

Marching to Freedom/ Supreme Court Cases

God and Caesar Conflicts
in the Civil Rights
Movement and the
Supreme Court

Class Goals

- ◆ Contact information – GodandCaesar@gmail.com or thcastner@comcast.net
- ◆ Explore the role of prophetic religion in the African American Civil Rights Movement.
- ◆ Trace the evolution of Supreme Court cases dealing with God and Caesar conflicts in the United States.

Religion and the Cold War

- ◆ In the Cold War America saw itself as the Godly nation fighting Godless Communism.
- ◆ What steps can “one nation under God” take to promote its interests?
 - Iran? Guatemala?

Barbara Savage's Perspective

"The emergence in the late 1950s of a Southern civil rights movement with churches, church people, and church culture at its center was a powerful and startling departure. . . . The movement is best thought of not as an inevitable triumph or a moment of religious revival, but simply as a miracle."

Contemporary Scholarship

- ◆ Jane Dailey, “Sex, Segregation, and the Sacred after *Brown*.” JAH (June 2004)
 - Argued that a theology of segregation was crucial to the resistance to the Civil Rights movements and just as much a part of American religion as King’s version.
 - Often fears of interracial marriage were expressed in religious language.
 - The Government’s stripping of tax exempt status from Bob Jones University for failing to integrate was crucial to the formation of the modern religious right. (Ballmer)

David Chappell – *A Stone of Hope*

- ◆ Saw the Civil Rights movement as a religious revival.
- ◆ Prophetic religion was key to the movement's success and power.
- ◆ The pro-integrationist message of the Bible, major southern denominations, and many religious leaders helped to mute white resistance.

Martin Luther King

- ◆ But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town.

King's Prophetic Critique

- ◆ American Segregation is a scandal in the eyes of God and contradicts the Gospel and core American values.
- ◆ American society must rededicate itself to fighting against poverty at home and overseas.
- ◆ American militarism is a threat to world peace and stability (especially in Vietnam)

King's Dream

- ◆ I have a Dream – or I have an eschatological vision?
 - We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until "justice rolls down like waters, and righteousness like a mighty stream. (Amos 5)
 - I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight; "and the glory of the Lord shall be revealed and all flesh shall see it together. (Isaiah 40)

SNCC Founding Statement 1960

- ◆ Nonviolence, as it grows from the Judeo-Christian tradition, seeks a social order of justice permeated by love. Integration of human endeavor represents the crucial first step towards such a society.
- ◆ Through nonviolence, courage displaces fear. Love transcends hate. Acceptance dissipates prejudice; hope ends despair. Faith reconciles doubt. Peace dominates war. Mutual regards cancel enmity. Justice for all overthrows injustice. The redemptive community supersedes immoral social systems.
- ◆ By appealing to conscience and standing on the moral nature of human existence, nonviolence nurtures the atmosphere in which reconciliation and justice become actual possibilities.

Competing Visions

- ◆ A Civil Religion that promotes “ceremonial deism,” patriotism, and American power and activity in the world.
- ◆ A Prophetic Critique that calls America toward a “beloved community” reflecting inclusion, concern for the poor, and pacifism.
- ◆ Which vision do you prefer?

God and Caesar – Case Studies

- ◆ A student censors the “under God” section of the pledge by saying “beep” during it. As the teacher what do you do?
- ◆ As a principal do you provide a stipend for the advisor of an afterschool Bible study club? All other club advisors are paid.
- ◆ Would you approve of a school voucher program that parents could apply to fund a Muslim school that teaches the supremacy of Shar’iah Law?

Constitutional Interpretation

◆ The Originalist Position

- A Portion of the Constitution can only mean what it was understood as meaning for the original authors
- Ignores the problems of new circumstances, unclear, contested, or compromised intent. May require judges to be “time travelling mind readers.”

Constitutional Interpretation II

- ◆ The Living Constitution Position
 - The Constitution and constitutional interpretation evolves to keep up with changing societal norms.
 - To what extent can/should unelected judges change the meaning of the document?
 - Is there a point where reinterpretation becomes rewriting?

