A MAGAZINE OF RELIGIOUS FREEDOM

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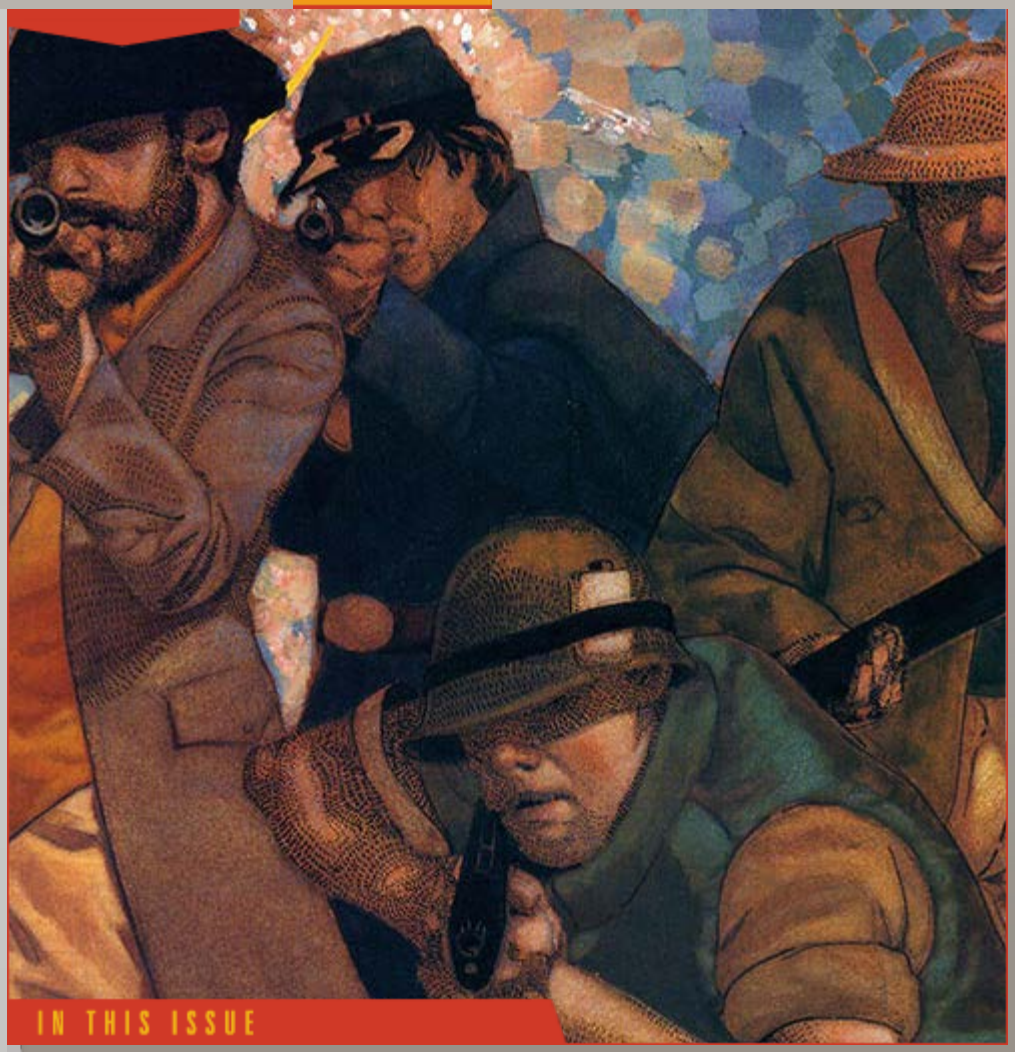

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MARCH / APRIL 2003

Conscientious Objections

Even In Peacetime Conscientious Objectors To War Are Often Labeled As Unpatriotic. In Times Of War They Are Called Cowards, Traitors, Or Worse. But In Good Times And Bad, In Peace And Even During War, We Must Protect The Rights Of People Whose Honest Be

BY: GARY KRAUSE

Even in peacetime conscientious objectors to war are often labeled as unpatriotic. In times of war they are called cowards, traitors, or worse. But in good times and bad, in peace and even during war, we must protect the rights of people whose honest beliefs, for whatever reason, place them out of kilter with national sentiment.

In post-September 11 America, voices of dissent to the government's military policies are not generally welcome. Amid the understandable patriotic fervor, pacifists and conscientious objectors sound like off-key tenors in the choir. In a September 26, 2001, piece entitled "Pacifist Claptrap," Atlantic Monthly editor Michael Kelly labeled the pacifist's position as "evil."[1] In case his message wasn't clear, a week later he called pacifists "liars. Frauds. Hypocrites."[2]

Throughout world history, depending on geography, conscientious objectors have been ridiculed, imprisoned, and persecuted. A quick glance at America's history shows even here the spirit of tolerance ebbing and flowing with circumstance. So when prominent throught leaders start labeling pacifists as evil, it's not hard to imagine why conscientious objectors should feel uneasy.

Writing in the Washington Post in 1965 at the height of the Vietnam War, journalist Murray Marder referred to the "national tendency to convert every conflict where numerous American lives are at stake into a holy war."[3] Since the events of September 11, 2001, the holy war rhetoric seems alive and well, and it's a sentiment that complicates matters for those who, for whatever reason, have a conscientious objection to war. The extent to which the government makes provision for such people is a barometer of its commitment to the rights of individual conscience.

The religious war rhetoric today starts at the highest levels. President George Bush has called America "the brightest beacon for freedom and opportunity in the world," defending "freedom and all that is good and just in our world." "We will rid the world of the evildoers," he has promised.

Best-selling Christian author Hal Lindsey describes the current conflict as a war between America and Satan: "America sees his [Satan's] face in clouds of smoke, sees his fingerprints all over New York and Washington and has decided to take him on in open combat." For Lindsey and many other fundamentalist Christians, the God-fearing thing to do is "use our military power in an unrestricted way."[4]

In the United States, many of the calls for a strong military come from fundamentalist Christians. Speaking soon after September 11, Stanley Hauerwas, a Christian ethicist in the Duke University Divinity School, accused American Christians in general of being "blank check people." He explained, "They go kill whomever the democratically elected leaders ask them to kill."[5]

On the other hand, many are offended by talk of a holy war and urge that God should be kept out of the equation. Spy novelist John Le Carré made this plea from his cliff house on Britain's Cornish coast: "Please, Mr. Bush—on my knees, Mr. Blair—keep God out of this. To imagine that God fights wars is to credit Him with the worst follies of mankind. God, if we know anything about Him, which I don't profess to, prefers effective food drops, dedicated medical teams, comfort and good tents for the homeless and bereaved."[6]

Naturally governments can wage war with greater vigor, authority, and purpose if they and their constituents believe God is on their side. But the relation between God and war, religion and the military, is and always has been more complex and difficult.

Early in its history the Christian church faced the issue of how to relate to government and war. How could Christians reconcile the "turn the other cheek" teaching of Jesus with the pressing need to defend themselves from foreign armies?

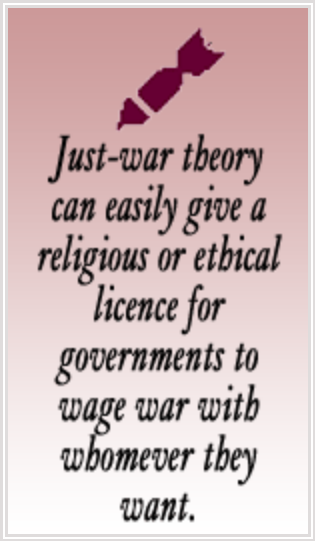
The early church took a largely pacifistic approach to war, but this changed as its political and social influence increased, and the Roman Empire became increasingly Christian.[7] During the fourth and fifth centuries leaders and theologians such as Augustine and Thomas Aquinas developed views and arguments that came together in what we know today as "just war" theory.

In its classic form this theory has two dimensions. First, that Christians can and should discriminate between just and unjust wars (jus ad bellum). Second, there should be moral limitations on the way war is conducted (jus in bello). Under each category there are specific examples—for example, all nonviolent options must be exercised first; it can be waged only by legitimate authority; it can be only in self-defense; it must have a reasonable chance of success; it must discriminate between combatants and civilians; violent action must be proportional.[8]

The U.S. Conference of Catholic Bishops issued a statement after the events of September 11, 2001, that was firmly within this tradition. "As our nation undertakes military action, our Bishops' Conference calls for continued prayer, resolve and restraint in response to the terrorist attacks of September 11," it said. "We renew our call that our military response must be guided by the traditional moral limits on the use of force. Military action is always regrettable, but it may be necessary to protect the innocent or to defend the common good."[9]

Just-war theory is severely flawed. Dumbed down, it can easily give a religious or ethical licence for governments to wage war with whomever they want. All they have to do is clearly differentiate themselves—the "goodies"—from their enemies—the "baddies."

In calling for proper discrimination, just-war theory demands a knowledge we don't and can't have. In the complex and hazy climate of international terrorism, most civilians simply don't have a proper knowledge of "the enemy," and must assume their leaders do. As for limitations on the way war is conducted, the military doesn't send out a list of weapons it plans to use so that the people can vote on them before they are used. Even if they did, by what criteria would we be proficient to judge if they fit the category of "legitimate force"?



Cluster bombs, for example, are notorious for causing civilian casualties and were used extensively during the attacks on Afghanistan. The 15,000-pound Daisy Cutters, also used by America in Afghanistan, incinerate everything within a half-mile radius. "This is an awesome device," says terrorism expert Michael Yardley. "It immediately kills everything within range, and anyone nearby will be left psychologically traumatized."[10] By what standard is the legitimacy of such weapons judged within the just-war tradition, and how, when, and by whom would such judgment take place?

In the face of such considerations, some Christians respond somewhere along the axis of pacifism to noncombatancy. "The feeling that bloodshed and killing are fundamentally opposed to love runs deep in the Christian conscience," writes Louis Swift, "and any claim that is made for the legitimacy of force has to be reconciled with this conviction."[11] Lawrence Minear points out that the roots of American conscientious objection to war were religious in nature, even though today most American Christians support the military. He adds: "The Old Testament commandment against killing and the New Testament injunctions against returning evil for evil have led American Christians from Colonial days to eschew, in varying degrees, military service, alternate service, and taxation for military purposes."[12]

Another deeply rooted tradition in America is political and legal accommodation of the rights of Americans to be conscientious objectors. Some of America's founders were pacifists who were persecuted for their beliefs in Europe. The framers of the Constitution omitted a clause on conscientious objectors only because they didn't envision any need for a standing army.[13]

At the onset of the Revolutionary War, George Washington issued a draft order, which was a call to "all young men of suitable age to be drafted, except those with conscientious scruples against war." A Massachusetts act of 1757 exempted "the people called Quakers from the penalty of the law for nonattendance on military musters." This was not practiced in all the American colonies, but by the time of the Revolution Quakers had won exemption in many of them.[14]

During the Civil War a Northern law of 1863 "excused 'members of religious denominations' who personally as well as by their sect's articles of faith were 'conscientiously opposed to the bearing of arms.'"[15] The following year Congress amended the draft law to provide some accommodation for conscientious objectors. Options for the objector included service in hospitals or elsewhere, or paying a commutation fee of 0.[16]Some 4,000 men served as unarmed legal conscientious objectors.[17]

In times of peace and in times of war with a surplus of military personnel, governments can afford to be generous with conscientious

objectors. The real test comes when there is a shortage of personnel, as happened during World Wars I and II. The Selective Training and Service Act of 1940 required all males aged 21 to 36 to register for the draft, but exempted from military service those who "by reason of religious training and belief" opposed war. This meant that the government gave exemption to those belonging to traditionally pacifist religious groups such as the Quakers, but made no allowance for conscientious objectors outside of these groups.

