
REPORT from the CAPITAL



From the beginning of time people have struggled for their right to think, believe and speak in freedom. Often those who have exerted their rights have been subjected to persecution and repression. The persecutors always fear free men who have the will and the power to develop their personalities and to accept responsibility for each other.... Baptists have also met repression and have been compelled to fight for the right to practice their religion freely. This has given the Baptist movement a living tradition. It is a movement demanding spiritual freedom, not only for its own members but also for other groups demanding the same rights.... Therefore, freedom from political, economic, and military repression is a condition for peace and progress in the world.... People need each other ...

OLOF PALME

REPORT from the CAPITAL

"... a civil state 'with full liberty in religious concernments' "

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Cover: Olof Palme welcomed the 1975 Congress of the Baptist World Alliance to Sweden in an address as timely today as then. His words were challenging, heart-felt personal testimony. He then left the hall unescorted, shaking hands with well-wishers as he made his way to his unpretentious automobile. Sweden's slain Prime Minister — a genuine, gentle person, but a victim of the social violence he opposed.

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Laura Tribe in a book reviewed by Stan Hasty discusses what he calls "the myth of the surprised President." This idea holds that United States presidents are shocked to discover that their appointees to the high court do not always act as expected on the president's policies. Tribe, however, holds that a president usually gets what he expects from the appointment. It seems that we all have need to cling to unexamined and therefore comforting myths.

Baptists in the United States cite Roger Williams as the one who bequeathed them the rich legacy of religious liberty. But the Roger Williams who was not a person to confuse the authority of either church or government, often proves to be a disappointment. He doesn't always satisfy the free spirits who turn to him in self-justification of their choices. And the more timid are made nervous by the awesome responsibilities of "soul freedom," which, after all, thrusts upon us a voice in determining our spiritual destinies. And that is more challenging than the burden of political destiny. Freedom often proves too much for the fainthearted and they are anxious to give it away. They accept the myth that we can trust the state to embrace and defend our civic and spiritual freedoms.

This issue of REPORT covers related religious and political turf. William Lee Miller's article on Roger Williams gives radical form to the spiritual maverick nostalgia idolizes. After all, Williams provided the rationale and model for religious liberty. He was critical of the pretension and dangers of ecclesiastical power, and in fact, believed that the "true" church he sought would appear only with the return of Christ.

Williams trusted in "the moral foundations we share in consequence of being human," and was committed to a civil state that fulfills its proper functions. Thus, the notion of a Christian or "chosen" nation was foreign to his thought. Nor did he countenance appeals to conscience as a basis for exemption from a shared social duty. Conscience was strictly for the domain of the "spirituals." Williams — advocate of integrity in church and state — no myth.

"Behind the smoke screen of parental choice and healthy competition — another effort to grant aid to parochial schools." That is a conclusion of Oliver Thomas, who in his analysis of TEACH ("The Equity and Choice Act") finds another assault on the wall of separation. He says that any program that extends public funds to religious institutions at the primary and secondary level is divisive and fosters political conflict along religious lines. Thomas believes the price of freedom is the church's willingness to refuse offers of public assistance such as in H.R. 3821, now before the House and S. 1876 in the Senate.

James Dunn focuses on another taxation issue: while school vouchers are an instance when government would use public funds for religious education, the proposed taxation of churches is a case in which government would dip into church mission dollars to pay for public programs. Succinctly stated, Dunn explains "we're not simply concerned about the *principal* ... we are anxious about the *principle* of radical departure that would begin taxing churches."

To see church-state relations in a broad context, join us in Washington for the 20th National Religious Liberty Conference, October 6 - 8, 1986 □

Victor Tupitza

A closely divided U.S. Supreme Court ruled a Williamsport, Pa., school board member had no legal standing to challenge an earlier federal district court decision upholding high school students' right to gather in a public school classroom for Bible reading and prayer.

The high court's 5-4 ruling has the effect of reinstating the district panel's 1983 decision that a group of students at Williamsport Area High School that was denied permission to meet on an equal basis with other extracurricular groups possesses a constitutionally protected right of free speech to conduct its meetings.

The dispute dates to September 1981, when the group asked the principal at Williamsport High to authorize its meetings during a twice-weekly, 30-minute period for meetings of extracurricular groups. Although the principal granted permission for an initial meeting, he subsequently referred the matter to the superintendent of schools, who then sought legal advice from the school board attorney. After the lawyer for the board issued a written opinion that in his view the practice violated the Constitution's ban on an establishment of religion, the students took the school board, the superintendent and the principal to court.

Writing for the narrow majority, Justice John Paul Stevens held that Williamsport school board member John C. Youngman Jr. had no legal basis to appeal the district court decision after the board's eight other members decided not to appeal. Youngman took the case to the Third U.S. Circuit Court of Appeals, which in July 1984 overturned the district court in a 2-1 decision. ●

The U.S. Supreme Court has ruled the First Amendment does not require the military to accommodate religious practices that in its judgment would violate uniform dress-code regulations.

In a 5-4 ruling, the high court affirmed a court of appeals decision allowing the U.S. Air Force to enforce dress regulations in the interest of the military's perceived need for uniformity—even if the effect of those regulations is to restrict the wearing of visible garments required by a person's religious beliefs.

In the case, Simcha Goldman, an Air Force captain who is a practicing Orthodox Jew, argued his right to wear a yarmulke—or skull cap—while on duty as a psychologist in a military hospital outweighed the military's need to enforce its uniform regulations.

In delivering the opinion, Justice William H. Rehnquist said, "The Air Force has drawn the line essentially between religious apparel which is visible and that which is not, and we hold that those portions of the regulations challenged here reasonably and evenhandedly regulate dress in the interest of the military's perceived need for uniformity." ●

Terrel H. Bell, former secretary of education, has come out swinging at right-wing critics who, he says, hounded him throughout his four years as department head for failing to enact what they called the "Reagan Revolution."

At the same time, Bell had high praise for Reagan who, he said, "supported his Cabinet tenaciously, whether they were under attack from the Right or the Left."

In a lengthy magazine article, Bell described the right wing of the Republican party as consisting of Reagan revolutionaries whose views on education "did not represent the views of the President." Instead, he said, "They took his guiding principles and carried them to the lunatic fringes of ideological political thought."

Bell described those critics as having "no part of anything less than total elimination of the Department and all its programs." The "true movement conservatives," Bell said, "believe that not a dime of federal money should be spent on education." ●

THE FIRST LIBERTY

STATE AND CHURCH: NO GARDEN FOR NOW, JUST WILDERNESS

It is often said in twentieth century discussions of the separation of church and state, in a kind of snappy formula, that Jefferson believed in separation to protect the state from the church, but Roger Williams believed in it to protect the church from the state. That has a nice and memorable neatness about it, but it does have this fault: It is mistaken. It is mistaken in the case of Williams, at least, if the church that the state is to be separated from is any one of the actual, visible churches. (It may not be quite true in the case of Jefferson either.)

Williams was at least as critical of the pretensions and dangers of the ecclesiastical power of these visible churches as was Jefferson — more so, probably. Even more passionately. And he was as committed to a civil state that fulfilled its proper functions without regard to the religious belief of its citizens. He, too, did not want an intermingling of churchly claims with the state and civil affairs; for the purposes of a civil state, we should appeal to the moral foundations we share in consequence of our being human.

What of the church? Let us devise a snappy formula of our own. In Anglican Virginia it was difficult to get *out* of the church. In Massachusetts Bay it was difficult to get *into* the church. In Roger Williams' case it was difficult to *find* the church. As to Jefferson: for him, one might say, after the worldly power of state churches was broken, it was diffi-

cult to take the church — the many "sects" — seriously. Williams took the one true church very seriously indeed — and found all, or almost all, the actually existing religious assemblies in all, or almost all, regards — false. And then concluded that, until the time when Christ should come again and all that were saved were transplanted into the garden of the church, we should live together in the wilderness of the world as civil human creatures.

The two chief movements that would shape the American arrangement of

for cause of conscience — but only religious conscience, and that only in what today would seem the rather restricted domain of "spirituals" of belief and worship. Along with other Puritans, he believed that the commonwealth must enforce, for the common good and order and safety, the "second table" — that is, the latter five of the Ten Commandments that deal with morality, with obligations to one's neighbor. And the civil government must carry out its legitimate civil role, protecting the lives and goods and safety of all, even requiring actions objected to on grounds of conscience, including religious conscience.