Constitutional Changes

- ◆ Constitutional Amendments
- ◆ More fully applying original principles
- ◆ Reflecting changing societal expectations/norms
 - Cruel and unusual punishment
 - *Brown v. Board of Education*
 - *Loving v. Virginia*
- ◆ Reflecting the will of voters as expressed through elections
 - Constitutional Revolution of 1937

First Amendment

- ◆ Congress shall make no law respecting the establishment of religion or restricting the free exercise thereof. . .
- ◆ Establishment Clause: Bars the establishment of a national church. It would be too controversial and conflict with state established churches.
- ◆ Free Exercise Clause: Congress may not interfere with religious groups acting according to the dictates of their conscience. (But what limits?)

1st Amendment – Core Principals

- ◆ Liberty of conscience
- ◆ Free exercise of religion
- ◆ Religious pluralism
- ◆ Religious equality
- ◆ Separation of church and state
- ◆ Disestablishment of religion

14th Amendment 1868

- ◆ Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

19th Century Decisions

- ◆ 1871 – *Watson v. Jones* – The Supreme Court refused to intervene in an internal church dispute claiming that courts have no jurisdiction over internal matters of faith and practice.
- ◆ 1879 *Reynolds v. United States* -- In a question related to polygamy in Utah the court ruled that the claim of a religious duty, ie to practice polygamy within the religion of Mormonism, did not permit the individual to violate a Congressional statute against polygamy. The First Amendment protected religious belief but not all behaviors which stemmed from that belief.

Selective Incorporation

- ◆ 1925 – *Gitlow v. New York* – In this free speech case in which the Supreme Court began to selectively incorporate rights from the Bill of Rights into the Fourteenth Amendment and declare that they were binding on the states. While the case only spoke of the freedom of speech and the press from the First Amendment it was later expanded to include religion.
- ◆ 1940 – *Cantwell v. Connecticut* – Continued the incorporation process begun by *Gitlow* and declared that the Fourteenth Amendment required states to abide by the Free Exercise clause of the First Amendment.

Everson v. Board of Ed. 1947

- ◆ While allowing public schools to spend money transporting students to parochial schools this decision helped to clarify the court's interpretation of the Establishment clause and incorporated it into the 14th amendment.
- ◆ *"The 'establishment of religion' clause of the First Amendment means at least this: 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. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.*

Everson - Continued

- ◆ *No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'*"

School Prayer

- ◆ 1962 – *Engel v. Vitale* – The decision declared mandatory prayer in school unconstitutional because it violated both the First and the Fourteenth Amendments.
 - *"It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance."*

School Bible Reading

- ◆ 1963 – *Abington Township School District v. Schempp* – Banned publicly sponsored devotional Bible reading in the public schools. At the same time it specifically sanctioned the reading of the Bible for its literary or historical merits.
 - *"The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind."*

Schempp Continued

- ◆ *We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality."*

Evolution

- ◆ 1968 – *Epperson v. Arkansas* – Struck down an Arkansas state law which banned educators in state supported schools or universities "to teach the theory or doctrine that mankind ascended or descended from a lower order of animals," or "to adopt or use in any such institution a textbook that teaches" this theory.
- ◆ "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite."

The Lemon Test

- ◆ 1971 -- *Lemon v. Kurtzman* – Struck down Rhode Island and Pennsylvania laws that allowed the state government to partially reimburse parochial schools for the cost of teachers salaries, text books, and other instructional materials. It created the three pronged lemon test for determining whether specific laws violated the constitution.
- ◆ *"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the statute must not foster 'an excessive government entanglement with religion.'"*

School Religious Clubs

- ◆ 1990 – *Board of Education of the Westside Community Schools v. Mergens* – Ruled that student run religious clubs could make use of school property during non-school hours. It also declared the 1984 Equal Access Act (which had guaranteed religious groups access to school facilities) to be constitutional. Since the decision was based on the interpretation of a statute and not the First Amendment it did not change the courts reading of the establishment clause.

Prayer at Graduation

- ◆ 1992 -- *Lee v. Weisman* – Struck down clergy led prayers at student graduations and created the coercion test to measure whether or not a school's engagement in religion violates the First Amendment.
 - *“What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.”*

“Under God”

- ◆ 2004 – *Elk Grove United School District v. Newdow* – This case challenged the constitutionality of the “under God” line in the Pledge of Allegiance. While the court refused to rule on the merits of the case, in a dissent Sandra Day O’Connor posited a ceremonial deism test that might point a way out of the controversy.
- ◆ Proposed test for the pledge:
 - history and ubiquity
 - absence of worship or prayer
 - absence of reference to particular religion
 - minimal religious content.