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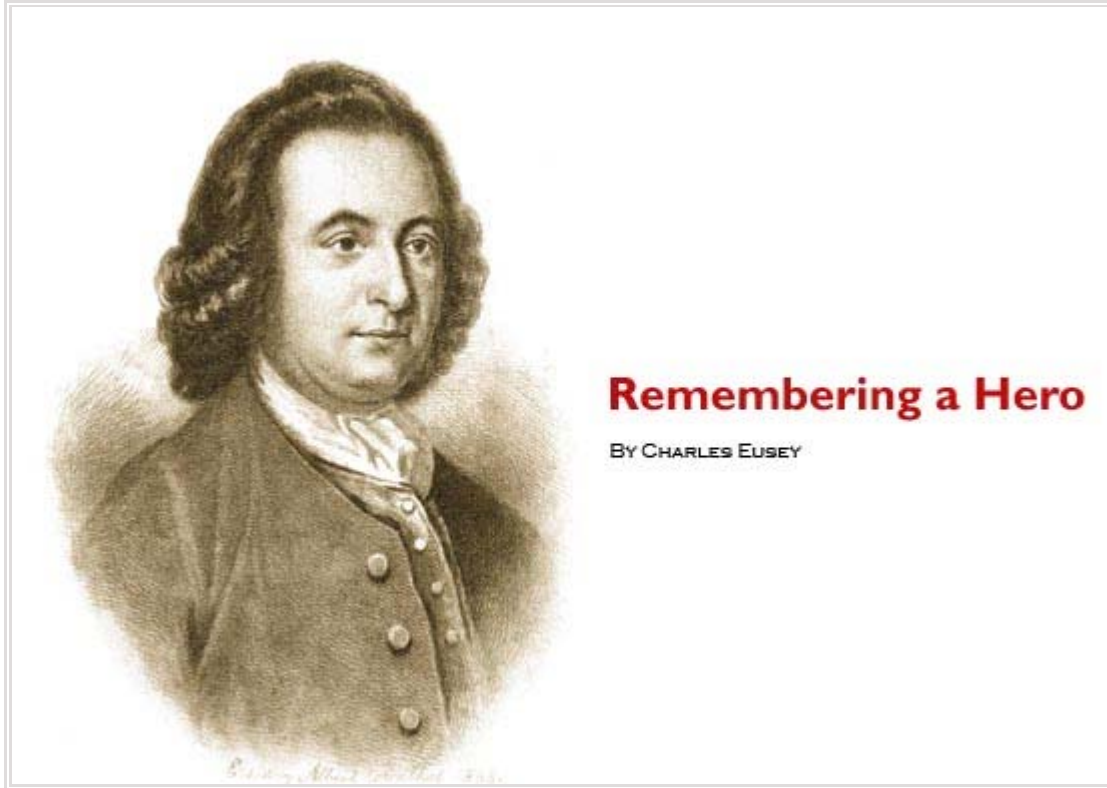
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SEPTEMBER / OCTOBER 2000

Remembering A Hero

BY: CHARLES J. EUSEY



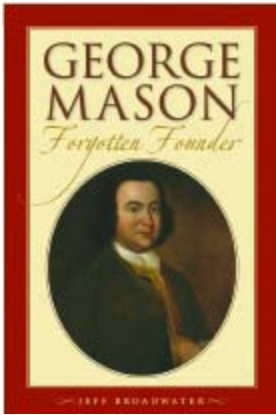
Jeff Broadwater of Barton College, Wilson, North Carolina, has sought to acquaint Americans with one of our most important founders. George Mason, in the words of Joseph Ellis, author of *Founding Brothers: The Revolutionary Generation*, "was the most respected founder in his own time who is virtually invisible in our time."

It is not for a lack of accomplishments that Mason has been forgotten. In 1776 he wrote most of Virginia's constitution, one of the first in this nation. He authored the Virginia Declaration of Rights, a model for the Bill of Rights. (The second paragraph of the Declaration of Independence was taken from the Virginia Declaration of Rights.) Madison's famous Memorial and Remonstrance quoted liberally from Mason's Declaration of Rights. Mason served as one of the most influential delegates to the Constitutional Convention in Philadelphia; and he initiated the movement that resulted in the first ten amendments.

Mason was a leader who did not seek for applause. He did not seek national office. He wrote no memoirs. No collection was made of his papers.

Mason feared government, because he feared a corrupt political process. He worried that the people would lose their virtue and become corrupt. But as he began to doubt the virtue of the citizens he became convinced that the republican state governments were a threat to liberty. He was fearful in 1787 that the Constitution did not protect minority interests.

Mason grew up in a Virginia society whose founders were committed to civil liberty, especially freedom of religion. This commitment came largely from the church vestries who insisted on autonomy from the Anglican hierarchy. In the words of Broadwater, "The concern of eighteenth-century Americans for freedom of conscience laid the foundation for a subsequent commitment to other individual and minority rights."



Broadwater posits that the framers of the Constitution were committed to a separation of church and state partly because they were skeptical about the claims of the church. He quotes Gordon Wood to say, "At best most of the revolutionary gentry only passively believed in organized Christianity and, at worst, privately scorned and ridiculed it."

Mason believed that religion was a catalyst for virtue, but he did not believe in an imposed religious orthodoxy. Neither did he support an ecclesiastical establishment.

The Stamp Act protests gave Mason his first opportunity to attack slavery. His protest began with an antislavery preamble. While he did not endorse the expansion of slavery, he did not see its speedy demise. He supported a ban on the foreign slave trade and the legislation of private manumissions. His ownership of slaves and failure to free them at his death is explained in part by his desire to protect the financial interests of his nine children.

George Mason: Forgotten Founder by Jeff Broadwater, The university of north Carolina Press, 329 pages, \$34.95.

Mason's support of religious freedom was strengthened by his conviction that religious toleration had economic value. Virginia had attracted many immigrants through its relatively permissive religious climate. He also supported religious freedom for philosophical reasons. "Persecution in matters of religion serves not to extinguish, but to confirm the heresy."

The evolution of Mason's concept of religious freedom is shown in his relationship to the Anglican Church. His first draft of the Virginia Declaration of Rights provided for toleration of religious dissenters. Anglicanism, though, remained the state religion. Non-Anglicans were second-class citizens. Later he joined with Madison and Jefferson to disestablish the Anglican Church and to bar subsidies to religion.

Religious tests for office holding were included in all of the constitutions of the original colonies except for that of Virginia. In other respects the Virginia Constitution was more influential. Thirteen of Pennsylvania's 16 provisions can be traced to the Virginia Constitution. John Adams used it in Massachusetts. Even the French Declaration of the Rights of Man and of the Citizen is based on Virginia's bill of rights. It was the first bill of rights adopted by a popularly elected convention and attached to a written constitution.

During the Constitutional Convention in Philadelphia Mason was ever aware of the short-comings of a republican system. He emphasized both the possibility of majority oppression of the minority and the possibility of creating demagogues. He tried but was unable to convince the convention to add a bill of rights to the Constitution.

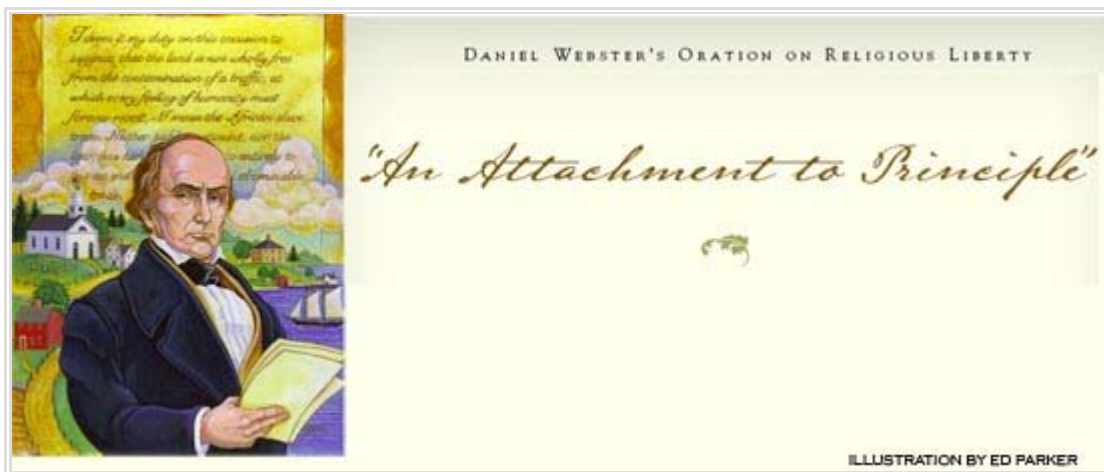
Broadwater is to be thanked for introducing us to the "forgotten" George Mason. In the words of H. W. Brands, author of *The First American: The Life and Times of Benjamin Franklin*, his "elegant and insightful study will remedy this neglect, and none too soon."