Williams did not accept appeals to one's "conscience" as a basis for exemption from a shared social duty. When as "president" of Rhode Island, he attempted to organize a militia, and Quakers and some Baptists who were what we would call conscientious objectors to war objected, he penned what is perhaps the most quoted of all his writings, the letter about the mixed religious company on a ship. This letter can do service, as it has often been used to do, as an epitome of Williams' views in general, but a reader should note the context, and note, too, the duty Williams would have the state require, as well as the liberty he would insist the state should grant....

Moreover, Williams' conception of the overt acts that are injurious to order and peace and general welfare and that the state might (or must) therefore properly restrain, was a large one. Though libertarians of conscience in all times and places — including Jefferson and twentieth century Americans — face at *some* point the claims of order and peace and justice to others against overt acts by free exercisers of religious conscience, Roger Williams called upon those claims much earlier than would more citizens today.

THE FIRST LIBERTY

Religion and the American Republic
By William Lee Miller, Alfred A. Knopf:
New York, 1986, 373 pp.

church and state — roughly speaking the Jeffersonians and the Baptists or dissenters — were both inclined to individualism and a withdrawal from and a negative picture of the state and, at least in the Baptist case, other large social institutions, indeed, the links and claims of the social order itself. That impulse to withdrawal and inclination to individualism, and that hostility to the state, contributed some of the sting to the doctrine of radical church-state separation. But Williams, the retrospective hero of at least one of these traditions, was not like that.

He was a thorough believer in the civil state doing its legitimate work, and in law, and in punishment of offenders against the civil peace. He was a believer, moreover, in a natural moral order, which human reason could discern sufficiently to carry on a civil life across many religious persuasions.

Williams attacked, with honorable, memorable, and inspiring thoroughness, the "bloody tenet" of persecution

Dr. Miller is Professor of Religion at the University of Virginia. A writer on American culture as well as religion and politics, he previously taught at Yale, Smith College and Indiana University. This article from *The First Liberty*, the chapter "Roger Williams: the Root of the Matter," was adapted for REPORT. It is used by permission of the author.

Most twentieth century Americans would dissent from Williams' apparent view that the state should make sure that citizens have their hair cut properly (this against some Quaker men, conscientiously shaggy.) Williams would have the state prohibit activities like those that appear in the footnotes and texts of twentieth century court cases as examples of activities from other lands that, even though practiced for religious reasons, the state should not permit: human sacrifice, temple prostitution. He approved of the censorship of "wanton," "immodest," and "unclean" books, and of expressions of contempt for the authorities. Perhaps enough has been said to make clear that he was not a premature candidate for membership in the American Civil Liberties Union. That ship of Williams' was going to be a tight ship.

If we say that Williams was not a "libertarian," but rather what we might call a high communitarian, that may make clearer and perhaps the more impressive, his defense of unqualified liberty in that domain which he did defend, the domain of the "spirituals" — soul freedom. Later centuries would be inclined to fold the several liberties into an interconnected whole. Sometimes when one talks to people in the twentieth century, it almost seems that if there is freedom of speech and freedom of thought and freedom of association, a distinct freedom of religion would be a superfluous, perhaps even a problematic, addition to the list. Not for Roger Williams. For him it was distinct and profound. (It should be said, lest, in overcompensation he be made too uncongenial to modern convictions, that the government of Rhode Island he founded was "Democratical;" and that Williams saw the people as the source of all power; and that he certainly believed in argument.) . . . If Roger Williams had a high communitarian view of the state and of shared human institutions here in the wilderness of the world, he had an extremely exacting set of criteria for what the garden of the church truly is, or should be — so exacting, as we have said, that it may be that no actually existing church fulfills them. Williams, reading the Bible and disputing, left Boston for Salem, Salem for Plymouth, Plymouth for Salem again, and Salem for the Aquidneck wilderness, all within the five years of 1631-36, almost entirely because of his extremely exacting views of the true church of

Christ.

In Rhode Island, then, his further reading and disputing led him briefly to become a Baptist, then to leave the Baptists to become a "seeker" outside all existing churches. . . .

Williams, the well-educated Cambridge graduate, rejected the universities that train a hireling ministry: "The Universities of the Nation as subordinate and subservient to such *ministries* and [national] Churches, are none of the Institutions of Christ Jesus." But he did not therefore attack and reject the universities, as such. He differed markedly not only from some sectarians of his own time but also from the evangelists of later times who would attack such institutions, root and branch, as "Godless," "secular," "humanistic," and so on. He wrote, for just one example, "I heartily acknowledge that among all the *outward Gifts of God*, humane learning and the *Knowledge of Languages* and good *Arts*, are excellent and excell other outward gifts as far as *light* excels *darkness*, and therefore that *Schools of humane Learning*, ought to be maintained . . . and cherished."

But for all that, they are "none of Christ's," and not the proper source of a true "ministry."

Perhaps we would not be too far wrong to summarize this way: He had almost a conservative churchman's view of the institutions of human society — secular institutions — but he had more than a radical sectarian's view of the church, the ministry, "Christian" institutions. . . .

In the nation formed a hundred years after his death, there has continually been, and still is, an effort to picture the United States as a "Christian Nation." Roger Williams certainly did not expect, or in one sense even want, a "Christian" Rhode Island. He did not see God saving whole peoples in bulk — in nation-sized lots, or in whole civilizations at a time.

A Christian believer, according to Williams, should not necessarily want or prefer Christians in places of command — "Christian" statesmen or leaders — or exclude people of other beliefs. There is for him no necessary link between what it takes to be a "visible saint" and what it takes to be a good magistrate, governor, or public official. If one makes some kind of religious test, one is shutting out people who might be good at public

office, and putting in people who may not. In fact Williams suggests it will be relatively rare that there will be Christians, of that very pure sort that may be gathered into the garden, who will be good at being officials of the civil state. Most of the original believers were poor, and despised, fishermen and carpenters; and Williams expected it to continue to be more or less like that, the claims upon the faithful witness to Christ Jesus being what they are.

Williams, with his Biblical interpretation, denied the identification of the Israel of the Old Testament with any existing state. Neither Massachusetts Bay nor England nor Rhode Island nor any other actually existing nation — by extension, not the United States of America — is the equivalent or approximation of Israel as God's people, God's nation. Israel was a one-time-only arrangement, a "none-such." No subsequent nation is chosen, or covenanted with God, or favored by a special providence as a particular people.

It is a matter "of the highest consideration" that the understanding that won out, as the United States developed and grew, was not that of Roger Williams but of John Winthrop, perhaps of John Cotton — a mainline Puritan view. Massachusetts Bay had picked up and carried on the disposition of Englishmen to identify England with Israel, as chosen and favored of God, selected and cared for by a special providence; and that view had entered into the bloodstream of America, and appeared even in the deists of the founding period, and continues to add an element of self-righteousness to American self-interpretation to this day.

Perhaps it was inevitable that so exacting and difficult a view as Williams' should not prevail across whole nations or over stretches of time. In a sense, for the same reasons he did not expect whole nations to be "Christian," one should not expect whole nations even to comprehend, much less to follow, an exacting conviction like his.

When more than a century later Baptist leader Isaac Backus defended religious liberty and separation of church and state throughout the revolutionary and founding period, he did draw heavily on Roger Williams — but not on his view of "Christendom" and the wilderness of all present nations. Backus, admirer of Williams, nevertheless wanted a "Christian America." □

VIEWS OF THE WALL

Oliver S. Thomas



Even the more somnolent in our midst are beginning to realize that there are those in high places who are trying to rewrite First Amendment jurisprudence by discarding the hallowed principle of church-state separation. The most recent assault on the wall of separation comes in the form of a bill fallaciously entitled "The Equity and Choice Act" (TEACH). Providing neither equity nor true choice, the bill if enacted will convert a highly successful remedial program for the educationally disadvantaged into a tuition voucher plan. Touted by the Administration as fostering "healthy competition" between public and private schools and providing substantial federal aid to the poor, TEACH is fatally flawed for a number of reasons.

