

Separation of Church and State: Constitutional Policy in Conflict

Angela Oberbauer, Professor, Political Science Department, San Diego Mesa College

Abstract

Christian and Conservative Right advocacy groups are especially in conflict with Constitutional Policy statements within the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” known as the “Establishment” and “Free Exercise Clauses”. Fundamentalist in the Christian Coalition, the Catholic Opus Dei, and Neo-Conservatives, are among those who believe morality in society must be restored through God Sovereign policies. Their dogma supports an Authority, hierarchal economic power, unusual reverence toward wealth, and tight control over society by eliminating democratic advancement. Their plan includes incremental deletion of laws that protect “Separation of Church and State.” Vital to implementing this bold plan, is placing followers [activists] into prominent positions within state and federal governments--the Executive, Congress, and Supreme Court, and into education, economic and communications institutions. The activist’s role is to use their position to reverse policies [through subtle or even blatant political processes] that hamper fundamentalist and conservative aspirations to secure closer State and Church ties, thereby facilitating compliant political, social, and economic order that reflect their vision for a moral society.

Separation of Church and State: Constitutional Policy in Conflict

The phenomena instituted within the First Amendment’s Establishment and Free Exercise Clauses as part of the Bill of Rights on December 15, 1791, will not be reconciled---still in present times, by Religious Right and Conservative Interest Groups in America. They are determined to bring back “no” Separation of Church and State. In fact, Professor Martin Marty (2008) of Religious Studies at the University of Chicago recently wrote that Republican Mike Huckabee, currently running as Presidential Candidate in the national primaries, even suggests that the United States Constitution needs to be amended and revised to reflect a more Godlike Constitution.

(http://newsweek.washingtonpost.com/onfaith/martin_marty/2008/01/god_and_the_constitution.html).

Religious intolerance was common among American colonies before the Constitution was created in 1787. In fact, by the time the Declaration of Independence in 1776 was proclaimed by the new Nation’s leaders, nine of the thirteen colonies had official¹ denominations (Bardes et al. 2008 and 2007, 111).

Further, the concept that Church and State should be established as separate entities, was also suggested by Dante Alighieri in 1312, when he wrote *On Monarchy [De Monarchia]*: “...the best possible way to attain order and justice for the civilians of Florence...[or the known world]... is only with an all-knowing, good, strong, and just monarchy [empire or world government]. And that this type of temporal order will ensure the least conflict among men. The result will be universal peace...Justice is strongest only under a monarch without interference from the Pope or Church (in www.Logoslibrary.eu 2007).

¹ In both Bardes editions, same page number, Thomas Jefferson was an advocate against continued religious intolerance to be condoned under the new Constitution, therefore, it required clear modification to the fact.

Forum on Public Policy

The Founding Fathers feared continued state denomination of religion and religious practices under their new Constitution of 1787. Therefore, Thomas Jefferson, James Madison with others, supported language that expressed a “Wall of Separation between Church and State” in the First Amendment of the Bill of Rights ratified in 1791 (McConnell et al 2006, 44-46).

President Thomas Jefferson repeated his advocacy for a Wall of Separation between Church and State, when he wrote a letter to the Danbury Baptist Association on January 1, 1802, in answer to their concerns of existing religious discrimination as a minority religion in the state of Connecticut (<http://www.usconstitution.net/jeffwall.html>). The Association’s letter was sent to Jefferson on October 7, 1801. Nehemiah Dodge, Ephraim Robbins, and Stephen S. Nelson asked the President to clarify whether the Establishment and Free Exercise Clauses applied only to the Federal Government, or to national and state governments (ibid).

Jefferson believed so strongly in separation of church and state, that he, along with James Madison and James Mason, previously supported the passage of the Virginia Statute for Religious Freedom beforehand in 1786. In fact, in the Virginia Declaration of Rights² it was noted by the Representatives of Virginia on June 29, 1776 at their state convention in their “Bill of Rights” under Section 16 (ibid, 49):

That Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction not by force or violence: and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience...

The original Constitution of 1787 had no language protecting general religious freedom, other than a statement under Article VI: “...no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States” (O’Connor and Sabato 2007, 80).

Colonists had experienced religious suppression previous to their Revolution, when in 1774, the English Parliament established Anglicanism and Roman Catholicism as official religions in the colonies. The [First Continental Congress](#) was called by the Virginia House of Burgesses to assemble delegates from all 13 colonies, except Georgia, in Philadelphia in September 1774. The Congress immediately sent a letter of protest, declaring that it was “...[Astonished] that a British Parliament should ever consent to establish ... a religion [Catholicism] that has deluged [England] in blood and

² For a more defined understanding of the language in the Virginia Declaration of Rights June 29, 1776, refer to Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1443-1444, 1462-1463 (1990).

Forum on Public Policy

dispersed bigotry, persecution, murder, and rebellion through every part of the world”
(<http://www.answers.com/topic/first-continental-congress>; and Marshall 2000 at
[http://links.jstor.org/sici?sici=0080-4401\(2001\)6%3A11%3C1%3APABATW%3E2.0.CO%3B2-C](http://links.jstor.org/sici?sici=0080-4401(2001)6%3A11%3C1%3APABATW%3E2.0.CO%3B2-C)

The Fourteenth Amendment of the Constitution (1868) not only defined who a citizen of the United States is, but Congress hoped further [with the Civil War over] that additional suppressions within states’ laws against citizens would be corrected by this Reconstruction Amendment (O’Connor and Sabato 2006, 86-87):

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.

It took many decades for the Supreme Court to gradually “incorporate” most of the Bill of Rights freedoms through the 14th Amendment’s Due Process Clause, including both parts of the Religion Clause. Many scholars argue that individual freedoms protected against federal encroachment by the Bill of Rights were intended to be protected against the states as “privileges or immunities of citizens of the United States” (McConnell et al 2006, 71-76).

They further mention that the principal author of the Amendment, John A. Bingham, as well as the floor leaders who presented the proposed Amendment in both the House and Senate, refer to the Privileges or Immunities Clause as including the protections of the first eight amendments [39th Congress, 1st Session 1034 (1866)](at <http://memory.loc.gov>; McConnell et al 2006, 71-76).

There is no mention of God in the United States Constitution (at The Library of Congress). Further, within the Tripoli Treaty between the U.S. and the Barbary States approved by the U.S. Senate on June 10, 1797, the document specifically states that the United States is not a Christian nation under the Treaty’s ARTICLE 11 (Library Of Congress, 3094-96, <http://memory.loc.gov>; <http://www.yale.edu/lawweb/avalon/avalon.htm>; Gene Carmen 2007 at www.Tripod.com; http://www.stephenjaygould.org/ctrl/treaty_tripoli.html):

As the Government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquillity [sic], of Mussulmen; and, as the said States never entered into any war, or act of hostility against any Mahometan nation, it is declared by the parties, that no pretext arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries (Library Of Congress, 3094-96; <http://memory.loc.gov>;

<http://www.yale.edu/lawweb/avalon/avalon.htm>2007;

http://www.stephenjaygould.org/ctrl/treaty_tripoli.html).

Revisionists reject validity of Article 11 in the Treaty with Tripoli, because they argue that the Senators who signed it could not understand Arabic, therefore the document has no value. However, the Congressional Documents in the Library of Congress reveal in the Original Treaty Book [pages 3904-95—96], that President Adams and Secretary of State Pinckney signed it, along with three-fourths of Senators present on June 10, 1797, and read and understood the Treaty before them, translated by Joel Barlow into English, including the document receipt (Gene Carmen 2007 at <http://www.sunnetworks.net/~ggarman/index.html#Return%20to%20Essay%20list>).

The Religious Right Takes Action

The following Supreme Court rulings have inspired interest groups of the religious and conservative right to take political action because they feel violated by certain court decisions. Court rulings often affect religious or certain ethical or moral practices within public institutions.

U.S. Supreme Court Rulings on Public Schools:

Supreme Court interpretations of the Establishment Clause and Free Exercise Clause, begin to effectively incorporate First Amendment protections through the 14th Amendment's due process and equal protection clauses to state laws, with *Cantwell v. Connecticut* (1940)³ [relevant to Free Exercise of Religion]. With this case, the Supreme Court reversed a lower court's decision stating Cantwell [a Jehovah's Witness] was exercising unpopular views, "...by playing an anti-Catholic record to passersby on the streets of New Haven, Connecticut..." therefore committing a breach of the peace. The Court further pointed out that his actions caused "no clear and present menace to public peace and order...and therefore his conviction was unconstitutional (McConnell et al 2006, 64, 74, 124; and at UMKC Univ. Missouri-KansasCity.

