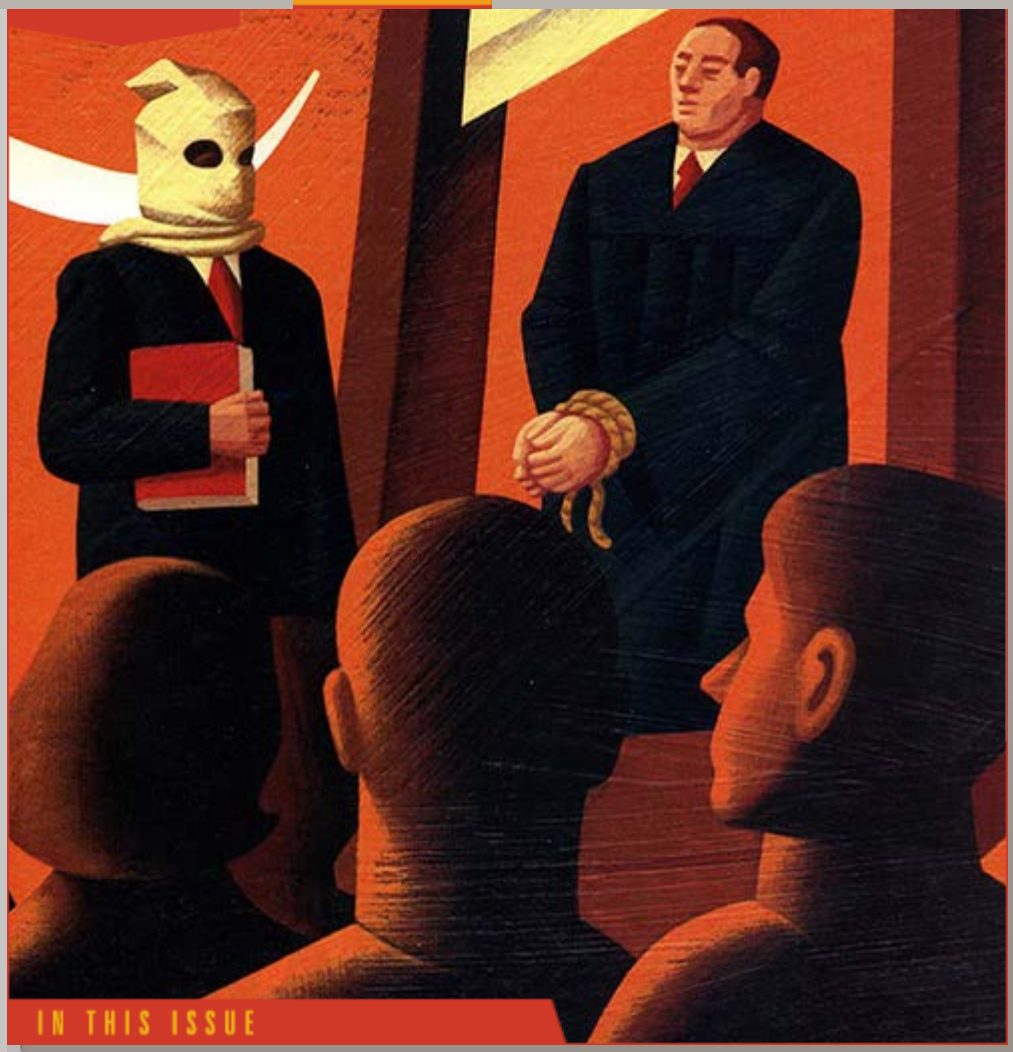
A MAGAZINE OF RELIGIOUS FREEDOM

LIBERTY



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SEPTEMBER / OCTOBER 2003

At Liberty

The Responsibility Of Liberty

BY: VERNON L. ALGER, ESQ.

At the conclusion of the Constitutional Convention, when asked whether we had a republic or a monarchy, Benjamin Franklin replied, "A republic - if you can keep it!" Thomas Jefferson once said, "Eternal vigilance is the price of liberty."

Preserving democracy does, indeed, take work. It must have an educated and active citizenry. Constructive input, not just criticism, is necessary. Monday morning quarterbacking is easy, and those who don't have the responsibility for the result of important decisions usually have all the answers. But the perspective changes when an individual, or a whole society, must make a decision and be accountable for its results. When elected or appointed officials are faced with the reality of decision-making, the solutions don't seem as clear-cut as before they took office. After completing a year as president, John Kennedy said, "The only thing that really surprised us when we got into office was that things were just as bad as we had been saying they were."

For example, the actual responsibility of setting judicial policy has changed the philosophy of more than one Supreme Court justice. Dwight Eisenhower lamented his appointment of Earl Warren to the Supreme Court. Warren, a former moderate governor of California, presided over one of the most liberal periods in the court's history. Once on the bench his perspectives changed.

Why?

American democracy provides for majority rule but minority protection. A balancing of interests and a drawing of lines must be made by judge and elected representatives - not an easy task. Good things, such as liberty, taken to extreme, can have bad results. Freedom has a natural restraint in that one person's liberty stops where another's begins. Again, not an easy line to draw, as Earl Warren soon learned when he faced the awesome task of drawing them.

Some believe that their religious freedom includes the right to compel others to adhere to the majority's sectarian beliefs, a problem that points up the tension between the non-establishment clause and the Free Exercise clauses of the First Amendment. A balance also must be found between the employee's need for a religious accommodation and the employer's business needs; between protected speech and abuses like slander and pornography; and between the amount of tax money appropriately taken to support public programs and the right of people to keep the fruit of their labor.

In many of these balancing queries no "bright-line" answers exist. Decisions must be made, lines must be drawn - and responsibilities for those judgments must be accepted. No doubt government must make some hard decisions, but in a representative government, the ultimate responsibility is with us, the people. We must hold our officials accountable for their decisions, which in effect become our decisions as well.

The failure to control the national debt is one example. For years, Congress and the administration have refused to limit spending to the amount of revenues received by the federal government. As the debt rises, so does the percentage of subsequent budgets that must be allocated to pay the interest. When the debt and the resulting interest obligation impound future budget options, economic freedom is reduced - and the potential for governmental instability exits. We must remember, too, that only a stable government can guarantee liberty on a long-term basis.

Yet the failure to elect people who will make these decisions and accept the responsibility is ours. Periodically there are attempts to take the responsibility off Congress and the administration through amending the Constitution to require a balanced budget. The U.S. Constitution, as a political roadmap and protector of individual liberties, has served the American experiment well for more than two hundred years. Just as a federal judge will not rule in cases based on a constitutional issue when another basis for a decision exists, so the Constitution should not be amended because elected government won't make hard decisions.

Almost 11,000 bills have been introduced to amend the Constitution. Only 27 (the first 10 being the Bill of Rights) have been adopted. It's a traumatic process, not meant to be taken lightly. Many proposed amendments are very parochial, such as prayer in public schools and the posting of the Ten Commandments in public places. As in these two examples, it's often the majority trying to limit the rights of the minority. When the House of Representatives votes 295 to 125 to support an Alabama judge who flaunts the non-establishment clause by posting the Ten Commandments behind the bench in his public courtroom, questions arise as to the wisdom of Congress proposing amendments to the Constitution for any reason.

Our elected officials have the responsibility to make hard decisions. If they won't, the citizens have a responsibility to replace those officials. As Charles Murray said recently, "Freedom and responsibility are as inseparable as opposite sides of the same coin." George Bernard Shaw said it another way, "Liberty means responsibility. That is why most men dread it."

Yes, our Founders gave us a Republic. It's up to us to keep it.

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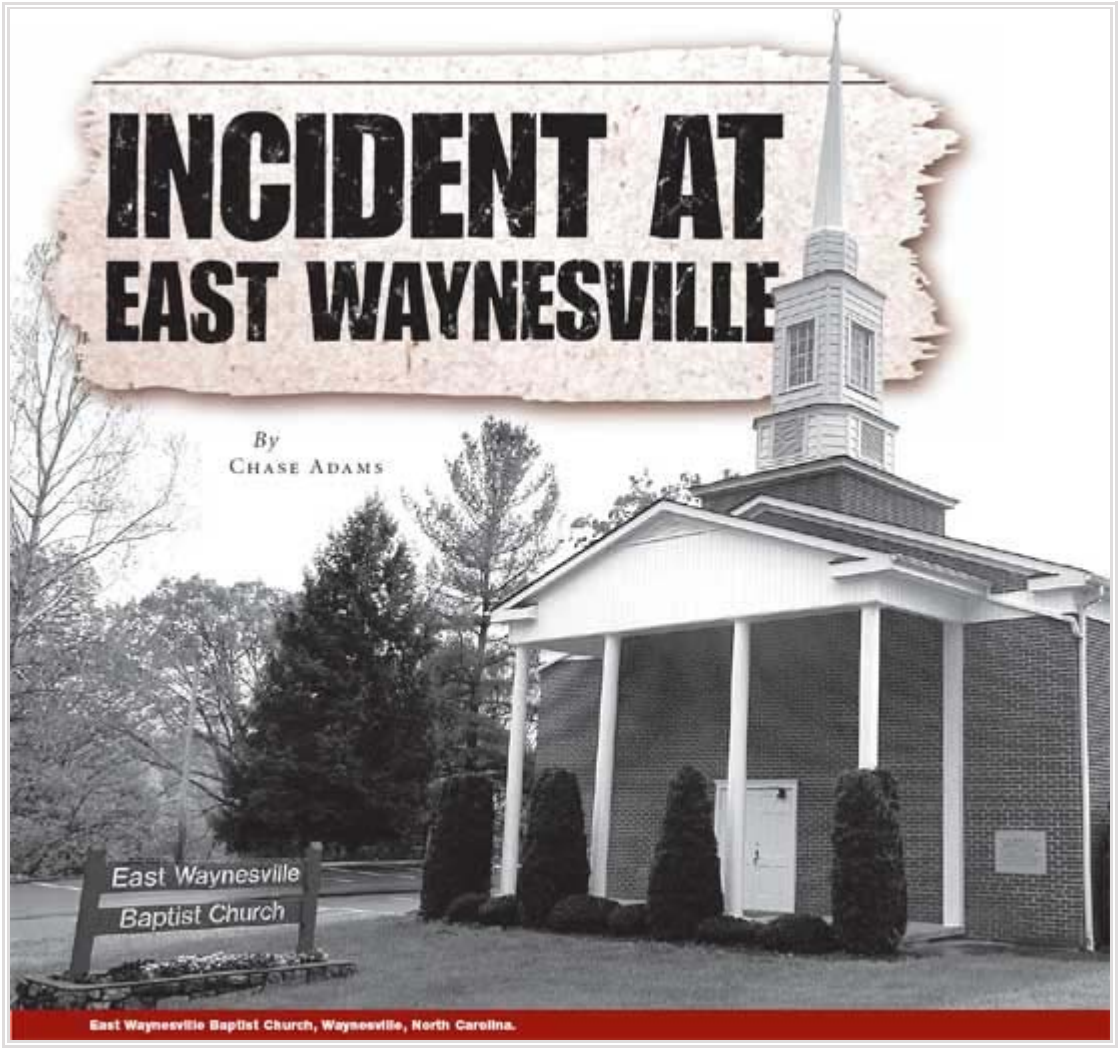
SEPTEMBER / OCTOBER 2008

Incident At East Waynesville

BY: CHASE ADAMS



Whatever happened to religious freedom in America? After all, isn't it preaxiomatic that a church has the right to determine for itself what is required for membership? If the free exercise clause means anything, it means that a church should be able to require any kind of belief, no matter how ludicrous. If it wants the faithful to believe that we're descendants of aliens, it should have right to kick out those who stray from that orthodoxy. If it requires you to believe that its leader is finishing the job that (according to its own theology) Jesus failed to do because His work was interrupted by the cross, then the church has the right to disfellowship those who reject that view. If members are required to believe that Jesus once came to the Americas and witnessed to people there, then it has the right to discipline, or even boot out, those who deny that belief. If that's not religious freedom, what is?

