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REPORT from the CAPITAL



**SOUTHERN BAPTIST HISTORICAL
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Nashville, Tennessee**

I AM THE LIGHT OF THE WORLD

REPORT from the CAPITAL

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

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Cover: "Christ, the Light of the World," is situated on Massachusetts Avenue at 14th Street in the nation's capital. Designed by Eugene Kormendi in 1949, at first it elicited negative comment for its expression of modern art. The statue rises 22 feet within a 90-foot semicircular niche and is a tribute to "the founder of the Christian religion."

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Freedom: A Prime-time Concern

The word 'religion' appears only once in the Constitution of the United States: "... no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States." And the First Amendment simply states that "Congress shall make no law respecting an establishment of religion," its sole use of that word. Can there be any doubt that those who wrote and ratified these documents clearly assumed the reference alluded primarily to Protestant Christianity but also to Roman Catholicism and possibly Islam? Today, the courts cannot proceed on that narrow assumption.

With the increasing number of cases coming before the U.S. Supreme Court and the complexity of the issues, "the need for one consistent definition [seems] imperative to ensure fair adjudication of these matters." Eric Mazur probes this area in a paper, "Definitions of Religion in Supreme Court Decisions," with his focus falling on theistic and universalistic definitions.

Merrill Hawkins examines a concern that we are accustomed to regard as peculiarly American. Yet in recent days, the question of religion and the public schools has surfaced in the wake of democratic movements that have all but eliminated the repression of religion in most of the Eastern European socialist countries. Poland, the Soviet Union, and even Italy are having to determine the place, if any, that religion occupies in the school curriculum. We continue to struggle over the matter of opening the public purse to fund church-related schools.

As James Dunn reflects on "The Things that are Caesar's," few would contest that the human spirit owes its first allegiance to the Creator. Of course, then, the point of the controversy that follows is over the nature and scope of Caesar's rule. Much like the endeavor to define religion, Dunn notes that as a struggle, "It's never settled once and for all."

So it is with the 22nd National Religious Liberty Conference sponsored by the Baptist Joint Committee on the theme, "Freedom's Spiritual Roots: Baptists and the Bill of Rights." On October 1-3, scholars and experts from the fields of law, religion and the media will be dealing with Baptists and the Bill of Rights, with implications for religious liberty, freedom of the press, and the protection of the freedom of conscience. Bill Moyers, Cynthia Clawson, William Lee Miller, Landrum Leavell, Robert Handy, Gardner Taylor, Quinn Pugh, New Gingrich, Mark Hatfield, Bill Gray, and Steny Hoyer have accepted invitations to participate. To avoid the often used "bait and switch" tactic, we want only to say at this time that we are optimistically awaiting confirmation from other prominent national leaders. Take a moment now to register — see page 10 of REPORT for details. □

Victor Tupitza



● **A MASSACHUSETTS JUDGE** has ruled requirements for providing off-street parking that are applied to shopping centers and office buildings should not be imposed on churches.

The decision was the result of a three-year battle between the town of Needham and three church groups who planned to share a new building -- the first new church constructed in the town in 30 years.

In 1986, the Greater Boston Baptist Association, Good Shepherd Christian Fellowship, and Ruach Israel Congregation jointly purchased 1.78 acres of land on which they planned to construct a building with a 266-seat sanctuary and 98 parking spaces.

The sponsoring groups applied a standard formula of one parking space for every three sanctuary seats in determining the size of the parking facility. But the building inspector applied a standard that assumed every room in the building would be used simultaneously and thus required 284 parking spaces, which equaled one space for every seat in the building.

Needham had no bylaw stipulation for church parking, but the inspector followed the one-to-three ratio applied for other public facilities.

In ruling against applying that standard to churches, Massachusetts Superior Court Justice George N. Hurd, Jr., told the town to give the churches a building permit within one month. (RNS)

● **A MINNESOTA COURT** of Appeals panel has been asked to decide whether Christian Science parents can face criminal penalties if their children die after receiving only spiritual healing treatment for serious illness.

The panel heard arguments on an appeal by Hennepin County of a ruling by Hennepin County Judge Eugene Farrell that dismissed second-degree manslaughter charges against a Christian Science couple in the death of Ian Douglass Lundman.

The 11-year-old boy's mother and stepfather, Kathleen and William McKown, were indicted after he died of insulin deficiency in the couple's home. The government claimed that by relying only on prayer to cure the boy's illness, the couple had negligently caused his death by creating an unreasonable risk.

Farrell dismissed the charges on grounds that parents who rely on spiritual healing for their children's health care cannot be punished for criminal child neglect when that care is less than successful.