In place of bearing arms the government substituted unpaid service of some kind—either directly related to the military effort or some kind of general community service. Those conscientious objectors who failed the religious test, or objected for other reasons, fared worse, and some 5,000 were imprisoned in the U.S. between 1940 and 1945.[18]

Until 1965 the U.S. government continued to make provision for only conscientious objectors whose objections were religious in nature. This changed after a watershed case involving Daniel Seeger, a conscientious objector who was agnostic as to the existence of God and whose religious faith was limited to a "purely ethical creed."[19]This case led the Supreme Court to widen its scope to include the world-views of conscientious objectors who have "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption."20 In 1970 accommodation became even broader for those whose objection was expressed in philosophical rather than religious terms.[21]

Although the United States makes broad-ranging provisions for conscientious objectors, these rights and privileges are at best precarious. This can be seen in the case of those who choose to become conscientious objectors after they have enrolled in the military. Father Michael Baxter, associate professor of theology at Notre Dame University, worked in Germany with military personnel who changed their minds and became conscientious objectors during the Gulf War. He says many of the soldiers came from disadvantaged homes and entered the military naïve to the realities of war.

"The military was to them an opportunity for employment," he adds. "They weren't just-war people, they weren't pacifists, they weren't anything when they enlisted. They were just out of a job." He says that during the Gulf War, conscientious objectors were forcibly deployed to the Middle East, some in handcuffs and leg irons. Many were arrested and not even given the right to receive letters from their families.

According to Baxter some 2,500 conscientious objector applications were submitted, but "during the Gulf War no CO applications were processed, even though military regulations provided for the rights of COs."[22]

In 2003 talk of reintroducing the draft is on the American agenda, and there's no reason for confidence that conscientious objectors will be better treated in the future. Republican representative Nick Smith sponsored the Universal Military Training and Service Act of 2001 that would require conscientious objectors to "participate in basic military training and education," even though they would be exempt from "any combatant training component."[23] Although not expected to pass, it reflects an environment in which tolerance for those out of step with "ridding the world of evildoers" may be sorely tested.

Dissent to war in modern-day America ranges from full-blown pacifism to noncombatancy (which is really conscientious cooperation, ready to accommodate the military as far as possible, short of actually carrying a gun). The dissenters range from highly committed religious people (such as Mennonites) to thoroughly secular atheists.

Whatever the hue or stripe of the dissenters and their dissent, it's the duty and privilege of a civilized democracy to respect and accommodate their right to act in accordance with their beliefs. No matter how much it hurts. No matter how holy we think the war.

Gary Krause is an Australian who writes from Burtonsville, Maryland. He has long had an interest in this topic. While studying at the University of Newcastle, in New South Wales, Australia, he wrote an honors paper on the attitude of the Christian churches toward war.

[1] Washington Post, Sept 26, 2001.
[2] Ibid, Oct. 3, 2001.
[3] From "No Holy War," Washington Post, July 16, 1965, quoted in Lawrence Minear, "Conscience and the Draft," Theology Today 21, no. 1 (April 1966): 71. Richard Falk echoed this view in 2001: "The U.S. temperament has tended to approach war as a matter of confronting evil. In such a view, victory can be achieved only by the total defeat of the other, and with it, the triumph of good" ("Defining a Just War," The Nation, Oct. 29, 2001).
[4] WorldNetDaily, Sept. 26, 2001.
[5] Duke University Forum, "The Morality of War in Islamic and Christian Perspective," Oct. 9, 2001. See www.duke.edu/web/forums.

[6] John Le Carré, "A War We Cannot Win," The Nation, Nov. 19, 2001.
[7] Mark Edward DeForrest, "Just War Theory and the Recent U.S. Air Strikes Against Iraq," Gonzaga International Law Journal 8 (1997).
[8] J. T. Johnson points out that the modern just-war viewpoint is the secular derivative of a split in the classic just-war theory that took place after the Reformation. It replaced war for religion as a just cause with causes that could be put in natural law or political terms. See J. T. Johnson, Ideology, Reason, and the Limitation of War: Religious and Secular Concepts 1200-1740 (Princeton, N.J.: Princeton University Press, 1975), pp. 8, 9, cited in Alan Johnson, "The Bible and War in America: An Historical Survey," Journal of the Evangelical Theological Society, June 1985.
[9] "Catholic Bishops' Conference President Issues Statement on Military Action," press release from United States Conference of Catholic Bishops, Oct. 9, 2001.
[10] Quoted in Annette McCann, "Cluster Bomb Row Has Blair on Back Foot," The Herald (Glasgow) Nov. 8, 2001.
[11] J. Swift, The Early Fathers on War and Military Service (M. Glazier, 1983), p. 79, quoted in Alan Johnson.
[12] Minear, p. 60.
[13] See "History of Pacifism in the U.S.", www.pbs.org/itvs/thegoodwar/american_pacifism.html.
[14] Minear, p. 61.
[15] Ibid.
[16] Note, however, that those who refused or could not afford that option were treated harshly under military law.
[17] "History of Pacifism in the U.S."
[18] "Conscientious objector," Columbia Encyclopedia, sixth edition (2001).
[19] Minear, p. 63.
[20] United States v. Seeger 380 U.S. 163 (1965).
[21] Welsh v. United States 398 U.S. 333 (1970).
[22] Quoted in Liz Zanoni, "Baxter Speaks on Conscientious Objection in Gulf War," Online Observer, Feb. 1, 2001.
[23] HR. 3598.

MARCH / APRIL 2003

Professional Patriotism

In Every Mob There Are Those Craven Folk Who Would Never Dare Alone To Attack A Victim. They Are The Ones Who Make The Loudest Noise, Who Talk The Most About Their Bravery. Courage—real Courage—is Apt To Be Calm. The One Who Shouts And Gesticu

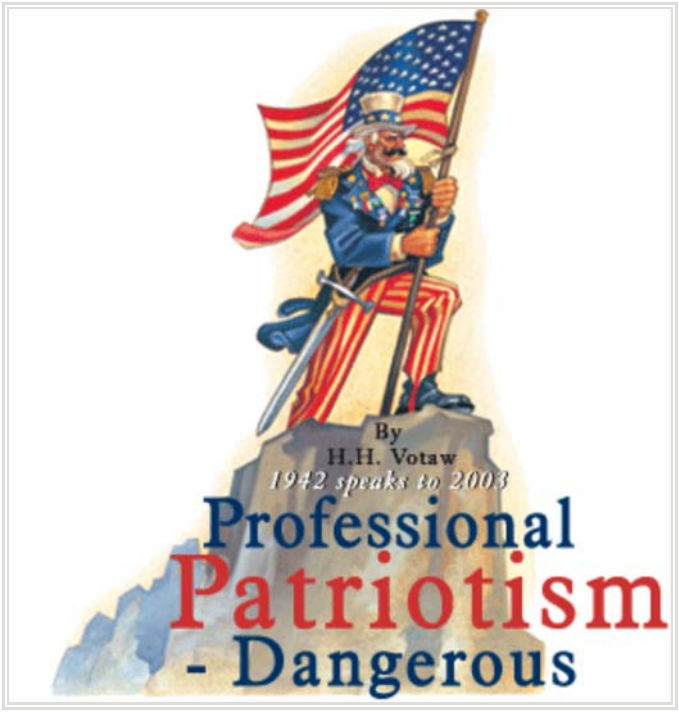


Illustration by David Lafleur

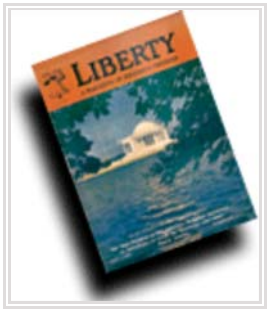
PRINTABLE VERSION

In every mob there are those craven folk who would never dare alone to attack a victim. They are the ones who make the loudest noise, who talk the most about their bravery. Courage—real courage—is apt to be calm. The one who shouts and gesticulates most stands in danger of dissipating his energy. Whistling in the dark or when passing a graveyard is a small boy's way of showing that fear is not in his heart at all, of advertising his courage.

In wartime there are those who talk much of loyalty, who, when somebody is watching, wave the flag, who are quickest to speak out against anyone who might disagree with them on any point. These brave (?) folk must cover up cowardice by attacking others.

Many at this time are demanding that conscientious and devout folk give up their religious convictions because of the nation's danger. Every good Christian is a good citizen. No man can be a good Christian and not be a good citizen. Every good citizen will naturally want to give the best he can to the best land on earth. But no good state can or will ask any of its citizens to sacrifice that which is more precious than life.

These observations are prompted by an incident that came to our attention recently. A young Seventh-day Adventist woman employed in one of the departments of the government in Washington was commanded to appear for work on Saturday. She offered to come earlier and work later each day in the week to make up for time lost by Saturday absence. She even offered to work on Sunday, if there were any place where her services could be used, and not accept the extra allowance that is generally made for Sunday work. She advanced one or two other suggestions for giving the government the full measure of her services, but all she got for her pains was to be told that she was yellow—a fifth columnist. The man who thus spoke to her may have lived in America all his life; he may have sprung from an ancestry that goes back to Plymouth Rock, for all we know. But it is perfectly certain that he knows nothing about the



spirit that prompted the men who founded this nation.

It will be a sad day indeed for America if the time ever comes when any service to the state is placed above the duty that man owes to his God, and if an attempt is made to force the conscience of the citizen. The founder of the Christian faith bade His followers to "render . . . unto Caesar the things which are Caesar's; and unto God the things that are God's."

In the present conflict for the preservation of the things that have been precious to us during all our history, some urge that it is necessary to sacrifice inherent rights for a time, that they may be secured for the future. We recognize that the struggle now going on is a vital one for America, but we agree with the words of Senator [Joseph] Guffey contained in an address entitled "Civil Liberties in a Nation at War" and printed in the Congressional Record of December 15, 1941.

"Traditionally the American people have recognized a distinction between the liberties they enjoy in time of peace and the restrictions they must necessarily expect in time of war.

"This does not mean that the Bill of Rights is to be suspended for the duration of the emergency. Nor does it mean, as some are inclined to assert, that our liberties are only 'qualified' in any event. They are as real today as they have ever been in our history. It is important that we keep them that way. Should we deny their essential validity now, we would deny the very democracy we are fighting to preserve, for they are in a real sense the foundation of our democracy. . . .

"To those who incline to the belief that the Bill of Rights should be suspended in wartime, I say that we should all remember that without the Bill of Rights we should not have had a Constitution at all. Our forebears made it a condition precedent to ratification of the Constitution as it was originally proposed. In fact, the history of my own state of Pennsylvania records that Abraham Lincoln's grandfather, as one of Pennsylvania's representatives, refused to vote
for ratification of the Constitution as first submitted
because the Bill of Rights was not included. . . .

"Because our government is of the people, by the people, and for the people—because it is carrying out the people's mandate and directing the people's endeavors as the people wish them directed—we need have no fear that our war effort will be impeded by strict adherence to the principles of the Bill of Rights. In fact, I conceive the real danger to our Bill of Rights in wartime to be not legislative enactments, but rather the misdirected patriotism of individuals and groups who may be inclined to brook no criticism of our endeavors. . . .

