

Analysis: Scalia is wrong on Constitution & religion

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Although Supreme Court Justice Antonin Scalia has the power—with the aid of four fellow justices—to make the U.S. Constitution mean what he says it means, his recent take on religion and the Constitution ignores history, is illogical and could be harmful.



Editor Marv Knox Scalia maintained the U.S. Constitution can favor religion over “nonreligion” in what he called a “sermon” at Archbishop Rummel High School in Metairie, La., [Religion News Service reported](#).

The principle of religious neutrality has been twisted by judges to mean traces of religion must be banished in favor of a purely secular public square, Scalia claimed.

“To tell you the truth, there is no place for that in our constitutional tradition. Where did that come from?” he said, according to RNS. “To be sure, you can’t favor one denomination over another. But we can’t favor religion over nonreligion?”

Partly right

Scalia is correct in his assertion religion cannot be silenced in the public square. Too often, secularists insist the language and perspective of faith

are out of bounds in public speech. Ironically, some Christians actually meet them halfway when they insist only majoritarian religion—namely, Christianity—should be allowed without qualification.

But favoring religion over nonreligion strikes against the principles imbedded in the first freedom guaranteed in the First Amendment: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” The First Amendment tells government to butt out of religion, from both giving religion a helping hand and impeding it with regulations.

That’s not an invention from the 1970s, but from the 1790s, when the Bill of Rights became part of the Constitution.

Scalia’s approach may make sense for a Catholic, whose faith group is the largest in the nation. For hundreds of years, many Catholics have approached politics and public policy from a majoritarian position. First in Europe and then in the areas of America where they comprised a majority, they favored blurry lines between church and state.

Wrong on First Amendment

But this approach should be anathema for Baptists, who “grew up” as a minority group. Historically, Baptists have looked out for minority faiths and, as several of our forebears pointedly insisted, also for people of “no faith.” We’re free-exercise, anti-establishment First Amendment-thumpers.

Scalia’s thinking also is illogical and self-contradictory coming as it does from a conservative who instinctively distrusts big government. Why would someone who thinks government perpetually botches everything want government to have anything to do with something so precious as faith?

And, of course, if Scalia’s thinking becomes accepted currency, it will be dangerous and harmful.

The first victims will be people of no faith, who by his very proclamation could face immediate discrimination.

Next would come people from minority faiths. Envisioning how adherents of Islam or Hinduism could be persecuted and discriminated against requires very little political or theological imagination in this political season.

And, if you take the long view of history, you can see how Scalia's reasoning could come around to scourge Catholics and Baptists and others who now stand near the top of America's religion hill. Imagine ongoing demographic swings. And even if you don't want to think about right and wrong or democratic principles, think about the fate of your great-grandchildren, who may still be Baptist or Catholic but also among a minority of Americans. Their non-Christian majority may think little of disfavoring those minority faiths.