

REPORT from the CAPITAL

For He Himself is our peace,
who made both groups into one,
and broke down the barrier
of the dividing wall ...

EPHESIANS 2:14

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REPORT from the CAPITAL

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

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Cover: Joy! East German Ulrike Nather (left) embraces her great aunt, a West German, after worshipping at Charlottenburg Baptist Church in West Berlin on November 12, a day when many East German Christians worshiped in the West for the first time. (BP PHOTO by Joanna Pinneo.)

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First Taste of Freedom

Who among us has not rejoiced over the developments taking place in Eastern Europe, where the first taste of liberty animates spirits too long muted by state repression? Citizens, possessing but a rudimentary understanding of democratic systems, now prod and poke around as they explore and test the parameters of newly gained freedom. It's reminiscent of that which took place in our own nation some 200 years ago. As each of these nations goes about effecting change, the accent almost immediately falls upon the need to "reconstitute" their constitutions.

Constitutions lie at the heart of fundamental change but are not necessarily guarantors of liberty. A revolutionary generation gave the American people a Constitution and a Bill of Rights that have resulted in a viable government and a free citizenry. But in Russia, after a century-long revolutionary vortex (Webster: a circular motion that creates a vacuum at the center), the Marxist program to redress social injustice failed and the result was a nation shackled for more than 70 years.

James Dunn notes that "history seems to scream out against insensitivity to the delicate nature of mutual respect required to make the American experiment work." His concern is over the intrusion of the church into politics in a way that he says overshadows the qualifications of the candidates and even becomes counterproductive. In the situation at hand, the result of the congressional vote in California affirms that assertion and with it the separation principle.

Madison's devotion to religious liberty strengthened his devotion to constitutionalism and to federalism; to rule by law with the assent of a community of responsible citizens. So writes Neal Riemer in the second of a two-part article on "Creative Breakthroughs" — the first having focused on Roger Williams. What follows here is a succinct survey of James Madison as he deals with the difficulties that faced this nation in its formation. Madison envisioned a federal republic that would effectively empower government and make provision for the people's freedom. It's a thesis of Riemer's that there is an connection between prophetic politics and key religious ideas.

Religion in the public schools — the use of public school facilities by church groups and the propriety of ceremonial prayer at graduation exercises — continues to look to the courts for clarity. Lawyers David Day and Brent Walker address some of the ambiguity educators face, particularly that of upholding free exercise while avoiding violation of the establishment clause. Day writes that short-term use of a school by a church in process of building its own facilities avoids the constitutional problem present when the church has no such plan. Walker points out that not every compromise arrived at in the courts is satisfying. If prayer is "secularized" (one court ruled this would be appropriate) in the endeavor of making it inoffensive to any and all, it raises the question of its integrity and worth. □

Victor Tupitza

● **A COUNTY COURT** judge has dismissed a lawsuit involving several Baptist churches in Nashville, Tennessee.

A year ago, Nashville's metropolitan government filed a lawsuit seeking a judgment regarding the taxability of church parsonages. The city was seeking to tax 141 tax-exempt properties that it claimed were not used for charitable or religious purposes. About 20 Baptist churches were among those cited.

In the suit, the government challenged the constitutionality of a 1984 state law that said church parsonages should be tax exempt as "property used purely and exclusively for religious purposes."

In his decision, Judge Irvin H. Kilcrease, Jr., wrote that "tax exemptions in favor of religious, scientific, literary, and educational institutions are liberally construed, rather than strictly.

"A parsonage is the home of a full-time regular minister of a local church. The 'purely and exclusively' use test for property to be tax exempt is met where the use is 'directly incidental to or an integral part of' one of the recognized purposes of an exempt institution." (BP)

● **THE CITY OF Pittsburgh** did not display a Hanukkah menorah in front of a city-council building during the holiday season although its right to do so was upheld by the Supreme Court.

Officials of Allegheny County said they decided against the display of the menorah because the high court, in a companion ruling, banned the display of a nativity scene in a Pittsburgh county courthouse. (RNS)

● **AN AMERICAN BAPTIST** volunteer church worker was incarcerated for 18 days in El Salvador before being released and sent back to the United States.

Salvadoran officials arrested Jennifer Casolo after claiming to have found a large cache of military weapons on her rented property.

Casolo, who served in El Salvador with Christian Education Seminars, has maintained she knew nothing about the weapons.

Donovan Cook, pastor of Seattle's University Baptist Church where Casolo is a member,

called the arrest "another example of how the (Salvadoran) government is attacking the church there."

Cook expressed "gratitude to the religious community across the country, particularly to church executives whose efforts were primarily responsible for Jennifer's release. It was the religious community's pressure on congressional representatives that made the difference." (ABNS)

● **AN ATTORNEY'S ADVICE** against traditional prayers before high school football games in Thomasville, North Carolina, has led to his being criticized as an enemy of prayer who has foisted something on the city.

But Charles F. Lambeth, Jr., said he wasn't trying to be a publicity hound or a trouble maker. Although he was troubled by the pre-game prayers for years, he kept quiet until he learned the U.S. Supreme Court had refused to overturn a ruling in a Georgia case that such invocations violate the First Amendment.

Until this year, the Thomasville games were accompanied by a prayer from a Protestant minister. After Lambeth made his suggestion to the school superintendent, the school board voted unanimously to have a moment of silence in place of prayer.

Lambeth, a Protestant, said he was surprised by the number of people protesting the policy change. "I think that they have this view that the majority prevails, that what the majority wants to do, the minority has to go along with," he said. "But that's not what the First Amendment says." (RNS)

● **A MINNESOTA COUPLE** have been charged with kidnapping and false imprisonment in the abduction of their 29-year-old daughter whom they sought to "deprogram" because they believed she had joined a religious cult.

The couple's attorney said the parents had become increasingly concerned about their daughter's behavior, but when they tried to intervene they were rebuffed by their daughter at the apparent suggestion of leaders of her church, a fundamentalist congregation in suburban Minneapolis. (RNS)

David R. Day

David R. Day is a lawyer practicing in Indianapolis, Indiana. A 1977 graduate of Harvard Law School, Day specializes in school law and serves on the Hamilton Southeastern School Board, located in a suburb of Indianapolis. He is active in the United Methodist Church.

RELIGION CLAUSES in TENSION

When Religious Groups Use Public Facilities

Frequently, issues of religion in the public schools implicate the doctrinal tension between the free exercise clause and the establishment clause of the First Amendment. In their attempt to maintain religious neutrality, schools face challenges from those who claim they are producing an antireligious environment and efforts by others to "restore" religion to the school. In their attempt to give access to religious groups, schools struggle with whether they are supporting religion in violation of the establishment clause, a struggle complicated by the complexity of the *Lemon* test. *Lemon v. Kurtzman*, 403 U.S. 602, 29 L. Ed.2d 745 (1971).

The problems faced by schools also seem to trouble the Supreme Court, which has not yet satisfactorily reconciled the establishment and the free exercise clauses. Instead, the Supreme Court has established two independent, and sometimes conflicting, standards: The *Lemon* test for the establishment clause, and a balancing test for the free exercise clause under which the court weighs the state interest in achieving its objectives against the interest of persons in pursuing their religion free from state intrusion. As one commentator noted in "Developments in the Law — Religion and the State," 100 Harv.L.Rev., 1633-34 (1987):

As a result of the Court's differing standards, the outcome of cases may often depend on whether a particular dispute is characterized as an establishment or a free exercise claim. For example, the regular use of public university facilities for student religious services may be characterized either as governmental advancement of religion, impermissible under the establishment clause, or as an accommodation to religious students, required by the free exercise clause. Although this characterization often influences the

outcome, there are no neutral principles to govern the crucial characterization problem.

