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LIBERTY

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NOVEMBER / DECEMBER 2003

Letters

Ends and Means

I am greatly dismayed that your response to Mr. Gary Jenson's letter to the editor in the May/June 2002 issue was so restrained and vague. "Rough logic"? Mr. Jenson's logic was fine; it was his suppositions or assumptions that drove his logic that were dangerously flawed. His suggestion that our internment of United States citizens of Japanese ancestry in concentration camps was a benevolent and necessary act to "protect" them from the other citizens is absurd! Should we round up all the African-Americans in the United States of America to protect them from hate crimes that are motivated in response to crimes committed by a few other African-Americans? The same could be said of the Irish Americans every time the IRA commits a crime. Should we resegregate our society to "protect" one racial or cultural group from the bigotry of the others? This was the fundamental argument and justification used by many to institute segregation in this country. The belief that "the ends justify the means" is the basis of most of the atrocities in history. We should have and should always rise above our fears and protect the innocent from the mobs.

PHIL DABNEY
E-mail

I plead guilty to not condemning or attacking the letter that offended Phil Dabney. We want Liberty to be a safe place to express views, no matter how offensive they might be. Sometimes an argument can discredit itself by revealing flaws in logic or morality. We trust our readers can make appropriate judgments. —Editor.

"Rough Logic"!

I rather liked having my logic described as "rough," as you did in your response to my letter that was published in the May/June 2002 issue—it is Lincolnesque, perhaps. I do not, however, recognize the constitutional rights of everyone living in this country. Those rights are reserved for citizens. It is wrong and dangerous to grant them to foreigners, who may or may not be here legally.

The article by Jim Walker dredges up some interesting quotes while arguing that America is not a Christian nation, but he tries too hard when he suggests that the Treaty of Tripoli is more relevant to American law than the Declaration of Independence. It cost the government nothing to assure the "Mussulmen" that we weren't Christian so they would sign a treaty with us, but the Declaration and the Constitution are the compact that makes us a people.

Walker is wrong when he says that Christianity is not mentioned in the Constitution. In Article VII it says, ". . . in the Year of our Lord . . ." (I suppose I should give Jerry Fallwell credit for pointing this out to me—that's why we keep him around; he says interesting things.)

Walker sloughs off the statement in a Supreme Court case that this is a Christian nation by calling it dicta. Well, the "wall of separation" statement in Everson is dicta of the worst kind; it goes against the sense of the case. The Supreme Court breached the wall in that very case. The justices could have said, "It's none of our business how New Jersey chooses to pay for the education of its children," and the result would have been the same, without all the confusion we cope with today.

GARY D. JENSEN
Lake Jackson, Texas

Human Rights a Trump

I read with some interest "The Quest for Power and Influence" and the editorial in the May/June 2003 issue. While I agree with the philosophy of separation of church and state, I firmly disagree with your position that "the deadly dozen" advertisement fostered by Catholics was wrong.

The problem is simple. Many, apparently like you, consider abortion to be a political subject when in actuality it is a "human rights" issue. Who among us, of any faith, can deny that the denial of God-given life is anything but a denial of a basic human right? It most certainly is not Republican, Democrat, Libertarian, liberal, independent, or conservative. Many have tried to make it political, but the right to life transcends all politics.

If you can agree with the "right to life" being a basic human right, why is it wrong for any faith group to demand of its members who are in political office **that they** do what they can to extend that basic right to the unborn? Any human right should have the full backing of government and "the church" in unison. Anything less literally "spits in God's face."

JOHN C. KOST

Myrtle Beach, South Carolina

Abortion is hardly an unimportant issue—whether seen as a human rights denial or a moral denial of faith. My point is that people of religious faith and human concern should object through the means provided by the Constitution. What should trouble any freedom-loving citizen is a willingness to impose any church dicta on the state. If we allowed Islamic fundamentalism to have its way, women might be disenfranchised in startling ways. If we allowed Catholic priests to rule through the state, they might require all to observe Sunday and attend Mass. Religious concerns permeate our common dialogue and people of faith must act on them—but not to the detriment of the freedom of choice guaranteed by the Constitution and so fully endorsed by my Bible. —Editor.

War and Conscience

I am writing this after reading the issue "War and Peace" (March/April 2003). May I say I appreciate the historical and law coverage of the first article, "War and Peace," by Ronald B. Flowers. I thought of Prime Minister Jean Chretien of Canada standing firm in not agreeing to join President Bush totally in the Iraq war. History might be repeating itself, as young Americans can still come to Canada to live (instead of causing "public unrest" by staying in the United States of America and being part of marches against war). With differing views on the war, peaceful means are more likely achieved.
Thank you for the revealing article.

ATHENA MONTOYA-TULLOCH
Cocrane, Alberta, Canada

Prisoners of War

After reading "War and Peace," I see again how Jesus makes one search His words on understanding of war.

In the Old Testament wars the question wasn't "How many men are on your side?" but "Is God on my side?" The rule is different in the New Testament. Jesus taught that it is the military with the most muscle that wins the war (Luke 14:31). Why the change? Because Jesus died so that we would not need to kill on His behalf. This isn't to say He doesn't want evildoers punished (Romans 13:1-7).

We process criminals every day in America without killing them. Why don't we use this approach with foreign invaders—real or imagined? I believe the most mature Christian leader would and could, because with God "all things are possible" (Mark 14:36).

BILL TASSIE
Burlington, Michigan

A Matter of Which Religion

"Theocratic Dreams" (July/August 2003) brings up a bunch of topics, some of which I have pretty strong views on. If I understand Kimberly Blaker correctly, she seems to be saying that there are two options for government policy: either support and fund no organizations that make mention of God, or else fund the organizations that are of the dominant faith. I disagree with this on two grounds.

1. It is surely possible to create a system of equal access in which the government supports religious organizations regardless of creed.

2. I believe that secularism is a religion, in that it has a defined worldview with a listing of values and taboos, and is aggressive in evangelizing people to accept it.

The author mixes two areas that are quite different, in my view. I am quite worried about the atmosphere of crisis in America following September 11, 2001. There is a real danger of tyranny arising out of this atmosphere. However, I do not see government support of religious organizations in such areas as feeding the hungry, caring for the sick, and educating children as being a threat to constitutional liberty or democracy.

She is also quite wrong in her view that secularism is necessary for a successful democracy. There are plenty of examples of nations with an overwhelmingly dominant religion and simultaneously a vibrant democracy. Poland, Italy, the Philippines, most of Latin America, and, in a way (the case is unique), Israel all testify to the dispensability of secularism in a successful democracy, without producing a "fundamentalist" state. And then you have such examples as Germany, where the citizens pay a tax to their church (the tithe), but select which churches (or none) receive the money. I think this is a wonderful thing that we would do well to institute here—with a few modifications, of course.

STEFAN, VIA JOZ LEE
Medford, Oregon

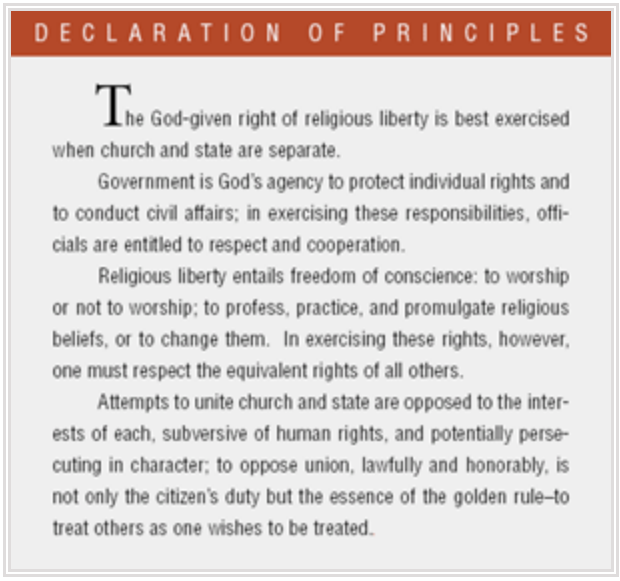
The First Amendment of the U.S. Constitution was intended to prevent overt public funding of religious activity. And, yes, radical

secularism can function in an aggressive way to inhibit true religious expression. That is why anti-religious views and policies have no place in the United States of America. The goal is to create a neutral government environment that allows religious faith to flourish and coexist. —Editor.

How We Got Here

My dad is an atheist. My mom is Episcopalian, and has been actively involved in her church for about 48 years. They have been happily married for 54 years.

The United States of America is 227 years old, and contains people of all religions, or lack thereof. We are stable and prosperous, and have avoided most of the religious strife that has plagued the rest of the world. I love my parents and my country. I learned early on that, although my parents have different views on religion, they have many of the same interests and very similar values. They have always treated each other with a great deal of respect, and treated their children—and the whole world—with great compassion. They are both active and responsible members of the community and are well respected by everyone.



DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice, and promulgate religious beliefs, or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights, and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the golden rule–to treat others as one wishes to be treated.

The United States was determined from the beginning to avoid the mistakes of Europe by focusing on the core values of freedom, democracy, human rights, and a government limited by the Constitution. How one felt about God or Jesus or the pope was secondary to this great experiment. After much discussion (which continues to this day), we decided to let people believe and worship however they pleased, with the government officially neutral. The goal of creating a free, prosperous republic was paramount. Sure enough, this great experiment has worked beautifully! All kinds of religions have flourished and coexisted like nowhere else. Not coincidentally, we have become the richest and most powerful nation as well. I am fully convinced (especially since September 11) that this freedom of religion/separation of church and state policy is the single smartest thing this country has ever done.

Therefore, let us continue to keep our eyes on the prize, and let everyone believe whatever they want in the privacy of their own minds and houses of worship. Let us resist all attempts by the government to favor one creed over another, as in the Middle East and Middle Ages. Let us continue to be the great and free nation that we are, and let us not forget how we got there!

DAN MARSHALL
Silverdale, Washington

NOVEMBER / DECEMBER 2003

State Sunday Laws

Sunday Laws Have Been A Part Of The Legal Landscape Of America From The Time Of European Settlement. Nevertheless, Because Sunday Laws Are Not Generally At The Forefront Of Today's Legislative Debates And, As Currently Enforced, Create Only Occasional Ser

BY: MIRIAM CHO

Sunday laws have been a part of the legal landscape of America from the time of European settlement. Nevertheless, because Sunday laws are not generally at the forefront of today's legislative debates and, as currently enforced, create only occasional serious difficulties, their pervasive presence is ignored. However, these laws should be neither dismissed nor treated lightly. Sunday laws are religious in origin and purpose, and they create a burden on the religious practices of those whose faith dictates that they rest on a day other than Sunday.

Every state in the United States, except Alaska, currently has Sunday laws. These laws restrict a gamut of activities, some of which include the sale of alcoholic beverages, sale of property, sale of nonnecessity goods, adult entertainment, mechanical labor, banking, barbering, creation of contracts, racing, hunting, operation of movie theaters, and water sports. Indeed, 46 states restrict the sale of alcoholic beverages on Sunday. More than 20 states restrict some other form of business on Sunday. Twenty-two states prohibit legal procedures (service of process, issuance of warrants, etc.) from being executed on Sunday. Seventeen states restrict the sale of motor vehicles on Sunday, and 14 states restrict horse racing on Sunday.

