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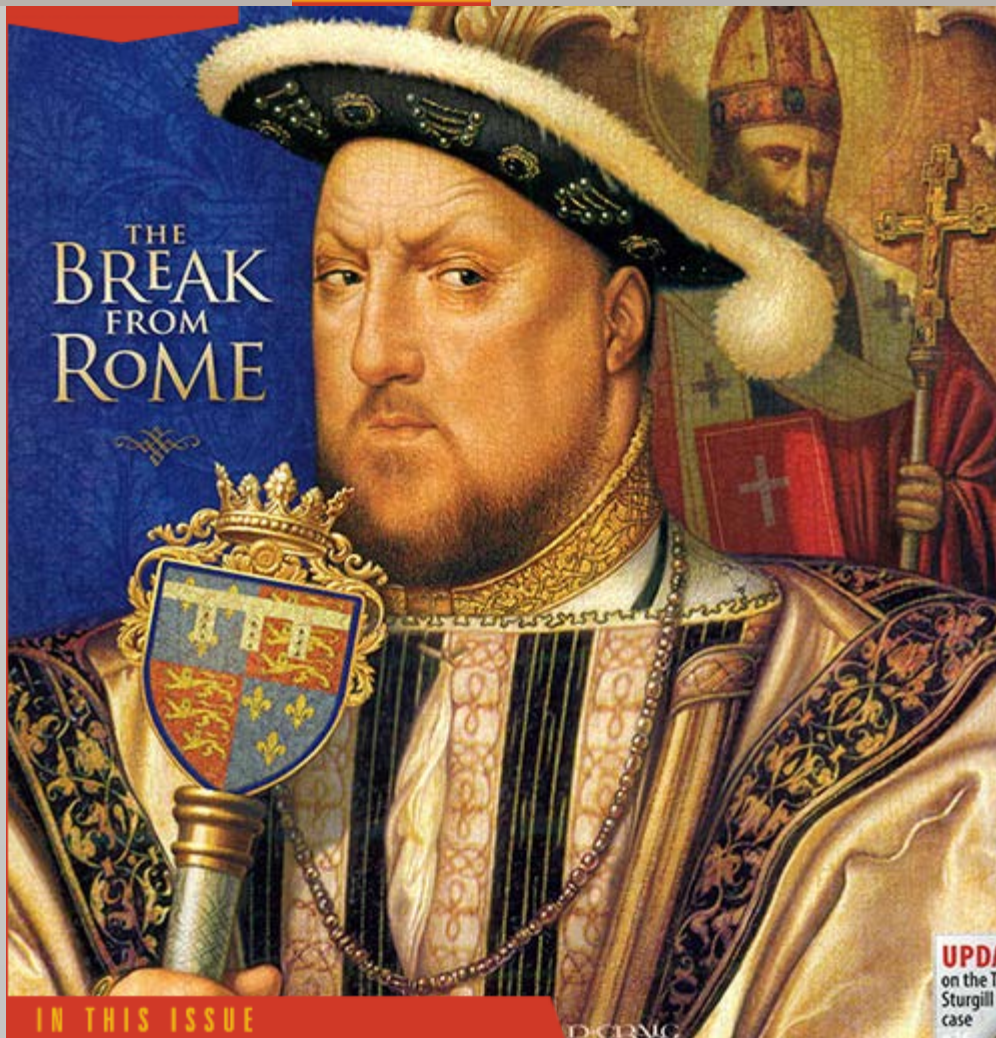
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EDITOR'S BLOG

IN THE MEDIA

JANUARY / FEBRUARY 2009

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IN THIS ISSUE

The Summum of All Fears

The Break From Rome

Gaining the Upper Hand

The American Advent of Benedict XVI

A Right of Passage

Learning About the First

Amazing!

NEW! LIBERTY ROUND TABLE

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SUMMUM / FEBRUARY 2009

The Summum Of All Fears

Editorial

BY: LINCOLN E. STEED

The Supreme Court of the United States of America is not given to levity. Even the occasional outburst of its resident bad boy Antonin Scalia is less humorous than it is revealing of deeper divisions within the court not yet truly explored.

We may yet get to see where all that leads—and a strange case that came before the court in mid-November last year could do it. Or it could merely have the court back to marking time, as it has done with some similar cases in which it dodged a bullet by invoking what it has called “ceremonial deism.” I’ve always found this term and its use today curious. After all, many of the framers of the Constitution were deists—at a time when that identification was damning. It amounted to having a religious view that bordered on the nonreligious. In an age of faith, the skeptical deist escaped total rejection because he at least acknowledged a God—albeit an absent God who left us with a rather secular logical construct. “Ceremonial deism” would almost seem to confirm this historical anomaly at a time when many would like to reinvent history and have those same deists forming a very self-conscious religious state.

The case centers around the efforts of Summum founder “Corky” Ra to have his religion’s Seven Aphorisms placed in a Pleasant Grove, Utah, park alongside a longtime Ten Commandment display. He cites free speech rights, and thereby dodges the issue of whether the state should be in the business of displaying any religious symbol.

Where else but in America, some may snigger.

It is, of course, a good thing that the United States is so forthright in protecting religious expression. Goodness knows far too many countries either don’t care or care so much that they will protect only one favored form of expression.

But by my lights this is a particularly dynamic moment to be revisiting this topic in the United States. “Sum of All Fears” as a movie title may have veered toward nuclear terrorism, but the sum of those fears today could just as easily be the amazing convergence of forces that cannot help but pull us into a religious crisis.

As this issue comes out we expect the transfer of presidential power in the United States. Leaving is a president who came to embody the goals of the emerging politically active Religious Right. The faith-based initiative was only a small part of his outward expression of a sense of religious exceptionalism and manifest destiny. Coming into office is a president with a background that covers religious experience as diverse as black liberation theology and Islam. His is a rich background that goes a long way to explaining his apparently more globalist vision.

And where are the global religious trends heading? I think they are best summed up by referencing a two-day summit held November last year in the General Assembly of the United Nations. Cochaired and called by King Abdullah of Saudi Arabia, the meeting aimed at bringing all religions together for world peace. Continuing religious intolerance within Saudi Arabia aside, this may be a far more important barometer of the world religious view than the likely-never-to-quite-go-away issue of religious terrorism. As has been pointed out repeatedly by new Middle East peace plenipotentiary, former British prime minister Tony Blair, since religion has been so much of the cause of violence in recent years, it is only by coming together on religious issues that we can solve things.

It sounds good to a point. But in my view there is only one thing worse than being forced at the point of a gun to convert to a particular religious viewpoint—it is being herded into a religious corral of syncretism. Once branded with this form of religion, one’s particular deeply held faith views if practiced are likely to be declared maverick and unacceptable.

The real world consequences of the U.S. financial meltdown have yet to be truly seen. While the panic has been global, its cause and primary effect remains predominantly American. It has affected U.S. financial dominance in the world. It will tend to make it more obligatory for the United States to play along with the globalist agenda.

The irony with the Bush administration was that although rather extreme and intolerant religious worldviews were embraced within its fold, the legislative agenda to accompany them was never empowered. Now that the economic temple of secularism has collapsed around us, it



is obvious that any strange bedfellow is acceptable if it will restore us to economic security. Debt? Run the printing presses all day and pour in the red ink. State-run corporations and the socialist menace? What's good for big business must be good for us all. Global jihad and the menace of terrorism? Real enough, but it might all evaporate if we gather together and sing Kum Ba Yah. Religion is good if it is directed to the public good. So let's come together, agree to behavioral ground rules, and let the millennial good times roll.

Let's remember that the most insane abuses of human dignity that took place in the democratic center of Europe barely a lifetime ago came about by democratic acclaim and were seen as the answer to the stifling malaise of the Great Depression. Religion was not so much attacked as co-opted.

We need to be on our guard today. I remain convinced that the great threats to religious liberty are not to be found in particular pieces of legislation or particular court actions, onerous as some of them may be, but in the shifts and sea changes in attitudes that always precede and accompany great and dangerous movements. I pray that our little barque of religious freedom remains afloat across the likely shoals ahead.

And that might be as good a point to refer to this issue as I will get. Bannered on the cover is the first in a multipart series on the English Reformation. Forgive me my bias, but I hold it pretty important for our U.S. readers to review the origins of the whole religious liberty construct. It's pretty easy to criticize all faith followings for moments of intolerance brought on by their sense of divine privilege. But it is just as easy to note that religious freedom concepts barely existed before the Protestant Reformation, and owed as much to an enlightened theology of man's personal responsibility to find the Divine as they did to the secular enlightenment and the development of the modern mind.

It troubles me mightily that the principles of the Reformation are fading from Western consciousness. It troubles me mightily that the Western world is in such a rush to undo the Reformation—even as most of the issues that precipitated it in the first place have been reinstated. It troubles me mightily that there are so many calls for what amounts to religious legislation—even if often under cover of civil necessity.

After all, the hallmark of the worst religious persecutions of the Middle Ages was a common purpose between church and state. Drive a wedge between them, I say. As a couple, they are bad company for religious freedom. This issue also carries an update story on a Sabbath accommodation case that has finally been vindicated before the courts. One's rights may seem secure, but as this case shows, it can be a long legal pull to uphold them.

