A MAGAZINE OF RELIGIOUS FREEDOM

LIBERTY

IN THIS ISSUE

The Hijacking of Religion

For God and Country

NEW! LIBERTY ROUND TABLE
Read ongoing discussions on current religious liberty issues presented by leaders in the field. **Read Now**

EDITOR'S BLOG
School prayer has been a matter of serious contention for decades. In 1962 the ...**Read More**

LIFEQUEST LIBERTY
Podcast: Join Charles Mills and Lincoln Steed as they look at our religious liberty. **Listen Now**.

CAMPAIGN RESOURCES
Watch campaign videos and download resources to promote the Religious Liberty Offering. **More Info**.

SUPPORT LIBERTY
Your donation will help us in our pursuit to maintain the religious freedoms we enjoy.

Search here... Go!

ARCHIVES
View and search previous issues of *Liberty*

JANUARY / FEBRUARY 2002

No Sects, Please; We're French

French Antisect Politicians And Activists Want To Lead A World Crusade Against "Dangerous" Or "Potentially Dangerous" Religious Groups. They Have No Legal Definition Of The Word Sect, Which Is Terribly Confusing, But They Agree To Use

BY: JOHN GRAZ

The United States views the new legislation as another step toward restricting religious freedom in France and is concerned about the example France is giving to the rest of the world. France has solid democratic institutions; not the case for many of the countries likely to follow its lead. The United States' reaction echoes the reservations voiced by the president of the French Protestant Federation, Jean-Arnold de Clermont, and the Catholic Bishops Conference of France. Many majority churches and religions see the possibility of becoming victims of this antisect thrust sometime in the future.2

American opposition has been perceived as interference in France's internal politics, and suspected religious groups are accused of being the United States' "Trojan horse in Europe."3 In other words, they are considered by some as the arm of "American imperialism." This reaction is not totally new: French Protestants and Jews once faced a similar suspicion in France.

Freedom was the great cry of the American and French revolutions. But from the very beginning the two countries did not share the same concept of religious freedom. After its revolution in 1789 France accepted religious freedom. The Declaration of the Rights of Man and of the Citizen claims, "All citizens, being equal before [the law] (Article I) and no one shall be molested because of his opinions, even religious opinions, provided their expression does not disturb the public order established by law" (Article X).4

The declaration was a great step toward more freedom in a country that for centuries had been dominated by one exclusive and intolerant church.5 Protestants, then Jews, were recognized; which was not the case in most of the countries in Europe.

A comparison between the French and American declarations is useful. God is almost absent in the French declaration, and religious freedom is accepted with timidity. The only mention of God can be found in the preamble: "En presence et sous les auspices de l'Etre supr [Supreme Being]." The 1776 American Declaration of Independence states: "We hold these truths to be self-evident, that all men are created equal, endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." God is also the "Supreme Judge," and the one who provides "the protection of Divine Providence."6

Religious freedom, which had not been explicitly included in the Declaration of Independence, was strongly affirmed by the first amendment of the American Constitution, which states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."7

In contrast, the French revolutionaries were suspicious of religion. Too timid, in the judgment of the Protestants. Religious freedom appeared as a concession: m (“even”) and strongly limited by "Pourvu que . . . provided their expression does not disturb the public order established by law."

The dream of many French revolutionaries was to organize a church closely linked to the state. A church independent from the Vatican but under the authority of the monarch was also the dream of several kings.8 For the French revolutionaries, religious freedom was not the most important issue. Transferring the power from the king to the people was the key reform. The monarch and the aristocrats believed that the king was king by the grace of God. He was not accountable to anyone but God. He had the right of tolerating or not tolerating other religions outside of the official church. Because of differences in the religious and political contexts of the French and American revolutions, the French provided protection for human rights and religious tolerance instead of religious freedom.

Since that time religious tolerance and antireligious intolerance have alternated in France. The negative image of religion, created by religious wars and extremists, has fed antireligious feelings in a segment of the population and its leaders. State control of religion is largely accepted as a way of protecting all citizens. It would not be excessive to say that the concept of tolerance rather than religious freedom has inspired rulers. "Tolerance under control" is probably the most accurate phrase to describe the current policy. Thus Americans and French have never shared the same approach to religion.

For Americans, religion is seen as an essential factor in maintaining a democratic society and in providing a high level of values and solidarity. For many French Republicans and secular humanists, religion is a potential opponent to freedom and human rights —especially "Sects." While some "sects" do represent a real and legitimate danger to society, minority religious groups could also be an

easy target for the antireligious freedom activists.9

Antireligious Trend

The French antisect policy seeks justification by pointing to a succession of tragedies and mass suicides that happened in Guyana, Texas, Switzerland, France, California, Japan, and Uganda. The French believe that the best way to protect citizens against harmful or potentially harmful religious groups is to adopt a repressive legislation. Sects are more or less equated with criminal organizations.

The first problem facing the authorities was providing a definition of "sect." They decided to use the common usage.10 This choice is in itself significant. It meant that objectivity and academic research were not considered by the authorities. The published list of 172 churches, associations, and groups raised many questions and some opposition. What were the criteria? Why were some independent evangelical groups and the Jehovah's Witnesses, a minority of more than 200,000 members, listed?11 Why did the Parliamentarians declare them guilty before the public before being judged by a court?

Publishing a list to stigmatize groups before there is a judicial process to determine the guilt of any crime is resorting to totalitarian methods. It is shameful for a democracy. The government policy toward the so-called dangerous sects creates a climate of hostility, which encourages bias and favors discrimination. The new law may well fuel the antireligious bigotry that periodically rises in France and that in the past has resulted in the most severe abuse of people of faith and religious institutions.

Influence on World Attitudes

Who can be sure that in times of crisis any government won't follow in this path? The French model has received interest from South America, from Asia, and from some former Communist countries in Europe. In a number of countries, governments and societies have problems dealing with the new religious pluralism.12 They feel closer to the French approach by their history and national context than the American model. The United States, with its religious pluralism, is too unique for being a realistic model, it is claimed. Many countries, such as France, have to deal with a majority faith. If politicians want to stay in office, they need the support of the national, traditional church to build their new democracies. In giving special recognition to the traditional church, they seek to assure a certain protection for some acceptable minorities. But in combating ultracontroversial groups they set limits to their tolerance and favor their majority church. And mere tolerance is a short-term strategy that will favor discrimination and frustration in the long run.

American leaders and citizens should be especially concerned about this trend. The best response they can give to the new legislation is to remain faithful to their extraordinary heritage of freedom. A democracy doesn't need discriminatory legislation against religious groups to protect its citizens. It simply needs to enforce its penal code in a fair manner. In the United States citizens and leaders need to continue proclaiming religious freedom as a fundamental right, to be promoted and protected for all people everywhere. In doing that, they will stand for the ideals of their Founders and be on the side of the persecuted. It will be disastrous for freedom and for the world if the United States gives up its strong stance.

It would be a mistake to treat France as an enemy of human rights and religious freedom. France is wrong in equating "sects" with terrorism. France is wrong in listing religious groups as potentially dangerous sects. France is wrong in favoring discrimination on the basis of religion. But this does not mean that religious minorities are systematically persecuted in France. The United States should maintain a constant dialogue with French officials, share information, and explain their policies. A commitment of both countries to human rights will help improve religious freedom and ensure it is respected as a fundamental right.

---

1 See Les sectes en France, p. 14.
2 CNS News, May 31, 2001.
3 Bruno Fouchereau, "Au nom de la libert逓eligieuse Les sectes, cheval de Troie des Etats-Unis en Europe," Le Monde Diplomatique, Mai 2001.
4 J. F. MacLear, ed., Church and State in the Modern Age (New York and Oxford: Oxford University Press 1995), p. 76.
5 See Michelle-Marie Fayard, "Les D養arations des Droits de l'Homme," Conscience et Libert鑑i> 10 (1975): pp. 72-89, and from the same author: "La R鶯lution de 1789 et la libert逓eligieuse," Conscience et Libert頴8, (1979): 25-34.
6 See Fayard, "Les D養arations," p. 74.
7 MacLear, p. 66.
8 See "The Gallican Articles," March 19, 1682, MacLear, pp. 3, 4.
9 The introduction to the report, Les sectes en France, begins with the death and the suicides caused by several cults. See p. 5.
10 See Les sectes en France, p. 14.
11 Ibid., p. 25.
12 See Catherine Picard, Agence France Presse, No. 51.

John Graz is secretary-general of the International Religious Liberty Association, based in Silver Spring, Maryland. He holds a doctorate from the Sorbonne in Paris, France.

JANUARY / FEBRUARY 2002

Letters

Look to the Walls
I notice many polls these days regarding the posting of the Ten Commandments in schools. Recently I voted in the affirmative concerning mounting the Ten Commandments and noticed that the poll showed there were about two thirds of those polled who agreed with me and about a third whose conscience dictated they choose another path.
Rather than address the nays concerning their choice, I would like to speak to my brothers and sisters of the yea opinion.