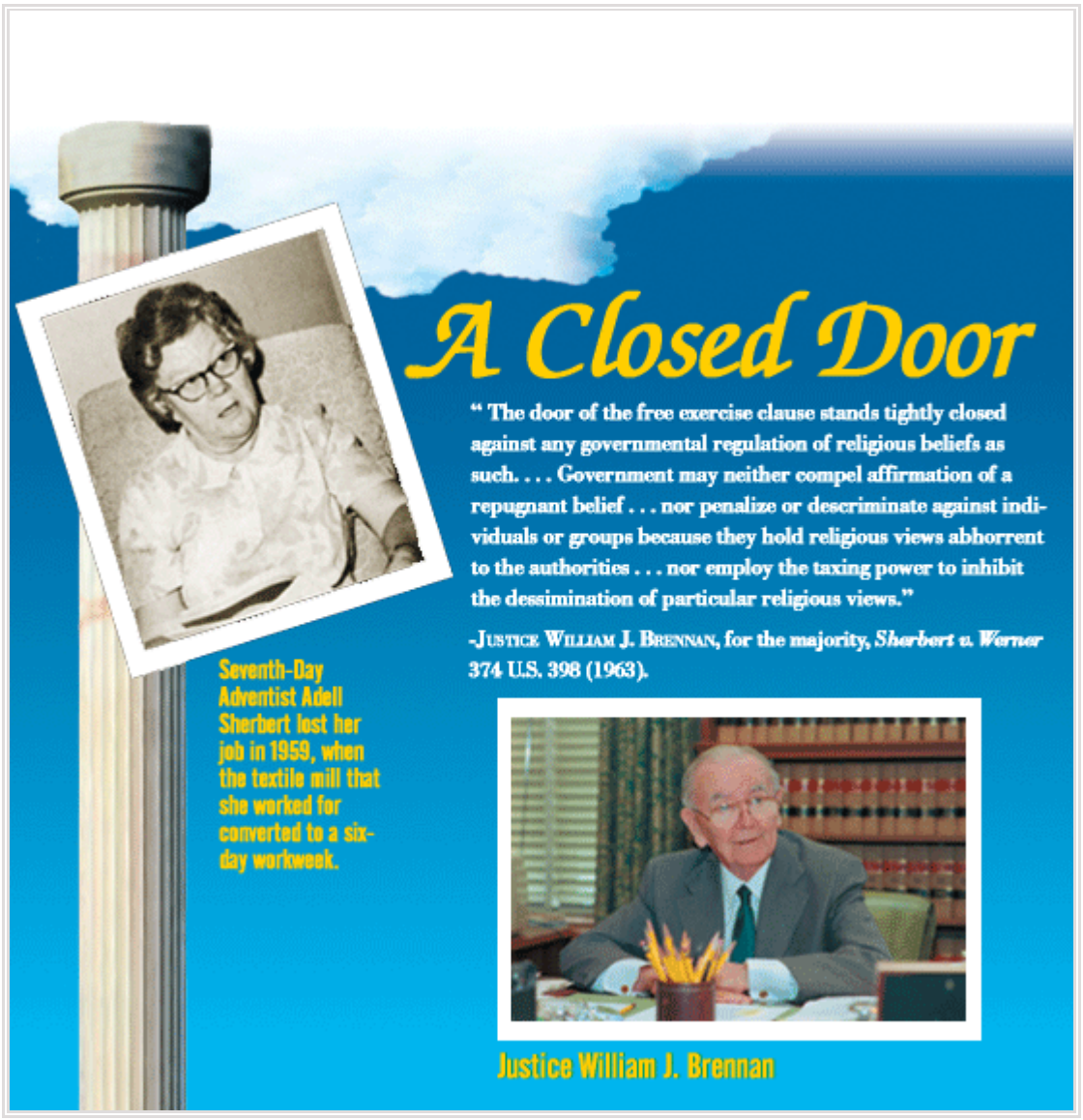
"I am completely satisfied that we can take all necessary measures to combat subversive activity without violence to the Bill of Rights. In fact, the Department of Justice has already had occasion to warn local executives throughout the nation that molestation of foreign nationals is to be avoided. This step was necessary, lest, in an excess of zeal, our local authorities should trample upon the rights of innocent individuals. . . .

"The liberties explicit in the Bill of Rights are the liberties our forefathers won with their lives. We have defended them on many a battlefield. We are defending them now. Because they grant to our people freedom from oppression, they set us apart from other nations in which the liberties of the people have been at the varying mercies of their sovereigns. They released and gave means of expression to the initiative which enabled our pioneers to conquer the wilderness. They have formed the basis of a great peaceful inland empire in which all men are equal before the law. They are worth defending. They have made us great in times of peace; they shall make us invincible in this dark hour of war. Because we are free we do not know the meaning of fear, nor is there in our minds and hearts any doubt of the outcome.

"I say that now, in the midst of war, is the time for us to proclaim our Bill of Rights as the great charter of freedom which we are fighting to preserve. Let it stand forth as a shining light to those nations engulfed in darkness, as a beacon in the storm, so that all who labor beneath the yoke of dictatorship may look up and take heart. Let us look upon our flag as a symbol of the liberties guaranteed by our Bill of Rights, so that the peoples of the world may say, wherever it waves, There men are free. Then let us address ourselves to our historic task, upon which the fate of all free men depends, the task of keeping that flag flying."

We commend these words to all thinking people. We believe that Americans will do well to face whatever the future holds with the firm determination not to infringe upon the rights of conscience of any man or woman. Let us be sure to cherish these rights in war as in time of peace.

This article appeared in the Second Quarter 1942 issue of Liberty. H. H. Votaw was an associate editor. He and Senator Guffey could not have more accurately presented the situation we face today in our war.

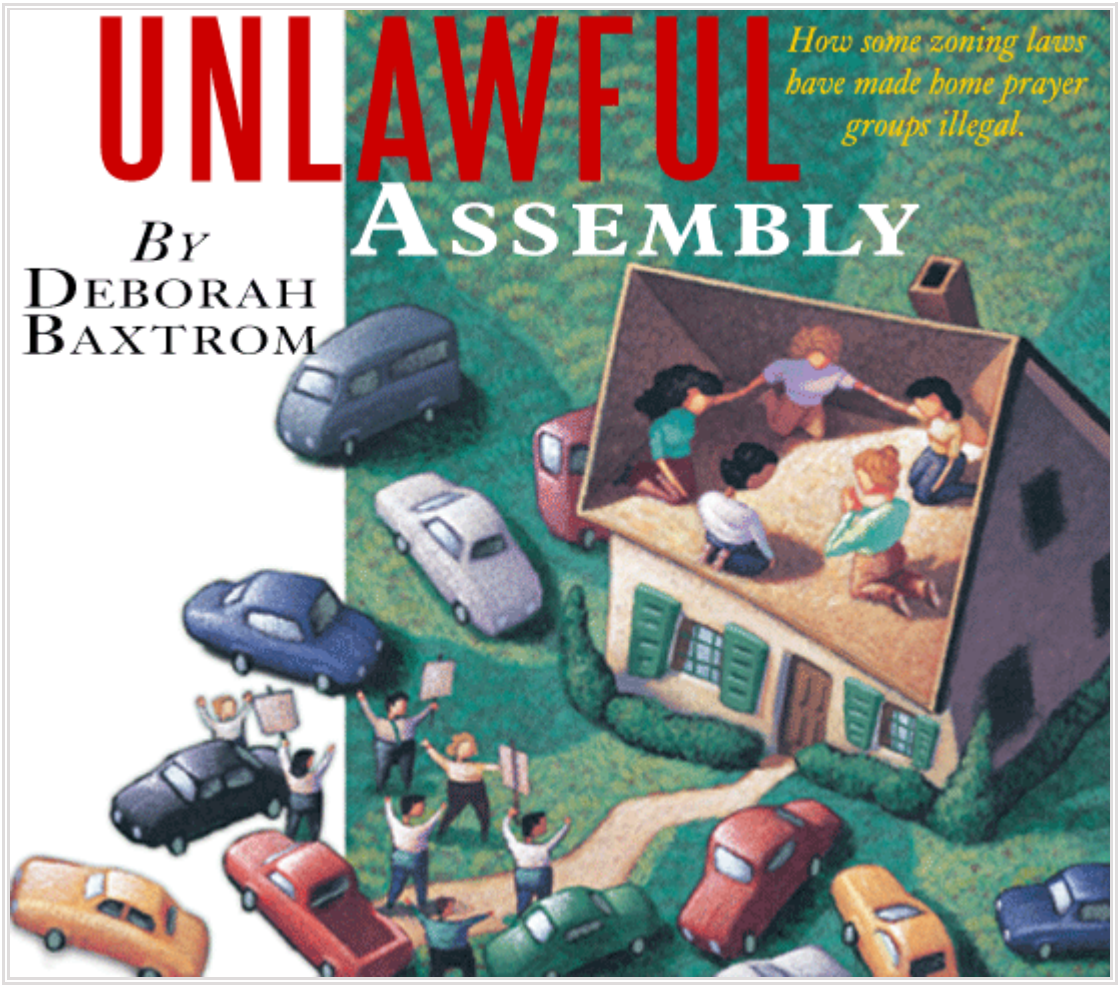

A Closed Door
" The door of the free exercise clause stands tightly closed against any governmental regulation of religious beliefs as such. . . . Government may neither compel affirmation of a repugnant belief . . . nor penalize or descriminate against individuals or groups because they hold religious views abhorrent to the authorities . . . nor employ the taxing power to inhibit the dessimination of particular religious views."
-JUSTICE WILLIAM J. BRENNAN, for the majority, Sherbert v. Werner 374 U.S. 398 (1963).
Seventh-Day Adventist Adell Sherbert lost her job in 1959, when the textile mill that she worked for converted to a six-day workweek.
Justice William J. Brennan

MARCH / APRIL 2003

Unlawful Assembly

A Christian Family Living In The Soviet Union Sometime In The Mid-twentieth Century Gathers With A Few Close Friends To Take Part In An Illicit Activity—Bible Study And Prayer. The Door Bursts Open, And The KGB Storms In. The Frightened Group Is Her

BY: DEBORAH BAXTROM



Illustrations by Paul Vismara

PRINTABLE VERSION

A Christian family living in the Soviet Union sometime in the mid-twentieth century gathers with a few close friends to take part in an illicit activity—Bible study and prayer. The door bursts open, and the KGB storms in. The frightened group is herded off for interrogation, possibly worse. This was a scene that characterized the continuing Soviet repression of religion.

Such a scenario could never happen in the U.S., of course, but a less dramatic, far more subtle form of religious discrimination may be taking place in American society, enforced not with guns, but with zoning laws.

In March of 1998 Diane Reiter began holding Bible study meetings every Thursday evening in her southeast Denver home. Between nine and 15 Christian women would gather at the Reiter residence for a potluck dinner, then pray and study the Bible or other Christian texts for about two to three hours. The women often carpooled, and about 10 vehicles would be parked outside the Reiters' home during

an average gathering. Although the cars were legally parked, neighbors complained that the meetings were causing parking problems in the area. The Denver zoning administration stepped in and issued an order stating that the Reiters were violating a city ordinance that prohibited more than one "prayer meeting" at a private residence per month. The couple was told that if they allowed their friends to visit their home more than once each month for the purposes of prayer and fellowship, they could face criminal sanctions.

The Reiters appealed their case to the zoning board and lost. They eventually filed suit in federal court, alleging that the zoning order violates their right to free speech and peaceable assembly.
The Reiters' attorney, Jay Sekulow, of the American Center for Law and Justice (ACLJ), called the Denver ordinance "an example of religious hostility at its worst. It's an unprecedented attack on religious freedom. The idea that a zoning authority can restrict the number of Bible studies at a private home is incredible."

Denver zoning administrator Kent Strapko didn't seem to find the order incredible or even unusual. He claimed that the Reiters are not victims of religious persecution, but are simply being asked to comply with a once-a-month rule that applies to all gatherings, including book clubs and parties. But the zoning order received by the Reiters specifically states, "Prayer meetings [italics supplied] are [being] held more than once per month in a single-unit dwelling . . . in violation of cited section." The order does not mention other types of gatherings.

Perhaps more significantly, Diane Reiter stated that when she spoke with the director of the zoning board, Janice Tilden, she was told that if she had been holding a weekly "book club" in her home, rather than a "prayer meeting," it would probably have been "no problem."

The Reiters are hardly alone in their struggle. In fact, the number of lawsuits filed by religious groups and individuals against U.S. cities because of restrictive and possibly discriminatory zoning laws has been steadily increasing. In an effort to aid religion in the struggle against restrictive zoning ordinances, President Bill Clinton signed the Religious Land Use and Institutionalized Person Act (RLUIPA) into law in September 2000.

RLUIPA states, "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest."

Attorneys for the Reiters state in their suit that "the city of Denver burdens [the free exercise of religion as a fundamental right] by flatly prohibiting [the Reiters] from exercising their faith through communal prayer more than once a month. The city offers no compelling interest to justify that prohibition. In fact, the only interest advanced to justify the discriminatory order is that some neighbors have had a negative reaction to the small group meeting. Disgruntled neighbors, however, do not constitute a 'compelling governmental interest.'"

While the Reiters acknowledged that the city has an interest in regulating traffic and parking in residential neighborhoods, their suit argued that the "city has no compelling interest in limiting the peaceable assembly of a few individuals within a private residence." According to Sekulow, "[the zoning order] is an abuse of the First Amendment."