Some Sunday laws merely restrict the hours of certain activities, while other laws prohibit select activities altogether. For example, most states restrict only the hours of alcoholic beverage sales on Sunday and do not totally prohibit their sale. In Delaware video lottery machines cannot be operated between the hours of 2:00 a.m. and 1:00 p.m. on Sundays. In contrast, shooting, hunting, card playing, and racing are prohibited altogether on Sundays in Alabama.[1] In Rhode Island motor vehicle dealers are absolutely prohibited from opening for business on Sunday.[2]

The punishment for violating a Sunday law is not minimal. The most common penalty is to be held guilty of a misdemeanor. Georgia's law provides that one can be held guilty of a misdemeanor for merely discharging a firearm on Sunday.[3] One can also have their license revoked (usually for violating alcohol regulations), be subject to fines, or even serve a short prison term for violating a Sunday law. In Oklahoma any person who violates any provision of the Sunday laws is guilty of a misdemeanor and can be punished by a fine or by imprisonment.[4]

Potential Threat to Religious Liberty

At first glance these restrictions may seem irrelevant to our religious liberty. Some of these laws are time-honored traditions whose presence is not even recognized. Moreover, complying with these laws imposes only a minimal burden. The closing of banks and government offices on Sundays is an example of a culturally accepted norm that does not place a huge inconvenience on most of society. Americans are so accustomed to having banks and government offices closed on Sundays that it is second nature to govern our schedules accordingly. Other Sunday laws may appear harmless because we assume that they are mere historical relics that remain on the statutory books, but that would never be enforced. In addition, some Sunday laws were enacted through the efforts of labor unions and do not have religious undertones.

However, Sunday laws do pose a real threat to religious liberty. The rationale behind these restrictions is hardly innocuous; they are designed to create an atmosphere of worship and have their heritage in the protection of Sunday as a day of worship. Some states recognize this purpose in a more explicit manner than others. For example, such states as Nebraska, Minnesota, and New York openly refer to Sunday as "the Sabbath" in their state law. Massachusetts law calls Sunday the "Lord's Day," while New Hampshire refers to Sunday laws as "Day of Rest" statutes. According to New York law, "The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community."[5]

Furthermore, many of these laws place a burden on individuals whose faith dictates that they observe a day other than Sunday. Statutes that forbid labor or the opening of business on Sunday impose a serious economic burden on those who observe Saturday as their Sabbath. Because their conscience dictates that they refrain from business on Saturday, while the law mandates that they refrain from business on Sunday, Saturday observers lose two business days, as opposed to the one business day that their counterpart Sunday observers lose. As a result, Saturday observers are forced to choose between economic loss and adherence to their religious convictions.

It may appear that the state and federal constitutional protections that guarantee the freedom of religion, freedom from state-imposed religion, and the equal protection of all citizens would invalidate Sunday laws if they imposed a burden on individuals whose religious faith dictates that they observe another day besides Sunday. Unfortunately, this is not the case. The U.S. Supreme Court has upheld Sunday laws against constitutional challenges,[6] and state courts have followed their lead. Eleven states have held that Sunday closing laws do not violate the separation of church and state or interfere with religious liberty. A number of state courts have ruled that Sunday laws do not violate equal protection or due process rights. Indeed, many state courts have stipulated that it is appropriate for states to impose Sunday restrictions for the purpose of promoting public health, safety, general welfare, and morals.

Factors That Mitigate the Impact of Sunday Laws

There are provisions that mitigate the impact of Sunday laws on Saturday Sabbath observers. Eleven states have statutes that explicitly exempt those who observe Saturday as their Sabbath from Sunday closing laws. These laws provide that those who conscientiously believe that the seventh day of the week ought to be observed as Sabbath and who actually refrain from labor and business on that day will not be liable for prosecution for performing labor or business on Sunday. Unfortunately, while these statutes provide some protection for Saturday observers, they have no effect on the statutes that were enacted to create an atmosphere of worship on Sunday. For example, it is doubtful that these statutes would exempt a Sabbath observer from a statute that forbids fishing on Sunday. Nevertheless, fishing is most likely forbidden on Sunday to foster an atmosphere of worship on this day.

There are also limitations on Sunday laws. North Carolina, for example, requires a public hearing to take place before a Sunday closing ordinance is enacted. Some of the existing restrictions on Sunday activities limit Saturday activities as well. This is especially true for

statutes that regulate the sale of alcoholic beverages. Also, most Sunday closing laws make exceptions for work of necessity and charity. States that forbid the opening of shops on Sunday usually make allowances for the sale of milk, bread, and medicines.

Many of the Sunday closing laws may not currently be enforced. The plausible reasons for nonenforcement are manifold. In many circumstances it is not economically advantageous to enforce Sunday closing laws. This is particularly true because American companies compete in the global market and because the costs of closing production lines a day a week may be prohibitive in some industries. In addition, there appears to be weak popular support for the strict enforcement of Sunday laws. Some closing provisions may not be enforced because they are viewed as antiquated. Some provisions may be so obscure that they are not enforced. Finally, law enforcement may have other enforcement priorities (e.g., reducing violent crime).

In conclusion, Sunday laws remain ubiquitous in America. They do not generally create a major burden on non-Sunday worshipers as they are currently enforced. Nevertheless, their continued existence, along with case law upholding their constitutionality, establishes the principle that the majority can impose its day of worship on religious minorities. Such a principle is antithetical to religious freedom. While public sentiment may not currently support the enforcement or expansion of Sunday laws, it is clear that such sentiment can change rapidly. In the face of such a change the legal stage is set for the enforcement and expansion of Sunday laws. These laws, therefore, are not merely historical oddities, but dangerous precedents that pose a real threat to our future religious liberty.

Miriam Cho has a degree in foreign affairs from the Univeristy of Virginia and is just completing her law studies there.

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[1] *Alabama Code*,

NOVEMBER / DECEMBER 2005

Schools Are Special

BY: M. THORNE

In the case of *Newdow v. U.S. Congress* the Ninth Circuit Court of Appeals ruled that Congress violated the First Amendment to the Constitution when it added "under God" to the Pledge of Allegiance in 1954. The *Newdow* ruling was as controversial as the Supreme Court's ruling in *Roe v. Wade* in 1973, when the High Court found an unwritten right to abortion buried in the Fourteenth Amendment. It was as controversial as the Court's 1954 ruling in *Brown v. Board of Education* that overturned *Plessy v. Ferguson*, the 1896 ruling that made "separate but equal" the law of the land.

When the *Newdow* ruling was announced, the public was shocked. Within minutes the ruling was condemned. Pundits and politicians denounced it. Later that afternoon members of Congress were on the steps of the Capitol, reciting the pledge, emphasizing the controversial phrase, pledging a constitutional amendment—if it became necessary—to keep the pledge just as it had been for almost 50 years.

Hardly anyone thought such action would be necessary. That evening, news shows were full of experts who assured the public that the *Newdow* ruling would be appealed to the Supreme Court. The nation's highest court would set things straight; it would certainly overturn the ruling. Pundits and politicians competed for time on TV to express their gut-level reaction that the ruling was *ridiculous, nuts, bizarre*, and *stupid*. Hardly noticed were those constitutional scholars who, after reviewing the ruling, said it was a good ruling, that it was carefully based on previous Supreme Court rulings. For the High Court to overturn the ruling, they said, it would have to ignore or disagree with many of its own rulings—not a likely prospect.

Of course, we don't know how the Supreme Court is going to rule on this. It might overturn the appeals court's ruling; it might not. We can be sure that, however it rules, it's going to consider certain things: What does the establishment clause prohibit? What did the Framers intend for it to prohibit? When Congress added the phrase "under God" to the pledge, did it make a law respecting an establishment of religion? Why did it add the phrase?

Let's examine those things that the Court is most likely to consider. In a subsequent article we will look at what the Supreme Court justices have said about such things in previous rulings. Once we do that, we'll be in a position to make a reasonable guess as to what the Court's ruling will be.

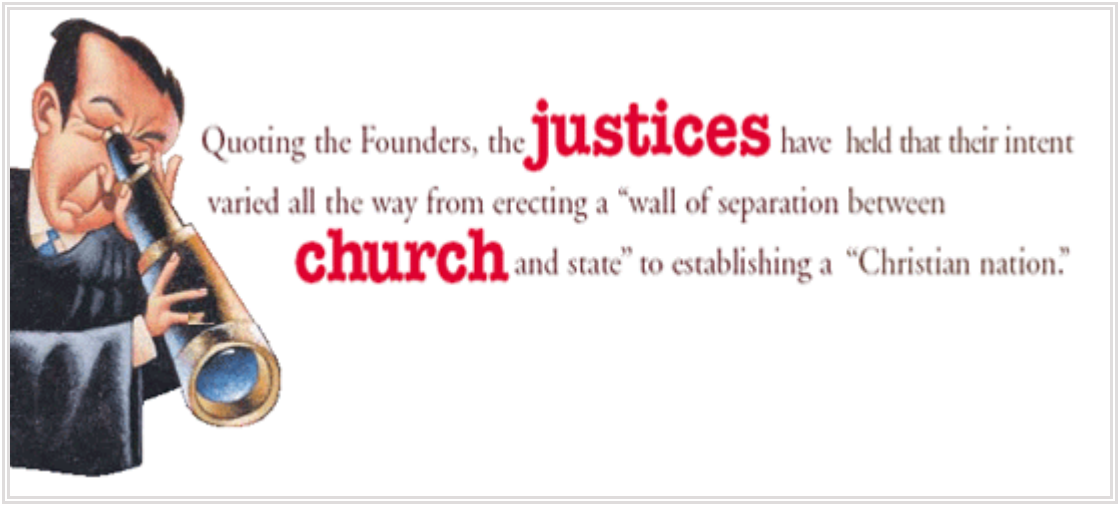
What's Allowed, What's Not

Our Bill of Rights begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Just what does that mean? According to the Supreme Court, what it means is this: Government must be neutral with respect to religion, neither favoring it nor inhibiting it. It must be neutral in its relations with believers, doubters, and nonbelievers; it must not take a stand on religious beliefs or practices. That's what it means, according to the United States Supreme Court.

How can that be? *Neutrality* isn't even mentioned in the First Amendment. It's easy to look at the religion clauses as two separate and independent clauses, one prohibiting certain types of laws (those respecting religious establishments), the other guaranteeing certain freedoms (to practice religion). It's the combined effect of the two clauses that requires neutrality.

Consider *Abington v. Schempp*, decided in 1963. This case was about a Pennsylvania law that said, "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day." The law also said that schoolchildren were not required to attend the Bible readings. Edward and Sidney Schempp, the parents of children attending school in the Abington school district, where the Bible readings were followed by the Lord's Prayer and the Pledge of Allegiance, brought suit to end the Bible readings and prayer. The Court ruled in their favor.

The Court reasoned that the law favored Christianity over Judaism, and so it violated the neutrality required by the religion clauses. The Court ruled that religious freedom meant "absolute equality before the law, of all religious opinions and sects." The Court referred to its ruling in an earlier case, *Everson v. Board of Education*, decided in 1947, in which it said the combined effect of the two clauses "requires the state to be neutral in its relations with groups of religious believers and nonbelievers." In *Abington* one justice wrote, "The state must be steadfastly neutral in all matters of faith, and neither favor nor inhibit religion."



The one justice who dissented from the Court's ruling in *Abington* agreed that the First Amendment required neutrality, the "evenhanded treatment to all who believe, doubt, or disbelieve." He wrote: "What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government." Yet he didn't agree that Bible readings in public school, some of which contained material that had been described in testimony as "practically blasphemous" to Jews, violated the notion of neutrality. Rather, he wrote that prohibiting religious exercises in public schools was not neutrality, but "the establishment of a religion of secularism." The Court considered and rejected that idea: "We cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those affected, collides with the majority's right to free exercise of religion."

As it is with almost all cases involving the religion clauses, not all of the justices agreed in the case of *Abington v. Schempp*. Yet the principle of neutrality was firmly upheld and has never been questioned. Just last year the Court ruled in the case of *Zelman v. Simmons-Harris*, a case about a school voucher program in which public funds were spent on parochial schools, primarily Catholic schools. The program was challenged on the grounds that it violated the establishment clause. The Court upheld the program because it found the program "is entirely neutral in respect to religion."

In *Newdow* the Court is sure to consider neutrality. The problem with the pledge, according to the appeals court, is that it is not neutral, that it promotes a particular religious belief: that there is one God and one God only. Can promoting such a controversial belief be considered neutral?

