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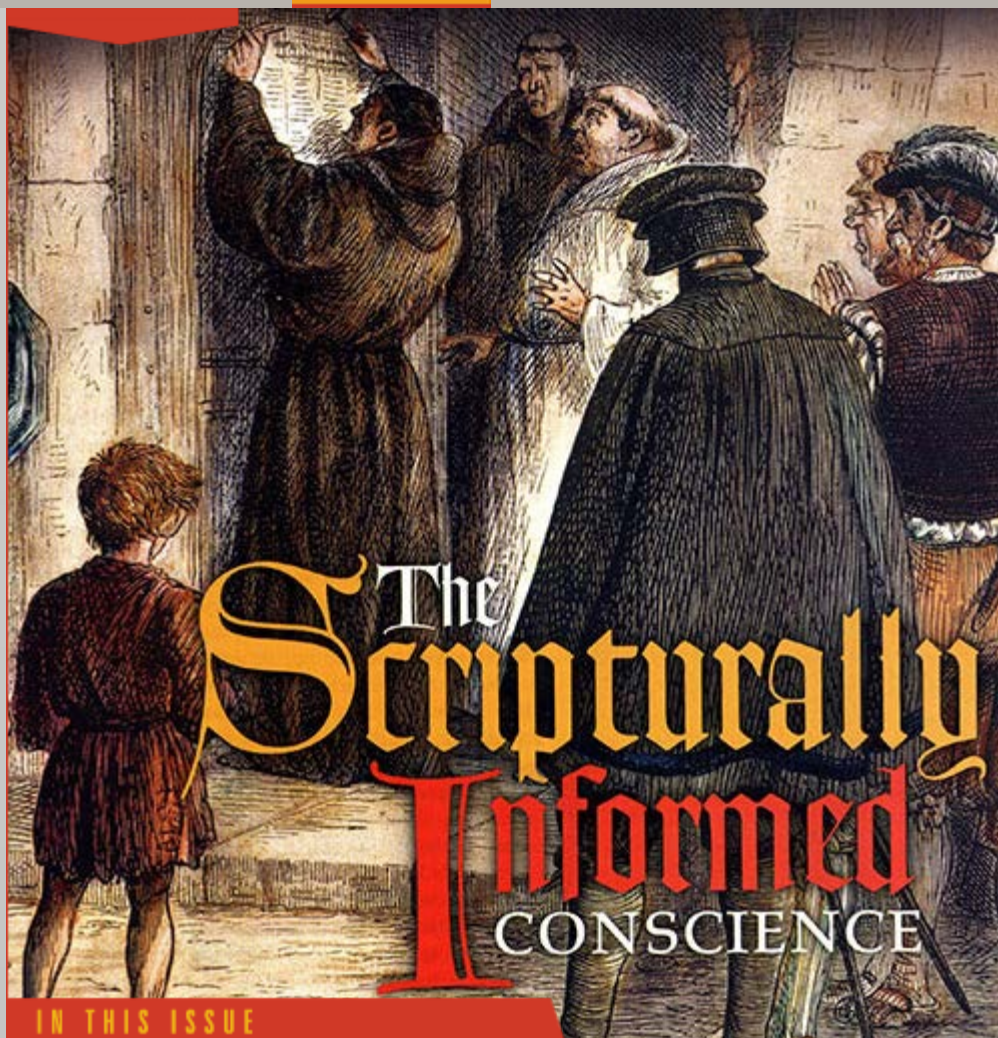
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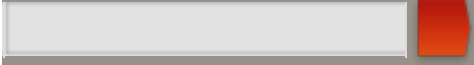
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MAY / JUNE 2007

A State Of Exception

BY: ENGIN OBUICIC

The Guantánamo Bay detention centre, set up in January of 2002 at the U.S. naval base in southeast Cuba, has recently seen its fifth anniversary. Established by the U.S. government as an urgent response to terrorism, the detention centre has given rise to allegations of indecent treatment of inmates, religious discrimination, and indeed, torture.

Common criticism of the Guantánamo affair pertains to the incarceration of detainees without trial, coupled with the incidents of torture and personal humiliation. To the international public Guantánamo, or Gitmo, as it is called, stands not only as a troubling disavowal of elementary humanitarian standards but as a significant breach of democratic norms. The head of Britain's judiciary, Lord Falconer, "denounced Guantánamo Bay as a 'shocking affront to democracy'" and cautioned that "nations must not sacrifice values in the fight against terrorism"

This has become evident in the controversial treatment of Guantánamo detainees who are being held without substantiated charges and without ethically independent legal representation. They have neither been relocated elsewhere nor have they been granted any truly satisfactory legal interpretation of their incarceration. ."

Ironically, Guantánamo has been set up by the government of a nation which has a democratic constitution. The basic norms for Western-style democracy require that every individual has the right within the judicial framework to legal and public representation. Every individual is a subject visible to the legal order of the democratic state. Their full visibility and participation in the legal system is respected and indeed foundational to Western democracy. However, when a democratic system permits the removal of these basic legal rights, it does so in the context of the so-called "state of exception."

A state of exception is a form of governance characterized by suspension of the democratic legal process in a favor of "extra judicial state violence" against specified groups. It depends upon a certain political climate and may arise in any democracy. States or nations are by their very nature organisms of self-assertion and identification. Geographic boundaries are not the only means by which a state or nation identifies and separates itself as an independent governing body. Encoded within nations is a clear awareness of normalcy as endorsed by the status quo. Any rupture to the norm has the potential to provide a threat to what is seen to characterize the proper function of the state. When a threat is detected by the state or nation, a response is made that results in a shift of attitudes relating to the group in question. Accordingly a perceived threat to the norm instigates a complete paradigm shift. In an attempt to reconsolidate the norm, the political-legal system institutes "extreme measures" resulting in the marginalization, or incarceration of the threatening elements.

Guantánamo stands as a direct consequence of a form of governance characterized by suspension of the democratic legal process in favor of extrajudicial measures against specified groups. Integrated in the penal system, the Guantánamo inmate is an exemplary element subject to "extreme measures" legalized by the state of exception. According to his legal status, the Guantánamo inmate is synonymous with numerous historical examples of groups and individuals marginalized for their convictions and affiliations: Huguenots, Basques, Kurds, Jews, Christians, Muslim groups, Gypsies, illegal immigrants, African refugees. However, the Guantánamo case is not limited to the current political ambience. It is a potential prelude to situations that may deny the political convictions and civic values of given minority groups.

Consider the following example:

The biblical writer Matthew specifies a group that will eventually become subject to the state of exception. This minority will not be integrated into the legal order:

"Nation will rise against nation, and kingdom against kingdom.

"There will be famines and earthquakes in various places.

"All these are the beginning of birth pains.

"Then you will be handed over to be persecuted and put to death, and you will be hated by all nations because of me" (Matthew 24:7-9,

New International Version).

From an impartial statement of fact in verse 7, we rapidly move to verse 9, which identifies the persecuted minority. The "you" of verse 9 are those who are one day to be handed over, persecuted, and put to death—hated by all nations. According to the text, this group of Matthew 24 will live at a time "in which the rule of law is routinely displaced by the state of exception, or emergency, and people are increasingly subject to 'extrajudicial state violence.'"

This prompts us to pose the following question: What judicially allows a state to hand over, persecute, execute, and hate or, in Agamben's terminology, "eliminate" others?

Agamben contends that a democratic state may transform into a totalitarian state. When this change occurs, the state of exception culminates in a routine "suspension of law."

The totalitarian state therefore allows for "extrajudicial" violence, which includes persecution and elimination of threatening civic elements that resist integration into the political system. This state of exception provides the context which permits the implementation of extrajudicial forms of legalized violence.

Agamben concludes:

"We can define modern totalitarianism as the institution, by way of a state of emergency, of a legal civil war that permits the elimination not only of political adversaries, but whole categories of the population that resist being integrated into the political system."

Should current political trends be retained as relevant political options, whereby "the rule of law is routinely displaced by the state of exception, or emergency," they will continue to be used as a warranted legal mechanism, by any nation or state, a mechanization that allows for the marginalization, isolation, and aggressive persecution of identified groups. It seems plausible that the state of exception will become a more routine reality for now unspecified minorities, religious and otherwise, who will find themselves subject to such extrajudicial processes.



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Sarah Lobegeiger holds degrees in English Literature and Language and Culture, from Curtin University of Technology, Perth, Australia.

Note: The legal terminology in the article has been reviewed and approved by Aleksandar Vukovic, the former bureau chief for case law of the European Court in Strasbourg, at Supreme Court BH.

1 *Sydney Morning Herald*. "Guantánamo: an Affront to Democracy," 27 January 2007. www.smh.com.au.

2 See Agamben, Giorgio, "State of Exception" (The University of Chicago Press, 2004).

3 Bull, Malcolm, *London Review of Books*, 4 September 2006. www.press.uchicago.edu/Misc/Chicago/009254.html.

4 *Ibid.*

5 Bull, *loc. cit.*

6 *Ibid.*

7 *Ibid.*

8 Bull, *loc. cit.*

MAY / JUNE 2007

Freedom Wings

BY: LINCOLN E. STEED



Benjamin Franklin knew a lot about kites and electricity. And he wrote enough pithy sayings to forever confuse them in the mind of the Biblical speed reader with Solomon's opus. But he has come to occupy the comedian's end of the Audubon spectrum for his promotion of the Turkey for National Bird. I still remember the almost testosterone thrill that went through the construction crew on my summer job a few decades ago each time the boss announced that the eagle was about to fly. Shakespeare aside, I don't think a dollar by any other name would fly. What was Ben thinking of? Not F16s and the projection of power, I'll warrant.

Gauging the national mood is always an inexact science. They say that elections do it well; but when only a minority of a population actually votes the result can be less than definitive. I'll admit to gleaning some of my benchmark opinions about public mood from such things as supermarket checkout-counter publications, what people are watching on the TVs in auto sales showrooms, and what the callers are offering on talk radio. . "

And let me tell you, the talons are out. This bird of pray(sic) is ready to stretch its wings a bit and do what eagles are supposed to do. After all, it's the American way. The way God meant it to be!

Excuse my note of irony, but I have to inject some, since those same sentiments as I've been hearing them on talk radio don't carry anything but certainty.