If we think having those commands of God on school walls is such a good idea, have we ever stopped to think what a good idea it would be to have those same laws posted on a wall in our own homes? How many of us who cry, “Yes, post ‘The Ten’ in schools!” could honestly say we have them hanging in our homes? I’m looking at my barren walls here in my home as I write and feeling a little squeamish about asking this question myself. Yes, I have them hidden in Exodus 20 in a few different versions of the Bible that I have lying about here and there, but sad to say, my walls don’t have “The Ten” hanging anywhere, not even in poster form.

Could it be . . . that maybe it’s time we “commandment thumpers” practice what we preach? Maybe we should have “The 10” hanging on the walls of our homes as well as the walls of our heart.

Ron Reese,
Canton, North Carolina

Liberty magazine has supported the law of the land and the spirit of separation of church and state in arguing against state-sponsored posting of the Ten Commandments (or any other religious text, Bible, Koran, etc). However, this letter gets to the real need for people of faith to act in their homes and lives to elevate and teach the highest moral values. —Editor.

JANUARY / FEBRUARY 2002

Winds Of Change

And The Bombing Continues. And We Begin To Fear Everything From Anthrax In The Air To The Omnipresent Bogeyman, So Easily Conjured Up From The Repressed Fears Of Childhood. And Are We Still Free?

I saw one of those shadowy figures of evil on television a few weeks ago. A false and anti-Messiah figure named Osama bin Laden reached out from the desert of Afghanistan to offer a few more vague threats. And then he said something with the ring of profundity. “The winds of change are blowing,” he said.

A few nights ago my 3-year-old son came tearful to our bed and snuggled in next to me. “Daddy, the wind is blowing,” he said by way of explanation. And yes, it was blowing up a gale on our hill. Obviously a major weather change on its way–rain, cold, or perhaps a chilling early snow.

And I think something analogous is blowing in world events. There is a certain blustery instability in the wake of September 11 that bears watching as we reach for coat and gloves.

It’s great to see the flag flying. In the ambivalence of the Vietnam era I still remember, it was too often burned and sat upon. A retired neighbor on my street comes out early every morning to raise his neatly folded flag up a large pole in the front yard. And he is dutiful in returning at sunset to lower it for the day.

But I have too much of a memory of other recent events in our world not to be troubled by some of the flag waving. As I drive to work I am often surrounded by pickups and SUVs adorned by huge flags taut in the breeze of their haste. Some pickups have several flags on poles planted in their sides. I can’t help being unnerved at the similarity to scenes in Somalia, Afghanistan, and Beirut—places where revved-up irregulars in pickups raced through the streets in search of an enemy. I have learned to respect quiet patriotism, and fear the bravado of nationalism as an end in itself.

We are, and have always been, in a battle with anti-democratic, evil forces who would sully our freedoms. What is new to this generation, it seems, is a lack of clarity about the real issues at stake. Security and survival seem to have become ends in themselves. We seem to have—for the moment, at least—forgotten that these blessed states have flowed from the principles of our still-new and egalitarian system. We seem to have forgotten that the German Third Reich of Hitler and the “evil empire” of the U.S.S.R. flourished on promises of security to their favored sons.

What surprised me and many other commentators of freedom was not that the so-called U.S.A. Patriot Act (107th Congress Bill Number H.R.3162) passed, but that it passed almost without democratic discussion. When the administration first presented the shopping list that led to the act, one legislator commented that many of the articles had long been on the wish list of those wanting to limit individual rights. His cautions were clearly not contagious, because the measures pretty much passed as presented, with only a four-year sunset clause to allow for relief. Very telling was the comment of a Congressman who voted against the Patriot Bill: “Where does that leave me?” he asked, feeling his patriotism was somehow questioned.

Others have neatly enumerated the dangers inherent in the vastly expanded government powers to intrude into personal affairs, to search homes clandestinely, to detain permanent residents without charge, and in general to unleash things we have not seen since the days of McCarthy and Hoover. Some of the critics have been a little too loath to allow for very real government frustration in dealing with international agents of terrorism who utilize all the tools of our modern world to escape detection. And like it or not, all war situations create compromises with freedom (of course, to raise a constitutional point, the U.S. has not actually declared war, even if we are truly in that state). But where the enemy is within and covert, these compromises become dangerous because they can so easily lead to pogroms of any new enemy the state apparatus may identify within the population.

Religion is a powerful force for good when applied in the spirit of faith. A dangerous element when subverted in the way that the al Qaeda network has demonstrated. I do see a troubling disconnect in the national analysis of the religious basis of the new struggle. Ignorant of the subtleties of religion, many have come to see the danger as one of religious extremists, rather than religious hijackers of the icons of faith. And under the rubric of our need to remain tolerant of other faiths we are rapidly drifting toward a point where all religion is allowed, but only in a benign, recessive form.

We are in danger of treating any activist religion as a threat—and the Patriot Act will work as well there as its original target, I’m afraid. Taking one of those salutary lessons of history, it is worth noting the mechanisms used against religious groups and individuals in the U.S.S.R. Contrary to most public reports, it was mostly the activist elements of religion that were targeted, by an array of conventional

state weapons like zoning, educational requirements, and residency permits. This was enabled because religious “activity” was seen as a threat to state security.

In the aftermath of September 11 the good mayor of New York City, Rudolph Giuliani, observed to a UN audience that after meeting with the faithful at synagogues, mosques, churches, and cathedrals, “I would say to myself, . . . ‘I know we’re getting through to the same God.’” He meant well, but if that is the accepted way to see religious activity, we are in for troublous times. The Bible warns against a mingling of religions—our word would be “syncretistic” worship. Almost by definition a publically syncretistic religion will react badly to independent action by any faith group. A case in point here might be the “war” that recently erupted between the Vatican and China over that country’s control of all religion under the blending actions of the Three-Self Movement. I pray that our nation will have the polity to maintain its constitutionally mandated allowance for all religions to operate freely, without favoring any.

Religion gains its power through an inner observance of divine principles. Just so, curiously, these United States have gained and exercised power through the moral power of founding principles. Compromise plays badly in both religion and state

JANUARY / FEBRUARY 2002

Liberty Briefs

Indonesia: Protesters Demand Islamic Law Hundreds of protesters in Jakarta staged a demonstration calling for the Islamic Sharia law to be imposed on the country's 212 million inhabitants, according to a British Broadcasting Corporation report. Indonesia is 83 percent Muslim and 7 percent Christian.
Nigeria: Former Ruler Calls for Imposition of Islamic Law Muhammadu Buhari, who ruled Nigeria from 1983 to 1985 after a military coup, has called for Sharia law to be imposed on the 123 million population, of which at least 40 percent are Christian. An Agence-France-Presse report quotes Buhari as saying, "God willing, we will not stop the agitation for the total implementation of the Sharia in the country." In February up to 3,000 people were killed in riots when Sharia was imposed in the state of Kaduna.

World's Worst Violators of Religious Freedom
The U.S. Commission on International Religious Freedom has said that the world's worst violators of religious freedom are: Myanmar, China, Iran, Iraq, Laos, North Korea, Saudi Arabia, and Turkmenistan. The commission cited many atrocities carried out in violation of religious freedom; singling out Afghanistan as a "particularly severe violator."

Saudi Arabia: Christians Imprisoned The Saudi Arabian Ministry of Interior has arrested and imprisoned many more Christians in recent months, according to International Christian Concern. Often held in solitary confinement and subjected to intense pressure to implicate others, these Christian believers and their families are experiencing severe violations of religious freedom.

Government to Shut Down Salvation Army in Moscow
A Russian court decided September 11 to shut down the Salvation Army in Moscow. The Salvation Army is accused of being a dangerous anti-Russian military organization.

Malaysia: Arson Attack on Christian Community Center The Marthoma Christian Community Center in Sungei Patani, a city about 190 miles northwest of Kuala Lumpur, was set ablaze by suspected Muslim extremists, reports Compass Direct. Police told church authorities that they believe members of the Malaysian Militant Group (KMM, or Kumpulan Militan Malaysia) were responsible for the fire. The KMM, an extremist Muslim jihad group whose members were reportedly trained in Afghanistan, have been accused of numerous armed robberies, an attack on a police station, the murder of a prominent politician, and fire bombings of another church and a Hindu temple, according to Compass.

India: Remarks "Condone Hate Campaign" Against Christians The reported remarks by the Indian prime minister that Christians are trying to convert Hindus in the guise of providing humanitarian services have brought a sharp protest from the All-India Christian Council. "Remarks such as the prime minister's are seen as condoning the hate campaign and the canards, lies and half-truths that are being spread in many parts of the country. They encourage communal and extremist elements to greater frenzy. Above all, they directly goad hatemongers to curtail Christian social inputs in education, health, and the uplift of marginalized segments, particularly the Dalits," says Dr. Joseph D. Souza, president of the All-India Christian Council, in a press release.

Vietnam: Pastor Arrested for Defending Religious Freedom A pastor who is well known for defending religious freedom in Vietnam has been arrested and beaten. Nguyen Hong Quang, a Mennonite pastor, his wife, and another man are now in prison and on a hunger strike, reports Compass Direct. The U.S. Commission on International Religious Freedom identifies Vietnam as one of the world's worst persecutors and a country where "grave violations of religious freedom persist."