A bit of background is in order. On July 1, 1985, the United States Supreme Court held that the use of federal funds received under Title I of the Elementary and Secondary Education Act of 1965 to pay public school employees to teach remedial classes in parochial schools was violative of the establishment clause and, therefore, unconstitutional.¹ The Court's opinion focused upon the entanglement created by offering these remedial services on parochial school premises. The educational community responded appropriately by developing off-campus sites where Chapter I services could be offered to parochial students.

Unfortunately, the United States Department of Education began publicly criticizing the Supreme Court's decision as soon as it was announced. In fact, Secretary of Education William Bennett offered assistance to any state or local educational agencies seeking to delay compliance with the Court's decision.

In November, Secretary Bennett transmitted his voucher proposal to Congress, claiming that it would "solve" the problems created by the Court. Insofar as the bill is an attempt to circumvent the lawful decisions of the United States Supreme Court regarding aid to parochial schools, it raises serious constitutional questions.

Proponents of TEACH (H.R. 3821) argue that it is wholly neutral in offering educational assistance to a class defined without reference to religion and is, therefore, constitutional under the rationale set forth in *Mueller v. Allen*² and

in the concurring opinion of Justice Powell in *Witters v. Washington Department of Services for the Blind*.³ While five justices of the United States Supreme Court have placed their constitutional stamps of approval on certain facially neutral programs of educational assistance, H.R. 3821 raises questions not previously addressed by the Court.

Unlike *Mueller*, H.R. 3821 involves the actual expenditure of public funds as opposed to a mere tax deduction or tax credit. Although constitutionally infirm when used as an incentive for enrolling students in parochial schools,⁴ governmental abstention from collecting revenues in the form of tax exemptions, deductions, and credits is far less likely to constitute governmental sponsorship of religion than is a transfer of public revenues. Chief Justice Burger recognized this principle in the case of *Walz v. Tax Commission*:

The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. 397 U.S. 664, 675 (1970).

Although *Witters*, as opposed to *Mueller*, does involve the expenditure of public funds, H.R. 3821 is also constitutionally distinguishable from the financial assistance that was upheld in *Witters*. The *Witters* decision is based upon the fact that the State of Washington's vocational rehabilitation program created no financial incentive for students to undertake sectarian education, and any aid received by sectarian schools was "miniscule." In stark contrast, H.R. 3821 will provide both powerful incentives and substantial aid for parochial schools. Even the concurring opinion of Justice Powell in *Witters*, which rests squarely on the neutrality principle of *Mueller*, does not lead to the conclusion that H.R. 3821 would pass constitutional muster. To the contrary, *Witters* as well as the frequently cited *G.I. Bill* involve financial assistance to students at institutions of higher learning. The Court has consistently distinguished such programs from those aiding primary and secondary schools. Financial assistance may be permissible at sectarian colleges, but expenditure of public funds at sectarian primary and secondary schools is not.⁵

The unique combination of actual public expenditure (unlike *Mueller*) for stu-

dents at primary and secondary parochial schools (unlike *Witters*) makes H.R. 3821 at the very least constitutionally suspect. This suspicion is highlighted by the fact that both the majority opinion in *Mueller* and Powell's concurring opinion in *Witters* were joined by a fragile coalition of only five justices. Considering further Secretary Bennett's open criticism of the Court's decision in *Aguiar v. Felton* and his apparent attempt to circumvent the Court's ruling, one can easily conclude that H.R. 3821 would not pass constitutional muster.

It is a well established principle of law that one cannot do through the back door what could not be done through the front. H.R. 3821 is a less than subtle attempt to do precisely that. Behind the smoke screen of parental choice and healthy competition, Secretary Bennett's bill in reality is nothing more than another effort to grant aid to parochial schools. If it is unconstitutional for public school teachers to teach secular subjects in parochial schools, as held by the Court⁶, then certainly the use of public funds to pay parochial school teachers to teach secular subjects in parochial schools is even more repugnant to the Constitution.

Apart from the significant constitutional question, H.R. 3821 is highly undesirable for a number of policy reasons. Most importantly, the proposed bill contains no prohibition against spending Chapter I vouchers for non-remedial services. Instead, Section 560 (c)(1)(B) encourages the use of vouchers to pay general tuition to private schools. By allowing Chapter I funds to be diverted to pay for non-remedial services, H.R. 3821 thwarts the intent of Congress in passing Chapter I and threatens to destroy one of our most needed programs of aid to education.

In addition to radically reconstructing Chapter I, TEACH threatens the harmony of our pluralistic society. Taxpayers should not be required to support parochial schools notwithstanding the fact that this support would be granted indirectly. Any program that extends public funds, whether directly or indirectly, to religious institutions at the primary and secondary level is undeniably divisive and fosters political conflict along religious lines. Such divisiveness is precisely what the establishment clause of the First Amendment was de-

U.S. Senator Paul Simon
Press Conference

signed to prevent.⁷

Some say we are overreacting to the prospect of a voucher plan that is limited to Chapter I funds. After all, Chapter I represents only a small portion of the total budget for federal aid to education. Assuming, *arguendo*, that we can characterize a 3.2 billion dollar program serving 4.8 million students as insignificant, a compelling reason still exists for vigorously opposing H.R. 3821. The Chapter I voucher is likely to be the starting point for the eventual "voucherization" of all education. Even Education Undersecretary Gary Bauer has characterized the bill as a possible "first step" in this process.

Perhaps the most "creative" argument in favor of vouchers is the notion that their will promote healthy competition between public and private schools. Healthy competition only occurs when all contestants are operating under the same set of rules. In this case, public schools are subject to a multitude of federal and state regulations that do not apply to private schools. Included are regulations prohibiting discrimination on the basis of age, religion, handicap, disability, and national origin. Public schools must accept all applicants while private schools are free to pick and choose a select group of students.

Asking public schools to compete on an equal basis for Chapter I vouchers is like asking one of two participants in a swimming meet to wear ankle weights. Anyone who characterizes this sort of mismatch as "healthy" or "fair" would have loved the Roman coliseum.

Even Secretary Bennett has acknowledged the preferential treatment accorded to private schools under existing laws. When asked why private schools should not be required to operate with the same regulations as public schools under a voucher system, Bennett responded, "It might put them out of business."

Like other parochial schemes involving the expenditure of public revenues, H.R. 3821 opens the door for government regulation of sectarian schools and is an affront to the autonomy of religious organizations. With government aid comes government regulation. Nowhere has this principle been more clearly demonstrated than in the case of *Grove City College v. Bell*.⁸ *Grove City* provided the religious community with the somewhat startling revelation that regulation of religious schools may result even when financial aid is received indirectly in the form of student assistance such as Pell grants — or, in this case, vouchers.

Religious organizations must continue to be free from government regulation and control in order to maintain the

healthy separation of church and state. The price of this freedom is the church's willingness to refuse offers of public assistance such as that contained in H.R. 3821. When religious organizations flirt with the notion of selling the birthright of their autonomy for the pottage of public assistance, Congress has the responsibility to protect the public from the excessive entanglement between church and state that would result from such aid.

Adding insult to injury, H.R. 3821 is also misleading in its treatment of racial discrimination. Pages are devoted to anti-discrimination regulations which create the impression that TEACH is a progressive bill with regard to race. In reality, these regulations are little more than a mirage.

Tucked away at the end of the 22-page bill is a provision to amend the law on declaratory judgments by adding TEACH to the list of sections that are excluded from this critical enforcement provision. The effect of this provision is to deny individuals the right to seek personal redress in a court of law. Instead, exclusive enforcement power is granted to U.S. Attorney General Edwin Meese. For Black parents whose children have been victimized by racial discrimination, such a provision is more than misleading — it is outright deceptive.

Characterization of the bill as aiding poor families is also specious. The average private tuition for elementary and secondary schools is \$1480 while the average Chapter I voucher will be worth only \$600. Such statistics expose TEACH for what it really is — a cruel joke on the majority of Chapter I recipients.

* * * *

Labels are important. If the label is attractive, the mind tends to assume that the product will be too. Hopefully, people will look closely enough at "The Equity and Choice Act" to see it for what it really is — another attempt to divert your tax dollars to parochial schools, this time at the expense of educationally disadvantaged children. □

ENDNOTES

¹*Aguilar v. Felton*, ___ U.S. ___, 105 S.Ct. 3232 (1985).