Reviving Dead Presidents

In cases involving the establishment clause (such as *Newdow*), the Court often wonders what the Founders—particularly those who wrote the Bill of Rights—would say. What did they intend? The Court often quotes what those individuals wrote or said. Very often a justice who would like the Court to rule one way or the other selects particular quotes to back his or her argument that so-and-so (usually Thomas Jefferson or James Madison) would rule this way or that in a particular case.

Time and again Supreme Court justices have written essays on the meaning and the history of the establishment clause. Quoting the Founders, the justices have held that their intent varied all the way from erecting a "wall of separation between church and state" to establishing a "Christian nation."

In *Newdow*, look for quotes from Jefferson and Madison to support speculations as to what the Founders thought and how they would rule in this case.

Testing for Violations

Something else the Court is likely to consider is a test to determine whether a law violates the establishment clause. Tests have their advantages. If they're objective, there's little risk of the judges' personal opinions getting into the mix. Another big advantage is that legislators and lower courts can use the tests to settle matters, so that they never reach the High Court. Tests promote stability: What's constitutional one year doesn't become unconstitutional another year. If the test is objective, it doesn't matter if it's a conservative Court or a moderate Court or a liberal Court: They'll all reach the same conclusion. That's how it should be, and so tests are good.

Is there a test that can be applied in *Newdow*? What about the Lemon test? This test is named after the case of *Lemon v. Kurtzman*, decided in 1971. The Court was asked to decide whether it was constitutional to use public funds to support parochial schools, and the Court ruled it was not, at least not the way that Pennsylvania and Rhode Island were doing it. How did the Court come to such a conclusion? It applied the Lemon test.

The Lemon test didn't just spring from this one case. It was developed over many years, and it measures a law or government practice according to these three questions:
1. Does it lack a secular purpose?
2. Does it have the principal effect of advancing or inhibiting religion?
3. Does it foster excessive government entanglement with religion?

The first question is called the "purpose prong," and it asks whether government's purpose is to endorse or disapprove of religion. The second question is called the "effect prong," and it asks whether regardless of government's purpose, the law in question actually endorses or disapproves of religion. The third question is called the "entanglement prong," and it asks whether government is getting caught up in religious affairs. If the answer to any of the three questions is yes, then we have a violation of the establishment clause.

Seems simple enough, right? Turns out it's not so simple. The justices don't always agree on whether a law has a secular purpose or some other "hidden" purpose. They don't always agree on whether a law tends to advance or inhibit religion, or whether it leads to entanglement. Neither do they agree that the Lemon test is the best test to use. In fact, there's been a great deal of dispute about the test, despite its lengthy development and long use. For instance, in one case (*Allegheny* v. ACLU) three of the current justices joined together to say that the effect prong reflected "an unjustified hostility toward religion."

Another problem is that the Lemon test yields some very inconsistent results, such as:
• A state may lend textbooks to parochial schools, but not tape recorders or maps.
• A state may pay the cost of busing students to parochial schools, but not for taking them on field trips.
• A state may reimburse a parochial school for administering tests prepared by the state, but not for tests prepared by the school's teachers.
• In some instances Nativity scenes or the Ten Commandments may be displayed in public places; in other instances they may not.

This inconsistency leaves legislatures and lower courts wondering what is constitutional and what is not. Is there another test that might be used, one that yields more consistent results? Will *Newdow v. U.S. Congress* give the Court an opportunity to devise such a test, or will it reaffirm the longstanding Lemon test?

Schools Are Special

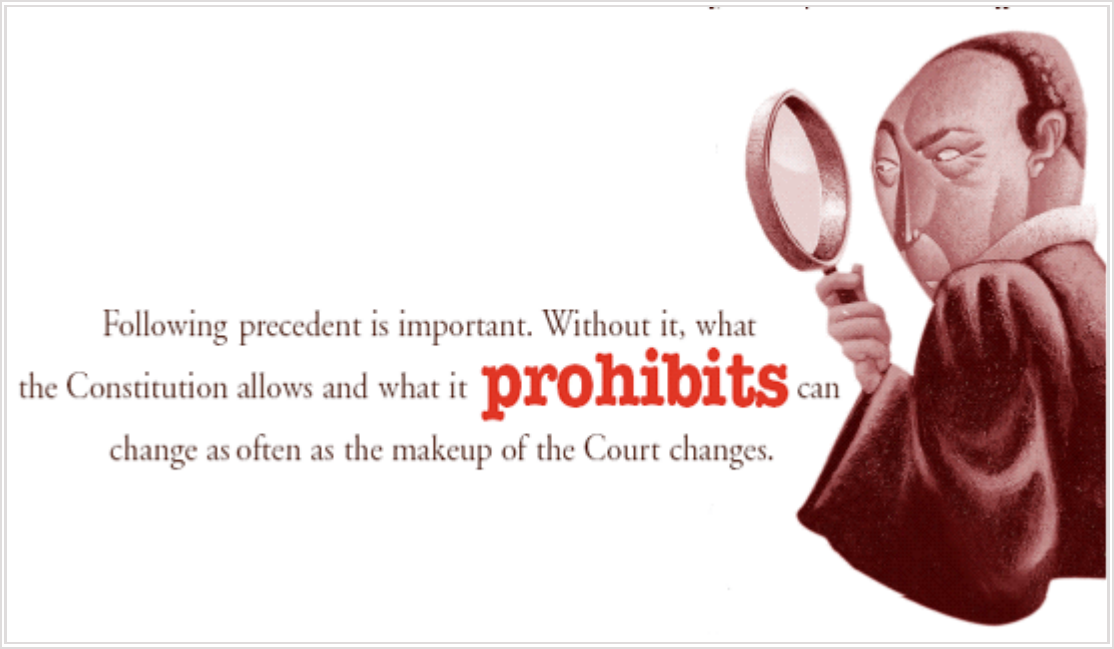
The Court takes special care when it comes to public schools. For most children (those whose families can't afford private school or don't have the wherewithal for home schooling), attendance in public school is mandatory. Schoolchildren are a captive audience. They are young and impressionable. For these reasons "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools."

In 1940 the Supreme Court ruled in the case of *Minersville School District v. Gobitis*. The case was about a requirement imposed by the Minersville School District: Teachers and pupils were required to recite the Pledge of Allegiance each day. It was about two children attending school in the district: Lillian and William Gobitas.* The two refused to recite the pledge for religious reasons, and so they were expelled from school. Raised according to the beliefs of Jehovah's Witnesses, they understood the pledge to be forbidden by Holy Scripture. The Court ruled that the children could be required to recite the pledge, even if it violated their religious beliefs. In his lone dissent Justice Marlan Stone noted that the state was competing with the children's parents, using public schools to "indoctrinate the minds of the young."

Three years later the Court heard the case of *West Virginia Board of Education v. Barnette*. Like *Minersville*, this one was about

children in public school who refused to recite the mandatory pledge for religious reasons (the plaintiffs were Jehovah's Witnesses). It was about a law that said if students didn't recite the pledge, then their parents could be sent to jail. The Court found the law unconstitutional, not because it gave children such power over their parents, but because forcing children to profess something that violated their religious beliefs "invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

The Court overruled the decision it had made in *Minersville* and left us with this notable sentiment: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."



Twenty years later (in *Abington v. Schempp*) the Court said the key to its decision in *Barnette* was that it "involved the compelled attendance of young children at elementary and secondary schools." In reaching its decision in *Abington*, the Court was concerned with "young impressionable children whose school attendance is statutorily compelled."

According to the ruling in *Barnette*, students in public school cannot be required to recite the pledge. Does that mean that Newdow lacks merit? Not at all. Consider *Lee v. Weisman*, decided in 1992. In this case the Court decided that it was a violation of the establishment clause for a school principal (the state) to select a cleric (a rabbi), give him guidelines (from the National Conference of Christians and Jews) on how to compose nonsectarian public prayers for "civic ceremonies," and have him recite those prayers at the school's commencement ceremony. The Court ruled that to do so was to exceed "the fundamental limitations imposed by the establishment clause, which guarantees at a minimum that a government may not coerce anyone to support or participate in religion or its exercise." In this case, exceeding those limits amounted to "religious conformance compelled by the state."

The Court might also consider the rights of parents of public school children to "direct the religious upbringing of their children" (*Doe v. Madison*, 1999). Although it was not considered in the appeals court's decision in *Newdow*, that court has twice declared that parents have such a right. The Supreme Court could look into the question of whether the state violates the rights of parents when it subjects their children (day after day, year after year) to a pledge that advocates a controversial religious belief.

If They've Been Doing It, It Must Be OK

The justices are likely to mention our "longstanding traditions" and our "national heritage." They always do when it comes to deciding whether something we've lived with for a while can be ruled unconstitutional.

The Pledge of Allegiance has been around for more than 100 years. The phrase "under God" was added to it almost 50 years ago. If it has been with us for nearly a half century, does it become constitutional for that reason alone? If that were the case, racial segregation

would be constitutional just because of its long history, and there would be no constitutional right to abortion.

Consider how important the Court considered tradition when it ruled in the *Minersville* case more than 60 years ago: "The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization." Not just a free society such as ours—but any civilization —depends upon a cohesive sentiment, and that sentiment depends on the transmission of tradition from generation to generation. That's heavy. Whether it's true or not should be irrelevant in deciding cases.

Does the Constitution say that tradition is a consideration when deciding what's allowed and what's prohibited? Are the justices of the Supreme Court free to use such notions as "civilization depends upon tradition" in reaching their decisions? In fact, they are free to do just that. Whether they should be is another question. What is certain is this: The Court has a history of ruling that longstanding traditions are constitutional simply because they are longstanding traditions. (Fortunately, the Court didn't use this sort of reasoning in *Brown v. Board of Education*.)

Consider the case of *Marsh v. Chambers*, decided in 1983, long after the Lemon test had become part of the Court's establishment clause jurisprudence. At issue in *Marsh* was whether it was a violation of the establishment clause for a state legislature to open its sessions with a prayer delivered by a Presbyterian minister who was paid by the state for delivering those prayers. In this case the Court didn't use the Lemon test. Why? Because it would have resulted in the Court's finding unconstitutional a longstanding tradition: legislative prayer. The Court noted, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country."

In its ruling the Court quoted from an earlier case: "It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it. Yet an unbroken practice . . . is not something to be lightly cast aside." In short, what the Constitution prohibits, the Court may allow if it's been going on long enough. In his dissent Justice William Brennan made this observation: "If the Court were to judge legislative prayer through the unsentimental eye of our settled doctrine [by applying the Lemon test], it would have to strike it down as a clear violation of the establishment clause."

In *Newdow* the Court could say that the reference to a solitary deity in the pledge doesn't render the pledge unconstitutional simply because it's been that way for almost 50 years. Perhaps the Court will even tell us how long a practice must be unbroken before it can elude the law.

Also, look for the Court to refer to "ceremonial deism." This is the notion that references to the belief that there is only one God have no religious significance, that such references have lost any religious significance through rote repetition. The phrase was introduced in the case of *Lynch v. Donnelley*, decided in 1984, a case about whether a city violated the establishment clause when it erected a Nativity scene at public expense. Justice Brennan introduced the term in his dissenting opinion: "While I remain uncertain about these questions, I would suggest that such practices as the designation of 'In God We Trust' as our national motto, or the references to God contained in the Pledge of Allegiance to the Flag can best be understood . . . as a form of 'ceremonial deism,' protected from establishment clause scrutiny chiefly because they have lost through rote repetition any significant religious content."

In several subsequent cases justices have said that the phrase "under God" in the pledge has no religious significance.

The Matter of Precedents

One more thing that will figure in how the Court decides the *Newdow* case is a very old tradition affectionately known as stare decisis. More commonly it is known as respecting precedent: the doctrine of following previous judicial rulings unless there's good reason for doing otherwise.