Reviewed by attorney Charles J. Eusey, Leominster, Massachusetts .

SEPTEMBER / OCTOBER 2000

An Attachment To Principle

BY: DANIEL WEBSTER



We have come to this rock to record here our homage for our Pilgrim Fathers; our sympathy in their sufferings; our gratitude for their labors; our admiration of their virtues; our veneration for their piety; and our attachment to those principles of civil and religious liberty which they encountered the dangers of the ocean, the storms of heaven, the violence of savages, disease, exile, and famine, to enjoy and to establish.

And we would leave here, also, for the generations which are rising up rapidly to fill our places, some proof that we have endeavored to transmit the great inheritance unimpaired; that in our estimate of public principles, and private virtue; in our veneration of religion and piety; in our devotion to civil and religious liberty; in our regard to what-ever advances human knowledge, or improves human happiness, we are not altogether unworthy of our origin.

Power of the love of religious liberty

The love of religious liberty is a stronger sentiment, when fully excited, than an attachment to civil or political freedom. That freedom which the conscience demands, and which men feel bound by their hopes of salvation to contend for, can hardly fail to be attained. Conscience in the cause of religion, and the worship of the Deity, prepares the mind to act, and to suffer beyond almost all other causes. History instructs us that this love of religious liberty, a compound sentiment in the breast of man, made up: of the clearest sense of right, and the highest conviction of duty, is able to look the sternest despotism in the face, and, with means apparently most inadequate, to shake principalities and powers.

There is a boldness, a spirit of daring, in religious reformers, not to be measured by the general rules which control men's purposes and actions. If the hand of power be laid upon it, this only seems to augment its force and its elasticity, and to cause its action to be more formidable and terrible. Human invention has devised nothing, human power has compassed nothing, that can forcibly restrain it, when it breaks forth. Nothing can stop it, but to give way to it; nothing can check it, but indulgence. It loses its power only when it has gained its object. If it be allowed indulgence and expansion, like the elemental fires it only agitates and perhaps purifies the atmosphere, while its efforts to throw off restraint would burst the world asunder.

Thanks be to God, that this spot was honored as the asylum of religious liberty. May its standard, reared here, remain forever! May it rise up high as heaven, till its banner shall fan the air of both continents, and wave as a glorious ensign of peace and security to the nations!

True principle of a free Government

The true principle of a free and popular government would seem to be so to construct it as to give all, or at least to a very great majority, an interest in its preservation: to found it as other things are founded, on men's interest. The stability of government requires that those who desire its continuance should be more powerful than those who desire its dissolution. This power, of course, is not always to be measured by mere numbers. Education, wealth, talents, are all parts and elements of the general aggregate of honor; but numbers, nevertheless, constitute ordinarily the most important consideration, unless indeed there be a military force, in the hands of the few, by which they can control the many.

Citizens to Restrain and Abolish Injustices

We are bound to maintain public liberty, and by the example of our own systems, to convince the world that order and law, religion and morality, the rights of con-science, the rights of persons, and the rights of property, may all be preserved and secured, in the most perfect manner, by a government entirely and purely elective. If we fail in this, our disaster will be signal, and will furnish an argument, stronger than has yet been found, in support of those opinions which maintain that government can rest safely on nothing but power and coercion.

As far as experience may show errors in our establishments, we are bound to correct them, and if any practices exist contrary to the principles of justice and humanity, within the reach of our laws or our influence, we are inexcusable if we do not exert ourselves to retrain and abolish them.

From a discourse delivered by Daniel Webster before the Pilgrim society at Plymouth, Massachusetts, December 22, 1820, in commemoration of the first settlement of new England. Selections arranged by A.J.S. Bourdeau. Daniel Webster was recognized as a great orator and statesman in his time: serving as a senator, secretary of state, and running three times for the presidency of the United States of America. He tried to avert the nation from civil war. This excerpt was first printed in Liberty, vol. 9, second Quarter, 1914, pp. 53, 54.

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Are We Shedding Rights?

BY: JOHN W. WHITEHEAD



Marcus Borden epitomizes what it means to serve as a role model for young people. Indeed, in recognition of his positive influence on his players, school, and community, the prestigious American Football Coaches Association awarded Borden its 2004 Power of Influence Award.

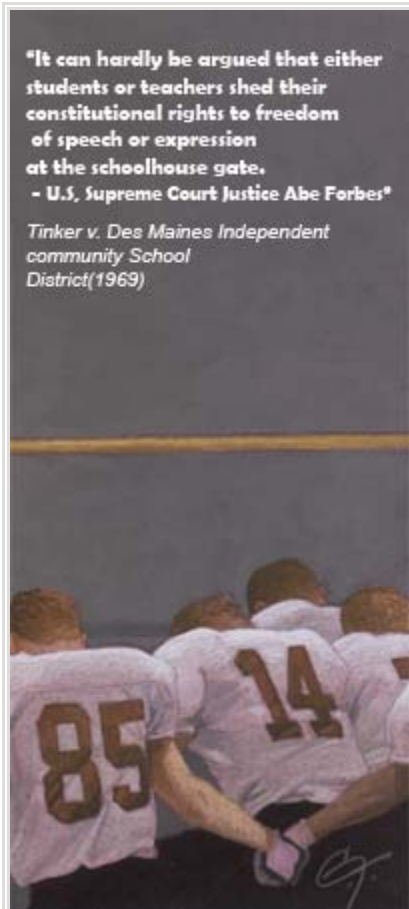
In 2003 Borden was honored as *USA Weekend* magazine's "Most Caring Coach" for his efforts in creating the *Home News Tribune* Snapple Bowl, which raises money for the Lakeview School for Cerebral Palsy and Children's Specialized Hospital. In the bowl all-star players from neighboring counties compete against one another in a night of football and fund-raising. Marcus Borden also organizes rallies at the two children's facilities with young patients there, the all-star players, and cheerleaders. Then during the actual bowl, each player plays for a specific child. According to Borden, it's "what the game is really all about. I'm a firm believer that you should be able to give something back to the community."

Incredibly, despite Marcus Borden's distinguished career and awards (he has also been inducted into the New Jersey Scholastic Coaches Association Hall of Fame and honored with the New Jersey Gatorade Coaches Care Award), the New Jersey ACLU legal director insists that he has fostered a "destructive environment" for students.

What did Borden, who for more than 25 years has served as head coach at East Brunswick High School in New Jersey, do to create such a "destructive" environment? He bowed his head—*silently*. Sometimes he knelt down on one knee—*silently*. Coach Borden wasn't attempting to pray with his football players, nor was he leading them in prayer. He was showing *silent* respect by bowing his head while his players offer their pre-game prayers, a longstanding tradition. Consequently, Borden found himself threatened with termination. Yet, as a student athletic trainer who worked with Borden during his first year as a coach at East Brunswick remarked, "The tradition of student-initiated prayer goes back many, many years. I think with all that is wrong in our schools today—gun violence, bullying, promiscuity, etc.—that the energy being spent on Marcus Borden bowing his head and taking a knee is a waste. Here is a man

trying to support the youth in his care and be a positive role model and all these administrative yahoos can worry about is his presence in a room with his players while they pray. It is time people stopped obsessing over the positive messages a coach is trying to send and start worrying about the real problems in school today."

Many of America's public schools are in a deplorable state, and our young people are surrounded by dangers on all sides—from premarital sex, school shootings, and drug and alcohol abuse to low literacy standards and a lack of understanding about the difference between right and wrong. Consider a recent study, for example, which found that nearly 26 percent (1 in 4) of American teenage girls ages 14-19 have at least one sexually transmitted disease.



In light of all this, you'd think the schools would be grateful for a teacher who serves as a positive, moral role model for young people. But when religion is involved, even heroes like Borden find themselves under fire.

Pregame, student-led prayer has been a regular part of football for many years. In fact, East Brunswick High's practice of player-initiated, pregame prayer has been in effect for more than 25 years, with more than 2,000 former East Brunswick football players opting to voluntarily pray before taking the field on game days. The prayers are a simple, solemn, nonsectarian request for safety and honor on the field: "Dear Lord, please guide us today in our quest in our game. Please let us represent our families and our communities well. Lastly, please guide our players and opponents so that they can come out of this game unscathed, no one is hurt."

But after some parents reportedly complained about a prayer that was offered at a pre-game pasta dinner, the practice became a target for official school censure. Quick to jump on the "thou-shalt-not-offend" bandwagon, school officials passed a policy in October 2005 prohibiting representatives of the school district from participating in student-initiated prayer.