²___ U.S. ___, 103 S.Ct. 3062 (1983).

³___ U.S. ___, (1986).

⁴*PEARL v. Nyquist*, 413 U.S. 756 (1973).

⁵*See Roemer v. Maryland Public Works Board*, 426 U.S. 736 (1976); *Tilton v. Richardson*, 403 U.S. 672 (1971).

⁶*Grand Rapids v. Ball*, ___ U.S. ___, 105 S.Ct. 3216 (1985); *Aguilar v. Felton*, ___ U.S. ___, 105 S.Ct. 3232 (1985).

⁷*Lemon v. Kurtzman*, 403 U.S. 602, 622 (1971); *Aguilar, supra*, at 3240 (Powell, J., concurring).

⁸___ U.S. ___, 104 S.Ct. 1211 (1984).

[T] here are two fundamental reasons that nominees' legal views should not be altogether off-limits to the Senate. One is that just as we know that a nominee's competence and integrity will affect his views as a judge, we know that the nominee's individual views about legal matters will in some measure affect decisions the nominee makes as a judge. The reason is that judges inevitably have leeway. They must fill in gaps in the law and must resolve ambiguities about what the law is, and in doing so a judge inevitably draws upon his or her starting point, views and outlook. This is true of all judges, and it is especially true of Supreme Court Justices, whose leeway in giving meaning to the majestic general commands of the Constitution is particularly great, and who must resolve conflicts among lower courts on a daily basis.

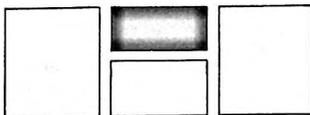
A second reason a nominee's views may be relevant to the current Senate is that they were relevant to the President's own decision to nominate. As an active partner in the judicial appointment process, as the authority that must "advise and consent" to nominations in our system of checks and balances, should the Senate evaluate any factor the President does? And if the President is trying to shape future judicial decisions by self-consciously nominating people with particular legal views, should the Senate—at least to some extent—consider whether those views are appropriate ones and good for the country? □

Arthur J. Goldberg
Christian Science Monitor

O ur Constitution is an instrument of practical government. It is also, and more important, a declaration of faith in the spirit of liberty, freedom, and equality.

The ultimate safeguard of our liberty is the people. They are the source of our Constitution. Its first words are: "We, the people of the United States, in order to . . . secure the blessings of liberty to ourselves and our posterity do ordain and establish this Constitution for the United States of America." The people are the ultimate guardians and protectors of our liberty, not the president, not Congress, and not the judiciary.

And we the people, if we are to keep our constitutional faith, must always recall the admonition of Thomas Paine: "Those who expect to reap the blessings of freedom must . . . undergo the fatigue of supporting it." □



Senator advocates reform in judicial appointments

WASHINGTON

Amid continuing debate over the U.S. Senate's role in the federal judicial appointment process, Sen. Paul Simon, D-Ill., has challenged his colleagues to examine ways to improve that process.

Simon expressed concern about recent judicial nominations—including nominees' professional quality and legal views—during an address at the National Press Club.

"We in the Senate must think harder about how we can try to assure that judicial appointments are the best possible," said Simon, who—although in his first Senate term—heads the Democrats' judicial nominations screening effort.

Simon advocated the Senate's active role in the appointment of federal judges, adding "there should be no automatic presumption that the president gets the judge he wants."

In explaining why judicial nominees should receive special scrutiny by the Senate, Simon said, "In contrast to the president's nominations to positions within his own executive branch, appointments to the judiciary are to a



branch of government that is supposed to be independent of the president and for a duration exceeding his own term of office."

He pointed out that during the Reagan administration a majority of the federal judiciary will have changed membership and a substantial turnover in the U.S. Supreme Court is still possible. "What is at stake in all these changes is the character of our judicial branch for a generation and the real-world meaning of our Constitution and federal law," he said.

□

Committee on Public Affairs, said the nation's conservative political climate favors a restoration of capital punishment because "people are angry and hostile and they want to strike out against the wrongdoers."

He said his group believes "there has to be, in a human society, room for reconciliation, restoration and redemption, that forgiveness can be institutionalized." □

Owner to pay daily fine

MINNEAPOLIS

A judge here has ruled a chain called Sports and Health Club Inc. must pay a \$300-a-day fine unless it ends a hiring policy that favors fundamentalist Christians.

Arthy Owens, founder of the organization that operates seven fitness clubs in Minnesota, said he will pay the daily fine rather than change his employment practices.

Owens, who lists God as an owner of the corporation, said, "It's well worth \$300 a day to be able to seek out people who agree with our goals and values."

BJCPA adopts position statement on government infiltration of churches

WASHINGTON

Noting an emerging pattern of government insensitivity to the rights of churches, the Baptist Joint Committee on Public Affairs has adopted a position statement on government infiltration of churches.

The infiltration statement was approved during the annual meeting of the Baptist Joint Committee, which is made up of 42 members representing eight U.S. Baptist denominations.

In its position statement, the committee pointed to an increased willingness of the government to infringe upon the free exercise of religion and to intrude into churches without regarding separation of church and state.

According to the statement: "The BJCPA condemns the use of paid informants, undercover agents and surreptitious tactics by any government agency investigating religious organizations as improper and illegal when less intrusive means of investigation or fact gathering are available. We lament the chilling effect upon worship, prayer, faith and fellowship freely exercised when worship services are invaded through the use of electronic eavesdropping equipment. We abhor government agents' fraudulent use of the name of Jesus Christ to gain access to the household of faith."

The task force that drafted the position statement was set up last year following a report on alleged church infiltration by U.S. Immigration and Naturalization Service agents and paid informants, who tape recorded worship services in Phoenix, Tucson and Scottsdale, Ariz.

The position statement also calls upon Baptists to be alert to government intrusion into churches and to report any such intrusions to the Baptist Joint Committee.

In addition to approving the position statement, the committee also authorized a task-force study on the teaching of religion and values in public schools.

A proposed resolution introduced by Albert Lee Smith, a Southern Baptist Convention representative from Birmingham, Ala., sparked the authorization of the study.

Smith's resolution, which cited a research study conducted by Paul Vitz for

Religious leaders fight restoring death penalty

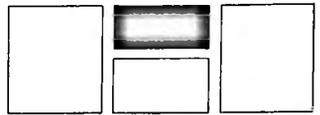
DETROIT

A coalition of religious leaders has been formed to oppose the drive to restore the death penalty to Michigan, which banned capital punishment in 1846.

The group, which includes representatives of the state's largest denominations, was formed in the wake of a petition drive to place the question of restoring capital punishment on the November general election ballot as a referendum issue. The group, Religious Leaders Against the Death Penalty, plans to campaign against the death penalty restoration through sermons, seminars and demonstrations, leaders said.

"We didn't come to lose," said Charles Adams, pastor of the Hartford Memorial Baptist Church and president of the Detroit branch of the National Association for the Advancement of Colored People. "We fight to win."

Adams, a member of the Baptist Joint



the National Institute of Education, called for recognition of the lack of references to "the history, heritage, beliefs and values" of religion in American social studies and history textbooks. Smith also asked the committee to "affirm that religion has made a valuable contribution to the formation and development of our country and that it still does today."

Following discussion on the proposed resolution, Robert Tiller, director of governmental relations for the American Baptist Churches, USA, called for the formation of a task force to study the issues raised by Smith's resolution. Tiller's motion was approved by the committee with one dissenting vote. □

Bennett defends voucher plan before subcommittee

WASHINGTON

Sitting before a U.S. House of Representatives subcommittee, Secretary of Education William Bennett spent four hours defending his proposed educational voucher plan.

Bennett answered a battery of questions posed by members of the Subcommittee on Elementary, Secondary and Vocational Education during the House hearing.

The Equity and Choice Act of 1985 (TEACH), if passed by Congress and signed by the president, would allow parents of educationally disadvantaged children to obtain vouchers that could be "spent" at the school—public or private—of the parents' choice.

In his testimony, Bennett emphasized the importance of parental choice and said such choice would improve Chapter 1 of the Education Consolidation and Improvement Act. Chapter 1 provides for federal funds to be sent to public schools that furnish educational services for children who are economically and educationally disadvantaged.

A number of both Republican and Democratic members of the subcommittee, however, challenged Bennett as to the proposal's real merits.

