

St. John's Unitarian Universalist Church Cincinnati OH Sunday August 30, 2009

Sermon pp. 1-6

Order of Service and Readings pp. 7-12

Liberal v. Conservative Conscientious Objectors, Howard Tolley

I. Introduction:

Since European colonists arrived in North America liberals and conservatives have battled over religious liberty. The most recent battlegrounds in that ongoing culture war involve bitter clashes over evolution and gay rights. Our UU 5th principle affirms the right of conscience and the democratic process; as religious liberals we tilt toward minority rights in situations where conservatives favor majority rule.

On the announcement insert in your order of service please find the list of 10 items headed "How much free exercise?" The items illustrate the difficulty of line drawing in a liberal democracy that must balance majority rule with minority rights. Please use the list as an individual self assessment your tolerance for the right of conscience by religious minorities. As I proceed to discuss each, mark with a T for tolerance each of the practices you believe the majority should tolerate out of respect for a minority religious practice that is illegal for others. Do not mark minority practices you believe the majority should be able to outlaw for the common good? If you don't have a writing tool use your fingers to count the number of T's.

How Much Free Exercise?

Mark with a "T" each of the following minority religious practices that you think should be tolerated.

1. A Christian Scientist who refuses all vaccination and inoculations
2. Animal sacrifice in Santeria worship
3. Polygamy by Mormons and Muslims.
4. Jehovah's Witness refusal to salute the flag and recite the pledge
5. Amish departure from public schools after 8th grade.
6. Quaker Conscientious Objection to taxes spent on war
7. Native American use of peyote in traditional worship.
8. Women's dress that conceals all but the eyes.
9. Born again Christian opting out of high school class teaching evolution.
10. Christian adoption agency refusal to place children with gay or lesbian couples despite antidiscrimination law that includes sexual orientation.

II. Where Liberals and Conservatives agree and disagree

Liberals are more tolerant of minority religious practices and want the state to accommodate them by making exceptions to laws that burden free exercise. Liberals for example

would allow Jehovah's witnesses who refuse to cite the pledge to opt out of that mandatory daily ritual in public schools.

Conservatives would deny exemptions to minorities reasoning that under majority rule, neutral, generally applicable laws should apply to all. From a conservative perspective, granting exceptions would favor minorities granting them unequal special privileges. In addition to guaranteeing free exercise, the 1st Amendment also bars state establishment of religion, so special accommodations would be an unconstitutional preference for minority faiths. Minorities can **believe** whatever they wish, but their **actions** can be regulated under neutral generally applicable laws, even if their acts are sincerely motivated by conscience

Liberals and conservatives also disagree about whether the state should be allowed to support religion over non-religion. Conservatives insist that "we are a religious people" and welcome state support for religion over non-religion so long as no one faith or denominations is preferred and there is no coercion of nonbelievers. Liberals insist on a high wall of separation that bars state support for religion over non religion as well as claims that the US is Judeo-Christian.

Liberals and conservatives do have some common ground as illustrated in two of the 10 assessment items. **#1** Although generally tolerant, liberals are prepared to limit religious practices when the state has a compelling interest as in the case of public health. Liberals would deny liberty of conscience and compel religious minorities to submit to vaccination. Checking an epidemic trumps the right of conscience. Conservatives although generally reluctant to accommodate religious minorities oppose invidious discrimination that singles out a minority for persecution, as were the Cuban practitioners of Santeria by the Hialeah city council. In **#2** the city fathers only objected to cruelty to animals when the slaughter was done in a Santeria animal sacrifice.

Many Liberals and conservatives also look alike in their inconsistent respect for conscientious objection and are guilty of applying a double standard. Both tolerate minority religious practices they respect but deny minority religious practices they consider unworthy. The dual challenge for both conservatives and liberals is:

1. First, to take care that restrictions on conscientious objection are based on a principled commitment to the common good and are not motivated by animus to unusual religious practice, and

2. Second, that when tolerating religious minorities we must also tolerate genuine conscientious objection based on secular reasoning by non believers, guarantee equal respect

III. Americans' Evolving Approach to Free Exercise

Roger Williams 17th century legacy of toleration is illustrated by quotes on the order of service. After persecution in both Europe and the Massachusetts Bay Colony he founded Rhode island as a bastion of religious liberty with equal respect for native Americans. In the 18th Century Madison enshrined free exercise in the first amendment and worked with Jefferson to revoke Virginia laws establishing a state church but Maryland would only allow Catholics to hold public office. In the 19th Century Americans had no tolerance for Mormons' right to engage in polygamy and we adopted marriage laws that appeared motivated by hostility to that faith. #3 Those laws remain in force today with minimal tolerance for plural marriages by Muslims as well as UU's who practice polyamory.