Hennepin County Attorney Tom Johnson told the appeals panel that while the parents' religious beliefs have absolute protection under the law, their actions do not. (RNS)

● **A FEDERAL JUDGE** has ruled a Minnesota law that allows high school students to take courses at church-related colleges at state expense constitutionally may be used for seven of eight colleges named in a lawsuit challenging the law.

The one exception cited by District Judge David Duty was Bethel College, which is operated by the Baptist General Conference. The judge noted the school requires students to affirm they are Christian in order to be admitted and requires faculty members to agree with the college's affirmation of faith before they are appointed.

Duty ruled that state money paid to the other colleges has been used solely to reimburse the institutions for their costs in teaching nonsectarian courses. (RNS)

● **THE COLORADO COURT** of Appeals has ruled the children of a divorced couple should be raised in the Jewish faith of their father despite the fact that their mother, a Roman Catholic, has been awarded custody.

The court ruled 3-0 against Dorothy Boeke, who regularly has taken her daughters to Mass despite a 1987 lower court ruling that they be raised in the Jewish faith of their father, Jerold Sim. (RNS)

● **A FEDERAL DISTRICT** court has ruled a public school district in Binghamton, New York, must allow a Christian group to use its facilities for a fund-raising event to benefit a local crisis pregnancy center.

The court upheld a complaint filed by Youth for Christ after the evangelical group was refused permission by the Owego-Apalachin School District to rent a middle school auditorium for a Saturday night performance by an illusionist in the spring of 1988. (RNS)

Definitions of Religion in Supreme Court Decisions

"The word 'religion' is not defined in the Constitution."

Chief Justice Waite
Reynolds v. United States

Chief Justice Waite wrote this sentence in 1879 to introduce his understanding of how history supports the Supreme Court's decision to condemn Mormon polygamy; had he penned them one hundred years later, he would have had to have added the clause, "but the Court keeps trying." The lack of an explicit definition of religion has never concerned the Justices. In decision after decision, the Court has determined not only what it considers to be the proper relationship between Church and State, but it has, through the language of its decisions, defined religion for the Constitution. Unfortunately, the definitions developed by the Court have been varied and applied in a random manner. From the Mormon polygamy cases of the nineteenth century to the American Nativist case of 1988, the Court has utilized a spectrum of definitions to religion and religious practices, resulting in an interesting mixed bag of popular religious scholarship.

Theistic Definition

The most conservative of the definitions to be expressed by the Supreme Court is also the first to appear. This definition, one that expresses religion solely as the presense of one or more central deities, provides the easiest test of religion for the jurists. Any philosophy that has at its center the notion of one or more supernatural entities (which is the first cause and final ending of all of man's struggles) is a religion; everything else is not. This test clearly limits what cannot be considered a religion. The gods of the Torah, New Testament, and Koran provide good examples, but so do the gods of the polytheists of Rome, Greece, and Scandinavia. Regardless of the presence of any other elements, if a religion hinges its theology on a belief in one or more anthropomorphic gods, it is theistic. Therefore, any definition of religion limited to those philosophies centered around such a belief is a theistic definition of religion.

Theologian Rudolf Otto best expresses the god-element of theism in *The Idea of the Holy*.¹ According to Otto, it is the emotional aspect of existence each believer experiences that defines religion. He describes religion as the system and method that a believer employs to relate the radical experience of the unexplainable,² or what could be called an encounter with God. He defines the religious experience as "creature-consciousness,"³ the ineffable ("creeping flesh")⁴

experience which the believer has with the "wholly other,"⁵ the holy, transcendent, or supernatural ("mysterium tremendum"⁶). The experience leaves the believer feeling completely in awe of and dependent upon that perceived supernatural force, in a "stupor."⁷

This theistic definition of religion has appeared in the decisions of the Supreme Court in several forms. The first type of theism, is a purely mainline Protestant Christian conception of religion. It brings with it the understanding that not only is religion defined by one's relationship to his or her God, but it is actually defined by one's participation in Christianity. This form of theism, best labelled Christian theism, understands all of man's ventures as part of the Christian notion of the world, and therefore understands every product of society as part of the Christian God's master plan.