Rep. Augustus F. Hawkins, D-Calif., questioned whether the proposal actually would provide a meaningful choice. Hawkins, chairman of the subcommittee and the overall House Committee on Education and Labor, pointed out that the average voucher would be worth approximately \$610 while the average pri-

ate school tuition is \$890.

Bennett responded while a voucher might not meet the tuition at some private schools, it would be better than nothing and would "go a long way to reaching \$890."

The subcommittee's ranking Republican, Rep. William F. Goodling of Pennsylvania, countered with his concern that the plan might be "teasing the poor." While agreeing a voucher would provide a "better chance than nothing" for parents of Chapter 1 students to afford private schools, Goodling asserted that in reality it would still be "no chance at all."

Another concern to which Bennett responded was the constitutionality of the proposed bill. He acknowledged some critics, including Hawkins, contend that using a voucher at a religiously affiliated school would violate the principle of separation of church and state.

"We should remember that Congress currently requires that Chapter 1 services be provided on an equitable basis to educationally disadvantaged children attending private schools, including those enrolled in religiously affiliated schools," Bennett said. "And we should remember that our proposal gives aid to parents—not schools. This arrangement is similar to the one upheld by the Supreme Court in *Mueller v. Allen*, where Minnesota allowed parents a tax deduction to help cover private or public school education."

According to an Education and Labor Committee staff report, however, vouchers would not be comparable to tuition tax credits or existing constitutional methods of aiding private school students. "A tax credit is 'redeemed' by the parent and ultimately ends up in the parent's pocket," the report stated. "The voucher funds would be redeemed by the private school and ultimately end up in that school's coffers." □

Justice attorney limits 'religious activity'

CINCINNATI

An attorney for the U.S. Justice Department has asserted that for tax purposes "religious activity is limited only to the conduct of worship."

Ray Hepper of Washington made that argument during an Internal Revenue Service appeal of a court decision favoring Tennessee Baptist Children's

Homes Inc.

In the appeal at the Sixth Circuit Appeals Court in Cincinnati, Hepper said, "We do not question that Tennessee Baptist Children's Homes are providing Christian homes for children. This activity is child care. Their religious motivation to do this is not relevant."

In response, the attorney for the children's homes, Frank Ingraham of Franklin, Tenn., said, "Child care is not just a matter of motivation but a religious activity motivated by religious concern."

In August 1984, a U.S. District Court in Cookeville, Tenn., determined the principal activity of the children's homes is "exclusively religious" and the homes therefore should be exempted from filing Informational Return Form 990. In November of that year, District Judge L. Clure Morton told the IRS to refund \$29,665.12 in penalties assessed against the homes for failure to file the form.

Presiding Judge Robert Krupansky said the appeal has been taken "under advisement" and a written decision will be announced later. □

New regulations proposed for alternative service

WASHINGTON

The Reagan administration has proposed regulations that could prevent religious groups from offering alternative service for conscientious objectors in the event of a military draft.

New guidelines proposed by the Selective Service System would bar groups with alternative-service programs from requiring a commitment to any religious belief or doctrine as a condition for participation.

In the past, conscientious objectors often have carried out their mandated alternative service with church groups that require agreement with their basic religious purpose.

The Reagan administration, however, has argued alternative service is a program of the government and employers of conscientious objectors are agents of the government and thus are subject to laws against discrimination based on creed. □

Government Infiltration of Churches

Jesus Christ calls his church to be in the world but not of the world. To the degree that the church is faithful to the heavenly vision, to the extent that Christians lovingly display God's grace to a broken and sinful world, and to the measure of believers' biblical passion for justice, the church presses toward the ideal. As the church seeks to fulfill its mandate and as the state seeks to preserve social stability, the two are at times confrontative and exist in creative tension.

The church is not above the law. Historically Baptists have urged that when compelled by conscience to engage in civil disobedience, Christians must accept the consequences of their actions. At the same time, when enforcing its criminal laws the state must act in accordance with the Constitution.

The courts long have recognized the unique status of religious freedom in the life of this nation. Enshrined in the First Amendment to the Constitution are these hallowed words: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Hence the courts have repeatedly struck down state imposed burdens upon the sincere exercise of religious faith. No agent of government is allowed to burden the free exercise of religion without a compelling state interest. Even in such situations the state must pursue its interest in the least intrusive manner.

Nevertheless, a disturbing pattern appears to be emerging. Government is becoming increasingly insensitive to the rights of the churches, is steadily more willing to infringe upon the free exercise of religion, and is frequently more intrusive in the life of the church, without due regard for the implications of the First Amendment for the separation of church and state.

The Baptist Joint Committee on Public Affairs decries this encroachment. Specifically, the BJCPA condemns the use of paid informants, undercover agents, and surreptitious tactics by any government agency investigating religious organizations as improper and illegal when less intrusive means of investigation or fact gathering are available. We lament the

chilling effect upon worship, prayer, faith and fellowship freely exercised when worship services are invaded through the use of electronic eavesdropping equipment. We abhor government agents' fraudulent use of the name of Jesus Christ to gain access to the household of faith.

Further, we condemn any violation of the sacred precincts of religious worship by law enforcers without a warrant, a subpoena, or an independent finding of probable cause by a magistrate. Religious liberty and all other civil liberties are at risk when law enforcement agencies ignore the mandates of the Constitution. For government agents to burden the free exercise of religion by infiltration of churches is a matter of the most grave concern and, except in rare instances, is a violation of the First Amendment.

We call upon Baptists to be alert to government intrusion into the life of the churches and to report to the Baptist Joint Committee on Public Affairs instances of governmental meddling, intervention, monitoring, surveillance, and other evidences of disregard for the free exercise of religion.

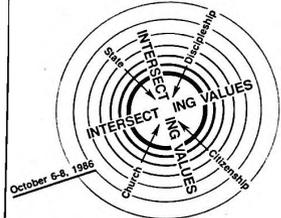
We call upon persons of good will at all levels of government scrupulously to avoid running roughshod over religious freedom and trampling carelessly upon the precious principle of church-state separation. It is not the prerogative of the government to define the nature and purpose of the church, to interfere with the mission and ministry of the church, or to attempt to influence the sincerely held religious beliefs of those in the churches.

In a free society errors are inevitable in the always difficult process of determining the fine line between liberty and license, between freedom and its abuse. But as with our lofty principle of "innocent until proven guilty," if we err in dealing with the occasional conflict between enforcement of the law and the autonomy of religious institutions, let us err on the side of freedom.

Adopted by the Baptist Joint Committee on Public Affairs. (March 4, 1986)

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GOD SAVE THIS HONORABLE COURT:

How the Choice of Supreme Court Justices Shapes Our History
By Laurence H. Tribe. New York: Random House, 1985. 171 pp., \$17.95.

A Review Essay

oldest Supreme Court in the nation's history, absent death or resignation in the interim. Tribe adds: "Not since F.D.R. appointed seven Justices in four years has the nation faced the prospect of so drastic a change as it does today in the arbiter of our Constitution."

Noting further that the average tenure of a justice's service on the high court has been about 15 years, Tribe predicts the next court will shape the institution well into the 21st century, adding: "A greyed Supreme Court is thus a sort of Halley's Comet in our constitutional universe: a rare apparition arriving only once in each lifetime, burning intensely in our legal firmament for a brief period before returning to the deep space of constitutional history."

Dramatic overstatement or not, what is indisputable is that major changes at the apex of our legal structure are entirely likely, if not inevitable, should Ronald Reagan make new appointments to the Supreme Court. Besides sounding that warning — he is plainly frightened by the prospect — Tribe sets out to dispel a trio of "myths" about the process of presidential nomination and senatorial confirmation of high court justices. In two instances he succeeds, but fails in the third.

That a jurist of the reputation and stature of a Laurence Tribe would produce a comprehensive study — at the outset of Ronald Reagan's second term — of the choices 40 U.S. presidents have made to the U.S. Supreme Court is immutable evidence of heightening concern over the shape the third branch of government will take should the 40th president have the chance to make new appointments to the nation's highest tribunal.

