

The US elections: Lieberman's holy war against the Bill of Rights

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Speaking on Sunday, August 27 at the Fellowship Chapel Church in Detroit, Democratic vice presidential candidate Joseph Lieberman declared, “the Constitution guarantees freedom *of* religion, not freedom *from* religion.”

This statement is a defining moment in the 2000 presidential campaign. It is the Connecticut senator's most explicit attack to date on the Constitutional principles of freedom of thought and expression and the separation of church and state.

In the same address Lieberman extolled belief in God as the basis of morality and the informing principle of American society. He told his audience, “As a people, we need to reaffirm our faith and renew the dedication of our nation and ourselves to God and God's purpose.”

The speech was in keeping with the general tenor of the Connecticut senator's public remarks since his selection as Democrat Al Gore's running mate. With Gore's blessing, Lieberman has flaunted his religion and cited it repeatedly as the justification for a crackdown on what he deems to be gratuitous sex and violence in the media, as well as other measures of an anti-democratic character.

Lieberman has backed the efforts of the Republican right to break down legal barriers to the intrusion of religion into public education, calling for a “moment of silence” in the schools. He is a supporter of government vouchers for private, including religious, schools. For all his claims to the contrary, he promotes censorship of the media and the arts. He has proposed, for example, that the Federal Communications Commission consider so-called “violent content” when it renews radio and television licenses.

It is no accident that this self-styled guardian of morality and faith was the first prominent Democrat to publicly denounce Clinton during the Monica Lewinsky affair, legitimizing the right-wing conspiracy headed by Independent Counsel Kenneth Starr that sought to use a sex scandal as the pretext for a political coup d'etat. Gore chose Lieberman for his running mate precisely because of the Connecticut senator's right-wing credentials, in line with the efforts of the Democrats to appropriate the social policies of the Republicans.

In the face of scattered criticism of Lieberman's Detroit speech, Gore defended his running mate, while Lieberman himself said he would continue to preach from the campaign stump, calling his invocation of God and religion “the American way.”

For the Democratic candidates and the political advisers managing their campaign, Lieberman's religious protestations have more to do with immediate electoral tactics than any deeply held convictions or considered political conceptions. Operating as they do at the most banal and crudely opportunistic level, they calculate that a Democratic ticket that echoes the sermonizing of the Republican right will neutralize their opponents' attempts to exploit the Lewinsky scandal, while garnering support from certain sections of the electorate.

However limited the motivations behind Lieberman's preachments, his claim that the Constitution does not guarantee freedom from religion has

far-reaching implications. He himself is, in all likelihood, incapable of conceiving of the political consequences that can result from prominent political figures trifling with such core Constitutional issues.

On its face, Lieberman's interpretation of the First Amendment prohibition of state support for religion is inane. There cannot be freedom *of* religion without the right to be free *from* religion. The conceptual foundation for all democratic rights to free thought and expression is undermined if the secularist basis of the state is removed.

The centrality of the principle of freedom of conscience to the Constitution as a whole is indicated by the fact that it is proclaimed in the very first sentence of the Bill of Rights. The First Amendment is explicit in rejecting theocracy and asserting the secularist basis of the American republic: “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.”

Lieberman has responded to criticisms of his statement by reassuring one and all that he supports the separation of church and state and opposes the religious right on issues like abortion. Those who are disturbed by his characterization of the First Amendment are, he implies, making a mountain out of a molehill.

But Lieberman's cavalier attitude does not alter the fact that his attack on the secularist principle embodied in the First Amendment places a question mark over the legal foundation for a host of democratic rights, from the right to abortion to such issues as gay rights, divorce, equality of the sexes, and basic matters of privacy. A critical aspect of the Constitutional separation of church and state is the right to be “left alone,” i.e., to be free from the intrusive meddling of organized religion or the state into one's private affairs. If, as Lieberman claims, the Constitution does not guarantee freedom from religion, then what is to prevent the state from imposing its concept of morality, based on religious beliefs, when it comes to sexual practices between consenting adults, personal relations inside and outside of wedlock, the teaching of evolution, or the content of the books, films, plays and music made available to the public?

Not only atheists, but also religious agnostics would be potentially subject to legal sanction or discrimination on account of their beliefs. The government could demand to know one's attitude toward God, or toward a specific religion, and one could be punished for not professing a belief in God or adherence to a particular faith. There would be nothing in the Constitution that in principle protected a person from being fired from his job because of his ideas on religion. Nor would there be a Constitutional barrier preventing the state from taxing the populace to support religions institutions.

Lieberman's phrase “freedom of religion but not freedom from religion” is a formula that could be accepted by the Islamic fundamentalist rulers of Iran. They do not insist that all Iranians become Shiite Muslims, but they do insist that religion infuse every pore of society and shape both law and public policy.

The Democratic vice presidential candidate's claim is wrong not only from the standpoint of Constitutional law, but also from the standpoint of

the history of American jurisprudence. American common law has undergone a long evolution, beginning in the colonial period. The Massachusetts Bay Colony was a theocracy, and the growth of the democratic element within American common law has been bound up precisely with an increasingly prominent assertion of freedom from religion.

The Pilgrims fled England toward the beginning of the seventeenth century to achieve freedom of worship. But in the New World they set up a theocracy that repressed all other religions. There was no freedom from religion in the Massachusetts Bay Colony. The theocratic order found its most tragic expression in the Salem witch trials of 1692.