School officials went so far as to order Borden, who also teaches Spanish, to stand still rather than bending a knee and silently bowing his head while his players recited pregame prayers. The penalty for disobeying was disciplinary action, including the loss of his job as a coach and tenured teacher. School officials justified their actions by insisting that while student athletes have the constitutionally protected right to pray, that privilege does not extend to coaches, who are public employees and whose participation would violate the First Amendment establishment clause, or the "separation of church and state" provision in the Bill of Rights.

Borden responded by offering his resignation in protest. But after thinking further about the matter, he changed his mind and rescinded his resignation so he could continue coaching. At the same time, believing that he was taking "a stand for every high school football coach in America," Borden, with the help of The Rutherford Institute, also filed a lawsuit asking the courts to review the school's prayer policy.

Although school officials in this instance seemed lacking in common sense, the federal district court clearly was not. In siding with Coach Borden, Judge Dennis Cavanaugh in a 2006 ruling held that the school district had violated Borden's constitutional rights to free speech, freedom of association, and academic freedom when they prohibited him from silently bowing his head and "taking a knee" with his players while they engaged in student-initiated, student-led, nonsectarian pregame prayers. "For the coach, who is looked at as the glue to hold all of this together and foster team spirit, to not be allowed to participate in these traditions—even in the passive way—just doesn't seem right," observed Cavanaugh.

Although Borden prevailed at the district court level, the school appealed the ruling, aided by Americans United for Separation of Church and State. And in April 2008, the U.S. Court of Appeals for the Third Circuit overturned Cavanaugh's decision. The court ruled that a football coach may not silently bow their head or "take a knee" with their team as gestures of respect for student-led prayers prior to a game. The appeals court specifically held that Borden's silent gestures are not activities protected by the First Amendment. The court also ruled that a teacher's in-class speech is not constitutionally protected and the educational institution, not the individual teacher, has the final determination of how to teach the students. Finally, the court declared that Borden's silent gestures violated the First Amendment establishment clause.

Understandably, Borden's case is being closely watched by athletic directors across the country who have been instructed to cease praying with their players. According to Grant Teaff, executive director of the American Football Coaches Association, more than 50 percent of high school football coaches nationwide have engaged in team prayer.

However, this case could impact more than just coaches. If this ruling is allowed to stand, it could very well mean that high school

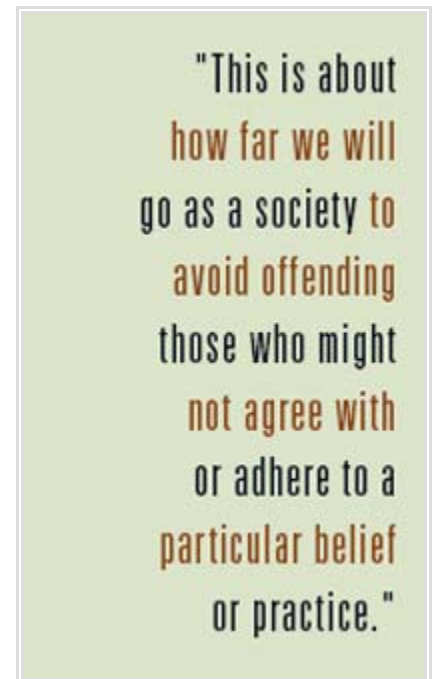
teachers across the United States will have virtually *no* free speech or academic freedom rights since, as the appeals court reasoned, teachers are mere proxies of the school hierarchy.

Yet this case is not really about whether a coach can silently bow their head out of respect during their players' pre-game prayers. This is about how far we will go as a society to avoid offending those who might not agree with or adhere to a particular belief or practice. In other words, we have become a politically correct society, where diversity is increasingly treated as an anathema and uniformity is prized. If someone *might* be offended, freedom of speech is erased. And when *religious* expression is involved, the establishment clause is sometimes used as a bludgeon to stamp out even silent gestures, such as Coach Borden's.

We must remember that those who added the establishment clause to the Constitution were primarily concerned with state practices that would interfere with an individual's freedom of religion. That is why the establishment clause is balanced in the First Amendment with the free exercise clause, which allows for freedom of religious expression—something the state (including the public schools) should not be able to eradicate.

Those who gave us the United States Constitution understood very well that civil and religious liberty generally go hand in hand. The suppression of either one, for any length of time, will terminate the existence of the other. As historian Roland Bainton has observed: "All freedoms hang together. Civil liberties scarcely thrive when religious liberties are disregarded, and the reverse is equally true. Beneath them all is a philosophy of liberty which assumes a measure of variety in human behavior, honors integrity, respects the dignity of man, and seeks to exemplify the compassion of God."

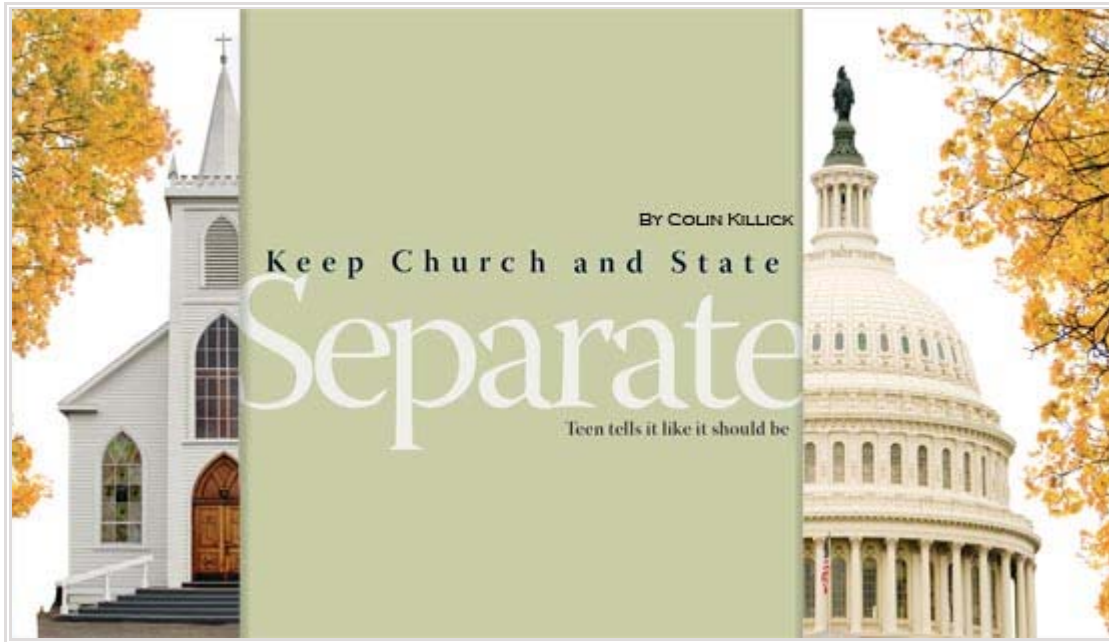
As our society becomes increasingly secularized, we would do well to remember that just as all freedoms hang together, they fall together as well.



Constitutional attorney and author John w. whitehead is founder and president of The Rutherford institute, Charlottesville, Virginia.

SEPTEMBER / OCTOBER 2000

Keep Church And State Separate

BY: COLIN KILLICK

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Those 16 words from the First Amendment spark controversy today, as they have throughout American history.

Individuals have tried to inject religion into government and policy, to use religion as a political litmus test and to use the powers of government to pro-mote a religious belief, usually Christianity.

These people have argued that such interaction is constitutional, the separation of church and state is not cited in the U.S. Constitution, and the Founding Fathers intended the United States to be a Christian nation.

As such efforts intensify under the Religious Right, it is essential to reaffirm the barrier between religion and government.

First, it must be noted that support for the separation of church and state is in no way grounded in opposition to religion.

The belief that religious and government institutions should leave each other alone does not constitute an abandonment of faith. On the contrary, it is for many an expression of the principles of tolerance and respect common to all religions.

Furthermore, there is compelling reason for religious people to support separation: it not only protects government from undue religious influence, but also protects religion from undue governmental meddling.

This was the position of many early backers, who had feared the control that the government of England exerted over religious institutions and believers.

Without a firm separation of the two, the government could conceivably interfere with religious affairs and tell believers and institutions how to practice.

Anyone who would support a government based on his religious principles should carefully consider how government power functions. It is based, fundamentally, on precedent.

Once it is established that the government has the right to establish religious law, a sufficient majority of legislators could pass laws based on any system of religious belief.

Almost any law could be justified on religious grounds, particularly if such a government had the authority to compel its citizens to obey religious law.

Laws that establish religion in government, even if created with most benign intent, could put our nation on a path toward repressive theocracy.

Finally, the notion that the Founding Fathers intended our nation to be a Christian one is fundamentally wrong.

Our founders included a number of deists and skeptics of organized religion.

James Madison, though a religious man, spoke strongly and repeatedly for a strong separation of church and state.

Thomas Jefferson, who described himself as a Christian, removed every passage asserting the divinity of Jesus from his Bible, and spoke of the need for a wall between church and state.

