

# Religion and Liberal Democracy - Kathleen Sullivan

- "The affirmative right to practice a specific religion implies the negative right to practice none"
- "The negative bar against establishment of religion implies the affirmative 'establishment' of a civil order for the resolution of public moral disputes"
  - This secular mechanism (the Establishment Clause) arises as a means of ending the war of all religious sects against all
  - the use of "religious grounds for resolving public moral disputes would rekindle inter-denominational strife"
    - since religious grounds cannot be used to solve public moral issues, a civil order must be established to resolve such disputes
      - "the establishment of a civil public order [Liberal Democracy]", then, "was the social contract produced by religious truce"
      - accordingly, the baseline for measuring Free Exercise and Establishment violations is "religious liberty insofar as it is consistent with the establishment of the secular public moral order"
      - the court "should take a broader view of establishment" and "a broader view of free exercise so long as religion does not genuinely threaten to undermine the secular welfare state"
- Liberal Democracy may function as a belief system with substantive content
  - liberal democracy serves as the overarching belief system for politics, and possibly for knowledge in general
  - not a totalistic orthodoxy that would be as threatening as a religious rule
    - is different from a religion
      - the content of liberal democracy is subject to continual revision in the crucible of pluralistic politics
        - the beliefs within the system of Liberal Democracy change over time unlike religions which have fixed creeds
    - "the guarantee of free speech ensures that no one may be forced to swear adherence to the culture of liberal democracy"
    - the guarantee of free speech ensures that religious points of view can participate in public debate
- Establishment Clause
  - "clearly forbids a government church, and with it oaths or tithes - that is, enshrinement of official religious belief or exaction of financial support for religion"
  - three degrees of government favoritism to religion
    - coercion, endorsement, acknowledgment
    - coercion and endorsement have not been allowed by the court
      - but acknowledgment has been deemed acceptable
        - Sullivan believes that the "establishment of secular public order forbids government to put its imprimatur of approval on religion through any official action"
          - therefore, acknowledgment of religion should not even be allowed
    - suggests two ways by which the court has allowed financial aid to religious beneficiaries
      - "including religious beneficiaries in a scheme that also extends benefits to other comparable but nonreligious beneficiaries"
      - "allowing private individuals to choose how to use indirect tax benefits instead of centrally directing how cash grants will be used"
    - argues that although tax-payers have a right not to finance religion, they do not have the right to choose not to finance something based on their religious beliefs"
      - eg. "all taxpayers have a right not to subsidize religion" but "no taxpayer has a right not subsidize abortion"
- Free Exercise Clause
  - the Court has "overwhelmingly rejected free exercise exemption claims"

-argues that the Court should not protect "adult 'members of religious communities from the consequences of their religious choices"

-religious groups should be allowed to "withdraw from regulation insofar as compatible with peaceful diarchic coexistence"

-however, groups should not be allowed to opt-out from obligations to the state