Not until World War II did our society begin on the road toward greater tolerance, led by the Supreme Court. #4 Pennsylvania public schools expelled Jehovah's Witness children who refused to salute the flag and recite the pledge of allegiance. A UU affiliated socialist composed the pledge in the late 19th Century affirming our commitment "to liberty and justice for all" with no reference whatever to "one nation under god." Even though the pledge didn't mention God, the Witnesses nevertheless found recitation of a secular affirmation violated their religion; would you believe that in the 1940s the U.S. flag salute was identical to the raised arm associated with Nazi Germany. Justice Jackson wrote the opinion guaranteeing the Witnesses' right of conscience, though he based the decision on free speech rather than free exercise principles.

The pledge became objectionable to even more religious minorities in 1952 when Congress added the phrase "one nation under God" as a counter to atheistic communism. Subsequent challenges to the pledge have failed to restore the original language, but presumably those who do not believe in a God cannot be compelled to recite the amended pledge.

As a high school student in Montclair NJ from 1957-61 I joined my fellow students each morning in homeroom not only in pledging allegiance to a nation under god. In addition I joined in reciting the Lord's Prayer in unison and I would also take my turn reading ten verses selected from the Bible to begin each school day. I was raised Presbyterian and my Catholic friends attended a parochial high school.

In Pennsylvania a Unitarian my age named Ellery Schemp wanted to bring a halt to bible reading and prayer at his school, even though the 16 year old was allowed to excuse himself

from the religious exercise. Ellery's persistent objections persuaded the ACLU to take the case and his principal to retaliate. Following his admission to Tufts, Ellery's principal contacted the university asking them to rescind the acceptance because of his defiance. In 1963 the Supreme Court ruled in Schemp's favor, ending the practice nationwide. An atheist, Madeline Murray O'Hare, received undue credit for the result won by a Unitarian teen's successful challenge.

Taking the bible out of the classroom benefited not only religious minorities, but also remedied an old dispute between Catholics and Protestants about which version of the bible to use. Only as an adult did I learn that Catholics and Protestants also follow different versions of the 10 Commandments. The Catholic decalogue does not forbid making idols.

An Amish family named Yoder won the next major Supreme Court decision extending the right of conscience. #5 In violation of compulsory school attendance laws, Amish parents sought to withdraw their children from school after the eighth grade. The parents regarded teenage work on the family farm as essential to maintain Amish community membership against secular influence, and the Supreme Court agreed.

Congress approved exemptions from conscription during the Vietnam War for religious conscientious objectors, and the Supreme Court extended protection well beyond CO's from traditional peace churches – Quaker, Mennonite, Brethren. Anyone with secular pacifist convictions as profound as those grounded in religious conviction was entitled to CO status as long as they opposed all war. Even though I didn't need a religious rationale to resist conscription for Vietnam, I could not qualify as a conscientious objector since my selective objection to Vietnam did not extend to all war. #6 In the only case I ever litigated after admission to the bar, I represented a Quaker was fined \$500 for asking the IRS to refund a portion of the taxes she paid that would be spent for war. While acknowledging her legal obligation to pay the taxes, I objected to penalizing her for an act of conscience that the government considered a frivolous tax return.

A Supreme Court decision on behalf of a 7th Day Adventist named Sherbert articulated the liberal standard of review that applied for nearly 40 years – in order to burden free exercise the state must show a compelling interest and use the least restrictive means. In 1990 Justice Scalia replaced that standard with the old 19th Century conservative norm: the right of conscience does not relieve an individual from the obligation to comply with a valid and neutral law of general applicability. #7 Thus the Court found no constitutional obstacle to laws requiring native Americans to comply with drug laws even if forbidden to ingest Peyote as part of a religious ritual. Congress and state legislatures have granted the exemption.

Conclusion

Where does that leave us today in our approach as religious liberals to tolerance for Christian fundamentalists identified in the last two pre-test items? For **#9** on compulsory instruction in evolution I have found that liberals who supported the rights of Amish and Jehovah's witnesses to exemption from school mandates are unwilling to tolerate Christian fundamentalist teens whose faith would be undermined by lessons on evolution. While conceding the legitimacy of school policies allowing children to opt out of sex education classes and biology lab exercises involving dissection of frogs, liberals insist the state has a compelling interest in exposing all children to evolution. Parents, they reason, should be convinced when the teacher assures them that their child only needs to learn enough to pass a state test and will not be pressed to renounce genesis for Darwin. I'm not persuaded and find it impossible to reconcile allowing amish children to leave school entirely and then insist that christian fundamentalists must study evolution despite religious objections.

Rest assured that in this instance I find Conservatives as inconsistent as liberals, although in the opposite direction. Conservatives in the anti-evolution context are more tolerant of Christian's liberty of conscience than they were when denying the right of conscience claimed by Amish and Jehovah's Witnesses.