Undoubtedly, President Reagan eagerly anticipates such an opportunity, and the likelihood that his choice of even a couple of new justices would change the Supreme Court for the next generation is undeniable. For unless the U.S. Senate were to stymie those choices in the confirmation process — itself an unlikely development unless the Democrats reclaim control of the upper house of Congress this November — what can be said with absolute certainty is that this president's nominees will be doctrinaire ideologues filtered through and approved by none other than Attorney General Edwin Meese III.

As it is, the president will have appointed more than half the sitting federal judges by the time his term expires in January 1989, and presumably all of them will have passed the ideological litmus tests being applied assiduously by Meese and his cohorts at Justice. (During Reagan's first term, Meese screened all nominees to the federal bench while serving in the White House as presidential counselor.)

Reagan and Meese are not about to miss their main chance to imprint their supposedly "conservative" judicial philosophy on every federal court where they are given opportunity to appoint new judges. They know full well the most lasting legacy of the Reagan administration is likely to be the future shape of the judiciary, especially if those Supreme Court vacancies in fact materialize.

That likelihood is not lost on Tribe and no doubt formed the primary motivation for publishing his latest volume. As the prolific Harvard Law School professor notes at the outset, the court presided over by Chief Justice Warren E. Burger will become, on November 3, 1986, the

Tribe, who has taught at Harvard Law since age 27 and holds his school's only chair in constitutional law, first jumps into the raging debate over "strict constructionism," a legal philosophy whose "guiding principle is exclusive attention to the constitutional text." Strict constructionism is "myth," he says, because of its "central flaw . . . that words are inherently indeterminate," adding: "If simply reading the Constitution the 'right' way were all the Justices of the Supreme Court had to do, the only qualification for the job would be literacy, and the only tool a dictionary."

He is also quick to point out, nevertheless, that neither is the court "free to take the position of Humpty Dumpty, that a word means just what I choose it to mean — neither more nor less," and predictably quotes the court's earliest exponent of an activist judiciary, Chief Justice John Marshall, who once wrote that "it is a Constitution we are expounding." What that means, Tribe explains, is that the Constitution "is the grand charter of a democratic republic, the philosophical creed of a free people, and it was written in broad, even majestic language because it was written to evolve."

As to the related philosophical tenet that the primary duty of Supreme Court justices is merely to divine the "intent" of the Constitution's framers and apply their understanding to current legal questions, Tribe argues convincingly that such divination is futile because the framers collectively — Congress, Constitutional Convention, state ratifying conventions — had no "single, ascertainable 'purpose' or 'intent.'" And, he asks, "even if such a mythical beast could be captured and examined, how relevant would it be to us today? Should the peculiar opinions held, and the particular applications envisioned, by men who have been dead for two centuries *always* trump contemporary insights into what the living Constitution means and ought to mean?"

Besides demonstrating ably the fallacies of strict constructionism, Tribe successfully debunks as well what he calls "the myth of the surprised president," a reference to the conventional argument

Continued on page 16.

INTERNATIONAL DATELINE



Missionaries optimistic over Philippines change

MANILA

Southern Baptist missionaries are optimistic about the future of work in the Philippines, having seen no sign that Baptists will be less welcome with President Corazon Aquino than they were with former President Ferdinand E. Marcos. Marcos fled the country as a rebellion of military officers and civilians ended his 20-year rule.

During the rebellion, Southern Baptists' mission chairman in the Philippines and the four other administrative committee members went on with a scheduled meeting at their offices in Manila.

Missionaries are not anxious about being in the country, said Les Hill, the mission chairman. "Our impression is the populace as a whole leans toward the revolution," he said, about three hours before the Philippine people heard that Marcos and 55 of his family and aides had fled from Malacanang Palace, home and office of the Philippine president.

"There have been a great deal of prayer meetings, both Catholic and Protestant, since the first of the year," said Les Hill. "It is valid, I think, to say what is happening may well be the answer to that kind of prayer.

"The big phrase that is being stated here is that seldom in history is tyranny successfully brought down to a democracy, but it is unheard of where civilians have protected the military. The people see this as a spiritual victory," said Les Hill. "They stopped the tanks by standing in front of them and then asking the soldiers to climb down and pray with them. And the soldiers did. What they were saying was, 'The Bible says prayer can move mountains; well, in this case, we have seen prayer that has turned tanks.'" □

Cardinal describes role in downfall of Marcos

VATICAN CITY

Cardinal Jaime Sin concluded his two-day trip to Rome, including a private audience with Pope John Paul II who said, "the church should not become a power in the Philippines." Cardinal Sin told reporters after leaving his meeting with the pope March 6. "He said he was

satisfied and happy about the way the crisis had been resolved."

Much of the credit for Marcos' flight has been given to the cardinal. Although he had not been seen with the former president since New Year's Day, Cardinal Sin met frequently with his wife, Imelda.

The cardinal said the dictator's wife came to him for consoling and advice. Imelda Marcos made personal confessions to him, often breaking down in tears, he related.

He said the new president, Corazon Aquino, and her running mate, Salvador Laurel, "came to me to my house to consult me and ask my advice. I helped them come together. When someone asks me something I, as bishop, have the duty to respond," the cardinal told reporters.

"I am not afraid of the communists," the cardinal said. "They are very few and they aren't so communist. They aren't atheists. They believe in God, only they're a little violent."

The cardinal stressed that recent events in the Philippines were most influenced by the United States and the church. □

Israel parties fear anti-racism bill effects

JERUSALEM

Religious parties supported by the chief rabbis have expressed concern that a government-sponsored anti-racism bill, in its current form, could be used to ban certain Jewish texts and rabbinical rulings deemed racist.

Some examples being given are prayers that have God telling the Jewish people, "You were chosen from all the nations," and the Biblical commandment to Israel to destroy the ancient Canaanite tribe of Amalek.

"Certain judges or jurists may use [the bill] for negative purposes," said Rabbi Simcha Meron, a former senior official of the Religious Affairs Ministry who is close to Israel's chief rabbis.

The religious parties are demanding that a clause be inserted into the anti-racism bill that would state that nothing in Jewish law can be deemed racist. So far, the leftist parties and much of the Labor Party are opposing the clause.

The anti-racism bill is aimed at Knesset member Rabbi Meir Kahane, who has called for the expulsion of

Arabs from Israel. Opponents of the clause suggested by the religious parties say it would render the bill ineffective because Rabbi Kahane claims to base his anti-Arab position on Jewish law. □

Investigation of church scored by Council leader

LONDON

Dr. Abisai Shejavalu, general secretary of the Council of Churches in Namibia, has attacked proposed plans for a government investigation of the council's activities.

In a statement issued in Windhoek, Dr. Shejavalu said that this move by South Africa's appointed government in Namibia is "an attempt to silence the church and prevent peace-loving people from speaking the truth." He stated that the council is "totally and irrevocably opposed" to a call in the interim government for "investigations of" and "measures to be applied to counter" the Council of Churches.

"Freedom of speech is a basic human right," said Dr. Shejavalu. "If the church and other agencies or individuals in a society believe something is wrong and unjust, they should have the right to say so publicly."

The Council of Churches has been an outspoken critic of the South African occupation of Namibia, and has dismissed the interim government as unrepresentative of the wishes of the people. Instead, the churches have called for withdrawal of South Africa's troops and for elections to be held under United Nations auspices. □

Islamic fundamentalists seek ban on missionaries

NAIROBI

A fundamentalist Islamic sect has called for the expulsion of all expatriate missionaries from the Sudan. The radical Sudan Moslem Brothers issued the call in their publication *Kalbia*.

The Islamic publication said the Western education given to students at missionary schools in the southern part of the country was corrupting their morals and fueling hatred between them and the residents of northern Sudan.

The missionaries were accused of "poisoning the minds of southerners by giving them a theology that made them



NEWS-SCAN

envious of their brothers in the north." The Moslem group charged that students in the south harassed and killed northerners who lived in the south, and destroyed their mosques.

The call is being viewed in Khartoum, the capital, as a renewed effort by fundamentalists to re-impose Islamic rule by decree. "Sharia," the Islamic code of law, was imposed earlier by former President Jaafar el Numeiry, who scrapped a British-derived legal system in 1983, creating an Islamic state and declaring himself imam, a religious leader with both political and spiritual authority.