Every week *Liberty* hosts a one hour radio program aired on Sirius satellite radio. We call it *Life Quest Liberty*. The topics are varied. The response also varies with the topic. However things came alive last week when we discussed pacifism and the right to be a conscientious objector to war. I was surprised by two things. First and happily there was no particular animosity to conscientious objectors—mostly I fear because they have become invisible if not absent. The second surprise was the easy acceptance of the notion that any war we wage is just and is the natural right of a Christian nation. In fact it was said that we are fulfilling God's will for our national destiny this way.

There is a naiveté in this that I find baffling. We are, after all, engaged in a very real struggle with an emergent form of Islamic radicalism which hold that decapitating civilians and blowing up men, women and children in various suicide attacks is the very will of God and absolutely justified because it will advance the cause of piety. We call this terrorism and right-thinking Muslims decry it as anything but the will of God.

Surely, for our good sons to be enlisting in any state-sponsored militarism—no matter how justified by legitimate national interest—with

the idea that this is furthering God's will is to tread into the mindscape of the current enemy. I am reminded of the old hymn, which called to piety with the line "not with sword's loud clashing; but with deeds of love and mercy."

A lifetime ago now, people of faith had to face the militarism which eventually engulfed all of Europe and most of the rest of the world in World War II. Historians know that most of our present moral certitude about its issues was absent or constantly shifting in the buildup to war. Americans forget that at times they were inclined in sympathy to Germany, that in spite of ongoing manipulation of public opinion by both Churchill and Roosevelt, it took Pearl Harbor to precipitate action—at which point warfare with Germany, the Axis partner, was automatic.

We forget that news of the Holocaust, while it began to filter out before war's end, was not truly realized till occupying troops stumbled upon the camps. We also now know that for several "good reasons"—such as a desire to bottle up the refugees in Europe and complicate German logistical problems, America and England restricted Jewish emigration and public knowledge of the situation.

We forget, too, that dealing at first from the frustration of weakness but later from the arrogance of power the allies resorted to wholesale firebombing of civilian centers in both Germany and then Japan. Robert McNamara sadly recounts in a recent documentary discussions he and others had at that time; hearing that if they were to lose the war they would be convicted as war criminals. Thankfully we had Nuremberg and the end of Nazism. But my point is that the moral landscape of war is not clear-cut—and we do the devil's business by claiming a mandate from God in its prosecution.

Abraham Lincoln remarked famously on the fact that in the civil war both sides prayed to the same God for help and felt they had His backing. They could not both be on the side of the Almighty. Maybe God and Heaven sighed equally at the horrors of both combatants.

I have long been inspired by the moral leadership shown by the Theologian Dietrich Bonhoeffer as his country underwent a moral inversion and followed the Nazi leadership into the horrors of National Socialism. But I was impressed again the other day as I viewed a documentary tracing how Bonhoeffer resisted to the point of imprisonment in a death camp and to his eventual execution. (The mistake I think he made as a Christian was to become somewhat complicit in an attempt to assassinate Hitler.) The documentary had actual footage of church leaders—Roman Catholic, Lutheran, and other major protestant denominations—giving the Nazi salute and swearing fealty to the Fuehrer. Churches integrated, literally, the swastika into the cross.

Leaders told the faithful that it was God's will they support the state. They even decried the various plots against Hitler as against God. It was eerie to hear Hitler say that Christianity was the bedrock of the German state. And it is always salutary to remember how that nation rode toward the abyss on a false call to moral values—values that we well see now were wrested from both a sense of humanity and a true sense of the Divine.

It seems that the war in Iraq—regardless of its strategic necessity or political context—is destined to be as testing of the United State's self image as Vietnam was. Vietnam took place in an era when a generation questioned the spectrum of values presented by their political leaders and all authority figures. The draft brought the debate quite literally into the conflict. With an all volunteer army the debate largely disappears. It seems we are to be spared this time the sad rejection of the soldiers by large segments of the population. But equally we have been spared the debate over the use of violence itself and a conscientious objection, whether the individual is relieved of moral responsibility, and of course the whole debate over how this comports with a view of God's will. I am not so sure that a lack of debate is healthy.

The poet Gerald Manley Hopkins long ago painted a wonderful portrait of the moral landscape we inhabit—as well as the higher values we need to acknowledge—in "God's Grandeur."

I pray that somehow out of this time of trial we will reexamine our view of God and how we advance His cause in this era of shock and awe.

God's Grandeur

The world is charged with the grandeur of God.
It will flame out, like shiring from shook foil;
It gathers to a greatness, like the ooze of oil
Crushed. Why do men then now not reck his rod?
Generations have trod, have trod, have trod;
All is seared with trade; bleared, smeared with toil;
And wears man's smudge and shares man's smell: the soil
Is bare now, nor can foot feel, being shod.

And for all this, nature is never spent;
There lives the dearest freshness deep down things;
And though the last lights off the black West went
Oh, morning, at the brown brink eastward, springs—
Because the Holy Ghost over the bent
World broods with warm breast and with ah! Bright wings.

—Gerald Manley Hopkins

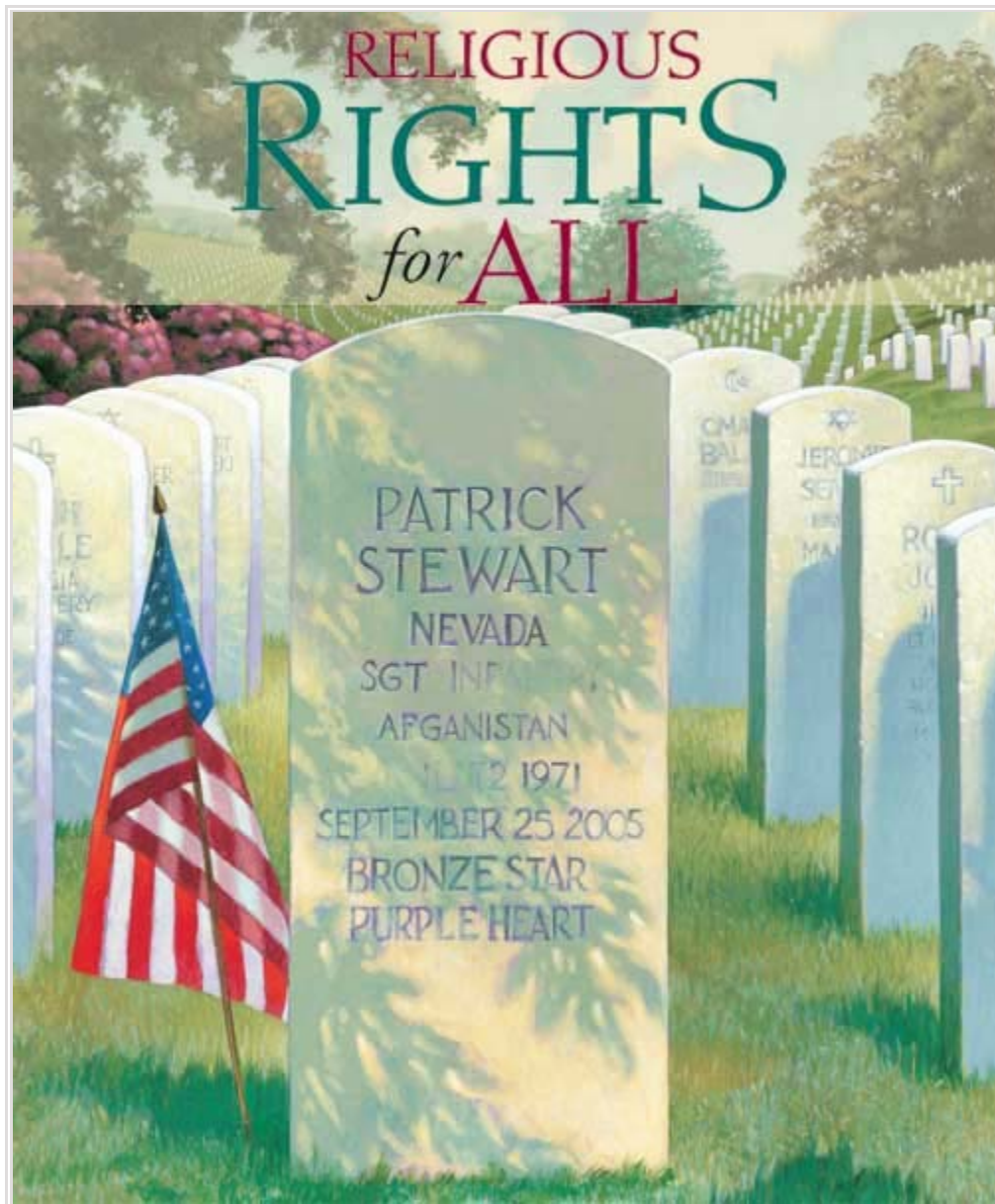


Lincoln E. Steed
Editor,
Liberty Magazine

MAY / JUNE 2007

Religious Rights For All

BY: JOHN W. WHITEHEAD



Sergeant Patrick Stewart, a 34-year-old decorated American soldier and follower of Wicca, was killed in Afghanistan on September 25, 2005, along with four other soldiers, when a rocket-propelled grenade struck his helicopter. For bravery in the line of fire, all five soldiers were posthumously awarded a Bronze Star and a Purple Heart.

Yet while the U.S. government recognizes that Sergeant Stewart should be remembered for his bravery and sacrifice, what Stewart's widow will remember is the fact that her husband died in service to a country that is denying him the right to religious freedom.

For Roberta Stewart, the year following her husband's death has been marked by her personal battle with the U.S. Department of Veterans Affairs to have the Wiccan pentacle, a five-pointed star surrounded by a circle, placed on Sergeant Stewart's memorial plaque at the Northern Nevada Veterans Memorial Cemetery.