Following precedent is important. Without it, what the Constitution allows and what it prohibits can change as often as the makeup of the Court changes. Imagine the situation in which abortion or racial segregation is constitutional one decade but unconstitutional the next. Lower courts are bound by Supreme Court decisions, but if those decisions are inconsisent, whoever follows them must be inconsistent—not a good situation. When the Court ignores precedent, it gives future courts justification for overturning its decisions. In effect, ignoring precedent sets a precedent for ignoring precedent.

In a following article we will look at how some of the current justices are likely to rule in *Newdow*, based on their previous rulings. We

will also look at how some of them are eager to ignore longstanding precedents so they may rule in favor of longstanding traditions, be they constitutional or otherwise.

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* Gobitas is the correct spelling of the family's name; a printing error led to discrepancy in the case's name.

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Freedom To Speak

BY: JOHN E. FERGUSON, JR., DAVID L. HUDSON, JR.

In 1968 the U.S. Supreme Court ruled in *Pickering v. Board of Education* that public school teachers do not forfeit their First Amendment rights to engage in speech that their employer, the school district, might find disagreeable.[1] The following year, in *Tinker v. Des Moines Independent Community School District*, the High Court wrote that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[2]

These two seminal cases establish that public school teachers, as public employees, do not forfeit all of their First Amendment freedoms when they come to school. One area in which many believe teachers do forfeit their rights to free speech is religious expression. A common perception exists that schools are religion-free zones that teachers must respect.

Jim Henderson, senior counsel with the American Center for Law and Justice, says that "the promise of *Tinker* finds no fulfillment regarding individual teachers' rights to assert a free-exercise right or a free-speech right to express their religious views against the school district's position that it is entitled to require a teacher to communicate material consistent with the curriculum."[3]

The free exercise clause of the First Amendment ensures that individuals have a right to practice their religious faith freely. However, public schools are governmental entities that must avoid establishment clause problems. Pupils at school are considered impressionable minors who must be taught academic subjects, not indoctrinated in any religious belief. The tension between the two clauses sometimes surfaces in disputes over teachers' religious expression.

The problem, according to some observers, is a rigid, highly separationist interpretation of the establishment clause that renders any religious expression by teachers constitutionally impermissible and unnecessarily elevates the establishment clause over the free exercise clause. Others counter that schools must protect against religious indoctrination of impressionable young minds to ensure that schools properly protect the individual sphere of liberty and the central meaning of the First Amendment. The often emotionally charged debate over the appropriate balance in this area has led to protests, divided communities, and, frequently, lawsuits.

Why Limit Teachers' Expression

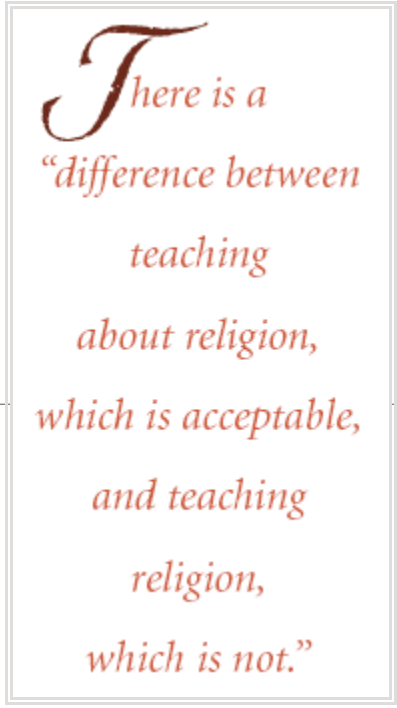
School districts limit teachers' religious expression in order to avoid the perception that the school is endorsing religion, which would be a violation of the establishment clause. Teachers, as agents of the government, may not indoctrinate students in religious matters.

To this end, a school district need not show that teacher speech actually violates the establishment clause in order to prohibit a teacher from engaging in religious expression. The U.S. Supreme Court has noted that "the interest of the state in avoiding an establishment clause violation 'may be [a] compelling' one justifying an abridgment of free speech otherwise protected by the First Amendment."[4] A recent federal appeals court decision explained: "In discharging its public functions, the governmental employer must be accorded some breathing space to regulate in this difficult context. For his part, the employee must accept that he does not retain the full extent of free exercise rights that he would employ as a private citizen."[5]

Courts have always been fastidious in enforcing the establishment clause in public schools. The captive audience of impressionable children combined with teachers hired to represent the government creates a sensitive mix of compelling interests.

Obviously, when a government agent interacts with children, stringent protections should be in place. This is particularly true when the interaction is elicited through the enticement of a free education and enforced with truancy laws. The more nuanced argument involves the teacher's representation of the government. This most clearly occurs when the educator is teaching in the classroom. But as any good teacher will quickly remind you, teaching is not confined to the front of the classroom. Educators send a message to students not only in what they say but in what they bring to class, what they wear, and how they conduct themselves in front of the students. This creates a situation in which all time spent in front of students, whether in the hall between classes or sitting at one's desk during quiet reading times, is educational time.

Some separationist groups argue that schools should take the strictest possible approach, removing not only teacher expression that expressly proselytizes, such as a sermon or prayer with students, but also personal expressions of religion, such as the wearing of a *hijab* or yarmulke or not saying the pledge. Such strict separationists claim that public schools have long been a hotbed of religious indoctrination and that religious expression by teachers must be eradicated if schools are to balance the scales and achieve the neutrality the Supreme Court indicates is the appropriate environment for public schools.



Why Teachers Need More Protection

However, school districts' desire to avoid establishment clause quandaries does not mean that teachers must never discuss religion. Religion is an important part of history, culture, social studies, and current events. U.S. Supreme Court justice Tom Clark wrote in the 1963 decision *Abington Township v. Schempp* that "it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."[6] How could a history teacher effectively teach about the Crusades without some discussion of Christianity and Islam? As one federal appeals court wrote, there is a "difference between teaching about religion, which is acceptable, and teaching religion, which is not."[7]

The published case law appears to favor school officials who show that they acted out of establishment clause concerns. For example, federal courts have sided with school officials who:

- Forbade teachers from leading students in prayer.[8]
- Ordered a teacher to remove a religious T-shirt.[9]
- Ordered a teacher to remove a Bible from his desk and two religious books from classroom bookshelves.[10]
- Prohibited teachers from wearing Muslim garb[11] and Sikh clothing.[12]

Clearly, some of these situations closely follow U.S. Supreme Court guidance on the appropriate relationship between a state actor and the public. Teachers may not preach to their students, lead them in devotional Bible readings, or otherwise try to convert them to their religious faith. Instead, the Court requires neutrality of teachers on matters of religion, neither promoting nor disparaging any religion, or even nonreligion. But what if during a classroom discussion a student asks how the teacher deals with stressful conditions in the world, such as the Columbine massacre, the September 11 terrorist attacks, or the war with Iraq? Can the teacher truthfully state that her or his religious faith helps the teacher to cope with life's difficulties?

There is not a large body of case law involving teachers' religious liberty rights. But some religious liberty advocates say that many teachers won't broach the subject of religion for fear of discipline by the school or lawsuits. "The majority sentiment that I see among discussion groups of teachers is that many teachers are fearful of talking about religion at all in order to avoid an establishment clause lawsuit," says Mathew Staver of the Liberty Counsel, a Florida-based religious liberty group. "Thus, they eliminate religion. It becomes a situation where they are not neutral toward religion. Out of an overabundance of caution, they are showing hostility toward the subject matter of religion."[13]

Staver, Henderson, and others cite the case of *Roberts v. Madigan* as an example of a federal court unnecessarily censoring a public school teacher's religious expression and showing hostility, instead of neutrality, toward religion. In the case a school principal ordered a fifth-grade teacher to quit reading the Bible to himself during a "silent reading period." The teacher also had a poster in his classroom stating "You have only to open your eyes to see the hand of God" and two books—*The Bible in Pictures* and *The Life of Jesus*—sitting on his bookshelves along with more than 200 other books. The principal ordered the removal of the poster, the two books, and even the Bible from the school library.

A federal district court sided with the principal on all counts except the removal of the Bible from the school library. A federal appeals court upheld the lower court's decision, writing that "the removal of materials from the classroom is acceptable when it is determined that the materials are being used in a manner that violates establishment clause guarantees."[14] The court reasoned that many of the teacher's students would think that there was government support for Christianity.

U.S. Department of Education to the Rescue?

With the more extreme elements of this debate firmly entrenched, and the confusions plaguing many of the more moderate advocates in this area, what is the appropriate balance when it comes to religious expression by public school teachers? While consensus is far from universal, there are signs that the smoke is clearing, just as it has on so many other religious liberty issues in public schools.

On February 7, 2003, the U.S. Department of Education released guidelines addressing some of the middle ground in this debate. Though controversial, the guidelines seem to generally abide by the various court rulings in the area of teachers' expression.

"When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the establishment clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies."

The guidelines are controversial in part because they require that schools implement policies that protect student religious speech, or risk losing federal funding. This raises the stakes for schools, particularly if the guidelines conflict with court rulings on the establishment clause. At the same time, the guidelines rekindle awareness about these issues. Such awareness often requires a lawsuit or parent complaint before action is taken. Now schools are required to enact proactive policies that provide guidance when controversies occur.

Some also argue that the positions taken in these guidelines represent disputed areas of law as settled and that sections are ambiguous.[15] For example, the guidelines state that student religious speech at school-sponsored events is not attributable to the state. This appears to conflict with some recent rulings of the Ninth Circuit.[16] In either event it should be clear that the ambiguities must be read in conjunction with court precedents, for that is the way courts must interpret the guidelines when lawsuits get filed over their application.

Another provision in the guidelines could affect public school teachers in the daily discharge of their duties. The provision provides that "students may express their beliefs about religion in their homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions." It explains: "Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content." This provision creates "another area of uncertainty" and potentially conflicts with at least one federal appeals court opinion.[17]

Conclusion

While the new Department of Education guidelines will surely continue to create controversy, they will also require schools to address issues of religious liberty in the school. Inherent in any authentic self-evaluation by schools and their communities will be the need for schools to respond to their religious diversity, not only among the students but also the faculty. Such self-evaluations must occur in the most religiously diverse nation in the world. A teacher's need to wear a yarmulke or explain the source of her comfort during a national disaster is peripheral to the bigger issue—whether schools foster classroom environments in which diversity is embraced. They must become places where all members of the school community feel comfortable enough to integrate their religious identity without threatening the religious integrity of others. As the guidelines and many court cases point out, expressions of personal devotion, such as a cross pendant or hijab, are generally acceptable in the public school, while overt acts of proselytizing, such as leading students in prayer or otherwise encouraging students toward religious acts, are not.

It is only when religious liberty and religious diversity are taken seriously that the public schools can fulfill one of their earliest missions, to become citizenship training grounds for the next generation of Americans. When this mission is fulfilled, no court will need to remind us that the constitutional rights of students and teachers are not lost at the schoolhouse gate.

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[1] 391 U.S. 563 (1968).

[2] 393 U.S. 503, 507 (1969).

[3] David L. Hudson, Jr., "Teachers' Religious Liberties," www.firstamendmentcenter.org, available online at www.firstamendmentcenter.org/rel_liberty/publicschools/topic.aspx?topic-teachers_liberties.

[4] *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 394 (1993).

[5] *Marchi v. Board of Cooperative Educational Services of Albany*, 173 F.3d 469, 476 (Second Cir. 1999).

[6] 374 U.S. 203 (1963).

[7] *Roberts v. Madigan*, 921 F.2d 1047, 1055 (Tenth Cir. 1990).

[8] *Breen v. Runkel*, 614 F. Supp. 355 (W.D. Mich. 1985).

[9] *Downing v. West Haven Board of Education.*, 162 F. Supp. 2d 19 (2001).

[10] *Roberts*.