This article will discuss the tension between the free exercise and establishment clauses in the problematic area of the religious use of school facilities (other than those involving student use under the Equal Access Act).

Religious Use of School Facilities

In many school districts, the school buildings are the major public buildings.

In their attempt to give access to religious groups, schools struggle with whether they are supporting religion in violation of the establishment clause.

Often, the school permits and even encourages community use of those buildings for meetings and events. As might be expected, religious groups or organized churches often want to utilize the school buildings to hold religious meetings or even worship services.

When these meetings have involved students and are held just before or after the school day, courts have generally prohibited the use. For example, in *Bell v. Little Axe Independent School District No. 79*, 766 F.2d 1391 (10th Cir., 1985), the court enjoined student meetings of the Son Shine Club which met one morning a week after school buses arrived but before school started. Likewise, in *Garrett by Smith v. Renton School District No. 43*, 874 F.2d 608 (9th Cir. 1989), the court upheld the decision of the school

to prohibit a Christian student group from meeting just before school. The court found an establishment clause violation in this use of a tax-supported classroom at a time when most students must be at school.

Ford v. Manuel, 629 F.Supp. 771 (N.D. Ohio 1985) reached the same result with respect to classes conducted by a Weekday Religious Education Council either immediately before or after the school day in public elementary schools. The court held that religious instruction could not reap such benefits from the compulsory school attendance laws. This court stated that its ruling was narrow and turned on the location and timing of the classes as well as the young age of the children involved.

Although the courts rather uniformly prohibit use of school facilities for religious purposes in close proximity to the school day, at least one court reached a different result when the use was proposed for a Saturday night. In *Gregoire v. Centennial School District*, 674 F.Supp. 172 (E.D. Pa. 1987), *aff'd without opinion*, 853 F.2d 918 (3rd Cir. 1989), Student Venture, an affiliate of Campus Crusade, and several students sought an injunction to require the school to rent the high school auditorium on Saturday night for a magic show. The program would provide a magic show and, following an intermission at which people were free to leave, an evangelical message from the magician. The policy of the school was to prohibit use of school facilities for religious services, instruction or activity.

The court first noted that the activity would not occur during school hours so that students would not necessarily be the principal attendees. The court further noted that no school personnel, other than custodians, would be present at the program.

The school did have a policy of opening its facilities for community use thereby creating an open public forum. Because the school's denial of the proposed use in this case was based on the content of the program, the court held that the school had to show a compelling interest in order to justify its decision. The school argued that its policy was justified by the establishment clause or, as the court stated:

The defendant has, albeit with good intentions, and possibly because it

perceives its role to be an adversarial one in separating church and state, pushed too hard against the sometimes wavering wall of separation that must be held up between church and state. 674 F.Supp. at 178.

The court held these concerns were not as pressing when the program was not initiated by school employees and not primarily attended by the school's students. In considering the school's policy, the court appeared to note a distinction between religious speech and religious services as follows:

As the regulation is placed over the constitutional spectrum it takes on a somewhat chameleonic character giving it different constitutional hues. The manner that defendant invokes this written regulation will determine the constitutional hues it will project — sometimes constitutionally acceptable; sometimes not. The portion of the regulation which prohibits use of school facilities for any religious "services" has potential constitutional vitality at another time, and in another case, since the forum defendant has created is only an open forum as to speech and association and not services, rituals, ceremonies or rites. Furthermore, the performance of religious services by definition does not have a secular purpose and would thus violate the establishment clause. On the other hand, the portion of the regulation which prohibits use of school facilities for religious "instruction" is not valid in the context of this case since it violates plaintiff's free speech rights. The portion of the regulation which prohibits religious "activities" has no constitutional meaning when read in a vacuum without any specific application to precise facts. To the extent that the regulation would be exclusively relied upon to bar religious speech, it is unconstitutional. 674 F.Supp. at 179.

In a subsequent decision, *Gregoire v. Centennial School District*, 701 F.Supp. 103 (E.D.Pa. 1988), the court again focused on a perceived distinction between explaining a religious belief and participating in a worship service. The school had amended its building use policy following the first decision but again faced a legal challenge to that policy. The court again struck down the policy as violating the students' rights. The court used the magician's program as an illustration of this distinction:

If [the magician's] delivery of the Christian evangelical message is an explanation of his religious belief, or his religious experience, then that is a precise example of free expression of ideas that Centennial cannot prohibit, given the broad program of speech

and expression offered to the community in its forum. If, on the other hand, [the magician's] Christian evangelical performance was some sort of a religious ceremony, rite or ritual, then defendants would be permitted, under constitutional standards, to deny a facility use application since the forum created by Centennial is an open one only for speech purposes. 701 F.Supp. at 107.

This distinction between religious speech and religious services would seem to be inconsistent with the Supreme Court's decision in *Widmar v. Vincent*, 454 U.S. 263, 269, n. 6, 70 L.Ed.2d 440 (1981). There the Supreme Court lumped religious speech and worship together as a protected activity, a combination which drew criticism in Justice White's dissent. Further, the monitoring of the activity required to insure that religious speech does not become religious worship would seem to be the type of entanglement prohibited under the *Lemon* test. Still, the first decision in *Gregoire* apparently requires a school which has permitted community use of its facilities to also permit that use for religious programming.

A district court reached the same result in *Country Hills Christian Church v. Unified School District No. 512*, 560 F.Supp. 1207 (D.Kan. 1983). There the church sought to use an elementary school for Sunday church services on six "special Sundays" such as Easter, Thanksgiving, Christmas, and Mother's Day, and the school denied this use.

Again the court found that the school had created an open forum by permitting community use of its facilities and that the restriction on religious uses was a content-based restriction which had to be justified by a compelling interest. The

... [T]he school had created an open forum by permitting community use of its facilities and the restriction on religious uses was a content-based restriction which had to be justified by a compelling interest.

court did not accept the school's establishment clause argument finding no evidence to support the supposed impressionability of children who either attended church in their school building or who saw their school building being used as a church by others. Using the

Lemon test, the court found that an equal access policy furthered a secular objective, did not provide a primary benefit for religion and avoided excessive entanglement. The court held that the school's attempt to distinguish religious from nonreligious uses would be an entangling factor that could be avoided by allowing churches equal access to the school facility.

When the proposed church use moved from six special Sundays to a more permanent use, however, a different court found the *Country Hills* reasoning unpersuasive. In *Wallace v. Washoe County School District*, 701 F.Supp. 187 (D.Nev. 1988), a church sued when a school would not rent its high school to the church on a regular basis for Sunday morning worship services and Sunday School. The school had a policy which encouraged community use of facilities for worthwhile purposes but excluded uses for religious purposes. The court agreed that the school had created an open forum but accepted the school's argument that the observance of the establishment clause provided a compelling interest for the school's rejection of the church's use.

The court applied the *Lemon* test to uphold the school's decision. The court found that permitting equal access to school facilities would serve a secular purpose and would prevent excessive governmental entanglement in religion. But the court found that the proposed church use would violate the second aspect of the *Lemon* test by primarily advancing a religious interest. As the court noted, the church proposed to make a permanent use of the school facility. The church had no building site and no plans to build any building. Instead, the church proposed that its principal place of worship would be the school.