<http://www.googlesyndicatedsearch.com/u/umkc?q=Establishment+Clause&site=none>).

With a vote of 5-4 in *Everson v. Board of Education* (1947)⁴ [relevant to the Establishment Clause): the Court upheld a state law that reimbursed parents for the cost of busing their children to parochial schools because the Majority felt the parents were only reimbursed, not the parochial school. It is suggested that the majority of justices on the Supreme Court viewed "the wall" separating church and state more as a shifting, porous barrier (McConnell, 63-64; UMKC <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/estabinto.htm>).

³ 310 U.S. 296 (1940)

⁴ 330 U.S. 1 (1947)

Forum on Public Policy

Then in *Zorach v. Clauston* (1952)⁵ the Court upheld the practice of giving public school students "release time" so that they could attend religious programs in churches and synagogues. Writing for the Court Justice Douglas said the Constitution does not require "callous indifference to religion." However, with *Engel v. Vitale* (1962)⁶ the Court ruled that New York's public school practice of beginning school days with a prayer drafted by school officials violated the Establishment Clause (2006, 238; Schmidt et al. 2007-08, 114).

The Court ruled against periods for silent meditation in the classroom in *Wallace v. Jaffree* (1985)⁷ as the Court stated that incorporation was "elementary proposition of law" (472 U.S. 38, 48-49). And with *Lee v. Weisman* (1992)⁸ prayer had been spoken before a graduation ceremony, and Justice Kennedy described prayer at graduation was unacceptable coercion (ibid). Justice Scalia noted in his dissent, that the Kennedy opinion represented a "psychojourney". Further, Scalia saw no problem with a prayer at a graduation event, unless a penalty of some sort was attached to non-participation (2006, 496; <http://www.law.umkc.edu>). However, in *Sante Fe Independent School District v. Doe* (2000)⁹ a Texas school district requested students elect a student to speak briefly over the PA system before football games. The Policy stated further that the speeches should solemnize the event and be nonsectarian in nature. The Court ruled 6-3 against the District policy, stating it violated the Establishment Clause in the First Amendment using a public air system at a public school to pray. Therefore, the Court has demonstrated a willingness to strike down any practices that might likely be perceived either as coercive or as a state endorsement of religion. (Schmidt et al. 2007-08, 115).

The Question of Financial Aid to Religious Schools

Financial aid to religious schools was at issue in *Everson v. Bd. of Education* (1947)^(ibid 4, page 7) and in *Board. of Education. v. Allen* (1968)¹⁰ when the Court also upheld a law loaning textbooks free of charge to the students in private schools. The majority argued "no funds or books are furnished to the parochial schools, and the financial aid is to parents and children, not schools." However, because aid did go directly to private schools in *Lemon v. Kurtzman* (1971)¹¹ the "Lemon" test was articulated by the Court clarifying criteria when Government action violates the Establishment Clause, unless the action shows

⁵ 343 U.S. 306 (1952)

⁶ 370 U.S. 421 (1962)

⁷ 472 U.S. 38 (1985)

⁸ 505 U.S. 577 (1992)

⁹ 530 U.S. 290 (2000)

¹⁰ 392 U.S. 236 (1968)

¹¹ 403 U.S. 602 (1971)

[It]:

1. **Has a significant secular (i.e., non-religious) purpose,**
2. **Does not have the primary effect of advancing or inhibiting religion, and**
3. **Does not foster excessive entanglement between government and religion**

(Greenberg 2003, 462; 2006, 352, 372; at UMKC <http://www.law.umkc.edu/>; at <http://www1.law.umkc.edu/Library/bookmarks.htm#fedcourts>; and <http://supreme.justia.com/scripts/search>).

In 1985, the Court ruled in *Aguilar v. Felton* (1985)¹² that sending government-paid teachers into parochial schools to provide remedial education violated the establishment clause, as the program "excessively entangled" state and religion.

However, in *Agostini v. Felton* (1997)¹³ the Court upheld the practice of providing services of government-paid counselors teaching at sectarian schools (McConnell et al. 2006, 390 and 417).

Further, in 2002, the Court ruled in *Zelman v. Simmons-Harris*¹⁴ that state Vouchers allocated through an Ohio program providing financial assistance to parents of private school children in the Cleveland City School District--based on a parent's financial need, was in order. The plaintiffs argued that 90 percent of the money given to the parents was used to send their children to parochial schools. Nevertheless, the Majority voted 5-4 in favor of the Voucher program because they suggested it did not violate the Establishment Clause. Chief Justice Rehnquist noted that the program was neutral with respect to religion, and the money was given directly to the parents. The four Dissenters stressed voucher provisions were used for and benefited religious schools, and created a "...religiously based conflict harmful to the Nation's social fabric" (<http://www1.law.umkc.edu/Library/bookmarks.htm#fedcourts> ; Bardes et al. 2007, 113).

Rulings that supported or denied Theocracy establishment:

State laws that define acts of murder and stealing are agreed upon by state legislatures and the People. However, when a law's purpose and effect would be religious, not secular, then it violates the Establishment Clause. In *McGowan v. Maryland* (1961)¹⁵ the Court was considering the constitutionality of a state specific Sunday closing law. "The Court found there were secular benefits to having a uniform day of rest, allowing the scheduling of community activities free from many work conflicts, and that

¹² 473 U.S. 402 (1985)

¹³ 521 U.S. 203 (1997)

¹⁴ 536 U.W. 639 (2002)

¹⁵ 366 U.S. 420 (1961)

Forum on Public Policy

predominated over any present day religious purposes or effects, and thus the Sunday closing law was constitutional” (McConnell 2006, 179; UKMC law Library).

With *Scopes v. State* (1927),¹⁶ the Tennessee Supreme Court upheld the state law titled The 1925 Anti-Evolution Act, which prohibited school teachers to teach any theory “...that denies the story of divine creation of man as taught in the bible...[or]...to teach instead that man has descended from lower order of animals” (2006, 547; <http://www.logos.com/products/details/2182>).

Evolution is one of the most contentious and recurring issues in the public school curriculum, and is a theory by English scientist Charles Darwin in his *Origins of Species* (1872), in which he argued following (<http://www.infidels.org/library/historical/charlesDarwin/>;
<http://www.law.umkc.edu/faculty/projects/ftrials/scopes/darwin.htm>; McConnell et al. 2006, 547):

As many more individuals of each species are born than can possibly survive; and as, consequently, there is a frequently recurring struggle for existence, it follows that any being, if it vary however slightly in any manner profitable to itself, under the complex and sometimes varying conditions of life, will have a better chance of surviving, and thus be naturally selected. From the strong principle of inheritance, any selected variety will tend to propagate its new and modified form.

Therefore, Darwin’s theory suggests only the survivors would pass on their form and abilities (http://www.infidels.org/library/historical/charles_darwin/origin_of_species/Chapter4.html).

This view contradicts strict evangelical Fundamentalist views included in their set of small books called “The Fundamentals: A Testimony of the Truth (1910-1915), claiming the essential points of Christian doctrine. This evangelical Protestantism is a movement militantly opposed to secular, liberal trends in modern culture (2006, 546, 547, and 548). Further, Christian Fundamentalist believe that only their interpretations of both the Old and New Testaments are valid. By the early 1920s several states had passed laws against teaching evolution in the public schools, which included The state of Tennessee’s 1925 Anti-Evolution Act (<http://www.logos.com/products/details/2182>).

The State of Arkansas enacted its own “anti-evolution” law in 1928 as a result of Fundamentalist passionate political action. In *Epperson v. Arkansas* (1968)¹⁷ Susan Epperson, a recent graduate of the University of Illinois’ Graduate school of Zoology, was about to teach her tenth grade biology class with

¹⁶ 289 S.W. 363 (1927)

¹⁷ 393 U.S. 97 (1968)

Forum on Public Policy

a new book; one chapter included Darwin theories on evolution. The young teacher feared she would be accused of breaking Arkansas law forbidding the teaching of evolution.

The Supreme Court ruled in the majority: “That there is and can be no doubt that the First Amendment does not permit the State [of Arkansas] to require that teaching and learning must be tailored to the principles or prohibitions of any religion or dogma” (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&navby=title&v1=Epperson+v.+Arkansas+%281968%29>).