Aid Workers Imprisoned in Afghanistan
Charges of preaching Christianiy were enough reason for Afghanistan's Taliban government to arrest eight foreign aid workers (including two Americans) and sixteen Afghan employees. When the parents of the two American women met with them August 27, they were well and in good spirits. The regime was doubtless trying to prove a point to international aid workers–a point doubly troubling to the outside world in the days following the September 11 incidents in New York and Washington, D.C., and charges that the Taliban regime may have been harboring terrorists. The real tragedy of these arrests is in the fate of the Afghan nationals. The penalty for the foreigners, if convicted, is three to 10 days in jail and expulsion. The penalty for an Afghan who converts to Christianity is death.
–Associated Press report in The Washington Post, August 28, 2001

Shortly after Kabul fell, Northern Alliance forces rescued all eight foreign aid workers. -Editor

JANUARY / FEBRUARY 2002

Canadian Conundrum

The Charter Turns On Christian Values.

BY: M. H. OGILVIE

Americans doubting the truth of Tocqueville's great paradox of liberal democracy, that equality will overwhelm liberty once a state attempts to impose its version of perfect equality for all, need only look a few miles north to Canada. An experiment to test that proposition has been in progress here since 1982, when the Canadian Charter of Rights and Freedoms, a European-styled bill of rights, was entrenched in the Canadian constitution.
Prior to 1982 the protections for religious liberty were those of the common law, subject to the Canadian inheritance of parliamentary sovereignty dating from the English Reformation, which placed the Crown-in-Parliament atop both church and state. As long as the Canadian population was almost entirely Christian in culture and practice, the likelihood for church and state conflict was minimal.

In the handful of cases before 1982 (most resulting from provincial legislation in Quebec in the mid-twentieth century to limit the religious liberty of Jehovah's Witnesses), the Supreme Court of Canada (SCC) was quick to strike down the legislation and to protect religious freedom on an implied bill of rights theory. The court's view reflects the natural law origins of the common law, holding that religious liberty is an inherent attribute of being human and a prior condition for society. It could not be trimmed by the positive law except in truly exceptional circumstances.

But since 1982 the courts have turned that older assumption of the common law on its head, citing the charter for the civil law proposition that individual liberties are the gift of the state, to be tailored and trimmed as the state, typically represented by the courts, thinks fit. Americans still see themselves as endowed by their Creator with certain inalienable rights, but this self-perception no longer gathers to Canadians.

Four seemingly innocent sections of the charter completed the constitutional revolution in relation to religious liberty. Section 2(a) guaranteed the fundamental "freedom of conscience and religion." But the ominous equivalence in that phrase was cut down even further by three other sections: by entrenching "equality" through affirmative action for members of certain designated groups in section 15; by subjecting the entire charter to an interpretation rule requiring that it be read to enhance multiculturalism in section 27; and by limiting the rights guaranteed, so that they are not absolute, but subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In effect, the charter effectively set out the classical conflict of liberty and equality, and then handed the matter over to the courts, without providing any criteria except relativism by which to determine when to tip the balance in one direction or the other.

For Christians this experiment has meant first the erasure of the marks of a once predominant Western Christian culture from public spaces and, more recently, isolation in Christian legal ghettos whose boundaries are drawn increasingly narrow by an appellate judiciary creating a brave new world of perfect equality in which a perfect humanity (i.e., Canadians) will reside. Christians are not noticeably among the groups judicially slated for "equality" in Canada. Quite the contrary!

Judicial erasure of Christianity from public spaces in Canada in the past generation follows patterns elsewhere: the restructuring of the work-week to the "24/7" week; the removal of religion from public schools and colleges and from public events; the reconfiguration of religious accommodation in the workplace as a secular disability; as well as the now normal redrafting of criminal and family law to downgrade legal protection for human life and family life.

Public practice has followed judicial suit. We see it in the circumstantial evidence of denial of employment or promotion on merit in public services, schools, colleges, or by appointment to the bench. We see it in the clear evidence of, for example, the censure by the prime minister's Office of Christian Clergy for references to Christ and the New Testament in the Swissair crash memorial service in 1998, although Jewish and aboriginal clergy were not censured at all. We see it in the invocation of aboriginal nature gods by the Anglican primate at the installation of the current governor-general in 1999, whose prayers contained no Christian references at all.

The ghettoization of Christians in Canada is made even more disturbing because it appears to have advanced considerably beyond that in any other Western democracy. Equality, as understood by the courts, has trumped personal liberty in religious and many other matters. The most recent decision on the balance of equality and religious liberty by the Supreme Court of Canada in Trinity Western University v. British Columbia College of Teachers on May 17, 2001, is a case in point.

Unsurprisingly, the SCC's decision had been awaited with considerable apprehension. The crux of the case was the argument that the

mere expression of core Christian beliefs about human sexuality within the Christian community is sufficient evidence of a discriminatory attitude to deny Trinity Western graduates the right to work as certified teachers in the public schools. A successful outcome for BCCT would have been particularly horrific: merely being Christian in Canada would have been sufficient legal grounds for exclusion from public employment and public participation. And lest it be thought that the potential for such a legal outcome is delusional, previous appellate decisions balancing the equality rights of homosexuals and the religious expression rights of Christians should administer a sharp dose of what passes for legal reality in Canada today.

In addition to a range of decisions extending the same-sex benefits found in most Western jurisdictions, Canadian jurisprudence has gone much further than that in other Commonwealth jurisdictions in attempting to inculcate secular values—known in Canada as "charter values"— into Christian institutions under the rubric of equality. This has occurred in four ways.

First, when faced with claims for equality for which the positive law did not previously make express provision and to give content to section 15 of the charter, the SCC has selected the criterion of subjective feelings of self-worth by which to determine a valid equality claim: "I'm hurt by your beliefs. My right not to be hurt by your beliefs means that my equality claim takes precedence over your religious liberty claim to those beliefs." This argument is calculated to please a judicial generation whose personal philosophy is one of Nietzschean self-expressive individualism. Such fail to see that judicial failure to provide a reasoned and reasonable justification for accepting that claim renders decisions capricious, arbitrary, and unworthy of respect in a democratic society. For the SCC, human dignity is to be valued because a complainant says their dignity should be valued. The court never asks why human dignity should be valued. For it to acknowledge the reason given by most religious and some secular thinkers—that humanity is created by God in His own image—would have significant implications for future decisions. Decisions not only about how life is to be lived but also about the protection of life before birth and near-death stances that the court has repeatedly shown it does not wish to countenance. The SCC's value system is firmly detached from any transcendent value system.

Since the equality provision in section 15 is an empty vessel into which a court may pour whatever content it wishes and, since equality is, by definition, tautologous, it was predictable in 1982 that the judiciary would be faced with numerous suppliants and that it would be difficult to determine the criteria by which to make choices. In law, the available choices are predetermined by who is a claimant—and in Canada, there are several state-funded programs providing public funding for charter litigation to state-approved claimants. Thanks to the generous taxpayer, a vertically and horizontally integrated charter industry thrives.

In cases involving same-sex claims, the SCC consistently honors the claim on the basis that homosexuals have a right to equal dignity with others; a claim with which few in Canada would disagree in relation to political and legal rights. But in cases in which the courts have to balance that claim with the religious liberty claims of Christians under section 2(a), they consistently prefer the section 15 claim by giving this same reason, but without saying why it should be so privileged. Nor do the courts show evidence of searching for solutions that might accommodate both interests, which they ought to do in the very diverse Canadian society.

The 1998 decision in Vriend v. Alberta demonstrates the criterion for equality as well as showing how the SCC has moved against the Christian community and the entire body politic in Canada. In that case, an active homosexual dismissed from his position as a laboratory instructor at a small private evangelical college in Alberta challenged his dismissal by asking the court to "read into" provincial human rights legislation protection on the ground of sexual orientation. The court did just that. It then ordered the Alberta legislature, which had twice debated and decided against this inclusion, to do so—and it did. The subjective hurt feelings of homosexuals was the reason given for this deeply antidemocratic move. That elected legislatures would comply in this and other determinations shows both the dominance enjoyed by the court and how befuddled Canadian legislators are about the fundamentals of democracy. These episodes are deeply troubling signs of the Canadian descent from democracy.

The third move against Christians in Canada by the courts surfaced in the dissenting decision in TWU. J. A. Rowles hinted strongly that Christian institutions (and she cited the Roman Catholic Church, which was an intervener in the case through the Canadian Conference of Catholic Bishops) may be under a legal duty to comply with charter values, although she did not care to specify why or how.

The argument that Christians should consider changing their historical teachings about homosexuality, for example, also surfaced in a 2000 decision under Ontario human rights legislation in Brillinger v. Brockie. There the tribunal fined a small printshop owned by an evangelical and ordered it to complete a printing contract for materials to be distributed to the public promoting the moral equivalence of heterosexuality and homosexuality. The tribunal chided the evangelical defendant for not following the example of the United Church of Canada, one of whose former moderators gave "expert" evidence about Christian "persecution" of homosexuals. The case is currently under appeal. But even if a higher court reverses this decision, it is an ominous development that some tribunals and judges perceive it is now politically safe in Canada to suggest that Christian beliefs be changed to bring them into line with state values.