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JANUARY / FEBRUARY 2008

The Break From Rome

The English Reformation And The Origins Of Religious Diversity And Religious Freedom: PART I

BY: DAVID J. B. TRIM

This article is Part One in a four part series. [Click here for Part Two.](#)

Henry VIII set off an extraordinary chain of events in the 1530s when he broke away from the Roman Catholic Church, becoming the first European monarch to deny the power of the Papacy, and establishing himself as “Supreme Head” of the church in England. This article examines why and how Henry initiated the break with the Papacy and is the first of a series of articles on the English Reformation.

The English break from Rome created one of the first controversies over the distinction between church and state power. The execution of Henry VIII’s chief counselor, Sir Thomas More, who supposedly died declaring himself “the king’s faithful servant but God’s first,” is one of the best-known events of the sixteenth century—at least in English-speaking countries.¹

England’s break from Rome has more than historical interest, however, because it triggered a process with extraordinary ultimate outcomes: religious diversity in North America, with the consequent separation of church and state in the United States. How the medieval ecclesia anglicana became the Protestant Church of England and then fragmented into multiple denominations is thus of great significance.

Recently some Roman Catholic apologists have asserted that the Reformation in England was not truly about theology, spirituality, or liturgy—it was about the lusts of Henry VIII. While they recognize that the events of subsequent centuries and the divergence between Protestant and Catholic in the English-speaking world cannot simply be erased, they seem to think that if the root causes can be shown to have been unworthy, theologically unimportant, or both, then it will be easier for the consequences to be undone. Much is riding on an accurate understanding of the English Reformation.

This series will demonstrate collectively two significant points. First, that “Protestantization” (to use an ugly but useful term) occurred in England alongside and independent of Henry VIII’s break with Rome, and really dates from after his reign—the English Reformation was only just beginning at Henry’s death and, as one authority notes, “England had discontinuous Reformations and parallel Reformations.”² Second, underlying the process of religious change were substantive doctrinal differences—indeed a very different conception of man’s relationship with the Divine. These fundamental differences were far more important in the divergence of Catholic and Protestant in sixteenth-century England (and after) than were either the indiscretions of a willful, lascivious, and self-indulgent king, or the extraordinary personalities of his children, each of whom reigned in turn after his death.

The English Reformation and America

“Christianity’s twenty-first-century profile in the four nations of the British Isles is a result of [early-modern religious] upheavals.”³ The same can be said, albeit to a more limited degree, of North America, because the pattern of religious life was shaped largely in pre-Revolutionary America and reflected its English heritage. That pattern was maintained largely in the subsequent century, although it inevitably was affected significantly by emigration from central and eastern Europe—which had different religious histories—and eventually by emigration from Africa and Asia, which introduced non-Christian faiths into the American religious matrix. Nevertheless, the various new religious traditions and attitudes were integrated into the existing model; they reshaped the mold, but did not break it. Because the English influence was there at the beginning, it was formative and still shapes American government, American law—and American religious life.

The controversies generated during the English Reformation (circa 1540s–1600) and civil wars and revolution (1641–1658), and the churches and sects created thereby, are the basis of the denominational divisions in America; they provided a template for how most American churches are organized; and in them lie the origins of many of the practices and attitudes of American Christians. 4In those



sixteenth-and seventeenth-century events are, moreover, the roots of religious diversity and religious liberty as understood in the United States today.

Put simply, because England had a reformation, which then fragmented, turning homogeneity into plurality, and because the United States originated as English colonies, America was from its earliest days characterized by religious diversity. Only where there is religious diversity is there a need for religious liberty; diversity of belief within and between the original 13 colonies meant that there could be no one national church within the United States.

Thus, the modern concepts of the division of church and state and of religious liberty both have their roots in the English Reformation. Its roots, in turn, lie during the reign of Henry VIII (1509-1547).

Henry VIII

Henry VIII looms large in history, literally and figuratively. His decision “to declare unilateral independence from Rome” has traditionally been portrayed in British and American historical writing as creating a new England, which was a model of a new type of state, “fully sovereign within itself.”⁵ It has also traditionally been seen as the cause of the English Reformation—indeed sometimes as in and of itself constituting the English Reformation!

There are several problems with this view. Even apart from the complex issue of whether the government of England under Henry and his successors really was dramatically different and new, which has been much debated by constitutional and political historians, there is the question of whether considerations of national and personal prestige, or of religion, really were important in Henry’s decision to break with Rome. There is also the question of whether the decapitation of the medieval head of the English Church—the pope—and his replacement by the king—Henry—truly represented religious reform in any meaningful sense. We shall come to this last issue later.

Henry VIII holds the hand of Anne Boleyn. On the right the unhappy Pope Clement VII looks at the couple sideways. In the background Henry VIII’s existing wife, Catherine of Aragon, is seated on the throne and pointing at the couple.

In any case, against the positive views of traditional historiography there is another longstanding idea, which is that the break in the centuries-old relationship between England and Rome was simply due to Henry VIII’s personality and particularly his libido—that religious divergence and then diversity were caused by Henry’s unchecked sexual desire. This view was expressed within Henry’s lifetime (being condemned in Parliament in 1531) and it circulated freely in the years following his death; in 1585, for example, an English Catholic priest, writing about England’s break with Rome, attributed it to the fact that “the king himself was faithful neither to God nor to his first wife.”⁶ The reality is that, like most European monarchs of the period, Henry had kept several mistresses, by whom he had fathered illegitimate children, yet whom he had never showed the slightest interest in marrying. The reason for the break with Rome was not that Henry was an unfaithful husband, for that had been the case for some years before 1527, when he began the attempt to have his marriage to Catherine of Aragon annulled; it was Henry’s need (and that of his dynasty and kingdom) for a legitimate son and heir—for he had none.

The modern concepts of the division of church and state and of religious liberty both have their roots in the English Reformation.

An Endangered Dynasty

In 1509 the 18-year-old newly crowned Henry VIII married Catherine of Aragon, daughter of Ferdinand and Isabella of Spain, and widow of Henry’s older brother, Arthur, who died before their father, Henry VII. Because Catherine had been married (though only briefly) to Arthur, canon law required a papal dispensation before she could marry Henry. The English government duly obtained this—it was to prove both ironic and a major stumbling block in Henry’s later efforts to annul the marriage.

Although Catherine conceived six times, just two successful pregnancies resulted: she gave birth to a son who lived only a few days, and a daughter, Mary (b. 1516), later Queen Mary I(1553-1558). By 1525, when Catherine turned 40, it was plain that she would have no more children. This was not just a personal or marital issue; it was a key dynastic and political problem.

Today we know that the Tudors were to rule England for 118 years and impel the country toward greatness; we take their success for granted. In 1525 they were parvenu royals. Henry VII had captured the crown in 1485 by force; the legal basis of his claim had been extremely dubious and he had ended the prolonged internecine struggle of the Wars of the Roses (the last battles of which had been fought in 1485 and 1487, within living memory), partly by his personal ability, but partly by being the last man standing after three decades of conflict. His marriage to Elizabeth of York, the heiress of the chief rival family, ensured that his sons had an impeccable dynastic claim to the English throne, but only one son outlived him. Henry VIII had two sisters and a daughter, but as his sisters had married and his daughter would marry, if one of them succeeded him the Tudor name would end. In any case, although English law theoretically allowed a woman to succeed as monarch if she had no brothers or if they died without heirs, this had never actually happened up to that time. Henry probably agreed with the general sixteenth-century view that a woman was bound to be a weak and ineffectual ruler, so that chaos might ensue on a

female succession.

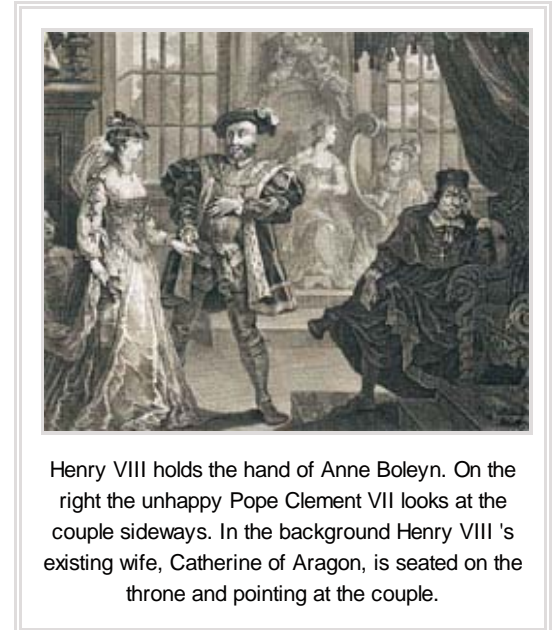
Thus, if the Tudor dynasty was to survive, and if England was to be safeguarded from another series of bloody succession wars, it seemed clear to Henry and to those around him that he needed a son—ideally several sons. If Catherine could not supply them, he would have to marry again. The problem was that the Catholic Church did not permit divorce. How was the circle to be squared?

The King's "Great Matter"

This problem and its possible solutions, the king's "great matter" as it became known to the king's counselors, were the chief concern of Henry's government in the late 1520s and early 1530s. Although divorce was impossible, marriages could be annulled, if it could be shown that they had never been consummated or that they should never have been allowed in the first place—that no valid marriage had been contracted. It was on the latter ground that Henry in 1527 began to seek an annulment of his 18-year marriage to Catherine.