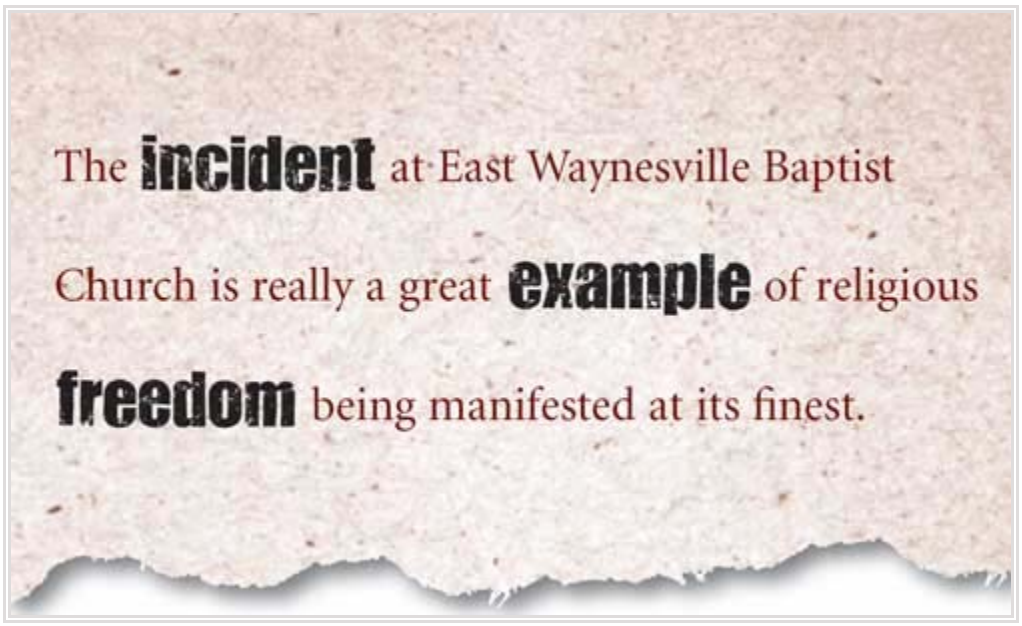
If this concept is so fundamental, then why all the screeching earlier in the year when a Baptist minister in North Carolina was accused of kicking out members who didn't vote Republican in the most recent presidential election? Are we now telling churches what they can and cannot require for church membership? Does not a church have the right to require members vote in a certain way in order to be part of that fellowship? Is not it a violation of the most fundamental principles of church-state separation when a church is not allowed to demand certain beliefs, or actions, of church members, just as long as those actions do not violate the law?

Above: The Reverend Chan Chandler's attorney, Jay Pavey, announcing that the minister has resigned from the East Waynesville Baptist Church Tuesday, May 10, 2005. Right: The Reverend Chan Chandler and his wife, Melody, arrive at the East Waynesville Baptist Church.

Last we heard, churches were *voluntary* organizations. People join by their own choice. No law forces them to join or to remain, and no law dictates what doctrines should be. The U.S. Supreme Court, in one of its archetypical decisions, said, "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association,. . . is unquestioned" (*Watson v. Jones*, 1872).

In other words, churches can require members to believe anything, and it's not the government's business to dictate those beliefs or to determine internal church discipline when someone is deemed to have strayed from "truth." Indeed, unless property rights are involved, or there is a violation of the law, the government generally stays away. True religious freedom demands, it would seem, nothing less.

Thus, when the Reverend Chan Chandler, of the East Waynesville Baptist Church, in Waynesville, North Carolina, supposedly told church members that anyone who planned to vote for John Kerry should either leave the church or repent, he was truly exercising religious freedom. Putting aside, for the moment, the slight question of the church's 501(c)(3) status (tax exemption), the pastor was within his rights. If the church wanted to throw out anyone who didn't vote for Bush, or swear undying fealty to the GOP ("God's Own Party"), or burn incense on the altar to the war god, that's its right, guaranteed by the First Amendment to the U.S. Constitution itself, and it would be a sad day in America were the government, at any level, to step in and force it otherwise.



Which, of course, didn't happen. Chan Chandler might have caused a national furor by his actions, but—with the exception of the tax exemption question—it really wasn't a legal issue, despite the appearance of lawyers on both sides of the dispute. Instead, the onslaught of publicity and Chandler's subsequent resignation. . . a prime example of the beauty of voluntary organizations functioning in a democracy. The government didn't need to step in—public opinion did the job itself.

There's a great lesson to be learned from this story, and it gets to the genius of the American experiment with religious liberty.

Of course churches have the right to promote and teach anything they want; but people have the right to protest, to leave, to contact the press, and to make a royal hoopla about it too. In many ways it's the market that drives the engine of faith in this country, and it's the way it should be. People are free to promote and teach and propagate all the nonsense they want; they just need to be prepared to face the consequences, that's all, especially in what's been deemed the "marketplace of ideas." This is a free country. You can believe whatever you want to and promote just about whatever you want to as well. At the same time, however, people are just as free to oppose your actions and your beliefs, and if you are humiliated, mocked, or driven into obscurity because of your actions, well. . . that's what freedom is all about.

And we got a great example of that principle with the East Waynesville Baptist Church. The screeching fantods caused by Chandler's actions did all that was necessary to remedy the situation: Chandler's out, and some of the apostates seem to be heading back. All without any government coercion, regardless of whatever potential lawsuits might arise. This is the essence, and the beauty, of religious freedom. Preach, teach, promote whatever you want; make membership requirements as strict as you want; demand from your members whatever you want. Just be prepared to accept the consequences, that's all.

Thus, while ballyhooed as an example of a church crossing the line on religious liberty, the incident at East Waynesville Baptist Church is really a great example of religious freedom being manifested at its finest. Though Americans United for Separation of Church and State wrote to the IRS about the church having possibly violated Section 501(c)(3) of the tax code, which prohibits church and public charities from endorsing candidates for public office, it's probably a moot point now that Chandler is out. No doubt too, the ensuing publicity will make whoever follows a lot more circumspect as well.

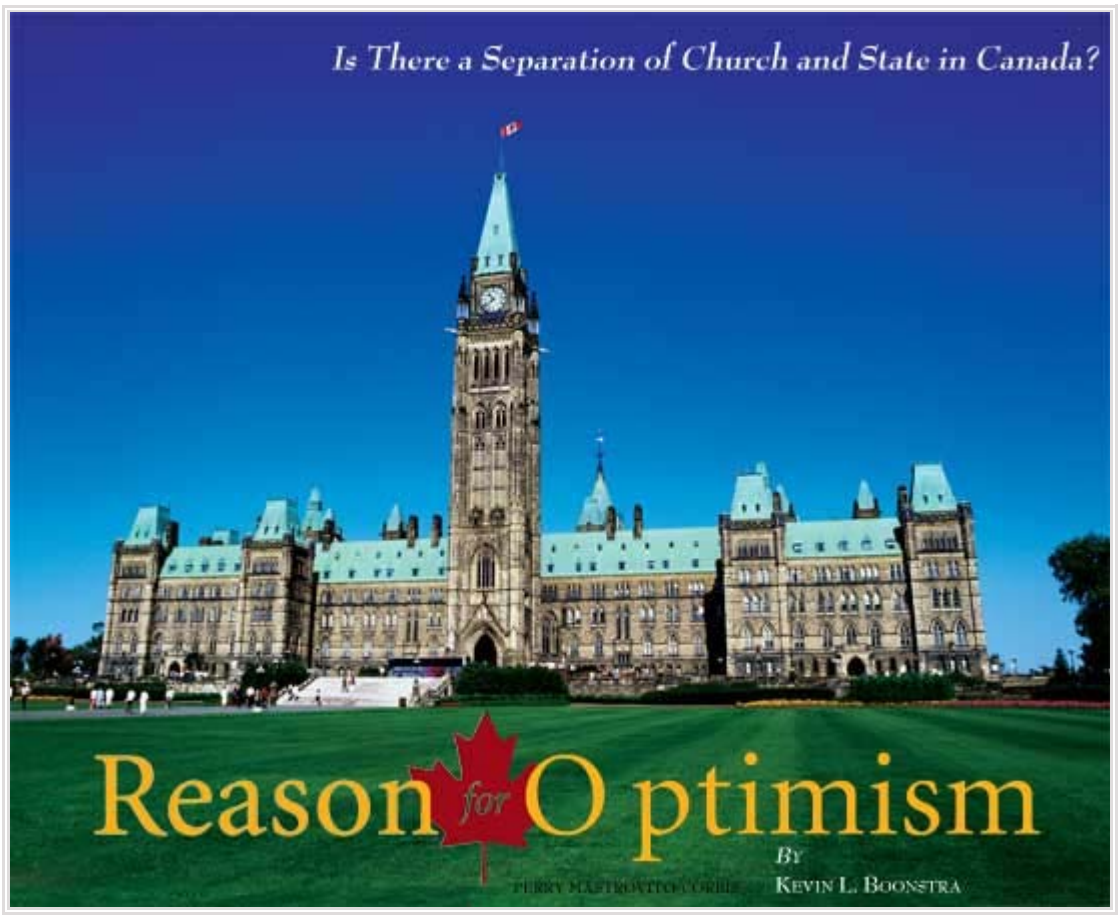
In short, the incident at East Waynesville is proof that the principles of church-state separation work. Though the line between God and Caesar isn't always easy to define, when it's crossed big-time, as is apparently what happened from Chandler's pulpit, market forces have proved themselves more than capable of remedying the situation.

Chase Adams is a journalist with a penchant for the unusual angle. He writes from Washington, D.C.

SEPTEMBER / OCTOBER 2003

Reason For Optimism

BY: KEVIN L. BOONSTRA



Americans who are curious about such things often ask how the Canadian constitution creates a separation between church and state.

In Canada, religious liberty rights are guaranteed in two different sections of the Charter of Rights and Freedoms. Section 2(a) of the charter indicates that everyone has "freedom of conscience and religion." Section 15 provides a guarantee of equality under and before the law, without discrimination on a number of grounds, including religion.

Nowhere does the Canadian constitution specifically separate church and state in the same manner as the First Amendment of the United States Constitution. The American Constitution specifically precludes the passing of laws for the establishment of religion. Canada's charter, which became part of Canada's constitution in 1982, does not contain a similar provision.