The fourth move against Christians by the courts is the companion argument to the third: Christians should be excluded from public deliberations in Canada unless they can prove their primary allegiance to charter values over Christian values. This assertion surfaced in the trial decision in Chamberlain v. Surrey School District No. 36 in 1998, which quashed a local school board decision against adopting primary readers about "alternative families." Homosexual complainants had insisted on this, on the ground that strictly secular

principles were to be applied in public decision-making; apparently there were some Christians on the school board!

That decision was overturned unanimously by the British Columbia Court of Appeal on the ground that the religious freedom guarantee extended to the expression of religious insights as well as secular views in public decision-making—but the trial judge was widely praised for her espousal of charter values and was given a promotion.

Which brings us back to TWU. By an 8-1 decision the court decided that the TWU education program should be certified. But it also decided that neither the religious freedom guarantee nor the equality guarantee is absolute. By restricting the exercise of belief to within a religious institution and denying conduct expressive of belief outside, the court thought it had resolved the conundrum. Pity the poor TWU graduates now teaching in the public schools of British Columbia. Their every word and gesture both in and out of the classroom may be scrutinized for breach of charter values. Chamberlain may now be implicitly overturned.

As good Canadians, ever grateful for any crumb the state should drop their way, some Christians were actually pleased that the SCC still permits freedom of belief within the Christian community and the presumption of innocence outside until signs of “intolerance” are manifested. But the tumbler of religious liberty in Canada is 10 percent full, not 90 percent empty. The silence of the court as to what amounts to discriminatory practices and the failure of the court to affirm that Christians may actually speak qua Christians in public places is troubling. Equally troubling is the ambiguity in the majority decision as to whether being a member of a Christian church might be cited as proof of intolerance toward homosexuals. Active engagement on Christian principles in political activities could well be so interpreted following the TWU decision. Prior to the release of the decision TWU was widely expected to be a watershed case. But it is not yet clear in which direction the stream is flowing. The court has not resolved whether religious freedom of expression for Christians is flowing again or continuing to ebb away. I suspect the latter, but hope I am wrong.

If public silence is the legal price for Christians to exist in Canada, as the SCC appears to suggest, then in the 20 years since the charter, Christianity has been both ghettoized and reduced to a quasi-illegal status. A more imaginative and urbane appellate judiciary might have devised more thoughtful approaches to the inevitable conflicts the charter provoked than the either/or approach it has invoked. Recent opinion polls clearly show that on the specific issue of making express legal provision for sexual orientation as a prohibited ground of discrimination, a significant majority of Canadians agree with the directions from the courts. Only a fundamentalist minority would deny political, economic, and social rights. A significant majority also support the extension of “marriage” as a civil legal category, and this is likely to occur in a year or two.

However, these developments need not have been at the expense of religious free expression. Greater judicial willingness to search for more accommodating solutions might have avoided the present stalemate between charter values and religious values. The unfortunate result is that Fundamentalists on each side are directing the culture war that has erupted, with annihilation of the other side as the shared goal.

Toleration for diversity and an urbane understanding of pluralism is a lot to expect in Canada. We have long historical traditions of economic dependency on the state, and a small town cultural attitude at all social levels that rewards conformity and uniformity. The unquestioned assumption that all problems should be fixed by the state by a one-size-fits-all solution has produced citizens who take their values from their political leaders. We seem to lack independent standards by which to judge those values and are too enfeebled by economic dependency to resist those values even when perceived as wrong. All this, combined with a form of parliamentary government that lacks the checks and balances of other modern constitutions and a secret judicial appointments system at the pleasure of the prime minister, probably means there can be little hope for immediate relief.

Unlike the United States, Canada lacks a network of privately funded colleges, voluntary organizations, religious organizations, think tanks, and media, as well as a professional and business class deriving its wealth from independent enterprise rather than state handouts, from which contrary voices might be expected. Moreover, the demands on the Canadian state for “equality” can become more voracious only as long as the courts make the outcome so attractive: a substantive equality of economic rights, not a mere formal equality of political rights.

Originally said to be a shield for liberties, the Canadian Charter of Rights and Freedoms has become a sword for state intrusion into all spheres of life. The public-private distinction has collapsed; personal liberty counts for little. It seems that Tocqueville was right, even if it was not Canada he had in mind. Canadian history might have predicted as much. Christians in Canada may have once enjoyed a monopoly on public influence granted by the state. But that state, under new management, has now turned on them. For the first time they must learn the lessons of true religious liberty and teach them to a doubting nation.

M. H. Ogilvie is professor of law at Carleton University, Ottawa, Ontario, Canada.

JANUARY / FEBRUARY 2002

Care For Your Rites

You Go To Court And Establish A Point Of Law. It's A Done Deal, Right? Surely You Don't Have To Keep Going Back To Court To Establish The Same Point. If Only It Were That Simple. Let Me Tell You About A Point Of Law Established In 1963 By The United

BY: MITCHELL A. TYNER

Jim Raines (a pseudonym) was hired as a service writer by a major auto dealership in a large Southwestern city. A service writer is the guy who prepares the service order on your car when you take it to the dealer. Jim was scheduled to work Monday through Friday, plus one Saturday a month. He rapidly became the star service writer for that dealership. Then Jim became a Seventh-day Adventist and informed the service manager that he could no longer work on Saturdays, as he would henceforth observe that time as the Sabbath.

Jim didn't threaten or demand his rights. He just made the service manager aware of the changed situation, offered to work any other time on any other day, and asked for an accommodation. The manager said, "I understand, and I'll talk to the boss about it." That was Monday morning. The following afternoon the service manager asked Jim to come into his office. He said, "Jim, I've talked to the owners about this. They say that if you can't work the hours we hired you to work, you need to find another job."

After another few minutes of conversation, it was evident to Jim that no accommodation would even be considered. As instructed, he turned in his uniforms, cleared out his desk, and left. He then went to the state employment security office and applied for unemployment benefits—which the dealership contested. The state awarded Jim the benefits anyway, and the dealership appealed.

The appeal resulted in a telephone hearing, the most common way of conducting such a hearing. The dealership argued that it should not be chargeable for Jim's benefits because it hired Jim to work on Saturdays, and he could not do so, and that any possible accommodation of Jim's Sabbath observance would work an undue hardship on the dealership. At bottom, the dealership seemed to be arguing that Jim's religion was his business, not the concern of his employer, and they should not be required to do anything at all for him because of it.

Jim's case raises two points. First, can a person be denied generally available government benefits, such as unemployment compensation, because of conduct mandated by or forbidden by sincere religious belief? Second, did the dealership commit illegal discrimination when it refused to accommodate Jim's Sabbathkeeping? Both points are governed by case law of long standing, case law that should have obviated the unemployment benefits appeal. Why it did not is subject to conjecture, if not suspicion.

The case in point? Sherbert v. Verner, United States Supreme Court, 1963. Adele Sherbert was a Seventh-day Adventist who lived in Greenville, South Carolina. When the textile mill where she worked went to Saturday overtime, she refused and was fired. Then she was denied unemployment benefits, because to get such, she had to be willing to take any job available to her—jobs that all required Saturday work. Her appeal went all the way to the United States Supreme Court, where Justice William J. Brennan wrote that such a denial was tantamount to a tax on Sherbert's religion. The Court held that whenever government, intentionally or not, makes religious practice more difficult, it must justify that by showing that its action served a compelling public interest that could not be met by any other method less intrusive on the religious practice. Since South Carolina had not been able to so justify its denial of benefits, Sherbert won. The language of the decision could hardly be clearer: you can't deprive a person of governmental benefits because of religiously motivated conduct.

The other case is TWA v. Hardison, United States Supreme Court, 1976. Larry Hardison worked in the maintenance facility of Trans World Airlines in Kansas City. As a member of the Worldwide Church of God, Hardison observed the Sabbath, just as did Adele Sherbert. Hardison transferred to a new area of the facility and in doing so lost his seniority for purposes of bidding on preferred shifts. He was assigned to work on Saturdays and could no longer successfully bid for another shift. Fired, he brought suit, alleging that TWA was guilty of illegal religious discrimination because it refused to accommodate him as required by Title VII of the Civil Rights Act of 1964 (42 USC2000e, et seq.).

The Supreme Court ruled that TWA did indeed have a responsibility to accommodate Hardison if it could do so without undue hardship on the conduct of the business. Because TWA had carefully considered every available means of making such an accommodation, and could show that each method would have produced undue hardship as defined by the Court (violation of seniority rights, diminution of productivity, extra cost, or infringement of the rights of other employees), Hardison lost. Yet the legality of the accommodation

requirement was upheld. An employer can't just say "Your religion is your concern, not mine. Work when you're told to, or leave." At the very least an employer must do two things: First, sincerely try to find a way to accommodate. Second, if such an accommodation is not found, show the undue hardship that each available method of accommodation would produce.

So what about the argument of Jim's employer that because any accommodation would produce undue hardship, it should not be charged for Jim's unemployment benefits? Notice the dates of these two cases: Sherbert was 1963; Hardison was 1976. In between the two was the passage of the Civil Rights Act in 1964. The point? At the time of the Sherbert decision, religious discrimination in employment was not illegal! Therefore there was no discussion of whether Sherbert's employer could have accommodated her. It was irrelevant. The benefits were requested from the state, not the employer. The concept of undue hardship thus has no place in such an unemployment benefits hearing.