The court contemplated that the church would advertise its services at the school thereby creating a perceived state approval for the church services. The court also found that students who might be members of the church or who used the school on weekend activities might infer that the school supported or endorsed the church. Although these are similar to arguments made and rejected in *Country Hills* to oppose temporary use of the school, the court found the permanent nature of the proposed use would distinguish its case from *Country Hills*.

Finally, in an unusual twist on the use of school facilities, one must consider *Clayton v. Purdy R-2 School District*, 884 F.2d 376 (8th Cir. 1989). There the school had a policy of prohibiting dances on school grounds. The district court invalidated this rule on the grounds that it violated the establishment clause of the

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VIEWS OF THE WALL

J. Brent Walker
Associate General Counsel



Nearly 30 years after the Supreme Court rendered its landmark school prayer decision in *Engel v. Vitale*, 370 U.S. 421 (1962), the question of prayer in public schools continues to be a vexing legal, political and religious issue. The court has stood firm in its disapproval of state-encouraged prayer and other religious exercises in the classroom. *Wallace v. Jaffree*, 466 U.S. 924 (1984); *Stone v. Graham*, 449 U.S. 39 (1981). But how about in other areas of school life — such as prayer at baccalaureate services and commencement ceremonies?

I.

The law on public prayer at baccalaureate services seems fairly clear, even though the Supreme Court has not spoken directly on the issue. Although thoroughly religious, baccalaureate services (including spoken prayers) are probably permissible if: (a) attendance is not compulsory, (b) the service takes place away from the public school, (c) it is privately sponsored and led, and (d) the service is not promoted by the school. Cf. *Goodwin v. Cross County School*, 394 F.Supp. 417 (E.D.Ark. 1973). On the other hand, to the extent the baccalaureate service is school sponsored, led, or promoted (particularly if attendance is required), it will likely be struck down.

Although the direction of the law concerning baccalaureate exercises appears to be fairly clear, the issue of prayer at graduation or commencement exercises remains muddled. The Supreme Court has not spoken on this issue, and there is a difference of opinion among the lower federal courts and state courts.

II.

Several courts have upheld the constitutionality of graduation prayers. See, e.g., *Sands v. Morongo Unified School District*, 262 Cal. Rptr. 452 (Cal. Ct. App. 1989); *Grossberg v. Deusebio*, 380 F.Supp. 285 (E.D.Va. 1974); *Wiest v. Mount Lebanon School District*, 457 Pa. 166, 320 A.2d 362 (1974); *Wood v. Mount Lebanon Township School District*, 342 F.Supp. 1293 (W.D.Pa. 1972). These courts have tended to reason that such prayers are permissible because: (a) they are not a recurring part of a routine school program, (b) attendance at graduation is usually optional, (c) graduation is mainly ceremonial, rather than an educational or religious activity, and (d) no state funding is used. Such prayers thus present "only a shadow of a danger" of creating an appearance of governmental

support for religion.

An important case is *Stein v. Plainwell Community Schools*, 822 F.2d 1406 (6th Cir. 1987). There, a federal appeals court (with jurisdiction over Michigan, Ohio, Kentucky, and Tennessee), reviewed prayers used in two graduation ceremonies in Michigan. In one school a graduating senior gave a brief invocation and benediction. In the other, prayers were offered by a member of the clergy selected by the graduating class.

The court ruled, as a general principle, that "nonsectarian" and "nonproselytizing" prayers, could be delivered at graduation ceremonies. The court reasoned that graduation prayers are more akin to prayers spoken at the beginning of legislative sessions (which the Supreme Court has upheld), than a typical classroom prayer.

However, on the peculiar facts presented in the *Stein* case, the court ruled the other way! It condemned the prayers as violating the establishment clause of the First Amendment, because they "symbolically place the government's seal of approval on one religious view — the Christian view." *Id.* at 1410. For example, one prayer concluded "In Jesus' name" and another incorporated the prayer of Saint Francis and, therefore, advanced a distinctively Christian point of view.

In short, the court in *Stein* would approve prayers that do no more than affirm "American civil religion" or "solemnize" a public occasion. But when they go further — essentially telling some parents and students, "we do not recognize your religious beliefs, our beliefs are superior to yours" — such prayers will not pass constitutional muster. *Id.*

If the prayer is pervasively religious, it clearly violates the First Amendment. If the prayer has been secularized and "civilized," then it poses serious problems for committed Christians.

III.

There are, on the other hand, cases that expressly disapprove ceremonial prayer at graduation exercises — both in principle and as applied. See e.g., *Bennett v. Livermore Unified School District*, 193 Cal.App.3d 1012, 238 Cal.Rptr. 819 (Cal.Ct.App. 1987); *Graham v. Central Community School District*, 608 F.Supp. 531 (S.D.Iowa 1985); *Doe v. Aldine Independent School District*, 563 F.Supp. 883 (S.D.Tex. 1982). Recognizing prayer to be "perhaps the quintessential religious practice of many of the world's faiths," these courts refuse to endorse a secularized form of prayer as the court did in *Stein*. In short, however it is toned down or "civilized," such prayer still serves a primarily religious purpose and, therefore, fails scrutiny under the First Amendment.

Typically, these cases allege that the practice of prayer at commencement exercises violates the First Amendment's establishment clause. The recent case of *Lundberg v. West Monona Community School District*, _____ F.Supp. _____ (N.D.Iowa 1989) gives the issue a new twist. Here, the plaintiffs included a disgruntled clergyman who was prevented from praying and who claimed a violation of the free exercise clause of the First Amendment.

The court ruled that the plaintiffs' right to free speech had not been violated, because the high school's graduation ceremony was not a "public forum." Nor were their free exercise rights violated, because the clergyman had failed to demonstrate that public prayer constituted a central part of his religious beliefs. The court ruled that the "plaintiffs are free to pray on their own at the graduation ceremonies, but this right to free exercise of religion does not mean that they can 'use the machinery of the state to practice [their] beliefs.'" [quoting *Abington School District v. Schempp*, 374 U.S. 203, 226 (1963)]. Finally, the court ruled that, if the prayer had been allowed, it would have violated the establishment clause.

Accordingly, the present state of the law on public prayers at graduation ceremonies remains uncertain at best. Lower federal courts are divided and, until the Supreme Court rules definitively, uncertainty will continue to prevail.

IV.

Baptists who continue to support the separation of church and state and to advocate religious liberty for everyone see a real problem in purely ceremonial

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prayer. If the prayer is pervasively religious — as one could argue prayer must be — then it clearly violates the First Amendment as interpreted by the Supreme Court. If the prayer has been secularized and "civilized" — so as to survive a constitutional challenge — then it poses serious theological problems for committed Christians. Prayers that are so bland that they offend no one usually say little, if anything. Are such prayers really biblical "prayer" as Christians have come to understand and practice it over the centuries? I think not.

Justice Hugo Black, a Baptist layman, once opined that religion is "too personal, too sacred, too holy, to permit its 'unhallowed perversion.'" *Engel, supra*, at 432, quoting II Writings of Madison, "Memorial and Remonstrance Against Religious Assessments," at 187. The same can be said about prayer. To employ the means by which we are privileged to communicate with the sovereign God of creation and history simply to solemnize an ordinary graduation ceremony cheapens prayer to the point of "unhallowed perversion."