In 1972, when the civil war waged by southern rebels ended with the signing of a peace treaty in Addis Ababa, Ethiopia, freedom of religion was guaranteed by the document, but foreign missionaries were barred from returning. The next year, however, the constitution gave official recognition to Christianity as a religion. Missionaries were invited back in 1978. □

Common civil code would 'break India to pieces'

COCHIN

A Moslem leader and lawmaker who has been a member of the New Delhi parliament for 25 years, said that proposals for a common civil code for members of all religious communities in India were "harmful" and would "break India to pieces."

Ebrahim Sulaiman Sait discussed the complex issues of conversion and religious rights in India as they intersect with civil law and interpretations of India's constitution. The common civil code applicable to all religious communities without distinction was demanded by fundamentalist Hindus and by progressives among both Moslem and Christian groups following supreme court rulings.

The groups argue that such a code—to supersede prevailing religious codes pertaining principally to inheritance among Moslems and marriage in both communities—was mandatory under India's constitution. The constitution includes a general policy directive to the state to endeavor to enact a "uniform civil code" for all citizens.

Mr. Sait said the proposed code will contradict a provision in the same charter guaranteeing absolute religious freedom as a "fundamental right."

He commented on an earlier judgment in which the same court, overruling claims by the church and other defendants, ruled that another fundamental right in the constitution to "profess, practice and propagate religion" did not include a right to "convert any person to one's religion by an exposition of its tenets."

The Moslem leader said the right to propagate religion included a right to convert as long as there was "no coercion or compulsion." □

Baptist Union in Scotland backs Ecumenical study

EDINBURGH

For the first time since the Reformation the Roman Catholic Church in Scotland has agreed to take part in nation-wide, grass-roots ecumenical discussions with the mainstream Protestant churches on the fundamentals of Christian belief.

The Inter-Church Process, as it is known, has been organized by the British Council of Churches, and is called "Not Strangers, But Pilgrims." A launching service for the project was held here with participation of leaders of nine denominations and the Salvation Army.

The study has the backing of the Church of Scotland, the Episcopal Church in Scotland, the Roman Catholic Church, the Baptist Union in Scotland, the Congregational Union of Scotland, the Methodist Church in Scotland, the Quakers, the United Free Church of Scotland, the United Reformed Church and the Salvation Army. □

First gain in 60 years

LONDON

Membership in the union's 1,900 member congregations rose to 154,300 in 1984, according to a report presented to the Baptist Union council meeting in March. Bernard Green, the union's general secretary, said the 60-year membership slide "seems to be over." An article in the denomination's weekly *The Baptist Times*, said the ecumenical evangelistic campaign known as Mission England, was an important factor in the membership turnaround. □

Unwillingness to allow his guards to confiscate the book of Psalms that he said sustained him as a Soviet Jewish prisoner of conscience cost Anatoly Shcharansky 130 days in solitary confinement and delayed his release in the subsequent East-West prisoner exchange. "My release without making any concessions proves our struggle can really be successful, despite all the pessimism we hear," Shcharansky affirmed.... On a similar note, the Bible and the study of scriptures has taken on growing interest, particularly among Roman Catholics. Britain's *Baptist Times* reported Aleksander Kircun, respected leader of the Polish Baptist Convention, as looking forward to "a wide revival in our country." He served in eight evangelistic campaigns this year with three more to come.... The situation is not as hopeful in Romania, where the government keeps a tighter rein on religion amid accusations of persecution by Christian and human rights groups. But typical of the ambiguity is the example of Baptist pastor Buni Cocar, whose Church of Hope was leveled by government bulldozers. His congregation and friends in America offered consolation, but Romanian critics say nothing would have happened had Cocar not insisted on defying authorities by enlarging the building for the third time. Like its counterpart the Soviet Union, Romania encourages atheism and merely tolerates religion.... Perseverance is not new among Africans, according to the London Development Report. Recently, while "photographers fell over each other to get the best shot of the dying child," the quiet endurance and coping with droughts continued: Niger families shared their meager reserves with migrants, Fulani herders often lent newcomers a cow until a calf was produced, while in Sudan officials spoke of more lives saved by people eating desert grasses than by unsuccessful Western efforts to get food to the drought-stricken areas in time.... Iliia Orlov, organist and one of the preachers of Moscow Central Baptist Church, died of cancer at age 60. He was largely responsible for making Billy Graham's visit to the Soviet Union possible. □

CORRESPONDENCE

Reader response extends dialogue and thereby helps to focus and clarify the issues. Letters must carry both signature and address of the writer and should not exceed 200 words. We reserve the right to edit for length.

Thanks for the excellent REFLECTIONS in the February REPORT. I share your grief (is there a better word?) at the dilemma which historic Baptists are facing — defending the religious rights of people who are trying their best to take away my religious rights.

Marion Aldridge
Columbia, SC

Thank you for the statement [related to government infiltration of churches*] of the Baptist Joint Committee. The statement is sensitive, balanced and direct, and the support of the Committee is very deeply appreciated.

Gary F. Skinner
Phoenix, AR
(Presby. Church, Synod of the Southwest)

It is an absolutely breathtaking statement of the highest possible order. My congratulations to you and to the others who participated in its draftsmanship.

Peter D. Baird
Phoenix, AR

[*The statement appears on page 10 of this issue of REPORT.]



- Going beyond the usual treatment of Roger Williams as a church-state separationist, Professor Miller presents Williams as one who prescribed radical duties for the church that would separate radically from the state. With what would he be comfortable in your church? What would disturb him? He finally became a "seeker" outside the church. Would that indicate that he would probably find no peace in any church today?
- After reading VIEWS, assume the roles of these characters for discussion. Have one group be the Department of Education, arguing in favor of TEACH. Have another group play a local public school principal in a poor district. Have another group take the part of a right-wing Ku Klux Klan educator, or a left-wing communist educator (that could be a possibility, you know) wanting to get

Write A Hymn

The 20th National Religion Liberty Conference. Theme: "Intersecting Values: Christian Citizenship and Church-State Separation"

This marks the 50th anniversary of the Baptist Joint Committee on Public Affairs. We invite the submission of hymns on the theme of religious liberty, soul liberty, and the freedom of religion. Baptists have cited soul liberty and the priesthood of believers as the biblical bases for their strong commitment to freedom of conscience.

You may write new lyrics to an existing, familiar hymn tune. Entries will be judged by leading church musicians. The winning entry will be introduced at the October, 1986 conference in Washington, D.C. Winner will be provided registration, hotel, with meals.

federal money for his new school.

- In his book review of Laurence Tribe's book, Stan Hastey highlights the idea that no genuine divination of "the intent of the founders" is possible. Reread that part, and make a creative argument that "the intent of the founders" is a Johnny-come-lately idea. List some issues that the founders never addressed.

- "It can happen here," says James Dunn (Reflections). He warns against complacent procrastination in the current moves to tax the church. Dunn assumes that Baptists should become involved in the political process. What does the Bible say about this issue? How have Baptists you have read about in this magazine lately responded to political activism?

Pop Quiz

1. What statement did the Baptist Joint Committee recently adopt?
 2. Which U.S. senator has sought to reform the judicial appointment process?
 3. Where are religious leaders fighting the death penalty's restoration?
- [Answers to last month's quiz above.]

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ANSWERS TO MARCH POP QUIZ

1. Abraham Lincoln believed the Declaration of Independence contained spiritual values regarding slavery that the Constitution did not recognize. To reconcile this, he wanted the nation to return to its original document—the Declaration.
2. Chief Buthelezi of the Zulu tribe.
3. Technological hubris was defined as the idea that "all that can be done should be done."
4. The 1986 National Religious Liberty Conference will be held in Washington, D.C. on October 6-8, 1986.

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... we're not simply concerned about the *principal* which is earning interest for our later years. We are anxious about the *principle* of radical departure that would begin taxing churches.

REFLECTIONS

James M. Dunn
Executive Director



What does it take to get you riled up? Maybe our circuits are overloaded. Maybe we have become inured to government bungling and to civic evil and error.

Perhaps our R.I.Q. (righteous indignation quotient) has dropped too low. One should not be blamed for not wanting to sound like those who have given moral outrage a bad name. It's clear that in this era of religiously fueled politics there are full-time "indignants" who have made a career of being outrageous and outrageous. With few exceptions the televangelists bring in big bucks by simmering, stewing and knowing just when to boil over. It pays to stay cool and seem balanced, poised most of the time. But holy anger is totally appropriate when government starts taking steps to tax churches.