Nor does the idea that Jim changed the terms of the employment get the dealership off the hook. In Hobbie v. Unemployment Appeals Commission of Florida (1987), the Court held that the right to have and practice a religion includes the right to change one's religion. Therefore Paula Hobbie, who became a Seventh-day Adventist after entering the employ of the company that then fired her for refusal to work on Saturdays, was found qualified to receive unemployment benefits.

Sherbert and Hobbie closed the door on the dealership contesting Jim Raines' benefits. The state employment security office agreed with Jim's argument and granted benefits. But it took several hours of preparation and hearing time to get the job done. Employers do that routinely, many times a year. If the employee is not represented by counsel, or aware of his/her rights far more than is the usual employee, the employer often wins. Some hearing officers remember Sherbert, but many do not.

What about the other part of Jim's case—the allegation of religious discrimination? The case was settled on mutually agreeable ground, thus the need for the pseudonym. Jim had lost three months' pay. Having begun a business of his own, he has no desire to return to his old job. The settlement, together with his unemployment benefits, equaled approximately the value of his lost wages.

What prompted the dealership to settle? Evidence of the existence of at least five available options to accommodate Jim without undue hardship, options that the employer didn't even bother to explore. The same week Jim was fired, the dealership hired two new service writers. It could have put them in the Saturday rotation in Jim's place and the rest of the team would have worked the same number of Saturdays as before: no hardship on other employees, no extra cost. In addition, it could have transferred Jim to positions in car sales, parts warehouseman, mechanic's helper, or service writer in the body shop, none of which would have caused a problem with Saturday hours. Confronted with the evidence of these overlooked options, the employer decided to settle.

The moral of this story? Past case decisions in your favor that supposedly "establish the law" may have done just that. But if the defendant is not forced to hear and heed their messages, they afford little protection. Rights are never secure "once and for all." Rights, once established, must be constantly tended, safeguarded, and enforced.

Mitchell A. Tyner, an associate general counsel for the Seventh-day Adventist Church, has much experience in defending cases of religious discrimination. He writes from Silver Spring, Maryland.

JANUARY / FEBRUARY 2002

Home-Grown Intolerance In France

The Countries Of Western Europe Are America's Historic Partners In Terms Of Shared Commitment To Democracy And Human Rights. But Even In Western Europe We Are Observing New And Subtle Forms Of Religious Discrimination. The Bill Enacted By The French Gover

BY: JOSEPH K. GRIEBOSKI

Passed by the French Parliament, and signed into law in June 2001, the “To reinforce the prevention and repression of groups of a sectarian nature” aims to restrict the free expression, growth, and development of religious groups. Amazingly, many of those targeted are from mainstream religious beliefs, which flourish in the United States under the basic human right of freedom of conscience and belief.

While the legislation is specifically aimed at “sects” and cults,” the consequences of this bill are extremely dangerous, not only for religious groups, but also in the long run for democracy and religious rights in Europe and throughout the world. While there is no legal definition for the terms sect and cult in French law, these words do carry a derogatory meaning and characterize what are seen to be dangerous groups.

The legislation contains repressive measures that will have a chilling effect on the freedom of religion and belief, including the dissolution of targeted religious associations, the imprisonment of members of such groups, and infringement upon freedom of speech —including speech intended to persuade another person to a particular point of view, whether philosophical or religious.

The law gives a court the authority to dissolve any group if it or any of its leaders have been found guilty of more than one vaguely defined criminal offense. It provides for the dissolution of any related group if a leader of that related group has at least one conviction against him or her. The law also allows the government to decide who is a “leader” of a group. It provides for fines and jail sentences if there is any attempt made to reestablish the dissolved group under another name or corporation.

Mental Manipulation

A particularly disturbing aspect of the legislation is the creation of a new criminal offense: that of causing “a state of psychological or physical subjection resulting from serious and repeated pressures or from techniques which can alter [a person’s] judgment,” originally entitled “mental manipulation.” Although the terminology “mental manipulation” has been replaced by the more acceptable phrase “abuse of a person’s state of weakness,” the text of the crime remains unchanged.

In essence, the law permits the government to prosecute any organization that establishes a seeming state of physical or psychological reliance that causes the follower to behave differently from their usual past behavior. One wonders where the change known as “conversion” fits into this new legal norm.

Additionally, any type of religious education or proselytization can be suspect under the vague crime of “abuse of a person’s state of weakness.” It is no wonder, then, that people of many traditional faiths—including the Catholic, Protestant, Jewish, and Muslim communities—are concerned about the lack of clarity regarding the law’s criminalization of “mental manipulation.”

Acts Leading to Dissolution

The list of predicated penal acts set forth in the law is extremely broad. Moreover, the law does not even require that the convictions involve offenses committed when acting for the religious organization.

An individual convicted under the law may also be denied civil and family rights (such as child custody) and may be denied the right to participate in a professional or social activity, if it is determined that the activity led to the action at issue in the penal proceedings. If the presumed “crime” of “causing a state of subjection” takes place on the premises of a religious organization, it is subject to closure for five years or more.

In addition, religious organizations themselves are liable under this provision. These are extremely drastic penalties for a “crime” couched in subjective, unscientific, and arbitrary standards vague enough to encompass any religious activity, including teaching and proselytizing. Any form of education and any form of persuasion can be defined as “techniques which can alter judgment.” Under this law individuals will be subject to imprisonment and religious associations themselves to conviction, closure for five years or more, and

then dissolution, if a judge determines that the religious beliefs or practices are somehow harmful to a person—even if the practices and beliefs are otherwise lawful and freely consented to by the individual.

A variety of international standards are violated by the ambiguous and severe provisions for civil dissolution in the legislation. The government is providing for the eradication of a religious group based on actions unrelated to the dealings of the group itself. As Elizabeth Clark pointed out in testimony before the Senate Foreign Relations Committee in May 2001, "the law is inconsistent with recent European court decisions on freedom of association, which recognize that the right to have a legal entity is an integral part of the right to freedom of association. The fact that a leader may have done something illegal —regardless of the religion—does not deprive the rest of the group the right to associate."

This legislation violates several international principles and standards, all of which France has adopted. Among those violated are the nondiscrimination principles of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Vienna Concluding Document.

Criminal Actions

Another repressive provision allows associations fighting against religious faiths to initiate criminal actions as civil plaintiffs on behalf of affected persons, even if the "victims" have no complaint with the organization. In addition, "any association duly classified as being of public interest" organized in its bylaws and articles of incorporation to "defend" and "assist" individuals or protect "collective freedoms" may initiate a civil dissolution action against a religious organization. This will allow antireligious groups with ingrained prejudices against faiths to first initiate criminal actions against targeted individuals and organizations, and then initiate dissolution actions.

International Consequences

Not only is this legislation a threat to believers in France, it also will have a significant effect on believers worldwide. The South China Morning Post reported on April 6, 2001, that, "the model proposed in France would almost certainly be studied by the SAR [Hong Kong] Government if it chooses to respond to recent pressure from the pro-Beijing camp over the Falun Gong's local activities by considering introducing criminal laws to deal with the sect. . . . Indeed, there were reports last month that the French antisect laws have already caught the eye of the Department of Justice and the Government may use French laws as a reference point in defining an 'evil cult.' "

Participants of the international conference Totalitarian Cults and Threat of the Twenty-first Century, which took place April 25-27, 2001, in Nizhny Novgorod, Russia, also referred to the French legislation as a guide when it stated in its final report, "We assume that the legislation of our country on freedom of conscience and religious activity up to now is not adequate. Traditional religions do not need any specific state protection from totalitarian sects, but citizens of Russia do. We put forward an initiative to introduce into Russian legislation alterations or amendments, or to adopt new legislative acts of direct action in order to put under a strict control, to restrict or even to ban the activity of totalitarian sects [destructive cults] and other groups falling under such definition. Here we can use legislative experience of such European countries as France, Belgium, Germany and Austria."

Domestic and International Opposition

In France itself there has been serious and consistent resistance voiced by representatives of the civil society and the major monotheistic faiths. In May 2001 Pastor Jean-Arnold de Clermont, president of the French Protestant Federation, and Cardinal Louis-Marie Bill鬠president of the French Conference of Catholic Bishops, expressed their reservations about the legislation in a letter to Prime Minister Lionel Jospin.

When formally accepting the credentials of Alain Dejammet, the new French ambassador to the Holy See, Pope John Paul II devoted an entire section of his speech to religious liberty, an unusual theme when receiving ambassadors of Western democratic countries. The pope reminded the ambassador that "religious liberty, in the full sense of the term, is the first human right. This means a liberty which is not reduced to the private sphere only. . . . To discriminate religious beliefs, or to discredit one or another form of religious practice, is a form of exclusion contrary to the respect of fundamental human values and will eventually destabilize society, where a certain pluralism of thought and action should exist, as well as a benevolent and brotherly attitude. This will necessarily create a climate of tension, intolerance, opposition and suspect, not conductive to social peace."

