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Opinion: Faith and Politics Step Out

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Religious freedom is moving in opposite directions in Canada and the United States. In recent years, Canadian law has moved openly toward the separation of church and state. American law has moved quietly in the opposite direction.

Most public opinion-makers still think America remains faithful to the separatism of Thomas Jefferson. To end repressive religious establishments, Thomas Jefferson had sought religious freedom in the twin formulas of privatized religion and secularized politics. Religion must be "a concern purely between our God and our consciences," he wrote in 1802. Politics must be conducted with "a wall of separation between church and state." "Public Religion" is a threat to civil society and must thus be discouraged. "Political ministry" is a menace to political integrity and must thus be outlawed.

These Jeffersonian maxims remain for many today the cardinal axioms of a unique American logic of religious freedom to which every patriotic citizen and church must yield. Every American public school student learns the virtues of keeping his Bible at home and her prayers in the closet. Every church knows the tax law advantages of high cultural conformity and low political temperature. Every politician understands the calculus of courting religious favors without subverting religious causes. Religious privatization is the bargain we must strike to attain religious freedom for all. A wall of separation is the barrier we must build to contain religious bigotry for good. Would that today's right-wing killjoys could learn these patriotic lessons, instead of pestering us with their Ten Commandments and faith-based initiatives!

Separation of church and state was certainly part of American law when many of today's public opinion-makers were in school. In the landmark cases of *Cantwell v. Connecticut* (1940) and *Everson v. Board of Education* (1947), the United States Supreme Court for the first time used the First Amendment religion clauses to declare local laws unconstitutional. The Court also read Jefferson's call for "a wall of separation between church and state" into the First Amendment. In more than 30 cases from 1947 to 1985, the Court purged public schools of their traditional religious teachings and cut religious schools from their traditional state patronage. Lower courts struck down many other traditional forms and forums of church-state cooperation in the public square.

After forty years of such cases, it is no surprise that Jefferson's metaphor of "a wall of separation between church and state" became for many the source and summary of

American religious freedom. Indeed, many within and beyond the United States think Jefferson's words are enshrined in the First Amendment. The constitutional text is actually more prosaic and restrained. It reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

"Metaphors in law are to be narrowly watched," Justice Benjamin Cardozo once warned, "for starting as devices to liberate thought, they end often by enslaving it." So it has been with the metaphor of a wall of separation. This metaphor has held popular imagination so firmly that many have not noticed that separation of church and state is no longer American law.

In the past two decades, the Supreme Court has abandoned much of its earlier separationism and reversed several harsh precedents. In more than a dozen cases, the Court has upheld government policies that support the public access and activities of religious groups -- so long as these religious groups are voluntary, and so long as non-religious groups are treated the same way. So, religious counselors could be funded as part of a broader federal family counseling program. Religious student groups could have equal access to public classrooms that were open to non-religious student groups. Religious groups could have the same access to public facilities, forums, and funds that were already opened to other civic groups. Religious student newspapers were just as entitled to public university funding as those of non-religious student groups. Religious schools were just as entitled to participate in a state-sponsored school voucher program as other private schools.

The Supreme Court has defended these holdings on wide-ranging constitutional grounds, and it has not yet settled on a consistent new logic. One consistent teaching of these recent cases, however, is that public religion must be as free as private religion. Not because the religious groups in these cases are really non-religious. Not because their public activities are really non-sectarian. And not because their public expressions are really part of the cultural mainstream. To the contrary, they deserve to be free, just because they are religious, just because they engage in sectarian practices, just because they sometimes take their stands above, beyond, and against the mainstream. They provide leaven and leverage for the polity to improve.

A second teaching of these cases is that the freedom of public religion sometimes requires the support of the state. Today's state is not the distant, quiet sovereign of Jefferson's day from whom separation was both natural and easy. Today's state is an intensely active sovereign from whom complete separation is nearly impossible. Few religious bodies can now avoid contact with the modern welfare state's pervasive regulations of education, charity, welfare, child care, health care, family, construction, zoning, workplace, taxation, security, and more. Both confrontation and cooperation with the modern state are almost inevitable for any religion. When a state's regulation imposes too heavy a burden on a particular religion, the free exercise clause provides a pathway to relief. When a state's appropriation imparts too generous a benefit to a particular religion, the establishment clause provides a pathway to dissent. But when a government scheme

provides public religious groups and activities with the same benefits afforded to all other eligible recipients, constitutional objections are now rarely availing.

A third teaching of these cases is that freedom of public religion also requires freedom from public religion. The state must strike a balance between coercion and freedom. The state cannot coerce citizens to participate in religious ceremonies and subsidies that they find odious. But the state cannot prevent citizens from participation in public ceremonies and programs just because they are religious.

A final teaching of these cases is that the freedom of public religion is no longer tantamount to the establishment of a common religion. Government support of a common civil religion might have been defensible in earlier times of religious homogeneity. It is no longer defensible in modern times of religious pluralism. Today, our public religion must be a collection of particular religions, not a combination of religious particulars. It must be a process of open religious discourse, not a product of ecumenical distillation. All religious voices, visions, and values must be heard and deliberated in the public square. All peaceable public religious services and activities must be given a chance to come forth and compete.

Today, so-called “Christian right” groups have seized on this insight better than most. Their recent rise to prominence in the public square and in the political process should not be met with glib talk of censorship or reflexive incantation of Jefferson's mythical wall of separation. The rise of the Christian right should be met with the equally strong rise of the Christian left, of the Christian middle, and of sundry Jewish, Muslim, Hindu, Buddhist, and other groups who test and contest its premises and policies. That is how a healthy democracy works. The real challenge of the Christian right is not to the integrity of American politics but to the apathy of American religions. It is a challenge for peoples of all faiths, and of no faith, to take their place in the marketplace.

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