

CHRISTENDOM WITHOUT ESTABLISHMENT: A BRIEF LOOK AT HISTORY

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Perhaps the most important thing I can contribute to this very interesting discussion is to suggest the possibility of an alternative starting place. Rather than asking what religious institutions or religious manifestations are consistent with the Non-Establishment Clause of the United States Constitution, I think religious believers should ask what attitude toward the United States Constitution is consistent with their religion.

After loving God, the first thing my religion asks of me is to love my neighbor. In today's society, my neighbors include people of many different religions. Loving them requires making room for them to live out their several religious commitments comfortably and in friendship with other people. Doing that requires listening to them carefully before deciding what our government should allow them to do, what it should subsidize them in doing, what it should forbid them to do.

Love of neighbor is, I believe, either a revealed doctrine or a raw intuition. I do not think it can be arrived at in its fullness through philosophical inquiry. But it is a better basis for church-state relations than any philosophical doctrine. It commends itself intuitively even to people who know nothing of philosophy. It also provides a bridge between people who differ as widely in their philosophies as they do in their religions.

I see non-establishment or separation of church and state as ancillary to love of neighbor. But like love of neighbor, it is a theological doctrine before it is either philosophical or legal. It begins with the Lord's admonition to render to Caesar the things that are Caesar's. It has had its ups and downs in the ensuing millennia.

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After the conversion of the Roman emperors, church and state took their places as complementary governments of a unified society. Each had its place in the overall scheme of things, with a good deal of interaction, not all of it harmonious. In the medieval kingdoms and dukedoms, the church took its place on rather similar terms. With the settlement of the investiture controversy in the eleventh century, it was established that the prelates of the church owed their temporal endowments to their royal or feudal superiors, but got their spiritual authority direct from God. The absolute monarchies that arose in the sixteenth century were generally dissatisfied with this duality and attempted to reduce the church to a branch of the state. The attempt ultimately foundered in most places because of the development of religious differences. But in the mandate about things that are Caesar's, the different Christian denominations had enough of a theological basis for the autonomy of the secular to make it possible for them to accept a plurality of religions in a unified state.

The way this development led to our own Non-Establishment Clause was via the English Reformation, which took the form of the state taking over the whole apparatus of the medieval church without making any significant structural change. Anglicanism retained the idea of a common Christianity manifested in a common institutional and liturgical form. That situation led to the reference in the Anglican Canons of 1604 to "the Church of England as by law established."

It was from the institution so described that the English Dissenting congregations dissented. There were Roman Catholics, who thought the Anglican sacraments were invalid. There were Presbyterians and Independents, who didn't believe in bishops. There were Baptists, who didn't believe in infant baptism. All these groups formed illegal communities, called conventicles in the legislation of the time. A series of statutes beginning with the Toleration Act of 1689 gradually lifted the legal disabilities of these groups and their members. But the distinction remained between them and the established church. The Church of England as by law established continued to be endowed and deployed throughout the country, and its ministrations continued to be a public entitlement. After a considerable struggle, people who could not in conscience accept those ministrations were permitted to provide others for themselves. But they were on their own in doing so. The difference between the established

church and the Dissenting congregations became rather like that between public and private schools in the United States.

It was this ubiquitous and officially recognized institution that the Dissenting settlers of the American colonies resisted bringing to this side of the Atlantic. They resisted it so powerfully that the Anglicans were not able to have their own bishop until after the Revolution. Everyone was afraid that a bishop who appeared among them would bring official powers with him and try to exercise them over the Dissenting colonists—to say nothing of the unruly Anglicans of some of the Southern colonies.

Dissent from the established church was not chiefly doctrinal. Anglicanism was always pretty permissive as to doctrine. But many Protestants objected to having a hierarchical polity and a set liturgy, while Roman Catholics would have no polity and no liturgy but their own. Anglicans and Dissenters were generally in accord both on the basic economy of salvation and on the fundamentals of Christian moral teaching. In the United States, with the Established Church of England out of the picture, the doctrinal and moral consensus common to the different non-established churches became the basis for what is now called the American civil religion.

I am not as familiar with the American constitutional history as either Professor Greenawalt or his critics, but I suspect that what people had in mind when they spoke of not wanting an establishment of religion here was the established church in England, with its claim to embody the common religious consensus of their Christian state within a single institutional and liturgical form. If I am right, what the Framers of the Constitution expected to do was run a Christian state without institutional or liturgical uniformity. Given the development of our history, the expectation naturally led to its being run without doctrinal uniformity either and ultimately to its being run as not exactly a Christian state. One group after another appeared among us with some kind of departure from the original consensus but with an unquestionable claim to be accepted on equal terms within our society. If we Christians are to love our neighbors as our faith requires, we must find ways to make them comfortable in our midst. The Non-Establishment Clause should not be interpreted to stand in the way of our doing so.