#10 addresses our willingness as religious liberals to tolerate intolerance that discriminates against gays. At what point do we find equal rights such a compelling interest that the right of conscience is trumped? We deny racist religious institutions tax exempt status. When the Christian Bob Jones University practiced race discrimination liberals found the state interest in equal rights so compelling that they stripped the religious school of its tax exempt status. In Europe a commitment to women's rights trumps Muslim dress codes **#8**, but does not require the Catholic Church to ordain female priests. Is the need to end sex discrimination against women so compelling that religious patriarchy can be ended by the state? In states that allow gay marriage, is the need to ban discrimination based on sexual orientation so compelling that Christian adoption agencies must place children with same sex couples?

At the risk of provoking an angry response from this welcoming congregation I would personally note a "T" for **#10**, and provide an exemption for a Christian adoption agency. after that disclosure I look forward to a spirited challenge from St. Johners who believe that such an exception would violate gay rights.

When the right of conscience conflicts with community norms each society draws the line in accord with its own values. I'm profoundly grateful that Roger Williams repudiated the

intolerance of Europe and established a colony that honored liberty of conscience for all, including Native Americans. In the ongoing cultural war that has divided U.S. liberals and conservatives we can all be thankful that our shared commitment to free exercise, equal rights and separation of church and state has spared us the all too familiar carnage involving Muslims and Hindus, Catholics and Protestants, Sinhalese Buddhists and Tamils, Jews and Palestinians.

On the 10 item assessment of your values counting every T as a liberal response you can now rate yourself on a scale 1 to 10 with higher scores being more liberal and lower more conservative. A perfect 10 goes beyond liberalism indicating a libertarian persuasion. A zero would suggest you are authoritarian rather than conservative.

In keeping with our longstanding commitment to a right of conscience for all we must remain on guard against a liberal bias in deciding what practices to tolerate while also insisting that non-believers enjoy the same right of conscience afforded to the religiously inspired.

Order of Service

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*Boast not proud English, of thy birth and blood,
Thy brother Indian is by birth as Good.
Of one blood God made Him, and Thee and All,
As wise, as faire, as strong, as personall.* Roger Williams *Language of America*, 1643

*. . . it is the will and command of God that (since the coming of his Sonne the Lord Jesus) a
permission of the most paganish, Jewish, Turkish or antichristian consciences and worships, bee
granted to all men in all Nations and Countries.*

Roger Williams *Tenent of Persecution* 1644

*We . . . covenant to affirm and promote . . .
The right of conscience and the democratic process within our congregations and society at
large.*

UUA 5th Principle

COMMUNITY WORSHIP SERVICE

August 30, 2009

WELCOME AND ANNOUNCEMENTS

George Dershimer

PRELUDE

“The Last Rose of Summer”

Thomas Moore

Arranged by Phil Coulter

(Please listen meditatively during the music)

LIGHTING THE CHALICE

Jim McDonough

OPENING HYMN

“Where is Our Holy Church” #113 -T

AFFIRMATION

Love is the spirit of this church,
The quest of truth is its sacrament,
Service is its prayer.
And this is our great covenant:
To dwell together in peace,
To seek knowledge in freedom
And to help one another

SPECIAL GUESTS

Srs. Mariastella Wampembe and Theresia Khamsini, of the Sisters of Our Lady
Queen of Africa, Sumbawanga, Tanzania

WHEEL OF LIFE

(A time to share a personal joy or sorrow from the past week, please refrain

from promoting a cause or making an announcement. Respecting the worth of all, please be brief.)

SPOKEN MEDITATION
BEING SILENT TOGETHER

RESPONSIVE READING “God is One” #566 -T
SPECIAL MUSIC “Scaramouche, Op. 165” Darius Milhaud
2. Modere

READINGS

Supreme Court Justice Robert Jackson, *W. Va. V Barnette*
Professor Martha C. Nussbaum, *Liberty of Conscience*

OFFERING “Summer’s End” Dennis Alexander

RESPONSE TO GIFTS “Spirit of Life” #123 -T

SERMON “Liberal v. Conservative Conscientious Objectors” Howard Tolley,
Jr.

CLOSING HYMN “We Would be One” #318 -T

BENEDICTION/CLOSING WORDS #684 -T

POSTLUDE “Summer Fiesta” Melody Bober

EXTINGUISHING THE FLAME

Hymn selections marked T can be found in hymnal “Singing the Living Tradition”

Hymns selections marked J can be found in hymnal “Singing the Journey”

PEACE – Our Peace Cranes are made and strung by us, for peace is at risk. As of August 24th, there have been 4,253 US service personnel deaths, and 30,182 wounded [http://www.globalsecurity.org/military/ops/iraq_casualties.htm] in Iraq; with at least 101,352 civilian Iraqi casualties] <http://www.iraqbodycount.net/>].

READINGS

Martha Nussbaum, *Liberty of Conscience*, Conclusion

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Justice Robert Jackson, from *West Virginia v. Barnette*, 1943

Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.