In April 2001, 50 members of the parliament of the Council of Europe wrote to the French Senate urging it to stop the vote on the then-draft law, commenting on its potential to create "religious discrimination in France."

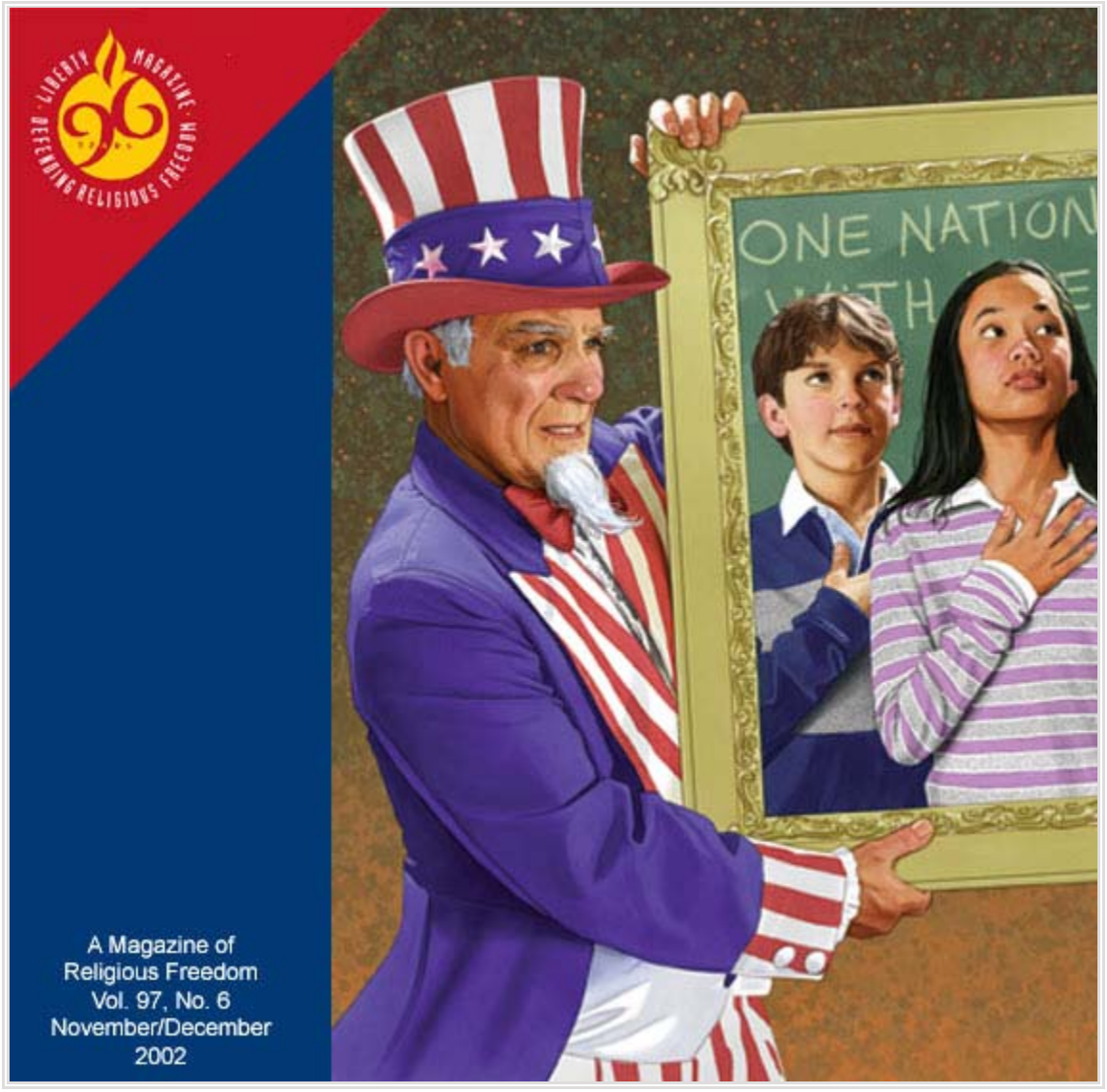
In a January 2, 2001, letter, then-U.S. Secretary of State Madeleine Albright expressed her concerns regarding the dangerous trend of religious intolerance advancing across Europe. Secretary Albright stated that ". . . the proposed legislation is part of a disturbing trend in western Europe where some states have adopted, or are considering, discriminatory legislation or policies that tend to stigmatize legitimate expression of religious faith by wrongfully associating them with dangerous 'sects' or 'cults.' Such laws and policies pose a danger to freedom of religion."

In his testimony before the Senate Foreign Relations Subcommittee on Western Europe, the acting assistant secretary of state for democracy, human rights, and labor, Michael Parmly, commented that "although the proposed bill does not apply exclusively to religious groups, it is clearly intended to target the new and less familiar religions in France. We are concerned that the language in this context is dangerously ambiguous and could be used against legitimate religious endeavors, such as religious schools, seminaries, monasteries or retreats."

The International Helsinki Federation for Human Rights has stated, "We need for France to show respect for international standards. . . . But this law contradicts France's obligations undertaken in the Helsinki process. It contradicts the standards of the Council of Europe. . . . The law is a threat to religious tolerance and basic liberties that are central to French political values. The law reflects a demonizing attitude toward minority religions and will increase the sense of insecurity felt by members of minority religions.

Joseph K. Grieboski is president of the Institute on Religion and Public Policy, in Washington, D.C.

JANUARY / FEBRUARY 2002



JANUARY / FEBRUARY 2002

The Hijacking Of Religion

How Religious Beliefs Are Exploited For Policital And Secular Ends.

BY: JONATHAN GALLAGHER

For a country to move from general tolerance to extreme intolerance in just a few short years speaks to the power of religion and its ready exploitation by those seeking political authority and control. The fuel is human competition. Where there is enough food, land, water, and other resources, the need to fight other communities is much reduced. But as the world becomes increasingly overpopulated, then such scenarios can only increase. Religion is so close to the heart of how any society defines itself that those seeking political power and worldly goals will readily use such a potent weapon. The exploitation of religious belief is not new—witness the jihads and crusades from history—but its greatly increased extent and impact would seem to be dominant factors in the foreseeable future.
The militant Taliban militia in Afghanistan also exemplified the use of religious dictates as powerful political tools. Claiming that their interpretation of Islam mandated their actions, the Taliban essentially barred women from participation in education and many aspects of society; decreed death to anyone leaving the Islamic faith or encouraging another to do so; banned access to the Internet; destroyed the religious heritage of other faiths (e.g., the Buddhist statues); and required religious minorities to wear a distinguishing label, reminiscent of Hitler's yellow star requirement for Jews.

With this total integration of religion and politics in Afghanistan, there has been no opportunity for political dissent, which was equated with religious apostasy. Religion was completely hijacked in the service of the state, an unquestionable tool of oppression and discrimination to which there can be no opposition.

When interreligious violence erupted in Indonesia just three years ago the primary response was astonishment. Had not Christians and Muslims, Hindus and Buddhists—in fact, believers of just about every faith under the sun—lived together in relative tranquillity, with mutual toleration marred only rarely by religious difference?

So where did the sudden animosity come from?

Tracing back the waves of massacre and death, it seems that the trouble there began with a minor dispute between two villagers. It just so happened that one was Christian, the other Muslim. But religion was not itself the cause of the disagreement. However, as the situation became inflamed the opposing families began to exploit the religious difference, until the whole pot boiled over into violence against the other side, ultimately defined purely on the basis of religious persuasion.

The result? Thousands dead, hundreds of thousands displaced, refugees in their own country. The world recoiled at the emerging tragedy of forced conversions, rape, and mutilation—all apparently because of "interreligious conflict."

Yet this vivid example clearly reveals that the motivating forces behind the violence were not primarily religious even though religion was used to label and define the enemy.

The end of an authoritarian regime, competition for land and resources, employment issues, intertribal disputes, economic disparities—all these are far more significant causes for the communal violence in Indonesia. Religion is just a convenient "identifier" to sanction war and murder after a perceived threat to one's own community.

In the words of Maksum Maksum, chief editor of the Indonesian daily Jawa Post, "different communities have difficulty in detaching themselves from religious matters. There can be jealousy and suspicion between religious groups, and a very complex societal problem can develop that is very difficult to resolve."1

Why does it happen? Why the interreligious violence? According to Aidir Amir Daud, vice director of the Indonesian daily newspaper Fajar, "the Indonesian constitution guarantees religious freedom, but this is not always applied in practice. Religion is the right of the individual, but other factors such as affluence can cause problems. The key is communication between religious leaders and a working together for socioeconomic equality."2

In other words, the root causes are economic, social, and political. Religion is simply the tool that is used to gain control.

Sudan was named in the 2000 report of the U.S. Commission on International Religious Freedom as the world's worst violator of religious liberty. The 2001 report indicates that the situation has further deteriorated: "The situation in Sudan has grown worse in the

year since the release of the commission's report. The government of Sudan continues to commit egregious human rights abuses —including widespread bombing of civilian and humanitarian targets, abduction and enslavement by government-sponsored militias, manipulation of humanitarian assistance as a weapon of war, and severe restrictions on religious freedom."3

The Islamic government of the north is waging a genocidal war against the south, whose population is mainly Christian and animist. Through a policy of massacre and destruction of villages, the government uses "Islamicization" as a tool to forcibly convert and enslave those captured in the south. Girls are forced into slavery; worse, boys are forced to join the army and sent to fight in the south.