[11] *United States v. Board of Education for the School District of Philadelphia*, 911 F.2d 882 (Third Cir. 1990).

[12] *Cooper v. Eugene School District No. 45*, 301 Oreg. 358, 723 P.2d 298 (1986).

[13] Hudson.

[14] *Roberts*.

[15] See Thomas Hutton, "Sins of Omission: Federal Prayer Guidance May Cause Headaches for Schools," *Inquiry & Analysis* (April 2003).

[16] See Cole v. Oroville Union High School District, 228 F.3d 1092 (Ninth Cir. 2000).

[17] Hutton, citing *Settle v. Dickson County School Board.*, 53 F.3d 152 (Sixth Cir. 1995).

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No Religious Tests

On Tuesday, July 29, 2003, in the Dirksen Senate Office Building, there was a "forum to discuss the recent injection of religion into the judicial nominations process." Senator Patrick Leahy introduced the topic and his personal reasons for participating. After he spoke there were several presentations by various religious leaders and fellow senator Richard Durbin. As a service to our readers LIBERTY presents excerpts of Senator Leahy's comments and the opening presentation by Rev. C. Welton Gaddy, president of the Interfaith Alliance.—Editor.

SENATOR PATRICK LEAHY: First I want to thank everybody who has come here today, and I certainly appreciate so much the religious leaders who have really come together and united on one thing, to condemn the injection of religious smears into the judicial nominations process.

Partisan political groups have used religious intolerance and bigotry to raise money and to publish and broadcast dishonest ads that falsely accuse Democratic senators of being anti-Catholic. I cannot think of anything in my 29 years in the Senate that has angered me or upset me so much as this. One recent Sunday I emerged from Mass to learn later that one of these advocates had been on C-SPAN at the same time that morning to brand me an anti-Christian bigot. . . . These partisan hate groups rekindle that divisiveness by digging up past intolerances and breathing life into that shameful history, and they do it for short-term political gains. They want to subvert the very constitutional process designed to protect all Americans from prejudice and injustice.

It is saddening, and it's an affront to the Senate as well as to so many, when we see senators sit silent when they are invited to disavow these abuses. These smears are lies, and like all lies they depend on the silence of others to live, and to gain root. It is time for the silence to end. . . . And those senators who join in this kind of a religion smear . . . hurt the whole country. They hurt Christians and non-Christians. They hurt believers and nonbelievers. They hurt all of us, because the Constitution requires judges to apply the law, not their political views, and instead they try to subvert the Constitution. And remember, all of us, no matter what our faith—and I'm proud of mine—are able to practice it, or none if we want, because of the Constitution. All of us ought to understand that the Constitution is there to protect us, and it is the protection of the Constitution that has seen this country evolve into a tolerant country. And those who would try to put it back for short-term political gains subvert the Constitution and damage the country.

The First Amendment encompasses so many different things: the freedom of speech, the freedom to practice any religion you want, or none if you want. We are not a theocracy; we are a democracy. And because we are a democracy, all of us, especially those who may practice a minority religion, get a chance to practice it.

C. WELTON GADDY: Last Wednesday the Senate Judiciary Committee's discussion on William Pryor's nomination to the Eleventh Circuit Court of Appeals in Atlanta deteriorated into a dramatic demonstration of the inappropriate intermingling of religion and politics that raised serious concerns about the constitutionally guaranteed separation of the institutions of religion and government. . . . The debate of that day, though alarming and disturbing, has created a teachable moment in which we will do well to look again at the appropriate role of religion in such a debate. That is why we are here this morning.

Religion plays a vital role in the life of our nation. Many people enter politics motivated by religious convictions regarding the importance of public service. Religious values inform an appropriate patriotism and inspire political action. But a person's religious identity should stand outside the purview of inquiry related to a judicial nominee's suitability for confirmation. The Constitution is clear: there shall be no religious test for public service. . . .

In recent years some religious as well as political leaders have advanced the theory that the authenticity of a person's religion can be determined by that person's support for a specific social-political agenda. So severe has been the application of this approach to

defining religious integrity that divergence from an endorsement of any one issue or set of issues can lead to charges of one not being a "good" person of faith.

The relevance of religion to deliberations of the Judiciary Committee should be twofold: one, a concern that every judicial nominee embraces by word and example the religious liberty clause in the Constitution that protects the rich religious pluralism that characterizes this nation and, two, a concern that no candidate for the judiciary embraces an intention of using that position to establish a particular religion or religious doctrine. In other words, the issue is not religion but the Constitution. Religion is a matter of concern only as it relates to support for the Constitution.

Make no mistake about it, there are people in this nation who would use the structures of government to establish their particular religion as the official religion of the nation. There are those who would use the legislative and judicial processes to turn the social-moral agenda of their personal sectarian commitment into the general law of the land. The Senate Judiciary Committee has an obligation to serve as a watchdog that sounds no uncertain warning when such a philosophy seeks endorsement within the judiciary. . . .

The United States is the most religiously pluralistic nation on earth. The Interfaith Alliance speaks regularly in commendation of "one nation—many faiths." For the sake of the stability of this nation, the vitality of religion in this nation, and the integrity of the Constitution, we have to get this matter right. Yes, religion is important. Discussions of religion are not out of place in the Judiciary Committee or any public office. But evaluations of candidates for public office on the basis of religion are wrong, and there should be no question that considerations of candidates who would alter the political landscape of America by using the judiciary to turn sectarian values into public laws should end in rejection.

The crucial line of questioning should revolve around the issue not of the candidate's personal religion but of the candidate's support for this nation's vision of the role of religion. If the door to the judiciary must have a sign posted on it, let the sign read that those who would pursue the development of a nation opposed to religion or committed to a theocracy rather than a democracy need not apply.

In 1960 then presidential candidate John F. Kennedy addressed the specific matter of Catholicism with surgical precision and political wisdom, stating that the issue was not what kind of church he believed in but what kind of America he believed in. John F. Kennedy left no doubt about that belief: "I believe in an America where the separation of church and state is absolute." Kennedy pledged to address issues of conscience out of a focus on the national interest, not out of adherence to the dictates of one religion. He confessed that if at any point a conflict arose between his responsibility to defend the Constitution and the dictates of his religion, he would resign from public office. No less a commitment to religious liberty should be acceptable by any judicial nominee or by members of the Senate Judiciary Committee who recommend for confirmation to the bench persons charged with defending the Constitution.

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Fair Game

Woven Into The Warp And Woof Of American Culture—a Good Swath Of It, Anyway—is The Notion Of Athletics And Fair Play. For Decades School Sports Have Helped Lift Young People From Obscurity Into The Limelight (Ronald Reagan, Brandi Chastain). A

BY: ALLEN M. JACKSON

By Allen M. Jackson

Woven into the warp and woof of American culture—a good swath of it, anyway—is the notion of athletics and fair play. For decades school sports have helped lift young people from obscurity into the limelight (Ronald Reagan, Brandi Chastain). And in some parts of the country—most notably Texas—football games all but take on the aura of an actual religious event.

Of course, athletic events can take place on days and at times inconvenient to some participants. In 1924 Scottish runner Eric Liddell refused to run in Olympic trials on a Sunday, much to the consternation of the prince of Wales and the United Kingdom. Liddell stood his ground and later won bronze and gold medals in track events at the Paris Olympics. Sandy Koufax, ace pitcher for the Los Angeles Dodgers, was one of the few Jewish baseball players to attract national fame and attention; his celebrity was further ensured when he refused to play on Yom Kippur, the Day of Atonement commanded in Leviticus. Entreaties from Dodger management were unavailing; Koufax spent the day fasting and praying. Several days later Koufax pitched more than 18 innings of baseball to lead the Dodgers to several victories. Such stories often become legendary—Liddell's experience was a major component of the Academy Award-winning motion picture *Chariots of Fire*—and in the telling confirm that principles are worth fighting for or maintaining. In 1995, in an echo of Liddell's stand, Eli Herring, a member of the Church of Jesus Christ of Latter-day Saints, turned down the National Football League draft and a potential multimillion-dollar contract with the Oakland Raiders because Herring, as The Wall Street Journal and Reader's Digest reported, wouldn't play football on Sunday. Almost 40 years after Koufax refused to play ball on Yom Kippur, another Jewish player for the Dodgers, Shawn Green, sat out a 2001 pennant race game against San Francisco in order to honor the Lord God on Yom Kippur.

Recently another case involving principle, athletics, and religious observance came to the fore, this time in Oregon. However, this wasn't a case of an athlete turning down a multimillion-dollar contract or seeking to take off a holy day. Rather, it was a group of young athletes at Portland Adventist Academy (PAA) asking both the state board of education and the Oregon School Activities Association, or OSAA, which manages competitive sports programs among the state's schools, to accommodate the Sabbathkeeping desires of the school's basketball team, the Cougars.

The issue might not have arisen had not the Cougars been a successful team. In 1996 the Cougars qualified for the state tournament

and eventually won the championship. OSAA officials changed the semifinal game's time to Friday afternoon, allowing the team to play. However, it is argued, the body would not have made any further schedule adjustments, which meant the Cougars would have forfeited games they would have been required to play on Saturday morning or afternoon, time that is part of the seventh-day Sabbath observed by Adventists, as well as by Jews and by some Christians in other denominations and independent churches. (A Salvation Army church in Grants Pass, Oregon, has in recent years promoted Sabbath observance along with Sunday services, for example.)

What happened after the 1996 Cougar victory appears to have set in motion the current crisis: OSAA wanted the Adventist school to promise that it would not forfeit other games if the team gained a spot in future play-offs. School officials could not in good conscience sign a pledge such as that; they then went to the Oregon Department of Education and sought a ruling compelling OSAA to make "reasonable accommodation" for the students.

A hearing officer for the Department of Education found that OSAA had not done its best to help the students, but a full departmental hearing went against the Adventist students in February 2002. Three PAA students and their parents, represented by attorneys volunteering for the Oregon chapter of the American Civil Liberties Union, went to the state appellate court and asked for an order supporting their cause.

"Under the religious liberty guaranties of the Oregon Constitution, if the OSAA's practices infringe a student's religious beliefs, the OSAA must prove that its actions are the least restrictive means of furthering a compelling state interest," attorneys Charles F. Hinkle, Jeremy D. Sacks, and William R. Long wrote in their brief. "The religion clauses as well as the privileges and immunities clause of the Oregon Constitution prohibit the OSAA from treating one religion differently from another when it establishes the tournament schedule, and they prohibit the OSAA from treating religious factors differently from secular factors when it makes tournament scheduling decisions."

Fighting this request, attorneys for the state board of education (associated with the Department of Education) cited a former OSAA executive director who said the Portland Adventists must "adjust their thinking" to cooperate with other schools. Yet OSAA adjusted the start times of other play-off, tournament, and "consolation round" games to meet the needs of other parties, including a visiting team that arrived late the night before a contest, as well as regional television and radio broadcasters.

Jonathan M. Radmacher, an attorney representing the OSAA, told *Liberty* magazine that accommodating the seventh-day Sabbatarians would impose burdens on other schools in Oregon that would, in effect, make those schools observe a Saturday Sabbath.

However, argue attorney Hinkle and his colleagues, Oregon law requires more in the way of accommodation than is found in other states. And OSAA has for decades enforced rules banning competition on Sunday, the day of rest observed by the state's largest Christian faith, the Roman Catholic Church, and its second-largest, the Mormons. Therefore, attorney Hinkle and his colleagues argue, "OSAA is willing to accommodate religion, but not every religion," and that's not in keeping with the spirit—or the letter—of Oregon law.

But is such accommodation an "establishment of religion," as the OSAA argued? In June 2003 the Oregon court of appeals said it wasn't necessarily so, and asked the board of education to reevaluate the Adventist students' arguments.

"To require OSAA and the other participants in the Class 2A tournament to accommodate petitioner's religious obligations does not mean that they are endorsing petitioner's religious views, nor are they being discriminated against on religious grounds," the court said in its opinion. "There is no suggestion in the record that any proposed accommodation might cause a conflict with another participant's religious obligations."