In regard to the city's legitimate interests—the regulation of traffic and parking—there appears to be a double standard in the Reiters' case. Several commercial establishments are located near their residence, and patrons, visitors, and tradespeople are free to park on the street where the Reiters live. There is also a commercial tennis and pool club about a block away that "treats the street on which [the Reiters] reside as an overflow parking lot on almost every weekend during summer months." Curiously, no zoning order has been issued against this club or any other nearby commercial establishment.

The Reiters made every effort to avoid confrontation with their neighbors. No one was able to claim that their gatherings were disruptive—loud music was not played, and noisy conversations did not filter into the streets. Yet the zoning authority singled them out

even though their meetings were quiet, orderly affairs.

As for their visitors' vehicles, the women parked their cars within the legal public right-of-way and did not block the driveways of other residents. When Diane Reiter was confronted by a neighbor about the number of cars parked on the block during a meeting, she immediately asked her guests not to park near that neighbor's house. A second neighbor later complained, and again Mrs. Reiter requested that her friends avoid parking near the second neighbor's home as well. When
the complaints continued, she finally asked her guests to park at the tennis and pool club in order to avoid the neighborhood streets altogether. Generally her guests complied. Nevertheless, the zoning authority soon became involved.

In October of 1998 a city zoning specialist wrote to the Reiters to demand a "routine zoning inspection" in regard to the prayer meetings being conducted in their home. Mrs. Reiter explained that several different activities took place during her gatherings, including religious fellowship, study, and a potluck meal, and that prayer was just one aspect of the meetings. She also explained that though her husband is an assistant pastor for a nondenominational Christian center, her meetings were unrelated to his job. But the city persisted in labeling the gatherings "prayer meetings" and ordered the Reiters to discontinue all such meetings beyond one per month.

"Whether discrimination is present or not must remain an open question for the moment," the Reiter suit states. "However, there is no doubt that the order is invalid because this vague and arbitrary application of the city's power cuts too close to the heart of rights guaranteed by the First Amendment."
Attorneys for the Reiters believe that the zoning authority's regulations not only violate RLUIPA, but also Fourteenth Amendment due process rights of private citizens. "The order, and the underlying zoning regulation that prohibits private individuals from gathering to pray in a private home more often than once a month, are invalid because they are vague in definition and arbitrarily applied."

Zoning administrator Strapko has stated that a former administrator was asked to ban all meetings, but instead decided that one meeting per month was permissible—a decision that could easily be considered "arbitrary." Yet Strapko maintains he does not act on the 10-year-old ordinance prohibiting "excess" prayer meetings unless neighbors file complaints.

But what about the vague criteria for defining what constitutes a "prayer meeting"? The Reiters cannot know when an ordinary social gathering in their home might violate the zoning order because communal prayer is such a large part of their lives. Strapko claimed to be in possession of written records that would document the intent and scope of the determination upon which he rested his decision, but when the Reiters' attorneys repeatedly requested these records, Strapko failed to produce them.

Since the Denver zoning authority gave no clear definition of what comprises a prayer meeting, the Reiter suit holds that the zoning order is unconstitutionally vague. It states, "Simply put, no one with ordinary intelligence knows when a social gathering in their home may suddenly evolve from a permissible activity into a forbidden 'prayer meeting.'"

According to Grayned v. City of Rockford (1972): "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly . . . . A vague law impermissibly delegates. . . basic policy matters to [government officials] on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications."

The Reiters claimed that they had been denied the equal protection of the laws. "If the city is to maintain that what [the Reiters] are doing is a 'prayer meeting,' then it must admit that its order is directed precisely at religious speech and that it burdens the fundamental rights of free speech, free association, and free exercise of religion."

In addition, since the Reiters' home meetings are protected by the First Amendment, "there is no need in this situation to eviscerate First Amendment rights that protect private speech within a private home. If, as those who petitioned in opposition alleged, there are violations of parking regulations, then the remedy is to enforce the parking regulations, not to suppress free speech."

Attorneys for the ACLJ also believe that the zoning order violates the Reiters' free exercise rights. "Prohibiting 'prayer meetings' is nothing less than an impermissible content-based ban. 'It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys' (Rosenberger v. Rector and Visitors of University of Virginia [1995]. . . . 'If the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own house, what books he may read. . . . Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds' (Stanley v. Georgia [1969]."

Recent rulings in similar cases seem to indicate that the law may ultimately agree with
the arguments set forth in the Reiter suit, in part because of limitations imposed on cities through the Religious Land Use and Institutionalized Persons Act.

One dispute in Owings Mills, Maryland, involved an Orthodox Jewish couple that held monthly prayer services in their home for about 10

Jewish men. Once again, neighbors complained, and Seth and Lisa Pachino were fined ,000 and ordered to halt the meetings. The Pachinos won their case on appeal. A Baltimore County zoning code official said there was insufficient proof to indicate that the couple was operating a religious institution.

And in Connecticut, a federal judge ordered New Milford town officials to allow members of the Murphy family to hold prayer meetings in their home until their lawsuit against the town was settled. The family had been barred from holding prayer meetings by a city zoning order after neighbors complained about traffic problems in the area.

Vincent P. McCarthy, attorney for the Murphys and senior Northeast counsel for the American Center for Law and Justice, said, "The judge based her injunction on RLUIPA, and said that the town hadn't shown a sufficient reason for prohibiting these prayer meetings; that there's no legitimate purpose that's served under the zoning regulation. RLUIPA has changed things by requiring cities to show a compelling state interest in order to justify any of its regulations when those regulations burden religious beliefs."

In the Murphy case, U.S. Magistrate Judge Holly B. Fitzsimmons did indeed cite the Religious Land Use and Institutionalized Person Act, as well as the First Amendment, in her ruling. Judge Fitzsimmons appeared to be swayed by the testimony of individuals who stated they were intimidated by the zoning order. In her ruling, Fitzsimmons wrote, "The court finds that the allegation that people are afraid to attend a prayer meeting because they fear being arrested is a substantial burden that the defendants have imposed on the prayer group participants."
Small-group religious gatherings in one's home would seem to be part of our religious heritage and within the rights of all American citizens—without the threat of intimidation by governmental forces. We cannot allow zoning laws or any form of local regulation to be invoked in a prejudicial way to restrict religious activities.

Deborah Baxtrom is a freelance writer living in Los Angeles, California. She has a keen interest in religious liberty and has been a regular contributor to Liberty.

MARCH / APRIL 2003

Respect In The Workplace

Many Religious Persons At Some Point In Their Working Life Encounter A Conflict Between A Requirement Of Their Job And Their Religious Conscience. Employers Sensitive To The Religious Convictions Of Their Employees Often Make An Effort To Alter The Job R

BY: STUART J. LARK

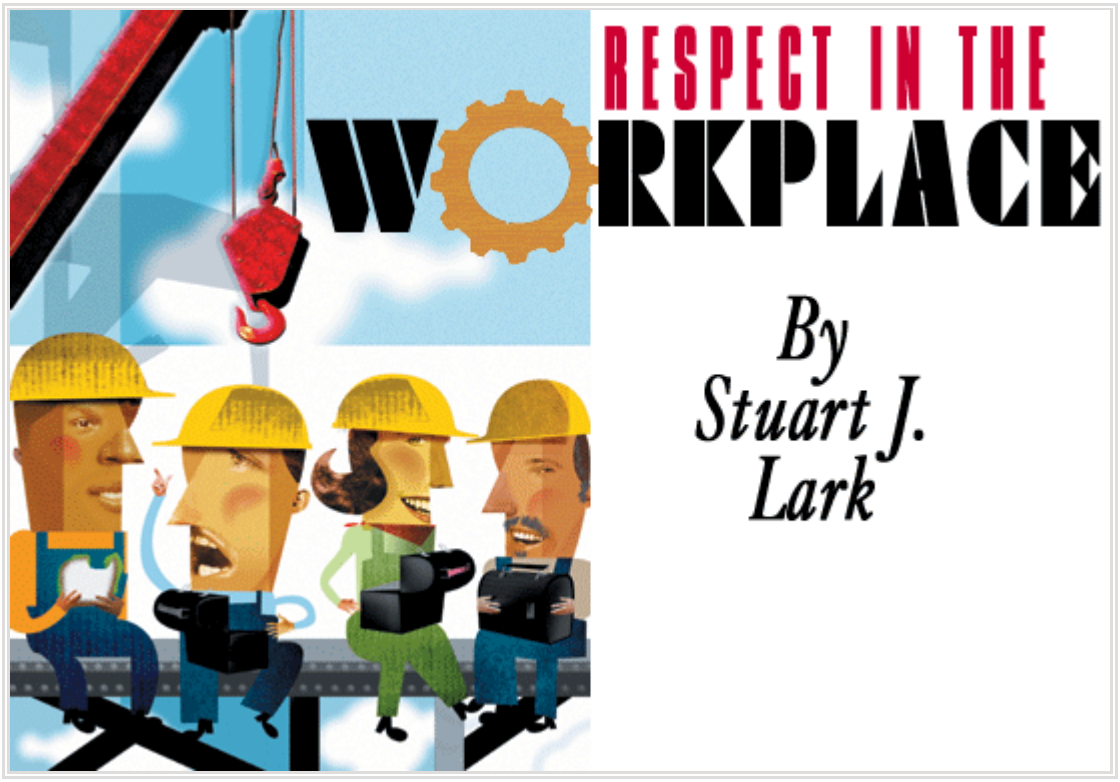


Illustration by William Riser

PRINTABLE VERSION

Many religious persons at some point in their working life encounter a conflict between a requirement of their job and their religious conscience. Employers sensitive to the religious convictions of their employees often make an effort to alter the job requirements so as to remove this conflict. However, some employers fail to make such changes, even when doing so would impose no significant cost on the employer. I would like to share two examples that have recently come to our attention at the Christian Legal Society.

A caseworker employed by a large social service agency asked to be excused from cases involving assistance for people seeking abortion services. The employee believed that providing such assistance violated his religious convictions. Although such cases constituted only a small portion of this caseworker's workload and there were plenty of other caseworkers available to handle these cases, his request was refused. The agency stated that its policy was that all caseworkers must be able to handle all cases.

However, many of the agency caseworkers cannot handle cases involving Spanish-speaking clients because the workers do not, and are not expected to, speak Spanish. Although the agency makes an exception for language, one that significantly impairs its service quality, it was not willing to accommodate the sincere religious beliefs of this caseworker.

As a result of the refusal to accommodate, the caseworker quit his job in order to preserve his religious conscience.

In the second situation, an employee was pressured by a large telecommunications company to work with pornographic material that was being delivered by the company as a new subscriber service. He refused, based on his Christian beliefs. Although he made several attempts to raise this issue with the company's personnel department, he was unable to reach anyone who would assist him. As a result, the employee is miserable and depressed at work, ignored by management, and subject to criticism from coworkers. He expects that eventually he will have to resign because of the mental anguish he is suffering.

These cases (and others) raise the fundamental issue of whether, and to what extent, private employers should be required by law to accommodate the religious practices and beliefs of their employees. The proposed Workplace Religious Freedom Act (WRFA) addresses this issue by requiring employers to provide an accommodation unless doing so would result in "significant difficulty or expense" for the employer.[1] For reasons I will discuss here, we think this standard reflects sound social policy regarding the religious liberty interests of our citizens and will protect believers from having to choose between their conscience and a career in an increasingly diverse work environment.[2]

Religious Accommodation as a Social Value

The rule set forth in WRFA makes an important statement about the respect our society should give to the religious beliefs and practices of our citizens. This respect accords with basic Christian theology. To say that people are created "in God's image" is to say, in part, that each person has a religious "impulse" or "drive." People are most fully human when this religious impulse flourishes as God intends. As a prayer of Augustine's says: "Thou hast formed us for Thyself, and our hearts are restless until they find rest in Thee."

But this flourishing cannot be coerced; it's a matter of faith, freely adopted and expressed. Evangelical thinkers at the time of the founding trumpeted this truth. Isaac Backus, a Baptist minister, stated that "God is the only worthy object of all religious worship, and nothing can be true religion but a voluntary obedience unto his revealed will."[3] A similar notion formed the basis for the Virginia Bill for Establishing Religious Freedom, authored by Thomas Jefferson (not an Evangelical), which asserted that government attempts to influence religion violated "the plan of the Holy Author of our religion, who being Lord of both body and mind, yet chose not to propagate it by coercions on either." Taken together, these principles indicate that society should make as much room as possible for the voluntary religious practices and beliefs of its citizens.[4] Such respect promotes the highest aspirations of God for His people.