Christian theism appears primarily in those cases concerning conflicts with the Church of Jesus Christ of Latter-day Saints (Mormons), though it is not restricted to them. In fact, the first example (among the decisions studied) of this attitude appears in a probate case in Pennsylvania.⁸ Writes Justice Story:

"Now, it may well be asked, what is there in all this, which is positively enjoined, inconsistent with the spirit or truths of Christianity? Are not these truths all taught by Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament?"⁹

Of all of the religious minorities whose cases have been pleaded before the Court, the Mormon community has been subjected to the most vicious attacks for their seemingly un-Christian practices, particularly the tradition of multiple marriage. Justice Bradley encapsulates this condescending sentiment when writing for the Court:

"The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Christianity and of the civilization which Christianity has produced in the Western world."¹⁰

The use of the Christian theistic definition is not limited to expressions of outrage at Mormon practices, though. As late as 1931, in spite of the presence of one Jewish Justice, the Court maintains an overtly Christian attitude toward religion and society, equating Christianity with citizenship:

"We are a Christian people, according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God."¹¹

Christian theism represents only a particular version of the theistic definition of religion expressed in the Court's decisions. In *Reynolds v. United States*,¹² the Court begins to utilize a more broad conception of theism, which is expressed by an identification with any of the traditional conceptions of a deity, not specifically the Christian God. The deity is posited

Eric Mazur recently became legislative counsel for Americans for Democratic Action in Washington, D. C. His Master's Degree thesis in the Department of Religious Studies at the University of Virginia dealt with difficulties the Court has faced in defining 'religion.'

with omnipotence, omniscience, and omnipresence like the God of the Torah, New Testament, or Koran, but is not directly linked to any of the religious traditions that have produced such personifications. In many of the decisions, the expression of pure theism implies the Protestant conception of God, but does not identify Him explicitly. For example, while it is the "Christian world" that stands in judgement of Mormon polygamy, Justice Field concludes more broadly that:

"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for [H]is being and character, and of obedience to [H]is will ... The first amendment [sic] to the Constitution ... was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker. ..."¹³

The appearance of the two varieties of theism in the same opinion is not contradictory, but proof of the relationship between the two conceptions of religion. Christianity is a subset of the more general category of theistic religions; the broader theistic definition of religion includes Christianity. However, the lack of specific identification with one particular tradition permits the inclusion of all theistic philosophies in this definition of religion.

The decisions written by Justice William Douglas (1939-1975) represent the clearest example of the Court's record on pure theism. From 1943 to 1965, Justice Douglas expresses his theistic conception of religion more clearly than any other Justice. In a dissenting opinion for the Sunday Closing Cases, Justice Douglas writes:

"The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator, which government must respect."¹⁴

However, it is Douglas's statement in *Zorach v. Clauson*¹⁵ which most concisely expresses the Supreme Court's understanding of religion in America:

"We are a religious people whose institutions presuppose a Supreme Being."¹⁶

This boldly theistic statement of belief not only defines the Court's first one hundred years of theological interpretation. It establishes the conservative limit against which the more liberal definition of religion would eventually respond.

Universalistic Definition

The second dominant definition of religion expressed in Supreme Court decisions is not as concerned with the relationship between Man and God, but with the relationship between Man and the Universe. It does not completely disregard the notion of a deity as the center of religious belief, but instead de-emphasizes it in favor of more homocentric questions of religion. This Man/Universe conception of religion can be identified as universalism.¹⁷ Religions built upon a universalistic philosophy seek to answer the questions of existence, good, and evil through the understanding of this relationship. Definitions of religion based upon this understanding of the world, therefore, can be understood as universalistic definitions.

Just as Rudolf Otto best expresses the theistic definition, theologian Paul Tillich illustrates the universalistic definition of religion. He defines religious faith as an object of the "ultimate concerns"¹⁸ of the believer; those concerns which require the

"total surrender of him who accepts this claim, and promises total fulfillment even if all other claims have to be subjected to it or rejected in its name."¹⁹

Not only must the faith be unconditional, but it must also be

one of ultimate fulfillment based on a "truly ultimate"²⁰ notion, such as creation, salvation, or damnation.

The obvious difference between the theistic and the universalistic definitions is the role of an anthropomorphic deity. Theistic religions, by definition, require such a figure, while universalistic religions do not. The relationship is not necessarily mutually exclusive: all theistic religions are universalistic since they seek to answer the same ultimate questions, but not all universalistic religions are theistic. For example, the traditional Western religions of Judaism and Christianity are universalistic in that they attempt to provide answers to the same universal questions that secular humanism does. However, since Judaism and Christianity are monotheistic and secular humanism denies the existence of God, the former are theistic and universalistic, while the latter can only be universalistic.

