Religion, Policy and Politics:
The Rules of Engagement

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I. Introduction

Religion is often engaged with American policymaking and politics. Policy choices are based on values and, for many citizens, values are rooted in faith. American campaigns are essentially processes whereby political candidates introduce themselves personally to voters; for many candidates, this involves some explanation of their religious identities and convictions. Congregations are communities with sacred missions, but at times they also serve as springboards for the formation of some of the most active, organized and enduring citizen networks dedicated to policy change.

The fact that religion, policy and politics are inevitably engaged in our country, however, does not mean that they should be engaged indiscriminately. Indiscriminate engagement would do great violence to our cherished national commitment to religious freedom, for example, by permitting a majority faith to seize the reigns of political power and to use that power to coerce those outside the faith to fall in line with majority beliefs and practices. Furthermore, while legal rules are necessary to protect national values, legal rules alone are insufficient to guard against many of the dangers that arise in this area. When religion and politics intersect, there is a tendency, for example, for religion to be transformed from a spiritual force committed to non-political principles and methodologies to simply another earthly political power. Thus, this intersection must be mediated not only by law, but also by ethical and religious principles.

In short, there are and should be rules for the engagement of religion, policy and politics. This essay first briefly describes some relevant legal principles, and then goes beyond these legal principles to explore additional ethical and religious rules of engagement.

II. Legal Principles

The paramount source of American legal rules is, of course, the U.S. Constitution. Specific provisions of the Constitution, as well as the interpretation of those provisions by the U.S. Supreme Court, address some of these issues that arise when religion, policy and politics intersect. First, the Constitution protects the right of all Americans to hold public office, regardless of their faith or lack thereof. In that case, Justice Brennan commented:

[G]overnment may not as a goal promote ‘safe thinking’ with respect to religion and fence out from political participation those, such as ministers, whom it regards as overinvolved in religion. Religionists no less than members of any other group enjoy the full measure of protection afforded speech, association, and political activity generally.

Additionally, private citizens, meaning those who don’t hold public office, clearly have a constitutional right to comment on issues of public concern in religious terms. This right
also extends to non-governmental organizations. As a legal matter, this freedom flows from the Constitution’s explicit protection for the rights of all citizens to speak freely and to exercise their faith, and from the general constitutional notion “that all eligible citizens should enjoy equal opportunity to participate in self-governance.” As the Court said in 1970: “Adherents of particular faiths and individual churches frequently take strong positions on public issues . . . . Of course, churches as much as secular bodies and private citizens have that right.”

If religious individuals become government officials, they take on an important responsibility to protect and defend the Constitution, including the constitutional obligation of the government to refrain from establishing religion, but it is commonly accepted that this responsibility does not require such officials to forfeit the rights described above. Indeed, although the Court has not directly addressed this issue, many agree that the Constitution provides political candidates and public officials with a great deal of freedom to talk publicly about their religious convictions. The reasoning behind this position seems to be threefold. First, citizens generally appear to understand these leaders’ comments on their religious beliefs to be more personal than governmental, especially given the fact that they are accustomed to hearing them speak of their personal experiences and convictions in many different ways. Second, there is a long history of officials and candidates making these kinds of remarks, and in one case the Court found that this kind of history justifies practices that otherwise might be found unconstitutional. Third, a ban on religious discussion in these contexts would not only severely constrain the free-flowing political debate we prize, it also would be virtually impossible to implement in a sound and fair way. Indeed, it could draw the government into evaluating matters of religious doctrine, which itself is unconstitutional.

The Court has said that governmental action, however, as opposed to personal speech by government officials, must have a clear non-religious purpose and primary effect. In other words, while the Constitution protects the right of private individuals and organizations to promote religion, it prohibits the government from doing so. Why does the Establishment Clause of the First Amendment prohibit the government from promoting or sponsoring religion? As the Court has noted:

The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the [government.] The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and choice committed to [the non-governmental] sphere, which itself is promised freedom to pursue that mission.

Similarly, the Court has recognized that when the government advances religion, it creates the sense that those who do not identify with the government’s chosen faith are somehow less American than those who do. Thus, “[t]he First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” Consistent with this reasoning, Justice O’Connor has noted that requiring a law to manifest a secular purpose “is not a trivial matter”; instead, it “serves [the]
important function” of “remind[ing] government that when it acts it should do so without endorsing a particular religious belief or practice that all citizens do not share.”