The framers of the Constitution inserted a ban on religious tests for office, a common practice in most Western nations.

Considering that the laws of most such nations, particularly England, contained explicit establishments of Christianity, it would seem odd that founders intending to make America Christian would omit such language from the Constitution.

Rather, a clear clue to the intentions of the Founding Fathers can be found in an obscure but important diplomatic document: the Treaty of Tripoli, negotiated between the new United States and the Muslim Barbary state and ratified in 1797.

Buried in the standard diplomatic clauses is Article 11: "As the Government of the United States of America is not, in any sense, founded on the Christian religion . . . it is declared by the parties, that no pretext arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries."

The entire treaty, including Article 11, was read in full in Congress and printed in several major newspapers. No record of any disagreement or protest has ever been found.

Today, we must be vigilant in deter-ring any erosion of this crucial barrier. While religion naturally informs the ethical beliefs of our legislators, religious doctrine must never be established as law.

If we fail to guard this distinction, we risk destroying two of America's greatest institutions: the freedom of religious practice, and the right of citizens of all beliefs to fair and equal governance.

Colin Killick is a teen columnist for the Tucson Citizen. he wrote this for the february 19, 2008, edition. He is a senior at basis Tucson high school, Tucson, Arizona.

SEPTEMBER / OCTOBER 2008

America Comes To Rome

BY: JOSEPH K. GRIEBOSKI



When the Vatican announced last fall through Archbishop Pietro Sambi, papal nuncio to the United States, that Pope Benedict XVI would be visiting the United States, "professional Catholics," pundits, clerics, and even politicians debated the meaning and message of his first papal "voyage" to the United States. In fact, it had been nearly 10 years since his predecessor, Pope John Paul II, had visited the United States.

Most Americans had perceptions and thoughts about Pope Benedict before his April 15, 2008, arrival in the United States. The average American expected to see a conservative, dour, and authoritarian man, an image built from his many years defending orthodox Catholicism as prefect of the Congregation for the Doctrine of the Faith. Even the "in crowd" of Catholic educators, theologians, hierarchs, and policy wonks expected America to receive a papal thrashing for losing its way and heading toward hedonism.

Instead, America met a gentle, loving, compassionate man of thought; a prayerful leader whose insights and thoughtfulness and message of prayerful coexistence far made up for the charismatic affability and dramatic presence of his predecessor. But very much like his predecessor, Benedict made fundamental rights, especially religious freedom, a centerpiece of his message to the United States.

As Rocco Palmo—who writes from America for *The Tablet*, the international Catholic weekly published in London—stated after the papal visit, "Lest anyone still be looking for a program, a roadmap for the future of the American Catholic project, it's in our midst. We've got it. And soon—now—the prayer and work begins to make it a reality."

With "Christ Our Hope" as the theme of his visit, Pope Benedict XVI brought a burst of energy, optimism, and faith to American Catholicism—and to America itself—during his five-day visit, and with it a new air of responsibility for both. "I have had the joy of personally visiting, for the first time as the successor of Peter, the dear people of the United States of America, to confirm the Catholics in their faith, to renew and increase fraternity with all Christians, and to announce to everyone the message of 'Christ Our Hope,' as the theme of the trip said," the pope commented after his return to Rome.



Let us not assume, however, that Pope Benedict's visit was simply an opportunity for him to show his affection for the United States, its history, and its people. The pope, by virtue of his office, is a teacher. And as the theme of the trip suggested, Pope Benedict taught with clarity, vision, and principle the hope that is in Christ—in our daily lives, in our prayer lives, and in our public policy, especially in defense of fundamental rights.

Pope Benedict addressed some of America's more crucial issues during his visit, even addressing a hot political topic during his first public meeting: "Brother bishops, I want to encourage you and your communities to continue to welcome the immigrants who join your ranks today, to share their joys and hopes, to support them in their sorrows and trials, and to help them flourish in their new home."

Three paragraphs into his address, Pope Benedict reminded the hierarchs that "this, indeed, is what your fellow countrymen have done for generations. From the beginning, they have opened their doors to the tired, the poor, the 'huddled masses yearning to breathe free' (*cf. sonnet inscribed on the Statue of Liberty*). These are the people whom America has made her own."

At a time when America as a whole is divided over the politics, security, economics, and finance of immigration, Pope Benedict reminded the American bishops—as the successors to the apostles—that immigration is not an issue; it is a people—it is a young girl escaping murder in Honduras; it is a family seeking medical attention in the United States; it is a young man trying to find work to support his extended family at home. Benedict reminded the bishops—and all Americans—that immigration is more than an issue; it is a face.

Benedict did not sugarcoat his message to the people of the United States. The pope remained strong in his upholding of fundamental Christian truths in the context of American politics, history, and liberty.

Throughout his visit, the pope highlighted the importance of fundamental values and liberties, emphasized within the American context. At the welcoming ceremony at the South Lawn of the White House, he said: "Historically, not only Catholics, but all believers have found here the freedom to worship God in accordance with the dictates of their conscience, while at the same time being accepted as part of a commonwealth in which each individual and group can make its voice heard. . . . Freedom is not only a gift, but also a summons to personal responsibility. Americans know this from experience—almost every town in this country has its monuments honoring those who sacrificed their lives in defense of freedom, both at home and abroad. The preservation of freedom calls for the cultivation of virtue, self-discipline, sacrifice for the common good, and a sense of responsibility towards the less fortunate. It also demands the courage to engage in civic life and to bring one's deepest beliefs and values to reasoned public debate. In a word, freedom is ever new."

During his meeting with President George W. Bush, the pope paid "homage to this great country, which from the beginning has been constructed based on a pleasing joining together of religious, ethical, and political principles, and continues to be a valid example of healthy secularism, where the religious dimension, in the diversity of its expressions, is not only tolerated but valued as the 'soul' of the nation and the fundamental guarantee of the rights and duties of the human being."

And later to the bishops he reiterated that "respect for freedom of religion is deeply ingrained in the American consciousness—a fact which has contributed to this country's attraction for generations of immigrants, seeking a home where they can worship freely in accordance with their beliefs."

Benedict carried his message of fundamental rights, especially that of religious freedom, throughout his many visits. During his address to the United Nations General Assembly, the pope emphasized that "human rights, of course, must include the right to religious freedom, understood as the expression of a dimension that is at once individual and communitarian—a vision that brings out the unity of the person while clearly distinguishing between the dimension of the citizen and that of the believer. The activity of the United Nations in

recent years has ensured that public debate gives space to viewpoints inspired by a religious vision in all its dimensions, including ritual, worship, education, dissemination of information and the freedom to profess and choose religion. It is inconceivable, then, that believers should have to suppress a part of themselves—their faith—in order to be active citizens. . . . The full guarantee of religious liberty cannot be limited to the free exercise of worship, but has to give due consideration to the public dimension of religion, and hence to the possibility of believers playing their part in building the social order."



Acclaimed Catholic writer and commentator George Weigel stressed that "the pope's U.N. address . . . made an intriguing argument: human rights, which can be known by reason, are the moral 'language' by which the world can turn dissonance into conversation."

The pope's comments on religious freedom made during his visit to the United States tend to go further than even those of his predecessor, who can well be known as the Pope of Freedom. During his meeting with representatives of other religions in the "Rotunda" Hall of the Pope John Paul II Cultural Center in Washington, D.C., Benedict stated that "the task of upholding religious freedom is never completed. New situations and challenges invite citizens and leaders to reflect on how their decisions respect this basic human right. Protecting religious freedom within the rule of law does not guarantee that peoples—particularly minorities—will be spared from unjust forms of discrimination and prejudice. This requires constant effort on the part of all members of society to ensure that citizens are afforded the opportunity to worship peaceably and to pass on their religious heritage to their children."

Benedict is not stepping back in his defense of religious freedom, even going so far as to mention minorities specifically in his statement. And actions do speak louder than words, as religious minorities were invited to meet with the pope.

Religious liberty continued to be a centrality of the pope's message, but in a different guise: spiritual independence. As the Pew Forum on Religion and Public Life's U.S. Religious Landscape Survey states, "A major survey by the Pew Research Center's Forum on Religion & Public Life finds that most Americans have a nondogmatic approach to faith. A majority of those who are affiliated with a religion, for instance, do not believe their religion is the only way to salvation. And almost the same number believes that there is more than one true way to interpret the teachings of their religion."

