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Churches 'are not bound by the First Amendment and cannot violate it'; Racism in the church

John L. Allen Jr. | Sep. 21, 2007 All Things Catholic

Ronald Reagan once famously insisted that Soviet Premier Mikhail Gorbachev ?tear down that wall,? referring to the division of Berlin into East and West. In a somewhat less dramatic fashion, Auxiliary Bishop Thomas J. Curry of Los Angeles demanded Thursday that another wall be torn down -- in this case, the metaphor of a ?wall of separation? between church and state in the United States, which Curry called ?bad law and bad history.?

In point of fact, Curry insisted, separating church and state is neither what the First Amendment was intended to do, nor is it what has actually happened over more than 200 years of American history. For that reason, he said, it?s time to ?abandon the language of church/state separation? altogether.

The Irish-born Curry, who has written extensively on church/state relations in the United States over the years, spoke at a symposium on faith and politics sponsored by Duquesne University in Pittsburgh on Sept. 20.

In essence, Curry?s argument was that the image of a ?wall of separation? between church and state, which comes from an 1802 letter by Thomas Jefferson to the Danbury Baptists, has badly distorted the popular American understanding of the First Amendment. Specifically, Curry said the First Amendment?s ?free exercise of religion? clause has come to be misunderstood, under the influence of the idea of separation between church and state, in at least three fatal ways:

- As a government grant of religious tolerance, ignoring that religious freedom is actually an element of natural law;
- As requiring religion to stay out of public debates and spaces, which, Curry argued, was never the intent, nor is it the actual meaning of the First Amendment;
- As empowering the government to foster the religious freedom of individual citizens, when in fact, Curry said, all the First Amendment means is that the state has no power in religious matters.

Curry noted that it was the 1947 Supreme Court case *Everson* v. *Board of Education* that enshrined the metaphor of a ?wall of separation? as a guiding idea in American legal thought. (The case involved charges that a program in New Jersey, in which the state paid the cost of transportation to and from private schools, indirectly amounted to establishment of religion.) Curry said that in the 60 years since, the wall metaphor has been ?an unmitigated disaster.?

In truth, Curry argued, the only subject addressed by the First Amendment is the state -- churches, he said, ?are not bound by the First Amendment and cannot violate it.?

Curry said that religious bodies have every right to involve themselves in the public life of the country, as religious leaders and groups have done repeatedly throughout American history, from debates over slavery and the death penalty to stem cell research and immigration. Further, Curry said, there?s no reason that church and state can?t collaborate in pursuit of a legitimate secular aim, such as education or poverty relief.

Taking the ?wall? metaphor seriously, Curry said, distorts the original American understanding of the free exercise of religion into something more akin to the rigid French policy of denying religion any public voice or role.

?Churches can be as involved as they want to in political affairs,? Curry said. ?They may risk their tax exemption, but that?s not a matter of constitutional law.?

?We hear a lot today about the church imposing its beliefs on the country, but this isn?t so,? he said. ?Having religious reasons for favoring or opposing a secular law is not prohibited by the constitution. If we do that, we end up controlling or banning certain forms of thought, which is precisely what the founders wanted to avoid.?

The ?wall? image, Curry said, has also fostered what he described as a false notion that the government has a positive role as a promoter of individual religious freedom. This illusion, he said, has produced an ever-increasing cycle of demands for new religious exceptions to public law:

- The use of drugs such as peyote in religious ceremonies;
- Refusal to display one?s photo on a driver?s license on the grounds that it violates scriptural bans on graven images;
- Refusal to use a social security number on the grounds that ?only God should number us?;
- Refusal to accept blood transfusions for oneself or one?s children;
- Refusal to send children to public schools beyond a certain level.

In each case, Curry said, there may be an argument for accommodation of these behaviors on the grounds of fairness or compelling public interest, but it?s not because the behavior is religious.

?If anyone can decide what?s religious and then demand that the government protect it, we would have complete anarchy,? Curry said.

Under the influence of a false reading of the ?free exercise? clause, Curry said, courts sometimes grant exemptions from civil laws to religious groups on an ad-hoc basis. For example, he said, the Supreme Court has held that the Amish don?t have to send their children to school beyond the eighth grade, but they refused to allow a Jewish military officer to wear a yarmulke under his uniform. Unwittingly, Curry argued, such jurisprudence puts the courts in the position of deciding who gets religious freedom and who doesn?t.

As another example, Curry pointed to a Florida case in which a municipality had proposed knocking down headstones in a cemetery to make mowing the grass easier. Both Christians and Jews objected on the grounds that the headstones had religious significance, and the judge actually spent weeks studying the theological and spiritual significance of burial rituals in both faiths. Curry argued that the case should have been decided on other grounds, such as basic fairness or due process, rather than having the court assess specifically religious questions.

Curry?s deliberately provocative conclusion was that those who promote the notion of a ?wall of separation? between church and state are guilty of the same approach to the First Amendment that Christian fundamentalists take to the creation accounts of Genesis -- reading it outside its historical context and the intent of its authors.

The wall metaphor, Curry said, ?is incapable of leading us to appreciate the true meaning of the First Amendment.?

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Three other interesting notes from Curry?s presentation.

First, as he has in the past, Curry sounded a note of caution about public funding for Catholic schools, such as voucher programs. He noted the irony that at the same time Catholic leaders have clamored for greater public support for church-run schools, they have also expressed growing concern for their Catholic identity. Curry noted that it?s tough to have both at the same time, since ?he who pays the piper calls the tune.?