Under federal guidelines, only approved religious symbols can be placed on government headstones or memorial plaques. Included

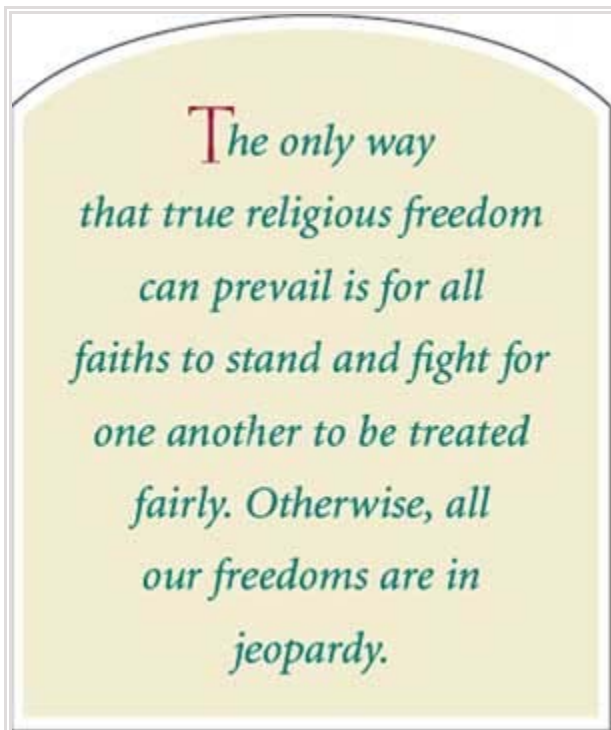
among the 38 approved symbols are those that represent such mainstream religions as Christianity, Judaism, Buddhism, Islam, and Hinduism. However, the list also includes more obscure religions such as Sufism Reoriented, Eckankar, Konko-Kyo Faith, and Seicho-No-Ie, as well as symbols for atheism and humanism.

In fact, memorial markers can include a host of religious imagery, including several types of crosses, a Buddhist wheel of righteousness, a nine-pointed Baha'i star, the Mormon angel Moroni, the flaming chalice for Unitarians, or the Islamic star and crescent. However, because no Wiccan symbol has yet been approved for inclusion on government headstones, Stewart's request to have the pentacle adorn her husband's plaque was denied.

Although Wiccans are not considered part of America's mainstream religious establishment, they are a growing minority—especially in the military. According to 2005 Defense Department statistics, approximately 1,800 active-duty service members identify themselves as belonging to the alternative religion that subscribes to magical activities and Earth worship.

The military has, in fact, made some attempts to accommodate the religious beliefs of its Wiccan servicepeople by including an explanation of the religion in the Army chaplains' handbook, allowing services to be held on military installations and even permitting soldiers to proclaim their affiliation on their dog tags. As journalist Hanna Rosin pointed out in "Should the Witches Be Welcome?" (a *Washington Post* piece on Wiccans in the military), "Far from clashing cultures, the Wiccans and the military coexist cheerfully. To the Army, the Wiccans are part of a proud American tradition, proof that 'people with different religious beliefs are all working together successfully.'"

Given the military's seeming willingness to support, as Rosin puts it, "soldiers who want to practice what the military calls, without passing judgment, 'minority' religions," the Department of Veterans Affairs' obstinacy over approving the Wiccan symbol for inclusion on headstones makes little sense, legally or otherwise. Whatever one's opinion might be about the Wiccan faith, there is no doubt that the First Amendment to our U.S. Constitution provides for religious freedom for individuals of *all* faiths.



The U.S. Supreme Court has routinely held that viewpoint discrimination by the government against particular expressions of religion is unconstitutional. In the Supreme Court's 1963 ruling in *Sherbert v. Verner*, Justice William J. Brennan observed: "The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs." In that same opinion, Justice Brennan wrote that "government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities."

Yet by refusing to place the Wiccan symbol on Sergeant Stewart's memorial plaque, while permitting symbols of other religions and nonreligions, the government is clearly engaging in viewpoint discrimination—which is not the right way to treat someone who has died in service to his country.

We cannot allow our fallen service personnel to be dishonored because of what they believe. That is why Roberta Stewart went on the offensive, waging her own personal battle in the halls of Congress, through the media, and eventually in court.

As a result of Mrs. Stewart's tireless efforts to honor her husband's memory and acknowledge his religious beliefs, the state of Nevada finally agreed to have a plaque constructed with the Wiccan pentacle for Sergeant Stewart

and added to the Veterans' Memorial Wall in Fernley, Nevada. The state's attorney general even went so far as to declare that federal officials have no authority over state veterans' cemeteries.

However, the Department of Veterans Affairs has yet to add the pentacle to its list of approved symbols. As a result, in November 2006 Stewart and the widow of a Korean War veteran who died last year sued the federal government for not allowing Wiccan symbols on their husbands' military headstones. A separate lawsuit filed by a Wiccan church charges that the government's failure to approve the Wiccan symbol, while accepting various other faith symbols, violates the First Amendment and the Religious Freedom Restoration Act.

Thus, for Roberta Stewart, the battle is far from over. Speaking to a gathering of approximately 200 friends and family at an alternative memorial service in honor of her husband, Stewart declared, "This is discrimination against our religion. I ask you to help us remember

that all freedoms are worth fighting for."

How do we remember? We do so by renewing our resolve to preserve and protect our freedoms. As President Ronald Reagan remarked while looking out upon a sea of headstones at Arlington National Cemetery on a Memorial Day many years ago:

"The sight before us is that of a strong and good nation that stands in silence and remembers those who were loved and who, in return, loved their countrymen enough to die for them. Yet, we must try to honor them—not for their sakes alone, but for our own. And if words cannot repay the debt we owe these men, surely with our actions we must strive to keep faith with them and with the vision that led them to battle and to final sacrifice."

If we are to keep faith with the other brave men and women who have died in service to the United States, then we must remember that all rights hang together. That is both the genius and the strength of the American system.

The Framers of our Constitution understood that religious freedom was for everyone. This is even more so today with the multitude of religions that dot the American cultural landscape. And the only way that true religious freedom can prevail is for all faiths to stand and fight for one another to be treated fairly. Otherwise, all our freedoms are in jeopardy.

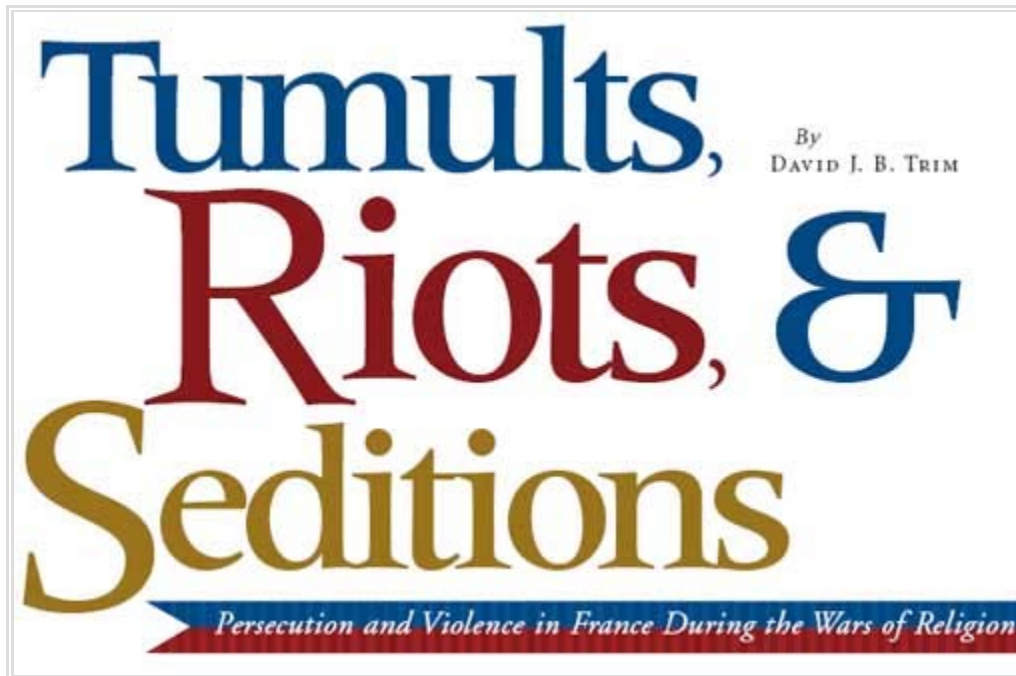


John W. Whitehead is founder and president of The Rutherford Institute, based in Charlottesville, Virginia.

MAY / JUNE 2007

Tumults, Riots, And Seditions

BY: DR. DAVID J. B. TRIM



The European wars of religion, which followed the Reformation and raged roughly from the early mid-sixteenth century to the later mid-seventeenth century, were marked by a range of atrocities, all carried out in the name of Christianity. Later generations realized the incongruity and attempted to shift the culpability for the violence to one side or the other of the confessional divide. That attitude, of attempting to fix the blame on Protestant or Catholic, is still influential, but it is misguided.

This article considers sixteenth-century France, which suffered more than most European countries from conflict in the name of religion. Divided between the majority Roman Catholic population and the minority Calvinist Huguenots, France was racked by civil wars (the French Wars of Religion) and by persecution and communal violence for most of the last 40 years of the sixteenth century. Peace came in 1598, with a remarkable (albeit temporary) experiment in religious toleration, effected by the Edict of Nantes. France in this period is, as one historian recently observed, "one of the most salient points in the history of persecution and pluralism."

While modern historical scholarship is less confessionally partisan than it once was, the preconceptions of historians brought up in a Catholic or Protestant milieu still present challenges to writing the history of the Reformation era. Furthermore, prejudices engendered by past generations are often more influential than the views of today's academics.

The books on my parents' bookshelves as I was growing up seemed to make it clear that Protestants were the good guys and Catholics the bad guys. When as a boy I first read that the Huguenot cavalry at the Battle of Dreux (1562) were clad in white cassocks, over their armor, it seemed only appropriate. Researching the period as a professional historian has given me a more balanced perspective, but jaundiced views are still widespread. Patrice Chereau's spectacular motion picture *La Reine Margot* (1994), which was both an artistic and a commercial success, including in English-speaking countries, reinforced the view that violence in France's *guerres de religion* was the fault of Roman Catholics. A counterpoint to this is the recent claim by Pope Benedict XVI that the Protestant reformers were responsible for a breakdown in a traditional Catholic consensus against compulsion or violence in the name of religion.

What, then, does history really reveal about religious violence during the French Wars of Religion?