Maintaining that self-defined spiritual values and practices without communal aspects is in violation of the earliest biblical teachings, Benedict called on American Catholics to remain steadfast in the church's communal identity: "In a society which values personal freedom and autonomy, it is easy to lose sight of our dependence on others as well as the responsibilities that we bear towards them. This emphasis on individualism has even affected the church (*cf. Spe Salvi, 13-15*) giving rise to a form of piety which sometimes emphasizes our private relationship with God at the expense of our calling to be members of a redeemed community. Yet from the beginning, God saw that 'it is not good for man to be alone' (see Gen. 2:18). We were created as social beings who find fulfillment only in love—for God and for our neighbor. If we are truly to gaze upon Him who is the source of our joy, we need to do so as members of the people of God (*cf. Spe Salvi, 14*). If this seems countercultural, that is simply further evidence of the urgent need for a renewed evangelization of culture." A new religious liberty issue will begin to develop in America as more and more people identify themselves as spiritual but don't claim membership in or allegiance to a particular religious community. In his address to Catholic educators, Benedict highlighted the need to remain steadfast in faith when developing the understanding of freedom: "While we have sought diligently to engage the intellect of our young, perhaps we have neglected the will. Subsequently we observe, with distress, the notion of freedom being distorted. Freedom is not an opting out. It is an opting in—a participation in Being itself. Hence authentic freedom can never be attained by turning away from God. Such a choice would ultimately disregard the very truth we need in order to understand ourselves."

Pope Benedict XVI "shocked" ostensibly Protestant America with his compassion, openness, and warmth during his visit, fundamentally

shifting the perception of most Americans about the successor to Pope John Paul II (and Saint Peter). But more than his vision was his message of coexistence, cooperation, and promotion of fundamental rights and his demonstrated commitment to them that awed and impressed the American people. Pope Benedict has a new friend in the people of the United States.

Joseph K. Grieboski, a loyal son of the Roman Catholic Church, is founder and president of the institute on religion and Public Policy, based in Washington, D.C. He last wrote on the pope in our march/April 2007 issue with an analysis of the Regensburg speech. Then, as here, his observations were well placed and accurate. Then, as here, Liberty editor Lincoln steed elaborated on the larger significance for Protestants and for Protestant America. See the editorial on pages 2 and 3 of this issue for the editorial perspective.

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Special Dispensation

BY: HEINZ VOLK



Few people would suspect a church of trying to arrange things so that its clergy would be allowed to break a law with impunity. Yet that is arguably what is happening in Hungary.

In an effort to wean the populace off vodka and crack down on the mayhem caused by drunk drivers, Hungary's parliament recently passed zero-tolerance legislation. If a police officer administering breathalyzer tests detects even the slightest trace of alcohol in what a driver exhales, the officer can confiscate their license on the spot. Unfortunately, that would leave Roman Catholic priests high and dry, as they celebrate Mass daily and drinking sacramental wine is an integral part of the service.

The problem for the fathers is compounded by the fact that, due to a short-age of priests, each is responsible for the spiritual well-being of parishioners in several villages, requiring a daily circuitous commute, with more wine imbibed at each stop. Add to that the weddings, christenings, and funerals requiring a priest's presence and the possibility of liquid libations and one can readily see that few, if any, priests would be able to pass the test.

To allow its priests to continue their important ministry, the church has asked the justice minister to exempt them from this new law, adding that it would issue special cards to the priests stating that alcohol consumption is in the fulfillment of and conjunction with their official duties.

By making the appeal, the church is putting the government, as well as itself, in a precarious position. If the government grants the church's request and gives exemption to Roman Catholic priests, it could be charged with favoritism. If, on the other hand, it denies the exemption, that could be construed as a curtailment of religious freedom and state interference in the execution of the priests' religious duties.

The Bible sets high standards for priests and other clergy. They are to be role models, their lives characterized by purity and holiness.

Although most of those taking holy orders are dedicated, devout individuals, the Roman Catholic priesthood has been plagued by allegations of sexual abuse by a few, and the church's coffers have been depleted in settling the resultant suits.

If priests are granted an exemption so that they can flout their country's legislation, it will surely send the wrong message to their parishioners. Respect for the clergy will be undermined, and so will respect for both secular and religious laws.

Is there a way out of the dilemma? There is, of course, a very real church-state issue here. Separation of church and state can easily run up against freedom of religion if overzealously and insensitively applied. Is there a way that priests can keep the law while at the same time continuing to fulfill their religious duties?

One obvious answer might be for them to have a chauffeur. Here in North America, having a designated driver allows people to party and imbibe yet still get home safely without endangering the lives of others. With several churches under their jurisdiction, the Hungarian priests should be able to find someone willing to drive them around, especially if the gas is paid for. The savings realized when a priest does not need to own a vehicle and be responsible for its maintenance and upkeep would probably suffice to pay for a driver.

There is perhaps a practical option of the Catholic Church taking a second look at the sacramental wine. When God gave the Israelites guidelines for their feasts, He told them to use "new wine." That is, wine that hasn't fermented yet, or pure grape juice. Admittedly, during the Middle Ages keeping wine from fermenting may have been difficult, but with Louis Pasteur's discoveries, this is no longer a problem. Pure, unfermented grape juice can be bought in any grocery store. Nonalcoholic or dealcoholized wine is just as readily available, retaining the flavor yet avoiding the intoxicating effects and breakdown of inhibitions that have led some priests into compromising situations.

Given this, it would be well for priests and other clergy to go back to the drink that God originally intended to be used in His holy feasts. That way they could keep the law and carry out their religious duties with the blessings of the state as well as a clear head and clean conscience.

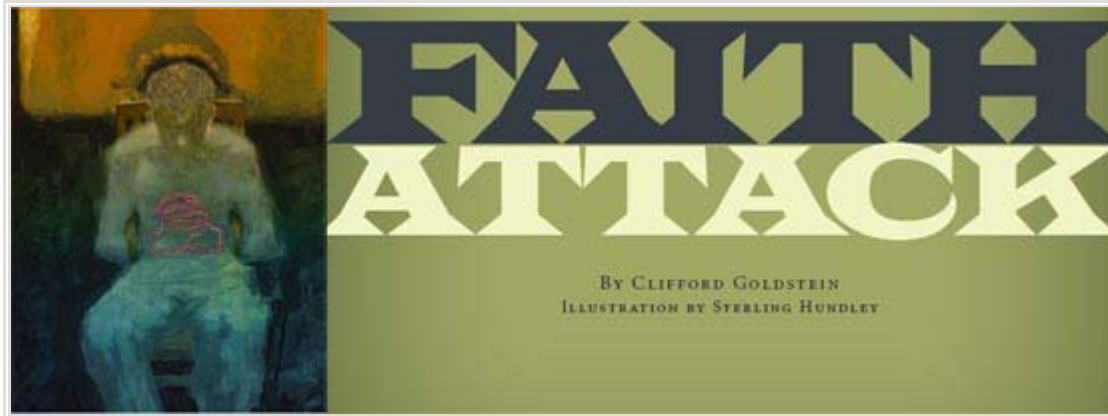
Heinz Volk writes from Summerland, British Columbia, Canada.

Some years ago, while editing a teen drug education journal, I attended an interfaith meeting on drug and alcohol problems. A Roman Catholic priest with expertise on his church's alcohol issues revealed that by using alcoholic wine for the Mass many priests are becoming alcoholic. An alcoholic can relapse almost immediately upon drinking again. He explained that there is a dispensation for such priests to use nonalcoholic grape juice instead. A good solution and arguably closer to the biblical ideal. Editor.

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Faith Attack

BY: CLIFFORD GOLDSTEIN



Picture this dystopia: in the name of rationality, reason, and science—religion is severely pro-scribed. Some religious beliefs— *beliefs*—deemed so dangerous that those holding them should be killed. The concept of religious "tolerance" would also be anathema: persons would not be allowed to hold whatever religious beliefs they chose—this cannot be for beliefs deemed irrational. And parents could be charged with "child abuse" for giving their offspring a religious education.

It all sounds like something from the failed social experiments of the Soviet Union, the Eastern bloc countries, and other now defunct Marxist regimes, perhaps?

Perhaps. Yet that kind of society would be the logical outgrowth of views promoted by an elitist clique of atheist writers, philosophers, scientists, and scholars. Dr. Richard Dawkins, Daniel C. Dennett, Christopher Hitchens, and Sam Harris are at the forefront of what's been dubbed "the new atheism," a take-no-prisoners, shock-and-awe assault on any theism at all. Richard Dawkins wrote: "I am not attacking any particular version of God or gods. I am attacking God, all gods, anything and everything super-natural, wherever and whenever they have been or will be invented."¹

Nothing's new, of course, about cynical "intellectuals" challenging a belief in God. But there are some frightening subtexts embedded in this new rhetoric. In *The New Republic*, author Damon Linker expressed concern about what he called the "illiberal" and "brutally intolerant" proselytism of the new atheists² Among them are ideas that, if taken to their logical conclusion, would wreak havoc on the free exercise of religion.

What are these "new atheists" promoting, and what's so potentially dangerous about them?

Lucretius or Madalyn?