The First Amendment to the United States Constitution establishes certain fundamental principles regarding the respect that government must pay to the private religious choices of citizens.5 The free exercise and establishment clauses of the First Amendment enforce the principle that government action should be constrained so as to minimize its influence on the private religious choices of citizens.[5] In furtherance of this principle, many religious liberty advocates argue that the First Amendment requires any government action that burdens religious practice to be justified by a compelling governmental interest.[6]

Respect for private religious exercise should apply not only to government action, but also to the private workplace, where most people earn their livelihood. Of course, competing social interests related to the rights of private employers must also be considered. Nevertheless, private employers are subject to a wide range of government regulations related to other social interests such as family responsibilities, protection of the environment, and the promotion of public safety. Such regulations impose significant costs on employers. We believe that respect for the religious "impulse" of workers is a social value at least as important as these other social values. Of course, because a religious impulse cannot be defined objectively, it is impossible to create a uniform rule for all situations. In this regard, we think that the WRFA rule establishes an appropriate balance, to be applied on a case-by-case basis, between the religious aspirations of employees and the business interests of their employers.

What About Religious Employers?

The WRFA rule would not apply to religious employers, because they are exempt from the Title VII provisions that apply to religion.[7] This exemption, which prefers the religious associational interests of a religious employer over the religious exercise of an employee, is necessary to preserve religious liberty. Associations formed around religious conviction cannot be separated from the religious liberty interests of the individuals who comprise such associations. If the law were to give one individual a trump card over the religious associational rights of others, the result would undermine all religious liberty protection. Put differently, religious associations need greater protection because the religious liberty interests of individuals cannot be protected without respecting and protecting the associations that individuals may form around shared religious conviction.

Historically, the most common conflicts between religious exercise and work requirements have involved Sabbath and holy days and religious dress. However, conflicts are arising with increasing frequency in other areas.

Rules Limiting Religious Expression

Some employers have adopted rules prohibiting employees from sharing their faith (or proselytizing) with coworkers. Such rules are meant to protect workers from religious harassment, but they are overbroad.[8] The expression of one's faith to another person, and any other discourse on the subject, is not a disfavored category in social conversation. The emphasis, therefore, should be on the manner, as opposed to the content, of the expression. If the manner of presentation causes consternation to other workers, then the employer may have a valid interest in prohibiting it. But the basic right of individuals to express their beliefs in the workplace and enter into dialogue with others is something that should be accommodated.

Social Values

Another area of conflict involves social values promoted by the employer that are in conflict with those of the employee. This conflict may arise in certain so-called diversity training seminars at which employees may feel that they are required to participate in and actively embrace certain moral concepts. The most common example at present relates to sexual orientation. Employees who believe as a matter of religious conviction that homosexual conduct is wrong often object to being required to participate in seminars that validate such conduct. Alternative arrangements should be made for such employees unless the employer can demonstrate that real harm (i.e., a significant difficulty or expense) would result.

Sanctity of Life Issues

Finally, issues related to the sanctity of life are likely to raise significant conflicts in the future. Many persons who oppose abortion on religious grounds work in health-care positions. Such persons may object to participating in abortion-related activities, whether such activities consist of actual abortions, dispensing of drugs that are abortifacients, or merely referring clients to abortion providers. Recent developments related to stem cell research and "therapeutic" cloning, both involving the destruction of human embryos, are certainly going to create conflict for persons who may be required to assist in such activities or to work with the results of such research. Finally, activities related to physician-assisted suicide (or euthanasia) pose similar problems.

Religious persons today work in a culturally and religiously diverse environment. This diversity creates an increased potential for conflict between workplace requirements and individual religious exercise. The fundamental principles of religious pluralism upon which this country was founded require employers to respect and accommodate, where possible, the religious exercise of their employees. The standards set forth in WRFA reflect this country's commitment to religious pluralism and would provide important protection for religious employees.

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[1] WRFA has been introduced in the Senate (S. 2572) under the lead sponsorship of Senators John Kerry (D-Mass.) and Rick Santorum (R-Pa.).

[2] See also James Standish, "Working for Freedom: Why Legislation Is Necessary to Protect Religious Freedom in the American Workplace," Liberty Online, May 2002.

[3] I. Backus, "A Declaration of the Rights of the Inhabitants of the State of Massachusetts-Bay in New England" (1779), in Isaac Backus on Church, State and Calvinism: Pamphlets, 1754-1789, at 487 (W. McLaughlin, ed., 1968).

[4] It is not possible to separate an individual's religious beliefs from religiously mandated or motivated conduct or practice. To say that someone is free to hold a religious belief but not to practice or observe the religion in terms of what that religion mandates or motivates them to do is effectively to say that they cannot practice that religion.

[5] See generally Douglas Laycock, "The Underlying Unity of Separation and Neutrality," Emory L. J. 43, 46 (1997).

[6] Although the U.S. Supreme Court has declined to apply this standard to neutral and generally applicable laws, Employment Division v. Smith, 494 U.S. 872 (1990), the standard nevertheless applies to the federal government under the Religious Freedom Restoration Act (42 U.S.C.

MARCH / APRIL 2003

Editorial-Priorities

Where We Will Be When You Read These Words I Cannot Quite Say. It Was Not Lightly That We Chose To Banner "War And Peace" On The Cover Of This Issue. Of Course That Bannering Relates To The Personal Moral Dilemma Faith And Patriotism Can Create In Times O

EDITORIAL

Where we will be when you read these words I cannot quite say. It was not lightly that we chose to banner "war and peace" on the cover of this issue. Of course that bannering relates to the personal moral dilemma faith and patriotism can create in times of state violence. Not since the paranoia of the cold war rivalry between the United States and the Soviets has there been such a sense of imminent danger...of the individual carried away on the shoulders of war. After all, that was a big part of the premise to Tolstoy's "War and Peace"—that forces beyond the individual, even beyond a leader's control, can inflame war or create peace.

In my last editorial I challenged the legitimacy of "just war" thinking that imagines it can cloak military action with Divine right. Abraham Lincoln recognized the danger of this in his second inaugural when he pointed out that both sides in the Civil War prayed to the same God, both believed their cause just; and yet both sides could not be right at the same time. No wonder he argued against malice and for charity to the vanquished.

The still small Seventh-day Adventist Church found in the Civil War a real test of both faith and patriotism. Leaders like Ellen White had long decried the evil of slavery. As war loomed, she saw it as a natural punishment for the inhumanity of the south. But church leaders did not incite members to take up arms and act out the words of the Battle Hymn of the Republic in exacting God's vengeance. For Adventism, the emerging dynamic of that war was the development of a position of noncombatancy–not necessarily pacifism, but a Christ-based code of personal conduct that respected life and the distinction between the kingdom of God and the kingdom of man. That position held during two world wars and up through the Vietnam war.

Many of my Adventist peers with higher draft numbers or lower grades served in the Vietnam era military. Many of them stood resolutely for non-combatancy. I confess to not a little awe of what they stood for.
I was impressed when General Barry McCaffrey, commander of the armored forces in the Gulf War and for a time director of the White House Office of National Drug Control Policy told me that he owes his life to a Seventh-Day Adventist medical corpsman in Vietnam. And I have been a bit chagrined to reflect on the fact that so many Adventist young men volunteered for the White Coats–a non-combat assignment where they were tested like Guinea pigs to develop, among other things, it turns out, chemical and biological agents like Anthrax.

Surely the world is no less ambiguous today. We should not be making easily invoked constructs of war or indeed any state action as definitively the will of God...man is too finite for such presumption. We should be working toward, as William Bennett seems to argue repeatedly in his books, a sense of personal virtue and morality. A moral citizenry will more naturally result in a state that acts with charity, while reserving faith as an eternal matter between the individual and the Divine.

In a recent public meeting I made a comment dismissive of the just war theory, and was accused of denying the U.S. or any other nation

the moral right to wage war. I do not think that conclusion follows. States must, of course, act in ways to protect themselves and their interests. The Apostle Paul in the New testament of the Bible is quite definite that Christians should respect the power and prerogatives of civil government. But he gave it no Divine mandate other than the responsibility to God we all share.

Back in the Old Testament, when Israel demanded a king like other nations, the prophet Samuel upbraided them for rejecting God, and in an extended prediction gave details of how a king would usurp God's claims on them(see I Samuel 8). In fact Saul, the first King, did just that; appropriating the role of the priest and waging war for his own ends. Certainly the narrative gives no traction to the divine right of kings.

I think that rather than inciting any state to military action, Christians and others of faith should work and pray toward creating moral awareness within society that will necessarily influence the way public policy is carried forward. We laugh, at times a little hollowly, at despots like Saddam Hussein when they invoke Jihad or holy war against us. We believe this call improper and unauthorized–as it must always be.

President Bush, Secretary Rumsfeld and others have often reminded us that we are in an era of "asymmetric" warfare. There is an element of asymmetry on many fronts. Despot that Saddam is, the country of Iraq has pursued a secular course and allowed a multi-faith community which includes one million Christians. We persist in supporting or enabling regimes that actually invoke the death penalty for citizens converting to Christianity. It might make perfect sense for secular national interest to ally with them, but it exposes the silliness of the just war construct.

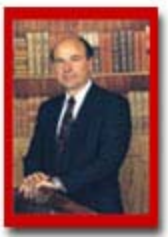
And at home we can so easily neglect justice.

It seems that affirmative action policies are on the way out. Replaced by what? The tone of the change is troubling; seeming to signal a new social arrogance that like the love of "Love Story" means never having to say you are sorry. Even a casual visitor to the United States can see that racial division and the legacy of slavery has created a deep thrombosis.

The war on terrorism has already changed the very nature of a free society. The terminology of the national response strikes many as a gauche revisiting of George Orwell's 1984. We now not only presume, but many seem to hope, that big brother is watching.

What next? I was struck by a presentation Senator Kennedy gave to the National Press Club a few weeks back. After covering the questions de jour, he suddenly launched into an impassioned warning that civil liberties would be attacked next. But they have already been, in a variety of ways that most applaud because they seem to aid our efforts to root out the terrorists! What shadow of the future beyond
is rising already to panic the
senator?

Which brings me back to religious liberty as a nonnegotiable. Is it safe in our current national dislocation? The elephant in the room beyond the murmuring about terrorism is surely religion. The terrorism that we are reacting to is one manifestation of a militant faith. It is cruelly intolerant. In another manifestation whole states have been taken over. We must be careful that in countering the first we do not emulate the second aspect of a national faith. Nothing less than a recommitment of the United States to its founding principle of complete freedom of religion for all beliefs will protect us.



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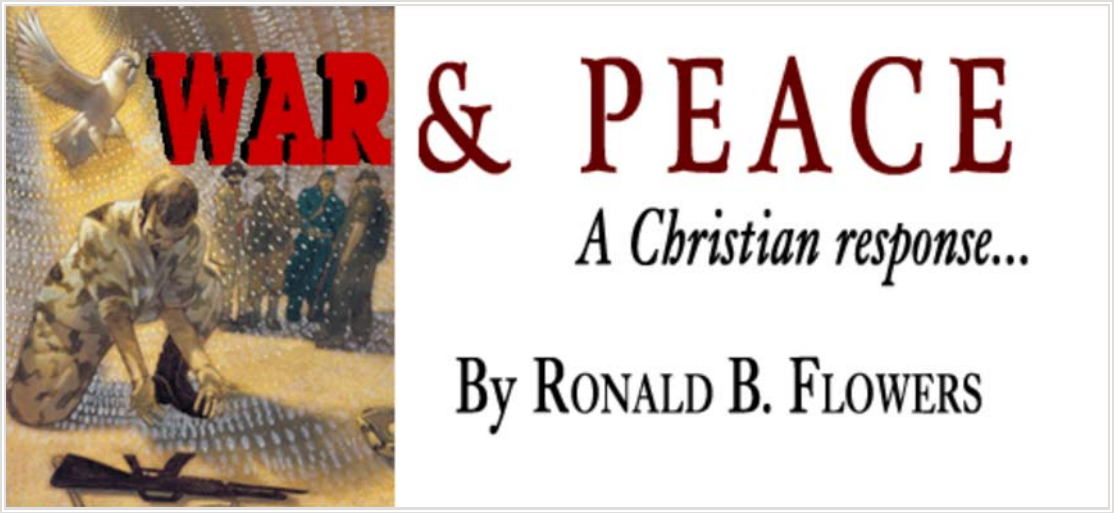
War & Peace

War Talk Is Fashionable Again In America. President Bush Has Alerted The Nation That He Intends To Be Rid Of Iraq As An Irritant In The Near East. Congress Has Endorsed That Intent. Armaments Are Stockpiled In The Region.