The universalistic definition of religion used by the Supreme Court has not developed *ex nihilo*, nor has it completely replaced the theistic definition. It is merely the latest development on the theology/philosophy spectrum utilized by the Court. Two intermediate steps, logically joining the two different definitions, appear in two decisions written in the mid-1940s. The first shift, though minor, is evident in Justice Jackson's majority opinion for *Board of Education v. Barnette*.²¹ On the unwillingness of Jehovah's Witnesses to salute the American flag, he writes that

"A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn."²²

This notion of symbols deriving meaning from their use (or user) is actually not clearly identified in religion until thirteen years after the publication of the *Barnette* decision. Mircea Eliade writes that both space and time contain dual notions (one sacred, the other profane) that the believer places upon them, rather than existing inherently. These dual capacities enable the believer to return to the mythical time of beginning (creation), and assume the power of the first beings or gods.²³ Thus, a cross is only sacred to those who have made it so; to the unbeliever, it is merely a profane object.

Obviously, Justice Jackson's use of the notion of human creation of symbolic meaning could not possibly have derived from Eliade's theories, which came later. However, the similarities between the two conceptions of symbol, in addition to the fact that both were discussing believers and their religious attitudes, signals a shift away from the strict theistic definition of religion, which places the creation of any symbol's sacred meaning with the deity, and not with the believer. The liberalization of the definition of religion marks a move away from the litmus test of simple theism; if the creation of symbolic meaning lies with the believer, then there can be differences in the understanding of the deity. What may be a god to one person or group does not necessarily have to be a god to another. The conception of one or more anthropomorphic gods determining what is and what is not a religion becomes subjective. The Court's declarations of a Christian world or a Supreme Being are no longer fact, but mere religious opinion.

The second subtle shift away from the theistic definition of religion occurs in a decision appearing the next year. In a dissenting opinion for *United States v. Ballard*,²⁴ it is again Justice Jackson signalling a slight departure from a strictly theistic definition toward one that is more liberal. Justice Jackson, citing William James as a scientist of religion, discusses the nature of religious faith as something for which there is no explanation.²⁵ This, like his earlier discussion concerning the meaning of symbols, is a departure from the conservative theism, since it leaves as unprovable the central character of

Continued on page 11

VIEWS OF THE WALL

Oliver S. Thomas
General Counsel



The most significant legislation affecting religion in decades is now before the U.S. Congress. The Religious Freedom Restoration Act (H.R. 5377), introduced in the House of Representatives on July 26, is designed to restore the protections for the free exercise of religion jettisoned by the U.S. Supreme Court in *Oregon v. Smith*.

You may recall that in *Smith* the Court abandoned 27 years of legal precedent by holding that states no longer had to demonstrate a "compelling interest" in order to restrict religious practices. The compelling state interest test had provided protection for churches from intrusive governmental regulation in matters ranging from taxation to zoning to anti-discrimination claims. With the loss of this fundamental legal safeguard, churches and individuals are subject to the whims of bureaucrats and legislators as to whether religious liberty will continue to be recognized and respected in American society.

A great debt is owed to Congressman Stephen Solarz (D-N.Y.), who insisted that this wrong could not go unanswered. Enlisting the support of my colleagues Marc Stern (American Jewish Congress), Mort Halperin (ACLU), Douglas Laycock (Univ. of Texas), Michael Farris (former counsel for Concerned Women for America), Elliot Mincberg (People for the American Way), Forest Montgomery (National Association of Evangelicals), myself and others, Solarz has drafted a bill that would restore the free exercise of religion to its former place of honor. With passage of the Solarz bill, freedom of religion will again stand alongside freedom of speech, press, and association as those values so fundamental to democracy that we have insulated them from the vagaries of legislative majorities.

The Religious Freedom Restoration Act is supported by an extraordinary coalition of organizations. They are:

- Agudath Israel of America
- American Civil Liberties Union
- Americans for Indian Opportunity
- American Jewish Committee
- American Jewish Congress
- Americans United for Separation of Church and State
- Anti-Defamation League
- Association on American Indian Affairs
- Baptist Joint Committee on Public Affairs

With the loss of this fundamental legal safeguard ("compelling state interest"), church and individuals are subject to the whims of bureaucrats and legislators.

