

Faith-Based Morality and Public Policy

Brian said I'm an atheist, but the word has two distinct meanings. The first is a person who does not have a sense that there is a God—who, in short, is not a religious person. The second is a person who adheres to the doctrine that there is no God. That is a metaphysical proposition that does not interest me. You cannot convince a religious person that there is no God, because he does not share your premises, for example that only science delivers truths. There is no fruitful debating of God's existence.

I note that President Bush, in his press conference following his reelection, said, in answer to a question about the increased political activism of religious people, that in America not only is anyone free to worship as he pleases, but also anyone is free not to worship at all, and the people who choose not to worship are just as patriotic as the worshippers. Well, I am one of these nonworshippers, but I have no interest in promoting a doctrine of atheism.

I read recently, in a book on Locke—who grounded his egalitarianism in Christianity—that “Modernity has a secular self-understanding that tends to deny religious doctrine a role in political justification.” Let me take this quotation as my text, and remind you of six actual or hypothetical cases involving religion and the Constitution:

1. The peyote case—an Indian tribe uses peyote in its religious ceremonies; the state outlaws peyote.
2. The Amish case—the Amish don't want their kids to attend high school, in violation of the state's compulsory schooling law.
3. The Ten Commandments case—is it lawful to post the Ten Commandments in a courthouse or other public building?
4. May a state ban the teaching of evolution, or require teaching of “creation science,” in its public schools.
5. Should the fact that most opposition to abortion is based on belief in ensoulment invalidate laws restricting abortion on demand?
6. Should the fact that much of the opposition to gay marriage rests on religious belief invalidate laws refusing to recognize such marriages?

In the first two cases, religion is seeking an exemption from secularly motivated laws of general applicability. In the next pair of cases, the state is being asked to enact, in effect, a religious dogma. The last two cases are the interesting ones. A law prohibiting abortion or gay marriage is not an enactment of religion in the same sense as posting the Ten Commandments or teaching divine creation, because those prohibitions do not mention religion or contain a religious message; they are merely inspired by religion. It would be a leap to regard them as “establishing” religion. And, in my view, a leap too far.

The leap would imply that the only morality that should guide public policy in today's United States

is a secular morality. There are secular moralities, such as utilitarianism. But should the Constitution, or political philosophy, be understood to prescribe utilitarianism, whether in the Benthamite or J. S. Mill versions, or maybe “secular humanism,” as our civic religion? That might depend on the character of morality, on what kind of normative order morality is, exactly. Specifically, on whether it must be reasoned, functional, practical, articulably derived from or related to some unexceptionable social goal. Well, much or even most morality seems based, rather, on instinct, emotion, custom, history, politics, or ideology, rather than on widely shared social goals. Think of the absolute prohibition of infanticide in contrast to the far more tolerant view of even late-term abortions. Think of the prohibition of bullfighting, cock fights, and cruelty to animals generally. Think of the rejection in our society of the Islamic punishment code, public nudity, polygamy, indentured servitude, chain gangs, voluntary gladiatorial combat, forced redistribution of wealth, preventive war, torture, the mutilation of corpses, sex with corpses, sex with nonobjecting animals, child labor, duelling, suicide, euthanasia, arranged marriages, race and sex discrimination. Are there really compelling reasons for these unarguable tenets of the current American moral code? One can give reasons for them, but would they be anything more than rationalizations? They have causes, that history, sociology, or psychology might elucidate, but causes are not reasons.

If morality, or at least a large part of the moral domain, lives below reason as it were, isn't the practical consequence that morality is simply dominant public opinion? And so if the population is religious, religion will influence morality, which in turn will influence law, subject to constitutional limitations narrowly interpreted to protect the handful of rights that ought not to be at the mercy of the majority.

Rawls and others have thought that religious beliefs shouldn't be allowed to influence public policy, precisely because they are nondiscussable. But this view rests on a misunderstanding of democracy. Modern representative democracy isn't about making law the outcome of discussion. It is not about modeling politics on the academic seminar. It is about forcing officials to stand for election at short intervals, and about letting ordinary people express their political preferences without having to defend them in debate with their intellectual superiors.

If this analysis is sound, then we see that the statement that “Modernity has a secular self-understanding that tends to deny religious doctrine a role in political justification” depends on whether modernity is equated with the dominance of the secular. The statement is thus entirely circular.

I welcome comments, as well as suggestions of additional topics for me to address during my guest week.

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