Also in 1987, *Edwards v. Aguillard*¹⁸ challenged Arkansas law prohibiting the teaching of evolution. The Supreme Court declared the law unconstitutional because it had as its primary purpose the promotion of a particular religious belief (Bardes et al. 2007, 116).

In another area of state law and religion: *Marsh v. Chambers* (1983)¹⁹ the Supreme Court considered the constitutionality of Nebraska's practice of beginning each day in its state legislature with a non-denominational prayer. The Court upheld the practice 7-2, reasoning that the same First Congress that proposed the Bill of Rights also voted to hire a congressional chaplain and begin [its] legislative days with a prayer. Therefore the Court believed the Founding Fathers could not have intended in the Establishment Clause to have prohibited legislative prayers. Further, the majority refused to apply the Lemon Test in this case (www.caselaw.lp.findlaw.com/scripts/getcase).

In *McCollum v. Board of Education* (1948)²⁰ the Court allowed student release time for religious classes outside the public school. However, in *Engel v. Vitale* (1962)^(ibid 4, page 8) the Court struck down school prayer in class in New York State public schools; and in *Abington School District v. Schempp* (1963)²¹ the Court struck down teacher led prayer and Bible reading in public classrooms (McConnell et al., 649, 486; and <http://caselaw.lp.findlaw.com/scripts/getcase>).

Therefore, the Supreme Court makes clear that government cannot make laws which establish required religion classes, required prayer, or required Bible reading, because they are laws in respect to "an establishment of religion" (2006, 371).

Further, the *Larkin v. Grendel's Den* (1982)²² case involved state legislative authority given to churches. Massachusetts' law (ch.138, §16C) allowed churches and schools to veto liquor licenses for establishments within 500 feet of their buildings. Voting 8-1, the Court struck down the Massachusetts law. Because this law gave power to churches [and school districts], it was found by the Supreme Court to

¹⁸ 482 U.S. 578 (1987)

¹⁹ 463 U.S. 783 (1983)

²⁰ 333 U.S. 203 (1948)

²¹ 374 U.S. 203 (1963)

²² 459 U.S. 116 (1982)

Forum on Public Policy

violate two prongs of the *Lemon* test, including the third prong because it excessively gave religious groups power to make policy in the processes of government (704-709).

On June 14, 2004, the Supreme Court decided with a 5-3 vote, to send the *Elk Grove Unified School District v. Newdow*²³ case back to the Ninth Circuit Court to make a decision on whether "under God" in the Pledge of Allegiance violates the Establishment Clause. The Court reminded the lower Court that plaintiff Newdow was a non-custodial parent to the child in question, whom Newdow suggested was violated by the phrase. Therefore, Newdow lacked standing to represent the child in court without any legal custody rights, and he had no right to stand before the Court to represent his biological child. Three justices, in concurring opinions, indicated that they would have concluded on the merits that the Pledge law created by Congress in the 50's did not violate the

Establishment Clause. Justice Thomas wrote he would find that the Establishment Clause was not incorporated through the Fourteenth Amendment, and therefore doesn't limit states at all! Scalia had to reclude himself from the case because of previous derogatory remarks he had made relevant to Newdow at a conference he attended (2006, 63, 482; and at: <http://www.supremecourtus.gov/>).

Abortion: According to the UMKC Exploring Constitutional Conflicts website, there were more abortions in 1868 than in 1973. Religious and politically right interest groups continue their highly motivated political action over issues such as *abortion, homosexuality, and the death penalty*. The *Roe v Wade* ruling in 1973, is a particular ruling these groups want reversed (www.findlaw.com).

In *Roe v. Wade* (1973)²⁴ a young women in Texas wanted to abort her pregnancy. Texas law prohibited such action---influenced by Fundamentalist and Catholic state legislators following beliefs that life begins at conception. Justice Blackmun [and the Majority] reviewed past and present theological and medical assumptions of when life begins, beginning with the Stoics up to present day assumptions. After much deliberation, Blackmun wrote "...In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake" (www.findlaw.com; www.supremecourtus.gov). In other words, it is the private right of an individual [according to her own conscience] to decide an important moral decision and procedure (<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/Roeargs.htm>).

The *Roe* decision was another catalyst for numerous Southern Democrats---many of which are Fundamentalists or Catholic Right and had been long-time Democrats. Along with the 60's Civil Rights Laws, and now *Roe*, many Southern Democrats became Republicans because they believed the Republican Party embraced their traditional religious views appropriately (Patterson 2007, 255).

²³ 542 U.S. 1 (2004)

²⁴ 410 U.S. 113 (1973)

Forum on Public Policy

Since Roe, the Supreme Court has had a number of cases regarding abortion:

On April 18, 2007, in *Gonzales v. Carhart*²⁵ & *Gonzales v. Planned Parenthood*²⁶ the present Supreme Court with 5-4, overturned [two] Federal Appellate Court rulings stating the “Partial-Birth Abortion Ban Act of 2003, enacted by Congress and signed into law by President George W. Bush was unconstitutional (www.laww.cornell.edu/ <http://news.findlaw.com/hdocs/docs/abortion/2003s3.html>: http://www.nytimes.com/ref/washington/scotuscases_ABORTION.html 7/1/2007).

The 2007 Court also overturned *Stenberg v. Carhart* (2000)²⁵ in which the Court then ruled that in certain circumstances in the 2nd trimester, a partial birth abortion may be necessary. However now, the Court ruled that the 2003 Act was constitutional in banning partial-birth abortions (www.thomas.loc.gov; <http://supreme.justia.com/scripts/search>).

Writing for the Majority Opinion, Justice Kennedy noted that because it [the 2003 Act] does not impose an undue burden on a woman’s right to abortion based on its lack of a health exception, does not mean the Act is unconstitutional. Justice Kennedy pointed out further that the “Federal Act defines the fetus in the womb as a living organism...It prohibits the killing of a living fetus if a doctor kills the partially delivered living fetus...[and Justice Kennedy noted further] ...The Act expresses respect for the dignity of human life” (www.supremecourtus.gov). Reading this ruling, one could determine the Majority opinion supporting a religious viewpoint.

Justices Thomas, Scalia, and Alioto concurred. Scalia noted: “I write separately to reiterate my view that the Court’s abortion jurisprudence, including Casey (1992) or Roe v. Wade (1973) has no basis in the Constitution” (ibid; <http://supreme.justia.com/scripts/search>).

In her Dissenting Opinion of *Gonzales v. Carhart*, Justice Ruth Bader Ginsberg wrote(<http://supreme.justia.com/scripts/search>):

Today’s decision is alarming. It refuses to take Casey (1992) and Stenberg (2006) seriously. It tolerates, indeed applauds federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians & Gynecologists (ACOG)...And for the first time since Roe, the Court blesses a prohibition with no exception safeguarding a woman’s health.

Homosexuality: In 2003, the Supreme Court reversed its earlier position on sodomy. With [Its] decision in *Lawrence v. Texas*,²⁷ the Court held that laws against sodomy that are directed to one group, violate the due process clause of the Fourteenth Amendment. Justice Kennedy further stated: “The liberty

²⁵ 200 U.S. 321 (2007)

²⁶ 200 U.S. 337 (2007)

²⁷ 539 U.S. 558 (2003)

Forum on Public Policy

protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons” (Schmidt 2007-2008, 177; <http://supreme.justia.com/scripts/search>).

Christian Right evangelicals and Conservative Republicans perceive such rulings as insulting to their beliefs for moral behavior. They further challenge the twelve states and more than 230 cities and counties in the U.S. that have special laws protecting lesbians and gay men against discrimination in employment, housing, public accommodations, and credit. Their political power has also recently influenced resignations from Florida Representative Mark Foley in 2006, and negative news coverage of Idaho U.S. Senator Larry Craig on September 1, 2007 for alleged illegal homosexual behavior (www.cnn.com/news.com).

Religion and Government Support: In cases involving governmental institutions supporting religious organizations, the Court recently ruled on *Hein v. Freedom From Religion Foundation* (2007).²⁸ However, the conflict continues from both sides of political philosophy on whether government support to religious organizations and churches should exist, and asks whether it violates the Establishment Clause (www.supremecourtus.gov ; http://www.oyez.org/cases/2000/2009/2006/2006_06_157/docket/).

One of President George W. Bush’s first Executive orders, was the establishment of the “White House Office of Faith-Based and Community Initiatives” on January 29, 2001 (www.whitehouse.gov). This Executive Order created offices within the White House that financially supports religious social organizations, and this Office gives financial aid to numerous religious conferences, training, and grant-giving, and aid to various church social support systems.