- Christian Science Committee on Publication
- Concerned Women for America
- Evangelical Lutheran Church in America
- Friends Committee on National Legislation
- General Conference of Seventh-day Adventists
- Home School Legal Defense Association
- Lutheran Office of Government Information (LCMS)
- National Association of Evangelicals
- National Council of Churches
- National Council of Jewish Women
- National Drug Strategy Network
- National Jewish Commission on Law & Public Affairs
- National Jewish Community Relations Advisory Council
- Native American Church of North America
- Native American Rights Fund
- People For the American Way Action Fund
- Union of American Hebrew Congregations
- United Church of Christ, Office for Church in Society

Primary sponsors include Representatives Paul Henry (R-Mich.), Don Edwards (D-Cal.), chairman, Subcommittee on Civil and Constitutional Rights, and Jim Sensenbrenner (R-Wis.), ranking minority member, Subcommittee on Civil and Constitutional Rights. Some forty additional members of the House have become primary co-sponsors, including such perennial adversaries as Newt Gingrich (R-Ga.) and Steny Hoyer (D-Md.). Already, Senators Joseph Biden (D-Del.), chairman of the Senate Judiciary Committee, and Strom Thurmond (R-S.C.), ranking minority member of that committee, have announced their intention to introduce a Senate version of the bill.

The thrust of the bill is disarmingly simple. No governmental authority will be allowed to restrict a person's free

exercise of religion unless the government demonstrates that application of the restriction to the person (1) is essential to further a compelling governmental interest, and (2) is the least restrictive means of furthering that interest. The party aggrieved by a violation of the law will be able to obtain appropriate relief in a civil action.

It is important to note that the bill does *not* change the result in the recent *peyote* decision but rather changes the standard by which all free exercise claims are evaluated. Native Americans, Amish, Jews, and, yes, Baptists and Catholics all stand to gain from this legislation.

Why is the bill so important?

Without it, individual and minority religious rights will suffer immensely. Just days after *Smith*, the Supreme Court vacated a decision of the Minnesota Supreme Court in favor of Amish farmers who had objected on religious grounds to the warning signs the state was seeking to affix to their buggies. The Amish, quite reasonably, had agreed to use silver reflective tape — which the record showed was just as effective in deterring accidents. Applying the compelling state interest test, the Minnesota court had reasoned that the state had no compelling interest in forcing these humble servants of God to display garish orange emblems when the more modest reflective tape would work equally well. Notwithstanding, the U.S. Supreme Court sent the case back to Minnesota for reconsideration "in light of *Smith*."

Other cases currently in the courts also are likely to be affected. For example, a church in Boston recently succeeded in escaping the application of a landmarking law to the interior of its worship facility. The Boston Landmarks Commission had refused to allow certain changes to be made to this most sacred portion of the church's facilities because of the church's historic nature. Based upon the compelling state interest test, the trial court found that the application of such landmarking laws to church interiors was constitutionally impermissible. Under *Smith*'s lower standard of protection, it is quite likely that such a case would be lost. With *Smith* now on the books, it is simply a matter of time until every religious group in America suffers.

If readers haven't made the effort to contact their elected representatives about this important legislation, they should do so today. □

PRIVATE SCHOOLS, PUBLIC FUNDS

One of the oldest debates in American church-state discussions involves the concept of state aid to parochial secondary and elementary schools. This discussion originally involved lobbying on the part of Roman Catholics who desired that various forms of government financial grants be awarded their educational system.

While this issue appeared to be settled by court and political directive, the emergence of private protestant schools, most of them fundamentalist, in the last 20 years has reopened the debate. Though protestant fundamentalism and traditional Catholicism differ theologically, their views of elementary education are similar in that they both desire pervasively religious education. As a result, the two religious groups feel that public education, in its secularization, prevents or inhibits religious growth. They cite its foundation in "secular humanism."¹

A key goal of parochial school lobbyists has been the tuition tax credit or voucher. Under a revised method of financing school systems, parents who elect to send their children to religious private schools would be entitled to deduct the tuition from their taxes and pay the private school the amount. Consequently, these people contend that upon choosing to attend private schools, those who pay school taxes are subject to "double taxation"; that is, one payment goes to the private school and one payment goes to the unattended public school.²

Despite increased lobbying for this unprecedented form of school financing, the *status quo* of funding public education only remains the best standard: parents should not receive tuition tax credit for sending their children to church-related schools.

One reason tuition tax credits for parochial schools should not be allowed is the historical and social basis of the American system of public education.

For various reasons, the separation of church and state and the concept of religious liberty have been most severely tested in the public schools. That tuition tax credits are again being proposed is evidence that "religious liberty was never more at stake than now."³ At present, most citizens pay some form of taxes, a portion of which supports public education. This portion is not tuition; it is tax revenue for the support of public schools. The idea that one could retain this portion and pay it in the form of tuition to a religious private school is, in essence and in effect, the transfer of tax dollars to a religious institution.