Nor was this just a matter of political, personal, and dynastic convenience. For Henry, there might be a theological dimension to his wife's repeated failed pregnancies. Henry personally was very devout. In 1521 he had worked with a team of scholars to rebut Martin Luther's anti-papal diatribe *De captivitate Babylonica*; the refutation was published as *Assertio septem sacramentorum* (with Henry listed as sole author!) and was (ironically) a defense of papal supremacy for which the king was awarded the title "Defender of the Faith" by the pope. Henry was "meticulous in his religious duties" and so found it all the more disquieting that "his children continued to die in the womb or in infancy. And did not Leviticus 20:21 say that if a man had sexual relations with his brother's wife, they would be childless?" His lack of heirs proved to Henry that his marriage had always been biblically invalid. Today it may seem that his beliefs were suspiciously congruent with his own interests; they were still sincerely and strongly held. As his most recent biographer observes: "To Henry, God's commands [were] blindingly obvious. His marriage to Catherine was contrary to divine law as stated in the Bible [which], could not be set aside. It was said that 'an angel descending from Heaven would be unable to persuade him otherwise.'"⁷

Personal piety thus combined with personal lust, dynastic anxiety, and concern for national security to produce in Henry the conviction that he not only could end his marriage with Catherine—he must. An annulment would certainly be approved by the English Church courts, but Catherine refused to accept that she was no real wife, so it was certain that she would appeal to Rome, where it could not be presumed that Pope Clement VII would take Henry's side. Ensuring that he did side with Henry became the chief policy objective of the king's ministers, and the chief goal of English diplomacy in Europe. The annulment, sure enough, ran into trouble in the Roman courts, both because Henry had already obtained a papal dispensation to allow him to marry Catherine in the first place, and because Clement was rightly afraid of Catherine's nephew, Charles V, king of Spain and Holy Roman emperor. Failure to secure the annulment led in 1529 to the dismissal and imprisonment of Cardinal Wolsey, the king's chief minister since 1514.



Henry VIII holds the hand of Anne Boleyn. On the right the unhappy Pope Clement VII looks at the couple sideways. In the background Henry VIII's existing wife, Catherine of Aragon, is seated on the throne and pointing at the couple.

More than Lust

All this highlights the fact that, both inside and outside England, Henry's break with Rome involved rather more than the king's lust. It is true that the king's first attempts to persuade the pope to annul his marriage to Catherine began about the time that he was "struck with the dart of love" for Anne Boleyn.⁸ His lawsuit at Rome was obstructed partly because Clement VII presumed "that all Henry wanted was a new bedmate in place of his ageing, barren, and increasingly lachrymose wife."⁹ But what he and his great nobles and officials really wanted was a legitimate heir. Henry had already taken Anne's sister, Mary, as his mistress in the early 1520s; getting rid of his longterm wife, a close relative of Charles V, and making a minor English gentlewoman his queen, with the internal and international disruption that was bound to result, was only worth considering if he would thereby gain a son as well as a lover.

In the end Henry VIII was to gain rather more than an heir. Wolsey was replaced as the king's chief minister by Thomas Cromwell, who conceived the idea of denying that the pope had any authority over the English Church. This offered the additional immense incentive of giving the king comprehensive power over the church, its wealth, and lands. The conclusion of the king's "great matter" was thereafter to be intrinsically bound up with attempts to increase the power of the king.

The end result was that in the spring of 1533 Henry wed Anne Boleyn, and Thomas Cranmer, freshly installed as archbishop of Canterbury, finally declared the annulment of the king's marriage to Catherine, validating his marriage to Anne. Vehement papal assertions to the

contrary had no effect in England, where Henry was now “the only Supreme Head [on] earth of the Church of England.”¹⁰

Repudiating Rome

The claim made in a 1533 act of Parliament that the king of England had first claim on the allegiance of all his subjects, whether clerical or lay, that within his own kingdom he was supreme, and thus that “this realm of England is an empire,” reinforced by other acts and royal proclamations, was the foundation for all subsequent developments in English government and for English nationhood, as it emerged.¹¹ This is what the rejection of Rome had come to be about, as well as getting a male heir. The break with the Papacy, then, was caused by desire—but desire for dynastic perpetuation and royal dominion, rather than carnal lust. It was about sovereignty and royal supremacy, not sex.

His lack of heirs proved to Henry that his marriage had always been biblically invalid.

A First Step Toward Reformation?

Yet neither was it about doctrines—about sola scriptura, soteriology, the sacraments, or any of the issues about which Luther and continental reformers had been so exercised since 1517. What relationship was there, then, between separation from Rome and reformation in England? Was not the English Reformation the creation of Henry VIII?

This will be explored in the second part of this article, but we have already seen that the reasons for Henry’s rejection of Roman authority were not religious, but political. What will be seen in part two is that Henry would prove to be happy to moderately reform the English Church, having been given the chance by his assertion of supremacy over it. However, from his point of view, that was merely a fortunate by-product of his claims of ecclesiastical supremacy. His original plan seems to have been Catholicism without the pope.

Protestantism neither caused nor was achieved by the break with Rome. In the long run, as will be seen subsequently, Henry VIII’s denial of papal authority probably was indispensable to the eventual emergence of Protestantism. But the English Reformation was to some extent an unforeseen and unintended consequence of the king’s great matter.

This article is **Part One** in a four part series. [Click here for Part Two.](#)

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3. Diarmaid MacCulloch, “The Change of Religion,” in Collinson, ed., *The Sixteenth Century*, p. 83.
4. The long-term consequences in the United States of events in England in the 1640s-1650s are sketched out in two previous articles: D.J.B. Trim, “Oliver Cromwell: The Intolerant Inheritance of America’s Religious Extreme,” pt. 1, *Liberty*, Nov./Dec. 2006; Trim, “A Moral Vision: Oliver Cromwell and the Transformed Christian Nation . . .,” pt. 2, *Liberty*, Jan./Feb. 2007.
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7. E. W. Ives, “Anne (c. 1500–1536),” *Oxford Dictionary of National Biography* (Oxford University Press, 2004); www.oxforddnb.com/view/article/557; accessed May 15, 2008.
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JANUARY / FEBRUARY 2008

Gaining The Upper Hand

Subsidiarity And Justice For All?

BY: EDWIN COOK

Catholicism of the twentieth century experienced a renaissance of global proportions. In the 1990s, Catholicism played a dominant role in the downfall of Communism in the former Soviet Union. His charm with the masses and his diplomatic skill earned Pope John Paul II “Man of the Year” recognition by Time magazine. The Catholic vibrancy of the twentieth century has carried over into the twenty-first century. In the United States of America, the Catholic Church announced in March 2007 that for the first time in the history of that once overwhelmingly Protestant country, it now has the largest membership of all churches.¹

Historians attribute such a phenomenal rebirth to the pivotal, progressive decisions made during Vatican II that moved the church more in touch with the modern era. While such a claim is certainly valid and evidence exists for its substantiation, one may also trace the exuberance of modern Catholicism to its methodology in addressing the social issues of the late nineteenth century. Principles formulated then—particularly one known as subsidiarity—still find application in the present, especially when the church’s approach to “the social question” is viewed as a form of evangelism.² The social stances of Catholicism, such as pro-life and traditional marriage, have won the approval of most Evangelical Protestants and have resulted in a closer, harmonious working relationship between both groups.

Historically, the principle of subsidiarity, which forms the foundation of much Catholic social thought and action, was first used by W. E. von Ketteler (1811-1877), although he did not formulate it expressly.³ Von Ketteler viewed society as an organological entity that not only stressed the unity of all its parts, but more so emphasized their mutual interdependence. Seen in this light, the principle of subsidiarity applies to all societal factors, from the state to the individual, including all institutions in between. Thus, by definition, subsidiarity is “a principle in social organization: functions which subordinate or local organizations perform effectively belong more properly to them than to a dominant central organization.”⁴ It presupposes the state to be of divine origin and that society is correctly viewed from an organological perspective.⁵



The October 1962 opening of the Second Vatican Council at Saint Peter's Basilica. The Council was summoned by Pope John XXIII .

Von Ketteler’s seminal concept of subsidiarity was later enunciated in the encyclical *Rerum Novarum* (1891) by Pope Leo XIII. Faced with the social challenges of “the two great political systems of modern times, liberalism and socialism,”⁶ Pope Leo criticized them from newly rediscovered Thomistic principles. Liberalism found its economic expression in capitalism, and socialism resulted in loss of human freedom. Either system posed threats to the working class. By addressing these social injustices, Pope Leo XIII introduced the concept of state “intervention- but-not-interference” that was later formulated into a more concise form by Pope Pius XI in *Quadragesimo Anno* (1931) and that was referred to as subsidiarity.⁷

Pope John Paul II, in *Centesimus annus* (1991), celebrated 100 years of Leo XIII’s contributions in this area and developed the concept of his predecessors further. He defined subsidiarity as the state’s obligation to create “favourable conditions for the free exercise of economic activity, which will lead to abundant opportunities for employment and sources of wealth.”⁸ He balances this example of state intervention with a corresponding policy of noninterference, as speaking against the welfare state, when he stated:

“Here again the principle of subsidiarity must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.”⁹

help to coordinate its activity with the activities of the rest of society, always with a view to the common good.”⁹

Through such statements, John Paul II clearly defined the balance between state “interventionbut- not-interference” as the foundational principle of subsidiarity.