The Freedom From Religion Foundation challenged the Executive Branch programs because it claimed the Initiatives Office and programs it financed violated the Establishment Clause (www.supremecourtus.gov). Further, the Foundation challenged the right of the Executive Branch to use monies allocated to it by Congress to support religious activities, thereby using taxpayer dollars to do so, which the Court ruled against previously in *Flast v. Cohen* (1968)²⁹ (McConnell et al. 2006, 354).

With a 5-4 vote, Justice Alioto reversed judgment from the lower courts, ruling for the Majority that there is no evidence that the taxpayers suing in *Hein* have a qualified taxpayer standing under *Flast*, nor have they been injured under Article I paragraph 8 of the Constitution (O’Connor and Sabato 2007, 72; McConnell 2006, 354) nor has the Establishment Clause been violated in the opinion of the Majority (http://www.oyez.org/cases/2000/2009/2006/2006_06_157/docket/).

²⁸ 551 U.S. ____ (2007)

²⁹ 392 U.S. 83 (1968)

Forum on Public Policy

The Plaintiffs in *Hein* considered the Court's ruling another blow to the purpose of the Establishment Clause and protections under Article I for U.S. taxpayers. However, for the Christian and Republican Right [which includes Neo-Conservatives] their agenda to utilize Conservative Justices as one important vehicle to shape government policy more compliant to fundamentalist philosophy, was taking place with numerous Court rulings in the 2006 – 2007 Supreme Court Sessions (Greenhouse, www.nytimes.com July 1, 2007).

President George W. Bush, the Neo-Conservatives, and the Christian Right

Most political systems have specialized structures for the judiciary. The United States has one of the world's most complex judicial structures, with the federal Supreme Court at the top (Greenberg and Page 2003, 462). All Federal [U.S.] Justices, once their nominations by the President of the United States have been confirmed by the U.S. Senate, have their positions for life (*ibid*). Federal Justices in America are also chosen for their political ideology and their past rulings and positions on political, economic, and social issues. This important information plays a determinant part in why a President in office decides to appoint whom he appoints. Each President hopes his nominee---in most cases a member of his party, will rule according to party political philosophies and values.

U.S. federal judges, according to law, do not have to be lawyers. And federal judges, in particular Supreme Court justices, come often from the most elite parts of the legal profession, are mostly white, male, and from upper-income or upper-middle-class backgrounds, and mostly Protestant (*ibid*), that is until our most recent Court membership.

The Supreme Court at present has five conservative Justices all nominated by Republican Presidents: Chief Justice John Roberts in 2005 by President George W. Bush; Associate Justices Antonin Scalia in 1986 by President Ronald Reagan; Samuel Anthony Alioto, Jr. in 2006 by President George W. Bush; Clarence Thomas in 1991 by President George H. W. Bush; and Anthony M. Kennedy 1988 by President Reagan. All five Conservative Justices are Catholic.

The remaining four Justices lean moderate-to-liberal in their political philosophies: Justices Ruth Bader Ginsberg and Stephen G. Breyer are both Jewish and were nominated respectively in 1993 and in 1994 by President William Clinton. Justice David Hackett Souter is Episcopalian and nominated in 1990 by President George Herbert Walker Bush, and Justice John Paul Stevens is Protestant, nominated in 1975 by President Gerald R. Ford (www.supercourtus.gov/ ; http://www.adherents.com/adh_sc.html).

According to Linda Greenhouse of the New York Times: “By the time the Roberts court ended its first full term on Thursday [June 28, 2007], the picture was clear. This was a more conservative court, sometimes muscularly so, sometimes more tentatively, its majority sometimes differing on methodology

Forum on Public Policy

but agreeing on the outcome in cases big and small. Of death penalty cases, the prosecution prevailed in nearly every criminal case 14 of the 18 non-Texas cases” (July 1, 2007).

A third of the Court’s decisions, more than in any recent term, were decided by 5-4, and along ideological lines. The swing voter is now Justice Anthony M. Kennedy, taking over retired Justice Sandra Day O’Connor’s role on the bench. Kennedy’s vote helped a majority to rule in favor of the Federal Partial-Birth Abortion Ban Act of 2003, and to treat campaign advertising by corporations and unions as core political speech despite the restrictions imposed by the McCain-Feingold campaign finance law of 2002 (<http://www.fecwatch.org/law/statutes/publaw107-155.pdf>; www.thomas.loc.gov), and further deny Seattle, Washington and Louisville, Kentucky school integration plans that the Alioto majority voted to invalidate (Greenhouse, www.nytimes.com/ref/washington/scotuscases/; www.supremecourtus.gov/).

Greenhouse reported on May 29, 2007, that the Supreme Court in *Ledbetter v. Goodyear*,³⁰ ruled 5-4 against workers seeking pay discrimination under the Civil Rights Act of 1964, mentioned under its Title VII (www.memory.loc.gov/cgi-bin/query/Civil), unless an employee files within 180 days in the Federal Courts that this pay discrimination has taken place.

The Court’s Majority opinion was given by Justice Samuel Anthony Alito, Jr. [the Five Majority votes included again: Alioto, Roberts, Scalia, Thomas, and Kennedy]. The Majority enlisted a tight Timeframe to file such cases as defined under Title VII. The Majority rejected the argument made by the Equal Employment Opportunity Commission [the federal agency that enforces Title VII, and was once headed by Justice Clarence Thomas], that employees can take action to file a claim of discrimination using each paycheck that reflects the initial discrimination is itself a discriminatory act that resets the clock on the 180-day period, known as the “paycheck accrual” in Title VII (Greenhouse 2007; <http://memory.loc.gov/cgi-bin/query/>; <http://slate.com/id/2167286/>).

Previously, a jury in a Federal District Court in Birmingham, Alabama, had awarded Lily M. Ledbetter \$3 million dollars in back-pay and compensatory and punitive damages, which the trial judge reduced to \$360,000 dollars. Then the 11th Circuit U.S. Court of Appeals in Atlanta, Georgia, erased the previous verdict entirely because it felt no evidence of intentional pay discrimination during the 180 day period had been shown. The Ledbetter decision on May 29th, 2007, may affect more than 40,000 workers who have filed in federal courts from 2001 to 2006 (Greenhouse, 2007).

Justice Ruth Bader Ginsburg wrote the Dissenting Opinion in Ledbetter [with dissent from Justices Breyer, Souter, and Stevens]: “The Majority Opinion overlooks characteristics of pay discrimination...and...secrecy in most workplaces about salaries...[It further]...should treat a pay claim

³⁰ 550 U.S. ____ (2007)

Forum on Public Policy

as [It] treated a claim for a “hostile work environment” in a 2002 decision, permitting a charge to be filed as “based on the cumulative effect of individual acts (www.supremecourtus.gov).

The Supreme Court rulings are law. Each affects or benefits different groups in society, including employees, employers, industry, the environment, moral issues, and religious support by Federal or States governments in the United States. The Justices make their decisions on cases before them, and interpret “law” or case law the way they see it.

It is not accidental that two more conservative Republicans with religious right beliefs were chosen recently by President George W. Bush. Both Roberts and Alioto were former Federal Circuit Appellate Court Justices with reputations for supporting conservative values and the side of corporate institutions in their rulings. In addition, their education and religious support of the Catholic Right Opus Dei Society is fact. Further, Justice Scalia is also a supporter of Opus Dei Doctrine, has a son who is an Opus Dei priest, and Scalia has influenced Justice Thomas to join him in this support of Opus Dei philosophies (Cocozzelli 2006, Part Two). The Opus Dei Society is one of the Catholic Right advocacy Groups that blatantly expresses the highest regard, almost reverence toward wealth, economic power, and close State and Church ties (Cocozzelli 2006, Part Three).

The U.S. Presidency, Neo-conservatives, and the Christian Right connections:

It is difficult to know whether President George W. Bush joined forces with neo-conservatives because he either followed, had knowledge of, respect for, or already believed in political philosophies taught by German philosopher Leo Strauss, an important Professor of Political Science at the University of Chicago during the 50’s and 60’s, who died in 1973. Strauss wrote numerous books on his understanding of philosophies. Strauss taught and wrote about moral behavior and the political, which are the philosophies that Neo-cons [new conservative Republicans] live by (Mason 2004; Xenos 2003; Boyle 2003; Hersch 2003; Drury 1999).