Moreover, the three-judge appeals panel declared, "For the OSAA to require a person to choose between a religious obligation and participation in a covered activity, without first attempting to find a reasonable accommodation for the conflict, is to act in a way that is fair in form but discriminatory in operation." The ruling—a first in the nation—generated national headlines and not a little controversy.

Both the OSAA—which still contends that accommodating all religions would place undue burdens on the group and its member schools—and the state are considering a possible appeal of the court ruling directing the board to reexamine the issue. Attorney Hinkle

believed such an appeal would be filed; attorney Radmacher said the matter was under consideration.

Although PAA principal Matthew Stanfill—himself a onetime high school athlete who chose Sabbath observance over sports advancement—lauded the ruling, he eventually resigned his job, noting that others in the school and local church administration were opposed to interscholastic competition overall, in part because of Sabbath concerns.

Many of the students in the original case have completed their high school education and are no longer able to participate in any benefits a new board of education decision might provide. And with the OSAA not willing—it seems—to back down, the fight may drag on even longer, Hinkle fears. Yet there seems to be no principle that OSAA is fighting for, he says, noting that what is really at stake here are student athletes who want to both participate in league competition and honor their convictions.

"We are a big enough and gracious enough country to be able to grant that request," Hinkle said.

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Allen M. Jackson is a freelance writer living in Wheaton, Maryland.

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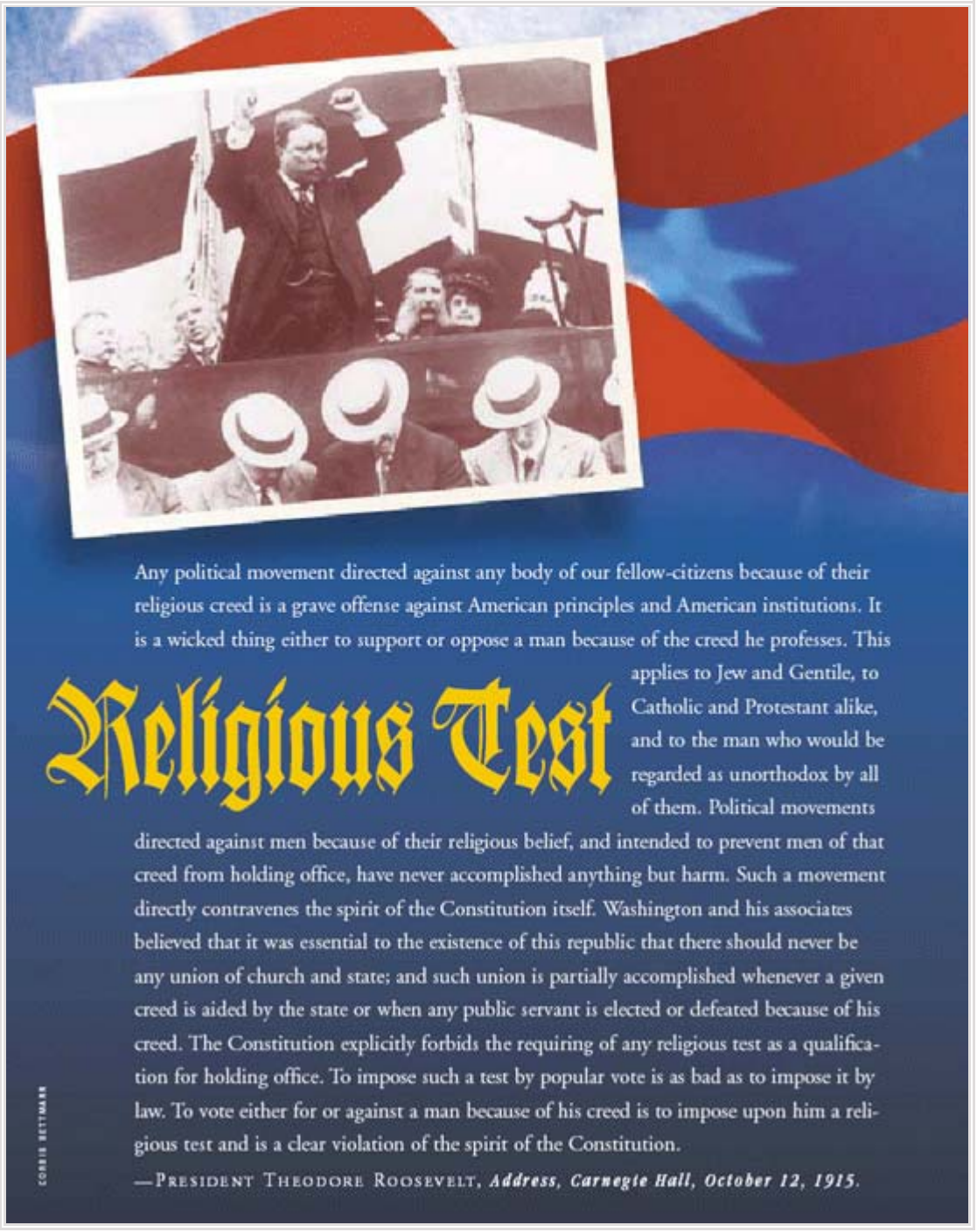
Religious Test



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Editorial - Executive Summary

This Morning I Unpacked My Latest Cell Phone And Tried To Turn It On. And Tried And Tried. To No Avail! I Pushed Every Likely Button In Hopes Of Getting Power Up. I Even Read The Summary Sheet For Start-up. It Was Cryptic And Unhelpful. Finally I Called T

BY: LINCOLN E. STEED

This morning I unpacked my latest cell phone and tried to turn it on. And tried and tried. To no avail! I pushed every likely button in hopes of getting power up. I even read the summary sheet for start-up. It was cryptic and unhelpful. Finally I called the 800 help line, and a velvet-voiced woman on the other end took me step-by-step through the empowerment process. She never once said, "Why didn't you read the instruction manual?" But it was the subtext to the whole encounter, during which my inner voice was screaming "Ignorant Luddite," or more insulting contemporary equivalents. Now that I've begun to read the instruction book I find the phone is capable of all sorts of things—that it has a built-in speaker-phone capability and that it will respond to voice commands (as opposed to my young children, who often will not!).

Like so much of the news media-addicted populace I've been bombarded by the Roy Moore/Ten Commandment monument saga. It's gone from the story of a crusty judge who insisted on posting a copy of the Bible Ten in his courtroom, where most of the transient guests should have read them long before their appearance, on to the much "heavier" scene of praying faithful, some prostrate before the two-ton granite version of the Ten, being dragged off by authorities. And I must say the scene is at first distressing to any Christian. It easily translates into a call to action, to a deep throaty roar of "Crusade"—against secular humanists and other infidels, of course—and prayers for regime change in the courts.

But after the TV tube had faded to black, sometime after bundling the newspaper into the trash with the other disposables of life, my righteous indignation began to subside. Especially after it hit me that the good judge seems intent on posting a dangerously truncated version of the biblical Ten Commandments (in fact, the Bible is pretty severe in its condemnation of those who would add to or take away from the words of Scripture). As a Seventh-day Adventist I am troubled to see the full text of the fourth commandment redacted to "Remember the sabbath day, to keep it holy." Read the full text, including "six days shalt thou labour, and do all thy work: but the seventh day is the sabbath of the Lord thy God," and the case for a Saturday Sabbath begins to take on a biblical imperative.

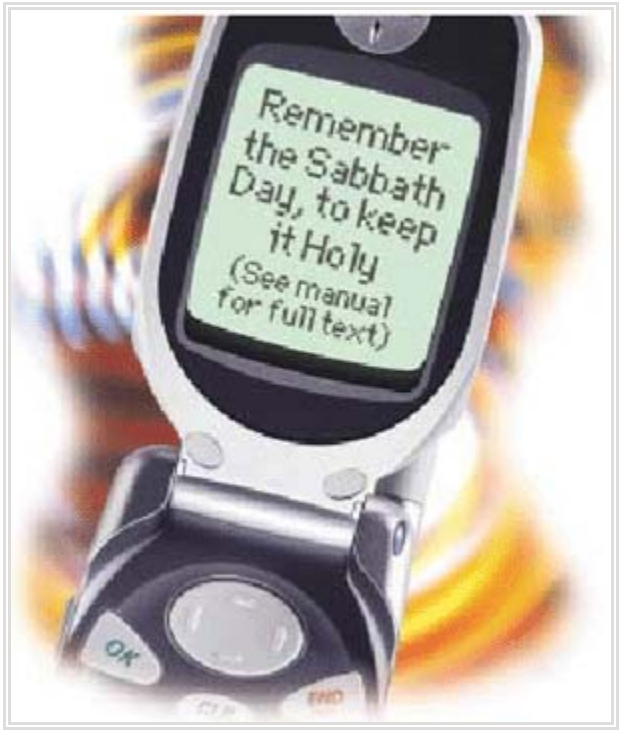
It has become painfully apparent that the good judge Moore is intent on thumbing his nose at the law. However, he is enabled in this by people who do not know or only know part of the law. They demand unbridled religious "freedom" to flaunt these icons of a particular faith, and fail to recognize the legal prohibition on the state to promote any version of faith. The First Amendment is, after all, a bar to state religion ("Congress shall make no law respecting an establishment of religion") as well as a guarantee of religious expression ("or prohibiting the free exercise thereof"). I know that most of Moore's supporters would howl with indignation if a Buddhist judge were to enshrine the Buddha's teachings on stone at the courthouse—and their justification that this is a Christian country is both wrongheaded and wrong law. It depends for its power on uniformed opinion—if people read more history, knew more of the Constitution itself, rather than what is said about both, the argument in this and other equally contentious issues might simply not be there.

This tendency toward relying on executive summary is an unfortunate fact of life in a modern society that spawns information faster than a computer virus. It might have taken root, as it did with me, during school days when Cliff Notes and other summaries were an easy entrée to comprehending the incomprehensible. And the habit plays itself out in the success of insider summary newsletters and the disquieting revelation that the barest legal summaries, read or unread by a governor, might determine a death-row inmate's fate. But can we thus summarize and simplify the particulars of the system of laws and the principles that define our very freedoms? I think not!

I was much taken with a recent Forum feature in USA Today by Tony Mauro, a Supreme Court correspondent. He told of the very interesting project of civics teacher Randy Wright and his students at Liberty Middle School in Hanover, Virginia. They have been trying to convince Congress and the Treasury Department to redesign the $1 bill to feature the preamble to the Constitution and a summary of the Constitution itself. The idea has wings—since 1998, Congress has introduced bills, hearings have been held, and public service ads touting the idea have been well received—but has yet to take off. It's a great idea, but deeply flawed if real knowledge of the Constitution is the ultimate aim.

Tony remarks by way of a truism that most Americans have only the vaguest idea of what the Constitution contains. After election 2000 it

became apparent that many people think we are a pure democracy rather than a democratic representative republic—and their misapprehension can only be heightened by the goings-on in California!! And how can we interpret the many security-at any-cost-no matter-how-much-freedom-we-have-to-give-up call-in comments to talk radio other than an application of the most superficial knowledge of the Constitution?



In fact, the summary of the Constitution these bright-eyed student optimists would put on the dollar might itself cause further devaluation of its content. Take the Fourteenth Amendment: it would read "Defines citizenship." No better than the fourth Commandment summary to its reality, and scarcely any way to prepare someone to cry foul at the idea of removing citizenship rights at the outset of government charge and detainment! That sort of constitutional Cliff Note summary can only demean our freedoms.