"As to the gods, I have no means of knowing either that they exist or that they do not exist. For many are the obstacles that impede knowledge, both the obscurity of the question and the shortness of human life."³ Thus wrote Protagoras about 400 years before Christ. The sophist was just one in a long line of thinkers who, to varying degrees, challenged religious belief. The list includes names such as Aristotle, Lucretius, Avicenna, Benedict de Spinoza, Voltaire, Jean-Jacques Rousseau, Immanuel Kant, David Hume, Bertrand Russell, and Anthony Flew. (Flew, once dubbed "the world's most notorious atheist," recently changed his mind and now believes that God does exist.⁴)

In one sense, little is new about the new atheists' philosophical arguments. They've come up with almost nothing that hasn't been heard before, or expressed more persuasively. Their polemics can get puerile, to put it mildly.

Here's typical Dawkins: "A popular deity on the Internet at present—and as undisprovable as Yahweh or any other—is the Flying

Spaghetti Monster, who, many claim, has touched them with his noodly appendage. I am delighted to see that the *Gospel of the Flying Spaghetti Monster* has now been published as a book, to great acclaim. I haven't read it myself, but who needs to read a gospel when you just know it's true?"⁵ Texts like this are, no doubt, why one critic wrote that these men "advance no argument that I, the village atheist, could not have made by the age of 14."⁶

We're not talking here, then, about the heirs of Lucretius or David Hume but, rather, the intellectual kin of Madalyn Murray O'Hair.

Thought Crime

The comparison with O'Hair—for decades the ultra-nasty den mother of American atheism—isn't, however, limited merely to the intellectual paucity of their apologetics. O'Hair didn't just attack religion as religion; she went after practice and expression as well. Which is the point: one doesn't have to read too far between the lines, or in some cases not between the lines at all, to see something similar brewing among the new atheists.



Sam Harris, in his screed *The End of Faith*, writes, "I hope to show that the very ideal of religious tolerance—born of the notion that every human being should be free to believe whatever he wants about God—is one of the principal forces driving us toward the abyss."⁷ As if that weren't enough, he argues that "some propositions are so dangerous that it may even be ethical to kill people for believing them."⁸

It's one thing to restrict people, or even kill them, because of their actions. But to so demonize thought and belief! Any thoughtful observer can see that free speech in America—though enjoying a vast and complicated legal bulwark of protection—is, in this age of political correctness, having its limits tested in ways not seen, perhaps, since World War I. But Harris is promoting an assault not just on action, not just on speech, but on *belief itself*. Who would have thought that Orwellian "Thoughtcrime" would be taken out of the realm of political satire and promoted by someone deemed liberal, or progressive?

Harris sounds like Torquemada, not Hume. American courts, of course, have drawn a distinction between belief and action: you can believe whatever you want, no matter how absurd, but limits must be imposed on the actions inspired by those beliefs, a distinction that Harris apparently misses.

One wonders too just what "propositions" Mr. Harris would deem worthy of death? Lines regarding the limits of action and speech have been hard enough to draw. But to extend those lines toward belief (i.e., *religious belief*) would plunge any nation deep into the scary realms that haunted Orwell's fervid imagination.

The Cost of Free Exercise

From the earliest days of the American experiment, the free exercise of religion has been deemed a right sacred enough to merit special protection. This is an idea that Richard Dawkins obviously can't understand or won't acknowledge as central. Thus he bemoans the "weird . . . privileging of religion"⁹ in America. He uses some extreme examples of illegal practices that were given free exercise protections and expresses horror that in some of these cases, the members are allowed their practices, despite the law.

The logic, though, is simple: the American courts wisely decided to stay out of questions of dogma and theology. "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect."¹⁰

In other words, today's heresy and absurdity could be tomorrow's orthodoxy, and thus the courts proscribe neither. Certain bizarre views

can, at times, get special protection under the principles of free exercise jurisprudence, but that's part of what religious freedom costs. That Dr. Dawkins—who is opposed to all religious belief—finds that too costly proves only the shallowness of his worldview. It says nothing about the value that America places on the role of faith in society, and what it's willing to accept in order to protect that role.

Suffer the Little Children

No argument, of course, can be complete without invoking the children and what's best for the children. Daniel Dennett, in *Breaking the Spell* (guess what "spell" that is? Shades of *The Golden Compass*?), warns about the "effect of religious upbringing and education on young children"¹¹ He compares religious education to parents who, under certain conditions, let their children drink alcohol. "When do the authorities have not just the right," he asks, "but the obligation to step in and prevent abuse? Tough questions, and they don't get easier when the topic is religion, not alcohol."¹²

Dawkins, in contrast, shows little respect for such nuance, arguing that the damage to children caused by sexual abuse "was arguably less than the long-term psychological damage inflicted by bringing the child up Catholic in the first place."¹³ Dawkins labels certain religious teachings, such as eternal torment in hell, as nothing short of "child abuse."¹⁴ He also bemoans one of the most famous religious liberty cases in America, *Wisconsin v. Yoder*, in which the U. S. Supreme Court allowed the Amish in Wisconsin to withdraw their children from school before age 16.

No question, of course, that when the issue of children arises, religious liberty rights must be carefully balanced with other concerns. The courts have wrestled with this difficult area for years. But what could the phrase "religious freedom" mean if parents were not, except under the most radical and extreme circumstances, given the ultimate say in fostering their child's religious beliefs, no matter how egregious some of those beliefs might seem to others? A free society can offer nothing less and still call itself "free."

Children do need to be taught *something* about themselves, their origins, and their destiny, right? The new atheists, then, would teach their children—what? That we're created by chance, with no ultimate purpose or destiny, and that more conscious thought went into someone spray painting graffiti on a wall than went into our existence? Children who lose siblings, friends, or parents must be taught that these people are gone forever, with no hope of ever seeing them again. The children will also learn that they themselves, and all their hopes and dreams and desires, will also one day be forever gone—with no hope of redemption, no hope of having the hard questions answered, no hope of anything but the pain and suffering of this life, followed by the eternal blackness of a cold and dead universe.

Child abuse, Dr. Dawkins, can come in myriad forms.

Fodder for the Right

The new atheism is, if nothing else, a hyperbolic reaction to the many excesses of religion, so painfully seen in recent years with, among other things, suicide bombings and other atrocities done by the faithful. For these atheists, there's only a quantitative difference between a believer who, hoping for a fast route to 70 virgins in paradise, blows up himself and others, and a believer who rejects the standard neo-Darwinian model of origins in favor of intelligent design. Both represent worldviews completely alien to these polemicists, whose single-tiered, materialist conception of the universe allows for nothing divine.

Fortunately, their views aren't likely to become public policy anytime soon, and certainly not in the United States (after all, look how well they worked in the Soviet Union). Their most damaging impact might be, instead, the fertile fodder they provide the Christian Right, long trying to convince the flock that their religion is under attack by secular elites and that the only way to protect themselves is for Christians to gain the reins of political power. In short, the extremism of the new atheists will only feed the extremism of the Christian Right, each side pushing the other further in a direction that neither needs to go.

Clifford Goldstein writes from mount airy, Maryland. a former editor of Liberty, Clifford now edits bible study guides for the seventh-day Adventist Church. He writes prolifically and travels widely, lecturing on a variety of topics (even religious liberty on occasion! —ed.).

1. Richard Dawkins, *The God Delusion* (New York: Houghton Mifflin, 2006), p. 57.
2. Damon Linker, "atheism's wrong Turn," *The New Republic*, Dec. 10, 2007, pp. 16-18.
3. Quoted in *From Thales to Plato* (University of Chicago Press, 1956), p. 60.
4. see Anthony Flew, *There Is a God* (New York: Harper Collins, 2007).
5. Dawkins, p. 76.
6. www.city-journal.org/html/17_4_oh_to_be.html

7. Sam Harris, *The End of Faith* (London: The free Press, 2005), p. 15.
8. *Ibid.*, pp. 52, 53.
9. Dawkins, p. 44.
10. *United States v. Ballard*, 322 U.S. 78 (1944).
11. Daniel Dennett, *Breaking the Spell* (new York: Penguin books, 2006), p. 321.
12. *Ibid.*, p. 323.
13. Dawkins, p. 356.
14. *Ibid.*, p. 357.

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Liberty Saves The Day

BY: ALAN J. REINACH



Pacific Union College in Angwin, California, was up against the proverbial wall. A powerful coalition was pressing for an amendment to the Napa County General Plan in order to prevent the college from pursuing plans for an "ecovillage." Proposed development at the college would upgrade commercial facilities and provide added residential housing, including much-needed low-income housing, and would add 17 acres to the development foot-print of the community. It would utilize state-of-the-art building and conservation techniques to minimize its environmental impact. Yet the jury decided that this project should not be evaluated on its own merits, and must be blocked at all costs.

The cost to Pacific Union College was to be substantial. Amending the General Plan would not only block the particular project, but threaten to severely restrict its property and development rights.