Catholic Repression and Persecution

When considering the record of religious violence in late sixteenth-century France, at first guilt seems to lie overwhelmingly with those on the Roman Catholic side.



The 1540s saw mass executions of Protestants in many French towns. These were quasi-judicial proceedings against people convicted of heresy, but are striking because of the numbers put to death. And they were to be succeeded by less formal and more massive acts of brutality. In 1561, for example, when convicted heretics were released by royal decree, as part of a short-lived attempt to achieve compromise, in the town of Marsillargues a Catholic crowd rounded them up "and executed and burned them in the streets." Then in 1562, the First Civil War/War of Religion was triggered by the slaughter of a

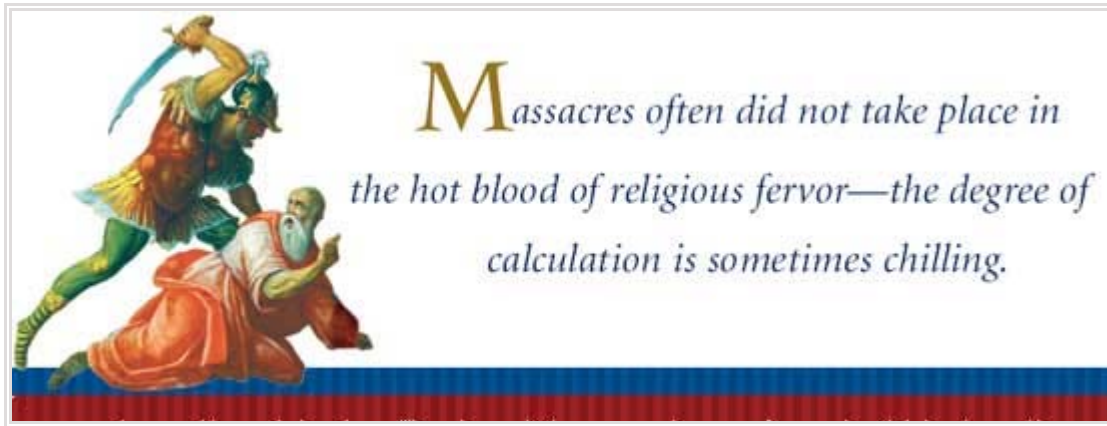
whole congregation of Huguenots, worshipping in a barn outside the small town of Vassy. It was the first of many massacres, of which the St. Bartholomew's Day Massacre in Paris (August 24, 1572) is only the best-known and most horrific. In less than 24 hours, some 3,000 Huguenots, including women and children and the elderly, were murdered by the king's troops, Catholic nobles and their retainers, and by the ordinary people of Paris.

In the weeks that followed the massacre in Paris, between 2 and 5,000 more Huguenots were killed across France as the news of the massacre arrived in the country's cities, setting off copycat massacres of the local Protestant populations. At Bordeaux the massacre occurred after a Jesuit preached a sermon "on how the Angel of the Lord had already executed God's judgment in Paris, Orléans, and elsewhere and would do so in Bordeaux." . "

Elsewhere, though, massacres often did not take place in the hot blood of religious fervor—the degree of calculation is sometimes chilling. In Rouen, for example, many of the Huguenots were in prison and Catholic zealots broke into the jail "and systematically butchered them." In Lyons the leading Catholic killers made public display of their bloodied clothing in the streets, being boastful, rather than regretful.

Where Catholics lacked the numbers or confidence to attempt to put all their confessional rivals to the sword, they used other tactics. Thus at Sens, in 1562, a mob, drawn from both the town and nearby villages, confronted the Calvinists coming out of church and engaged them in "a bloody battle." In Lyon the same year, Catholic boys stoned Protestant worshippers on their way to service. At Pamiers in 1566 a youth society performing a ritual in honor of Pentecost entered the Calvinist quarter as the local pastor was preaching, then began to sing "'kill, kill,' and serious fighting began that was [to last] for three days."

The violence spilled over even into the organized campaigns of the civil wars in which, in theory, the rule of war ought to have applied. But Louis de Condé, leader of the Huguenot cause up to 1569, was murdered as he tried to surrender after being unhorsed in the battle of Jarnac in March 1569. Two other Huguenot generals, Montgomery and Briquemault, were denied the rights of prisoners of war when captured in 1574; instead they were tried as traitors and executed by being broken on the wheel—judicially tortured to death.



As the distinguished American historian Natalie Zemon Davis has highlighted in her important study of religious violence in the *guerres de religion*,

Catholic violence went beyond the grave—not only Huguenot lives were taken, their dead bodies were desecrated.

In Normandy and Provence, "leaves of the Protestant Bible were stuffed into the mouths and wounds of corpses."

In 1568, when word spread that a Huguenot was about to be buried in a consecrated cemetery, "a mob rushed to the graveyard, interrupted the funeral, and dragged the cadaver off to . . . the town dump."

The corpse of Admiral de Coligny, the celebrated Huguenot leader whose murder was one of the first actions of the St. Bartholomew's Massacre, was mutilated, stoned, and hung on a gibbet before finally being burned.

At Provins in 1572, a Huguenot corpse had ropes tied to neck and feet and was then made the subject of a tug-of-war competition between the boys of the town, before they dragged it off to be burned.

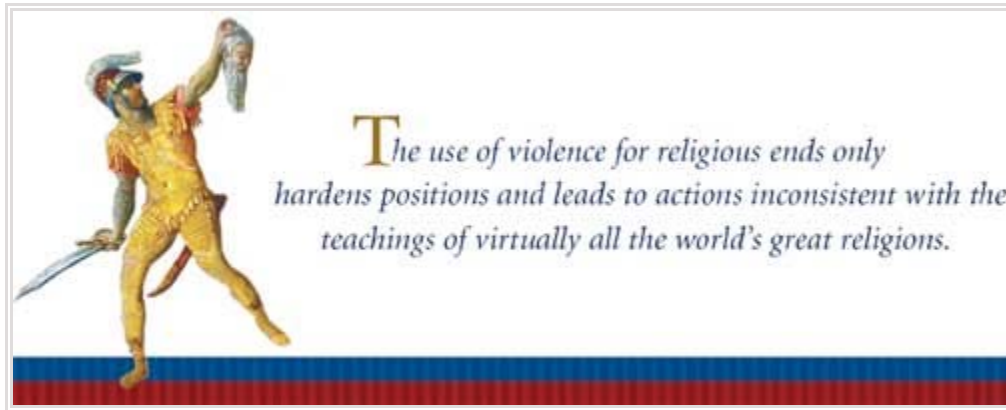
Elsewhere, it was commonplace for Huguenot bodies to be thrown into rivers or burned, but bodies were also mocked and derided as they were dragged through the streets to their fate, and frequently "had their genitalia and internal organs cut away."

All this is not the stuff of Protestant propaganda; it is well-documented historical fact. Furthermore, Catholic preachers and polemicists deliberately tried to whip up hysteria against the Huguenots, accusing them of rape, cannibalism, and infanticide; characterizing heresy as a pollutant, a cancer, or a contagious infection; and declaring that droughts, blights, and famines were God's judgment on those who would not cleanse the nation of the defiling disease of heresy. As the great political theorist Jean Bodin observed in 1583: "The eloquent tongue of a mutinous orator is like a dangerous knife in the hands of a madman."

It is easy, then, to portray the Catholic party in the wars of religion as a malign force—as oppressors and persecutors, with Calvinists as victims who only defended themselves.

Protestant Aggression and Intolerance

However, the Huguenots in fact were not guiltless—they were an active ingredient in the combustible recipe that produced the explosion of violence in late sixteenth-century France. In Rouen, just in 1560 and 1561, "there were at least nine incidents variously described in the documents as 'tumults,' 'riots,' and 'seditions,' . . . all of them arising out of actions" by the Huguenots. In Agen in 1561 Protestant artisans systematically destroyed the altars and statues in the town's Catholic churches. At Lyon a Calvinist shoemaker interrupted the Easter sermon preached by a Franciscan friar, crying out "You lie"—a claim punctuated by the gunshots of Huguenots waiting outside in the square. Throughout France, Protestants frequently interrupted masses or Corpus Christi Day processions to seize the host and crumble it before indignant Catholics (for whom, because it was Christ's literal body, this was a horrible blasphemy), proclaiming it "a god of paste" or "a god of flour," rather than the real body of Christ. Similar patterns were repeated often: Catholic religious processions were regularly showered with rubbish; they, like church services, were disrupted by psalm-singing, whistling, or slogan-chanting Protestants; and frequently churches were "cleansed," with offending objects deliberately desecrated with spit, urine, and excrement before being smashed. Priests, monks, and friars, or officers of the law holding Protestant prisoners, were often beaten up or killed, and occasionally even tortured to death.



It is not only what the Huguenots *did*; it is what they did *not* do. They were often unwilling to accept that Catholics were also sincere Christians and were unwilling to compromise on any points.

The most influential sixteenth-century French proponent of toleration of other Christians was a Roman Catholic, Michel de L'Hospital, Chancellor of France in the 1560s. He came to believe, genuinely and passionately, that toleration was what was right for followers of Christ, who, as De L'Hospital wrote, "loved peace, and orders us to abstain from armed violence. . . . He did not want to compel and terrorize anybody through threats, nor to strike with a sword."

In contrast, Calvin condemned the leading Calvinist advocate of toleration, Sebastian Castellio, as did prominent Huguenot pastors and theologians.

For that matter, Henri of Navarre's willingness to compromise his faith in order to end conflict was an important factor in ending the wars, but in so doing he provoked the condemnation of many Huguenots, both leaders and rank and file. Henri acted as he did partly to advance himself, in order to be unchallenged king of France (which he became as Henri IV), famously declaring: "Paris is well worth a mass." However, Henri also genuinely wanted to end decades of confessional conflict and it is unlikely that this could have been achieved without some compromises. Many Huguenots felt that Henri should have had faith in God and defied human logic, and a miracle might have been worked. Yet ultimately Henri's willingness to abjure was vital in ending religious violence. Which course of action, then, was the more in keeping with the example of our Lord? It's a perplexing question.

The Nature of Early-Modern French Religious Violence

None of this changes the fact that the Huguenots were much more sinned against than sinning in sixteenth-century France. Nineteenth-century Protestant writers were right in identifying the intolerance of the Roman Catholic majority as the motor that drove religious conflict in France.