The payment of public funds to religious schools constitutes government support of a religion, a notion the United States has opposed since the First Amendment to the Constitution. While early education in the country was directed by the churches, the first public schools were formed in Massachusetts by Horace Mann, and were non-sectarian in nature.⁴ Because many of the early leaders believed grassroots literacy was vital to democracy, and because the private system was inadequate, civic leaders led the formation of free, theoretically equal, and religiously neutral public education.⁵

Horace Mann's goal, which became that of all American public education, was a non-sectarian education system that would educate individuals, further the public good, and allow religiously diverse people to coexist in peace. Prior to Mann's reforms, the Massachusetts schools were dominated by "Calvinist pietism," and the Westminster Catechism was a part of the curriculum.⁶ However, the increasingly pluralistic Massachusetts of the 1800s found that a school system used by "Unitarians, Universalists, Episcopalians, Baptists, and Methodists," but dominated by a Calvinist worldview was discriminatory and inefficient. Consequently, Mann led the drive for public education that would be free from sectarian bias. He was chosen the secretary of the first state school board.⁷

To be sure, many rigid sectarians disagreed on religious grounds with the premise of non-sectarian education. Then, as today, these people have the unrestrained right to form separate systems of private schools that have a dif-

ferent philosophical base. However, Mann's contention, and the contention of many since then, is that the government's responsibility is free public education, one that is non-discriminatory and that does not respect or establish a particular religious worldview. Further, strict separation of church and state as a historical precedent does not allow government financing of religious schools.

Protestants and Catholics who seek financing for their sectarian schools from government tax revenues are not acting in the American tradition of separation. Rather, persons who want the state to foot the bill for their religious choice, are "accepting a compromised form of policy which must more and more breach the wall of separation of church and state."⁸

In summary, the historical and social precedents against financial tax credits to religious education are numerous and well established. Initially, there is the potential for "divisiveness" in American society as religious schools proliferate. Regardless of intentions and efforts, religious schools divide people along

School taxes do not equal tuition; if that were the case, childless couples and corporations would be entitled to receive tax credits.

religious lines and foster teachings which accent our differences. While these schools have a right to exist, they "should not be facilitated by the grant of public funds."⁹ Second, the contention that parents who send their children to private schools are subject to double taxation by paying taxes and tuition is based on a false premise. School taxes do not equal tuition; if that were the case, childless couples and corporations would be entitled to receive tax credits as well. American public education is based on the idea that the "entire public benefits from public education," and the entire "public must pay for it, even if they exercise the option of private education."¹⁰ Third, a system of tuition credits

Merrill Hawkins writes from Starkville, Mississippi, prior to relocating to Waco, Texas, where he has begun work on a Ph.D. at Baylor University.

News in Brief



New bill would override court's peyote decision

WASHINGTON

Legislation that would restore the "compelling interest" test in free exercise of religion cases has been introduced in the U.S. House of Representatives.

The chief sponsors of the Religious Freedom Restoration Act, along with representatives of a diverse coalition of religious and civil rights organizations, announced the bill's introduction during a recent news conference.

"On April 17, the Supreme Court dealt a devastating blow to religious freedom in the United States," said Rep. Stephen J. Solarz, D-N.Y. "In the case of *Oregon Employment Division v. Smith* a majority of the justices held that the First Amendment no longer requires government to accommodate the religious practices of all Americans unless it can demonstrate that the restriction is absolutely necessary to achieve a compelling state interest.

"With the stroke of a pen, the Supreme Court virtually removed religious freedom — our first freedom — from the Bill of Rights. We have gathered here today to unveil legislation designed to restore that most precious of freedoms to its place of honor in the Bill of Rights."

In addition to Solarz, the bill's chief sponsors are Reps. Paul B. Henry, R-Mich.; Don Edwards, D-Calif.; and James F. Sensenbrenner, R-Wis. More than 30 other members of the House also have joined in sponsoring the legislation.

The bill is expected to be introduced in the Senate by Joseph R. Biden, D-Del., and Strom Thurmond, R-S.C.

The Religious Freedom Restoration Act would restore the compelling interest test used by the Supreme Court prior to its *Smith* decision. That test required government to demonstrate that any law restricting the free exercise of religion is essential to furthering a compelling governmental interest and is the least restrictive means of furthering that interest.

In *Smith* — a case involving the religious use of the drug peyote — the court limited the application of the compelling interest test to a narrow range of cases involving the free exercise of religion.

"In a radical break with established First Amendment jurisprudence, the court has now abandoned this careful

balancing act between religious freedom and laws of general applicability," Solarz said. "As the court put it, from now on the traditional standard for protecting religious liberty is a 'luxury' that government is free to ignore."

Balance, Henry explained, is at the heart of the free exercise clause.

"The *Smith* case obviously is not about drug legalization," Henry said. "Justice O'Connor's opinion made quite clear that the traditional compelling government interest test does not mean that at all.