Determining if an act of government has the requisite non-religious purpose and primary effect can be a complex and difficult inquiry, to be sure. But some basic guidelines can be gleaned from the Court’s decisions in this area. The Court is “normally deferential to a State’s articulation of a secular purpose,” but it also has “required that the statement of [legislative] purpose be sincere and not a sham.” The mere fact that a law “may coincide with the religious tenets” of a church “does not, without more, contravene the Establishment Clause,” the Court has said. It explained: “That the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny.” And a statute that is motivated in part by a religious purpose may be constitutional, but “the First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion,” the Court has noted. The Court also has struck down a law where it found that the “preeminent purpose” of the legislature was to advance religious doctrine. In short, these decisions permit religion to inform public policy, as long as religion is not the “preeminent” reason for the government’s action and the action has a clear, bona fide non-religious purpose and primary effect.

In addition to the U.S. Constitution, other legal restrictions are relevant to the engagement of religion, policy and politics. The most prominent of these legal restrictions are the federal statutory limits on the lobbying and political activities of tax-exempt organizations. Religious organizations that wish to be exempt from federal taxation must abide by certain legal restrictions on these activities, just as all other tax-exempt organizations must do. These rules limit tax-exempt organizations to an insubstantial amount of lobbying and flatly prohibit their intervention in any political campaign on behalf of (or in opposition to) any candidate for public office. At the same time, however, these rules leave room for tax-exempt organizations to play an active role in the debate of issues through unlimited public education, the ability to engage in an insubstantial amount of lobbying and the right to play certain valuable, nonpartisan roles in campaigns, such as providing unbiased voter education and outreach activities. A court has held that the prohibition on partisan political activity does not violate a church’s rights to free speech or create a substantial burden on the free exercise of religion.

These legal principles create some important rules regarding the engagement of religion, policymaking and politics, but the limits they place on religion’s role are not extensive. Individuals and religious organizations generally must be permitted to express their faith free from governmental interference. The government itself may not promote or sponsor religion, but candidates and public officials have a great deal of freedom to share their personal religious convictions and otherwise practice their faiths. Religion may inform public policy, as long as it is not the “preeminent” reason for the government’s action and the action has a clear, bona fide non-religious purpose and primary effect. If tax-exempt religious organizations observe certain legal limits on their lobbying and political activities that apply to all tax-exempt organizations, they can bring their concerns to
policymakers and participate in nonpartisan voter education.

III. Ethical and Religious Principles

These rules are not the only relevant rules for the engagement of religion, policy and politics, however, or at least they should not be the only rules that religious individuals and communities observe. Ethical and religious rules also should govern this realm. The legal rules create great freedom for religion to play an active role in policymaking and politics and also great responsibility for religious people and communities to use that freedom wisely.

Clearly, the risks for moral and spiritual integrity in this realm are great. Prayers and religious pronouncements in political settings often reek of false piety. Clergy have been known to pull prophetic punches and dumb down theology in order to curry favor with particular political powers. Religious people sometimes hurl verbal hand grenades in public policy debates, calling those who dare to disagree “sinners” or “heretics.” In almost every political campaign, someone insinuates that a person cannot be a good American if he or she is not a Christian or is not personally religious. Similarly, faith can become nothing more than a thin veneer for nationalism. Another pitfall for religion in its engagement in politics and policy is the common tendency of people to defend a politician they like when he talks about his faith, but argue that it somehow crosses a line when a politician they dislike says essentially the same thing. Likewise, many have been tempted to argue that it is okay for religion to inform policies they favor, but that it something different entirely when religion informs policies they oppose. In short, one doesn’t have to be politically savvy to recognize that false piety, venality, hypocrisy and acrimony tend to rush into the space where religion, policy and politics mix unless they are conscientiously restrained.

The restraint that is needed is not total restraint, however. For the reasons mentioned above, it is not fair, wise or realistic to ask religious voices to stay silent in these arenas. But those who speak religiously in the public square should measure themselves against rigorous, principled standards. The following is a modest effort to describe a few such standards. It should be noted that these standards are not aimed at political success, but rather at ethical and religious integrity.31

First, religious individuals and communities should care more about being faithful than about being powerful. The point of politics is to gain power over the machinery of government. The point of religion is, broadly stated, to live life according to spiritual principles. When these two vastly different systems intersect, religious people often find themselves tempted to play by political rather than religious rules. Religious people must resist this temptation.