First, Calvinist violence was often defensive, rather than aggressive. The nine civil wars resulted from the unwillingness of Calvinist nobles and congregations to allow fellow believers to be imprisoned, enslaved in the galleys of the royal fleet, or executed. The Huguenots never sought to impose Calvinism on the rest of France by force of arms, only to secure liberty of conscience and worship for themselves. Louis XIV was able to revoke the Edict of Nantes in 1685, ending France's experiment in religious liberty and driving the Reformed Churches underground, partly because a combination of military defeat and royal concessions led to the Huguenots disarming in the 1620s and 1630s, leaving themselves defenseless.

While at times Calvinists did initiate violence against Roman Catholic religious rituals or ecclesiastical officials, often in communal riots the Huguenots were simply defending themselves. Moreover, the worst outrages—the massacres—were *of* Calvinists, *by* Catholics, though this is not always apparent from Catholic historiography.

During his time as pontiff, John Paul II issued several apologies for wrongful actions by Roman officials in the past. Yet during his visit to Paris in August 1997, when celebrating a public mass on St Bartholomew's Day, he restricted himself to declaring, cautiously (and misleadingly), that on such a day, "one cannot forget the massacre of St Bartholomew, arising from very obscure motives in the political and religious history of France. Christians have undertaken actions that the Gospel reproves." Although the question of precisely who in the government and Catholic nobility was responsible for ordering the massacre remains much disputed by historians, there is no doubt of who did the killing and who were killed—and no doubt of its religious motivation.

Second, as Natalie Zemon Davis pointed out 30 years ago, there is a clear qualitative difference between the violence of Calvinists and

Catholics. France's Calvinists hoped to change the mind of the majority population; for them, Catholicism's sacred objects and leaders were the problem, because (as the Huguenots saw it) they misled the masses. And so Calvinists destroyed the host, icons and relics, to show that they were not imbued with divine power, and killed priests, because they were perceived to be leading the people astray. However, for French Roman Catholics, it was Calvinists themselves that were the problem. Killing Huguenots purged the country of what was perceived as pollution, or a cancer of the body politic, and was the first step toward recovering divine favor. This is why 3,000 Huguenots could be killed in Paris in 24 hours on 24 August 1572—a chilling parallel to the 3,000 killed in New York on 11 September 2001. With the smaller populations back then it was clearly an even more terrorizing moment in history.

In sum, whereas Catholic violence was directed *against* people, Calvinist violence was largely directed *against* things. It was therefore inherently always more limited than Catholic violence.

Yet the crucial facts are that Calvinists still perpetrated violence: they still murdered priests; they were still guilty of intolerance and oppression. While the distinction between the two forms of violence is an important one, we are, as it were, talking here about the lesser of two evils, not of a contrast between good and evil.

Conclusion

There is a part of me that thrills when I read the narrative of the Battle of Coutras (1589) by Agrippa d'Aubigné (the distinguished Huguenot historian, who was recording events in which he had participated), knowing that both the overweening arrogance of the Catholic League's army and the overwhelming numerical superiority on which it was based were about to be shattered by the moral superiority of the outnumbered but zealous Huguenot cavalry, chanting the 118th Psalm as they charged. But there is also a part of me that thrills when reading Michel de L'Hospital's heartfelt, gospel-based plea for acceptance of alternative points of view—and recognizes that De L'Hospital, a devout follower of Rome, was closer to the spirit of the Gospels than most members of the Reformed Churches.

Considering the experience of persecution and violence during the French Wars of Religion reminds us that the use of violence for religious ends, even if it is used moderately or to achieve apparently limited aims, will be counterproductive, because violence only hardens positions and leads to actions inconsistent with the teachings of virtually all the world's great religions. Violence and persecution should have no place in the arsenal of religious people seeking to convert others to their faith.

In addition, it is clear that seeking to pin blame on one side or the other in sixteenth-century France is misguided, because Protestants and Catholics alike failed to live up to the high standards of the One who declared: "You have heard it said . . . hate your enemy. But I say to you, love your enemies, bless those who curse you, do good to those who hate you and pray for those that spitefully use you and persecute you." Rather than seeking to determine who was more at fault, it is better to try to understand why so many true believers could act so contrary to the wishes of Christianity's founder and foundation. This will not only produce better historical understanding, but it may also yield insights into why the persecutory mentality is still far from dead today.



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2 Cf. D. J. B. Trim, "De Franse godsdienstoorlogen en de uitdaging voor partijdige geschiedenis," *Transparant: Tijdschrift van de Vereniging van Christen-Historici*, vol. 17, no. 3 (2006), pp. 4-8.

3 "Faith, Reason and the University: Memories and Reflections," *Regensburg*, Sept. 12, 2006, available at http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html.

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5 Davis, 167, 165, 172-3, 183; Philip Benedict, *Rouen During the Wars of Religion* (Cambridge & New York: Cambridge University Press, 1981), p. 128.

6 Davis, pp. 157, 162, 163, 179; Benedict, pp. 64, 67.

7 Quoted in Racaut, p. 70.

8 Benedict, p. 58.

9 Davis, pp. 163-4.

10 Eg., *Ibid.*, pp. 156-7, 171; Benedict, p. 61.

11 Davis, pp. 157-58, 160, 171, 173-4, 179-81, 183; Benedict, pp. 60-3, 67.

12 Quoted by Loris Petris, "Faith and Religious Policy in Michel de L'Hospital's Civic Evangelism," in *The Adventure of Religious Pluralism in Early Modern France*, ed. Keith Cameron, et al (New York, Oxford & Bern: Peter Lang, 2000), p. 137.

13 Eg., Ellen G. White, *The Great Controversy Between Christ and Satan* (1911; Mountain View, Calif., & Oshawa, Ontario: Pacific Press, 1950), pp. 276-77.

14 Quoted in Yvonne Roberts, *Jean-Antoine de Baïf and the Valois Court* (Bern & New York: Peter Lang, 2000), 80 (I owe this reference to Richard Bonney).

15 Davis, esp. p. 174.

16 Cf. Harry Leonard, "Reconsidering the St Bartholomew's Massacre, August 24, 1572, in Light of the Attack on New York, September 11, 2001," *Fifth Walter C. Utt Lecture, Pacific Union College, Angwin, Calif., 2002*.

17 Matthew 5:43, 44.

MAY / JUNE 2007

The American Government Vs. Religion?

BY: HAVEN GOW



A professor of religion at Texas Christian University, Ronald Flowers wrote in his book *That Godless Court* (Westminster/John Knox) how "In 1962 and 1963, as a reaction to its decision banning school-sponsored prayer in the public schools, the Supreme Court was frequently called 'godless.' Is that a fair representation of the High Court? Or is it more accurate to say that the Court was then and is now simply trying to maintain neutrality between church and state?"

In his book *Rights & Duties* (Spence), the late and eminent conservative Christian man of letters Dr. Russell Kirk insists that, contrary to some popular misconception, the Founding Fathers intended the First Amendment clauses pertaining to religion to promote and protect religion and religious freedom. Dr. Kirk observes: "(T)he first clause of the First Amendment never was meant to signify that the American government was indifferent to religions, or hostile toward it. . . . There is not national establishment of religion, but the American government acknowledges the benefits of religion and desires to encourage religious faith."

To buttress his position Dr. Kirk quotes U.S. Supreme Court Justice Joseph Story's comments in his *Commentaries on the Constitution* (1833): "Probably at the time of the adoption of the Constitution and of the First Amendment. . . the general if not universal sentiment in America was that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."

Justice Story's sentiments are reflected in the late liberal U.S. Supreme Court Justice William O. Douglas's majority opinion in the 1952 case of *Zorach v. Clauson*, which is reprinted in *Religious Liberty in the Supreme Court*, edited by legal scholar Terry Eastland and published by William B. Eerdmans Co.: "We are a religious people whose institutions presuppose a Supreme Being. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their

spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe." He added that "we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."

According to Dr. James Kennedy, senior minister, Coral Ridge Presbyterian Church, Fort Lauderdale, Florida, in word and deed our Founding Fathers demonstrated their belief in and support for the Judeo-Christian foundation of America. He points out that America's Founding Fathers and great presidents taught and tried to live by the principles of the Bible. Dr. Kennedy says this about President George Washington: "George Washington, the great founder of this nation, arose regularly and spent the time from five until six in the morning on his knees before a chair on which lay an open Bible. He retired every evening at nine o'clock to the same study, to the same chair, to the same open Bible."

This is what some other presidents have said about the Bible, the Word of God:

John Adams: "I have made it a practice every year for several years to read through the Bible."

Ulysses S. Grant: "Hold fast to the Bible as the anchor of your liberty; write its precepts in your hearts and practice them in your lives."

Theodore Roosevelt: "If a man is not familiar with the Bible, he has suffered the loss which he had better make all possible haste to correct."

Ronald Reagan: "Inside the Bible's pages lie all the answers to all of the problems man has ever known. . . . It is my firm belief that the enduring values presented in its pages have a great meaning for each of us and for our nation. The Bible can touch our hearts, order our minds, and refresh our souls."

Indeed, America's understanding of religious freedom and its importance is based on belief in and support for God, the teaching of the Bible, and a Judeo-Christian moral and religious foundation.

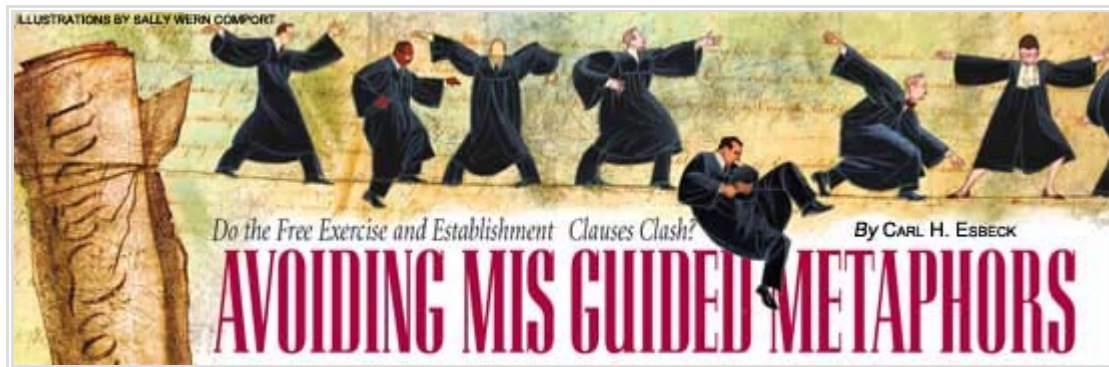


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MAY / JUNE 2007

Avoiding Misguided Metaphors

BY: CARL H. ESBECK



Even when the U.S. Supreme Court reaches the right result in a matter involving church-state relations, the justices too often do so for the wrong reasons. *Cutter v. Wilkinson* is illustrative. Handed down in May of 2005, *Cutter* reversed a lower court that had struck down as unconstitutional the Religious Land Use and Institutionalized Persons Act.