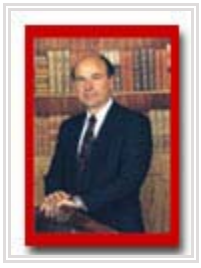
There can be no substitute for an informed citizenry to guarantee freedom's continuance. We can only hope for the best in countries like Iraq, where good faith efforts are made to implant democracy for the good of the populace. But the facts of history in the democratic West are clear: it is detailed knowledge of the specifics of freedom and what it embodies that enables its continuance. And while we can resurrect the old debate of just how religious principles have shaped English and now American common law as its continuance, it is indeed the culturally inculcated principles and knowledge that best define and protect. God help us if the present amnesia on constitutional and freedom principles is not just bad memory but of a deeper and more Alzheimic nature.

In the meantime we seem limited to our notes and executive summaries, hoping that someone else does not redefine as they redact for us. Perhaps that's why I was so taken by the point that Tony Mauro made toward the end of his essay.

"The Constitution, in short, does not lend itself to easy rendition on the back of a dollar bill. . . . Why not print the text of the First Amendment, pure and simple? 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.'

"The First Amendment, more than any other part of the Constitution, defines what is unique about America. The late Supreme Court justice William Brennan, Jr., once told columnist Nat Hentoff that the First Amendment was his favorite part of the Constitution. 'All other liberties and rights flow from the freedom to speak up,' Brennan said. 'Its enforcement gives us this society. The other provisions of the Constitution merely embellish it.'"

A good executive summary: we must protect the right to speak up and the right to speak Up.



Lincoln E. Steed
Editor,
Liberty Magazine

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Faith In A Dagger

BY: IAN PALMER

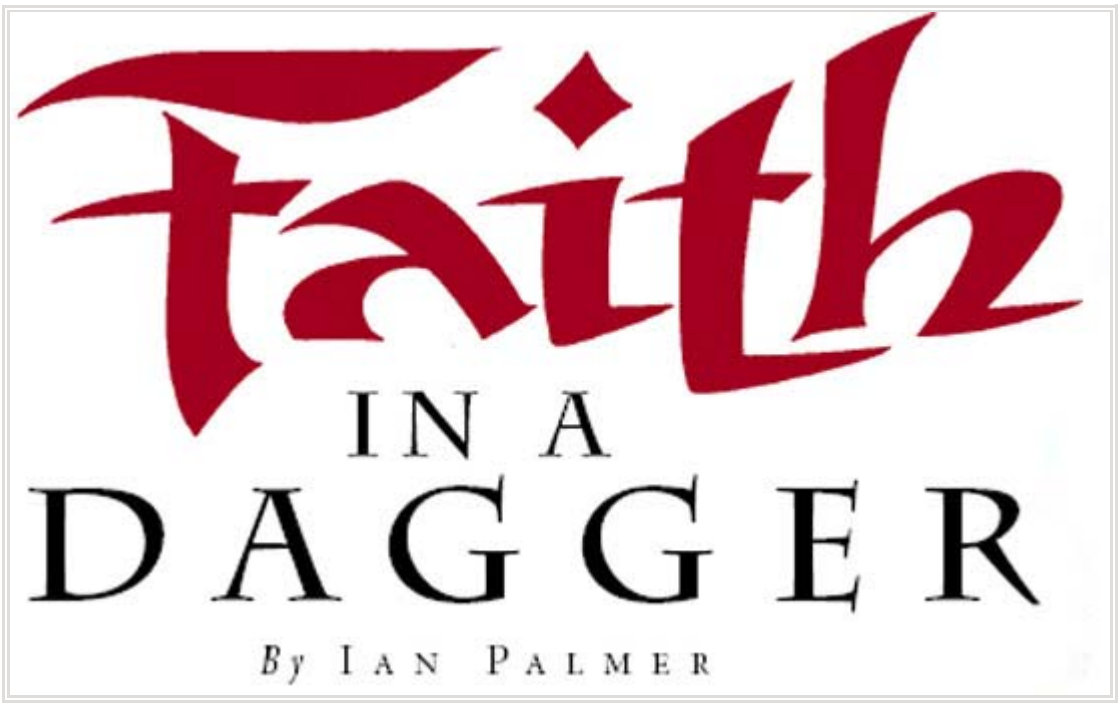

Illustration By Sally Wern Comport

Depending on whom you ask, Gurbaj Singh is either a victim of religious intolerance or a troublemaker defying his provincial government, school board, and school. In 2001 the then-12-year-old Sikh from Montreal made headlines when he knocked heads with his school, Sainte-Catherine-Laboure, over his wearing a four-inch (10-centimeter) ceremonial dagger, known officially as a *kirpan*.

Though he had previously been described as a pleasant child by his principal, Gurbaj Singh's reputation plummeted after his kirpan fell to the ground as he played on school grounds. A parent—understandably skittish, given recent high-profile incidents of school violence—subsequently reported the incident. While it was considering its options, the school board paid to have a tutor home-school Singh, but when it agreed to uphold its zero-tolerance policy, it ended the home-school arrangement. Then a spokesperson for the board reportedly demanded that Gurbaj Singh return to school without the kirpan or, if it was discovered that he was not receiving any schooling, risk having child-protection officials called in.

Gurbaj Singh and his family argued that the kirpan—in addition to long hair and a small comb—is a symbol of faith required of all Sikhs. The Singh family's lawyer, Julius Grey, therefore filed a motion in the Quebec Superior Court to have the school's decision overturned on the grounds that it violated his client's religious freedom. Grey argued that the family had expressed a willingness to compromise by wrapping the kirpan in cloth and double-stitching it to make it difficult to remove. But the school board had balked at the suggestion and had suggested that the young Sikh wear either a plastic replica or a pendant symbolizing the kirpan. The family had frowned upon both suggestions. The judge presiding over the case eventually ruled that Gurbaj Singh could wear his kirpan at school, providing it was concealed under his clothing and was encased in a wooden sheath.

No sooner had the court rendered its decision than Quebec's justice minister announced that the provincial government planned to appeal the verdict. Currently under way, the appeal process will likely not be decided for some time.

Though no one ever proposed that it is easy to properly establish when one's personal rights should overrule established guidelines, many experts have expressed support for Gurbaj Singh, given the deep religious significance the kirpan holds for Sikhs. But some experts have ventured further, arguing that the outcome of the case could ultimately have implications for religious liberties across Canada, especially given the increased emphasis on national security, as opposed to individual liberties, in the aftermath of September

11.

"Religious intolerance could be one of the elements," says Manjit Singh (no relation to Gurbaj), director of the Canadian Sikh Council, in theorizing why the confrontation has gone this far. He adds that the Party Quebecois government probably wants to use the Gurbaj Singh case as a rallying point to bolster its sagging fortunes in public opinion polls. "One of the arguments given, particularly by parents, is that they have no problem with us practicing our religion but don't want us to practice in public. I say, 'nonsense.' Because the majority of parents are from mainstream society, they only teach Catholicism and Protestantism. As they say, you can fool some of the people some of the time, but you can't fool all of the people all of the time." Manjit Singh added that two other Canadian jurisdictions (Ontario and British Columbia)—not to mention the United States and the United Kingdom—have already ruled that Sikhs can wear their kirpans, with some conditions.

The situation in Quebec therefore stirs up an issue many Sikhs believed had already been settled. But the Canadian Sikh Council was established for times such as this, times when the majority would mobilize to infringe upon the beliefs of the minority. Although the Gurbaj Singh case has been taxing, Sikhs have faced more than their fair share of indifference in Canada. They have succeeded as business owners, politicians, and activists—but they have also been threatened, yelled at, even physically assaulted in the days, weeks, and months following September 11. Manjit Singh conceded that it is important to remember that the loss of liberties for one group actually impacts each and every member of society, regardless of religious affiliation, ethnic background, or country of origin.

Most would agree with Manjit Singh's conclusion, but there are some who have questioned whether the Gurbaj Singh case has anything to do with religious liberty. Stuart Auty, president of the Canadian Safe School Network, has suggested that the debate over kirpans has little to do with school safety, because kirpans have thus far not been a problem. "It's an inexact science," said Auty. "Kirpans, to my knowledge, have never been used in a violent way as a weapon. There are much bigger fish to fry."
David Birnbaum, the executive director of the Canadian Jewish Congress, Quebec region, acknowledged that kirpans have not historically been used in a violent way, but he refused to go as far as to accuse the Quebec government of being driven by insidious motives. Nonetheless, Birnbaum said he and others from his organization are closely watching the Gurbaj Singh case. "In Quebec, like everywhere else, one has to be constantly vigilant to protect human rights, minority rights, and religious rights," said Birnbaum. "September 11 has had an impact on how people balance rights to freedom with rights to security. Our organization is watching closely from the perspective that there are instances in Canada, the United States, and Europe over the past few months where there have been increases in anti-Semitism." Birnbaum added that, while the government was faced with the task of balancing the rights of society and the need for security, people from all walks of life should be aware of the trickle-down ramifications the Gurbaj Singh case could have on other groups in society.
Eric Beresford, a consultant for ethics and interfaith relations for the Anglican Church of Canada, has followed the case and has also expressed his hope that Sikhs be allowed to practice their faith just as people of other faiths should be able to practice theirs. Much like Birnbaum, he added that what happens in the Gurbaj Singh case should be of interest to the greater society. "It's important to protect

individual and community rights," said Beresford. "To fundamentally undermine the appropriate dress code of an adult male in the Sikh community can be problematic. One of the problems is xenophobia following September 11. Those beliefs have been justified by the widespread suspension of civil liberties."

The Sikh faith is the fifth-largest in the world—with more than 20 million adherents—but it is still quite small compared to the more than 2 billion members of the Christian faith. While mainstream religions in Canada may not be as susceptible in the immediate future to the abuses experienced by followers of the Sikh faith, Beresford said it would be foolish to assume that mainstream religions are immune to such infringements. "In a world in which religion is seen as a source of division and a potential source of violence, one can see how society could go for the easy option of limiting a wide range of religious liberties. Part of being an Anglican is being part of civil society. Already, there is some evidence to show how that could be rendered more difficult given the government's response to September 11."

Ian Palmer is a freelance writer living in Toronto, Ontario, Canada.

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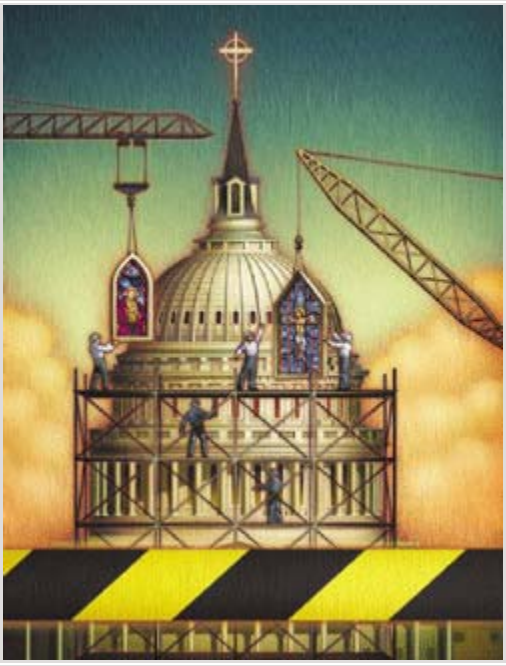
What Would A Christian America Look Like?

BY: RODNEY NELSON

By Rodney Nelson
Illustration By Jack Slattery



A few years ago a friend of mine paid my way to a family camp sponsored by the American Heritage Party of Washington State. The AHP was a Washington State chapter of the Constitution Party before leaving several years ago and changing its name to the AHP. While at the family camp I put on my critical hat and attended several seminars led mostly by Reformed (Calvinistic) speakers. Looking through the recommended book section, I noticed that much of the material was from a theonomist perspective. Theonomists are Christians who believe that society should adopt the Old Testament as the basis for law and culture. Modern theonomy, founded by Rousas J. Rushdoony, has become a very vocal minority within evangelical circles.