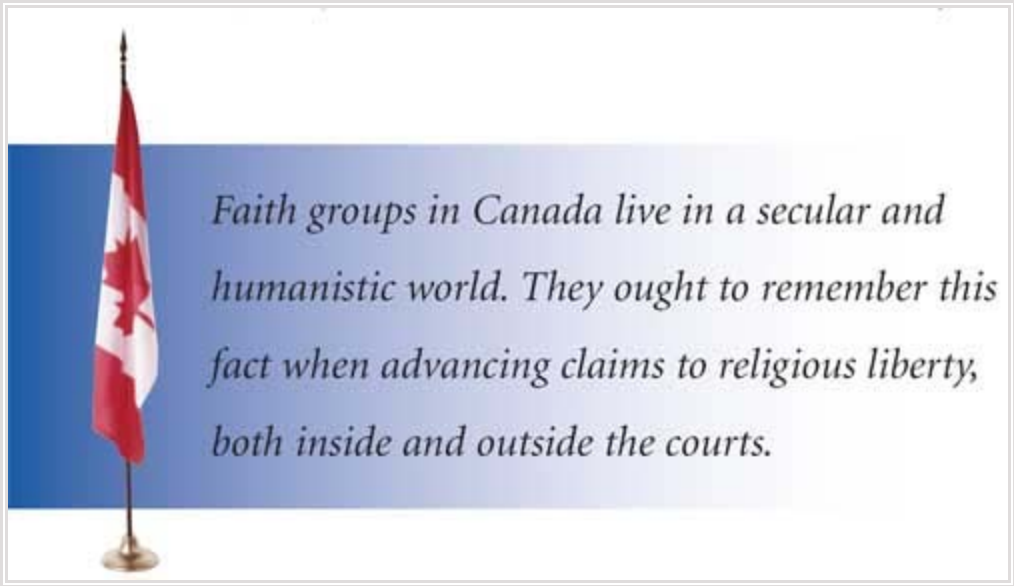
The difference in the apparent scope of constitutional protection is undoubtedly connected, in part, to the different experiences our two countries had in their formation. The American founding was the product of antigovernment thought, plus an uncomfortable mixture of religious skepticism (fearing that religious groups might take the reins of power) and the religious convictions of Protestant Christianity. The antigovernment thought is evidenced by numerous writers contemporary to the beginnings of the American experiment, as in the *Federalist Papers*:

"The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? *If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.* A

dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

The framers of the American Constitution saw the need to ensure that no one religion would dominate their nation. From the perspective of the late 1700s, such a concern arose out of experiences such as the Spanish Inquisition and other efforts in Europe by established churches to control the state and the beliefs of all citizens. Therefore, the American nation incorporated an assurance that there would be no "establishment of religion" within the Constitution.

Against the backdrop of occasionally conflicting philosophies was created the First Amendment protection relating to religious liberty, which protected the free exercise of religion and against the establishment of religion.



The antiestablishment protection can be seen to accomplish two objectives: (1) protecting religious minorities from the moral dictates of the religious majority; and (2) protecting society generally from the "evil" of religious imperialism. This latter view of the purpose of a protection "from" religion has taken on new importance in a postmodern and "secular" world. Rather than benefiting religion, the antiestablishment clause of the First Amendment has had the effect of hindering opportunities of religious organizations and individuals. For example, the United States Supreme Court has interpreted the antiestablishment clause to prevent both Bible readings in schools as well as state aid to private schools.

In Canada we do not have an expressed freedom "from" religion in the charter as in the antiestablishment clause of the First Amendment. However, as with most things philosophical and economic, the forty-ninth parallel is an imperfect membrane, allowing American religious liberty thought and antiestablishment sentiment to permeate the collective mind of Canadian society.

In Canada we never had the skepticism of the established church shown by those in the United States and, until recently, did not see a strong need for protection "from" religion. From confederation, our formal head of state was also the formal head of the Church of England. Prior to confederation, the Treaty of Paris allowed the Roman Catholic Church to maintain its position of dominance in Lower Canada. The British North America Act in 1867 also structured Canada to allow religious groups to live together without a fundamental distrust of either Protestantism or Catholicism. This accommodating practice has more recently expanded to other faith groups who now enjoy freedom of religion Canadian style.

A number of cases decided in the 1950s by the Supreme Court of Canada (before the passage of the charter) laid a strong foundation for the free exercise of religion in Canada. These cases arose primarily from the intolerance in Quebec society of the Jehovah's Witnesses. The words of Justice Rand, in discussing the validity of a Quebec City bylaw precluding the distribution of pamphlets (aimed at stopping the evangelism of the Jehovah's Witnesses), show a strong inclination toward the protection of a positive right of the free exercise of religion:

"From 1760, therefore, to the present moment religious freedom has, in our legal system, been recognized as a principle of fundamental character; and although we have nothing in the nature of an established church, that the untrammeled affirmations of religious belief and its propagation, personal or institutional, remain of the greatest constitutional significance throughout the Dominion is unquestionable."

"Strictly speaking, civil rights arise from positive law; but freedom of speech, religion and the inviolability of the person, are original

freedoms which are at once the necessary attributes and modes of self-expression of human beings and the primary conditions of the community life within a legal order."

The potential for an "established church" was seen as less of a threat to religious liberty than was the secular state. Earlier in that same decision, Justice Rand noted that "the Christian religion, its practices and profession, exhibiting in Europe and America an organic continuity, stands in the first rank of social, political and juristic importance."

In 1982 the Canadian constitution was "repatriated" from the United Kingdom, and for the first time Canada received a bill of civil rights in the form of the charter. The lack of any provision expressly separating church and state created some initial optimism in religious groups in Canada that freedom of religion in Canada would primarily be freedom for religion, as opposed to freedom *from* religion.

Then, in 1985, the Supreme Court of Canada made its first decision on the meaning of "freedom of conscience and religion." The legislation under attack was the Lord's Day Act, federal legislation that mandated a common day of rest on Sunday. The *Queen v. Big M Drug Mart* was the appeal of a conviction of Big M Drug Mart for opening on Sunday. The Court had to decide whether legislation with a clearly religious origination was contrary to a new constitutional guarantee of freedom of religion.

The Court said that the Lord's Day Act bound all Canadians to a "sectarian Christian ideal," working a form of coercion that was "inimical to the spirit of the *Charter*." The Court stated:

"In proclaiming the standards of the Christian faith, the Act creates a climate hostile to, and gives the appearance of discrimination against, non-Christian Canadians. It takes religious values rooted in Christian morality and, using the force of the state, translates them into a positive law binding on believers and non-believers alike. The theological content of the legislation remains as a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture."

In essence, the Court took a guarantee that appeared to be directed to constraining the government from stopping citizens from practicing their religion and included within it a guarantee that the government would not impose religious belief or practice. The Court also stated:

"What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of 'the tyranny of the majority.' Non-Christians are prohibited for religious reasons from carrying out activities which are otherwise lawful, moral and normal. The arm of the state requires all to remember the Lord's day of the Christians and to keep it holy. The protection of one religion and the concomitant nonprotection of others imports disparate impact destructive of the religious freedom of the collectivity."

This result was influenced by the fact that the very first Supreme Court of Canada decision on freedom of religion was with respect to a law establishing a specific religious practice. It should be reasonably clear to most people who think about religious liberty issues that it is contrary to true freedom that religious practices be imposed on others. Subsequent Canadian cases have found that the charter precludes religious indoctrination in public schools but not education *about* religion in public schools.

Section 2(a) of the charter was not created solely, or even primarily, to preclude religious dominance of one group over the entire society. It was put in place to ensure that each individual and faith group had the freedom to maintain beliefs and exercise its religion. The "antiestablishment" component of section 2(a) is a necessary part of this freedom, but it is not the primary motivation for freedom of religion.

There is always a risk that, in the hands of a secular society dominated by humanistic thinking, section 2(a) will be interpreted to protect the society from religion and not the reverse. This should not be the focus of a freedom of religion guarantee. Freedom of religion should provide a positive right for citizens to engage in those religious practices that their consciences dictate.

Fortunately, *Big M Drug Mart* also included some very strong language as to the scope of freedom of religion. Subsequent cases have clarified that individual religious liberty is broad, and recently the Supreme Court of Canada affirmed that freedom of religion "consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials."

As a result of this type of analysis, Canadians have not had some of the same difficulties as our American cousins in obtaining a robust protection of religious freedom. To date the Canadian courts have not restricted religious liberty in circumstances in which a generally applicable or "neutral" regulation imposes a burden on religious belief or practice.

This is, in part, because the charter also protects against discrimination on the basis of religion. The antidiscrimination provisions of the

charter are useful because the Supreme Court of Canada has held, numerous times, that a facially neutral regulation can be the source of discrimination contrary to the charter. For example, some judges of the Supreme Court of Canada held that a lack of funding of religious schools contravened charter guarantees when Catholic schools were provided funding. A decision that required public funding of religious schools would be almost unthinkable in the U.S.A.

Faith groups in Canada live in a secular and humanistic world. They ought to remember this fact when advancing claims to religious liberty, both inside and outside the courts. This is particularly true for Christian claims to freedom of religious practice, as our society, perhaps to a greater extent than that in the U.S.A., maintains a skepticism of the objectives of Christian groups. There is some distrust of Christianity, based in large part on the dominant position enjoyed by Christianity for a great part of Canadian history.

There are certainly challenges ahead for Canadians of faith. The well-publicized establishment of same-sex marriage in Canada will create dissonance between religious beliefs and practices and social norms that will undoubtedly cause clashes of rights. However, our history provides religious groups with some reason for optimism that freedom of religion, while including a "freedom from" component, will continue to protect a full freedom for religious belief and practice.

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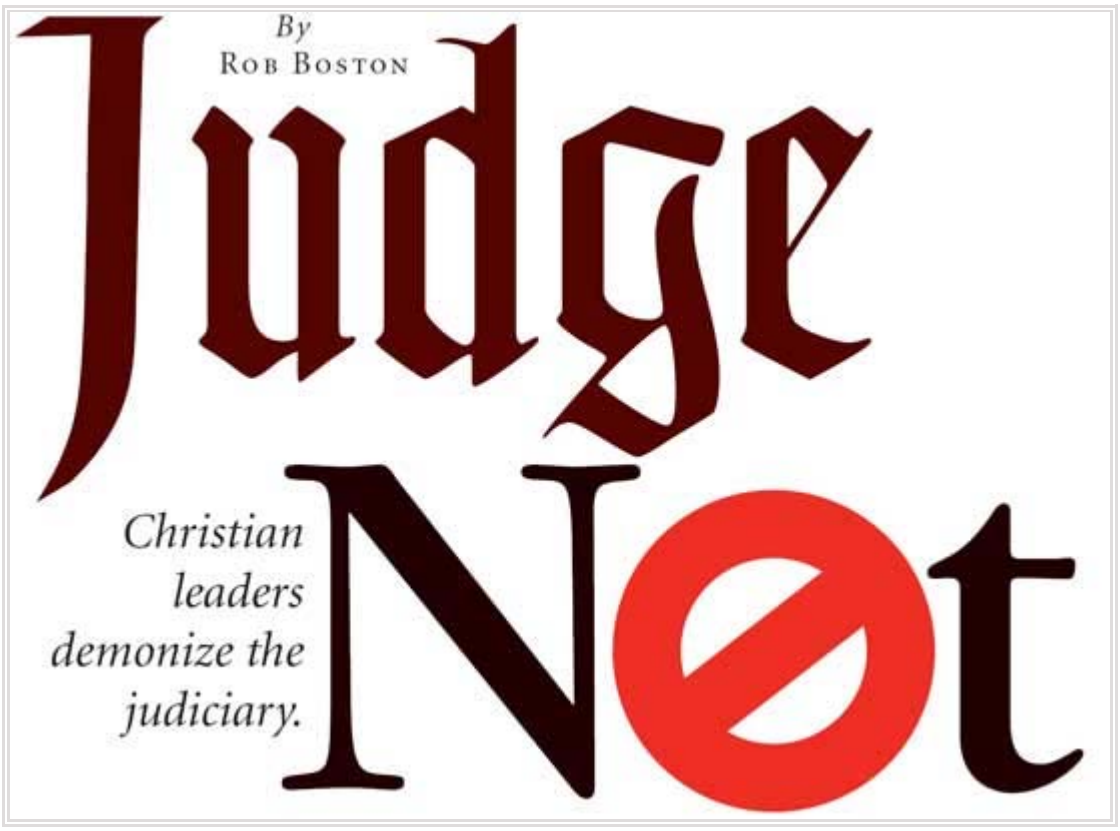
1 The Federalist Papers, No. 51. (Italics supplied.)
2 Engel v. Vitale 370 U.S. 421 (1962); Arlington School District v. Schempp 374 U.S. 203 (1963).
3 McCollum v. Board of Education 333 U.S. 203 (1948); Board of Education v. Allen, 392 U.S. 236 (1968), 20 L. Ed 2d 1060, pp. 1065,1066; Everson v. Board of Education 330 U.S. 1 (1947), 91 L. Ed. 711, p. 724.
4 This was the original Canadian constitution. It was legislation passed by the British Parliament and did not expressly contain civil rights guarantees.
5 They include Chaput v. Romain (1955) S.C.R. 834, Saumur v. Quebec (City) (1953) 2 S.C.R. 299, and the famous case of Roncarelli v. Duplessis (1959) S.C.R. 121.
6 Saumur v. Quebec, p. 327.
7 Ibid., p. 329.
8 Ibid., p. 327.
9 (1985) 1 S.C.R. 295.
10 At p. 337.
11 Zylberberg v. Sudbury Board of Education (1988), 65 O.R. (2d) 641 (C.A.); Russow v. British Columbia. (A.G.) (1989), 35 B.C.L.R. (2d) 29 (S.C.); Canadian Civil Liberties v. Ontario (Minister of Education) (1990), 71 O.R. (2d) 341 (C.A.).
12 Syndicat Northcrest v. Amselem, (2004) 2 S.C.R. 551 at para. 46.
13 Which is something the Americans have struggled with in cases such as Employment Division v. Smith 494 U.S. 872 (1990). The result of the decision in Employment Division v. Smith was to require religious persons to comply with state regulations that were of general applicability, even where religious belief mandated conduct inconsistent with that regulation.
14 See for example Andrews v. Law Society of British Columbia, (1989) 1 S.C.R. 143 at p. 162. (definition of discrimination); Eldridge v. British Columbia. (Attorney-General), (1997) 3 S.C.R. 624; M. v. H., (1999) 2 S.C.R. 3
15 Adler v. Ontario, (1996) 3 S.C.R. 609, see minority decision of J. McLachlin (as she then was).