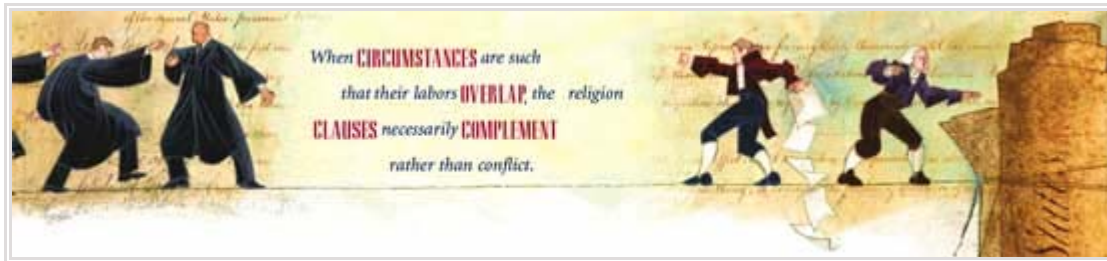
Known by the clunky acronym RLUIPA, this relatively new congressional statute tempers the impact of zoning decisions on religious organizations, as well as assists those individuals of faith who are incarcerated in our country's jails and penitentiaries. In these two quite distinct arenas where regulation is pervasive, RLUIPA requires that laws having a disparate impact on a religious organization or a particular religious observance must yield to the needs of the religious liberty claimant. This means that the religious claimant is exempt from the strictures of a law generally binding on others. The exemption holds, unless officials can show that the claimant should not be excused—even in just this one circumstance—because of likely serious public harm such as a traffic hazard or a prison security breach.

In *Cutter* the three-judge panel of the United States Court of Appeals for the Sixth Circuit reasoned that RLUIPA's exemption specifically for religious observance constituted a preference for religion, and that the no-establishment command in the First Amendment did not permit legislation to prefer religion over nonreligion. That is not the law, and there was little doubt that the Sixth Circuit's decision would not stand up on appeal. From a certain perspective, however, one has to empathize with the confused judges of the circuit court. In the Supreme Court's decision in *Kiryas Joel Board of Education v. Grumet* (1994), Justice Souter did say in oft-quoted obiter dictum that the Establishment Clause prohibits government from "favoring. . . religious adherents collectively over nonadherents." But the High Court, in its high-handed fashion, does not always mean what it says. In this instance it is a good thing. At the time of the *Cutter* appeal there were no less than three prior cases (and none to the contrary) where the Court held foursquare in favor of a congressional statute that exempted religious practices from legislative burdens that others had to bear. It is instructive to bring them to mind. In *Arver v. United States* (1918) exemptions from the military draft for clergy and seminarians were found not to violate the Establishment Clause. In *Gillette v. United States* (1971) an exemption from conscription into military service for those who oppose war in all circumstances was upheld. Finally, in *Corporation of the Presiding Bishop v. Amos* (1987) the Court approved a broad statutory exemption in a civil rights employment nondiscrimination act for religious organizations making staffing decisions based on religion.

The rationale behind *Arver*, *Gillette*, and *Amos* is simple enough: For regulatory legislation to exempt a religious practice is for Congress to leave religion alone. A state does not establish religion by leaving it alone. Indeed, for government to leave religion alone reinforces a separation between these two centers of authority—state and church—that is good for individual religious liberty, good for the autonomy of religious organizations, and good for the state.

The upholding of RLUIPA in *Cutter* should have been easy for the Supreme Court, just another increment in a lengthening line of precedent. It was not to be. In an opinion by Justice Ginsburg, a unanimous Court charted the task before it as "find[ing] a neutral course between the two Religion Clauses," which by their nature "tend to clash." Thus its assignment, as the Court saw it, was to determine if RLUIPA fell safely in the narrows where "there is room for play in the joints between the clauses" and thus there still remained "space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause."

Clearly the Court contemplates that the free-exercise and no-establishment principles run in opposite directions, and indeed will often conflict. It is as if the Court envisions free exercise as proreligion and no establishment as, if not antireligion, then at least tasked to hold religion in check. Such a view—wrongheaded, as I shall point out below—places the nine justices in the power seat, balancing free exercise against no establishment, in whatever manner a five to four majority deems fair and square on any given day. Such unguided balancing accords maximum power to the Court (or worse, power to one "swing" justice), while trenching into the power of the elected branches.



The view that the First Amendment's text, free exercise and no establishment, are frequently in tension, and at times are in outright war with one another, is quite impossible. The full powers of the national government are enumerated and limited, an original understanding later made explicit in the Tenth Amendment.

When ratified in 1791, the Bill of Rights did not vest more power in the national government. Rather, the fears of the Anti-Federalists, who had a significant voice in the First Congress, drove them to just the opposite objective: to deny to the central government the power to interfere with essential liberties (for example, speech, press, jury trial) that might otherwise be implied from the more open-ended delegations of power in the Constitution of 1787.

The Federalists, in turn, gave little resistance to this enterprise because their position all along was that the national government had not been delegated powers to touch speech, press, and religion in the first place. Indeed, James Madison, Jr., a Federalist at this time in his career and the principal theorist behind the 1787 Constitution, led the charge for a Bill of Rights.

The Federalists harbored a different anxiety, namely, to avoid a second constitutional convention as sought by Patrick Henry and others favoring greater state sovereignty. Adding a Bill of Rights would sap whatever popular support was behind Henry's efforts. So Congress settled on the text of the proposed articles of amendment in mid-September 1789, with little more than the usual give and take.

Twelve articles were submitted to the states, but only ten were ratified. The successful articles (numbers three through twelve) were thought to alter very little the status quo, but the Bill of Rights did calm the anxieties of many citizens over the centralization of national power, while serving as a useful hedge against possible future encroachments.

Most pertinent for present purposes, each substantive clause in the first eight amendments (the Ninth and Tenth read as truisms) was designed to anticipate and negate the assumption of certain powers by the national government—a government already understood to be one of limited, enumerated powers.

Thus, for example, the free-speech provision in the First Amendment further limited national power—or, from the Federalists' perspective, merely made clear that the central government had never been delegated power to abridge freedom of speech in the first place. Likewise, the free-press provision further limited national power.

These two negations on power—the speech and press clauses—can reinforce one another, but they cannot conflict. Simply put, it is impossible for two denials of power to conflict.

Similarly, the free-exercise provision further restricted national power and the no-establishment provision likewise restrained national power. These two negations—the Free Exercise Clause and the Establishment Clause—can overlap and thereby doubly deny the field of permissible governmental action, but they cannot conflict. Moreover, the clauses-in-conflict fallacy would attribute to the drafters, the founding Congress of 1789-1790, the error of placing side by side two constitutional clauses that work against one another. That is just too implausible to take seriously.

The Court's wrong turn has its origin, as best I can determine, in *Widmar v. Vincent* (1981). *Widmar* is yet another result that is rightly decided but for the wrong reason. The case involved a state university that allowed student organizations to use classroom buildings to hold their meetings. When a religious student organization sought to schedule space to conduct meetings that included worship, the university balked, citing the need for strict separation of church and state as required by the Establishment Clause. The Court, relying

on a long line of precedent that prohibited the government from discriminating based on the content of one's speech, had little trouble ordering the state university to give equal access to all student organizations without regard to religion.

If only the justices had stopped right there. Alas, having explained that the no-establishment principle did not justify the university's hostility on these precise facts, the Court fatefully went on to leave open the possibility that on a different set of facts no establishment could override the students' right to freedom of speech. Once again, this is logically impossible: two negations on governmental power can overlap, but they cannot conflict. What the Court should have said—had it been thinking—is that a finding that the justices thought pivotal to the result in *Widmar* is that the speech in question was private speech, not government speech. Private speakers have speech rights; the government does not have speech rights. If the worship service had been conducted at the behest of the university (hence government speech), then no establishment rather than free speech would have been the relevant restraint. Instead, the *Widmar* Court asked if the Establishment Clause conflicted with, and thus overrode, the Free Speech Clause. Taking that wrong path has made all the difference.

One might further crowd the Court with this inquiry: When two First Amendment provisions conflict, why do the justices choose no establishment to override free speech or free exercise rather than vice versa? Is there a sliding scale of rights in the Constitution, some more valuable than others? Where are we to find this hierarchy of constitutional rights, or is that too to be trusted to the balancing of nine unelected justices?

The Free Exercise Clause and the Establishment Clause do not conflict. Instead, they do different work, each in its own way protecting religious liberty and properly ordering church-state relations. When circumstances are such that their labors overlap, the religion clauses necessarily complement rather than conflict. Thus the Court's imagining these two negations on governmental power as frequently clashing—two bones grinding one upon the other at an arthritic joint that has lost its "play"—is a dangerously misguided metaphor.



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1 544 U.S. 709 (2005).

2 The Establishment Clause reads, "Congress shall make no law respecting an establishment of religion . . ." U.S. Const. amend. I. By the literal text, for Congress to enact a law about religion generally is not prohibited. Rather, what is prohibited is a law about, more narrowly, an "establishment" of religion. For example, it is fully consistent with the Establishment Clause for Congress to enact comprehensive legislation requiring employers to provide unemployment compensation to their employees, but then—in order that religion be left alone—exempt religious organizations from the act. Such a religion-specific exemption is certainly to "make [a] law respecting" religion, but more narrowly the exemption does not establish religion. See *Rojas v. Fitch*, 127 F.3d 184, 187-89 (1st Cir. 1997) (holding that a religion-specific exemption for faith-based organizations from unemployment compensation tax did not violate the Establishment Clause).