People of faith should not tweak their policy positions or the language they use to please political powers. Further, religious leaders must always bear in mind that their primary obligation is to speak truth to power, even if it means losing political access and status. Indeed, it is particularly clear that political parties do not operate on spiritual principles,
and religious institutions need to remember that too close an identification with them is bound to undermine religious missions. Religious people also must swim against the tide by refusing to participate in the politics of personal destruction and by applying codes of conduct in this area evenhandedly rather than selectively. Moreover, everyone who talks about religion in public should search his or her conscience for true motives, and refrain from performing this task for others.

Second, as religious individuals and communities, we should remember that we are “God’s servants,” not his “spokespeople.” Representative Barbara Jordan offered this wise advice to those who speak of religion in the public square: “You would do well to pursue your cause with vigor, while remembering that you are a servant of God, not a spokesperson for God . . . and remembering that God might well choose to bless an opposing point of view for reasons that have not been revealed to you.”32 This is not a call for moral relativism or an attempt to require abandonment of claims of exclusive religious truth. Instead, it is an encouragement for all to express their views with humility and respect.

Third, religious individuals and communities should recognize that there are differences between piety and patriotism. People of faith have loyalties to two sovereigns – God and government. While it usually is not a problem for religious people to be loyal to both, and many Americans can sincerely be described as both patriotic and godly, this does not change the fact that there are distinctions between these spheres. In other words, there is something different about pledging oneself to God and pledging allegiance to the American flag -- religious people should never forget it. This should prompt religious people to recognize, for example, that when we engage in policy debate, we speak as citizens who have equal, but not better, rights than other citizens. Similarly, it should lead religious people to be among the first to insist that no one must meet a religious test to serve our country or to be a good American.

Fourth, religious people should call on leaders to discuss their religious convictions in ways that support, rather than cast doubt upon, their ability to protect and defend the Constitution, including the command to uphold equal religious liberty for people of all faiths and none. We also should call on our leaders to refrain from suggesting that American policies and programs are part of God’s will, in part because this tends to create the dangerous impression that this country has a religious mission and that that mission is unassailable. While all elected officials bear these responsibilities, our presidents carry a special burden because they are the only leaders who represent the entire nation, both at home and abroad.

Similarly, we should seek to extend to everyone the religious freedom we demand for ourselves. Religious people and communities should defend the right of all religions to bring their values to the public square, even if we do not endorse their religion or policy positions. As a recognition of the value of each human being, we also should do all we can to ensure that our neighbors have true freedom of choice in religious matters. Our neighbors cannot enjoy that freedom when state power is used to pressure them to live their lives according to certain religious doctrine.
IV. Conclusion

In sum, it is true that religion can and does play an active role in policymaking and politics, and it is also true that religion’s entry into these arenas creates certain risks. We should not attempt to manage these risks by calling for a hermetic sealing off of religion from policy and politics. Instead, we should call for fidelity to rules of engagement that are based not only in law, but also in ethical and religious teachings.

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1 Many thoughtful commentators have explored various layers of these issues in fine detail. See, e.g., sources cited infra note 12. The purpose of this essay is not to provide such a finely detailed analysis, but to provide a basic introduction to some of the relevant legal, ethical and religious principles in this area.

2 Article VI of the Constitution states in part: “[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”


4 Id. at 641 (Brennan, J., with whom Marshall, J., joined, concurring in the judgment).


6 See Amendment I of the U.S. Constitution.


8 Walz v. Tax Comm’n, 397 U.S. 664, 670 (1970). See also infra at p.3 for a discussion of some relevant legal restrictions that apply to the lobbying and political activities of tax-exempt organizations, including tax-exempt religious organizations.

9 “Congress shall make no law respecting an establishment of religion. . . . “ Amendment I to the U.S. Const.

10 The religious speech of career civil servants, however, often would be distinguishable from that of candidates, legislators or high-ranking executive officials. When career civil servants make religious comments during the course of their public duties, it seems likely that the public would perceive these comments as more governmental than personal. See generally Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, issued by The White House on August 14, 1997, which can be found at http://www.clsnet.org/clrfPages/pubs/pubs_guideFed.php

11 For example, Professor Michael Perry has argued:

Although the non-establishment norm . . .forbids any branch or agency of government to do certain things, to engage in certain sorts of actions, it does not forbid any person – including any person who happens to be a legislator or other public official – to say whatever she wants to say, religious or not, in public political debate. The serious question, then, is not whether legislators or public officials, much less citizens, violate the nonestablishment norm by presenting religious arguments in public political debate. The serious question, rather, is whether government would violate the nonestablishment norm by basing a political choice – for example, a law banning abortion – on a religious argument.