Moreover, public prayer — in a setting other than one in which believers gather for that purpose (such as worship or prayer meeting) — comes dangerously close to "practicing piety before men." Jesus clearly condemned such public piety in the Sermon on the Mount:

And when you pray, you must not be like the hypocrites; for they love to stand and pray in the synagogues and at the street corners, that they may be seen by men. . . . *But when you pray, go into your room and shut the door and pray to your Father who is in secret. . . .* (Matt. 6:5-6).

Probably the best way to work out this issue is to conduct the graduation ceremony as a secular exercise without ceremonial prayer, and leave the praying for a church-sponsored, student-organized, voluntarily attended baccalaureate service held in a church, synagogue, or other off-campus facility. □

News in Brief

Question over parents' donations goes to court

WASHINGTON

The Supreme Court has agreed to hear a case testing whether parents who contributed directly to their missionary sons may deduct that money as a charitable contribution.

Harold and Enid Davis, a Mormon couple from Idaho, provided financial support in 1980 and 1981 for two of their sons who were selected as missionaries by the Mormon Church. When the couple attempted to deduct the money as charitable contributions, the Internal Revenue Service rejected their claim.

A federal district court denied the deductions, holding that a donation should not be considered "for the use of" a church — as required under federal tax law — unless the church exercises control amounting to "possession of the contribution." In the case in question, the court said, the "particular use to which the funds were put was solely within the power of the missionary."

The Ninth Circuit Court of Appeals upheld the district court's ruling. In its opinion, the appeals panel said the federal tax system "does not provide for a deduction by a taxpayer who does not actually render service to the charity or make a contribution directly to the charity."

In appealing to the Supreme Court, the Davises' attorney argued the couple's intent in making their contributions was "to benefit the religious and charitable work of the church."

The Mormon Church routinely asks the family of each of its missionaries to contribute the necessary financing for that missionary, wrote Washington attorney Rex E. Lee. The church also prefers that the donor send the funds directly to the missionary, rather than through the church, he said.

Lee rejected the "actual control" or possession test imposed by the lower courts, saying it contravenes Congress's intent in specifically defining charitable contributions to include gifts "to or for the use of" a charitable organization.

The Ninth Circuit decision also conflicts with two other circuit court rulings in cases with almost identical facts, wrote Lee. The Fifth and Tenth Circuits both upheld such deductions.

The Justice Department agreed the Supreme Court should resolve the issue but disagreed that the deductions should be allowed.

"If an organization has no control over certain funds, it cannot 'use' them in the ordinary sense of the word," wrote Solicitor General Kenneth W. Starr. "Similarly, if funds are transferred to an individual under circumstances that will not provide an organization with control over their disposition, the funds would not ordinarily be regarded as having been given 'for the use of' that organization."

Requiring that an organization have control over the funds ensures the gift will be used for charitable purposes, Starr argued. The requirement also is vital to the IRS's ability to perform its oversight responsibility in the charitable contributions area, he said.

The case is expected to be argued in the spring. □

Court hears arguments in Swaggart dispute

WASHINGTON

Government should not be allowed to tax a religious organization's dissemination of its religious message, an attorney for Jimmy Swaggart Ministries told the nation's high court.

During oral argument before the Supreme Court, Michael W. McConnell of Chicago said California's taxation of materials sold there by the television evangelist's Louisiana-based organization places an unconstitutional burden on the ministry's ability to spread its message.

The dispute, *Jimmy Swaggart Ministries v. California Board of Equalization*, centers on whether California may apply a state sales tax to religious and nonreligious merchandise sold by Swaggart's organization at 23 religious crusades it held in California from 1974 through 1981. Also in question is the taxation of \$2 million worth of mail-order sales to Californians by the ministries during those years.

California's Board of Equalization assessed the organization owed \$183,000 in state sales tax, which the ministries paid under protest. When its application for a refund was rejected, the organization filed suit.

A California appeals court ruled in favor of the state, and the California Supreme Court refused to review the case.

In arguing before the Supreme Court, McConnell repeatedly said that "government must leave churches alone in their dissemination of religious doctrines." He said church-state separation means re-

ligious organizations cannot be assisted or subsidized by government, but they also cannot be prohibited or penalized by government.

Justice Antonin Scalia asked why religious organizations that sell merchandise should be treated differently than bookstores that sell Bibles or other religious books. Commercial bookstores, McConnell said, are not selling a religious message.

In response to a question from Justice John Paul Stevens, McConnell said transactions between churches and commercial businesses are not an act of religion and can be taxed. Religious organizations are not exempt from taxation in everything they do, he said, only in acts of disseminating doctrine and carrying on of worship.

When Stevens asked what the dividing line between commercial and religious organizations is, McConnell responded, "Purpose — whether it's providing the Word or making a buck."

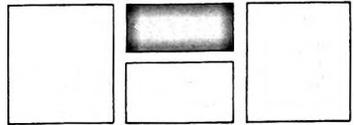
But California Deputy Attorney General Richard E. Nielsen disagreed with McConnell's interpretation of church-state separation, arguing that it does not mean religious organizations cannot be taxed. Rather, he said, it means there cannot be a special exemption made for or a special tax placed on those organizations.

Nielsen described the California sales tax — which he said is applied to all tangible personal property in the state — as a "general, nondiscriminating, revenue-raising tax." When questioned by several justices about whether the sale of items such as votive candles or printed booklets in local churches is taxed, Nielsen said he was uncertain but did not see why such sales would be exempted.

McConnell, however, argued the California sales tax goes against a 1943 Supreme Court decision that held Pennsylvania could not require an itinerant minister to pay a license tax in order to distribute religious tracts. He claimed both taxes place a burden on the spreading of a religious message.

Justice Sandra Day O'Connor asked McConnell if the cost of the sales tax could not be passed on to the purchaser. The attorney said no matter who pays the additional costs, a burden remains on the dissemination of religious material.

McConnell also cited the imposition of an "almost impossible" administrative burden on the Swaggart Ministries, which he said would have to keep track



of tax schemes in various states.

But Nielsen said McConnell's arguments failed to recognize that there is a difference between "any government burden" and an "unconstitutional burden." In the Swaggart case, he said, there is no evidence the sales tax dissuaded any buyer from purchasing merchandise or that it hindered the organization's activities.

In concluding his argument, McConnell said the California sales tax could have a chilling effect on out-of-state ministries. The taxation was triggered, he said, only because Swaggart Ministries held occasional religious crusades in the state. Other religious organizations might opt not to hold such meetings in California in order to avoid paying large amounts of taxes, he said. □

Religious use of peyote debated before high court

WASHINGTON

An Oregon law that makes possession of the drug peyote a criminal offense does not violate the constitutional rights of members of the Native American Church, that state's attorney general told the Supreme Court.

The state has a compelling interest in regulating the use of all drugs that overrides the church members' First Amendment right to free exercise of religion, argued Oregon Attorney General David B. Frohnmayer. "Peyote is a dangerous and powerful hallucinogen" that can cause "unpredictable behavior," he said.

Providing a statutory exemption for its use by Native American Church members not only would hinder the state's antidrug efforts, Frohnmayer said, but also would invite other religions to seek similar exemptions for the use of peyote or other drugs, such as marijuana. Such action could lead to a "patchwork of exemptions" that would require "religion-by-religion and believer-by-believer" examinations, he argued.