However, I knew that my friend and others I met at the camp were not theonomists. And I began to grow curious about which perspective would ultimately carry the day within the party rank and file. The AHP "adopts the Bible as its political textbook and is unashamed to be explicitly Christian."

A Class Visitor

I teach history in a Christian high school. Each year I teach a semester of U.S. government to seniors. During the semester I invite speakers from various political parties to visit the class and give a presentation on their political party. I have representatives from the Republican, Democratic, and Libertarian parties speak in class. A representative from the AHP came to speak one day. It was a very interesting presentation. He discussed the basic differences between a distinctly Christian political perspective and that of other political parties. He said the most important distinctive of a Christian view of politics is one of *transformation*. The objective of Christian political activism is to transform the institutions of society into the image of Christ. This includes government and politics. The theology this is based on is the "cultural mandate."

The cultural mandate states that it is the church's prerogative and mission to transform society for Christ. The original mandate was

given in Genesis 1:28, 29, reiterated in Genesis 9:1, 7, and extended in Matthew 28:19, 20. Together these texts dictate that humanity's original mandate was to subdue the earth, and that the church is to make disciples of all nations, not merely disciples *in* all nations. Furthermore, they cite Matthew 16:18, where Jesus declares that the gates of hell will not prevail over the church, meaning that the church is an offensive force that even hell cannot overcome. Some theonomists take this so far as to teach that Christ will not come again until the church is triumphant over the world (human institutions), not just in a spiritual sense. Therefore, preaching the gospel is not the only goal of the church, but must be coupled with discipleship of all human institutions.

What If...?

What if the Christian church controlled all of society? What would it look like? Is it possible to envision a society that is distinctly Christian? Have we crossed this bridge before?

It is certain that there is a difference between *establishing* a Christian society and *transforming* a society into a Christian one. The Roman Empire was transformed into a Christian civilization that would come to be known as Christendom. The past centuries have taken their toll on Christendom to the point where we are now in a postmodern era—effectively ending Christendom in Europe and other Western countries.

The history of the United States is directly linked not to the transformation of an existing culture and society, but to the establishment of a society originating from Protestant Christianity. Therefore, when we speak of a "Christian civilization" it is necessary to qualify what is meant by the expression. The establishment of distinctly Protestant Christian colonies in English America was an experiment in religious freedom and diversity. The creation of a Separatist colony in Plymouth by the Pilgrims was an effort to gain freedom of religious expression and to establish a separate church community free from bigotry and persecution.

The Puritan experiment in Massachusetts Bay was more than a yearning for religious freedom; it was a deliberate attempt to establish a distinctly Christian society that would be a "city on a hill" for all the world to see. It would be a reformed community experiment in which church and state worked together to create a Christian culture with laws based on both the Bible and English common law. Separation of church and state was not only unknown, but was seen as counterproductive to the creation of a Christian society. Christianity was more than a spiritual endeavor; it encompassed all areas of life, including politics.

Roger Williams

Roger Williams challenged the Puritan notion of church and state relations by insisting that civil government should never interfere with religious affairs and that churches should never use the government to promote a particular religion. The separation between church and state was to guarantee and promote religious freedom and deny governmental favoritism of one church or religion. For this belief Williams was banished from the Massachusetts Bay Colony in 1635. As a result, he founded the colony of Rhode Island as a haven for religious freedom.

Halfway Covenant

Despite efforts to preserve a particular notion of Christian civilization, the Puritan experiment faced the same problem that many Christian parents face with their own children. The fire and conviction of the original generation was dimmed in succeeding generations. Just as Christian parents cannot guarantee or determine their children's spiritual commitment for the future, so the progeny of the first generations of Puritans succeeded in diluting the spiritual formula and zeal of their forebears. As a result, a decision had to be made as to how descendants were to be incorporated into the fellowship of believers, since the fellowship was a covenant relationship of believers who confessed a relationship with Christ.

The solution was the Halfway Covenant (1662), introduced by Richard Mather, which gave partial membership rights to those as yet unconverted to Puritanism. Under it, the children of covenant members could not partake of Communion until they made a profession of

belief by the age of 14, thus promoting closed Communion. Solomon Stoddard saw an inconsistency in this by noting that Puritan belief held that a believer could not be certain of their salvation, so how could a person partake of the Lord's Supper, since it was predicated on verification of their salvation experience? Open Communion resulted and would lead to protestations by Jonathan Edwards (Stoddard's grandson) calling for closed Communion. He was removed from his church for this "heresy."

The Need for Revival

As a result of such measures, Puritan churches became more and more formalistic and preached a "lifeless morality." The need for revival was apparent and arrived through the First Great Awakening (1730-1760). Such historic figures as John and Charles Wesley in England and Jonathan Edwards and George Whitefield in America changed the spiritual landscape in the American colonies. The Great Awakening led to the founding of new colleges, thousands of conversions or renewed commitments to Christ, increased missionary activity.

And this renewed dynamic of freedom of religion quickly gave rise to an emphasis on political freedom. Political freedom would be encouraged by the Puritan belief in a congregational form of church government (each congregation governed itself). Puritans believed that government power should be limited by the consent of the governed, citizens should choose their own leaders, and private property should be protected by government. The Great Awakening gave the American colonies the awareness that if all men are equal in God's eyes, then all men should receive equal justice under the law, and true political freedom is possible only if participation is not determined by religious affiliation.

History's Lesson

Despite the opposition from certain religious leaders in the early colonies of America, the historical trend was for greater religious freedom and, by the time of our nation's founding, the separation of church and state.

The First Amendment to the Constitution exemplified these two attributes. The "establishment clause" guaranteed that government should not favor or establish one religion (or Christian denomination) as the official state religion, hence prohibiting government interference in the freedom of religion. The "free exercise clause" guaranteed the free expression of religious belief without government censure or interference. In other words, if government favored one religion over another, then freedom was prohibited. If freedom of religion was paramount, then government could not establish a state church, thus prohibiting government interference with religious expression. The First Amendment did not refer to separation of religion from public life. It referred to the interference of government in church affairs, and churches using the state to promote or enforce a particular religion. The intent of the First Amendment was to demonstrate that genuine religious freedom is accomplished when government stays out of a church's business, and when churches mind their own business. This did not mean that religious and moral values had nothing to do with public affairs, however. It meant that one particular church or religion would not control the government to the exclusion of another.

What About Now?

To state that America has been a Christian nation in its historical heritage is correct. The very founding of the Republic drips with Christianity. However, it was not founded by a single Christian denomination. The identity of America as a Christian nation derives from the mosaic and tapestry of Christian denominations that founded pieces of what would be the United States. The Protestant heritage of America saw each sect of Protestantism make its mark and contribution to the landscape of Christianity in America. However, no one sect dominated that heritage, though Calvinism's influence was indelible.

Protestant Christianity formed the foundation of a society that existed under the common moral base of Judeo-Christian belief and morality. There was freedom of expression, reflecting the diversity of Christian denominations and belief. Contemporary America witnesses the transition of this heritage into a postmodern society on which the common Judeo-Christian heritage is being chipped away piece by piece in all areas of society. But what would a re-Christianizing of American society look like?

Such a change would proceed from a different set of circumstances from those in our history. There would need to be a turning of the general public consensus to a renewal of historic Judeo-Christian beliefs and the values that underpin the cultural identity of America. We are not just talking about another Great Awakening or revival within the church at large, but a return to a broad consensus of Judeo-Christian values by the general public. One example might be shifts in positions on abortion. While the majority of Americans personally do not approve of abortion in general, there continues to be a consensus supporting a woman's right to have an abortion. These conflicting values are still in tension in the body politic. A majority of Americans abhor partial birth abortion, and view it as infanticide rather than abortion.

The number of Americans who claim to be evangelical, born-again Christians is rising in proportion to the general population (*Impact*, May 2003). This indicates that evangelical Christianity is making an impact on society and in the lives of people. It does not seem likely this can be passed off as a societal fad, as was common in the late 1970s and early 1980s. It also seems evident that the 2000 and 2002 elections indicated a disparity and polarity between "middle America" and everyone else. People do vote their lifestyles and consciences.

The current state of affairs in America is one of transition and shifting, and not merely negatively. In this reidentification of American values, Christians will play a role. The role will not be a return to the "good ole days" of Puritanism in the 1600s, but perhaps a return to values and principles that historically have undergirded America since its inception—ones not identified with a particular theology or denomination. The civic values of America are still there—values that find their genesis in the original Christians who founded this nation—and transcend sectarian differences.

This does not mean America is a "Christian nation" as understood by the original Puritans, Pilgrims, Baptists, Quakers, etc. What it does mean is that the vision of Roger Williams may win the day, in a society that upholds the virtues all Christians can agree on and in which freedom of religion is the norm. In such a society government and church respect the God-ordained roles given them and will work together to maintain religious freedom and governmental neutrality.

The Founders understood that government's establishment of a particular religion or denomination denies the freedom of all churches to worship without hindrance. Conversely, denying freedom of worship to any one religion means government establishes others as being legitimate or illegitimate. Does the First Amendment equate to America's being secular, as is the current trend of thought? No. It means that government is neutral toward favoring one religion over another, and affords all religions free expression of belief. The current legal maneuver of using the establishment clause to overrule the free exercise clause was not the intention of the Founders.

What Is Christian America?

Christian America is the historic legacy and heritage of the original Christian values shared by all Christians in the founding of the British colonies and in the founding of America. It reflects the "moral consensus" of Protestantism and Catholicism in the diversity of expressions exemplified by Christians who came to America for religious freedom. The variety and diversity of Christian religious expression gave birth to religious freedom in America.

Today we witness the process of chipping away that religious and cultural heritage by secularists and humanists using a new definition of tolerance and political correctness to redefine the moral consensus of America. What we are witnessing is the redirection of America to a different set of moral values; ones not reflective of a Christian cultural consensus. Religious freedom is being co-opted to mean secularity in public religious expression and limited to a purely private affair, not meant for public consumption.

Christians are commanded to be salt and light in the world. This characteristic should exemplify the Christian life in every type of society.

Seeking to renew the Judeo-Christian moral consensus in America is a duty of every Christian. However, religious liberty must be the center of all such efforts. As Christians honor the Lord through their lifestyles, society will reflect the values inherent in those characteristics. Revival is a vital aspect of this transformation process: changed Christians in turn change society. More Christians in society will produce a more Christian-friendly culture and therefore a freer society for all people. Contrary to the opinion of some detractors, a diverse and varied Christian populace leads to freedom for all people, Christian or otherwise. This is the great lesson of the American experiment in religious and political liberty.

Christian Politics

So, what about the efforts to create a distinctly Christian political party? Will such an effort guarantee Christian representation in the political process? Historically speaking, Christians have been major voices in most of the political parties that have existed in America. George Washington cautioned against the rise of political parties as creating factions that could destroy liberty. The rise of Federalists and Democrat-Republicans (Jeffersonian Democrats) guaranteed the permanence of the two-party system on the American political landscape. Is the time now for a Christian party?

The real question is what type of Christian party. Who will control it? Will it represent all Christians (Catholic, Mainline, Evangelical, Orthodox), or will it represent a narrow sector of Christians in America? What will be its theological construction (Calvinist, etc.)? Will it strive to build a broad-based Christian agenda of common values and principles shared by all Christians? Pragmatically, will it be merely a voice, or a power broker in the political system? How will it reflect the Savior's words in Matthew 10:16— "I am sending you out like sheep among wolves. Therefore be as shrewd as snakes and as innocent as doves" (NIV)?*

As stated earlier, the American Heritage Party is in the process of identifying who is its constituency. But whatever may come out of this process should never be seen as a monolithic attempt to represent all Christians. As with Protestant churches, a single Christian political party can never represent all Christians, especially in a nation that prides itself on religious and political diversity.

What would a Christian America look like? Let us ensure that we find out through revival and regeneration, not through the imposition of any particular view of Christian orthodoxy.

Rodney Nelson, a teacher of history and government, lives in Richland, Washington.

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