?I suppose all of us want to have our cake and eat it too,? he laughed.

Second, Curry pointedly conceded in response to a question from the floor that, given his premises, there?s precious little constitutional justification for having publicly funded Catholic chaplains (or chaplains from any other denominational background) in either the armed forces or the prison system.

He said that public authorities often bend the rules for religious groups in ways based more on cultural tradition than the Constitution.

?I go to celebrate Mass sometimes in the prisons, and every time I bring a small amount of wine with me, which is completely against the regulations,? Curry said. ?Thank God, no one so far has arrested me.?

Third, Curry said that in many ways the Supreme Court has not adopted the idea of a ?wall of separation? between church and state in its actual jurisprudence. The court has held, for example, that while a public school cannot require prayer, students who organize prayers on their own may do so on school grounds.

?The court needs to bring its rationale in line with its actual decisions,? Curry said.

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I?ve been on the road this week, speaking at two venues in the Portland area (All Saints Parish and a two-day theological symposium at Mount Angel Abbey), plus speaking at the same symposium at Duquesne University where Curry appeared.

Mount Angel, a picturesque abbey nestled on a wooded hilltop called Tapalamaho, or ?mount of communion,? in the local Native American language, was founded in 1882 by two Swiss-German Benedictine monks. Shortly afterwards the community opened a seminary, also called Mount Angel, which is now the oldest seminary West of the Rockies. It draws seminarians from all over the country, both diocesan and religious order candidates.

My topic at Mount Angel was my ?Mega-Trends in Catholicism? project, and if the quality of questions I drew over two days is any indication of the vitality of the seminary, something fairly impressive is happening under Abbot Nathan Zodrow and the faculty. This is the kind of place where one can be standing around having a cup of coffee, and an eager young seminarian will come bounding up to ask what the Vatican?s position is on Wittgenstein. (He was disappointed to learn there isn?t one, though I tried to soften the blow by discussing Benedict?s views of language, especially the idea of Christianity as a culture that fosters its own argot.)

My first mega-trend is the demographic shift in global Catholicism from north to south, and as I was repeatedly reminded, Mount Angel in many ways offers a microcosm of that broader current in the church. Today?s seminarians are disproportionately likely to be Hispanic, Asian and African, creating both healthy diversity and inevitable tensions.

The very last question I was asked, at the end of an intense two-day symposium, makes the point. We had been discussing the global expansion of Pentecostalism in the 20th century, and a young African seminarian rose to say that in his experience, other denominations sometimes do a better job of dealing with racism inside the church than Catholicism. If the Catholic future lies to some extent in the global south, he asked, doesn?t this suggest that Catholicism will need to come to terms with racism in its own house?

I cannot pretend to have given a terribly satisfying answer; perhaps the most important point I made was to validate the importance and the urgency of the question. I also can?t say whether things are any worse in Catholicism than in other traditions, and I suspect a great deal depends on what specific location and community one has in mind. Yet there?s no doubt that serious problems endure, and in the 21st century those challenges could easily metastasize if the church does not get ahead of the curve.

At a theological level, the Catholic church describes itself as the sacrament of the unity of the human family. In principle, ?catholic? means universal, so that a truly Catholic church ought to challenge prejudices of all sorts, whether racial, cultural, national, or ideological. Catholicism thus contains within itself unique resources to challenge the stain of racism.

Yet, I acknowledged, the church has not always succeeded in mobilizing those resources especially well. It?s important to realize, I said, that racism in the church is not just a problem in the global North, as if it?s only white Catholics who need to confront the ghosts in their closet.

One example comes from India. Estimates are that somewhere between 60 and 75 percent of Indian Catholics are Dalits, who often see Christianity as a means of protesting the caste system and of affiliating with a social network to buffer its effects. Beginning in the 1970s, the Catholic church took up the Dalit cause in Indian society, yet the church itself has a mixed record. Archbishop Marampudi Joji of Hyderabad, the first Dalit archbishop, said in a 2005 interview that ?discrimination against Dalits has no official sanction in the church, but it is very much practiced.?

Joji told a story about a meeting between Catholic leaders and the former Prime Minister Indira Ghandi in the 1970s. When the bishops complained about the treatment of Dalits, according to Joji, Gandhi shot back: ?First do justice to the Dalits within your church, and then come back to me and make your representation on their behalf. I shall do my best for you then.? Yet as of 2000, just six of the 156 Catholic bishops in India were Dalits, and out of 12,500 Catholic priests, only about 600 were Dalits.

Sensitivity to caste distinctions in the Indian church still runs strong. When Joji was appointed to an archdiocese where Dalits are not a majority, outgoing Archbishop Samineni Arulappa of Hyderabad complained, ?Rome is being taken for a ride. Rome does not know the ground realities.?

These are complex questions, and I have no magic bullet solution. It seems to me, however, that the beginning of wisdom is to acknowledge that racism, either inside Catholicism or outside it, is not a North/South issue. It?s a primal temptation of the human heart, one that Catholics will be challenged to address with new clarity in the 21st century as growing pluralism becomes a fact of ecclesiastical life.

The e-mail address for John L. Allen Jr. is **jallen@ncronline.org[1]**

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[1] mailto:jallen@ncronline.org