BY: RONALD B. FLOWERS



Illustrations by Sterling Hundley

PRINTABLE VERSION

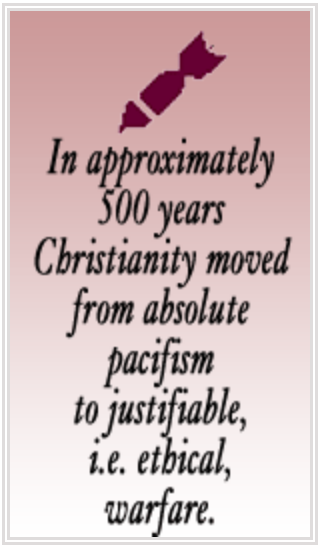
War talk is fashionable again in America. President Bush has alerted the nation that he intends to be rid of Iraq as an irritant in the Near East. Congress has endorsed that intent. Armaments are stockpiled in the region.

Already anti-war protesters have marched. Pacifists have tried to dissuade the government from its war plans. This willingness to oppose the powers that be raises again the historic views of conscientious objectors to war. This article reviews those Christian beliefs that object to war and violence, particularly in reference to American law.

Pacifists perceive pacifism to be as old as Christianity itself. Although Jesus never directly addressed the question of war, His teachings of love and nonviolence inspired many of His followers to reject war and military life. "The meek," Jesus said, "will inherit the earth" and "peacemakers . . . will be called children of God." Contrary to any concept of retaliation, Jesus taught, "Do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also." Jesus taught, contrary even to common sense, "Love your enemies and pray for those who persecute you."[1] Paul continued the theme: "Bless those who persecute you; bless and do not curse them." "Do not repay anyone evil for evil, but take thought for what is noble in the sight of all. If it is possible, so far as it depends on you, live peaceably with all." "Do not be overcome with evil, but overcome evil with good."[2]

The earliest Christians responded to such admonitions by not serving in the Roman military. Soldiers necessarily engaged in evil, including the requirement that soldiers worship the emperor as a Roman god. As monotheists and people charged to be peacemakers, Christians refused to be soldiers. But then some soldiers were converted to Christianity and, after about A. D. 170, Rome began to conscript Christians. Later, when Christianity became the official religion of the Roman Empire, Christians served in all ranks of the military. They now had the responsibility of protecting the empire from internal and external enemies. A new attitude toward war was required.[3]

The new attitude was the "just war" concept, devised by Augustine in his City of God. He proposed a theory of war consistent with Christian ethics. War should not be wanton destruction, but should be fought by rules that would make it humane—as humane as war



could be. So, in approximately 500 years, Christianity had moved from absolute pacifism to justifiable, i.e., ethical, warfare—a remarkable transformation. Just war theology has persisted as the dominant view in Roman Catholicism and most Protestant groups.[4]

But, with the advent of Protestantism, some "peace churches" emerged. Taking literally such biblical passages as those recounted earlier, these Christians made pacifism the centerpiece of their theology and morality. These were the Anabaptists (later called Mennonites, after one of their leaders, Menno Simons), the Church of the Brethren, and the Society of Friends (Quakers). The essence of their beliefs can be seen from this quote from the Anabaptists: "Jesus Christ has made us free from the servitude of the flesh and fit us for the service of God through the spirit which he has given us. Therefore we shall surely lay down the unchristian, yea, satanic weapons of force, such as sword, armor and the like, together with all their use, whether for the protection of friends or against personal enemies; and this in the strength of the words of Christ, 'I say unto you that ye resist not evil."[5] These peace churches, joined in the nineteenth century by the Seventh-day Adventists and in the twentieth by the Jehovah's Witnesses, play a large role in American law on conscientious objection, to which we now turn.

In 1775 the Continental Congress issued a resolution calling upon everyone to respect the rights of nonresisters, but also appealed to conscientious objectors to support the cause of liberty however they could, consistently with their consciences. It was at this time that alternative service, i.e., service to the nation without fighting, was first introduced.[6]
The Civil War was the next major crisis for conscientious objectors—national conscription. The Confederacy initiated a draft first, (October 1862) but its law exempted members of peace churches provided they supplied substitutes to serve for them or paid a fee of 0. The Union Draft Act of February 1864 required pacifists to serve in the military in noncombatant roles, unless they paid a fee of 0 to stay out.[7]

When America entered World War I, the Draft Act of 1917 exempted members of peace churches from service: "Nothing in this act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations."[8] Previous opportunities to hire a substitute or pay a fee were eliminated from the law from this time forward.

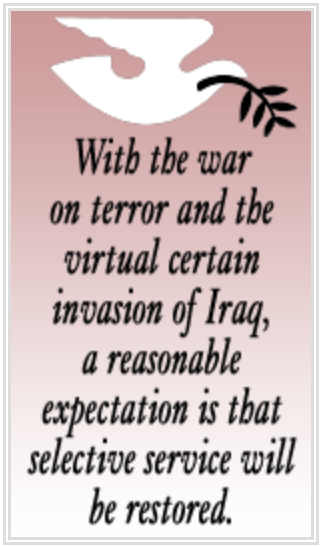
Some attacked this law in the Supreme Court as violating the establishment and the free exercise clauses, because it preferred some religions over others. The Court brushed the claim aside: "We pass [it] without anything but statement . . . because we think its unsoundness is too apparent to require us to do more."[9]

With world war threatening in 1940, Congress modified the conscription laws and broadened the category of who could qualify for conscientious objection. "Nothing contained in this act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."[10]Religious people of any faith could qualify, but nonreligious people could not. This change was urged on Congress by religious groups, both historic peace churches and others.[11]

The 1940 act did not define "religious training and belief." Soon people who were not members of religious organizations and who seemed not to be religious were in court seeking conscientious objector status. Courts disagreed on how religious a person should be to qualify under the "religious training and belief" language.[12] With courts in disarray, Congress rewrote the law in 1948: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participating in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."[13]

During the Vietnam War the definition of "religious training and belief" was challenged by people with unconventional religious beliefs; they did not believe in a personal God. The Supreme Court held that they qualified as conscientious objectors anyway. That Congress used the phrase "Supreme Being" rather than "God" suggested it envisioned an expansive interpretation of "religious training and belief." The Court developed what I call a "double sincerity test" for deciding if one qualified as a conscientious objector. "A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition."[14] With this elastic interpretation of the statute, virtually anyone could qualify. It was probably with that in mind that Congress wrote, in 1967, a version of the draft law that excised any reference to a Supreme Being: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed

forces of the United States who, by reason of religious training and belief, is conscientiously opposed to war in any form. As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological or philosophical views, or a merely personal moral code."[15]



Every one of these statutes from 1917 until the most recent in 1967 requires a conscientious objector to object to participation in war "in any form." This excluded any person who wanted to select which wars in which to fight. This was challenged during the Vietnam War by some who thought that war immoral, although they could conceive of fighting in other wars, such as defensive wars like World War II. The Supreme Court held that the statute would not allow that. Furthermore, because the statute was written in a religion-neutral way, it did not violate the establishment clause by favoring absolute pacifists over those who were selective objectors.[16]

This brief survey of exemptions for conscientious objectors in America's laws presupposes the existence of the draft. Since 1973 we have had an all-volunteer military. But, with the war on terror and the virtual certain invasion of Iraq, a reasonable expectation is that selective service will be restored. It is also reasonable to assume that the provisions for conscientious objectors will be reinstated—unless Congress does something different. That will depend upon the national mood about those who have conscientious objections to military service. And that will depend upon the national memory of huge numbers of military-age people who fled to Canada during Vietnam. All of this will bear watching as war clouds gather.

Ronald B. Flowers was for many years the John F. Weatherly professor of religion at Texas Christian University. A longtime contributor to Liberty, he writes from Fort Worth, Texas.

[1] Matthew 5:5, 9, 39, 44, NRSV.*
[2] Romans 12:14, 17, 18, 21, NRSV.
[3] Knut Willem Ruyter, "Pacifism and Military Service in the Early Church," Cross Currents 32 (Spring 1982): 54-60; Roland Bainton, Christian Attitudes Toward War and Peace: A Historical Survey and Critical Reevaluation (Nashville: Abingdon Press, 1960), pp. 66-84.
[4] Bainton, pp. 91-100. Characteristics of just war are: (1) it must have a justifiable cause, such as self-defense; (2) it must be declared by the highest possible authority, those accountable to the warring nation; (3) it should be a last resort, only after all other means of conflict resolution have failed; (4) proportionality, the evil that war inflicts should not be greater than the evil that it opposes; (5) there must be a reasonable chance of success; it must have as its goal a durable and moral peace. Joseph A. Allen, War: A Primer for Christians (Nashville: Abingdon Press, 1999), pp. 31-52; Edward LeRoy Long, Jr.,
War and Conscience in America (Philadelphia: Westminster Press, 1968), pp. 22-33.
[5] Schleitheim Confession of Faith, 1527, quoted in John Horsch, The Principle of Nonresistance as Held by the Mennonite Church (Scottdale, Pa: Mennonite Publishing House, 1951), pp. 8, 9.
[6] John Whiteclay Chambers II, "Conscientious Objectors and the American State From Colonial Times to the Present," in The New Conscientious Objection: From Sacred to Secular Resistance,
ed. Charles C. Moskos and John Whiteclay Chambers II (New York: Oxford University
Press, 1993), pp. 23-28; Conscientious Objection (Washington, D.C.: Selective Service System, special monograph 11, 1950), vol. 1, pp. 33-38.
[7] Confederate States of America, Statutes at Large (Feb. 1861-Feb. 1864), chap. 45, p. 78; 13 Statutes at Large 6 (1864); Conscientious Objection, vol. 1, pp. 41-45.
[8] 40 Statutes at Large 76 at 78

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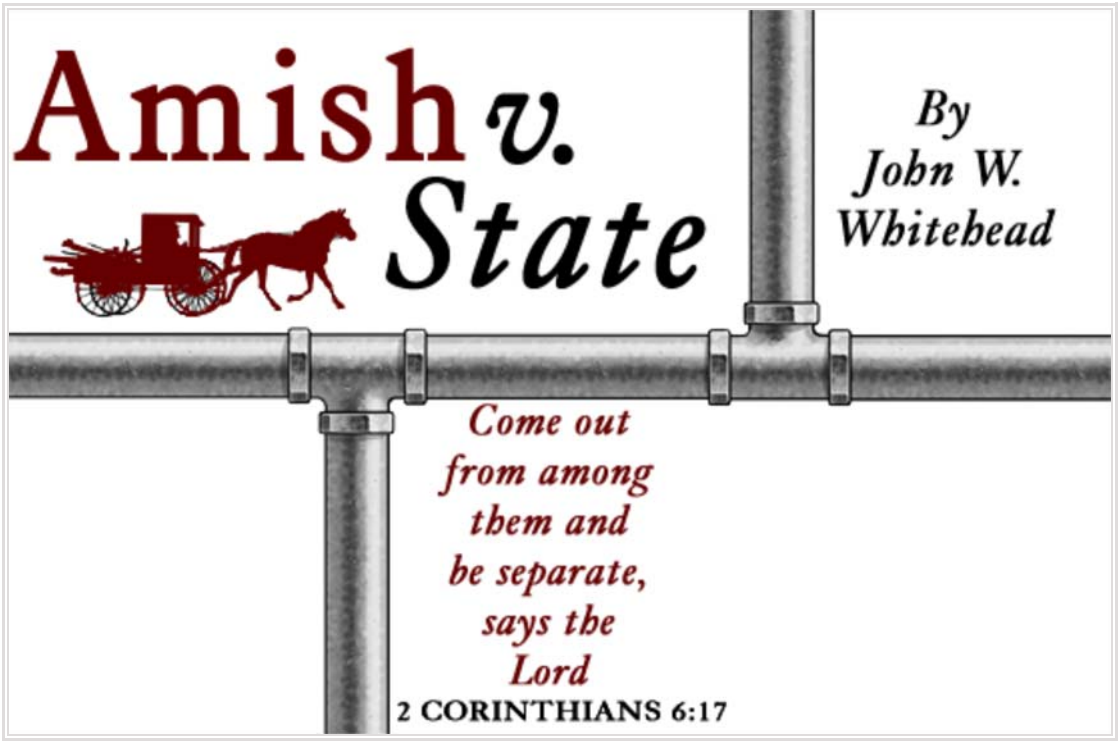
Amish V. State