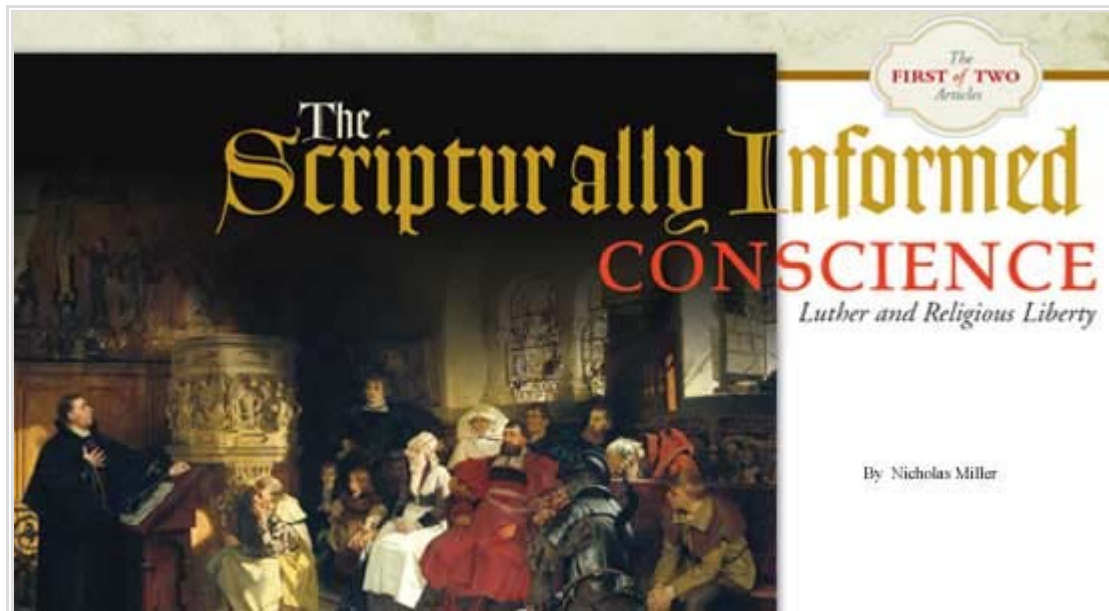
3 In candor, there is one exception to the "no conflict" logic, i.e., government-provided religion in prisons and the armed forces. The rationale is that the free-exercise rights of a prisoner or soldier override the duty of government to not establish religion. This occurs because of the unusual situation where government has removed individuals from general society (prison or posting at a military base), thereby preventing them from freely securing their own access to spiritual resources. This singular exception for government-employed chaplains is *sui generis*; hence it does not disprove the rule that the religion clauses do not conflict.

4 There is a far more plausible, historically grounded, and grammatically correct way of keeping the two participial phrases from conflicting while giving each phrase essential, independent work to do in the service of religious freedom. See Carl H. Esbeck, *Differentiating the Free Exercise and Establishment Clauses*, 42 *J. Church & St.* 311, 323-25 (2000) (explaining that the clauses-in-conflict problem is avoided by a rights-based free-exercise clause and a structural no-establishment clause, each in its own way protecting religious freedom).

MAY / JUNE 2007

The Scripturally Informed Conscience

BY: NICHOLAS MILLER



The road from the Protestant Reformation to the religious freedom of the American republic was full of unexpected turns, switchbacks, and delays. The ambiguities, tensions, and paradoxes within church/state thought are seen starkly at the second Diet of Speyer in 1529—the event which birthed the term "Protestant."

The Diet, or gathering of German nobility, was convened by Charles V in an attempt to restore spiritual unity to a religiously divided empire. The "cease-fire" of the first Diet of Speyer three years earlier, which had essentially suspended or recessed the Edict of Worms and allowed Lutheranism to spread, was ended by the second Diet. The only sop given the forces of reform was the allowance that Lutheran services could continue within existing Lutheran states. Catholic services could also be held within Lutheran territories. But no Lutheran services could be held within Catholic states. Here, the Edict of Worms' ban on Luther's teachings would be strictly enforced. No further spread of Lutheranism would be allowed.



The princes in the Lutheran minority were unwilling to accept the limited toleration offered by the Diet. In language oft-quoted by Protestant historians, the minority princes declared "Let us reject this decree. . . . In matters of conscience the majority has no power." One influential Protestant historian asserted that "the principles contained in this celebrated Protest . . . constitute the very essence of Protestantism. . . . Protestantism sets the power of conscience above the magistrate and the authority of the Word of God above the visible church." Indeed, the very term "Protestant" originated from the protest lodged by the Lutheran princes at Speyer. Over the centuries both the event and the name have become associated with the ideas of the rights of conscience and religious freedom.

But these same Protestant historians often leave unmentioned another, darker side of the Diet of Speyer. The Diet, including the Lutheran princes, condemned the Anabaptist movement, and decreed that rebaptizers should be punished, even with death if recalcitrant and persistent in their errors. While nobly championing their own "rights" to conscience and religious freedom, the Lutheran princes were apparently blind to any inconsistency in their attitudes and actions in condemning and persecuting the Anabaptists. Thousands of Anabaptists died in the years following, at the hands of both Catholics and Protestants.

Protestant historians generally ignore this aspect of the Diet, and make little effort to explain the apparent contradictions it reveals. This incident can provide support both for those who view the Protestant Reformation as a continuation of medieval ideas, as well as for those who view it as the beginning of modern ideas. It certainly serves as a warning for anyone wishing to trace a simple, direct, and progressive story from the church/state ideas of the early reformers to the religious liberty and pluralism of the modern world.



But just because a story is more complex than we had thought does not mean that it is wrong or cannot be told. The fact that significant near-contemporaries of the events of Speyer viewed them as having such significance for issues of conscience and freedom as to coin the name for a movement and a historical epoch is some indication that the world was actually changing, and that the events at Speyer were part of that change.

The Diet of Speyer did seem to represent some actual change in direction over previous views of church/state arrangement. At the very least, it introduced the rhetoric of religiously-based civil disobedience into public discourse.

But the apparent contradiction seen at Speyer may be better understood if we look closely at the balance and tension in the church/state thought of the theologian who had the greatest influence on the Lutheran nobles at Speyer—Martin Luther.

For good or for bad, much of Reformation thought was engaged in some way, either constructively or in opposition to, what Martin Luther said or wrote on any given topic. The world of church and state is no exception. The events at Speyer and its aftermath can be better understood, if not entirely explained, by looking at what Luther did and said on the topic.

This article, in its two parts, will examine the development of Luther's thought on church and state, focusing on the question of religious liberty. It will examine how his thought interacted with, reacted against, shaped, or was shaped by, his experiences with Catholics, Anabaptists, Reformed thinkers, and other Lutherans, especially Melancthon. In closing, some observations will be made on the possible long-term influence of Luther's religious liberty thought on the formation of the American republic.

Church and State in the Medieval World

On the eve of the Reformation, while church and state were technically distinct entities, they were viewed as inseparable and organic parts of society as a whole. As one medieval authority has succinctly put it, "The identification of the church with the whole of organized society is the fundamental feature which distinguishes the Middle Ages from earlier and later periods of history." Yet the state was—under the theory of the two swords, civil and spiritual—meant to serve as the servant of the church in enforcing the church's religious rules and standards. Through the mechanism of infant baptism, virtually all citizens of the state were also citizens of the church. Church and state combined to oversee and enforce this contractual relationship, in all its civil and spiritual terms.

It was a system with tensions and conflicts, as the interests of church and state could and often did diverge. The pope and his bishops had enormous influence and persuasive powers, but they were limited by their inability to wield force directly. They were, on the whole, dependent on kings and princes loyal to the church to carry out their decrees and to enforce their edicts. But such cooperation was often ad hoc, intermittent, and inconsistent. Lacking the means of consistent coercion, the church had to resort to political and spiritual pressure to get civil rulers to act on its behalf. Its persuasive powers, however, were significant. The threat of excommunication or interdict persuaded many a civil ruler to often significant levels of cooperation with the church.

Neither the **emperor** nor church leaders
could **conceive** of a claim to **conscience** outside
the dual sovereignty and oversight
of the **church** and state.

The tensions, limits, and powers of this system are clearly seen in the treatment of Luther at the Diet of Worms. Had the church had its way, there would have been no Diet at Worms. A papal bull had already condemned Luther's teachings and excommunicated him. All that was left was for the heretic to be arrested and consigned to the rack or the flames. But the Elector Frederick, Luther's patron, was unwilling to hand over his theologian without a formal hearing. He persuaded Emperor Charles V to hold a public hearing for Luther, and the Diet of Worms was convened in mid-April, 1521.

That the Diet met at all, then, was something of a defeat for Rome. It undercut the authority of the previous papal bulls against Luther. Still, it was a defeat that could yet end in the condemnation and execution of Luther—hardly a victory from the reformer's perspective.

Indeed, events initially unfolded much as the pope would have hoped. Luther was quickly questioned about the authorship of his books, which were assumed heretical. There was no room for arguing this point. Rather, the question was whether Luther would recant and reject his teachings. After a short delay, Luther made his memorable defense: "My conscience is captive to the Word of God. Thus I cannot and will not recant, for going against conscience is neither safe nor salutary. I can do no other, here I stand, God help me. Amen."

Luther's statement was not exactly a modern conception of conscience as an individual, independent, and unfettered moral center. His conscience was bound and hemmed, but not by the pope or the church, as the medieval view would have it. Rather, his conscience was bound by the Word of God. But neither the emperor nor church leaders could conceive of a claim to conscience outside the dual sovereignty and oversight of the church and state. And the line the church drew around conscience with the spiritual sword, the state would enforce with the civil sword.

Thus, Charles V condemned Luther as an unrepentant heretic in the Edict of Worms and ordered his books and writings destroyed and his person arrested and turned over for appropriate punishment—execution. At last the papacy had the civil mandate and enforcement it had been seeking, or so it seemed. But Charles had left open a small sliver of daylight—a twenty-day delay on the enforcement of the Edict. Luther, aided by Elector Frederick, slipped through this narrow window into a productive hiding at Wartburg Castle.