It is this backdrop of limits imposed upon the state that has given the principle of subsidiarity such universal fame in the area of international human rights. Its primary contribution in this regard lies in its ability to offer a medium of exchange and common ground for the two diametrically opposed concepts of sovereignty and individual rights. As Paolo G. Carozza states:

“The principle of subsidiarity provides an analytically descriptive way to make sense of a variety of disparate features of the existing structure of international human rights laws, from the interpretive discretion accorded to states, to the relationship of regional and universal systems, while also justifying the necessity of international cooperation, assistance, and intervention.”¹⁰

Viewed in this favorable light, the benefits offered by subsidiarity are worthy of further exploration.

To begin with, subsidiarity offers several practical benefits, the first of which is that it restrains sovereignty.¹¹ By limiting the involvement of higher organizations to aid only in those cases when lower organizations cannot achieve goals without such aid, it naturally checks overinvolvement of larger organizations. Such action is highly salutary in modern political systems that empower strong nationalistic ideologies. Since it tempers nationalism, universal norms are more realizable for promoting international human rights.

Furthermore, subsidiarity has global applicability with respect to all political (except totalitarian) and economic systems. Since it takes an “ambivalent stance toward the roles of the state and other social bodies,”¹² it can be more readily adopted by almost any nation. Such general applicability promotes a sense of justice through equally applied principles of action.

Carozza argues that another area in which subsidiarity offers a new vista to social justice is its support for pluralism in human rights discourse. By its very nature, the principle of subsidium focuses upon the individual and his or her freedom that is directed from a larger organization toward him or her. In this schema, the rights of the individual to develop as a person are strengthened and enhanced through the facilitation provided by the organization above him or her. Viewed in this light, subsidiarity is personalistic; “its first foundation is a conviction that each human individual is endowed with an inherent and inalienable worth, or dignity, and thus that the value of the individual human person is ontologically and morally prior to the state or other social groupings.”¹³ Rather than detracting from social justice, it is more readily obtained.

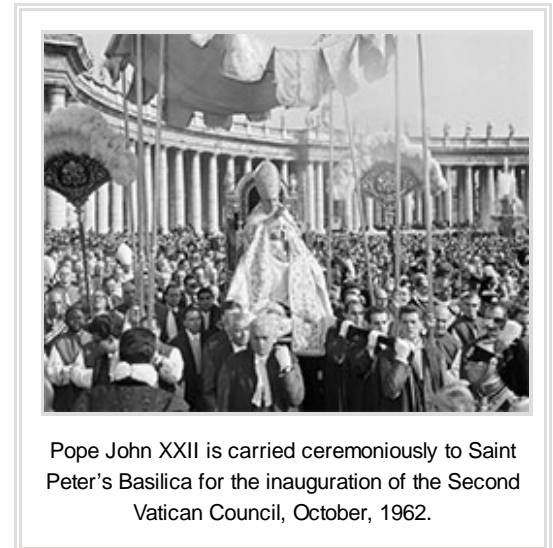
Although subsidiarity has much to offer, it has weaknesses in several areas. First, it endangers church-state relations. By definition, subsidiarity is designed to limit, or even to restrict, state involvement, which concept poses no threat in itself. The corollary of subsidiarity, however, requires higher organizations to facilitate the functioning of lower organizations. By such an ordering of societal structures, it naturally lends itself to supporting a theory of nonpreferential government aid to religious institutions.

This point bears significant weight in light of John Paul II's statements against the modern welfare state. If the welfare state is viewed as “an evil to be avoided,” then responsibility for societal needs falls upon the shoulders of lower organizations, such as nonreligious and religious groups dedicated to caring for the needy. Rather than the state taking direct charge of caring for its citizens, it should aid those subsidiary organizations (religious bodies) through monetary support to accomplish such fraternal duties as caring for the disadvantaged of society.

Furthermore, one must consider the historical context of the origin of the principle of subsidiarity. The Roman Question was still far from being resolved in the late nineteenth century. Leo XIII, who first introduced the premise of limiting the state in *Rerum Novarum*, marked his episcopate as one dedicated to the liberty of the church.¹⁴ Thus, through the concept of subsidiarity, strong, modern nation-states are limited from overinvolvement with those areas that the church identifies as traditionally belonging to its care; yet, by the same principle of subsidiarity, the state is obligated to assist the lower organizations to fulfill their mission, where such assistance may sometimes take the form of monetary sustenance. In simplistic terms, in the Caesaro-papal power struggle, subsidiarity grants the upper hand to the church.

A third weakness that becomes evident upon reading Carozza's article regards the conflicting terms used in reference to the freedom of the individual. On one hand, he states that subsidiarity is not based on the classical libertarian concept of society as an “aggregation of radically autonomous units,” but instead views man as having value that is “ontologically and morally prior to the state or other social groupings.”¹⁵ On the other hand, he argues that “the various human associations that constitute society (to the extent that they are healthy and functioning properly) are seen to fit together organically,” and that such a foundation for the concept of subsidiarity actually provides the individual with freedom to flourish and achieve his full potential.¹⁶

Perhaps an understanding of liberal Enlightenment thought and Catholic dogmatics is in order here. English philosophy of the Founding era of our nation was rooted in Enlightenment thought, particularly that of John Locke. Locke argued for rights of the individual based on concepts of the law of nature. He regarded man as having inherent rights as an individual apart from societal ties. Some of these rights,



Pope John XXII is carried ceremoniously to Saint Peter's Basilica for the inauguration of the Second Vatican Council, October, 1962.

such as the right to freedom of conscience in religious matters, were considered as inalienable, meaning no individual can relinquish such rights to any other person, or even to the state. Thus, Locke's Enlightenment thought argued for rights of the individual.

From a Catholic perspective, freedom for man means he has liberty to pursue truth and the good.¹⁷ More than this, he is actually obligated to enquire after the truth. Such notions find resonance only against the backdrop of an objective moral order, implying an underlying normative base, whether it is natural law or eternal law. Since the Catholic Church defines itself as the authoritative interpreter of either of these laws,¹⁸ then it is the final arbiter in queries concerning truth and the good. Part of its mission, in modern democratic societies, is to facilitate the adoption of Catholic moral thought by engendering discussion and debate within the body politic to achieve the common good as its ultimate end.¹⁹ Thus, it is correct to state, as Carozza does, that from a Catholic perspective, an individual has freedom within the concept of subsidiarity. However, from a liberal perspective this amounts to restrictions of conscience by attempting to bring the individual into conformity with the common good of society as defined by Catholic moral theology.

One may correctly argue, then, that the Catholic Church can certainly be credited as having promoted the cause of social justice, especially during the nineteenth century, through the concept of subsidiarity. Such a contribution planted the seed that is now bearing fruit as a viable means of reconciling national sovereignty and international human rights. On the other hand, while subsidiarity offers many benefits in these areas, it also has inherent weaknesses regarding concepts of the human person in relation to freedom when viewed from a classical liberal perspective. In a liberal democratic society such as America, one may insightfully ponder the deeper meanings of the quaint patriotic phrase "Liberty and justice for all," or should I suggest the question "Subsidiarity and justice for all"?

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1. Technically, the Catholic Church has had the largest membership among denominations in America since the 1850s, if denominational sub-affiliations are counted individually. For example, Southern Baptist members counted distinctly from National Baptist members resulted in Catholics being the majority of either two Baptist groups. However, in 2007, even when all sub-affiliated groups are totaled, the Catholics are still the dominant majority.
2. Pope John Paul II, in *Centesimus annus*, article 5, paragraph 6, states, "The 'new evangelization,' which the modern world urgently needs and which I have emphasized many times, must include among its essential elements a proclamation of the Church's social doctrine."
3. Ad Leys, *Ecclesiological Impacts of the Principle of Subsidiarity* (Kampen: Uitgeverij Kok, 1995), p. 25.
4. Merriam-Webster's Collegiate Dictionary, Eleventh Edition, entry "subsidiarity."
5. "Because the principle of subsidiarity fits within the wider framework of the organological vision of society, we must describe both versions of that larger framework."—In Leys, p. 14.
6. Ernest L. Fortin, "Sacred and Inviolable: Rerum Novarum and Natural Rights," *Theological Studies* 53 (1992): 207.
7. Paolo G. Carozza, "Subsidiarity as a Structural Principle of International Human Rights Law," *American Journal of International Law* 97, no. 1 (Jan. 2003): 41.
8. John Paul II, *Centesimus annus*, article 15, paragraph 5.
9. *Ibid.*, article 48, paragraph 4.
10. Carozza, p. 40.
11. *Ibid.*, p. 52.
12. *Ibid.*, p. 44.
13. *Ibid.*, p. 42.
14. John Courtney Murray, "Leo XIII: Two Concepts of Government," p. 561. Retrieved March 20, 2007 from www8.georgetown.edu/centers/Woodstock/library/Murray/1953d.htm; Thomas F. Stransky, *Declaration on Religious Freedom of Vatican II* (New York: Paulist Press, 1966), p. 138.
15. Carozza, p. 42, emphasis mine.
16. *Ibid.*, p. 43, emphasis mine.
17. John Paul II, *Centesimus annus*, article 46, paragraph 4: "But freedom attains its full development only by accepting the truth."
18. "[Natural law] points to God as the lawgiver, and it threatens to bring up for public discussion the claim of the Catholic Church that the Pope, as the Vicar of Christ, is the authoritative interpreter of the natural law" (Charles E. Rice, *50 Questions on the Natural Law: What It Is and Why We Need It* [San Francisco: Ignatius Press], p. 33).
19. The post-Reformation political structure of nation-states that are not perceived as being of divine origin, nor a part of an organic universal system, but that are constitutionally based, has posed a challenge to the church, especially when those constitutions grant freedom for all religions, or, as in the case of Communism, for no religion. In light of such modern political structures, the church states: "Wherefore We . . . address all civil rulers and all those who are in any way in charge of public affairs, and We solemnly assert that the Church must always enjoy a due freedom, in order to pursue her work of education, to impart truth to the mind, to impress justice on the spirit, and to refresh both mind and spirit with the divine love of Jesus Christ" (Pope Pius XII, *Summi pontificatus*, 1939, as cited by John Courtney Murray, in *Religious Liberty: Catholic Struggles With Pluralism* [Louisville, KY: Westminster/John Knox Press, 1993], p. 168). This same concept, of freedom for the church from state restrictions, was emphasized again in the highly acclaimed document *Dignitatis humanae* (Declaration on Religious Freedom) of Vatican II (1965).