Drawing the connection between Christian Right activists and Straussian Neo-cons, both of which President Bush 43 affiliates with, is easier than perceived to be, because they all have a common goal: Government is the tool to redeem morality in society by making God’s laws prevalent over American society.

The Simon Plan: In 1976, former Nixon Secretary of Treasury William Simon, understood that the only way to combat Democrats and their liberal immoral and communal ideas, e.g. The New Deal and Great Society, would be to regenerate a new Conservative message. So when he was appointed to run the conservative John M. Olin Foundation, he designed the “Simon Plan,” which urged the business world to

Forum on Public Policy

change the entire means of rebutting liberal causes by weakening liberal groups such as labor unions, universities, mainstream religions, and the media. Simon wanted his fellow wealthy Conservatives who supported the foundation, not to only focus on economic issues, but to focus on traditionalist, pre-Vatican II Catholic moral issues. For Simon, a staunch orthodox Catholic, there was no separating his faith from his politics (Cocozzelli 2007; <http://www.questia.com/library/communication/rupert-murdoch.jsp>; <http://rightweb.irc-online.org/> and <http://ww2.lafayette.edu/~library/special/simon/bio.html>).

Simon's Plan and message was to cultivate conservative voices in universities, in the media and in religious politics. Simon advocated that the message must appear to be more centrist than it actually is. And there needed to be a "unified message" on any given subject, and it would descend intact from the think tank, complete with talking points, directly to the pundit whose job is to get that message into the daily discourse, and then finally to the political candidate who campaigns on it as an issue. (2007)

During the same period, many Christian Democrats, including a number of American Jews, found liberal commitments to society violated their basic beliefs, such as taxation, social security, secularism in public schools, homosexuality, and abortion rights under the *Roe v. Wade* ruling (1973). A number of these Democrats left the party to join the Republican Party (Yurica 2004).

To the same extent, the "new" Conservative Right faction was forming: former Strauss students and followers of the Strauss theories on the descent of morality and the importance of an "authority." Strauss' basic complaints were the hedonism that had resulted from modernity and liberal ideas of "democracy," which he called "Nihilism" (Drury 1999, 11-106).

Some of Strauss' students are Abram Shulsky, Paul Wolfowitz [both received their doctorates under his mentorship]; John Ashcroft [former Attorney General under President George W. Bush]; and Harry Jaffa, which was with Pat Robertson on "The 700 Club" (Yurica 2004; Drury 1999).

Students taught by Strauss graduates in other universities are: Justice Clarence Thomas, Robert Bork (<http://www.loc.gov/rr/law/notconfirmed.html>), Irving Kristol [known as the godfather of new conservatism], Kristol's son William Kristol---the co-founder with Robert Kaglan of the "Project for a New American Century" think-tank, also the founder/Editor of "Weekly Standard" financed with Rupert Murdoch support, Kristol is also a board member of the "Foundation for Community on Faith Centered Enterprise," he is also affiliated with the conservative "John M. Ashbrook Center for Public Affairs, he is on the Board of "American Enterprise Institute", and Kristol is on the Board of Harvard University where he acquired his Ph.D., to mention just a few neo-conservative institutions. Further, Gertrude Himmelfarb was a former student of Strauss, and she is the wife of Irving Kristol and the mother of William Kristol.

Forum on Public Policy

Himmelfarb received her doctorate at the University of Chicago. (<http://rightweb.irconline.org/profile/1254>; <http://www.newamericancentury.org/statementofprinciples.htm>; Yurica 2004).

Additional Straussians are Donald Rumsfeld [former Secretary of Defense under George W. Bush], Alan Keyes, William J. Bennett, J. Danforth Quayle [former Vice President to President George Herbert Walker Bush], Allan Bloom, John Podhoertz, John T. Agresto, Newt Gingrich [former Speaker of the House of Representatives and designer of “Contract with America”, 1994 takeover of the House by Republicans]; Gary Bauer, Michael Ledeen, Dick Cheney [who worked for President Nixon and President Bush 41, and is the present Vice President for President Bush 43], and there are many other Conservatives who follow Straussian beliefs (Yurica 2004; <http://www.newamericancentury.org/statementofprinciples.htm>).

Strauss further taught and wrote about the sometime necessity of “noble lies,” and that an “Authority” should act as a wise tyrant to implement noble lies, especially when secrecy is necessary. These Machiavellian nuances were taught by Strauss to his students, including to students who received their political science education at the University of Chicago even after Strauss left the Political Science Department in 1968 (Boyle 2003; Drury 1999, 11-106).

The Straussians, or Neo-cons, also follow the Simon Plan exactly, by making sure their message was infiltrated into universities, they created their own think-tanks, e.g. Heritage Foundation, American Enterprise Institute, Project for a New American Century (PNAC), and by partaking in the John M. Olin Foundation, and establishing their own publications, i.e. *The Weekly Standard*, and their own Rightwing Media [Fox News and Murdoch affiliates] with messengers who spread the message exactly each day to the public on responsible moral behavior, taking aggressive foreign policy, deletion of liberal hedonism, and promoting American domination of world resources (Cocozzelli 2007; Yurica 2004; <http://www.questia.com/library/communication/rupert-murdoch.jsp>; <http://rightweb.irc-online.org/profile/1254>).

Relevant to Michael Ledeen: Ledeen was former Senior Fellow with the Center for Strategic and International Studies and counselor to the National Security Council and special counselor to former Secretary of State Alexander Haig in 1985. He also has had close ties to Reconstructionist ideologue Pat Robertson from the early 1980s, and Ledeen believes that violence in the service of the spread of democracy is an “American Manifest Destiny” (<http://www.yuricareport.com/Dominionism/MichaelLedeen.html> 2005; Yurica 2004).

As well, during the period that Leo Strauss taught at the University of Chicago, Rousas John Rushdoony [born into Calvinism, then later became a Presbyterian minister] founded the Chalcedon

Forum on Public Policy

Foundation in 1965 (<http://www.chalcedon.edu/articles/article.php?ArticleID=347>).

The Chalcedon Foundation is the name Rousas John Rushdoony called his Christian Reconstructionist organization. Rushdoony formulated his ideas on law and policies in his *Institutes of Biblical Law*, where he argued against any kind of inter-religious, inter-racial, and inter-cultural marriages because they break up the community (Yurica 2004; <http://www.chalcedon.edu/articles/article.php?ArticleID=347>; <http://forerunner.com/revolution/rush.html> ; <http://www.123exp-biographies.com/t/00034302446/>).

Rushdoony taught wealth as a value, to be found in Deuteronomy Chapter 28 in the Old Testament. He believed the immoral society in America must be infiltrated with Conservative Christian policies similar to the Middle Ages, where state with church would be ruled by elitists in order to secure morality, control, and economic strength (Ibid; and at: <http://www.drbo.org/chapter/05028.htm>).

Brian McLaren (2007), another Christian Right advocate wrote recently, that he also believes society and religious influence on government should be similar to a prophetic role, as it was in the first three centuries of the church (www.ChristianityToday.com).

Additional Rushdoony followers include his son-in-law Gary North (economist and powerful spokesman for religious right ideas), Pat Robertson (founder of the Christian Coalition), Herb Titus, the former Dean of Robertson's Regent University School of Public Policy (formerly CBN University), Charles Colson, Robertson's political strategist, Tim La Haye, Gary Bauer, politician and admired spokesperson for the Christian Right, and the late Francis Schaeffer, and Paul Crouch, the founder of TBN, the world's largest television network, plus many likeminded television and radio evangelists and news talk show hosts, e.g. Bill O'Riley, Sean Hannity, and Rush Limbaugh (www.cc.org/; Lithwick 2007 at www.Slate.com; Savage 2007 at www.Boston.com; Yurica 2004; <http://www.foxnews.com/oreilly/index.html>; <http://www.foxnews.com/hannityandcolmes/index> <http://www.rushlimbaugh.com/home/>).

Pat Robertson's Christian Coalition (CC) was organized in the 70's to mobilize conservative Christians to support a religion-based policy agenda (www.cc.org/). Along with Robertson's establishing radio CBN including television communications "The 700 Club" to spread CC ideas, he also established Regent University. Alone from Robertson's Regent Law School, 150 graduates work within the President George W. Bush Administration and Department of Justice, including Monica Goodling (Moyers 2007; Lithwick 2007; Savage 2007; <http://www.regent.edu/acad/schlaw/home.cfm>);).