SEPTEMBER / OCTOBER 2003

Judge Not

BY: ROB BOSTON



The Reverend Rick Scarborough is a Texas minister with big dreams of the national stage. Welcoming attendees to a recent gathering in Washington, D.C., the stocky ex-college football player said bluntly, "This is perhaps the most important conference in the city of Washington this year."

The topic of this momentous occasion wasn't terrorism, the economy, or global warming. Rather, the event, as described by Scarborough, would target "renegade judges who exceed their constitutional authority."

Bashing federal judges is suddenly all the rage among those who labor to make the United States an officially fundamentalist Christian nation. Seeking to keep ahead of the curve, Scarborough convened the conference in early April under the auspices of his newly formed Judeo-Christian Council for Constitutional Restoration.

Under the fancy name lies an organization with big—some would say radical—ideas: The federal courts, Scarborough and his supporters argue, have become an unelected, out-of-control oligarchy of black-robed elitists who must be made to give quarter. The conference was designed to find the best way to do that.

"This nation cannot long exist in the vacuum of atheism that is being forced on us by the court," Scarborough declared.
There is, however, one problem: The United States has long operated under the separation of powers. The three branches of government—executive, legislative, and judicial—are coequal but exercise checks and balances over one another. Thus critics say what Scarborough is proposing is nothing short of a revolution: bringing the courts under the sway of Congress would destroy that delicate balance and strike at a core principle of U.S.

government.

None of this fazes Scarborough. To Scarborough and his supporters, issues such as same-sex marriage, abortion, prayer in the public schools, display of religious symbols by government, and others define the national character. They've seen many of their legislative efforts in these areas nullified by the courts. Even a Supreme Court with seven of nine members nominated by Republican presidents has failed to produce rulings that please the Religious Right. The answer, they are increasingly saying, isn't to change the courts; it's to neuter them.

At Scarborough's meeting that meant one thing: impeaching offending judges.

It was a theme reiterated again and again by the speakers, who did not hesitate to name names. An angry Michael Schwartz, chief of staff for U.S. senator Tom Coburn (R-Okla.), blasted U.S. appeals court judge Stanley F. Birch, Jr., who incurred Religious Right wrath for chastising Congress for intervening in the controversy over Terri Schiavo.

"He needs to be impeached," Schwartz declared. Schwartz also blasted U.S. district judge James Whitmore, who also ruled against Congress' intervention, saying the judge should be removed from the bench "forthwith."

"I hope they serve long sentences," Schwartz added.

It's easy to dismiss such talk as the rumblings of a lunatic fringe. But although attendance at the April 7-8 Washington, D.C. gathering, titled "Confronting the Judicial War on Faith," was low—only about 200 people showed up—the antijudge hatefest caught the attention of some powerful people.

House majority leader Tom DeLay was scheduled to address the event in person but was called away at the last minute to attend the funeral of Pope John Paul II. DeLay sent a supportive videotape, and two others members of Congress, as well as leaders of national Religious Right groups and Senate staffers, attended in person.

During his videotaped remarks DeLay included a token line calling for a respectful dialogue—but the bulk of his comments poured gasoline on the fire.

From Left to Right: Allan Parker, Rick Scarborough and Phyllis Schlafly.

Blasting recent court rulings, DeLay said, "These are not the dictates of a mature society but a judiciary run amok. The failure is to a great degree Congress's. The response of the legislative branch has mostly been to complain. There is another way, ladies and gentlemen, and that is to reassert our constitutional authority over the courts."

With DeLay's help, conference organizers have big plans to ditch some powerful judges—starting at the top.

Their main target is Anthony M. Kennedy, appointed by President Ronald W. Reagan in 1988, and a devout Roman Catholic. Kennedy is no ACLU member when it comes to the separation of church and state; he has repeatedly voted to approve various types of taxpayer aid to religious institutions.

Yet the justice's conservative outlook on many issues means nothing to Scarborough's group. Kennedy has also voted to support legal abortion, in favor of gay rights, and against government-sponsored prayer in schools, stands that have made him a traitor in the eyes of the Religious Right.

Kennedy, said homeschooling advocate Michael Farris, "should be the poster boy for impeachment."

What if Congress balks? Farris has an answer for that, too.

"They ought to be impeached as well," he said. "We need to hold them to that standard."

Another speaker, Edwin Vieira, author of a book titled *How to Dethrone the Imperial Judiciary*, went even further. Asserting that "the fifth fool on the Supreme Court decides the issue and then according to them. . . everyone else in the world is bound by this decision," he blasted the Supreme Court for promoting "Marxism-Leninism-Stalinism."

Vieira approvingly quoted Joseph Stalin, whom he called "the greatest political figure of the 20th century."

Stalin, Vieira noted, had a solution for dealing with his enemies: "He had a slogan, and it worked very well for him whenever he ran into difficulty. 'No man, no problem.' . . . This is not a structural problem we have, this is a problem of personnel. We are in this mess because we have the wrong people as judges, and we have the wrong people as judges because we have the wrong people as legislators."

Speaker after speaker advocated similarly radical steps to rein in the judiciary. Impeachment was the hands-down favorite approach. Allan Parker, founder of the Texas Justice Foundation, was blunt. "What it is time to do is impeach judges, and I advocate the standard not just to be pro-life or any particular case," Parker said. "The standard should be any judge who believes in the 'living Constitution' should be impeached. Many of them have written this explicitly. It would be easy to document. . . . That's the standard, and it's time for impeachment."
Addressing a panel on "Remedies to Judicial Tyranny," Farris told the crowd, "Impeachment needs to be a serious reality, and I'm going to name some names."

To this crowd, impeachment is the perfect weapon of intimidation. "About 40 of them [federal judges] get impeached, you know, suddenly these guys would be retiring and going into private law practice, which would be, you know, happy days are here again," Farris told the crowd.

As a fail-safe in case impeachment is not enough, Farris also called for giving Congress the power to overturn any federal court ruling by a two-thirds vote and a vote of two-thirds of the state legislatures. He also proposed denying federal courts the ability to set precedent with their decisions. Under his theory Congress could pass a law mandating that Supreme Court rulings affect only the parties that bring them.

Another speaker, longtime Religious Right activist Phyllis Schlafly, advocated court stripping. Under this theory Congress can simply pass a law denying the federal courts the right to even hear certain types of cases. Not surprisingly, legal experts say the scheme is of dubious constitutionality.

Other speakers floated different schemes. Several claimed that Congress can vote to abolish federal courts or take away courts' funding. The Constitution does not permit Congress to cut off a federal judge's salary, but speakers advocated denying judges staff, office space, or operating budgets, or simply dismissing them for failure to maintain "good behavior."

Schwartz made it sound easy.

"If we have a clear standard, and if it is breached, then the judge's term has simply come to an end," Schwartz said. "The president gives them a call and says, 'Clean out your desk. The Capitol Police will be in to help you find your way home.' That's the end of it. We don't need any trials, we don't need any impeachment," he said.

Speakers constantly wrapped their views in religious language. Tony Perkins of the Family Research Council, one of the most powerful Religious Right groups in the country, accused federal judges of spawning "chaos," and reminded the crowd, "This is spiritual in nature." According to Perkins, the Supreme Court is worse than terrorists who slaughter innocent Americans. "The Court," he asserted, "has become increasingly hostile to Christianity. It represents more of a threat to representative government than any other force—more than budget deficits, more than terrorism."

In an attempt to give the movement at least the appearance of ecumenism, Scarborough added several politically conservative Jews to the program, including two rabbis. One of them, Aryeh Spero, took the unusual line of contending for the Christian Sabbath, telling the crowd, "I would suggest that we reinstitute the Sabbath, Sunday, as it was before. Make the day Sunday a day of faith."

Other conference speakers included former Alabama Supreme Court chief justice Roy Moore, who treated a luncheon crowd to snippets of his poetry; current Alabama Supreme Court justice Tom Parker, who introduced Moore; Alveda King, the conservative niece of Martin Luther King, Jr.; Michael Peroutka, the 2004 presidential candidate of the extreme right Constitution Party; and Alan Keyes, a Black conservative and perennially unsuccessful candidate for public office.

At the conclusion of the event conference organizer Scarborough announced that representatives of the various groups that attended had hammered out a "Declaration of Constitutional Restoration."

The document attacks separation of church and state as "a phrase not found in the Constitution and a concept foreign to constitutional law prior to 1947." It goes on to demand court stripping and impeachment of federal judges, and calls on Congress to "reduce or eliminate the funding of federal courts, the salaries of judges excepted, that overstep their constitutional authority."

Scarborough compared his group's effort to the Constitutional Convention, telling the crowd, "I begin to sense what it must have been like in Philadelphia." The document, Scarborough said, is "just as revolutionary as the Constitution. . . . We're asking you now to start a movement that will not rest until we see this nation restored."

Scarborough's desire to "restore" the Consti-tution might sound odd to at least one Founder. In *Federalist* No. 78, Alexander Hamilton succinctly summed up the role of the courts.

Hamilton observed, "The complete independence of the courts of justice is peculiarly essential in a limited Constitution. . . . Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."

It's a passage the court bashers might want to commit to memory.

Rob Boston is the assistant editor of Church & State, published by Americans United for Separation of Church and State, in Washington, D.C.

SEPTEMBER / OCTOBER 2003

Holy Men

BY: LINCOLN E. STEED

EDITORIAL

As we have been told innumerable times since September 11, 2001, "We are at war." If you read most any newspaper most any day you will read tales of horror and carnage and see gratuitous photos of the dead and dying—mostly Iraqis. For a number of reasons, probably well thought out, we don't see many other dead. Even the images of carnage in London came, largely, without the sickening sight of death.