SATURDAY, FEBRUARY 2008

The American Advent Of Benedict XVI

BY: MARTIN TRUEBLOOD

It wasn't quite the Second Coming, but almost. For the six days in April that Pope Benedict XVI visited the United States, all the coverage, the hoopla, the accolades, the promotion, and the PR surrounding the visit could have led someone to believe that it had been Christ, and not His self-proclaimed vicar, who had come to America.

From the moment Benedict arrived at Andrews Air Force Base on the Vatican jet, nicknamed "Shepherd One," where he was met in person by President Bush, an honor never before given to any head of state (much less a religious leader), until he left six days later from John F. Kennedy Airport in New York, when he was seen off by Vice President Dick Cheney and then Democratic presidential hopeful Hillary Rodham Clinton, the pope was feted, wined, dined, and hailed with the kind of accolades one would normally reserve for Jesus, not the pope of Rome, and certainly not in what was once deemed "Protestant" America.

It's been a number of months now since the whirlwind tour, and the fever and mania surrounding the papal visit has long died down. Thus, with the advantage of hindsight, and the added "objectivity" that comes from the distance of time, we can better seek to answer the question What was the meaning of Pope Benedict's visit? That is, What does the visit itself and the overwhelmingly positive response to him, not just from faithful Catholics, but from Protestants and politicians as well, say about the current state of politics and religion in America?

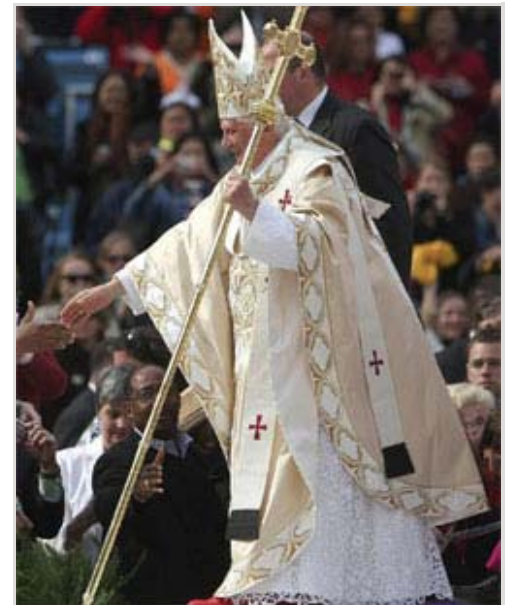
Background

As Bob Dylan once wrote, "The times, they are a-changing," and perhaps few things reveal that change, at least in the American religious world, more than the effusive and gracious welcome Benedict received on his first trip, as pope, to the United States.

Of course, the stage had been set from his predecessor, John Paul II, whose triumphal tours of the United States, the first in 1979, heralded a radical shift in the American attitude toward the Roman Catholic Church. It wasn't so much that John Paul's charm and charisma changed American attitudes toward Rome (though no doubt to some degree it did); rather, the force of his charm and personality simply brought out what has been brewing for years now, which was that the fervent nativism and anti-Catholicism that had so long been a powerful subtext in American society was all but dead.

Social scientists can debate the reasons for the change because, like all social issues, it's no doubt fairly complicated. But one reason is that the strong Protestant hold on American culture and thought has for many decades simply been dying away. And, because Protestantism itself—originally founded on a revolt, a bitter one at that, against Roman Catholicism—was the main carrier of anti-Roman sentiment, it is only natural that as the influence of Protestant thinking has waned, so has anti-Catholic sentiment waned.

Even more consequentially, there has been a slow but steady change within Protestantism itself regarding Rome. From the time of Martin Luther, pretty much into the early decades of the twentieth century, many Protestants—particularly



Pope Benedict XVI greets people in the crowd after celebrating Mass at Yankee Stadium in New York on April 20, 2008. CHANG W. LEE/AFP/Getty Images

fundamentalists and to a degree evangelicals—railed against Rome as the antichrist, as one of the beast powers in the book of Revelation (beasts in Bible prophecy are usually understood as religious and/ or political powers), as the “great whore of Babylon,” and the like. The Reformation itself was grounded on two crucial planks: salvation by faith alone, and Rome as the antichrist. Martin Luther (in his own inimitable style) had called the pope “the head of the accursed church of all the worst scoundrels on earth,” “a vicar of the devil,” “an adversary of Christ,” the “antichrist,” and “the man of sin.” And those were his softer comments! The point is, the animosity toward Rome was deep and unrelenting.

Though today, the first plank still holds (somewhat), the second plank, that of Rome as the biblical boogeyman, has almost (but not entirely) vanished from Protestant theology and thinking. One of the greatest examples of this change was seen about 10 years ago when a conservative Protestant evangelist named Jack Van Impe released a video in which he urged Protestants to support Pope John Paul II against “apostates” in the Catholic Church who were opposed to John Paul’s (to quote Impe) “conservatism on doctrines and morals.”

A Protestant evangelist asking other Protestants to support a conservative pope on the question of doctrine and morals?

Dylan wasn’t kidding about times “a-changing,” was he?

Benedict’s Visit

Thus, Benedict didn’t arrive in the United States in a vacuum. He was the beneficiary of a radical change in Protestant and, hence, American thought and attitudes. To a certain degree, the stage had already been set. He just needed to play the role expected of him, and that he did masterly. He’s no John Paul II; then again, he didn’t need to be. Benedict XVI did just fine.

Though very conservative on doctrinal matters (before becoming the 265th Roman pontiff, Cardinal Joseph Ratzinger was the prefect of the Congregation for the Doctrine of the Faith—the top theological post at the Holy See, the body that had carried out the Inquisition), he was able to strike a conciliatory-enough tone regarding the relationship between Rome and other Protestant churches, and with the Jews as well.

In one of many “historic firsts,” Benedict visited a synagogue in the United States, where—standing before a model of the ark of the covenant at an Upper East Side synagogue—the pope, once nicknamed “God’s Rottweiler,” extended his whiterobed arms and uttered to a group of about 100 prominent Jewish New Yorkers: “Dear friends, Shalom.” This is a long way from Pius XII, often dubbed “Hitler’s Pope.”

Meanwhile, Benedict’s speech at St. Joseph’s Church in Yorkville, New York, at a prayer service with about 250 Protestant leaders, showed that “God’s Rottweiler” knew all the right buttons to push, all the right phrases to say, without having to compromise anything that he, as a Roman Catholic, deems sacred. In fact, though most folks were caught up in the moment, they might have missed some of the nuances of his speech. One in particular should have caught the attention of Protestants but, it seems, didn’t.

“Too often,” the pope said in the middle of his plea for unity among the churches, “those who are not Christians, as they observe the splintering of Christian communities, are understandably confused about the gospel message itself. Fundamental Christian beliefs and practices are sometimes changed within communities by so-called ‘prophetic actions’ that are based on a hermeneutic not always consonant with the datum of Scripture and tradition.

“Communities consequently give up the attempt to act as a unified body, choosing instead to function according to the idea of ‘local options.’”

Taken at face value, that sounds fine, but if one considers endless past papal pronouncements about there being only one true “Mother Church,” i.e., the Roman Catholic Church, the statement decrying those who choose “local options” as opposed to attempts “to act as a unified body” could be taken as a slap toward the whole Protestant movement itself, which after breaking from the “Mother Church” had splintered into numerous “local options” that still exist today. Did he mean by “local options” such groups as the Southern Baptists or the Lutheran Church-Missouri Synod? The pope didn’t say and the Protestants didn’t ask.

Politics or Religion?

From the start, questions were raised about the nature of Benedict’s visit. Was it religious or

Pope Benedict XVI presents a gift to Rabbi Arthur Schneier (R) at the Park East Synagogue in New York, April 18, 2008. REUTERS/Gary Hershorn political, a topic made even more sensitive because he came amid a heated political season. Plus, the pope is not just the spiritual head of the Roman Catholic faith; he’s also the political ruler of Vatican City. And though President Bush insisted that the visit was not political, the White House had received the pontiff with the pomp and circumstance given to a head of state, and not to a “preacher” (could one imagine Bush, or any president, going to the airport to meet Billy Graham?).