The overall effect of **Luther's** arguments regarding the **priesthood** of believers in the Address and his teachings in the Secular **Authorities** was to turn the **doctrine** of the two swords into a model of the two kingdoms.

The story of the Diet, with its second-guessing, yet ultimate affirmation, of papal condemnations, its responsiveness to papal requests and goals—but with just enough ambivalence and delay in execution of plans to let the condemned heretic slip free—illustrates well the cooperative, conflicted, ambivalent, politically charged relationship between the medieval church and state. The church claimed to be the superior authority. The superior sword of the state, however, made that claim often theoretical.

Cooperation, when it happened, was a mutually agreed upon affair. But one thing that both the medieval church and state consistently agreed upon was that the conscience of the individual citizen was subject to the oversight of the church and state acting together. As seen at Worms, Luther's new teachings challenged this allied hegemony over the scripturally informed conscience.

Luther on Church and State

Luther's ordeal at Worms took place about four years after the release of his ninety-five theses. In the interim, he had given significant thought to the relationship between the church and civil rulers. He had published one of his most significant works on the subject, the 1520 *Address to the Christian Nobility of the German Nation*. There, he set down what he viewed as the proper role of the church in relation to the individual, Scripture, and society.

Luther believed that the church had wrongly erected three walls of privilege that prevented the correction of its continuing abuses.

The first wall was the assertion that spiritual authority was superior to that of civil. Thus the church was not subject to secular jurisdiction in many temporal matters. The second wall was that the Papacy alone had the right to authoritatively interpret Scripture. Therefore he could not be corrected by other persons. The third wall was that the pope alone could call councils. Thus the pope could effectively control the church, and prevent any appeal from his decisions to the body of the church

Luther attacked these walls by asserting the priesthood of believers.

"To call popes, bishops, priests, monks, and nuns the religious class, but princes, lords, artisans, and farm-workers the secular class, is a specious device invented by certain time-servers. . . . For all Christians whatsoever really and truly belong to the religious class, and there is no difference among them except insofar as they do different work. . . . The fact is that our baptism consecrates us all without exception, and makes us all priests. As St. Peter says, 'You are a royal priesthood and a realm of priests' [1 Pet. 2.9] and Revelation, 'Thou hast made us priests and kings by Thy blood.' [Rev. 5:9.]"

Luther believed that all Christians had an equal spiritual status, though they may fulfill different spiritual offices. But those selected for such offices, such as pastor or bishop, act merely on behalf of the congregation, all of whom have the same authority he does. He serves at the command and consent of the community, who can equally dismiss him from his office should they desire. This doctrine and

its implications truly undercut all three walls of papal privilege. In the first instance, by putting all Christians on a similar plane, it nullified any appeal that the church hierarchy had to being above secular rulers and rules, who were exercising a Christian office of their own. Luther turned the dual sword of the medieval world into a single sword, and placed it firmly into the hand of the secular ruler. "Hence secular authorities should exercise their office freely and unhindered and without fear, whether it be pope, bishop, or priest with whom they are dealing; if a man is guilty let him pay the penalty. . . . For this is what St. Paul says to all Christians, 'Let every soul [I hold that includes the pope's] be subject to the higher powers, . . . for they bear not the sword in vain.' They serve God alone, punishing the evil and praising the good. [Rom. 13:1-4]."

Luther did not here fully explicate the duties of the state. He did make clear, though, that while the state had a spiritual office, its function and role were secular. "This government is spiritual in status, although it discharges a secular duty." In other words, in affirming that all people, including popes and priests, were subject to the civil sword, he was not in this argument giving the state authority or jurisdiction in spiritual matters. In his treatise *Secular Authority: To What Extent It Should be Obeyed*, written just three years later, he discussed this point more fully:

"Worldly government has laws which extend no farther than to life and property and what is external upon earth. For over the soul God can and will let no one rule but Himself. Therefore, where temporal power presumes to prescribe laws for the soul, it encroaches upon God's government and only misleads and destroys the souls."

On this basis, he argued that Christians had no need to obey a civil ruler who commanded belief or the giving up of heretical books. "Heresy," he wrote, "can never be prevented by force. That must be taken hold of in a different way, and must be opposed and dealt with otherwise than with the sword. Here God's Word must strive."

While such a ruler should be disobeyed, Luther made clear that resistance or active opposition was not allowed the Christian.

The priesthood concept also toppled the second wall, once spiritual equality was established and the primacy of the papacy in interpreting Scripture was undercut. As Luther put it:

"Each and all of us are priests because we all have the one faith, the one gospel, one and the same sacrament; why then should we not be entitled to taste or test, and to judge what is right or wrong in the faith? How otherwise does St. Paul's dictum stand, 1 Corinthians 2:15, 'He that is spiritual judges all things and is judged by none,' . . . We ought to march boldly forward, and test everything the Romanists do or leave undone. We ought to apply that understanding of the Scriptures which we possess as believers, . . . Since God once spoke through an ass, why should He not come in our day and speak through a man of faith and even contradict the pope?"

Rather than force,
Luther would "preach it,
 teach it, write it," and
 allow **God's Word**
 to do the rest.

Finally, of course, the priesthood of believers overturned the third wall as well, as under this concept the church lay in the body of believers rather than in some supreme head. The body had the right to gather and to correct those who served it, including the pope.

The overall effect of Luther's arguments regarding the priesthood of believers in the *Address* and his teachings in the *Secular Authorities*

was to turn the doctrine of the two swords into a model of the two kingdoms. According to Luther, all people are divided into two classes, "the first belong to the kingdom of God, the second to the kingdom of the world." Those in God's kingdom "need no secular sword or law," since they have in their "hearts the Holy Spirit, who instructs them and causes them to wrong no one." Non-Christians, on the other hand, are "subjected to the sword, so that, even though they would do so, they cannot practice their wickedness" in peace and prosperity.

Luther saw a clear distinction between these two kingdoms, and viewed Christ's kingdom as limited to His followers. "For this reason these two kingdoms must be sharply distinguished, and both be permitted to remain; the one to produce piety, the other to bring about external peace. . . . Christ's rule does not extend over all." Further, Christ's kingdom does not involve using the sword. "Christ did not

wield the sword nor give it a place in His kingdom; for He is a King over Christians, and rules by His Holy Spirit alone, without law. . . . It is of no use in His kingdom."

In 1522 Luther showed that the commitments described above were more than mere words. Leaving his Wartburg sanctuary, Luther returned to Wittenberg to confront Karlstadt and others who were advocating the forcible removal of images and the overturning of the Mass. Luther agreed that the Mass was wrong, even sinful. But he "would not make it an ordinance for them, nor urge a general law." Such "forcing and commanding results in mere mockery, external show, a fool's play, man-made ordinances, sham-saints, and hypocrites." Rather than force, Luther would "preach it, teach it, write it," and allow God's Word to do the rest.

Events of the mid-1520s, however, caused Luther to begin to find different emphases within his views on church and state. The turmoil surrounding the peasant's revolt and the controversy surrounding the Anabaptists focused Luther's mind on the importance of respect for civil authority, as well as the civil implications of some ostensibly spiritual beliefs. To these events we will turn in Part II.



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1 Ellen G. White, *The Great Controversy* (Pacific Press Publishing Assn.: Mountain View, Calif., 1911), p. 201.

2 J. H. Merle D'Aubigne, *History of the Reformation of the Sixteenth Century* (American Tract Society: New York, 1854), p. 76.

3 Mark Greengrass, *The Longman Companion to the European Reformation, C. 1500-1618* (London and New York: Longman Publishing Group, 1998), p. 104.

4 Diarmaid MacCulloch, *The Reformation* (New York: Penguin [Non-Classics], 2005), p. xviii. R. W. Southern, *Western Society and the Church in the Middle Ages* (New York: Penguin [Non-Classics], 1990), p. 16.

5 R. W. Southern, *Western Society and the Church in the Middle Ages* (New York: Penguin [Non-Classics], 1990), p. 16.

6 *Ibid.*, p. 18.

7 *Ibid.*, p. 19.

8 *Ibid.*, pp. 20, 21.

9 Greengrass, *The Longman Companion*.

10 Heiko A. Oberman, *Luther: Man Between God and the Devil* (New York: Image Books, 1992). *There is some uncertainty whether Luther actually uttered the "here I stand" portion of this phrase or whether it was inserted by a later editor as a sort of summary statement.*

11 *Ibid.*, p. 204.

12 Charles V finessed the question of the pope's authority in his initial papal condemnation by insisting that the hearing at Worms was not to revisit or reopen the question of heresy, but rather to merely establish whether Luther was the author of all the books attributed to him, and to determine if he was truly recalcitrant.

13 *Ibid.*, pp. 227-229.

14 Greengrass, *The Longman Companion to the European Reformation*, p. 57.

15 John Dillenberger (editor), *Martin Luther: Selections From His Writings* (New York: Anchor Books, 1961), pp. 406-417.

16 *Ibid.*

17 *Ibid.*, pp. 407, 408.

18 *Ibid.*, p. 409.

19 *Ibid.*, p. 411.

20 *Ibid.*

21 *Ibid.*, p. 383.

22 Luther had a personal interest in the argument, as at the time certain civil rulers were banning the sale of his German-language translation of the New Testament.

23 *Ibid.*, p. 389. Quentin Skinner, in his history of political thought during the period of the Reformation, seems to misconstrue Luther's statements in his Address to make him say that Luther subordinated the church in all matters, secular and spiritual, to the civil ruler. He makes Luther's position effectively an Erastian one. It would seem to be a case of Skinner reading back into Luther's earlier views some of Luther's later modified views and Lutheranism's later practices. In my view, Skinner does not take into account sufficiently the development of Luther's thought, and the different views held by Melancthon and later Lutherans, as discussed more fully later in this paper. Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978).

24 *Ibid.*, p. 388.

25 *Ibid.*, p. 414.

26 *Ibid.*, p. 368.

27 *Ibid.*, p. 369.

28 *Ibid.*, p. 372.

29 Hans J. Hillerbrand (ed.), *The Protestant Reformation* (New York: Harper and Row, 1968), pp. 35, 36.