In addition, Oregon's interest in maintaining neutrality toward all religions prohibits it from granting an exemption solely to the Native American Church, Frohnmayer said.

But Craig J. Dorsay, the attorney for two church members who were denied unemployment benefits after they were fired for using peyote, argued that under the First Amendment his clients have a right to practice their religion, including the ceremonial use of peyote.

Citing the fact that the Drug Enforce-

ment Administration and up to 23 states have exempted the religious use of peyote from criminal prosecution, Dorsay said Oregon has not produced any documented evidence that ceremonial use of peyote has harmed individuals, society, or state law enforcement. "The First Amendment requires more than a legislative statement that 'we believe it is dangerous,'" he said.

Not only has Oregon failed to show that granting an exemption to the Native American Church would substantially harm state interests, but it has imposed a burden that could result in the "total destruction of the religion," he said.

Dorsay compared the use of peyote in the Native American Church to that of sacramental wine in the Catholic Church. But Frohnmayer said peyote poses a bigger danger than sacramental wine and is ingested for its hallucinogenic properties whereas the wine is not.

The oral argument in *Employment Division v. Smith* is the second time the Supreme Court has heard the case. Last term, the justices sent the dispute back to the Oregon Supreme Court for a determination of whether Oregon law protects the religious use of peyote.

But the Oregon high court did not answer that question. Instead, the court, as it had in an earlier decision, held the state's denial of unemployment benefits violated the First Amendment rights of the two drug counselors who were fired for their religious use of peyote.

The Supreme Court is expected to issue a decision in the case before the current term concludes next summer. □

Child-care legislation stalled in Congress

WASHINGTON

Action on proposed federal child-care legislation has been postponed until Congress's 1990 session.

The House Democratic leadership was unable to work out a compromise between members of two House committees on legislation that was being considered by a House-Senate conference committee.

Last October, the House passed a comprehensive child-care measure that included plans designed by the Education and Labor and Ways and Means committees. At that time, sponsors of the two plans were unable to agree on how to provide federal funding for child-care services.

The Labor and Education Committee supported establishing a new grant program to provide funds for day-care programs for children under age 13. The funding would have been distributed through the states, which in turn would have given the funds to eligible child-care providers.

But the Ways and Means Committee advocated increasing existing block grants to states. The grants would have been earmarked for child care and could not have been used to take the place of federal and state funds already being used for that purpose.

House leaders feared an amendment that was to be offered on the floor by Rep. Thomas J. Tauke, R-Iowa, in support of the block-grant approach would divide House Democrats and lead to a major floor fight, congressional sources said.

When Congress returns in January, the House is expected to resume efforts to work out a compromise child-care measure, which then will have to be reconciled with legislation already approved by the Senate. □

Judge: Clergy not exempt from abuse reporting law

SAN DIEGO

Clergy are not exempted from a California law that requires health practitioners, child-care custodians, and employees of child-protective agencies to report knowledge of possible child-molestation cases, a judge has ruled.

Superior Court Judge Herbert Exharnos upheld a decision of a municipal court judge not to dismiss misdemeanor charges against the pastor and assistant pastor of a church in Chula Vista. Both men are accused of failing to report allegations of child abuse that a female, now 18, had brought against her stepfather, a former lay preacher with the church.

The victim alleged she was molested while a student at the church's private school and that she reported the abuse to the two ministers.

Judge Exharnos agreed with the earlier ruling that the defendants were not charged as clergy but as operators of a private religious school who are not exempt from the state abuse-reporting law.

"Clergy who function in the dual capacity of 'child-care custodians' as defined in the Reporting Act must report such child abuse when such knowledge is required," he said. (RNS)

Neal Riemer

Neal Riemer is Andrew V. Stout Professor of Political Philosophy at Drew University. This is the second of a two-part article on "Religious Liberty and Creative Breakthroughs," which appeared in *Religion in American Politics*. Part I dealt with the influence of Roger Williams.

CREATIVE BREAKTHROUGHS

James Madison and the Breakthrough to the "Extensive Republic"

The problem facing James Madison and thoughtful Americans in 1787 was this: Is a just republican government in a large state possible? Republican thinkers in America were struggling to avoid being impaled on either horn of a dilemma: either a despotic empire as a necessity of government in a large state; or faction, injustice, and weakness as the inevitable outcome in a confederate republic with major power residing in the 13 American states.

The problem was not only theoretical but practical. Patrick Henry and other anti-Federalists — arguing that republican government is possible only in a small political community — opposed the new Constitution of 1787 and the stronger government it created. They could not lift their sights beyond the loose political confederation of the Articles of Confederation. Alexander Hamilton, John Adams, and other advocates of "high-toned" government maintained — before the adoption of the new constitution — that only an empire, or a strong central government on the British model, could hold together a political community as large as the new American nation. Confederations, they insisted, were notoriously weak and unstable, plagued by faction, and detrimental to the interests of justice and the common good. Madison's great contribution was to demonstrate that the conventional wisdom — the testimony of history and previous political theory — was wrong.

Madison's response to the problem required him to deal with four interrelated difficulties: Disunion, large size, faction, and the antirepublican danger. The potent forces of disunion were strongly entrenched in the 13 sovereign states. The large geographic size of the United States increased the threat to free and effective government. It did so, ironically, by encouraging both those who favored almost complete autonomy for each state and those who favored centralization of power. Selfish factional interests — groups opposed to the nation's common interest — operated within each of the states and obstructed the central government of the union. Men and

movements unsympathetic to republicanism were hostile to popular government in theory and disgusted with the weakness and degradation of republican government in practice.

Madison's goals required him to be at once a nationalist, a federalist, an empirical political scientist, and a republican. He was a nationalist who saw in a greatly strengthened, more nearly perfect federal union, the instrument to cope with the danger of disunion. He was a federalist defending the new principle of federalism as the republican answer to the problem of large size. He was an empirical political scientist who articulated an explanation of how faction, the disease of liberty-loving republics, might be brought under control in an extensive, representative, federal republic. And, finally, Madison was a republican passionately concerned in 1787 with the antirepublican danger who (in the 1790's) worked his way toward a theory of democratic politics, a theory based on the significance of civil liberties, bold republican opposition, and a loyal republican opposition party.

Madison believed that a strengthened federal republic would enable the nation to cope with matters of national concern and yet would leave ample powers — and freedom — to the people in the several states. The new federation would thus affirm: A unique division of powers between nation and states; key constitutional prohibitions on both the nation and the states; the direct operation of federal law on the individuals of the nation; a pragmatic and experimental federal system relying for its success upon a national consensus, a representative system, separation of powers, a resourceful presidency, and such organs as the Supreme Court.

Madison argued decisively (and here we come to the heart of his empirical theory of the extensive republic), that the multiplicity, diversity, and conflict of factional interests, plus their larger

sphere of operations, would diminish the possibility of factional agreement and unified factional action. Federalism would limit the spread of factional mischief and make it difficult for a factional majority to achieve power. What we today call pluralism would facilitate, not hinder, the pursuit of the common good. Madison sought in 1787, again in 1789, in the 1790's, and finally in the 1820's and early 1830's, to make his theory relevant to the central challenge of reconciling liberty and large size. His approach called for a keen analysis of the danger facing republican government, for political debate, for popular or party protest, and for a willingness to use radical constitutional means to secure necessary change.

[Madison's] approach called for a keen analysis of the danger facing republican government, for political debate, for popular or party protest, and for a willingness to use radical constitutional means to secure necessary change.