Or More Than 300 Years The Amish, Also Referred To In This Country As The Old Order Amish Or "Plain People," Have Practiced A Way Of Life That Revolves Around Their Deeply Held Religious Beliefs. Believing In A Literal Interpretation Of The Bible, These I

BY: JOHN W. WHITEHEAD



Illustrations by Tim Foley

PRINTABLE VERSION

For more than 300 years the Amish, also referred to in this country as the Old Order Amish or "Plain People," have practiced a way of life that revolves around their deeply held religious beliefs. Believing in a literal interpretation of the Bible, these intensely private individuals point to Romans 12:2, "Be not conformed to this world," as one of the bedrock Bible verses for their lifestyle and attitude of separation from the world. It is a lifestyle that rejects most of the trappings that come along with modern living. Dressed in plain (some might say old-fashioned) clothing, the men wear broad-brimmed black hats and plain-cut trousers, and the women wear bonnets and ankle-length dresses—they reject all that might get in the way of practicing their faith.

Despite their tendency to stay to themselves and adopt an attitude of nonresistance and pacifism, however, these Plain People have not been strangers to conflict, persecution, or oppression. In Europe the Amish opposition to the union of church and state and infant baptism made them highly unpopular. Some early Amish martyrs were even put in sacks and thrown into rivers in Europe as punishment for their beliefs. Their presence in the United States is largely a result of their escape from religious persecution in Europe. In fact, they were saved from extinction by William Penn, who granted them a haven from religious persecution in America.

Unfortunately, exercising their religious beliefs in the United States has not been without its own trials and tribulations, as recent legal struggles between state officials and the Amish have shown. We hear so much these days from our politicians and other government leaders that tolerance and diversity are essential to freedom and democracy. However, in Gladwin County, Michigan, tolerance and diversity are not being applied to the Amish. As one county health officer said: "We can't treat different segments of the population

differently. We can't discriminate."

Thus, in an effort not to "discriminate," the Central Michigan Health Department had 65-year-old Amish bishop Daniel Mast arrested and criminally charged with violating a health department ordinance. It turns out that Mast's crime was one of household plumbing or, more specifically, the lack thereof.

This farmer, along with many in his Gladwin County Amish community, refused to comply with a health department order to install a complex septic and sewage disposal system in his home to prevent runoff from household dishwater. In order to stay out of jail, Mast was even forced to post bail. Four other Amish farmers were also criminally charged with violating the ordinance, made to appear in criminal court, and forced to plead guilty in return for the criminal charges being dropped.

After all this, the farmers still tried to reason with health officials. The Amish lifestyle is so simple that it doesn't even include indoor plumbing, aside from kitchen sink wastewater that flows into a tile-lined septic system in their yards. This wastewater comes from organic soap that the Amish make themselves, and, in dry places like Arizona, is used to water gardens.

To install a complex and expensive septic system, which would obviously require electricity to run, was both improbable and unnecessary. After all, the Amish, who are generally opposed to the conveniences of modern living, do not use automobiles, telephones, or electricity and avoid commercial chemicals, gasoline, and chlorofluorocarbons. The Amish opposition to such devices and chemicals makes a profound statement, in that all of them pollute the environment.

After insisting that the department's wastewater disposal system is tailored to a non-Amish lifestyle, six of the Old Order Amish farmers proposed an alternative simple system of wastewater removal. This system would allow them to remove wastewater safely and effectively while still adhering to their Amish religious beliefs and practices.

An independent hydro geologist who was called in to investigate the farmers' proposal agreed that the system met, and even exceeded, all requirements of the health department's sanitary code. Nevertheless, the health department's board refused to accommodate the beliefs of the Amish. And the Rutherford Institute stepped into the fray, because what is really being contested is not so much the state of their plumbing as it is their religious freedom and the Amish way of life.

In today's society, emphasis is placed on the individual and his or her ability to achieve personal success and fulfillment. However, in the Amish culture all emphasis is on a community that protects its members. This, in part, helps explain why the Amish do not exhibit the angst and anxiety that haunt society at large.

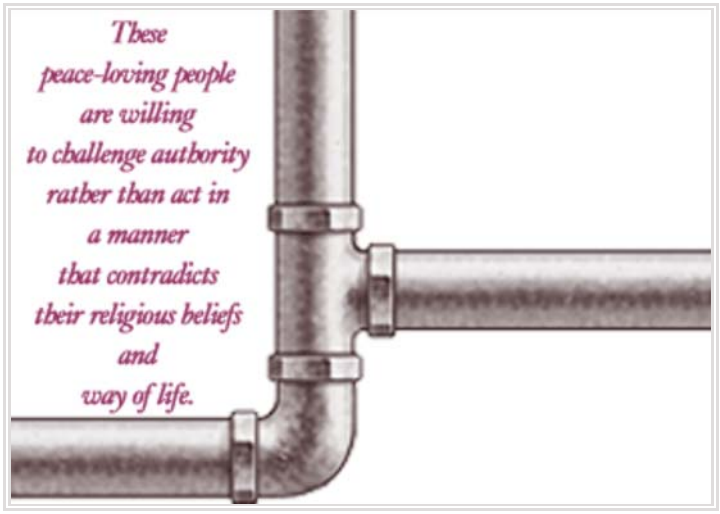
Typically thought of as a law-abiding group of individuals who live by a strict set of rules, the Amish are known for a devout adherence to their religious beliefs, a single-minded commitment to a simple, nonmodern lifestyle, and defenseless nonresistance. One thing they are not known for is breaking the law. Yet owing to the fact that the Amish culture is based on concepts that are in direct contrast with the ideals of modern American culture, clashes have inevitably evolved between the Amish and state officials over their lifestyle.

For example, in the early 1970s the Amish, after confrontations in various states, were charged with breaking the law because they do not send their children to school beyond the eighth grade. Failure to send children to school past the eighth grade is not usually a permitted or acceptable practice. The initial objection against high school attendance stems from the Amish religious beliefs on social boundaries. First Corinthians 3:19 is an often-quoted passage: "The wisdom of this world is foolishness with God." Besides, the Amish society is itself a school. They train their young people vocationally—how to be homemakers, farmers, carpenters, and tradespersons from very early ages. By the time an Amish girl is 12 years old, for example, she knows how to cook a meal for a whole crew of Amish workers, and a young man knows farm operations by the time he is a teenager.

The Amish, therefore, have practically no unemployment, since their society is a vocational school. The Amish operate one-room parochial schools and are taught by teachers with only an eighth-grade education. However, the teachers have learned how to teach with on-the-job training by an older and experienced Amish teacher.
The Amish educational method obviously works. When tested with standardized tests by the U.S. Office of Education, Amish pupils usually perform above the norms when compared to public school pupils in their communities. The students, therefore, are not educationally deprived.

Furthermore, it is difficult, if not impossible, for a non-Amish teacher to teach the values of humility, quietness, and shunning of technological things such as automobiles, television, video games, movies, and the latest fashions. Thus, according to the National Committee for Amish Religious Freedom, the Old Order Amish oppose higher education because it violates their morals and religious convictions and takes their children away from the simple ways of the Amish. But it took a United States Supreme Court case to finally settle the matter in 1972. In Wisconsin v. Yoder the Court ruled in favor of the Amish, saying that states could not constitutionally force the Amish to send their children to public schools.

Since then, however, Amish communities have continued to be targeted by government officials on issues ranging from child labor regulations to not posting license plates on their buggies to refusing to accept Social Security benefits or contribute to the Social Security system—all seemingly in an attempt to force the Amish into a lifestyle abhorrent to their beliefs.



Now these devout people are once again being forced to justify their way of life to government officials who assert that their regulations should override religious beliefs that are fundamental to the very existence of the Amish.

To most Americans who are consumed with modern amenities and who subscribe to the philosophy that you need to avoid confrontation, a dispute over plumbing may not seem like a worthy battle. But it says a lot about this group of simple-living, nonresistant, peace-loving people that they are willing to challenge authority rather than act in a manner that contradicts their religious beliefs and way of life.

The First Amendment to our Constitution was written to ensure that those who were out of the mainstream would be protected. As James Madison argued, the First Amendment was created to protect the minority against the majority. Thus, whether we agree with the way the Amish live their lives, it is their constitutional—and they would say sacred—right to determine this for themselves.

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Narrowing The Spectrum

One Would Have Thought That The Modern University Campus Would Be Open To Differences Of Opinion And Critical Thinking. However, Cynthia Maughan, An English Graduate Student At The University Of British Columbia (UBC), Fears That The Modern University May

BY: BARRY W. BUSSEY

Illustrations by Darren Gygi

PRINTABLE VERSION

One would have thought that the modern university campus would be open to differences of opinion and critical thinking. However, Cynthia Maughan, an English graduate student at the University of British Columbia (UBC), fears that the modern university may not be as open to differences of opinion as she once thought. She is now embroiled in a row with the UBC that has become legal rather than merely academic.

Ms. Maughan, an Anglican, refused to attend a Sunday seminar required by her professor in the course Strategies in Literary Theory. Her refusal was based on the fact that the seminar was held on her Sabbath and that it was held in the home of a classmate who earlier wrote an e-mail to UBC English graduate students that recalls "fondly a time period when Christians were stoned." Ms. Maughan felt it was "religiously repugnant" to be required to attend the seminar under such circumstances.

As a result of not attending the seminar, Ms. Maughan says she faced discrimination from her professor, Lorraine Weir, by not having the same opportunity as the other students in obtaining feedback on her academic essay. The seminar was billed by Prof. Weir as a

"trial run" for the final papers in the course. Unfortunately for Ms. Maughan, she was not to have that luxury, as there were no makeup arrangements.

Maughan was troubled by a number of the comments she received from Prof. Weir on her assignments. On one such assignment Prof. Weir noted that her "impression is that in the end the seminar challenged everything you hold dear—a situation that makes systematic inquiry very difficult." Matters became difficult indeed.

So Ms. Maughan appealed her grade, based on a UBC policy protecting from academic penalty those students who observe a holy day. A lower tribunal of two professors reviewed the matter. In denying her appeal, they identified other appeal bodies to Ms. Maughan, but they "strongly recommended" that she not appeal to the UBC Senate. Ms. Maughan did not bother to accept the advice and appealed anyway.

As this nasty bit of business eventually found its way to the UBC Senate, Prof. Weir allegedly went to some length to discredit Ms. Maughan by seeking letters from another student and other professors at UBC. Those disparaging letters suggested that Ms. Maughan was, among other things, "unstable," and that her complaints against Prof. Weir amounted to "threats and terrorism."

The UBC Senate committee was troubled with what they heard. Though they denied the appeal of Ms. Maughan's grade on technical grounds, they were not pleased with what was happening. Unanimously they held that Prof. Weir had "been neglectful of her teaching duties" in failing to
provide Ms. Maughan an alternative feedback in lieu of attending the Sunday seminar. The Department of English, they said, had "mounted an irrelevant attack upon [Ms. Maughan's] character for mental and emotional stability and for religious tolerance." They did not stop there—in their view the conduct of the English Department was inexcusable; it had "embarrassed the university, and descended well beneath the current standards of Charter values."

