

Justice Scalia repudiates separation of church and state

Patrick Martin
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In the latest in a long line of bigoted diatribes against democracy and equality, Supreme Court Justice Antonin Scalia declared Saturday, in remarks at a Catholic school in Louisiana, that there was no constitutional barrier to the US government discriminating in favor of religious believers against non-believers.

Scalia was speaking at Archbishop Rummel High School in the New Orleans suburb of Metairie. He rejected claims that the First Amendment requires the government to be neutral between religion and non-religion. “To tell you the truth, there is no place for that in our constitutional tradition,” he said. “Where did that come from?”

The First Amendment to the US Constitution reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Thomas Jefferson, author of the Declaration of Independence and the state of Virginia’s declaration of religious freedom, described the First Amendment as establishing a “wall of separation” between church and state. That constitutional tradition was reaffirmed in such decisions as *Everson vs. Board of Education* (1947), when Justice Hugo Black wrote in his opinion, “Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.”

Scalia adheres to a very different theory. He told his audience in Louisiana, “To be sure, you can’t favor one denomination over another, but [you] can’t favor religion over non-religion?” On other occasions, he has specified Judeo-Christian religions, in particular, as

legitimate objects of government support, provided no one sect is preferred.

In his remarks in Louisiana, Scalia elaborated a remarkable theory of American history: the United States won wars, and even specific battles, because of divine favor, a payoff from the divinity for lip service from American politicians.

“God has been very good to us,” Scalia said. “That we won the revolution was extraordinary. The Battle of Midway was extraordinary. I think one of the reasons God has been good to us is that we have done him honor. Unlike the other countries of the world that do not even invoke his name, we do him honor. In presidential addresses, in Thanksgiving proclamations and in many other ways.”

Presumably, the bombs dropped by Obama on Syria and Iraq, the drone-fired missiles employed for targeted assassinations in Yemen, Afghanistan and Pakistan, and even the bullets fired by Chicago cops into the bodies of fleeing youth are similar manifestations of divine favor.

Scalia actually made a labored linguistic argument (too abstruse and indirect to detail here), tracing the separation of church and state back to words “spoken by a serpent, addressing a woman named Eve.” In other words, Jefferson’s “wall of separation” is really the spawn of Satan!

The Supreme Court justice claimed that the interpretation of the First Amendment to bar government support for religious institutions dates back only to the 1960s. Without acknowledging his real target, Scalia, an ultra-right Catholic, was aiming his fire at another Catholic, President John F. Kennedy, who made perhaps the most famous and categorical affirmation of the separation of church and state during his 1960 presidential campaign.

Seeking to rebut suggestions by Protestant fundamentalists that a Catholic president would take orders from the Pope, Kennedy spoke before an association of Protestant ministers in Houston, Texas. His words are worth recalling, for they underscore the enormous decline in social and political thought in bourgeois circles over the past half century.

“I believe in an America where the separation of church and state is absolute,” Kennedy declared, “where no Catholic prelate would tell the president (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote; where no church or church school is granted any public funds or political preference; and where no man is denied public office merely because his religion differs from the president who might appoint him or the people who might elect him.” He added, “I do not speak for my church on public matters, and the church does not speak for me.”

Scalia’s comments are particularly provocative because the court is hearing arguments later this year in yet another case brought by religious organizations claiming that the Obama administration’s Affordable Care Act violates their religious freedom by requiring hospitals, colleges and other institutions run by religious groups to offer contraceptive coverage to employees.

He criticized his fellow justices who have voted to uphold the separation of church and state and see it as prohibiting discrimination in favor of religious groups in setting government policy. He declared, “Don’t cram it down the throats of an American people that has always honored God on the pretext that the Constitution requires it.”

Scalia added, in another attack on constitutional principles, that courts, including the Supreme Court, were wrong to insist that search and seizure is unconstitutional without a warrant. “We made that up,” he said, claiming that the constitutional requirement applies only to homes, not other premises, or vehicles, or people walking down the street.

The senior justice—he was appointed by President Ronald Reagan in 1986 and confirmed by a unanimous bipartisan Senate vote—has a long record of such anti-democratic sophistries. In December 2014, after the release of the Senate Intelligence Committee report on CIA torture, Scalia declared that the constitutional

prohibition of “cruel and unusual punishment” did not apply to torture for interrogation purposes, since that torture was not intended as punishment, but rather to extract information.

Last month, he interrupted arguments over an affirmative action case to declare that African-American students might be better off not going to top universities “where they do not do well, as opposed to having them go to a less-advanced school, a slower-track school, where they do well.” This philosophy would take American education back to the days before *Brown v. Board of Education* banned segregated schools.

In that respect, the location of Scalia’s latest outpouring of ignorance and misinformation may have some significance. Metairie is the area once represented in the Louisiana state legislature by former Ku Klux Klan leader David Duke, who was elected as a Republican in 1989 and served for three years.

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