At the eleventh hour, it appeared that the college was going to lose the fight. The tide was turning against it among the Napa County Board of Supervisors. It was then that Liberty magazine came to the rescue!

College president Richard Osborn was flying home from a meeting. Browsing through a recent issue of Liberty, he happened to read a story about a land use case involving the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA was enacted by Congress in 2000 following the growing problem faced by religious institutions in the local land use approval process. President Osborn suggested to college lawyers that they investigate RLUIPA issues. When they professed to lacking expertise in this area, he suggested that they contact the Seventh-day Adventist Church's religious liberty representatives. He knew they had experience in such issues.

I had the privilege to consult on the case and to help craft an RLUIPA argument and letter to the Napa County attorney, with very able assistance from Nicholas Miller, Esq., director of the Andrews University International Religious Liberty Institute. It was widely acknowledged that this legal analysis saved the day for Pacific Union College. It gave county officials pause. During that pause, they realized that the college was entitled to have its development plans considered on their own merits; that the future of the "urban bubble" in Angwin should be evaluated with the other urban bubbles in the county; and according to principles and practices that apply consistently throughout the county.

Some apparently do not understand the federal RLUIPA statute, or how the amendment of a Napa general plan can raise religious freedom issues. They see the issue in secular, not religious terms. RLUIPA requires that religious institutions be given equal treatment with other institutions. The proposed amendments to the general plan were designed to restrict the development rights of *only* Pacific Union College, and in that way, did not constitute equal treatment. There is no question but that county officials both understood and gave careful consideration to these legal principles. Moreover, despite press coverage claiming that the college had threatened to sue the county, county officials did not express fear that the college was threatening to sue. Indeed, we had the opportunity to remind county

officials that we are here to serve the community, not to fight with it.

There is, of course, no guarantee that the college will now prevail in its development plans, or that the project will not have to be substantially modified or reduced before it can be approved. There is a key environmental review process that will have enormous influence on the final outcome. All of the concerns expressed by those who oppose the project will be heard at the proper time and place, as the specific project is evaluated. This is how the land use process is supposed to work.

Thanks to *Liberty* magazine, Napa County has decided in favor of fundamental fairness toward Pacific Union College, a good neighbor and member of the county community for more than 100 years.

Should your church or religious institution be facing a difficult development process, it would be well to consult with religious freedom attorneys at an early stage in the proceedings to ensure that the relevant legal principles are followed.

Attorney Alan J. Reinach writes from Thousand Oaks, California. He represents the Seventh-day Adventist Church for religious liberty issues in a five-state area surrounding California.

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Something Borrowed, Somthing Blue

BY: LINCOLN E. STEED

It says something about the blossoming relationship between the once firmly Protestant United States and the Holy see that on pope Benedict XVI's first visit here the media became fixated on his choice of footwear. Red, handmade designer shoes, no less! But surely such an affectation is not relevant! it seems the old protestant penchant for recognizing the symbols of Catholicism has become one of fashion. No wonder the golden monstrance with its extravagant sunburst merited no mention!

From touchdown of "shepherd one" at Andrews Air Force base with President Bush on hand to greet the pope, to the moving service at ground zero, to the open-air mass, to the various ecumenical consultations, it was obvious that not only was precedent being set, but a love affair was underway. On his first visit to the United States, John Paul II knelt down and kissed the tarmac. Benedict's visit took the emotion to the next level. He could deal with business.

To his credit, the pope apologized for the pain inflicted by the priestly abuse scandal. Of course, words alone cannot atone for such systemic actions, but it was a necessary and effective response.

The pope went on pilgrimage to the shrine of 9/11 and ensured the emotional fealty of Americans by sharing their pain. It was an appropriate acknowledgement of a defining moment, and enough to cover for the deep disagreement between Rome and Washington over the militaristic response to that day.

He met with a wide array of religious leaders, including many representing Islam, and showed that dialogue can be had and is not necessarily contentious. of course, the net effect was to confirm him as the preeminent religious figure in the world—but maybe that designation is a natural outgrowth of how his influence is projected, and no reflection at all on the merits of the global faith community leadership.

The pope spoke softly, but he carries a big moral stick. After all, he is justifiably concerned at the West's drift toward secularity and moral relativism. All but the most hardened immoralist have to concede and applaud that he and his predecessor have elevated the tone of moral discourse. Of course, one would have to expect this of the role of a spiritual leader. it is at once demoralizing and startling that so many other religious voices have prostituted themselves to convenient causes and self-serving theologies that justify the worst tendencies of plunder and disregard.

To an often restive new World Catholicism Benedict spoke plainly in words all should note. "Any tendency to treat religion as a private matter must be resisted," he told the bishops. "Only when their faith permeates every aspect of their lives do Christians become truly open to the transforming power of the gospel." good stuff if taken spiritually. A little more significant if related to other emerging themes of Rome, however.

In spite of the fact that Rome has challenged the Islamic world to forsake its all-or-nothing approach to church and state, the model is not all that different. In recent years Rome has reemphasized the concept of "subsidiarity." under this model the state is limited in its power over those areas that the Catholic Church identifies as belonging to its care. But it also allows for the state to assist the church in its mission monetarily. And with the invocation of the authority of the magisterium the state itself is a lesser Power—certainly insofar as moral authority—than the church. The net effect is, in theory at least, not dissimilar from the medieval model that ended up requiring the protestant reformation and led to sovereign civil states.

The most telling application of the real-world church-state model followed by Rome is its stance toward the confessional states. Here the preeminence of the church is accepted as the ideal norm and equal treatment for other faiths somewhat fades in priority.

Where Rome has held out an admirable model is its call, mostly to the world of Islam, but sometimes repeated in a Christian context, for "reciprocity." it is a backdoor approach to religious freedom and the free interchange of religious information and allegiance—read right of proselytism and conversion. Under international conventions there must be a right of religious self-determinism. We can only hope and pray that Rome continues to support this bulwark of religious freedom.

The United States continues to see itself as "the indispensable nation." In a day of falling dollar values and rising euro this might seem less true. but in models of religious freedom the U.S. still adheres by constitutional mandate to a cleavage between religious and civil



**SOMETHING
BORROWED,
SOMETHING
BLUE**

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power—no matter how vigorously politically-ambitious church leaders here may denigrate the "separation of church and state." The model has much historic merit, and in the absence of god speaking directly to a chosen leader it is the ideal model to keep any church from using state power to require conformity, and to restrain the state from inhibiting or hijacking religious activity.

There is both irony and danger in the U.S. flirtation with an old World religious identity. Because even with its admirable moral voice and appreciated expressions of support for religious freedom, Rome remains the epitome of church-state union. a student of ancient history can choose to remember the bishop of Rome raised from the ashes of the declining roman empire to become a warlord in his own right, with papal states and claims of sovereignty over the kings of Christendom. But one does not need to go back beyond Benito Mussolini's Lateran treaty of 1929 and the designation of the 110-acre Vatican City as a new state. This is the not so ancient claim of the Holy See. At that point in the modern world a religious power, with every right to exist and advance its faith agenda, became a state with sovereign interests.

No wonder the U.S. so long resisted formal diplomatic relations with the new entity. While there had been informal U.S. envoys to Rome, it was not till 1984 and under Ronald Reagan that the U.S. appointed an ambassador. I personally think it not immaterial that this was done precisely at the time that politically-activist protestant leaders in the U.S. were losing their awareness of the need to distinguish politically between church and state. so the strengthening diplomatic link is not an indictment of the Vatican but a sad little canary in the new World.

Way back in 1998 the papal apostolic letter Dies Domini called on Catholics to "ensure that civil legislation respects their duty to keep Sunday holy." not a bad goal, per se. We all, in the cause of religious liberty, wish to see laws that respect the broad spectrum of religious activity. the danger, of course, is that Rome means what she always held about her authority to enforce Sunday observance. The apostolic letter was refreshingly honest about the origins of sunday worship, as something without direct biblical command but commended by "tradition" and the magisterium of the roman church.

Blue is a memorable color for religious freedom in the United States. While in catholic symbology it is a color of purity, and often applied to the figure of the mother of Jesus, here in the U.S. the dormant "blue laws" hark back to a time when the blurring of church and state had zealots thinking that moral behavior would follow from compelling to

D E C L A R A T I O N
of Principles

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

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

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

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

Sunday observance. I could point out that the bible commends the seventh day as such, but still, its civil application would be antithetical to continued religious freedom.

I say we continue to welcome the pope to these United States, as we have welcomed leaders as diverse as Nelson Mandela and Nikita Khrushchev. I say we applaud him when he speaks well of religious liberty, and join him and any other person of good will in encouraging the world to moral responsibility and personal piety. And I say we be on our guard about compromising our civil and religious freedom by emulating long-since discredited hybrid models of church and state.