"The free exercise clause has never provided a carte blanche justification of any otherwise illegal practice. It is about reaching the proper balance between religion and legitimate government functions. We need now to restore the balance in a way which recognizes and respects religion."

Without corrective legislation, Solarz said, the *Smith* decision could jeopardize the use of ceremonial wine, the right of public school students to take time off for religious holidays, the exemption of church interiors from landmarking laws, the practice of kosher slaughter, and the right of students to wear religious garments, such as yarmulkes, or not to wear clothing, such as gym uniforms, they believe to be immodest.

More than 25 religious and civil rights organizations — from liberal to conservative — have joined in support of the Religious Freedom Restoration Act.

Representatives of some of those organizations — including the Baptist Joint Committee on Public Affairs, National Association of Evangelicals, National Council of Churches, American Jewish Congress, Agudath Israel of America, American Civil Liberties Union, and Americans United for the Separation of Church and State — spoke during the news conference.

"Coalitions come and go, but mostly — in the volatile field of church-state relations — they go," said Oliver S. Thomas, BJC general counsel. "That's why this motley gathering of unlikely cohorts is historic.

"Although perennial adversaries, these groups are joining voices to say to the United States Supreme Court that religious liberty is not a luxury to be gratuitously bestowed by a beneficent majority. Rather, the nation's first liberty is a fundamental right entitled to the highest level of legal protections."

Applauding the proposed legislation,

Robert P. Dugan Jr., director of the NAE's Office of Public Affairs, said the bill "would restore the balancing process which formerly prevented government from running roughshod over religious freedom. Congress must send a message to a court which has turned its back on the free exercise clause."

The bill, which would not mandate a result in any particular case, would restore nearly 50 years of judicial protection for the rights of all religious observers, especially religious minorities, said Henry Siegman, AJC executive director. □

Justice Brennan resigns; Bush names replacement

WASHINGTON

Three days following the resignation of Supreme Court Justice William J. Brennan, Jr., President Bush named his first appointment to the nation's highest court.

During a White House press conference July 23, Bush announced his selection of David H. Souter, a judge on the First U.S. Circuit Court of Appeals. Souter, 50, was confirmed to that position unanimously by the U.S. Senate last April.

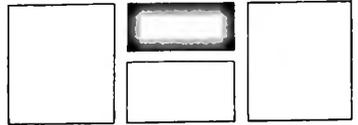
Refusing to answer questions concerning Souter's views on such issues as abortion and civil rights, the president said, "What I'm certain of is that he will interpret the Constitution and not legislate from the federal bench."

Bush said he selected Souter because of his "keen intellect" and "scholarly commitment to the law." Souter's professional experience "unquestionably demonstrates his ability, his integrity, and his dedication to public service," Bush said, adding, "He has a keen appreciation of the proper judicial role rooted in fundamental belief in separation of powers and the democratic principles underlying our great system of government."

Souter is a graduate of Harvard College and Harvard Law School. As a Rhodes scholar, he studied at Oxford University.

He served as New Hampshire's deputy attorney general during Sen. Warren Rudman's, R-N.H., tenure as that state's attorney general. Souter then was appointed attorney general in 1976.

After being named a state superior court judge in 1978, Souter was appointed to a seat on the New Hampshire



Supreme Court in 1983.

Souter, an Episcopalian, has never been married.

Senate confirmation hearings on his appointment are to begin in mid-September.

During the press conference, Bush also paid tribute to Brennan, who unexpectedly announced his retirement in a letter delivered to the White House July 20.

"His powerful intellect, his winning personality, and, importantly, his commitment to civil discourse on emotional issues that at times tempt uncivil voices have made him one of the greatest figures of our age," Bush said. "No one can question his dedication to the nation and the energy that he has brought to his high office. His retirement is marked by the dignity and honor that characterized his 34 years of service on the bench."

In his letter to Bush, Brennan cited the "strenuous demands of court work" as being "incompatible with my advancing age and medical condition."

Brennan, 84, suffered a small stroke several weeks prior to his resignation.

Brennan, who was appointed to the Supreme Court by President Eisenhower in 1956, is the fourth-oldest justice to have sat on the court. Only five Supreme Court justices have served longer than Brennan.

During his tenure, Brennan wrote more than 1,200 opinions, including decisions in such cases as:

— *Sherbert v. Verner* (1963), in which the court held only a compelling state interest can justify placing restrictions on an individual's religious liberty.

— *Grand Rapids School District v. Ball* (1985), in which the court ruled that federally funded remedial and enrichment classes cannot be held on parochial school campuses.