The topics discussed in the private meeting between the president and the pope included the war in Iraq, the Israeli-Palestinian conflict, recent developments in Lebanon, and, according to a statement released by the Vatican, they discussed “current moral and religious

questions, including those related to human rights and religious freedom, the defense and promotion of life, marriage and the family, education of new generations and sustainable development.”



Pope Benedict XVI presents a gift to Rabbi Arthur Schneier (R) at the Park East Synagogue in New York, April 18, 2008. REUTERS/Gary Hershorn

Though some topics are more directly political than others, as often is the case most moral and/or spiritual issues inevitably have a political dimension, since they are often impacted by law and public policy. Where exactly the line should be drawn between what's simply morality and what's simply politics has long been debated, and whatever church-state separation in America means, it certainly doesn't mean that religious views and sentiments don't have the right to be part of the debate, or to even shape the political outcome. All this, of course, gets more complicated when you bring in a figure such as the pope, someone whose office, by nature, includes a political dimension.

In fact, the origin of the trip was an invitation by the United Nations (which no one is going to mistake as a religious body) for Pope Benedict to address the General Assembly, as had two predecessors, Paul VI and John Paul II. In the address, Benedict said that “the Holy See has always had a place at the assemblies of the Nations” and that the Holy See, “according to the dispositions of international law, helps to define that law.” That's politics, pure and simple, and not religion.

Proof

No question, Benedict's trip from a public relations standpoint was a great success, not just for his pontificate personally (one rumor making hay on the Internet is that when asked what he saw when he looked into Pope Benedict's eyes, President Bush is said to have responded, “God.”), but for the Roman Catholic Church in America as a whole, which still has been reeling from the clergy abuse scandal.

His trip is proof, too, that not only has there been a massive healing in the great Protestant- Catholic divide, but that many Protestants see the Papacy no longer as an enemy but, in many cases, as an ally in the numerous political/moral issues that mean a lot to them. This is a radical change, one that could have profound implications for the political future of this country.

In short, Pope Benedict XVI's visit is another symbol of an amazing historical shift in American and Protestant attitudes toward a political-religious institution that for many years had been viewed as antithetical to all that Americanism and Protestantism stood for. Even more amazing is how Protestants themselves have been the most eager ones to reach across that gulf and embrace Rome. What that change means for American politics can be monumental in scope. History is being made; it's just hard to see it as such when you are right there as it is taking place.

Martin Trueblood is an avid observer of current events and church-state issues. He writes from Maryland, U.S.A.

LIBERTY | FEBRUARY 2008

A Right Of Passage

Sometimes Workplace Religious Accommodation Comes Slowly...

BY: TODD R. MCFARLAND

Thirty-nine months. Enough time for a teenager to go from frightened freshman to senior world-conqueror. Enough time to cover the invasion of Europe on D-day to V-E Day, three times over. Enough time for a newborn to start walking, talking, and asking questions. This was also the time frame from Todd Sturgill's firing from his job at UPS on December 17, 2004—because he refused to violate his conscience—to UPS complying with a court order to put him back to work. In all, 39 months to justice. During that time, Todd Sturgill initially had a federal agency tell him he didn't have a case. The UPS lawyers would openly mock his case. The UPS representatives would show up to a mediation conference with an offer so embarrassingly low that UPS's counsel wouldn't even tell Todd's lawyers what the number was.

The case went to trial and it went well—Todd Sturgill's case prevailed. But rather than walking off the field victorious, it was as though he was walking back to the locker room for halftime. And, in that analogy, while he was up by a few touchdowns, there was still another half to play. UPS appealed the verdict, and this process would take just about as much time as getting to trial in the first place. The appeal decision took away two thirds of the money the jury had awarded him: the appellate court would say that the trial court erred. This created a precedent, a rule that makes it more difficult for other workers to be fired because of their faith. But, Todd would get his job back and he would be “made whole”—at least in the sometimes myopic eyes of the law.

The first half of Todd Sturgill's case was told in Liberty in the November/December 2006 issue. As that article explained, Todd Sturgill became a Seventh-day Adventist in May of 2004. United Postal Services, his employer, refused to give him an accommodation for his religious practice of not working from sundown Friday to sundown Saturday. They fired him because he brought back an hour's worth of work on December 17, 2004, after being at UPS for nearly 20 years. That article was published just after Todd Sturgill's case had prevailed in a court of law.

But how had Todd Sturgill convinced a jury that UPS could accommodate him? After all, packages still have to be delivered on Friday—even in December. If UPS doesn't deliver them, its competitors certainly will. To understand what UPS could have done in Todd Sturgill's case, and has since done for other Adventist drivers, it is necessary to understand how UPS assigns packages for delivery.

UPS does not have a set route for its drivers like the postal service does. Rather, it uses a complicated system of loops and routes to balance the packages drivers have each day. What this means is that each morning as the packages go down a conveyer belt at the warehouse, UPS keeps track of the number of packages and stops each driver has. If one driver starts to get too many, UPS will take packages from that driver and give them to another driver to “balance the load.” This is done every day at every UPS facility in the country. Thus, while a driver has a “route,” it changes virtually every day, as they may give or take packages from another driver.

The shifting of packages at UPS is not limited to making sure each driver has the same amount of work. If an employee needs off for personal reasons, a birthday party, a Little League game, etc., UPS can and does take packages and give them to another employee. At trial UPS described this process as routine and done every day.

UPS actually used this process for weeks to accommodate Todd Sturgill informally. Despite the decree from upper management that there was nothing UPS could do, Todd's immediate supervisor was able to get him off by sundown until the very last Friday in December. On Friday, December 17, 2004, Todd realized he was not going to be able to deliver all of his packages in time before sunset. He called his immediate supervisor, who told him to call the manager of the entire facility. This manager repeated the company line that nothing could be done and that if he did not deliver his packages he would be terminated. He then asked Todd, “What are you going to do?” Todd told his supervisor he would work as much as he could for UPS, but was not going to violate his conscience.

That evening Todd had about an hour's worth of packages to deliver when he checked out a minute before sundown. Another UPS employee then took his truck out and delivered all the packages. That next Monday when Todd showed up to work, he was called into the office and—after nearly 20 years of dedicated service as an employee of UPS—was fired.



Todd immediately contacted Sam Green, the Seventh-day Adventist Public Affairs and Religious Liberty director for his region. Green helped Todd through a required UPS administrative process that told him he had no case. But this could not be the end of story. Green referred the case to the Seventh-day Adventist Religious Liberty Committee. This committee considers which religious discrimination cases it should fund. When Sturgill's case was accepted, the committee's attorney, then Mitch Tyner, sought local counsel to partner with. He found Charles Kester, an employment lawyer in northwest Arkansas. While an experienced litigator, Kester had taken only one other religion case before on a contingency. After that experience, he had said never again. He determined such cases too difficult to win and the payoff too small.

But now Kester had the prospect of getting paid an hourly rate (albeit graciously reduced for a nonprofit), so the economics made sense. Kester is an active Episcopalian with his own religious journey having a fair number of twists and turns—he certainly could identify with Todd's conversion commitment.

When the case started, UPS was openly confident of its chances of prevailing early on—and not without some reason. It was not clear at that point how UPS could have let Todd Sturgill off during its busiest time without incurring what the courts call “undue hardship.” Kester knew that because of a bad 1977 Supreme Court case, UPS only had to show anything more than a “de minimis” cost or decrease in efficiency to prevail. What exactly is a de minimis cost? The courts had not been real clear on this point, but it was certainly small and a lawyer mentor had once described it to Kester as anything more than “a nickel.”

First, Kester had to figure out how to attack the UPS position. He had a lot of experience with the postal service, but none with UPS. He was sure of one thing though: UPS was not being up front in its explanations. If UPS had wanted to give Todd Sturgill time off, it could have. And for a company that made 4 billion dollars profit in the year it fired Todd, any cost it would incur would almost certainly be “de minimis”—whatever that meant.

But how to convince a federal judge and jury of this fact? Federal courts have not been friendly to employment cases. Nationwide only 15 percent of employment plaintiff cases prevail, as opposed to about 50 percent of nonemployment plaintiffs in federal court. Kester knew the chances of prevailing with a religion case were even less.

Kester started out like any good lawyer will, testing the company's story. UPS said it would cost them money to accommodate Todd. He asked UPS how much. They couldn't answer this question. In fact, during the entire process UPS never gave a single figure on how much accommodating Todd would cost. However, Kester knew UPS could win without ever coming up with a figure; federal courts have said it wasn't necessary.