The methodology is one designed to eradicate all opposition and to enforce conformity. The tool of choice is religion—religion exploited as a vicious mechanism of destruction and death for all who will not comply.

Many moderates protest that such use of religion is against the fundamental principles of the faith in question. It is undeniably true that all the major religions speak to greater or lesser degrees about tolerance and compassion. Yet when religion is used by political extremists, such moderate views are lost in the rhetoric and violence. And many moderates do not want to be seen as in opposition to what is deemed a matter of faith; do not want to oppose those who have not only demanded what is Caesar's, but what is God's, too.

India provides a troubling picture of religious trends. The development of "Hindu fundamentalism" correlates with the establishment of the BJP, the "Hindu nationalist" party that now forms the government of India. Apart from the continuing feud with Muslim Pakistan, India has traditionally been a tolerant and pluralistic society. It has welcomed religions from beyond its borders, and Hinduism itself has always promoted toleration and acceptance. That is not to say that there have been no conflicts in the past, but generally India has been free from major religious conflict.

But today that tolerant scenario is rapidly fading. The exclusivistic attitude of the "Hindu national" politicians has encouraged an atmosphere of suspicion and fear, with interreligious conflict the obvious result. Instead of being an inclusive expression of religion, Hinduism is now being marketed as the "national faith." Calls are made from government officials for resistance to the work of Christian missionaries.

Any attempt by other religious groups to share their faith and gain converts is strongly resisted, and legislation requiring government permission to convert from one faith to another is already in place in some areas. Antagonism to Christian missionary work is becoming increasingly intense and viewed as a threat to national security and identity. Pressure to reconvert to Hinduism is strong.

A note left at the site of three bombings in the northern state of Bihar said, "Stop conversions under the pretext of social service. India is a Hindu nation. Christians, leave India."

Again, this is no accidental process. We are seeing the role of religion in society exploited and corrupted to self-serving ends by those who wish to gain power. By equating faith and nationalism, politicians gain support—for who would dare contradict what is presented as an "article of faith"? Religion is once again hijacked, and the threat to religious minorities is ominous. In situations of crisis, the majority seeks scapegoats. It does not take much imagination to foresee interreligious conflict of cataclysmic proportions in a country of more than 1 billion people, with great competition for food and water, with most resources rapidly being depleted.

When society reaches the breaking point, religious toleration is a scarce commodity.

"Militancy" in religion takes many forms, yet is a very "portable" concept. It would have seemed absurd even just a few years ago to suggest that a militant form of Buddhism might develop. Such an idea is no longer laughable. Even Buddhism, which is so linked with concepts of peace, tranquillity, and acceptance, has been hijacked to support nationalistic and political concerns.

Take, for example, the Himalayan kingdom of Bhutan, where Buddhism is the state religion. Conversion to other religions is illegal. Attacks on minority religious groups are increasing. Christians have been arrested and beaten. Some have been forced to leave the country.

Again, why? Because the religion of the majority—in this case, Buddhism—is viewed as essential to social stability and order. So a hostile and antagonistic attitude develops toward other religious faiths. The result: severe restrictions on religious freedoms and the potential for violent conflict.

Such exploitation of religion for political and secular objectives does not augur well for fundamental human rights on the international scene. The pressures of overpopulation, resource depletion, famine, disease, pollution, crime, and so on all impact society in negative ways that contribute to the desire to hijack religion for personal and national purposes.

Consequently the currently accepted norms of religious liberty and freedom of conscience will come under increasing attack. While nations nominally subscribe to such international instruments as the United National Charter, the Universal Declaration of Human

Rights, and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, such documents no longer seem to be well respected. In a recent conversation at the United Nations, one high-ranking diplomat referred dismissively to the Universal Declaration of Human Rights as “Western philosophy,” and stated that her country did not believe it should be bound by such agreements.

While we must avoid becoming alarmist, the developing situation should be cause for grave concern. When religion is hijacked, so is our fundamental humanity. Religion lies close to the heart of who we claim to be. So in exploiting religion, we exploit ourselves. As a result, multiplied millions are deceived by duplicitous leaders who claim to be speaking in the name of faith. What hope is there for separation of church and state when religion is employed in the service of politicians?

In his latest annual report Professor Abdelfattah Amor, United Nations Special Rapporteur on religious intolerance, writes: “The worldwide trend as regards religion and belief is towards increased intolerance and discrimination against minorities and a failure to take account of their specific requirements and needs . . . . Sadly, intolerance and discrimination based on religion or belief are ever-present in the world . . . . An appraisal of the status of freedom of religion and belief in the world today reveals a somewhat negative and disturbing picture.”4

There is no question that the intermixing of religion and politics will become an even greater part of this “negative and disturbing picture.” Amor goes on to describe what he calls “the ever-worsening scourge of extremism. This phenomenon, which is complex, having religious, political and ethical roots, and has diverse objectives (purely political and/or religious), respects no religion. It has hijacked Islam (as in Afghanistan, Egypt, India, Indonesia, Jordan, Lebanon, Pakistan, the Philippines and Turkey), Judaism (in Israel), Christianity (in Georgia), and Hinduism (in India). . . . The casualties of this aberration are . . . religions themselves.”5

And, it should be added, so is the freedom to believe, practice, and worship that goes along with religious tolerance and freedom of conscience.

The irony of the hijacking of religion is that the aim—to create a unified society based on the enforcement of one religion—is an illusion. The result is the complete opposite: the fracturing and destruction of society and the degrading and debasing of humanity. For when an individual’s religious freedom is violated, we are all violated. Truth responds poorly to force and imposition. It is shouted down by hatred and violence. In the words of Thomas Clarke: “All violence in religion is irreligious, and that whoever is wrong, the persecutor cannot be right.”6

Here is the true tragedy—that in enforcing religion, hijacking the belief system, truth is turned to error, right becomes wrong, and the whole set of moral and ethical values is debased and corrupted. The result is devastating for religious liberty.

Hijacked religion is no religion at all.

_____

1 Personal interview, Feb. 14, 2001.
2 Personal interview, Feb. 14, 2001.
3 USCIRF report 2001, p. 123.
4 E/CN.4/2001/63, pp. 46, 47, available at http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2001.63.En?Opendocument"
5 Ibid., p. 46.
6 Thomas Clarke, History of Intolerance (1819), vol. 1, p. 3.

_____

Jonathan Gallagher is United Nations Liaison for the Seventh-day Adventist Church. He writes from Silver Spring, Maryland.

JANUARY / FEBRUARY 2002

For God And Country

One Man's Battle To Reconcile Faith & Military Service

BY: ANDREW MCCLELLAN

He remembers the screaming KC-135s and C-5s; the roars, the lights, the vibrating windowpanes, the low buzz in his ears. It ignited his mind with the images and fantasies that only children can create. From those early days living near the Robert Gray Army Airfield in Texas, Allen Davis had one goal: to be a military pilot. By the time he was 14 he had read every book in the galaxy on flying. He had even built his own air force of model planes (American only, of course). He dreamed of attending the United States Air Force Academy. Though he graduated fifth in his high school class (with a 3.98 GPA), he faced one of the most searing moments in his life when, standing on his hot front porch, he opened a letter from the academy and read that he wasn't "academically fit" for their curriculum. But Allen Davis didn't give up; that wasn't him. And after four years at the Air Force Reserve Officer Training Program at Southwest Texas State University, he received his commission as a second lieutenant. He had graduated first in his class. Six weeks after his May 1989 graduation he was in the undergraduate pilot training program at Laughlin Air Force Base. Then it was on to Castle Air Force Base, where he learned to fly the KC-135 Stratotanker (one of the planes he had watched as a kid). Next thing he knew he was in Desert Storm, flying out of Jeddah, Saudi Arabia. Today, after many awards and medals (Aerial Achievement Medal, Kosovo Campaign Medal, NATO Medal, Southwest Asia Service Medal, and others), Air Force Major Harry A. Davis, Jr., is assistant operations officer and a C-5 evaluator aircraft commander, 22nd Airlift Squadron, Travis Air Force Base, California. He has a senior pilot rating, having flown more than 3,500 hours in such aircraft as the T-41, T-37, T-38, KC-135, and C-5.
That little boy who used to stand outside and watch military planes roar overhead has become an experienced pilot. He now flies planes that other little boys stare at and dream about. Few of them will ever fulfill their dreams the way Allen Davis has.

Amazingly, this Air Force officer has faced the threat of a court-martial because of his religious convictions. Everything he had worked so hard for since childhood came close to ending in "disgrace." In the midst of his struggle one great irony kept popping up in his mind: "Here I was," he says, "wanting to serve my country because I believe in its values, among them religious freedom. And now what I was willing to fight for to give to others—religious freedom—I was seeking for myself. And what happened? I faced the possible end of my career. It just didn't make sense."

That's not the only irony in this case. Another is this: Why would someone go AWOL (absent without leave) on a mission that he had volunteered to go on to begin with?