Ethically, Madison's theory — particularly as fully developed — embodies a breakthrough to a broadened conception of how Americans ought to live: Enjoying broadened conceptions of liberty, self-government, pluralist democracy, and the good political life in a strengthened and more nearly perfect union. He extolls the vision of religious and political liberty. He endorses the vision of just popular rule, operating through republican representation, and resistant to factional dominance. He accepts the value of the multiplicity and diversity of interests, of an informed and vigilant public opinion, and of competing

political parties, including a loyal opposition. He fights for a republican union and nation, operating under a more powerful, but still limited, constitution.

Empirically, Madison's theory of the extensive, federal republic, constitutes another breakthrough. The large size of, plus the diversity and multiplicity of, interests in, the new federal republic would defeat or inhibit the operation of factions and thus ensure greater success for the public good. The federal division of power would keep government at the local level close to the people, and yet give to the central government authority in matters of common national concern. Representation would operate to filter the evil effects of faction.

Constitutional limitations on power and separation of powers would help to ensure the successful reconciliation of liberty and authority in the new republic. Moreover, a loyal republican and constitutional opposition party would guard against tyranny at the center. The constitutional operation of majority rule, a sound public opinion, a free press, a healthy two-party system, the federal judiciary, wise statesmanship that could distinguish between a usurpation, an abuse, and an unwise use of constitutional power — these features would protect against the evils of monarchy, plutocracy, tyranny in the central government and against antirepublicanism and anarchy in the component states of the Union.

Prudentially, Madison's theory illustrates practical breakthroughs in politics. In 1787 he sees the need to strengthen the powers of the central government but is willing to settle for a central government not as strong as he had originally wanted, because he perceives correctly that the new Constitution is a major step in the right direction. He articulates key features of the new federal republic in Philadelphia in 1787; explains the new Constitution brilliantly and effectively in *The Federalist* and in the important Virginia Ratifying Convention; works to establish the new Constitution on a firm foundation with a Bill of Rights and with other supporting legislation in the first congress; and exercises leadership on behalf of a republican constitutional opposition party in the 1790's.

Madison's devotion to religious liberty strengthened his devotion both to constitutionalism and to federalism. This devotion enabled him to see that the same principles — of the salutary

Madison's devotion to religious liberty strengthened his devotion to constitutionalism and to federalism. This enabled him to see that the same principles that operated to ensure religious liberty might also operate to ensure civil freedom.

consequences of the multiplicity of sects — that operated to ensure religious liberty might also operate (now as the multiplicity of political, economic, and social interests), to ensure civil freedom. Human wit could, indeed, perceive that pluralistic diversity might advance freedom without interfering with civil decorum and harmony. As early as 1785 Madison had recognized that only a coalition between religious sects could endanger our religious right. Madison's *Memorial and Remonstrance Against Religious Assessments* (1785) testifies to his early great defense of religious liberty. His success in defeating such assessment was in no small measure to be attributed to the reality of the beginnings of religious pluralism in his native Virginia. In 1787 Madison again expressed his worry about a religious sect forming a majority and using its power to oppress other sects. And he noted that civil as well as religious rights could be endangered by an oppressive majority. To Madison the multiplicity of religious sects guarded against such oppression. In the Virginia Ratifying Convention of 1788 Madison drove home his point clearly and vigorously:

If there were a majority of one sect, the bill of rights would be poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest.

This idea, I am arguing, was in Madison's mind before, during, and after, the writing of the Constitution. So, too, I am suggesting, was the link between religious plurality and freedom, on the one hand, and economic, political, and social plurality and freedom, on the other. It was an easy step from the value of religious plurality for freedom to one of Madison's cardinal ideas — an idea central to his creative breakthrough in 1787 — that the multiplicity and diversity of political, economic, and social interests would similarly constitute a safeguard for political freedom.

Thus Madison's religious convictions carried over into the political arena. Again, the concern for religious freedom would strike another great blow for democratic and constitutional government in American politics.

Conclusion

It is, I believe, no accident that key religious ideas — particularly the idea of religious liberty, separation of church and state, and religious pluralism — have played such an important part in creative breakthroughs in American politics. Moreover, if we look to other reform movements in American history and politics — antislavery, women's suffrage, peace, economic reform, antidiscrimination — we can detect a comparably prominent religious role. Similarly, as we contemplate current and future problems we may well conclude that key religious ideas will play a prominent part in our efforts to deal with them. This, I would suggest, is bound to be the case because of the intimate connection between key religious ideas and a more prophetic politics.

In taking key religious ideas seriously — belief in the divine, in freedom of conscience, in covenant, in commandments — people in politics take seriously the gap between religious values and existential reality. They are, moreover, sensitized to probe both the reasons for such gaps and what might be done to bridge them. Genuinely creative breakthroughs in politics are rare, but the two examples treated in his essay (and the links between religious ideas and other reform movements hinted at above) suggest that religious liberty and other key religious ideas will play a significant role in future breakthroughs in American politics. □

INTERNATIONAL DATELINE



Revived religious freedom suggests thaw in No. Korea

THE BONGSU Christian congregation here in November celebrated its first year in the only Protestant church building (a Roman Catholic counterpart is located in another section of the city) in all of North Korea.

Both edifices were built by the government in 1988 with funds collected by the church in North Korea and Christian organizations in the United States.

Ko Gi Jun, secretary of the government's nondenominational Korea Christian Federation, said that along with a number of groups meeting in private homes, the churches offer evidence that Christianity was not completely eliminated in North Korea by the communist regime.

Ko claimed 10,000 Protestant Christians now live in North Korea, a figure double of the one he cited in 1985 and confirmed by independent sources, including U.S. Presbyterian mission leader Syngman Rhee. Catholics number about 2,000.

Although 12,000 Christians may worship regularly, the number is tiny when compared to that of South Korea, where government figures show 29 percent of the population proclaims Christianity.

Today, a thaw in church-state relations may be occurring in the north. The Korea Christian Federation has operated for the past five years, and the country's first public celebration of Easter in 43 years was held last spring in the Bongsu church. BP

GDR reforms remove points of church-state friction

WEST BERLIN

Almost unnoticed amid the dramatic opening of the borders of East Germany have been reforms in the schools, the institution of alternate service for conscientious objectors, and the severing of ties between a state-endorsed youth organization and the ruling party.

These changes go a long way toward eliminating what historically may have been major points of friction between church and state in the German Democratic Republic.

Military education already has been removed from the school program, and civics taught from a Marxist-Leninist point of view is to be ended on September 1, 1990. Protestant churches have

long sought these changes.

A revised text has also been proposed for the "promise" made during the so-called youth dedication, a ceremony religious leaders have likened to a secular confirmation. Eliminated would be references to the struggle of the international proletariat and the need to defend socialism from fascist attacks.

In the area of alternate service, conscientious objectors are being used to make up for losses of medical personnel who fled to the West. Indications are that the government will institute alternative service as a regular option, say church sources. □

Government harasses Christians in China

News Network International reported that a group of 165 Christian leaders was arrested early in October after Public Security Bureau officials raided an "underground convention" of 500 house church leaders in the Chinese province of Henan.

House church leaders in Beijing believe the arrests are not to be taken as an indication of a new antireligious campaign in the wake of last June's Tiananmen Square crackdown.

By mid-October, all but 34 leaders had been released after paying a fine of 250 yuan, equivalent to an average of four months' wages. It is not known whether the remaining 34 are still in detention.