We do get to see the warriors. They are our own sons and daughters dressed in appropriate battledress. They take care of business as we fight the battle "over there." We support them. How could we do otherwise!

But the real face of this ongoing conflict is more consistently on view in those same newspapers. And it is the face of the mullah, the ministers of any of a number of Christian subsets, the religious zealot, the angry mob demanding their religious view be adopted. It is the headline that equates a religious/moral agenda with national security.

Of course our battle with Al Qaeda is not at all a battle between our nominally Christian society and the religion that they quote to justify their fanatical vision of the world. However religion and religious values litter the landscape of this new era of warfare. Homeland security very easily devolves into ensuring that we define ourselves and discover true patriotism by our moral values.

Given that much of the conflict and its resolution is seen to hinge on a religious/moral world view, I come back to the face of the conflict. Who are these towering prophets of spiritual vision that we look to for moral clarity?

An article in this issue examines the use of religious language by the president of the United States—a man of clear religious commitment. It is good that a free, democratic nation allows such personal expressions of faith by its leaders. It is demonstrably positive that as a nation we be conscious of the principles laid down by the Almighty Creator God—the God most of the founders worshipped and referred to in the state documents. But we must be careful not to allow the religious pronouncements of secular leaders to proscribe religious practice.

There are many public faces to religious leadership in the United States. It is not good for me to name the various Reverends and Doctors—they speak to us on television as well as from the pulpit and their sound bites are becoming less commentary than directives.

They speak in absolutes and some of them have become bold enough to demand that public policy align with their faith vision—or else. Their intentions might be honorable but their methods are becoming eerily similar to those of the clerics in several Islamic Fundamentalist states: states where there is no separation of church and state and a particular vision of faith is imposed upon the populace by civil power.

Any study of civics and political history would show the role of the U.S. Supreme Court to have been generally as the founders expected—one of the three main branches of power—and certainly not an initiator of policy.
Today the model is shifting. The values war is more and more fought in the courts and the justices are being made the new holy men (and women) of our increasingly "moral" civil society. In the rush to put "pure" people in these positions many are willing to sacrifice the concept of judicial fairness for ideology--and failing to think through the implications of empowering moral high priests in our secular order.

There is developing within the increasingly influential politically aggressive religious leadership in the United States a concept of "Dominionism." It rests on an easy conflation of the United States as the favored nation of God with the governance models of the Old Testament.

It is too easy to dismiss this as just the doctrine of Manifest Destiny for the Twenty-First Century. That would have plenty of rough edges if it were even that simple—as any native American might remind. But again the true danger of this mindset is exhibit A for us and the world in the observed excesses and compulsions of states ruled by Islamic sharia law. We were troubled enough by what we saw in Afghanistan to remove that religious regime.

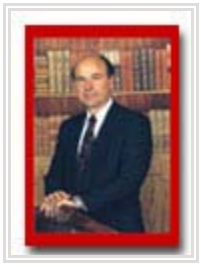
The problem with both sharia regimes and Christian hopes for a Biblically modeled state lie in determining the true will of Allah or God. Absent the Presence on the mountain, or the confirmation of Urim or Thummin we are left to the pronouncements and control of men and women who try to divine the Divine for themselves. Maybe they get it right or maybe they get it wrong. Maybe we are able to deliver the state to the moral direction of the ones who get it right; or maybe we get it wrong and end up with holy men who are convinced that kite flying merits a beating or worse.

The illustration with this editorial is of the prophet Abraham preparing to sacrifice his son Isaac to the Lord. Abraham is a rather central religious figure, given that Jews, Christians and Moslems revere him as a central figure—each claims to be "Abraham's seed." In fact there is a sad irony to the long intolerance between these monotheistic faiths that they are in a sense "blood brothers."

But look at the scene for a moment. In Abraham's upraised hand is a sharp dagger that he intends to bring down into the heart of Isaac. If the voice of God had not interposed Abraham would surely have slain his own son.
Since 9/11 we are especially fearful of those who kill in the name of religion. I have been at pains in discussing the new religious threats to point out that we must be careful to discriminate between those who kill for their faith and those who are willing to die for their faith. It is an important distinction to make between the violence committed in the name of religion by terrorists and the selfless proclamation of many people of faith outside the mainstream. People of deeply held faith who are different or even fanatically different should not be linked automatically with the terrorists' form of religious faith.

The story of Abraham and the dagger is revealed as a test from God. He had to be willing to kill his son to show his loyalty. He was not intended to actually kill him. A nice point. As a Christian I see it perfectly and am not troubled in my overall view of a God of love and mercy. But as someone with a sense of history I know that given political power, Christians in other ages used daggers, the rack, burning at the stake and a thousand other inventions of deluded faith to compel obedience to their vision of God. Thank God that compulsion has ceased to be a vehicle of conversion in the Christian West. The change came slowly, but once that method was rejected the separation of church and state proved itself more "Christian," more tolerable to faith practice.

Holy men? My Bible is full of them. I believe their successors live among us. But I would never suggest allowing any of them the mandate to order my faith experience any more than by the faith example their lives provide. What if I chose badly and allowed myself to be ruled by a holy man who ordered us all to drink poison-laden Kool-Aid? What if we allowed our society to fall under the dictates of a Mullah who preached hate and Jihad? What if Abraham had failed to hear the voice of God the second time?



Lincoln E. Steed

Editor,
Liberty Magazine

SEPTEMBER / OCTOBER 2003

Incorporation And Religious Freedom

BY: MISTER THORNE

We're certain we have rights that government must respect: the freedom to say what we want and believe what we wish; to go where we please and keep the company we choose; the right to marry our love, to have children, and to raise them as we see fit. We figure we have a right to a public trial by jury when we're charged with a serious crime, and a right to consult a lawyer. The police can't just barge into our homes, and they can't torture us. Most of us are certain that all these rights are guaranteed by the Constitution, but not everyone agrees.

Before the Fourteenth Amendment was ratified, our civil rights were nowhere near as expansive as they are today. According to the Supreme Court, the original Constitution gave us only those fundamental rights that belong "to the citizens of all free governments," such as the right to marry, to have children, and to own property. It didn't give us the right to say what we want; it didn't give us a right to a trial by jury, nor a right to privacy, and it didn't give us freedom of religion. The original Constitution, says the Supreme Court, gave us none of the rights contained in the Bill of Rights.

In 1833 in the case of *Barron v. Baltimore*, the Supreme Court ruled that the Bill of Rights didn't apply to the states. The national government had to honor those rights, but state and local governments didn't. If the mayor of a city didn't like a particular newspaper, nothing in the Constitution said that he couldn't order the police to shut it down. If the police wanted to bust into someone's house for no good reason, nothing in the Constitution said they couldn't. Nothing in the Constitution said that states couldn't engage in cruel and unusual punishments, or that they had to give criminal defendants a fair trial.

When the Fourteenth Amendment was ratified in 1868, many thought the purpose of the privileges and immunities clause ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.") was to incorporate the Bill of Rights; i.e., apply its limits to the states. Many thought this was one of the key purposes of the amendment. After all, the person who wrote it said that's what it meant, but the Supreme Court didn't agree with him. Just a few years after the amendment was ratified, in what is known as the Slaughterhouse Cases, the Court considered the meaning of the privileges and immunities clause and decided it means this: every citizen *in* a state has the same privileges as the citizens *of* that state. It's up to the states, not the national government, to decide what those privileges are, and the Fourteenth Amendment didn't change that.

The Court's decision in the Slaughterhouse Cases wasn't unanimous. Four of the nine justices dissented and said the Fourteenth Amendment means this: it *is* up to the national government to make sure states don't violate the "inalienable rights which belong to all citizens." One of the dissenting justices noted that at least *some* of the privileges and immunities of citizens of the United States were contained in the Bill of Rights.

After the Slaughterhouse ruling, civil rights advocates argued that, even if the privileges and immunities clause didn't mean the Bill of Rights applied to the states, the due process clause did. A state, they argued, couldn't deny anyone a fair trial, because due process demands a fair trial. The Court didn't agree. It ruled, in case after case, that the Fourteenth Amendment didn't mean that the Bill of Rights applied to the states. One state might allow criminal defendants to have a trial by jury, and another might not, and that was just fine: federalism in action.

The court could decide that if a state wants, it can require daily prayers and Bible study in public schools; it can require the Ten Commandments to be posted in every public school classroom; it could require public officials to take a religious oath.

For more than 50 years after the Slaughterhouse ruling, the Court insisted that the Bill of Rights didn't apply to the states, but not everyone agreed. One justice in particular, John M. Harlan, kept insisting that the Court had it wrong. The Bill of Rights specified some of the privileges and immunities of the citizens of the United States. Among them were the Fifth Amendment's privilege of immunity from self-incrimination, the Eighth Amendment's exemption from cruel and unusual punishment, the Sixth Amendment's right to a jury trial, and all the rights implied by the First Amendment, including those implied by the establishment clause. Harlan figured that the Fourteenth Amendment meant that the Bill of Rights applied to the states, but he couldn't persuade a majority on the Court that this interpretation was correct.

In 1922 the Court ruled that the Constitution didn't require states to honor a citizen's right to free speech. Just three years later the Court reversed itself. In the case of *Gitlow v. New York*, the Court said that "freedom of speech and of the press are among the personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States." In 1931, in the case of *Stromberg v. California*, the Court said the "conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech." In 1937 the Court said it again when it ruled, in the case of *De Jonge v. Oregon*, that "freedom of speech and of the press are among the personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States." Finally the amendment had teeth, but they were in the due process clause, not the privileges and immunities clause. And they were not fully grown.

In *Gitlow* the Court began to selectively incorporate the Bill of Rights through the due process clause, but it was slow going. In case after case the Court looked at the rights contained in the Bill of Rights and decided whether they were "liberties" protected by the clause. In most cases, said the Court, they weren't. In 1934 the Court said states could ignore the free exercise and establishment clauses. In 1937 the Court rejected the argument that if something was "a violation of the original bill of rights (amendments 1 to 8) if done by the federal government," the Fourteenth Amendment made the same thing unlawful "if done by a state." The Court rejected argument after argument that states had to respect a citizen's Fifth and Sixth amendment rights.

It was another matter when it came to First Amendment rights. In the 1940 case of *Cantwell v. Connecticut*, a unanimous Court ruled that the "First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws." In the 1947 case of *Everson v. Board of Education*, the Court ruled that the "First Amendment, as made applicable to the states by the Fourteenth, commands that a state 'shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" The establishment clause, said the Court, was meant to create "a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

In the 50 years following the *Cantwell* ruling, the Court ruled that—since it applied to the states—the establishment clause prohibited such things as:
Offering religious instruction in public schools (*McCollum v. Board of Education*, 1948).
Having public school students recite an official prayer each day (*Engel v. Vitale*, 1962).
Having public school students study the Bible each day (*Abington v. Schempp*, 1963).
Having public school students recite the Lord's Prayer each day (*Abington v. Schempp*, 1963).
Posting the Ten Commandments in public school classrooms (*Stone v. Graham*, 1980).
Conducting state-sponsored religious exercises at public schools (*Lee v. Weisman*, 1992).

When *Cantwell* and *Everson* were decided, the entire Court agreed that the Fourteenth Amendment incorporated both the free exercise clause *and* the establishment clause. But in 1963, in the case of *Abington v. Schempp*, one justice asked whether the establishment clause should have been incorporated to the same extent as the free exercise clause. In Abington, Justice Stewart said one of the key purposes of the establishment clause was to prevent the national government from interfering with state establishments of religion, so it was ironic that "a constitutional provision evidently designed to leave the States free to go their own way" had become "a restriction on their autonomy."

