a different understanding of the meaning of the first amendment? The only person who voted with me was unchurched. Yes, occasionally an unchurched person does succeed in getting elected to public office, even in South Carolina.

My understanding of the first amendment is deeply grounded in the notion of a pluralistic and tolerant culture that in our faith tradition goes back at least to King John Sigismund and the Edict of Torda in 16th century Transylvania. Their understanding is that we are all one community, united by a Southern culture that I do not share, where churches are partners in the community and not fundamentally different from other nonprofit organizations or groups that can apply for accommodations tax funds. It's

what David Macaulay, in his book *Unitarianism in the Antebellum South*, called an easy ecumenism. In that view, theological differences shouldn't divide us. Churches and perhaps even synagogues are all doing good work, and if that work involves attracting tourists and making Clemson a better place to live, why shouldn't they get tax dollars? It is not the religious element in what they do that matters, but the fact that these activities promote tourism and strengthen the bonds of community.

The council majority have Southern culture on their side. They also have the current administration in Washington blurring the issue with faith-based initiatives, a point raised by one council member. But where do they set the limits? Would they fund the local very conservative masjid for a Muslim gathering with the same enthusiasm they felt for Episcopalians doing the same thing? Is that easy ecumenism limited to the dominant Christian culture?

We know that the South has not been overly fond of the constitution from the beginning. They preferred the looser Articles of Confederation that gave much more discretion to states--most of which, including South Carolina, had a tax-supported established church at the time of the Constitutional Convention. The South also has its own reading of history, its own way of building a culture that requires a veneer of courtesy and kindness, a culture where people who are different are either assimilated into the culture or chased back home. Or more accurately, two cultures, one black, one white, but even those are in a process of assimilation of sorts. The South is not a place that has a strong tradition of letting conflicting cultures peaceably coexist without real assimilation as they do in other parts of the country. The South aspires to be a melting pot, not a stew pot. If you fail to melt, you are encouraged to emigrate, especially in the less urban areas.

So at some level I really do understand the deep religious and cultural roots of their position. And I recognize the deep roots in my native New England culture and my liberal religious faith that underlie my willingness to give up my faith tradition's access to tax money in order to ensure that the same is true of every other faith tradition. But surely the three Baptists on our city council have some awareness of their own dissenting history as a minority faith tradition. Baptists in the 1780s were among the most outspoken supporters of the first amendment. Surely my Catholic colleague must have had some awareness of how hard it has been to be a Catholic or any other religious minority in the South, of how Catholics sought and received assurances from George Washington that their faith would receive the same protection as the many varieties of Protestantism and even the Jews. Surely even our Lutheran mayor must be aware that his particular faith tradition is not indigenous to this part of the country and is often regarded as watered down Catholicism. The first amendment protects their religious freedom just as it protects yours and mine.

I have more trouble with the notion, expressed by one council member, that this strong reading of the first amendment is not what the founders meant. Apparently all our Founding Fathers have undergone a postmortem conversion to a conservative brand of Christianity, even Deists like Thomas Jefferson and Ben Franklin. And George Washington, who refused to take communion and, when chided for leaving before communion, simply stopped attending church. A number of our founding fathers would have been labeled Unitarians had that label been in use, while others were pious Christians who did not believe in inflicting their faith on others under some compulsion. Tolerance was considered essential if minimal response to differences in religious faith, which was extended by Washington, Jefferson and others not only across the range of Protestantism but to Roman Catholics, Jews, and even such exotic religions as Hinduism and Islam.

The Clemson City Council meets on land that was once part of the plantation home of John C. Calhoun, who was, as you know, a Unitarian. In spite of his very Southern reservations about many parts of the Constitution and his passionate defense of states' rights, Calhoun was a staunch supporter of the Bill of Rights. Like the Founding Fathers of the preceding generation, Calhoun was a son of the

Enlightenment that shaped our basic structures and laws, and he knew that the first amendment was written to ensure that some of the things that had happened to Quakers and Baptists and Methodists and Catholics and Separatists and Puritans and, yes, Unitarians and Universalists in England would not be allowed to happen here. We would ensure freedom to practice religion by making sure that none of them were supported by the government. It is this principle that is at risk in Washington, in Columbia, and even in our little corner of the larger world.

Having made my well-intentioned if ineffectual effort to try to understand the other side of the story, I return wiser but still unpersuaded to my original position. On that side are not just the language of the constitution but also the weight of two centuries of legal decisions and the weight of history from the Crusades to the Inquisition to the Holocaust. My own little battle on behalf of the first amendment is just one skirmish in a national cultural war to weaken the strong boundaries that courts have upheld in the first amendment. In South Carolina, that cultural war lies behind Governor Sanford's recently defeated proposal for vouchers that would divert state education funds to religious schools, as well as the current controversy over prayer at meetings of public bodies. At the national level, the conflict emerges in the push for faith-based social services, and the battle over religious freedom at the Air Force Academy. The struggles in Europe and in our own history to protect religious minorities with whom we may disagree seem so far away. It couldn't happen here and now. Or could it? Unitarian minister Francis David told his fellow Transylvanians in the 16th century that we need not think alike to love alike. But he made that statement under the protection of the Edict of Torda, which granted religious freedom to all faiths and established not one but four religions official state-supported churches, including Unitarianism. Only when a Catholic king succeeded Unitarian King John Sigismund was the Edict revoked. Almost immediately, Unitarians and other dissenters were again persecuted and hampered in worshipping and teaching according to their own beliefs. Francis David died in prison for pushing the limits of religious orthodoxy. In a different way, it could happen here.

It could happen here are four of the scariest words in the English language. But the issues involved are scary, and so is the apathy that surrounds the issue of first amendment protections to our religious freedom. It is incumbent on all of us to be aware and to be engaged. Only you can prevent first amendment forest fires. Eternal vigilance is the price of religious liberty. The task of understanding and safeguarding the first amendment is too important to leave to the lawyers and the ACLU and the atheists. As people of faith, it is our responsibility to honor our heritage and protect the religious freedom of our own faith tradition and other faith traditions for generations yet to come. May it be so.

Closing words

Holley Ulbrich

The words of Baptist minister John Leland of Virginia, written in 1790:

Truth disdains the aid of the law in its defense--it will stand upon its own merits. The pagans worshiped a goddess called truth, stark naked; and all human decorations of truth only served to destroy her virgin beauty. It is error, and error alone, that needs human support: and whenever men fly to the law or the sword to protect their system of religion and force it upon others, it is evident that they have something in their system that will not bear the light and stand upon the basis of truth.

Take the light with you. Carry the light, share the light, be the light. Blessed be.