Such gatherings are said to be common, especially in Henan province, where estimates are that one-fifth of China's Christians live. These meetings provide fellowship, teaching, and planning of evangelistic strategy.

Fears that a new "cultural revolution" would be launched, with the Christian Church in the firing line, appear so far to be unfounded, according to the *News Network* article filed by Keston. □

Warfare in El Salvador engulfs Baptist leaders

VALLEY FORGE, Pennsylvania

Citing the thousands of innocent persons caught between the struggles of the left-wing and right-wing parties in El Salvador, American Baptist Churches, USA, executive John Sundquist called his denomination to "prayers for those who have been wounded, or suffer grief . . . or fear for their future."

While no Salvadoran Baptists or ABC

missionaries have been reported killed or injured, the offices of Emmanuel Baptist Church in San Salvador were raided by government authorities in November.

Three members of the church, which operates aid programs throughout the country, have been incarcerated since early September. Another, Jose Mauricio Lopez Mejia, the church's representative to the country's National Peace Commission, has been released.

The four ABC missionaries have left the country for early holiday vacations; among them was Ruth Mooney, who had been detained briefly in November. They are expected to return in January.

A delegation of four U.S. church leaders, including the Rev. Donovan Cook, pastor of Seattle's University Baptist Church, spent the first week in December attempting to intervene on behalf of Jennifer Casolo.

Casolo, a University Baptist member who has been working in El Salvador, with the San Antonio-based Christian Education Seminars, was arrested and charged with storing arms for leftist guerrillas.

The ABC's delegation expressed its belief in Casolo's innocence and charged the military with a campaign to discredit the ministries of all churches in El Salvador. □

Views on religion change — still a convinced communist

Konstantin Kharchev, former chairman of the Council for Religious Affairs (CRA), has explained how members of the ideological Commission of the Central Committee thwarted his attempts to introduce new thinking into Soviet policy on religion.

In a frank interview published in *Ogonek* magazine, Kharchev says that Gorbachev showed some support for his proposals and he claims that leading hierarchs of the Russian Orthodox Church complained about him behind his back to the Supreme Soviet.

Kharchev says that initially he had followed his predecessors in a policy seeking "total subjugation of church to state." He then had good relations with "the neighbors (the KGB), but encountered strong negative reaction from regional party chiefs when he began to demand that authorities "keep the law" in their dealings with believers.

In the interview with the Soviet editor and elsewhere, Kharchev, who is awaiting an ambassadorial posting, has been



NEWS-SCAN

at pains to point out that he has changed his viewpoint on religion while remaining "a communist" and "a convinced materialist."

But he reads the Bible and says it and the Koran have given him an "exceptionally great deal." The most likely explanation for his interview is that as a declared supporter of *perestroika* he is ready to ally himself against the apparatchiks who oppose it. KNS

Right to worship restored after church is destroyed

COMANESTI, Romania

Romanian authorities granted the right to hold services to the Baptist Church of Comanesti in action believed to be directed toward restoring normalcy after the government had destroyed a newly erected church edifice.

European Baptist Press Service reported that persons arrested and charged with having built the new building without permission have been released from prison.

The government's charges, however, had been increased during the court trials to include that of "theft" of building materials.

Although the church members will not serve time in prison, they will be required to forfeit part of their salaries for up to two years on the sentence of each person. EBPS

Turn from taxes to tithers will fund churches in Italy

ROME

With the inauguration of a new system of financial autonomy for Italy's churches, bishops here have begun an unprecedented campaign to convince Roman Catholics to voluntarily finance their church.

Priests in the country's 25,827 parishes are urging churchgoers to deposit voluntary contributions in a special postal account. "The church is close to the people, and the people must be close to the church," read some of the 20,000 posters displayed in many churches.

The terms of the 1984 Church-State Concordat regarding self-financing is now in effect. Previously, all Italian priests were paid a monthly stipend, or "congrua," by the Italian government, for a total amount that this year reached 400 billion lire (about \$296 million).

Starting in January 1990, the Central

Institute for the Support of the Clergy, set up by the Italian Episcopal Conference, and the 216 diocesan institutes through which some priests' salaries will be paid, will have to finance themselves exclusively by voluntary and private contributions.

Although the private collection plate has always existed in Italy as elsewhere in the world, for the last 16 centuries the Italian church has been financed by the temporal or state power.

Two methods of financing are now available to those who wish to help support the church. Voluntary contributions may be deposited into a designated account, taxpayers deducting amounts up to \$1,500 dollars from their income tax. Or, taxpayers will be able to check a box on their income tax returns that will earmark .008 percent of their gross taxes for particular denominations such as the Roman Catholic Church, the Adventists, or the Pentecostals. □

Churches reopen as China observes 40th anniversary

SHANGHAI, China

As the government commemorates the 40th anniversary of "New China," Chinese Christians are celebrating the 10th year since permission was granted to reopen churches following the Cultural Revolution.

Baptist Press (SBC) reported that more than 6,000 Protestant churches have opened in China since 1979 — a rate of three churches every two days.

During the 1966-76 Cultural Revolution, every church was closed down and its property confiscated. Of the 6,000 Protestant churches reopened, about two-thirds meet in buildings returned to church ownership and one-third in new buildings. □

Pope, Gorbachev agree on ties, religious liberty

VATICAN CITY

Pope John Paul II and Soviet leader Mikhail Gorbachev concluded their historic encounter here with a decision to establish official and permanent relations, a first step toward full diplomatic ties after a gap of 72 years.

The Soviet Communist Party chief also pledged to increase religious freedom for all believers within the Soviet Union and invited John Paul to visit the USSR. □

The French Council of State has ruled that the wearing of religious headgear in school by Muslim girls is not intrinsically a violation of the law on separation of church and state. Authorities said the scarves do not pose a legal problem unless they are worn in a way that constitutes "pressure, provocation, proselytism or propaganda" aimed at other children in school The Lithuanian parliament broke new ground by amending the nation's Constitution to provide fuller guarantees of freedom of religion and to give churches legal status and the right to decide internal matters without state interference. The new definition of freedom of conscience is in close conformity to the formulation of the Helsinki Final Act of 1975 Speculating that the change may in part have a political basis — a consequence of his opposition to recognition of the Ukrainian Catholic Church — Keston College reported that Metropolitan Filaret of Minsk and Grodno was replaced by Archbishop Kirill of Smolensk and Kaliningrad as chairman of the Department of External Church Relations of the Moscow Patriarchate. It is expected that the Soviet parliament may legalize the Church within the next five or six months The *Bulletin of Christian Community* suffered losses in three separate incidents: the theft of equipment from the flat where the *Bulletin* has its editorial offices — a fax machine, computers, printers, and dictaphones were taken by two men at gun point when Fr. Viktor Grigoriev was alone, but the *Bulletin's* archives were not disturbed; a photojournalist associated with the *Bulletin* was killed by a car driven by an auto mechanic who had been drinking; and the editor of the *Bulletin*, Aleksandor Ogorodnikov, lost 79 books to Soviet customs officials on his return from a visit to the West The need to smuggle Bibles into China is a thing of the past, according to Amity Press, now that the one-millionth copy of the Chinese Bible has come off its printing presses. No one in China is worried about Bibles being distributed here. "It's all legal," said the press' manager, Peter MacInnis, adding, "For those people who want daring escapades, that probably takes some of the excitement out of it." Christians can buy an Amity Bible for about half its real cost, the United Bible Societies subsidizing paper costs. □

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History seems to scream out against insensitivity to the delicate nature of mutual respect required to make the American experiment work.