It became a great topic for scholarly debate: did it make sense to incorporate the establishment clause, or not? Constitutional scholars

couldn't agree. Some argued yes, and others argued no, and they had good reasons to support their arguments. While constitutional scholars debated, the Court continued along the path it chose in *Cantwell and Everson*. But there was dissent. One Supreme Court justice kept arguing against incorporation—John M. Harlan, Jr., grandson of that John M. Harlan who kept arguing in favor of incorporation 70 years earlier.

In case after case Harlan attacked the incorporation doctrine. He objected to it in the 1961 case of *Pointer v. Texas*, when the Supreme Court ruled that anyone accused of a crime had the right "to be confronted with the witnesses against him." He objected to it in the 1964 case of *Malloy v. Hogan*, when the Court determined that the "Fourteenth Amendment prohibits state infringement of the privilege against self-incrimination just as the Fifth Amendment prevents the Federal Government from denying the privilege." He objected to it in the 1965 case of *Griswold v. Connecticut*, a case about a state law prohibiting doctors from so much as discussing birth control with their patients. In that case, he said it was "unacceptable" for the Supreme Court to impose the "requirements of the Bill of Rights" on the states.

Akhil Reed Amar, professor of law at Yale, says the establishment clause was meant to prevent Congress from interfering with state religious establishments. In his book *The Bill of Rights: Creation and Reconstruction*, Amar notes that when the Bill of Rights was ratified, several states had established religions. Since those states agreed to the establishment clause, yet maintained their state religions, it's obvious that they didn't think the establishment clause applied to them. And if they didn't think so then, why should we now?

Justice Clarence Thomas agrees. In the 2004 case of *Elk Grove v. Newdow*, he said that the establishment clause wasn't meant to protect the rights of individuals; it was meant to protect states' rights. Incorporation makes no sense, claims Thomas, since it prohibits "precisely what the Establishment Clause was intended to protect—*state* establishments of religion."

Justice Antonin Scalia thinks along the same lines. According to him, if something was constitutional when the Constitution was ratified, it must be constitutional now. It's as simple as that. If the Founders didn't have a problem with state establishments of religion, why should we?

Chief Justice Rehnquist is of like mind. In the 1985 case of *Wallace v. Jaffree*, he said that the Supreme Court erred when it incorporated the establishment clause, and he agreed with a lower court's ruling: "The establishment clause of the first amendment to the United States Constitution does not prohibit the state [Alabama] from establishing a religion."

Still, in ruling after ruling, in each and every one of them since 1940 that considered the matter, the Court said state and local government had to respect the establishment clause. But that could soon change. All that's needed is a few more justices who agree with Professor Amar, and those justices might be on the Court in a few years.

Sandra Day O'Connor has just announced her retirement; and it's widely expected that Chief Justice Rehnquist will announce his retirement this summer. The 80-year-old Rehnquist, who's been on the court more than 30 years, is battling cancer. Ruth Bader Ginsburg is in her 70s, and had battles with cancer. John Paul Stevens is 84. Court observers say that it's possible that all four might retire in the next few years. If they do, George W. Bush gets to pick their replacements, and he's likely to nominate people who agree that the establishment clause doesn't apply to the states.

During the 2000 presidential campaign, then Governor Bush said that the two justices he admired most were Justices Thomas and Scalia. During the 2004 campaign he said if he had the opportunity to nominate someone to the Supreme Court, "I would pick somebody who would strictly interpret the Constitution." In other words, he would nominate people who think like Rehnquist, Scalia, and Thomas. If he gets to nominate enough of them, the Court could decide that the establishment clause doesn't apply to the states. If that happens, then every case which the Court's decision was based on an incorporated establishment clause becomes suspect. The court could decide that if a state wants, it can require daily prayers and Bible study in public schools; it can require the Ten Commandments to be posted in every public school classroom; it could require public officials to take a religious oath. Who knows? It might even be able to make adultery and homosexuality capital offenses.

Does this seem too improbable? It doesn't seem that way to the folks at Christian Exodus, an organization whose goal is to take over South Carolina and, if necessary, start a twenty-first century civil war. The idea is to get conservative Christians to move to the state in waves. In the first wave, to be completed by September 2006, the group hopes to take control of two counties. After that, subsequent waves will take control of other counties. If all goes according to plan, the organization will be able to make "constitutional reforms returning proper autonomy to the State by 2016 regardless of illegal edicts from Washington, D.C." One of those reforms is to rewrite the state's constitution to recognize "the Ten Commandments as the foundation of law."

Before the Civil War, South Carolina's constitution declared "that all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian

Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this state. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges."

The group takes seriously the Tenth Amendment to the Constitution, which it sees as allowing the states, and not the Supreme Court, to decide whether abortion is legal, whether homosexuals can be executed, and whether public school students can be required to recite the Lord's Prayer. It dismisses the Fourteenth Amendment as a fraud that was forced upon Southern states after the first Civil War. According to the organization's position statement, South Carolina has a right "to nullify this Amendment and all laws and court rulings arising from it." And if the federal government should interfere with that right, then the state will have no choice but to secede.

Maybe President Bush can make sure it doesn't come to that. If he can appoint enough Supreme Court justices who share the views of Justices Rehnquist, Scalia, and Thomas, then Christian Exodus might achieve its goal: a return to the good old days.

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Mister Thorne (real name) is a mathematics editor living in San Francisco. He frequently writes about church-state issues.

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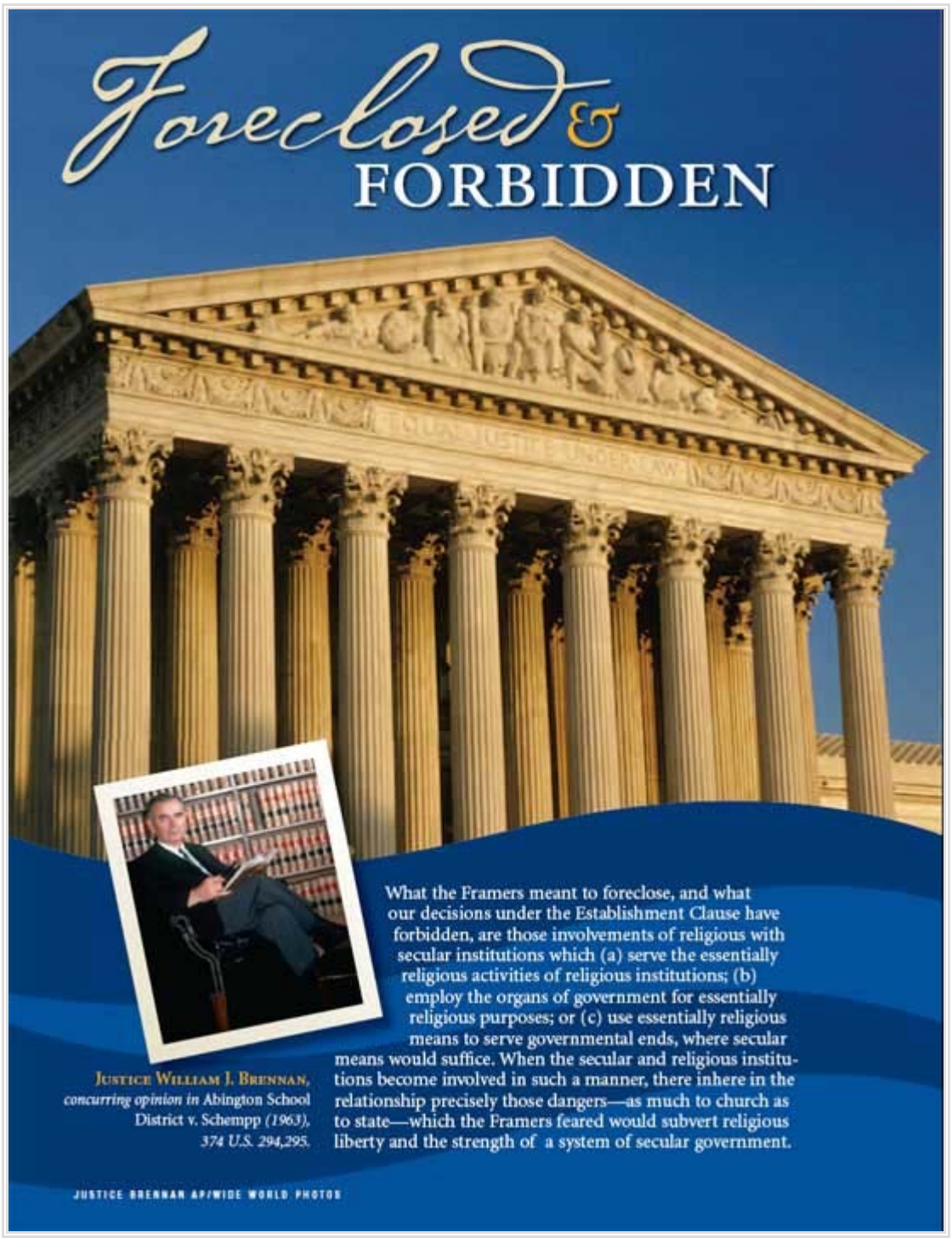
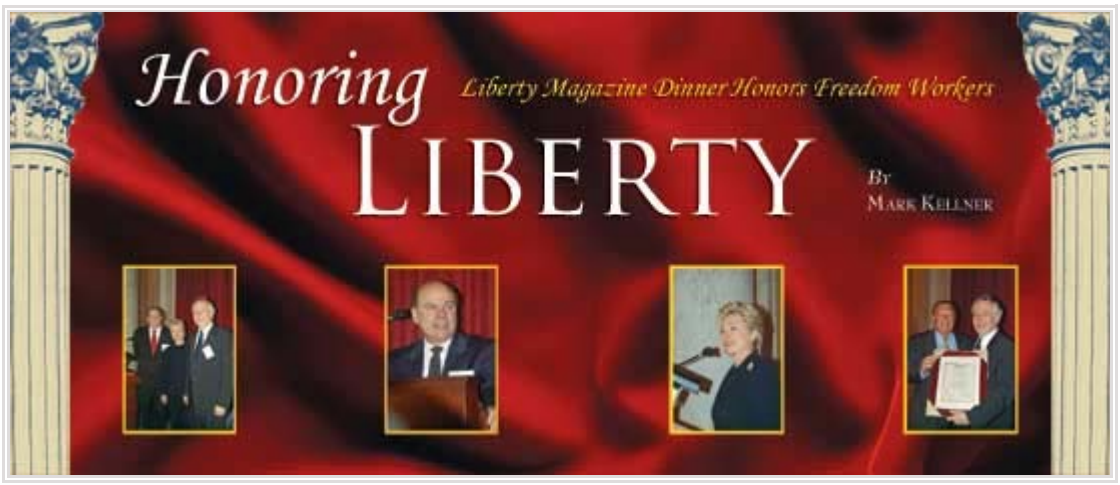


SEPTEMBER / OCTOBER 2005

Honoring Liberty

BY: MARK KELLNER



Part of the guest group at the 2005 Religious Liberty Awards Banquet in the Russell Senate Caucus Room

Religious liberty is one of the most important issues on the world's agenda today," said United States senator Hillary Rodham Clinton, Democrat of New York. She made the case for both freedom of religion and the right not to choose religion at a dinner sponsored by *Liberty* magazine, the International Religious Liberty Association, and the North American Religious Liberty Association, three religious freedom outreaches sponsored by the Seventh-day Adventist Church.