A funny thing happened when Kester started asking UPS employees about the cost to accommodate. They all loyally repeated the company line—undoubtedly fed to them by UPS's lawyers—that it would cost the company to accommodate Todd. But they couldn't say much more than that simple assertion. Every time a witness was asked how much it would cost and to get down to specifics, he or she couldn't come up with anything. It was always vague talk about efficiency and plan days, loops, and load balancing. But everyone agreed that what Todd was asking for, to have packages given to another employee a few days a year, was something UPS did for other employees for nonreligious reasons on a routine basis. Further, it came out at trial that there were at least three employees who were less senior than Todd that had fewer packages and got off work earlier on the day he was fired. Not only that, another less-senior employee had the entire day off on December 17. UPS could not explain how or why any of this had happened. Testimony also came out at trial showing that had UPS given part of Todd's work to other drivers, it would have meant each driver had, on average, only one third of a package more than he or she would otherwise have had. Despite this, UPS kept insisting it couldn't have accommodated Todd.

A funny thing happened
when Kester started asking
UPS employees about the
cost to accommodate.

The trial started on Monday afternoon and testimony ended Thursday morning. All of the evidence that Kester developed during discovery came out about what UPS could have done, as well as the fact that there were plenty of other drivers to help on that Friday.

Todd was a little surprised, then, when at about 5:00 p.m. the jury still had not reached a decision and said they wanted to come back on Friday. The legal team was even more surprised when it wasn't until about 2:00 p.m. on Friday that the judge's clerk called to say that they had reached a verdict.

By this point they were fairly confident. The jury came back and said that UPS unlawfully failed to accommodate Todd Sturgill. Inexplicably, they also decided that UPS had not terminated because of his “religion.” Despite this, the jury gave Todd all of the money he had asked for in back pay, and then they gave him twice that much money in punitive damages. Later the judge would also order that UPS give him his job back. But UPS was not done. It fully intended to exercise its right to appeal to the Eighth U.S. Circuit Court of Appeals in St. Louis. It was halftime for Todd Sturgill.

UPS, as was its right, appealed. The case was briefed and oral arguments heard by the Eighth Circuit in the fall of 2007. On appeal UPS changed its tune. While at trial it had insisted several times that accommodating would be an issue 52 weeks a year, on appeal it portrayed the conflict as coming down to one hour of work on one Friday. Despite the facts that UPS had refused to accommodate Todd Sturgill and that in helping him out, his immediate supervisor had essentially gone against UPS policy, UPS was now relying on that assistance. It argued to the court that because it had “minimized” the conflict, it had provided a “reasonable” accommodation, and that Todd could have been

expected to work that Friday evening in December.

This legal view was troublesome to Todd Sturgill and his legal team. What UPS was arguing was that it was reasonable to ask a person of faith to violate his conscience. They were arguing that a company might only be required to allow a person of faith nine out of 10 Sabbaths, but not all. The problem is that for a person of faith, a partial accommodation is no accommodation. There would be no difference between asking Todd to work one Sabbath a year or 52—he was not able to do either.

The appellate court came down with its decision on January 15, 2008. It was a mixed decision for Todd Sturgill. First, he got his job back and the court allowed his back pay from when he was fired until when he actually went back to work for UPS. However, the court said he was not entitled to the punitive damages because UPS had followed its own procedure.

Essentially, the court has given juries a license to second-guess and pass judgment on someone's faith.

Most disturbing, though, was the court's ruling on what is a reasonable accommodation. The court did not buy UPS's argument that all it had to do was minimize the conflict. But it didn't buy Todd Sturgill's argument that elimination of the conflict was also required. Rather, it said a jury might be able to find, based upon a number of factors, that asking a person of faith to work on his or her Sabbath was reasonable. Essentially, the court has given juries a license to second-guess and pass judgment on someone's faith. However, the court said that in Todd's case there was no question he needed to be accommodated on all Sabbaths.

Where does this leave people of faith? Vulnerable! The Eighth Circuit's ruling is the minority view. Most other courts throughout the country that have looked at this have gone the other way. Eventually the U.S. Supreme Court is going to have to resolve

this issue. However, in the meantime, religious discrimination law does not fully protect people such as Todd Sturgill in a large part of this country.

There is, of course, another solution to this problem. It is finally time for Congress to pass the Work Place Religious Freedom Act (WRFA) to make it clear to the courts that protecting religion means protecting religion all the time and not just part of the time. This law would also make it clear that companies like UPS can be required to pay more than a nickel and would put protecting religion on a par with other civil rights protections, such as disability.

Todd Sturgill went through a lot for his faith. In the end he "won," but that win only meant he got a job back that he should never have lost and got his back pay after over three years of not working for UPS. It is good we live in a country where the Todd Sturgills have the ability to vindicate their religious rights, it will be a better country when companies do not drag people like Todd Sturgill through 39 months of costly litigation, but choose to do the right thing to begin with.

Todd R. McFarland is associate general counsel for the Seventh-day Adventist Church. Much of his work involves defending religious accommodation cases like that of Todd Sturgill. Todd McFarland writes from Silver Spring, Maryland.

JANUARY / FEBRUARY 2008

Learning About The First

Youth Alive, MUHS, And A Constitutional Moment

BY: JOY CHOQUETTE

In the few years since the writing of the First Amendment in 1791, a separation between church and state has become a constitutional given. The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . and to petition the government for a redress of grievances.” The founding fathers of the United States government, aware that many of their fellow colonists had fled religious persecution, were most likely thinking along the lines of forced religious practices.

Legal cases settled on the basis of this original amendment have shown further distinctions in the ongoing separation of religion and state practices. In more recent years Supreme Court determinations on this topic have elicited much interest in the real world, not just informing academic opinion.

Part of that ongoing debate concerns attorneys, school officials, parents. They have everyday school issues that involve separation of church and state. There is much discussion as to the exact meaning of the First Amendment and how that wording relates to the establishment clause. In 1962 the establishment clause was further defined in a Supreme Court case (*Engel v. Vitale*). The outcome of this suit gave further clarification to the role of religion within public school settings, when Court justices deemed that prayer led by administration in schools violated the establishment clause.

It can be a treacherous slope for public educational facilities—which must not step on the religious rights of students, nor promote religion on campus. How does one allow prayer in school without encouraging it? What is required of an administration in order to make sure it is meeting the needs of students who may come from a variety of religious backgrounds? And what exactly is the school’s role in working with religious groups on campus?

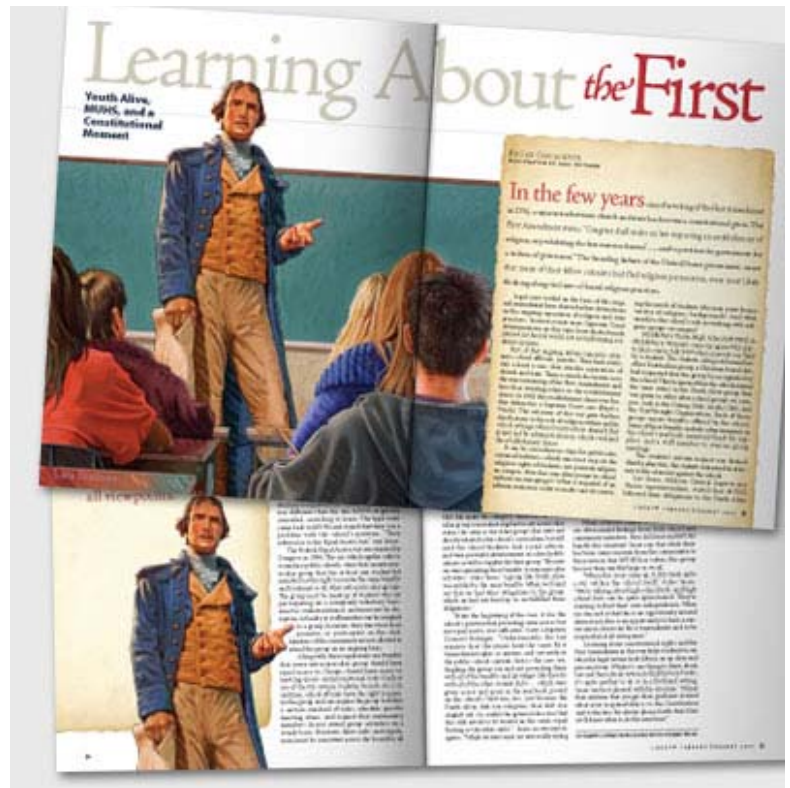
Middlebury Union High School (MUHS) in Middlebury, Vermont, came up against this particular issue in July 2007 when a lawsuit was filed by a student. The student, along with members of her Youth Alive group, a Christian-based club, had requested that the group be recognized by the school. They requested that the school extend the same status to the Youth Alive group that was given to other after-school groups on campus, such as the Outing Club, Arabic Club, and the Gay/Straight Organization. Each of these groups enjoys benefits offered by the school. Some of these benefits include advertisements in the school’s yearbook, monetary funds for supplies, and a staff member to oversee group meetings.

The student’s written request was denied. Shortly after this, the student contacted an attorney to file a lawsuit against the school.

Lee Sease, Addison Central Supervisory Union superintendent, stated that MUHS believed their obligations to the Youth Alive group had been met. The school was providing the Youth Alive students with access to the facility, without providing the additional benefits to members that the other groups were receiving. “We know from past practice and from the First Amendment, we have the obligation to neither establish religion, nor prohibit the free exercise thereof of religion. We thought we had positioned ourselves in the right spot,” said Sease. “We were trying to find out, ‘How do we live up to both of those requirements?’”