Lincoln E. Steed, Editor
Liberty magazine

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Home-School Panic

BY: CÉLESTE PERRINO-
WALKER

I remember a conversation I had with a casual friend when I was first thinking of homeschooling my children. She informed me (rather smugly, I thought) that laws would soon be passed to prevent parents who did not have teaching credentials from teaching their children at home. That was fine for her because she (a) didn't have children, and (b) had teaching credentials—so she was safe if she ever did decide to homeschool. I, on the other hand, hadn't even been to college. I spent many agonizing hours mentally tallying the time it would take for me to go back to college and get certified just so I could teach my own kids at home. Thankfully, that law was never passed in Vermont. But that's not to say it never will be. Every now and then this issue rears its ugly head in various places around the country.

The latest instance was in California, and the legality of homeschooling wasn't even an issue initially. During the course of an investigation resulting in conjunction with a petition to the trial court on behalf of three minor children (*In re Rachel L.*[2008], Cal.App.4th), in which the eldest claimed physical and emotional abuse by her father, the Los Angeles County Department of Children and Family Services discovered that the eight children in the family had been, or were being, homeschooled by the mother, who had no teaching credentials. Even though the trial court found the education the children received to be subpar, it refused to order the children to attend public school, stating that "parents have a constitutional right to school their children in their own home."¹ Unhappy with this decision, the attorney for two of the three minor children then petitioned the appellate court for extraordinary writ relief, asking them to direct the trial court to order the children be enrolled in a public or private school.²

The appellate court started the current brouhaha by declaring that the trial court was mistaken. They found that "under provisions in the Education Code, parents do not have a constitutional right to homeschool their children."³

In order to fully understand the implications of this decision, you must first grasp California education requirements. According to the California Homeschool Network there are four options for home-school education in California. They are: "establishing your own home-based private school, enrolling in a private school that offers independent study, using a public school independent study program (ISP) or charter school that caters to homeschoolers, or, if you have a credential, using the tutorial option."⁴

It's estimated that 166,000 children in California are homeschooled. Of those, "across the state, there are 18,352 students attending private schools with five or fewer students, state education officials said."⁵ Meaning that if there is any change in the education requirements to require teacher credentials all those home-school teachers and students will be suddenly breaking the law. And that's just California. Each state has its own requirements. If things don't go well for homeschoolers in California the repercussions could well affect the rest of the nation.

Attorney Deborah Stevenson explains that "there is no specific language in the United States Constitution that provides parents with a fundamental 'right' to the upbringing and education of their children. The U.S. Constitution is a document limiting the powers of the federal government. It does not grant rights to individuals.

"The United States Supreme Court, however, in *Pierce v. Society of Sisters*, did find in the 'pen-umbra' or shadows of the U.S. Constitution that parents have a fundamental liberty interest in the upbringing and education of their children. Frequently, this decision is cited and parents rely on that 'right.'"

It must be noted, however, that in that very same decision, among others, the United States Supreme Court also stated that even though parents have that fundamental right, the state also has a right to 'regulate' the right of parents in their ability to raise and educate their children. That's why we have many state statutes 'regulating' home schooling today."⁶

Stevenson, in her article regarding *In re Rachel L.*, disagrees with those who say the court's ruling was that home schooling in California is now illegal. She asserts that nothing has changed because of the decision, and that if parents comply with the state statutes they are just as free to homeschool as they were before the case was ever tried.

State superintendent of public instruction Jack O'Connell came to a similar conclusion and made an announcement stating that the California Department of Education had reviewed the February 28 California Court of Appeal ruling and nothing had changed. "I have



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reviewed this case, and I want to assure parents that chose to homeschool that California Department of Education policy will not change in any way as a result of this ruling. Parents still have the right to homeschool in our state."⁷ While O'Connell's statement must have been a relief to homeschoolers, his is not the final word on the subject—just a strong, positive one.

But while some Californians are breathing easier—many who see the broad, sweeping, condemning language of the case as a threat are not. Governor Schwarzenegger was quick to jump to the defense of home schooling in his state with strong words of support. "Gov. Arnold Schwarzenegger denounced a state appeals court ruling that severely restricts home schooling and promised Friday to change the law if necessary to guarantee that parents are able to educate their children at home."

"Every California child deserves a quality education, and parents should have the right to decide what's best for their children," Schwarzenegger said in response to the ruling, which said children educated at home must be taught by a credentialed teacher."

"Parents should not be penalized for acting in the best interests of their children's education," Schwarzenegger said. "This outrageous ruling must be overturned by the courts, and if the courts don't protect parents' rights then, as elected officials, we will."⁸

In *re Rachel L.* is technically applicable to one family and deals only with that family's ability to homeschool. However, the case sets a clear legal precedent that would apply to all other homeschooling families if it's not reversed. If ratified by the Supreme Court of California, the result could be a domino effect across the country.

The wording in the case that is worrisome to many people include phrases such as the following: "It is clear to us that enrollment and attendance in a public full-time day school is required by California law for minor children unless (1) the child is enrolled in a private full-time day school and actually attends that private school, (2) the child is tutored by a person holding a valid state teaching credential for the grade being taught." "California courts have held that under provisions in the Education Code, parents do not have a constitutional right to school their children in their own home." "We agree with the *Shinn* court's statement that 'the educational program of the State of California was designed to promote the general welfare of all the people and was not designed to accommodate the personal ideas of any individual in the field of education.'"⁹

Nothing about that wording sounds innocuous.

So, who stands to lose something in this case? Just who is homeschooling anyway? Back when I was a 14-year-old freshman in the late 1970s, practically no one was. Home schooling was a fringe phenomenon practiced primarily by nonconformists. "In 1985 approximately 50,000 children were being homeschooled nationally. Today that estimate has risen to nearly 2 million. Though only 1.5 percent of school-age children, it is still a significant number. With the home-schooling community growing by 15 to 20 percent per year, home schooling is an educational choice that appears to be here to stay.

"Last year, home-schooled children swept the top three places on the National Spelling Bee, and Stanford accepted 27 percent of its home-schooled applicants, nearly twice its average acceptance rate. Home schooling has gone from the fringe to the mainstream."¹⁰ Although in the beginning religion was cited as the major reason for home schooling, today the primary reason parents choose to homeschool is dissatisfaction with the public school system.

With the advent of the Internet the opportunities for homeschoolers will only increase and expand—if allowed to. Florida, for example, has the first state-funded virtual high school. Its promotional materials state that it presently consists of 54 percent public school students, 38 per-cent home-school students, and 8 percent private school students. Some of the benefits cited are a flexible schedule, enhanced course selection, and accommodation of alternative learning styles. Its 65 courses include AP classes.

"I was actually homeschooled for several years, as were my sisters," cites "Jake," who posted a blog comment on the Los Angeles *Times* article "Ruling Seen as a Threat to Many Home-Schooling Families." "All of us have college degrees and have been recognized for our academic achievements. We were taught by my mother who, at that time, did not even have a college degree, much less a teaching credential. This is just another way that the government is attempting to interfere with parenting and First Amendment rights. I plan on homeschooling my daughter and will go back to school to get my teaching credential if that is what I have to do."¹¹ The issue clearly struck a nerve not just with Jake, but also with the other 765 people to respond to the piece. Some were for and some were against mandating that parents be credentialed to homeschool, but all were passionate about the subject.

As are Glenn and Kathleen, a couple living in the Sacramento area, quoted in the article, who asked that their last name not be used out of fear of prosecution. "I want to have control over what goes in my son's head, not what's put in there by people who might be on the far left who have their own ideas about indoctrinating kids,' he said. If the ruling takes effect, Glenn vowed to move his family out of state. 'If I can't homeschool my son in California, we're going to have to end up leaving California. That's how important it is to me.'" ¹²

The Home School Legal Defense Association (HSLDA) began a petition to the California Supreme Court to "depublish" the opinion, which would make it difficult to cite the case as precedent. In just 10 days they collected 250,000 signatures, proving that home school is indeed a force to be reckoned with. Meanwhile, the California Court of Appeal granted a motion for rehearing in the *In re Rachel L.* case."

This is a great first step,' said Michael Ferris, chairman of HSLDA. 'We are very glad that this case will be reheard and that this opinion has been vacated, but there is no guarantee as to what the ultimate outcome will be. This case remains our top priority,' he added." ¹³

For now, homeschoolers in California and across the nation can breathe easy. Whether or not this is simply the calm before the storm, only time will tell.

Freelance author and editor Céleste Perrino-walker writes from Rutland, Vermont.

1 http://localhs.com/legal/nheld_on_rachel.asp

2 *Ibid.*

3 *Ibid.*

4 www.californiahomeschool.net/howTo/legopt.htm

5 www.sfgate.com/cgi-bin/article.cgi?f=c/a/2008/03/07/inChvG0sd.dTI

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