Another Christian Right Movement advocate, Jerry Falwell, a Baptist minister from Virginia, created the "Moral Majority in 1979; a New Christian Right political lobby group for evangelical Christians. In all three Protestant Right scenarios the most important goals were and continue to be: to advocate

Forum on Public Policy

Conservative Christian religious morality, economic liberalism, small government, deregulation, privatization, free trade, lower taxes, moral laws according to fundamentalist dogma; subversion of feminism, and to rid Social Security and Medicare, deny homosexual marriage, stop abortions from taking place, and to place followers [activists] into all areas of government, education, industry and the media. The late Reverend Falwell also founded Liberty University as well (<http://www.cnn.com/2007/US/05/15/jerry.falwell/index.html>; <http://www.falwell.com/>; www.cnnnew.com May 17, 2007).

Mel and Norma Gabler, founders of the Educational Research Analysts---a conservative Christian organization out of Texas, also added enormous power to the Republican right with the influence they have exercised for almost five decades in reforming how school textbooks would reflect their conservative values.

Some of the Gabler textbook standards they initiated and enforced especially with success in red conservative states, are following: reading books should present a “universe that rewards virtue and punishes vice; where good and evil are not moral equivalents; story content should provide “diverse views on current controversial issues such as global warming, feminism, evolution, and sensitive treatment of benefits to two parent families; and finally, high school world history text should “prevent stereotypes of whites as oppressors and people of color as victims” (www.pbs.org 8/1/ 2007; at: www.textbookreviews.org/; <http://www.lewrockwell.com/north/north332.html> ; and <http://www.bpnews.net/BPnews.asp?ID=26168>; “All Things Considered” at www.npr.org 2007).

William Simon was Catholic, a very conservative Catholic. He began influencing the Republican message from the early 70’s, and continues to influence its message even after his death in 2000. Along with Simon, there were many Catholics who did not like what they believed was an immoral, liberal, and Marxists direction the Nation was taking. These Catholics lived primarily in the suburbs, were upper-middle-class or upper class Americans (Cocozelli 2006-2007).

For the most part, the Civil Rights Acts of the 60’s and the decision on *Roe v. Wade* in 1973, all of which conservative Catholics did not agree with, influenced them to leave the Democratic Party and become Republicans. Furthermore, a number of conservative Catholics have found common goals within the Opus Dei Society and became members, or are supporters of the society still today. More moderate Catholics remained loyal to the Democratic Party (ibid).

To understand Opus Dei and the Catholic Right agenda, we need to understand Spanish “Carlism”, “...a preeminent political philosophy in Spain from the 1830s through the reign of Franco’s regime” (ibid). During the 1830s, Carlists wanted to reestablish the Bourbon Monarchy in Spain in order to stop the progressive rules of Charles III (1759-1788) and Charles IV (1788-1808), whose modern ideas to

Forum on Public Policy

separate Church power from the Monarchy were unbearable concepts to them. The Carlists united forces and engaged in many violent struggles until they helped Don Carlos, son of Carlos IV take the throne in 1833 (Cocozelli Part 8, 2006).

Carlism has two hallmark theocratic philosophies: It sees ultra-orthodox Catholicism as the cornerstone of the State. Secondly, sovereignty is vested not with the people, but with a monarch, who is answerable only to the Catholic Church (Cocozelli Part 8, 2006; (<http://www.opusdei.org/>).

American Carlists believe in tradition, family, and property, and are influenced by Carlism philosophies, such as Dr. Alexandra Wilhelmsen, John Newhaus, Justice Robert H. Bork and George Weigel, all of whom are Neo-Conservatives as well. Wilhelmsen taught at the Opus Dei-founded University of Navarra in Pamplona, Spain, and then settled at the University of Dallas, which today, is the home to the extreme Catholic Right---according to Cocozelli and other critics.

Opus Dei means “The Work of God” and was founded in Spain in 1928 by Josemaria Escrava de Balaguer, a Carlist and also a priest who wanted to create a Catholic lay society in which Catholics could achieve “holiness” through their everyday work: through a combination of prayer, principle and unquestioned adherence to Catholic teachings on all social issues, and there would be no religious dissent, but that members continue the important Catholic goal of evangelism. Escrava put down his ideas in *The Way* in 1934 (Cocozelli 2006; (<http://www.opusdei.org/>).

“The Work” is in essence Opus Dei, “...the whole sanctification is the Work of a lifetime” (ibid). The Work has approximately 80,000 members worldwide with over 3,000 members in the United States. Some reports state the Society has up to 200,000 members worldwide (Smith 2005 at www.abc.net.au/lateline; <http://www.mon.at/opusdei/>).

Opus Dei utilizes an internal cast-like structure of “numeraries” [unmarried, celibate members], “supernumeraries” [married members], and “cooperators [sympathetic non-members].” Jesuit Father Michael Walsh described Opus Dei members “...as being deeply involved in political and economic machinations, often with an ultra-conservative bent” (2006). Opus Dei is openly more concerned and inspired with the economic self-interest of “friends” who are already enormously wealthy and have power (Ibid). The Society does, however, help some poor young children and adults through various programs (www.opusdei.org).

The Opus Dei formula for success is not based upon the quantity of its converts, but the quality of its converts, e.g. “they must primarily be influential [college students and others] from very elite backgrounds” (Cocozelli 2006).

Some of Opus Dei converts include CNBC economic pundit Lawrence Kudlow, Senator Sam Brownback, former Senator Santorum of Pennsylvania, Supreme Court Justices Alioto, Clarence Thomas

Forum on Public Policy

and Antonin Scalia; and Justice Scalia's son is an Opus Dei priest. Further supporters of Opus Dei are Chief Justice John Roberts, attorney Mary Ann Glendon, Mary Ellen Bork, wife of Judge Bork; also the former U.S. Solicitor General Ted Olson who argued for the Bush side in *Bush v. Gore*³¹ in 2000 before the Supreme Court, receiving a 5-4 vote, thereby giving the 25 electoral votes from Florida and the Presidency to George W. Bush. In addition, Tom Monaghan [Domino's Pizza boss at <http://www.usdreams.com/Monaghan7677.html>], and Robert Novak well known conservative Chicago journalist often seen on Meet the Press, are cooperators, including conservative Catholics like Tim Russert of NBC news, Chris Matthews of NBC news and MSNBC, just to name a few of the important government, economic, and media personalities tied to or supporters of Opus Dei (Cocozzelli 2006; <http://www.mond.at/opus.dei/>; <http://supreme.justia.com/scripts/search>). Further, a number of Opus Dei cooperators are also connected to the Neo-conservative think-tank Project for the New American Century, and the Institute on Religion and Democracy (Cocozzelli 2006-2007).

Opus Dei seeks out the elite and wealthy for leadership, with the goal of infusing the U.S. [and the world] with a pre-Vatican II morality. Opus Dei elite and supporters are Republican and staunch supporters of President George W. Bush.

The Society did not find much support, however, from either Pope John XXIII nor from Paul VI, but has found enormous support and stature under Pope John Paul II and the present Pope Benedict XVI.

In fact, the papacy had its own history within Italy during the 1860s with nationalist forces trying to unite the country under a single monarch and an elected parliament called the new Kingdom of Italy. At that time, the papacy lost half the Papal States, and following the unification, it lost the rest of its territorial domains except the Vatican City. The Papacy was not only opposed to Italy's unification, but especially opposed to the ideas of political liberty and a secular state (Sodaro 2008, 45).

Additional Catholic Right groups include The National Catholic Reporter, the Catholic Information Center of Washington, D.C. run by Rev. John McCloskey [an Opus Dei priest who has great influence at the Institutes of Religion and Democracy, Institute on Religion and Public Life, Ethics and Public Policy Center, and the American Enterprise Institute], and William Donohue's Catholic League for Religious and Civil Rights (Cocozzelli 2006-07; McCloskey at www.CatholiCity.com).

How did all these religious and political right groups come to support George W. Bush?

George Walker Bush began a full and prosperous life when he was born into a prominent political family on July 6, 1946 in New Haven, Connecticut. His father, former President George Herbert Walker Bush, the 41st President of the United States from 1988 - 1992, had substantive experience in politics as

³¹ 531 U.S. 98 (2000)

Forum on Public Policy

Director of the Central Intelligence Agency, Ambassador to several nations, U.S. Ambassador to the United Nations, and Vice President to President Ronald Reagan from 1980 – 1988.