In the course of the eighteenth century, under the influence of the European Enlightenment, the theocratic element in the American colonies receded and more democratic principles gained strength. A critical factor in the development of American common law into the most advanced form of bourgeois democratic jurisprudence was the transition from the earlier theocratic principle to the establishment of a firm separation between church and state.

The American Revolution imparted a powerful impulse to the elimination of the tyranny of religion over the American people. Its most important political and intellectual leaders were imbued with the anti-clerical tradition associated with the Enlightenment and embedded in the progressive evolution of common law in the colonies. They were freethinkers and opponents of religious dogma.

Tom Paine was a deist, as were Thomas Jefferson and James Madison, two of the most important framers of the Bill of Rights. Despite the prevalence of religious backwardness within the population, they insisted that the new republic be founded on a secularist legal code.

Historically speaking, a seminal factor in the development of American jurisprudence and the expansion of democratic rights in general has been the restriction of the authority of religion and the power of the state to impose an officially sanctioned moral code. This battle has continued into the present, in the struggle against Blue Laws, anti-abortion laws and other legal impositions of religious doctrine.

Lieberman, in defending his views on religion and political affairs, has repeatedly stressed the role of religion in establishing a unifying ethical principle among the American people. He may sincerely believe in this conception. That, however, does not detract from the fact that his notion of the role of religion is reactionary, and reflects ignorance of the history of American common law and the evolution of the democratic principles that were laid down in the Constitution and subsequently expanded.

The extension of democratic rights in the US was bound up with the idea that people had the right to think whatever they pleased, as long as they did not harm others or break the law. Whether they chose to live by the Judeo-Christian moral code was their own affair. What Lieberman is proposing is a retrogressive throwback to the notion of religious-based "ethical unity" that was prevalent prior to the American Revolution.

The progressive significance of the abandonment of "ethical unity" is explained by a noted scholar in his study of the evolution of American jurisprudence:

"Taken together, the various libertarian changes in law [in the late eighteenth and early nineteenth centuries] did far more than merely restructure institutions, safeguard the procedural rights of criminal defendants, and grant equal rights to certain previously underprivileged classes. Those changes contributed in important ways to the breakdown of the ideal inherited from the pre-revolutionary period that communities should stand united in the pursuit of shared ethical ends.

"The breakdown of ethical unity began in the 1780s with the virtual cessation of criminal prosecutions for various sorts of immorality ...

"What was beginning to occur after the Revolution was not significantly more immorality but an abandonment of the pre-revolutionary notion that there was any one set of ethical standards that all men ought to obey"

(William E. Nelson, *The Americanization of the Common Law*, Cambridge, Mass.: 1979, pp. 109-11).

Given the enormity of Lieberman's attack on core Constitutional issues, the response has been remarkably and disturbingly muted. An exception to the general unconcern is the Anti-Defamation League (ADL), which issued an open letter on August 28 denouncing Lieberman's use of the elections to promote religion. The signatories, ADL National Chairman Howard Berkowitz and National Director Abraham Foxman, correctly wrote, "The First Amendment requires that government neither support one religion over another nor the religious over the nonreligious."

They went on to say, "The United States is made up of many different types of people from different backgrounds and different faiths, including individuals who do not believe in any god, and none of our citizens, including atheistic Americans, should be made to feel outside of the electoral or political process." Significantly, B'nai B'rith, the Jewish service organization and parent group of the ADL, came to the defense of Lieberman and disassociated itself from Berkowitz and Foxman.

More is involved in Lieberman's light-minded attitude to fundamental political issues than sheer ignorance. A man who can make such an inane statement about the First Amendment is one who has not thought seriously about Constitutional questions for a long time, if ever.

Lieberman expresses an indifference to democratic principles that marks the political establishment as a whole. This political trait cannot be ascribed simply to subjective qualities of this or that politician. Rather it reflects a political phenomenon with objective roots in the structure of American society.

Just 40 years ago John F. Kennedy, the first Catholic to be elected president, made the absolute separation of religion from political life the foundation of his campaign. He insisted that his religious beliefs were nobody's business but his own, and that, if elected, they would play no role in the formulation of government policy.

How is one to account for the transition from Kennedy to Lieberman? It is the expression of a profound process of political decay and erosion of American democratic institutions. This political decline is, in turn, rooted in social transformations, above all the enormous growth of economic inequality.

The chasm that separates the richest 5 or 10 percent from the rest of the population is reflected in the alienation of the entire political establishment from the masses of working people, and the extreme narrowing of the popular base of both big business parties. The candidates of these parties, whatever their election rhetoric, speak for social layers whose wealth has mushroomed in the course of the prolonged boom on Wall Street. Along with the rise in share values, the corruption of the political system has grown more naked and pervasive. The result is a political elite that is incapable of articulating the most basic democratic principles.

Despite the cavalier attitude of Lieberman and company, ideas have a logic of their own. The promotion of the notion that there is no freedom from religion in America may prove to have tragic consequences. What is to prevent in the future a law from being introduced in Congress proclaiming the United States a Christian nation, with all that such a law would imply in terms of mass political repression?

Lieberman's statements have exposed the acute dangers posed by the decay of political life in the US. They have put paid to the notion that the elections are a choice between the "lesser of two evils," and that a Democratic victory will safeguard democratic rights. If the Clinton administration has provided a degrading demonstration of prostration before the extreme right, a Gore administration will embody the adoption by the Democratic Party of broad sections of the Republican right's program.

Whatever the outcome of the elections, the seeds have been sown for a dramatic escalation in the assault on democratic rights.



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