Would you be upset if a government policy hurt poor widows disproportionately? If tax reform legislation as passed by the United States House of Representatives (H.R. 3838, section 1012) becomes law it will do just that. In addition it will target, as if by design, disabled and retired church workers of all sorts by taxing the church pension plans.

Elderly retirees from the churches are not among the wealthy of the world. The removal of the exemption for non-profit retirement plans would bring in minimal revenue while doing maximum damage to vastly underpaid servants of society.

Would it bother you a bit if the federal government began taxing the churches? That is precisely the result of the proposal in question. Oh, no, it would not slap a tax on the building on the corner with the hymnals and the pulpit, but the church would be taxed. Remember, pension boards are a mission and ministry of the churches, a way for the local church to reach out and care for its own, an extension of the caring community. A direct tax on the boards would be a tax on the churches.

Southern Baptists' Annuity Board and American Baptists' Ministers and Missionaries Benefit Board are nothing more than the means which these Baptist bodies have found to be faithful to the scriptural injunctions to provide for those who can no longer care for themselves. Other Baptist conventions and conferences and all sorts of religious groups have set up similar ministries. The boards of which we speak are not in competition with commercial ventures. In fact, each serves only its own churches as stewards, managing individual's contributions and the monies set aside by the churches as an expression of corporate responsibility.

Would you care if the essence of church-state separation were ignored? Herds of unregulated Baptists have little in common with one another. We know, though, that the scripture teaches that pride is sinful and we have been sinfully proud of our emphasis upon religious freedom protected by the separation of church and state. Listen, we're not simply concerned about the *principal* which is earning interest for our own later years. We are anxious about the *principle* of radical departure that would begin taxing churches.

Conflict, confrontation, and court cases would surely come. The load of litigation would be heavy. The costs of excessive entanglement between church and state are always high: reporting, surveillance, monitoring and meddling follow government taxation and regulation as night follows day.

Would you be disturbed if you knew that a bill so far-reaching as tax reform legislation were passed by the House of Representatives under a cloud? That's what happened. From months of closed-door hearings to protect members of Congress from special interests, H.R. 3838 sprang full grown on the public only a week before passage of this "simple" tax bill of 1379 pages. With benefit of little citizen input the House approved the bill, warts and all, without a record vote. The voice vote taken is a clever evasion of personal responsibility on the part of many Congress persons.

Tax law is complex. Legislative aides do the work on tangles of technicality that make our own tax instructions seem simple. Hence, the members of Congress cannot possibly keep up with every detail; after all, this is only one of many legitimate concerns. It is no surprise to find a Senator unaware of specifics. Senator Dole, who is on the Senate Finance Committee now considering tax reform, was asked last week about taxing the church pension boards. The setting was a national conference of non-profit organizations, persons keenly interested in tax policies. He said, "We have taken care of that, haven't we?" When told that the problem is yet unresolved he was obviously taken aback. To Senator Dole's credit he has looked into the matter. He and others on the Senate Finance Committee indicate that the taxation of church retirement plans will probably not be in the Senate version of tax reform. That means that there will be a conference committee to reconcile the differences between the House and Senate versions. This suggests that those who care about taking taxation of the church out of tax reform law should get busy communicating with members of the House Ways and Means Committee.

Why haven't you already been in a uproar?

You are exactly right about there being more important chores in the vineyard of the Lord, and yet, sometimes we must leap-frog a lesser priority over the great tasks because now is the only time we have. If we don't correct this flawed legislation now, we'll be living with it for years. Remember the muddle we got in over ERISA, the pension reform act?

You are, like most of us, coping with the challenges of daily existence. Get the car serviced. Make the meetings. Pay the bills. Pick up some raisin bran. So, you're not terribly likely to do a lot about an issue like tax reform. If you don't get riled up, however, nothing can be said or done that will take your place.

A lot of things are happening here that one would have thought never could. We've seen taxation of overseas earned income. The IRS definition of an "integrated auxiliary" has become a wedge of the government toward defining religion. This nation now exchanges ambassadors with a church, the Roman Catholic Church, and court rulings continue to edge closer to the day when tax dollars will be spent on private and parochial schools.

Don't think that we can any longer afford apolitical or anti-political attitudes if we propose to keep our freedoms. Unless we act on our own high resolve we have denied by that inaction our very identity.

Over simple, you betcha! Polemical, I hope so! If only those who read this page would get in gear we could stop this foolishness. Tax the churches? Indeed!

Come on, get riled up. □

that U.S. presidents often have been chagrined to learn the hard way that justices they appointed to the Supreme Court turned out to be quite different than what they anticipated. "The curious thing," he says, is that those who advocate this view "always trot out the same few examples in support of their cherished myth," including President Dwight D. Eisenhower's celebrated disappointment with two of his five nominees, Chief Justice Earl Warren and Justice William J. Brennan Jr. Asked once if he had made any mistakes while president, Eisenhower is reported to have replied, "Yes, two, and they are both sitting on the Supreme Court."

Tribe succeeds in laying the myth to rest through a painstaking review of numerous presidents who shaped the court in their own philosophical images through skillful appointments. Among these chief executives were Washington, Adams, Jackson, Lincoln, Grant, Harrison, Cleveland, Taft, Franklin Roosevelt, Truman and Nixon. In short, Tribe's mastery of the political context in which each of these presidents managed to appoint justices who performed as expected, amounts to a brilliant refutation of the myth of the surprised president.

He concludes: "All in all, little solace can be taken from the prospect that a determined President who takes the trouble to pick his Justices with care, who selects them with an eye to their demonstrated views on subjects of concern to him, and who has several opportunities to make appointments, will simply guess wrong and end up nominating a liberal in conservative garb or a conservative in liberal dress."

In trying to lay waste to Myth No. 3, however, Tribe turns from historian to salesman or cheerleader, as if to make an impact on possible upcoming battles in the U.S. Senate over nominees to the Supreme Court Ronald Reagan might have the chance to make. This myth, that of the "spineless Senate," refers to the notion that the Senate often abdicates its constitutionally mandated role of providing "advice and consent" to the president with regard to his high court appointments. Unlike his convincing proof that presidents seldom have been surprised by their nominees, however, Tribe does not demonstrate convincingly

his assertion that the "plain fact is that the Senate has vigorously exercised its power" of advice and consent.

Although he does provide several examples of nominees rejected by the Senate, some because they were presidential cronies, others because of their judicial philosophy, what ruins Tribe's argument is an excellent table — provided as an appendix — showing the disposition of every nomination made to the Supreme Court since George Washington's presidency.

That table yields the following evidence proving precisely the opposite of

what Tribe contends:

- Of 140 total nominations (although only of 130 individuals, since numerous chief justices have been elevated from within the court's membership, an action requiring new confirmation), 102 actually have served on the court.
- Of the 140 total nominations, only 11 have been rejected outright.
- Of the 140, six others were withdrawn, action on four others was indefinitely postponed, and on six others no action was taken. Added to the 11 rejected, and assuming confirmation problems led to the unusual actions just listed, at most 27 nominees have found the process of confirmation insurmountable.

An even more telling indictment of the Senate's unwillingness to perform its constitutional duty is this startling fact: Since 1900, of 53 persons nominated, only three have been rejected. One other nomination was withdrawn, and no action was taken on one other nominee.

Tribe then goes on to urge upon the Senate its duty to test nominees one by one, not by litmus tests on how they might vote on specific issues to come before the court, but on questions such as judicial philosophy and temperament and how the candidate views the Supreme Court's role. He also contends that senators should approach their confirmation task with an eye to "preserving the overall balance" so as to keep the court from lurching wildly in one direction or another.

This volume makes a significant contribution to a serious public debate that should — although plainly it does not — concern every citizen in the land. It does so at what may prove to be a critically important time, a time when one man — even if he is president of the United States — may have that rare chance to shape a nation's destiny far beyond his own term of office. As Tribe points out, only time will tell. But those sitting older justices will no doubt take note of another bit of statistical evidence pointed out by the good professor: Among justices who have retired from the court after the average 15 years, the average post-retirement life expectancy is less than four years. Laurence Tribe is obviously hoping that God will in fact save this particular honorable court. □

Religious Liberty— from the first, the trophy of Baptists.



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