George W. Bush grew up in Texas, where his father dabbled in the oil business. He went to Yale and then to Harvard Business School where he completed his MBA. During the 80's, Bush tried for a local office in the state of Texas, but lost. Then in 1994, he won the governorship of Texas away from Democrat Ann Richards. Bush's popularity in Texas was his ability to appeal to both moderate Republicans and the Christian Right, which had control of the Republican Party in Texas by 1994 (<http://www.famoustexans.com/georgewbush.htm>).

Bush described himself in an interview as a born again Christian, which helped his popularity with Fundamentalists. In 1999, he ran as the Republican Candidate for President. George Bush's Statement of Faith is following (<http://www.truthorfiction.com/rumors/g/georgewbush.htm>):

I could not be governor if I did not believe in a divine plan that supersedes all human plans...I build my life on a foundation that will not shift. My faith frees me...to put the problem of the moment in proper perspective...to make decisions that others might not like... to try to do the right thing, even though it may not poll well...I have a reverence for life; my faith teaches that life is a gift from our Creator. In a perfect world, life is given by God and only taken by God. I hope someday our society will respect life, the full spectrum of life, from the unborn to the elderly. I hope someday unborn children will be protected by law and welcomed in life. [now, relevant to the death penalty]: I support the death penalty because I believe...capital punishment is a deterrent against future violence and will save other innocent lives...During the more than half century of my life, we have seen an unprecedented decay in our American culture, a decay that has eroded the foundations of our collective values and moral standards of conduct. Our sense of personal responsibility has declined dramatically, just as the role and responsibility of the federal government have increased...The changing culture blurred the sharp contrast between right and wrong and created a new standard of conduct:...If it feels good, do it (2000).

These comments, among others, were made by George W. Bush during his Presidential Campaign year of 2000. Many of the same comments Bush revealed to journalist on morals and society and often speaks of today as President of the United States, were also written or taught by Leo Strauss, Rousas John Rushdoony and his followers, also by William Simon, and also by Opus Dei founder Josemaria Escriva in his book *The Way* (www.opusdei.org), and members of the Neo-cons (<http://rightweb.irc-online.org/profile/1254>; and at www.newamericancentury.org/).

Together, this combined "political machine" of the Christian Right, the Neo-Cons, and President Bush have succeeded in bringing a number of their goals to fruition: spreading the Conservative Message throughout churches, universities, all areas of government, industry, and the media.

Forum on Public Policy

Together, their efforts have been productive: a gray area between Church and State in United State's Laws seems to be evolving, structuring coalescent policies that reflect their vision for moral behavior, and limiting democratic elements that support rapid modernity and social inclusion.

This combined "political machine" has also achieved dissatisfaction among those in American Society that disagree entirely with the Machine's methods, the Machine's message, and the Machine's goals.

And because democratic processes still exist in America, the Conflict will continue over the issue of Separation of Church and State within the Establishment and Free Exercise Clauses of the First Amendment of the United State's Constitution.

References:

- Alighieri, Dante 1312. *De Monarchia*. Academic Search via in www.Logoslibrary.eu.
- Bardes, Barbara A., Mack C. Shelley II and Steffen W. Schmidt 2008. *American Government and Politics Today The Essentials*. 111. Belmont: Thomas Learning.
- Bardes, Barbara A. Mack C. Shelley II and Steffen W. Schmidt 2006-2007. *American Government and Politics Today The Essentials*. 118. Belmont: Thomas Learning.
- Boyle, Francis A. 2003. "My Alma Mater in a Moral Cesspool: Neo-Cons, Fundies, Feddies, and the University of Chicago." August 2, 2003. at: www.counterpunch.org/boyle080220033.html .
- Bush, George W. 2000. "Statement of Faith" taken from interviews during 2000 Presidential Election Campaign. at: <http://www.truthorfiction.com/rumors/g/georgewbush.htm>; and at: George W. Bush Profile, <http://www.famoustexans.com/georgewbush.htm>; and at www.whitehouse.gov .
- Cocozzelli, Frank 2006. "The Catholic Right, Part Two: An Introduction to the Role of Opus Dei." May 16, 2006. In, Reclaiming Citizenship History and Faith: Talk to Action, found at <http://www.talk2action.org/> .
- Cocozzelli, Frank 2006. "The Catholic Right, Part Three: Rev. John McCloskey, the Face of an Opus Dei Agenda." May 23, 2006, found at <http://www.talk2action.org/> .
- Cocozzelli, Frank 2007. "The Catholic Right (Revised)." July 8, 2007. found at <http://www.talk2action.org/> .
- Cocozzelli, Frank 2006. "Carlism and the Catholic Right (Eighth in a Series)". August 12, 2006. found at <http://www.talk2action.org/>.
- Carmen, Gene 2007. "U.S. Treaty with Tripoli 1797" Article 11. at www.Tripod.com. and at: <http://www.sunnetworks.net/~ggarman/index.html#Return%20to%20Essay%20list>).
- CNN News. found at www.cnn/news.com .
- Danbury Baptist Association's letter to Jefferson at www.usconstitution.net/jeffwall.html .
- Darwin, Charles 1872. *Origin of Species*. at http://www.infidels.org/library/historical/charles_darwin/origin_of_species/Chapter4.html .
- de Balaguer, Josemaria Escriva 1934. *The Way*. Founder of The Opus Dei Society. found at <http://www.opusdei.org/>
- Deuteronomy Chapter 28 the Old Testament. found at: Douay-Rheims Bible Online, <http://www.drbo.org/chapter/05028.htm>.
- Drury, Shadia 1999. *Leo Strauss and the American Right*. 11-13. New York: St. Martin's Press. pages 11-106, 23.
- Falwell, Jerry 1979. Founder of "Moral Majority" and Liberty University. Found at: <http://www.cnn.com/2007/US/05/15/jerry.falwell/index.html>; <http://www.falwell.com/>.
- First Continental Congress 1774, at (<http://www.answers.com/topic/first-continental-congress>).

Forum on Public Policy

- Ford, Richard Thompson 2007. "Jurisprudence: The Law, Lawyers and the Court *Bad Think: The Supreme Court mixes up intending to screw over your employee and actually doing it!*" May 30, 2007: 5:39pm ET. at ; <http://slate.com/id/2167286/> .
- Gabler, Mel and Norma. Founders of Educational Research Analysts in 1960s. Found at: www.textbookreviews.org/; <http://www.lewrockwell.com/north/north332.html> ; <http://www.bpnews.net/BPnews.asp?ID=26168>; and at: "All Things Considered" at www.npr.org 8/1/2007).
- Greenberg, Edward S. and Benjamin I. Page 2003. *The Struggle for Democracy*. Sixth Edition. 462. New York: Longman.
- Greenhouse, Linda. "It was the Supreme Court that conservatives had long yearned for and that liberals feared." In *The New York Times*. July 1, 2007. at www.nytimes.com . and at www.nytimes.com/ref/washington/scotuscases/
- Greenhouse, Linda. Ledbetter v. Goodyear. In *The New York Times*. May 29, 2007 at www.nytimes.com .
- Hersch, Seymour M. 2003. "Selective Intelligence." In *The New Yorker*, May 12, 2003.
- Jefferson, Thomas 1802. "Jefferson's letter to Danbury Baptists" at www.usconstitution.net/jeffwall.html.
- Lithwick, Dahlia 2007. "The Boss: How Pat Roberston's Law School is Changing America." April 7, 2007. at <http://www.slate.com/id/2163601/>
- Marshall, P.J. 2000. *Transactions of the Royal Historical Society Presidential Address: Britain and the World in the Eighteenth Century: IV, The Turning Outwards of Britain*. 6th ser., Vol. 11, 2001. In Classic Encyclopedia, Based on 11th Ed of Encyclopedia Britannica (pub. 1911). [http://links.jstor.org/sici?sici=0080-4401\(2001\)6%3A11%3C1%3APABATW%3E2.0.CO%3B2-C](http://links.jstor.org/sici?sici=0080-4401(2001)6%3A11%3C1%3APABATW%3E2.0.CO%3B2-C).
- Marty, Martin 2008. "Which God? Whose God? Huckabee's God?" at: http://newsweek.washingtonpost.com/onfaith/martin_marty/2008/01/god_and_the_constitution.html
- Mason, John G. 2004. "Leo Strauss and the Noble Lie: The Neo-Cons at War." Spring 2004. at www.Logosjournal.com/.
- McCain-Feingold Campaign Finance Election Law (2002). at: (<http://www.fecwatch.org/law/statutes/publaw107-155.pdf>; and www.thomas.loc.gov).
- McCloskey, Rev. John 2007. Opus Dei priest. Lobbies at: Institutes of Religion and Democracy, Institute on Religion and Public Life, Ethics and Public Policy Center, and American Enterprise Institute. Found at: www.CatholiCity.com.
- McConnell, Michael W., John H. Garvey and Thomas C. Berg 2006. *Religion And The Constitution*. New York: Aspen. 44-46.
- McConnell et al. Virginia Statute for Religious Freedom 1786. 44-46.
- McConnell et al. Virginia State "Bill of Rights" 1776, Section 16. 44, 46, 49.
- McLaren, Brian 2007. "Faith & Politics After the Religious Right (Part 2)." June 19, 2007, at: www.ChristianityToday.com .
- Monaghan, Tom. Domino Pizza CEO. at: <http://www.usdreams.com/Monaghan7677.html>
- Moyers, Bill 2007. "Keeping the Faith." At: <http://www.pbs.org/moyers/journal/05112007/profile.html> .
- Murdock, Rupert 2007. Murdock Media Affiliations. found at <http://www.questia.com/library/communication/rupert-murdoch.jsp>; and at: <http://rightweb.irc-online.org/profile/1254>.
- North, Gary 1999. "The Covenantal Wealth of Nations." from *Biblical Economics Today*, Vol. XXI, No.2, Feb/March 1999. at <http://reformed-theology.org/ice/newslet/bet/99.02.htm> also at: <http://www.lewrockwell.com/north/north332.html>.
- O'Connor, Karen and Larry J. Sabato 2006. *American Government Continuity and Change*. 80. New York: Pearson Longman.
- O'Connor, Karen and Larry J. Sabato 2006. 86-87.
- Opus Dei Society 1928. Founded by Josemaria Escriva de Balaguer, a Carlist and a priest. found at: (<http://www.opusdei.org/>;
- OpusDei, The Unofficial Homepage 2007. at: <http://www.mon.at/opusdei/> .