There is a fine line between establishing and restricting religious beliefs on a school campus. “Christian groups should not be penalized because of their religious beliefs,” states Josh Bolinger, litigation counsel with the Alliance Defense Fund (ADF). Bolinger was one of the attorneys who represented the MUHS student. “They’re entitled to the same rights and privileges as any other student group on campus. While the school permitted the group to meet, it denied the group access to benefits that other campus student organizations enjoyed, simply because the club’s purpose was religious.”

After notification of the lawsuit, the school’s insurance carrier became involved and hired an attorney to represent the school. This legal firm was different than the one MUHS originally consulted, according to Sease. The legal team came back to MUHS and stated that there was a problem with the school’s position. “They referred us to the Equal Access Act,” says Sease. The Federal Equal Access Act was enacted by Congress in 1984. The act, which applies only to secondary public schools, states that an extracurricular group that has at least one



student-led member has the right to receive the same benefits and treatment as all other extracurricular groups. The group must be made up of students who are participating on a completely voluntary basis, must be student-initiated, and must not be disruptive. A faculty or staff member can be assigned to a group; however, they must not lead, promote, or participate in the club. Members of the community are not allowed to attend the group on an ongoing basis.

Along with these regulations are benefits that every extracurricular group should have equal access to. Groups should have access to meeting spaces and promotional tools (such as use of the PA system, bulletin boards, etc.). In addition, school officials have the right to monitor the group and can require the group to follow a certain standard of rules, schedule specific meeting times, and request that community members do not attend group activities on a steady basis. However, these rules and regulations must be consistent across the board for all extracurricular groups within the school.

The Federal Equal Access Act was heavily supported early on by conservative Christian groups, and there has been a large increase in Bible-based groups since its inception in the early 1980s. Ironically, given the original intent of the backers, because the Federal Equal Access Act allows for religious groups of all types to gather in an after-school setting, Wiccans, satanists, and neo-pagans are allowed to meet along with traditional Christian groups. But, of course, that is consistent with a religiously neutral state stance, which allows all religion or irreligion to flourish.

“What we stressed is that this is an opportunity around democracy, this is an opportunity to have a conversation about the First Amendment and to be respectful of all viewpoints.”

“Based on the Equal Access clause, the group [Youth Alive] was entitled to an advisor, paid by the school,” states Sease. The group was also entitled to status as an extracurricular activity. Sease points out that MUHS initially believed that there were no differences between cocurricular and extracurricular activities. The school learned that this was not true.

A cocurricular activity is one in which activities relate directly to the curriculum. Examples of this would include a math or French club. An extracurricular activity is an activity that is not related to the curriculum. The other noncurriculum-based clubs, such as the Arabic Club and the Outing Club, fall under this category. Therefore, the Youth Alive group was indeed eligible for extracurricular status, the same as the other groups that were not directly related to the school's curriculum, but still used the school facilities, had a paid advisor, and were provided advertisement in school publications as well as supplies for their group. “Because we were extending those benefits to noncurricular activities,” states Sease, “a group like Youth Alive was entitled to the same benefits. When we found out that we had other obligations to the group, which we had not lived up to, we fulfilled those obligations.”

“From the beginning of the case, it was the school's position that providing some access, but not equal access, was sufficient,” states Litigation Counsel Bolinger. “Unfortunately, the law requires that Christians have the same First Amendment rights as anyone, and certainly in the public school context, that is the case too. Singling the group out and not providing them with all of the benefits and privileges like they do with all of the other student clubs . . . which were given access and space in the yearbook, posted on the school's Web site, etc., just because the Youth Alive club was religious, that club was singled out. So, really the general idea was that this club needs to be treated on the same, equal footing as the other clubs.” Sease, in retrospect, agrees. “While we were sued, we were really trying to find out ‘What were our obligations?’ and we were trying to live up to those obligations.”

Bolinger stated that there are many similar cases being handled by the ADF throughout the country. “I definitely think we're seeing more and more,” states Bolinger. “It's a fundamental aspect of constitutional law that religious speech is protected by the First Amendment, and that school officials can't single out Christian groups or students for discrimination just based on their religious beliefs. But in spite of these well-settled principles, we are seeing a lot of discrimination taking place, and we've been able to come in and help these students out.”

Soon after the motion of preliminary injunction, in which the court was asked for temporary relief while the case continued, ADF was approached by the school with the possibility of settling the case. “We were able to work with the attorneys of the school towards settlement, and ultimately reached a settlement and ended the case by filing what's called a ‘voluntary dismissal’ with the court,” says Bolinger.

The time period between filing of the initial complaint and resolution of the case was several months. According to Bolinger, once the school was made aware of the situation and the lawsuit, the school's attorneys decided to recognize the First Amendment rights of the students.

When a lawsuit similar to this is filed, there are often mixed feelings from both school and community members. How did Sease and MUHS handle this situation? Sease says that while there has been some reaction from the community to the position that MUHS has taken, this group has not been terribly large or vocal.

“When this issue came up, it did create quite a stir within the school itself,” states Sease. “We're talking about high school kids, and high school kids can be quite opinionated. They're starting to find their own independence. What we stressed is that this is an opportunity around democracy, this is an opportunity to have a conversation about the First Amendment and to be respectful of all viewpoints.”

Learning about constitutional rights and the First Amendment in this way helps students to see what the legal system looks like in an up close and personal way. While it's one thing to learn about law and the judicial system in thick history books, it's quite another to do so in a

firsthand setting. Sease says he is pleased with the outcome. "I think that anytime that you get clear guidance around what your responsibility is to the Constitution and to the law, I'm always pleased with that. Now we'll know what to do the next time."

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JANUARY / FEBRUARY 2008

Amazing!

John Newton And Religious Liberty

BY: ALBERT J. MENENDEZ

John Newton, the eighteenth-century slave-ship captain who was converted to Christianity and became a small-town vicar and renowned hymn writer, is remembered today for his beloved “Amazing Grace.” This song, once confined to Evangelical churches, has become an anthem of modern-day Christianity, and is heard in Catholic and Protestant churches, in parades and military events, and, perhaps especially, at funerals. It was the subject of a Bill Moyers special on PBS and has been recorded by numerous artists, including Judy Collins, whose haunting a cappella version captivated audiences from coast to coast.¹



Newton became curate of St. Peter and St. Paul's Church in Olney, a town 70 miles north of London. After five years of independent study for the Anglican priesthood, he was ordained in 1764 and promptly devoted himself to his flock. He identified with the Evangelical wing of the Church of England, and with his friend the poet William Cowper wrote thousands of hymns and poems, some of which were published later as the Olney Hymns. Oddly, “Amazing Grace,” not as popular as his other hymns, did not appear in denominational hymnals for two centuries.

Newton first expressed himself on the religious liberty question after moving to London to accept the rectorship of St. Mary Woolnoth parish on Lombard Street. He was there during the anti-Catholic “Gordon Riots” of 1780, instigated by those who opposed extending the 1689 Toleration Act to include Catholics. A recent Newton biographer, William E. Phipps, wrote: “In the summer of 1780, Newton was confronted by an outburst of bigotry toward Roman Catholics. It was provoked by Parliament's extension of the 1689 Toleration Act that accepted Catholics in addition to all trinitarian Protestants. A riot led by Lord George Gordon resulted in the pillaging and burning of a number of Catholic chapels and homes. Newton was especially perturbed because some Catholic families lived within his parish. From the window of his vicarage he could see fires each night that the ‘no-popery’ mob had set.”²

In a letter to the Protestant Association, which instigated the disturbances, Newton wrote there is “no warrant from [God's] word to inflict pains and penalties upon any sort of people in matters pertaining to conscience.”³ Years later, reflecting on these events, he noted, “I am no friend of persecution or restraint in matters of conscience.”⁴

In a letter to a friend, Newton insisted that he saw no value in toleration. Only complete liberty of conscience was acceptable. “I wish every person the same liberty in Religious matters, which I desire for myself. And I think Human Authority has not much right to interfere with pains and penalties, to force the consciences of those who are peaceable subjects. The Truth is strong, and as able to maintain itself now, as in the early days of Christianity, when it had no protection from Civil Government, but was oppressed with violence in every place. Constraint can only make Hypocrites.”⁵

As he grew older, Newton became more involved with different religious traditions. He praised the Methodist movement; hobnobbed with Baptists, Congregationalists, and Presbyterians.

He spent the last two decades of his life supporting and encouraging fellow Evangelical William Wilberforce's campaign to end the slave trade in the British Empire. He lived to see the day in 1807 when the Act for the Abolition of the Slave Trade passed both houses of Parliament. With great dignity and humility, Newton passed away at age 82, just before Christmas that year.

His accomplishments are many, but the old slave-ship captain turned parson and hymnologist should also be remembered as an ardent advocate of religious liberty.

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1. For a superb history of “Amazing Grace” and its enduring popularity, see Steve Turner, *Amazing Grace: The Story of America's Most Beloved Song* (New York: Harper Collins, 2002).
2. William E. Phipps, *Amazing Grace in John Newton* (Macon, Georgia: Mercer University Press, 2001), p. 162.
3. William Barlass, *Sermons on Practical Subjects* (New York: Eastburn, 1818), p. 584.
4. Newton, Letters, quoted in Phipps, p. 163.
5. Bruce Hindmarsh, *John Newton and the English Evangelical Tradition* (New York: Oxford University Press, 1996), p. 320.