"Those of us who are people of faith are so aware of what that means in our lives that it is sometimes a challenge for us to understand our obligations to make space for nonbelievers," Senator Clinton, who was elected to a six-year Senate term in 2000, said to an audience of more than 200. This is the third annual religious liberty dinner sponsored by *Liberty* magazine and the IRLA; all three have been held in the historic Senate Caucus Room on Capitol Hill.

Calling the Seventh-day Adventist Church a "vital force" for religious freedom at home and abroad, Senator Clinton lauded the involvement of the church, its 100-year-old *Liberty* magazine, and the International Religious Liberty Association, which the church organized in 1893. IRLA became a nonsectarian organization in 1946 and has among its board members representatives of many faith communities.

This was the first personal appearance by Senator Clinton at the dinner. Last year she offered a recorded greeting to the group that was circulated to *Liberty* magazine supporters. Previous speakers at the event included Senator Sam Brownback, Republican of Kansas, and Representative Chris Smith, Republican of New Jersey. President George W. Bush had also sent video greetings to the Adventist Church.

Senator Clinton said, "With 14 million church members worldwide and 1 million here in the United States, you understand very well the importance of religious freedom and freedom of conscience. It is your work, often, on the front lines of religious liberty that helps to tell the rest of the world the story of the oppressed; in so many ways denied their rights to live and believe as they choose." She added, "I also want to thank the church for the work you do for people in need here in our country and indeed around the world. Your health-care system—something I care deeply about—is a great example of your living your faith."

Senator Clinton also singled out the Adventist congregation in Pearl River, New York, whose "soup kitchen and food pantry had served over 1,800 children and over 2,100 adults, and I thought that it was so appropriate that they would come to give thanks for their ability to provide this necessary service for others."

Editor Lincoln Steed informed attendees of the significance of Liberty's 100 years.

Guest speaker for the event was Senator Hillary Clinton

James Standish, executive director of the North American Religious Liberty Association, praised Senator Clinton for her steadfast support of the Workplace Religious Freedom Act (WRFA), a bill the Adventist Church supports. Standish noted that in the United States, three Adventists every day, on average, lose their jobs over Sabbathkeeping issues. The WRFA is designed to protect the rights of people of faith, including Sabbathkeepers, in the workplace.

Standish also commended Senator Clinton for promoting religious freedom abroad and at home, particularly as a cosponsor of the WRFA, reintroduced last month by Massachusetts senator John Kerry, the 2004 Democratic Party U.S. presidential candidate, and Senator Rick Santorum, Republican of Pennsylvania.

"I hope that this will be the year that we will be successful in passing this," Senator Clinton told the audience, which included diplomats from more than 30 nations, representatives from the White House and the U.S. Department of Justice, 11 representatives from the U.S. Commission on International Religious Freedom, Adventist religious liberty workers, and many regional world presidents of the Adventist Church, along with representatives of other faiths, including Islamic, Jewish, Catholic, and Protestant groups.

Attorney James Standish, legislative liaison for the Adventist Chruch and Dr. John Graz, world director of Religious Liberty for the church, with Senator Hillary Clinton

She also praised moves toward democracy in both Iraq and Afghanistan and said that religious freedom must be a part of the new Iraq: "We must support their efforts to create a democratic government that does protect religious freedom as they attempt to fashion a constitution and a system of government that provides for their beliefs and their tenets of faith, but does so in a context of respect for others."

"It runs against their traditions in many instances, and they will have to be very statesmanlike in order to create new space for diversity, for pluralism, for tolerance. And we must help them accomplish that," she added.

Senator Clinton is welcomed to the event by Attorney Standish and Liberty Editor Steed.

Following Senator Clinton's address, *Liberty* editor Lincoln Steed offered an explanation for 100 years of the publication's outreach to government officials in the United States and abroad.

"*Liberty* magazine for 100 years now has held up this ideal, this dynamic of religious freedom supported by the separation of church and state. We can see that a lack of separation, an amalgamation of church and state, leads directly to religious intolerance. It leads directly to violence, genocide, all of these problems that our world is grappling with," he said. "We want. . . people to be exposed to the rationale of religious freedom the rationale that all religious activity is to be private and not meddled in by the state."

The dinner also featured awards to several people who have helped in the struggle for religious freedom: Bert B. Beach, former Public Affairs and Religious Liberty director for the Adventist Church; Roger W. Coon, a grassroots activist for religious freedom; Roland Hegstad, longtime *Liberty* editor; Richard L. Fenn, a retired religious liberty director; and Ambasador Robert Seiple, former head of World Vision and the first United States ambassador for religious freedom.

Seiple told the dinner audience that respect for the beliefs of others, and not mere tolerance, was required.

"We need to understand our faith, and we need to respect the faith of our neighbors. Respect leads to a celebration of all that we have in common, leading to the fact that all of us here have been created in the image of God," he said.

First ever U.S. Ambassador for Religious Freedom, Dr. Robert Seiple, was given an "Honor" citation by Dr. John Graz on behalf of Liberty and the IRLA

The state of Maryland, home to the IRLA and *Liberty* magazine, offered its own recognitions of religious freedom at the banquet. Elisha Pulivarti, executive director of the Governor's Office on Asian-Pacific American Affairs, brought a commendation from Maryland governor Robert L. Ehrlich, Jr., to IRLA secretary-general John Graz, "The commitment and selfless dedication to the promotion of religious liberty around the world and in appreciation of your significant and positive contribution to the society at large."

Editor Steed and a representative from the governor's office hold a proclamation in honor of Liberty magazine issued by Maryland Governor Robert L. Ehrlich, Jr.

Editor Steed reads the text of an award honoring longtime Liberty editor Roland Hegstad. His daughter Kimberly Handel accepted on his behalf.

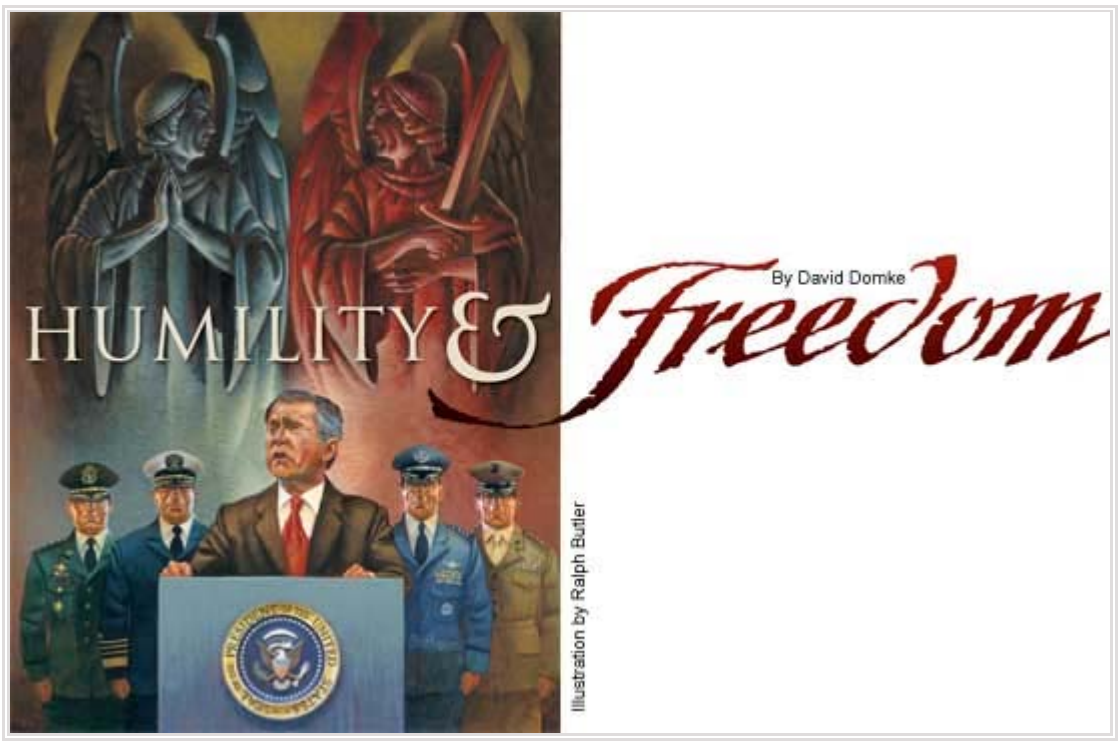
Of *Liberty* magazine, for which he proclaimed a day in its honor, the governor said, "*Liberty* magazine has made valuable and significant contributions in promoting tolerance and acceptance in promoting religious liberty in the world at large."

Mark Kellner, a journalist and communications specialist, writes from Silver Spring, Maryland.

SEPTEMBER / OCTOBER 2005

Humility And Freedom

BY: DAVID DOMKE



Since the evening of September 11, 2001, when George W. Bush quoted Psalm 23 and declared the day's events to be the opening salvo of a cosmic struggle of good versus evil, there has been a heated public debate about his openly religious language. *Standard and appropriate, or unusual and dangerous?* The latter, say more than 200 U.S. seminary and evangelical leaders who last October signed a petition condemning what they called a "theology of war" regarding the administration's convergence of God and nation in the campaign against terrorism. One of the signers is Sojourners magazine editor-in-chief, Jim Wallis, whose book God's Politics: *Why the Right Gets It Wrong and the Left Doesn't Get It* became a national best seller in early 2005. In chapter one Wallis says this: "I have never seen such outrageous behavior by a political party in trying to manipulate religion for its own agenda while so disrespecting the faith of millions of other believers who disagree with the Republican political agenda." Not so, say many administration officials and supporters who consistently have claimed that President Bush's mixture of religion and politics is nothing new in the American presidency. Reverend Richard John Neuhaus, editor of the journal *First Things*, told the Washington *Post* last September that "there is nothing that Bush has said about divine purpose. . . that Abraham Lincoln did not say. This is as American as apple pie." Similarly, Michael Gerson, Bush's primary speechwriter during his first term, told a group of journalists in December that "it's not a strategy," "it's also not new," and "I don't believe that any of this is a departure from American history." Perhaps both have a point.

The Gospel of Freedom and Liberty

A useful entry into this debate might be the words of the president as he began his second term in the Oval Office. In his January inaugural address, Bush used the words "freedom" and "liberty," in some form, 49 times. Two weeks later in his State of the Union address, it was 34 times. Say this for the president: He can hammer home a message.

Among these instances was this declaration in the inaugural: "We have confidence because freedom is the permanent hope of mankind, the hunger in dark places, the longing of the soul. When our Founders declared a new order of the ages; when soldiers died in wave upon wave for a union based on liberty; when citizens marched in peaceful outrage under the banner 'Freedom Now'—they were acting on an ancient hope that is meant to be fulfilled. History has an ebb and flow of justice, but history also has a visible direction, set by liberty and the Author of Liberty."

In emphasizing a higher power along with freedom and liberty, Bush is, as his supporters contend, doing nothing new.

Freedom. Liberty. God. These emphases by Bush are as mainstream as one will find in U.S. presidential rhetoric. Only one inaugural address, George Washington's second, makes no mention of a divine presence. Similarly, freedom and liberty are principles deeply ensconced in the American experience and identity, enshrined in more than 500 literal symbols of liberty and freedom, according to Brandeis University historian David Hackett Fischer. In emphasizing a higher power along with freedom and liberty, Bush is, as his supporters contend, doing nothing new.

However, that is not the whole story. For while Bush's points of emphasis are not uncommon for the presidency, the way in which he connects God with freedom and liberty is distinctive. And dangerous, some might reasonably argue. Let's think about this for a moment.