13 See infra note 19.
14 According to a test the Court has frequently used, a law must have a non-religious purpose and its primary effect must be one that neither advances nor inhibits religion. As the Court stated in 1971:

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster “an excessive government entanglement with religion.”

Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)(citations omitted). “[N]o consideration of the second or third criteria is necessary if a statute does not have a clearly secular purpose.” Wallace v. Jaffree, 472 U.S. 38, 56 (1985)(striking down Alabama moment-of-silence statute because “the enactment of the [statute] was not motivated by any clearly secular purpose – indeed, the statute had no secular purpose.”)

15 As the U.S. Supreme Court has said: “[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause [of the First Amendment] forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” Board of Education v. Mergens, 496 U.S. 226, 250 (1990) (portion of opinion written by Justice O’Connor and joined by Chief Justice Rehnquist and Justices White and Blackmun); Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 302 (2000).


18 “The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from ‘making adherence to a religion relevant in any way to a person's standing in the political community.’ ” County of Allegheny v. ACLU, 492 U.S. 573, 593-94 (1989). See also Lynch v. Donnelly, 465 U.S. 668, 687 (1984) (O’Connor, J., concurring) (“Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.”)

20 Id. at 75, 75- 76 (O’Connor, J., concurring in the judgment).
21 Edwards v. Aguillard, 482 U.S. 482, 586-87 (1987). Noting the Court’s traditional deference to legislative bodies in this area, O’Connor also has said: “If a legislature expresses a plausible secular purpose for a . . . statute in either the text or the legislative history, or if the statute disclaims an intent to [advance religion], then courts should generally defer to that stated intent.” Wallace, 472 U.S. at 74-75 (O’Connor, J., concurring in the judgment)(footnotes omitted).
23 Harris v. McRae, 448 U.S. 297, 320 (1980). In this case, the Court found that a federal statute that denied public funding for certain medically necessary abortions did not violate the religion clauses of the First Amendment. Id. It stated that the statute was “as much a reflection of ‘traditionalist’ values towards abortion, as it is an embodiment of the views of any particular religion.” Id. at 319.
24 Id.
In a later opinion, Justice O’Connor emphasized that the relevant question in these inquiries was “the legislative purpose of the statute, not the possibly religious motives of the legislators who enacted the law.” Mergens, 496 U.S. at 249 (portion of opinion written by Justice O’Connor and joined by Chief Justice Rehnquist and Justices White and Blackmun) (“Even if some legislators were motivated [to vote for the Equal Access Act] by a conviction that religious speech in particular was valuable and worthy of protection, that alone would not invalidate the Act, because what is relevant is the legislative purpose of the statute, not the possibly religious motives of the legislators who enacted the law.”)

In Edwards, 482 U.S. at 591 (striking down the Louisiana Creationism Act which forbade the teaching of evolutionary theory in public schools unless accompanied by instruction in “creation science”). In Edwards, the Court noted that “it [was] not happenstance that the legislature required the teaching of a theory that coincided with [a] religious view” – “[t]he legislative history documents that the Act’s primary purpose was to change the science curriculum of public schools in order to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety.” Id. at 592. The Court said that neither of the lower courts “found a clear secular purpose, while both agreed that the Creationism Act’s primary purpose was to advance religion.” Id. at n.15. In a concurring opinion, Justice Powell wrote: “A religious purpose alone is not enough to invalidate an act of a state legislature. The religious purpose must predominate.” Id. at 599 (1987) (Powell, J., with whom O’Connor, J., joined, concurring).

See also Stone v. Graham, 449 U.S. 39, 41 (1980)(striking down Kentucky statute that required the posting of a copy of the Ten Commandments on the wall of each public school classroom in the state because “[t]he pre-eminent purpose for posting the Ten Commandments on schoolroom walls [was] plainly religious in nature.”)

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29 See also The Williamsburg Charter, which may be found at http://www.freedomforum.org/publications/first/findingcommonground/C02.WilliamsburgCharter.pdf; A Shared Vision: Religious Liberty in the 21st Century, which may be found at http://www.bjcpa.org/Pages/Resources/Pubs/sv.final.pdf

30 Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000).

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