Good question, and it gets to the heart of Air Force Major Allen Davis's story. Little did he realize as he joined the Air Force that one of his greatest challenges wouldn't be in the air but on the ground. It came not from a hostile foreign power, but from the very military that he has served for more than a decade.

"Good to Go"
In early 2001 Major Allen Davis (A.D., as he's commonly called), stationed at Travis, volunteered for a classified training mission in Korea. Before leaving, Davis, a Seventh-day Adventist, spoke with the civilian contractor in charge of the exercise, stressing that he could participate in the exercise, but only if he could miss the training on Saturday, April 14 (the Sabbath day). He would gladly, he said, make up the time the next day. He made it clear that if the accommodation could not be granted, he would not go. If it could, he would be eager to go. He was by the contractor, who was also his sponsor, that it would be granted and that he could make up the time on Easter Sunday (when many of the other men and women in the same training program would be allowed to attend church services). Deciding to go for it, A.D. cleared his accommodation with his own commanding officers before leaving.

Believing that his Sabbath observance had been accommodated, Allen Davis flew to Korea. He arrived on Friday, April 13, at the Inchon International Airport at 1630. The exercises at the Korea Battle Simulation Center were scheduled to begin at 0930 the next day—the Sabbath. Instead of taking part, Major Davis spent the morning at church, then went to the servicemen's center in downtown Seoul. At one point that day he called his supervisor to let him know that he had arrived and to confirm that the training for the next morning was still on.

"I was told," said Major Davis, "that it was 'Good to go.'"

Apparently not.

When Allen Davis showed up for his training the morning of Sunday, April 15, he had no idea that something was amiss. The next day,

however, he faced these fateful words from his commanding officer: “You’re in trouble, Major.” He was then charged with Article 86 (failure to go, absent without leave), read his rights, and asked if he wanted a lawyer. The next thing this young Air Force officer and pilot knew he was sent back to America to face a formal military inquiry into his actions. If the inquiry were to determine he was at fault, he would be formally charged with a crime. A conviction would result in a court-martial and the end of his career.

“I just couldn’t understand,” he says, “how in the nation that pioneered religious freedom, I was facing criminal charges for exercising my own.”

The Limits of Free Exercise

Allen Davis wasn’t the first one to ask such a question, or at least a similar one, regarding the limits of religious freedom in America. Though most Americans take the free exercise of religion for granted, this specific freedom, as with all others, comes with limitations.

Of course, given the nature of things, it has to. Free speech doesn’t mean, as it has been said, the right to shout “Fire!” in a crowded movie theater. Freedom of the press doesn’t mean the right to publish secrets that could endanger American service personnel during wartime. And freedom of religion doesn’t mean that any practice—no matter how crude or violent or degrading—done under the auspices of religion has automatic constitutional protection.

Our state-allowed rights do come with limitations, those limitations usually being determined by how they balance with other rights and the rights of others. The great struggle facing American religious jurisprudence is What are those limits? How do we define them?

“The cherished rights of the individual to free exercise of religion,” writes Robert Miller and Ronald Flowers, “often conflict with the equally valued rights of other individuals and the interests of society. It is difficult, at best, to apply general constitutional principles to concrete problem situations; when these principles collide with each other, the difficulty is increased.”

From the earliest days of the American experiment in religious freedom, one of the key struggles has been when the exercise of religion clashed with what’s called the “police power” of the state: that is, the right of the government to regulate behavior that could conflict with the health, safety, and morals of society. It played out in the early Mormon cases, which dealt with the practice of polygamy. We saw the debate in the flag-salute cases regarding the right of Jehovah’s Witness schoolchildren to refuse to salute the flag. And it continued in the situation of Sabbathkeepers who faced economic pressure because of Sunday closing laws. There have been many other examples. Through them all, the courts hammered out a basic principle: those religious practices that were detrimental to individuals or to society as a whole could be banned. Otherwise people should not face civil or criminal penalties when they practice their faith. It was called the “compelling state interest” principle, and it meant, simply and somewhat crudely, that unless the state had a “compelling interest” in stopping the practice, the practice should be allowed.

All things considered, a reasonable position, though by nature it unleashed another slew of questions that to this day have not been fully resolved, such as When is a state interest “compelling”? In fact, since the infamous Smith decision even that standard has changed. According to the United States Supreme Court, it doesn’t matter whether your expression of faith poses a threat: if there’s a generally applicable law against that practice (in other words, the laws didn’t specifically target one particular religious group), then no matter how benign that practice is, to get relief you must get the law changed through the legislative process. Otherwise you’re out of luck.

The Military Question

If free exercise of faith is that fragile within the general population, what happens in the military, with its strict rules of conduct, accountability, and well-defined lines of authority? Here the courts have been even less sympathetic to religious practice.

In one of the more publicized cases, the United States Supreme Court (Goldman v. Weinberger, 1986) upheld an Air Force regulation that forbade the wearing of headgear while indoors, except by on-duty security police. This regulation had been a problem for an Orthodox rabbi and military psychologist named Simcha Goldman. His religion mandated that he wear his skullcap indoors as well. Stating that “the First Amendment does not require the military to accommodate such practices in the face of its view that they would detract from the uniformity sought by the dress regulations,” the High Court sided with the military (Goldman later got legislative relief).

Nevertheless, a person who joins the United States military doesn’t, by default, give up his or her religious rights. Specific regulations guide the principles of religious accommodation for military personnel. Without some effort at accommodation, we would see the great irony that those who risk their lives to fight for the religious freedom of others are denied that very right themselves. Though the lines might be drawn differently within the military, the lines still have to be drawn.

According to Air Force Instruction 36-2706 (Military Equal Opportunity and Treatment Programs), Section 4F, paragraph 4.40.1.1, “religious accommodation is based on the constitutional right of the free exercise of religion in accordance with DoD policy.”According to that policy, the “Department of Defense places a high value on the rights of members of the Armed Forces to observe the tenets of their respective religions. It is DoD policy that requests for accommodation of religious practices should be approved by commanders when

accommodation will not have an adverse impact on military readiness, unit cohesion, standards, or discipline." The policy stated also that "worship services, holy days, and Sabbath observance should be accommodated, except when precluded by military necessity."

All that sounds reasonable, which it is. However, it leaves open numerous other questions that could have answers as varied as each situation. First, regulations don't state that commanders "must" accommodate; regulations say that they "should" do so, and a vast gulf lies between those words. Second, the question arises of exactly how one defines "adverse impact." One's reasonable accommodation might be another's "adverse impact." Who decides? The answer is easy: the commanding officer.

For God and Country

In Major Davis's situation the commanding officer denied the request when it came through. He believed that Major Davis would be needed on that Sabbath. Only one problem: For some reason that denial never came through, never reached Major Davis back at Travis. As far as the commanding officer was concerned, when Major Davis didn't show up he was in dereliction of duty. This was defiance of an order. This was AWOL, something that could have put him in deep trouble, even to the point of ending his career.

Given the seriousness of the charges, the military wasn't going to do anything without an investigation. It brought two months of anguish for Major Davis. He faced the real possibility that all that he had worked for might crash and burn.

The in-depth investigation involved lawyers, chaplains, depositions, and some top military brass. During the investigation the question naturally came up: What about all the Sabbaths during the previous eight years that A.D. had been an Adventist? The answer was easy: He had been accommodated on every single one. The Air Force, following the dictates of Department of Defense policy, had given him his Sabbaths, hundreds of them in a row. Major Davis stated that in a time of emergency, such as during a war, particularly when lives were at stake, he would serve on the Sabbath.

The point was if accommodation had been made all along, why suddenly this problem? This explains why, when the investigation ended, Major Davis was exonerated. He had done everything right. Somewhere along the way, someone had dropped the ball, and it happened to land on this Air Force pilot's head. The denial of accommodation had never reached him. It was as simple as that, although that lapse—someone else's—could have cost him his career.

"There was a breakdown in the system somewhere," says Colonel Richard Stenbakken, a former U.S. Army chaplain, who was involved in the case from the start. "Though I don't know who was ultimately responsible for the lapse, someone probably got a good talking to. Things like this aren't supposed to happen."

But they do, and maybe not always with such a happy ending, either. Even the "Letter of Counseling" in Major Davis's file more than likely will be removed at some point. Allen Davis came out of the process with no official damage to his career.

Nevertheless, it still hurts.

"Though I knew that I did nothing wrong," says Major Davis, "it was still a very painful time for me and my wife, who was expecting. I love my God and I love the Air Force. I never expected those loyalties to come into conflict like this."

In the end the system worked. There was a mistake, and the mistake was rectified. His story, even though involving a blunder, reflects the basic conflict that Americans, military or civilian, face regarding the limits and parameters of the right to free exercise of faith. The limits are real. Persons of faith, whatever that faith is, never know when or how they might find themselves facing a similar conflict: one that basically pits God against country.

The military Code of Conduct, which many soldiers carry in their wallets, states, "I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in God and in the United States of America." Fine, but the question remains, not just for soldiers but for all Americans, and it contains the essence of the free exercise dilemma: What happens when God and the United States of America clash?

Andrew McClellan writes from Silver Spring, Maryland.