Forum on Public Policy

- Profile of United States Supreme Court Justices 2007. at (www.supercourtus.gov/ and at http://www.adherents.com/adh_sc.html).
- Robertson, Pat 2007. Founder of Christian Coalition and Regent University of Public Law. found at: www.cc.org/; ; <http://www.regent.edu/acad/schlaw/home.cfm>.
- Rushdoony, Rousas John 1965. *Institutes of Biblical Law*. found at <http://www.chalcedon.edu/articles/article.php?ArticleID=347>; and at <http://forerunner.com/revolution/rush.html>; <http://www.123exp-biographies.com/t/00034302446/>; <http://www.foxnews.com/oreilly/index.html> ; <http://www.foxnews.com/hannityandcolmes/index.html> ; <http://www.rushlimbaugh.com/home/>
- Savage, Charlie 2007. "Scandal puts spotlight on Christian Law School: Grads Influential in Justice Dept." April 8, 2007. In *The Boston Globe*. at www.boston.com/education/higher/articles
- Schmidt, Steffen W., Mack C. Shelley and Barbara A. Bardes 2007-2008. *American Government and Politics Today*. 2007-2008 Alternate Edition. 114-115. Canada: Thomas Wadsworth.
- Smith, Suzanne 2005. "An Inside look at Opus Dei." Found at <http://www.abc.net.au/lateline/content/2005/s1518645.htm>.
- Sodaro, Michael J. 2008. *Comparative Politics, A global Introduction*. Third Edition. 45. Boston: McGraw-Hill.
- Strauss, Leo 1958. *Thoughts on Machavelli*. 10-11. University of Chicago Press.
- Strauss, Leo 1958. 176-178.
- Straussian Followers/Neo-Con listings: found at following: <http://www.loc.gov/rr/law/notconfirmed.html>; <http://rightweb.irconline.org/profile/1254>; and <http://www.newamericancentury.org/statementofprinciples.htm>.
- The Fundamentals: A Testimony of the Truth (1910-1915). at <http://www.logos.com/products/details/2182> .
- The Simon Plan [William Simon]: found at ; <http://www.questia.com/library/communication/rupert-murdoch.jsp>; and <http://rightweb.irc-online.org/profile/1254>; and <http://ww2.lafayette.edu/~library/special/simon/bio.html>
- Tripoli Treaty 1797. Library Of Congress. 3094-3095-3096, at: <http://memory.loc.gov/>.
- Tripoli Treaty 1797. at: <http://www.yale.edu/lawweb/avalon/avalon.htm>.
- Tripoli Treaty 1797. at: http://www.stephenjaygould.org/ctrl/treaty_tripoli.html.
- University of Missouri Kansas City School of Law. Exploring Constitutional Conflicts. at: <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/estabinto.htm>. <http://www1.law.umkc.edu/Library/bookmarks.htm#fedcourts>). <http://www.law.umkc.edu/faculty/projects/ftrials/scopes/darwin.htm>
- U.S. Supreme Court Media OYEZ. cases found at: http://www.oyez.org/cases/2000-2009/2006/2006_06_157/docket/.
- U.S. Supreme Court Cases at Justia. found at: <http://supreme.justia.com/scripts/search>).
- United States Supreme Court 2007. Found at: www.supremecourtus.gov .
- Xenos, Nicholas 2003. "Leo Strauss and the Rhetoric of the War on Terror." at www.logosjournal.com .
- Yurica Katherine 2005. Yurica Report: Everything You Need to Know About Michael Ledeen. at: <http://www.yuricareport.com/Dominionism/MichaelLedeen.html>
- Yurica, Katherine 2004. "Yurica Report: The Despoiling of America." found at <file:///Users/angela/Desktop/Relig:Politics/The%20Despoiling%20Of%20America.webarchive>

Laws Listed:

- Civil Rights Act of 1964, Title VII. [employment] at Civil Rights: Law Library of Congress at: www.memory.loc.gov/cgi-bin/query/Civil.
- Executive Order 2001. House Office of Faith-Based & Community Initiatives. January 29, 2001. at: www.whitehouse.gov .
- McCain-Feingold Campaign Finance Law 2002. at: www.thomas.loc.gov/ .
- Partial-Birth Abortion Ban Act 2003. www.thomas.loc.gov/; www.supremecourtus.gov/ .

Cases Listed:

Forum on Public Policy

Cantwell v. Connecticut
310 U.S. 296 (1940)

Everson v. Board of Education
330 U.S. 1(1947)

Zorach v. Clauson
343 U.S. 3006 (1952)

Engel v. Vitale
370 U.S. 421 (1962)

Wallace v. Jaffree
472 U.S. 28k 48-49 (1985)

Lee v. Weisman
505 U.S. 577 (1992)Sante Fe Independent School District v. Doe
530 U.S. 290 (2000)

Board of Education v. Allen
392 U.S. 236 (1968)

Lemon v. Kurtzman
403 W.S. 602 (1971)

Aguilar v. Felton
473 U.S. 428 ((1985)

Agostini v. Felton
521 U.S. 203 (1997)

Zelman v. Simmons-Hanes
536 U.S. 639 (2002)

McGowan v. Maryland
366 U.S. 420 (1961)

Scopes v. State
289 S.W. 363 (1927)

Epperson v. Arkansas
393 U.S. 97 (1968)

Edwards v. Aguillard
482 U.S. 578 (1987)

Marsh v. Chambers
463 U.S. 783 (1983)

McCollum v. Board of Education
333 U.S. 203 (1948)

Abington v. Schempp
374 W.S. 203 (1963)

Larkin v. Grendel's Den

Forum on Public Policy

459 U.S. 116 (1984)

Elk Grove Unified School District v. Newdow
542 U.S. 1, 49-54 (2004)

Roe v. Wade
410 U.S. 113 (1973)

Gonzales v. Carhart & Gonzales v. Planned Parenthood
200 U.S. 321, 337 (2007)

Stenberg v. Carhart
530 U.S. 914 (2000)

Lawrence v. Texas
539 U.S. 558 (2003)

Hein v. Freedom From Religion Foundation
551 U.S. ____ (2007)

Flast v. Cohen
392 U.S. 83 (1968)

Ledbetter v. Goodyear
550 U.S. ____ (2007)

Bush v. Gore
531 U.S. 98 (2000)

Published by the Forum on Public Policy
Copyright © The Forum on Public Policy. All Rights Reserved. 2006.