The president offers a distinctly evangelical worldview regarding the appropriate role of the United States in the post-September 11 world. Central to this outlook is the "Great Commission" biblical mandate, in the book of Matthew, to "go therefore and make disciples of all the nations" (28:19, NKJV).* In the eyes of Bush's core political constituency, Christian conservatives, the desire to live out this biblical command has become intertwined with support for the principles of political freedom and liberty. In particular, the individualized religious liberty present in the United States (particularly available historically for European-American Protestants) is something that religious conservatives long to extend to other cultures and nations.

In the 1980s fundamentalist preacher and leader Jerry Falwell argued that the dissemination of Christianity could not be carried out if other nations were Communist—a perspective that provided a good reason to support Ronald Reagan's combination of a strong U.S. military, conservative foreign policy, and the spreading of individual freedoms. In that era Falwell told his flock that they could "vote for the Reagan of their choice." Falwell echoed this perspective in 2004, saying in the July 1 issue of his e-mail newsletter and on his Web site, "For conservative people of faith, voting for principle this year means voting for the reelection of George W. Bush. The alternative, in my mind, is simply unthinkable."

The certitude in the support for Bush by Falwell (and by other Religious Right leaders such as James Dobson, Pat Robertson, and Gary Bauer) is emblematic of fundamentalists' confidence that their understanding of the world provides what religion scholar Bruce Lawrence terms "mandated universalist norms" to be spread across cultural and historical contexts. For Bush and the Religious Right, those norms first and foremost are U.S. conceptions of freedom and liberty. Since September 11 these values have gained a special resonance among Americans—and the administration—because of genuine ideological, as well as strategic, reasons. Since the attacks Bush has often done what other presidents have rarely done: claimed that the freedom and liberty he seeks to spread is God's will for the world.

Consider a few examples:

In his address before Congress and a national television audience nine days after the terrorist attacks, Bush declared, "The course of this conflict is not known, yet its outcome is certain. Freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them."

In the 2003 State of the Union address, with the conflict in Iraq imminent, Bush declared, "Americans are a free people who know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world; it is God's gift to humanity."

In his address at the Republican Party Convention in September 2004, Bush made this claim: "I believe that America is called to lead the cause of freedom in a new century. I believe that millions in the Middle East plead in silence for their liberty. I believe that given the chance, they will embrace the most honorable form of government ever devised by man. I believe all these things because freedom is not America's gift to the world; it is the Almighty God's gift to every man and woman in this world."
And as he began his second term, Bush in his inaugural called God the "Author of Liberty," then two weeks later in his State of the

Union address said: "We live in the country where the biggest dreams are born. The abolition of slavery was only a dream—until it was fulfilled. The liberation of Europe from fascism was only a dream—until it was achieved. The fall of imperial communism was only a dream—until, one day, it was accomplished. Our generation has dreams of its own, and we also go forward with confidence. The road of Providence is uneven and unpredictable—yet we know where it leads: It leads to freedom."

Some might wonder if many of these words should be attributed to Gerson, a graduate of evangelical Wheaton College who was hired in 1999 by Bush and subsequently became the primary speechwriter for the White House. The words are Bush's.

Bob Woodward, in his book about the administration's push toward Iraq, *Plan of Attack*, includes this quote from Bush: "I say that freedom is not America's gift to the world. Freedom is God's gift to everybody in the world. I believe that. As a matter of fact, I was the person that wrote the line, or said it. I didn't write it, I just said it in a speech. And it became part of the jargon. And I believe that. And I believe we have a duty to free people. I would hope we wouldn't have to do it militarily, but we have a duty."

A New Manifest Destiny?

The claim that the U.S. government is doing God's work may appeal to many Americans, but it frightens those who might run afoul of administration wishes-cum-demands. This is particularly so when one considers how declarations of God's will have been used by European-Americans in past eras as rationale for subjugating those who are racially and religiously different, most notably Native Americans, Africans, Chinese, and African-Americans.

Indeed, religion scholar R. Scott Appleby in 2003 declared that the administration's omnipresent emphasis on freedom and liberty functions as the centerpiece for "a theological version of Manifest Destiny." If so, one must note the risk of repeating today what previous versions of Manifest Destiny did in the past: unduly emphasizing the norms and values of White religiously conservative Protestants at the expense of those who will not or cannot conform. At a minimum the president's rhetoric has, by implication, transformed Bush's "Either you are with us, or you are with the terrorists" policy to "Either you are with us, or you are against God."

Such a view sounds eerily similar to that of the terrorists we are fighting. Indeed, one might be hard pressed to discern how Bush's declarations that the United States is delivering God's wishes to the Taliban or in Iraq differ from the rhetoric of Osama bin Laden, that he and his followers are delivering God's wishes for the United States.

The answer, then, to whether George W. Bush's religious language differs from that of previous presidents lies in the details of the discourse. It's not in his choice of words; it's in how he puts the words together—which, of course, is always one short step from how he puts his policies together. One might hope that this president, who spoke after his reelection of spending his newly earned "political capital," might recall the words of Saint Augustine of Hippo to a student: "I wouldn't have you prepare for yourself any way of grasping and holding the truth other than the one prepared by Him who, as God, saw how faltering were our steps. That way is, first, humility; second, humility; third, humility; and as often as you ask, I'll tell you, humility."

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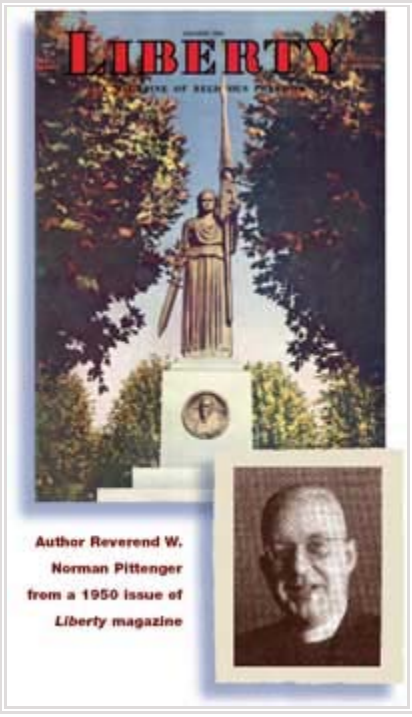
SEPTEMBER / OCTOBER 2003

The Other Side

In recent years we have been seriously concerned, in the United States, with the preservation of our religious liberties. For the most part this interest has expressed itself in our urgent attention to the problems of minority groups, whose rights have sometimes been imperiled—the Jehovah's Witnesses are a case in point here. More and more, within the past few years, another aspect of the problem has been posed—the way in which certain religious groups have appeared to invade the territory that by our national traditions has not been exposed to denominational control. The cases that have been argued in certain of the Southwestern states, and the unprecedented demands that have been made for provision of federal or state funds for denominational schools, have had our attention. Lovers of the American tradition have concentrated their interest so much on matters of this sort that the "other side" of the question of religious liberty may not have been as vividly and plainly before their eyes as it might well have been.

The "other side," then, is the way in which the liberties of religious bodies in America have seemed to be imperiled by a new kind of threat—new at least in our own country. This is the increasing substitution of an adulation of our national welfare, our American way of life, and our democratic institutions in the place of the religious orientation that all the great traditions represented in our land have stressed as central. In the earliest days of Christianity this very same threat faced the primitive church: the Roman Empire demanding and expecting to receive the reverence, even the worship, of its citizens. The early Christians were faced with the choice of worship of God, as they found Him revealed in Jesus Christ, or worship of Caesar under the name of "the genius of the Roman Empire." It was such a little thing: just to drop a grain of incense before the statue of the emperor. But the Christians refused and were prepared to go to martyrdom rather than give up their worship of the one true God. Not even by a look or gesture would they be disloyal.



Author Reverend W. Norman Pittenger from a 1950 issue of *Liberty* magazine

In Hitlerian Germany the German *Volk* and their destiny were held up as the unconditional object of adoration, and a German citizen who was unwilling to make this gesture of reverence to the spirit of the German people imperiled his life. A not dissimilar practice obtained in Japan, where the Mikado—who represented the *ethos* of the Japanese people, and was supposed to be a descendant of the sun goddess—received the same sort of veneration as part of a state cult. Now, it may seem far-fetched, but there are many of us who fear that the pressures of our international situation and the confidence that Americans have in their national place and destiny may lead to something of the same sort in our own land.

More than one illustration could be given; the most startling is perhaps the way in which such documents as the recently issued guide for chaplains of the armed services, which the writer has had the opportunity of studying, appear to place the national American values and the democratic way of life in a position equal to, if not by implication superior to, the particular religious groups that the chaplains may represent. Or again, the plain statement by educational leaders who, like Dr. Meiklejohn in his book *Education Between Two Worlds*, would have us believe that religion is no longer a possibility, and that the aim of education is to produce good citizens of the democracy whose meaning for life will be found in their understanding participation in the life of the country. And it may not be amiss to remark that the fashion in which certain patriotic exercises have now more and more acquired an almost religious fervor, is related to this same tendency.

Many years ago Professor Carleton Hayes wrote a book in which he said that there was real danger that in America "nationalism would be our new religion." He spoke of the new holy days, which are our national holidays; the new sacred scriptures, which are the writings of the Founders; the religious rites, which are the various patriotic ceremonies in which we engage. He might have mentioned the religious heresies, which today seem to demand that what used to be called religion shall be subordinate to loyalty to the nation.

It all seemed a little silly, a little impossible, when Professor Hayes wrote the book. But there are signs that it is not so silly, not so impossible as it then seemed. Perhaps the best thing that any one of us can do is to watch out carefully and see that we are not letting our young people or (if we are ministers) our congregation come to believe that Christianity is important, and indeed has value, solely because it is the bulwark of America, and therefore is adjectival to what is taken to be the real substantive: the nation and its destiny.

In other words, we have a twofold war to wage in these days. We must see to it that no religious group, however powerful in numbers, assumes the position of dictator; on the other hand, we must see to it that the national culture, the *genius* of the American people, and the values that rightly we esteem are kept in their proper places. America cannot be our religion; it cannot take the place that belongs to God alone. We can support and defend our nation, and we must be ready to do this, but we dare not let it take the place in our thought

and in our reverence that belongs to the God of creation and redemption alone.

Some people may think that all of this concern is evidence of an unbalanced mind or token of a false perspective. And yet if we attempt to read the signs of the times and note the way the wind is blowing, we shall see that the danger is with us. We shall be ready to do all in our power to curb the encroachment of national pride, power, and position upon the sphere that belongs to God only. We shall say, vigorously and bravely, that we owe to Caesar only the things that are Caesar's, and that Caesar holds his place only under God. No created thing can rightfully claim, not even our beloved country, the final allegiance that belongs to God.

No state, no national pride, no values of a mundane sort, no way of life that is not God's, can ask from us the reverence that belongs only to Him who has created us.

Let us, then, keep our eyes open, our ears alert. While we must not for a moment abate our effort to secure freedom of religious allegiance and freedom of religious expression, let us remember that we must also fight to maintain freedom for religious commitment to God; and let us insist, in season and out of season, that no state, no national pride, no values of a mundane sort, no way of life that is not God's, can ask from us the reverence that belongs only to Him who has created us and who (as we Christians believe) has also redeemed us.

Somebody once said to the writer, "You are an Episcopalian, and yet on this church and state business you talk like a Baptist." Well, the answer to that comment is simply that names do not matter, and that any Christian who recognizes the true significance of his faith, no matter what his name or his particular denominational loyalty may be, cannot be quiet when he sees the sovereignty of God threatened or questioned. As American citizens, we have the right and duty to see to it that our nation shall recognize the fact that religious liberty means freedom to worship God and to accord Him that supreme place which belongs to no man, to no nation. None of this means any lack of love for or loyalty to our land. It simply means that God is supreme and that this fact must never be overlooked or forgotten.

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An article from Liberty magazine, 1950