Ms. Maughan has since filed a statement of claim in the Supreme Court of British Columbia seeking damages for the discriminatory treatment she alleges to have suffered from Prof. Weir and others at UBC. Her legal counsel, Gerry Chipeur, is a constitutional lawyer based out of Calgary, Alberta. Mr. Chipeur alleges that Prof. Weir discriminated against Ms. Maughan because she refused to accept Prof. Weir's "belief that religion and European culture are responsible for many of the evils within society."1 In Prof. Weir's brief to the UBC Senate she noted that Ms. Maughan's academic views were a "recognition of one's own colonial heritage and implication in a tragic history."[2]

No stranger to controversy, Prof. Weir gained notoriety in Canada when testifying in the trial of child pornographer John Robin Sharpe, whose writings the court said were "morally repugnant." Nevertheless, the court accepted Prof. Weir's analysis that Sharpe's writings constituted "art." Prof. Weir is of the view that pornography is an expression of a society. "It's the world that's the problem, not the representations of the world," she says. "The argument for a utopia is an old one. 'Burn the bad books to make the people better.' The dualistic notion of our patriarchal violent society versus the peaceful, nonviolent utopia needs to be deconstructed in practical terms, so that we recognize a spectrum, allow a spectrum of views and lifestyles."[3]

According to newspaper accounts, the current head of the UBC English Department recognizes the importance of a broad spectrum on campus. While admitting to members of the department using inappropriate language with Ms. Maughan, Prof. Gernot Wieland said the incident has "sensitized us" and "made us more aware that there are certain limits and that we have to be a little more careful in our language." He denied there being a pattern of discrimination against Ms. Maughan, and concluded, "We have a large intercultural population here, so yes, we are very sensitive to that."[4]

Whatever the outcome of Ms. Maughan's lawsuit, it will surely assist the University of British Columbia in becoming all the more sensitive to the importance of allowing—in the words of Prof. Weir— "a spectrum of views and lifestyles," albeit not exactly in the same way she originally intended.

Barry W. Bussey holds degrees in theology, law, and political science. He writes from Toronto, Canada.

[1] Fancine Dube, "Christian 'Exposed to Contempt' Lawsuit Accuses UBC Professors of Discrimination Based on religion," National Post, Oct. 24, 2002, online edition at www.nationalpost.com.
[2] Statement of claim in the Supreme Court of British Columbia, Cynthia Maughan and The University of British Columbia, Lorraine Weir, Susanna Egan, Anne Scott, Judy Segal.

[3] Morgan Reid, "Little Sister's Under the Watchful Eye of Big Brother," The Peak, Feb. 6, 1995. http://www.peak.sfu.ca/ the-peak/95-1 /issue5/lilsis.html.
[4] Dube.

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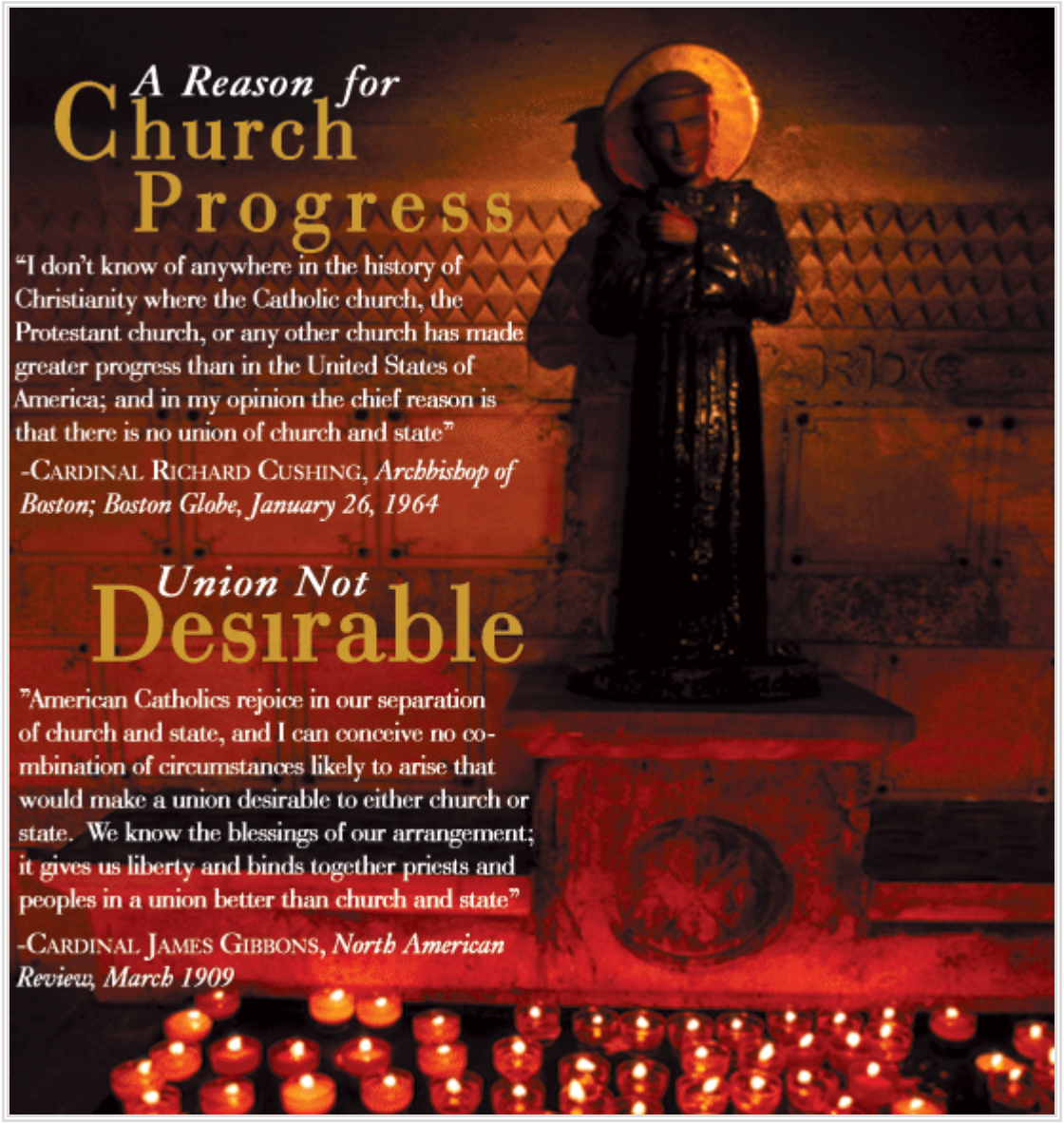

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Breakdown Of The Wall

While The Christian Coalition Correctly Argues That The Phrase "Wall Of Separation Between Church And State" Nowhere Appears In The U.S. Constitution, Our Constitution Does Contain These Words: "Congress Shall Make No Law Respecting An Establishment Of Re

BY: GERALD C. GRIMAUD

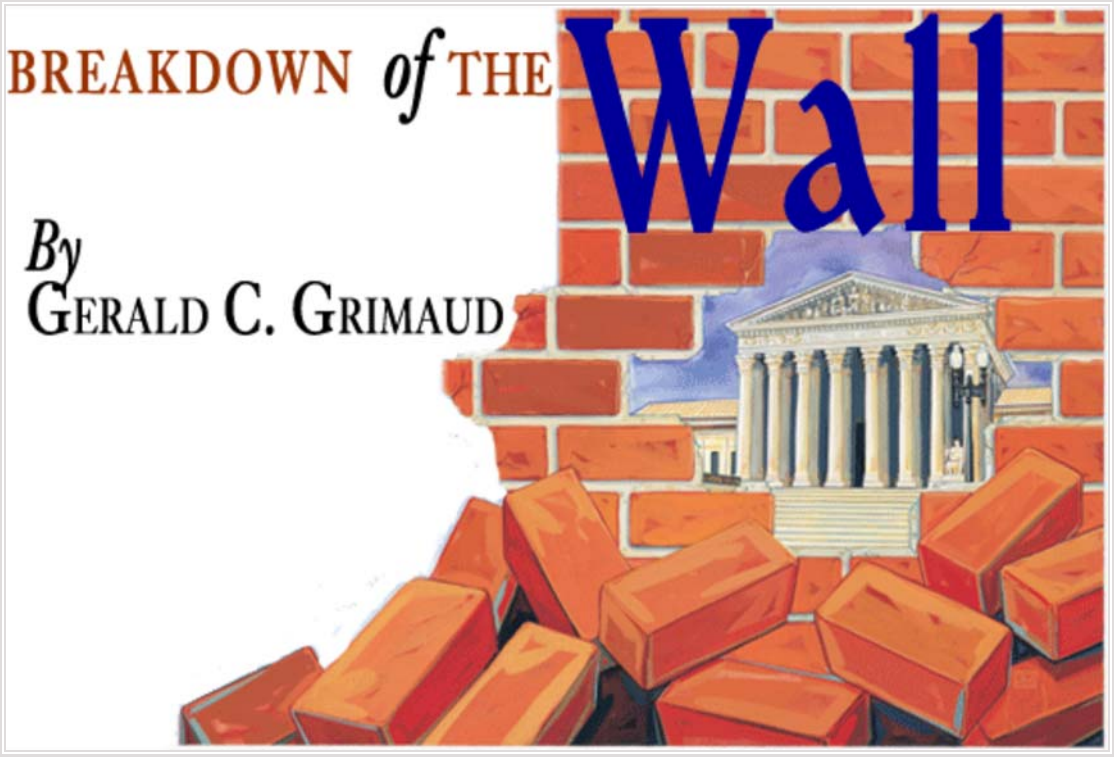

Illustration by Jim Mellett

While the Christian Coalition correctly argues that the phrase "wall of separation between Church and State" nowhere appears in the U.S. Constitution, our Constitution does contain these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Thomas Jefferson in 1802 explained our First Amendment religion provision as providing a wall of separation. The wall metaphor was employed by Roger Williams in 1644, by the U.S. Supreme Court in 1879, and in many cases since. The wall has obviously stood the test of time—at least until Chief Justice William Rehnquist expressly commenced his attack on the wall in his 1985 dissent in *Wallace v. Jaffree*. The Court, Congress, and Presidents Clinton and George W. Bush have since begun to dismantle the wall brick by brick, law by law, case by case, dollar by dollar, program by program. The wall was weakened as the Supreme Court allowed church and state "cooperation"; disallowing only programs that involved "excessive entanglements" between church and state. The test since 1997, however, now allows government funding of religious social programs, notwithstanding excessive entanglements, as long as there is a secular purpose (*see Agostini v. Felton*).

With President George W. Bush's current bold and aggressive plan to fund faith-based social programs we are entering a dramatic new era for church-state relations. Neither the president, the U.S. Congress, nor the Supreme Court appears to be concerned with the historical underpinnings of our constitutional religious liberty protections. History has shown us that freedom of conscience cannot exist

with the establishment of religion. The establishment clause, the "wall of separation," is unique to the United States. It is essential to protect church and state from each other. The wall took centuries to construct, at great cost.
Our inhumanity to each other more often than not involves religious conflict. This is evident from both recent and current events, e.g., Northern Ireland, Kosovo, and the Middle East. The nature of humanity is not really different in the United States than elsewhere, though we like to think so. What is different is our system of government. Unique to America is the establishment clause, the First Amendment, and strong courts to protect and implement our freedoms. The Bush administration is tampering with our most basic protection, the establishment clause, the first freedom in the First Amendment.

President Bush's supporters argue that his plan to fund "faith-based" social programs is not new; that components of faith-based funding can be found in the government's support of Catholic Charities, the 1996 welfare reform program, HUD's work with Black churches, and Catholic sisters and Jewish community groups that help low-income families with food, shelters, and homes.

It is significant that the rhetoric has gone from "cooperation" between church and state to religious groups "partnering" with government. Amazing!

With the breakdown of the wall of separation, both church and state will pay a great price, as will the individual. Yes, church social programs and the needy will benefit in the short run. However, with state funding comes government intrusion into church programs; forms, applications, questions, monitoring, supervising, auditing, regulating, managing, and even prosecutions. And over time, sadly, the mission of church programs will be neutered.

Gerald C. Grimaud is a former Pennsylvania assistant attorney general. He is engaged in the general practice of law in his hometown of Tunkhannock, Pennsylvania, including constitutional, criminal, and civil rights law.