REFLECTIONS

James M. Dunn
Executive Director



The English Star-Chamber was abolished in 1641. It was the government process dominated by church influence for thought control. The churchmen played politics heavy handedly and the politicians played church hypocritically. They were in cahoots. Students of history ever since have been nervous about church-state collusion.

John Milton rejoiced in the dismantling of the Star-Chamber because he saw it as "the impertinent yoke of prelaty, under whose inquisitorial and tyrannical duncery no free and splendid wit can flourish." Milton's friend Roger Williams, who came to the colonies, shared Milton's distrust of those who would control conscience. In that same decade, Williams, John Clarke and others were launching "a livlie experiment" that became the American way in church-state relations.

These three hundred and fifty years of living in a climate of individual responsibility, free conscience and unhindered expression have conditioned Americans to expect authority, civil and clerical, to stand always unflinchingly for freedom. Americans generally are offended by attempts to punish "unsafe" thinking, unpopular political opinion, or heretical religious beliefs.

This nation has come to terms with a system in which people put up with what they see as bizarre beliefs and outrageous lifestyles as part of the price paid for religious freedom. There is a fragile comity. That civility, even more than law, requires government to stay out of religion and churches to use common sense in the political arena.

That's why it is ominous news when the Roman Catholic Bishop of San Diego denies communion to a candidate for the state Senate because of her stand in the abortion debate. The use of church discipline in a political campaign is always problematic. The intrusion of the church into the campaign could become "the issue," overshadowing the qualifications of the candidates and even becoming counterproductive to the Bishops's intentions. Whatever one's views on abortion, whatever one's party affiliation, surely anyone can see the danger in this situation.

At the very least, one can hope that this is an isolated incident and not part of a pattern, a new aggressiveness. History seems to scream out against insensitivity to the delicate nature of mutual respect required to make the American experiment work. Last year in the presidential primary campaigns, it was two Baptists, Pat Robertson and Jesse Jackson, who blatantly attempted to use the churches. Their sin against the spirit of the First Amendment was different from the one in question but far more extensive and clearly unacceptable.

Quite apart from what the law may allow, completely aside from what the pragmatics of a political campaign may permit, unrelated to some determination by market research about the impact of churches plunging into a political race, one can hope and pray that restraint and forbearance will prevail. Churches and church leaders should not press to see how much they can "get by with."

Have we learned nothing from the religious wars in Europe? Can we not see the incendiary mix of religion

and politics in Iran? Are we blind to the moves toward greater freedom of conscience, not less, in much of the world today? Have we forgotten so soon how long it was that all Roman Catholic candidates for public office were suspect in this democracy?

John F. Kennedy gained respect for Roman Catholic politicians at every level of political activity when in 1960 he told the Houston preachers, "I do not speak for the church and the church does not speak for me." The voters took his word for it. His record was as good as his promise. It seems that the nation has almost moved beyond the deep distrust of Catholic candidates for president.

Yet, just now, with a nation more pluralistic than ever, polarized over religio-political issues and struggling to deal with common crises that demand cooperation (drugs, crime, AIDS, homelessness), now is no time to destroy the fine-tuning of church-state relations. The vigorous, dynamic state of American religious life and the sophisticated structures of government can coexist because the people have agreed that they can and must. The citizenry has an enormous reservoir of good will. Through the relatively short history of this nation, the public will has been for churches and church leaders, politicians and public servants *voluntarily* to maintain a healthy distance between church and state.

Debate will continue about how great that distance must be. That's good. Churches will continue to find ways to influence the political process. That's fine. The genius of the "livlie experiment," however, depends also upon remembering the need for that distance and the limits upon that influence.

Frederick Faber, the great Roman Catholic hymnist, gave the world "Faith of Our Fathers." He also wrote the powerful words of a hymn that speaks to the pervasive influence of God's love on interpersonal relationships, even politics.

There's a wideness in God's mercy
Like the wideness of the sea;
There's a kindness in his justice
Which is more than liberty.
The stanza most often omitted from modern hymnals is especially pointed:

But we make his love too narrow
By false limits of our own;
And we magnify his strictness
With a zeal he will not own. □

TENSION, from page 5

First Amendment because it advanced the view of the majority of residents in the school district who opposed dancing on religious grounds. 690 F.Supp. 850 (W.D.Mo. 1988). The evidence indicated that, when students attempted to change the rule, the local ministerial association spoke out against the change and ministers of several local churches preached against dancing in the school and urged their members to attend the school board meeting where the change in the rule would be considered.

The Court of Appeals reversed the district court's judgment and upheld the constitutionality of the rule under the *Lemon* test, totally disagreeing with the district court that had found that the rule violated each of the three requirements under *Lemon*.

First, the plaintiffs conceded in oral argument, and the Court of Appeals held, that extracurricular dancing is a wholly secular activity and the rule contained absolutely no religious component. Nor could the Court of Appeals find that any religious doctrine was principally or primarily advanced by the

board's enforcement of the no-dancing rule. Although the plaintiffs argued that the rule advanced a particular religious viewpoint concerning social dancing, the court found that the school district had not taken any position on the question of religious belief or made adherence to a religion relevant to a person's or student's standing in the community. Finally, the court found no showing that the rule fostered excessive government entanglement in religious affairs. The district court had based its entanglement argument on the divisive community debate concerning the dancing issue, a debate which divided along religious lines. The Court of Appeals held that such divisiveness was only a proper consideration in cases involving financial aid to parochial schools.

Having found that the rule satisfied the *Lemon* standards, the court next turned to the argument that board members acted in accordance with the religious beliefs of the majority and in conformity with their own faiths when they retained the no-dancing rule. The plaintiffs and district court believed this caused the board's action to be religiously motivated and a violation of the

establishment clause.

The Court of Appeals agreed that a number of board members had at some time expressed the view that their individual religious backgrounds favored the rule. The court also accepted the district court's discrediting of any testimony from the board members who claimed that moral, educational or fiscal concerns, not religion, had influenced their decisions. The court found, however, that the fact that governmental action coincides with the principles of a particular group does not transform the action into an improper establishment of religion. The court held that elected government officials are not required to check their religious background (or lack of it) at the door before they act on rules that are otherwise permissible. A contrary result, according to the court, would disenfranchise religious groups who were entitled to influence secular decisions. In its final comments, the Court of Appeals said that the proper remedy for any disenchantment with the school board's refusal to change the rule was the ballot box, and not the Constitution. □

Baptists and Religious Freedom



From their beginnings more than three centuries ago, Baptists always have contended for complete and absolute religious liberty for all. Baptist historians universally are agreed that religious liberty is one of the denomination's primary distinctives and perhaps its finest contribution to the whole of Christendom.

What is more important about this emphasis on religious freedom among early Baptists is that it is rooted firmly in the soil of holy scripture. Religious liberty thus is not the sole possession of Baptists; it belongs by God's decree to all humanity, even to the unredeemed.

But that Baptists have focused on religious liberty and lifted it up as a special emphasis throughout their history cannot be denied. It is therefore incumbent upon members of every generation of Baptists to learn about their heritage of freedom, to seek to enhance it in their own time, and to pass it on in its fullness to the next generation. □

[Study guide includes questions, activities, and research suggestions.]

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