— *Edwards v. Aguillard* (1987), in which the court held a state law requiring public schools that teach the theory of evolution also to teach "creation science" violates the First Amendment's establishment clause. □

Bush signs rights law for nation's disabled

WASHINGTON
President Bush has signed into law legislation that bans discrimination against the disabled.

As some 2,000 disabled individuals and their families watched during a

White House ceremony, the president signed the Americans with Disabilities Act.

"Every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom," Bush said.

"America welcomes into the mainstream of life all of our fellow citizens with disabilities," he added. "We embrace you for your abilities and for your disabilities, for our similarities and, indeed, for our differences."

The legislation was cleared by the Senate July 13 by a vote of 91-6. The House of Representatives a day earlier gave its approval to the bill by a 377-28 vote.

The law provides the disabled with the same civil rights protections given to women and minorities under the 1964 Civil Rights Act. It bans discrimination in employment, public accommodations, and transportation and communication systems.

The Americans with Disabilities Act includes two major exemptions for churches and related institutions.

The law excludes religious institutions or entities controlled by religious institutions from a list of categories of establishments — ranging from stores to restaurants to office buildings — considered to be public accommodations.

Also under the law, religious organizations are allowed to exercise religious preference in hiring, as well as to require all job applicants and employees to conform to the organizations' religious tenets. □

Baptist gives testimony supporting pension bill

WASHINGTON

A Baptist attorney testified during a recent congressional hearing in support of legislation that would simplify employee benefit law for churches.

Gary S. Nash, general counsel for the Southern Baptist Convention's Annuity Board, told members of a Senate Finance subcommittee that the Church Retirement Benefits Simplification Act of 1990 would be an important step for churches in dealing with the "constant onslaught of employee benefits legislation," which typically does not take into account the unique needs and characteristics of church retirement and welfare benefit programs.

The legislation, introduced by Sen. David Pryor, D-Ark., is designed to

achieve three primary goals:

— To recodify rules applicable to church retirement plans separately under the Internal Revenue Code of 1986, thus ensuring that future changes in the Internal Revenue Code would not inadvertently impact retirement plan issues unique to churches.

— To bring workable consistency to the coverage and related rules that apply to church retirement programs.

— To resolve other significant problems churches face in administering their retirement and welfare benefit programs under current law.

In his testimony, Nash explained: "S. 2902 creates a new section 401A, applicable only to 'qualified church plans' and modifies section 403(b) for churches. In addition, and most importantly, S. 2902 provides that new section 401A and the portion of section 403(b) that applies to churches will be 'walled off' so that future changes made for non-church employers in section 401(a) and section 403(b) will not apply to church retirement plans unless specifically made applicable thereto.

"S. 2902 simplifies and brings workable consistency to the rules applicable to church plans."

It also would make it clear that ministers who are employed as chaplains in hospitals, halfway houses, and government prisons can continue to participate in church retirement and welfare benefit plans, Nash said.

In addition, it would permit IRA-type qualified voluntary employee contributions to be made to church plans, Nash said, as well as deal with a number of other issues that prove troublesome to church pension boards under current law.

During the hearing, a Treasury Department representative voiced the Bush administration's opposition to the proposed legislation.

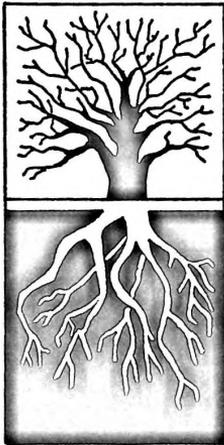
Thomas D. Terry, benefits tax counsel for the Treasury Department, testified the administration opposes:

— Exempting most qualified church retirement plans from current trust and nondiscrimination requirements.

— Extending special rules currently applicable only to qualified church-controlled organizations to all church-controlled or affiliated organizations.

— Consolidating special rules applicable to qualified church retirement plans in one section of the Internal Revenue Code. □

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Definitions, from page 5

religion. Like the notion of believer-created symbolic meaning, the declaration of the subjectivity of religious belief marks an expansion in the definition of religion by the Supreme Court.

James, writing around the turn of the century, actually defines religion this way:

"Religion, therefore, ... shall mean for us the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine."²⁶

He defines "divine" as "denoting any object that is godlike, whether it be a concrete deity or not,"²⁷ and "god" as "first things in the way of being and power."²⁸ For James, religion depends on the individual's personal experience with that which he holds to be of ultimate importance.

The utility of James's theories as a bridge between Otto's "wholly other" and Tillich's "ultimate concern" is more apparent than those of Eliade. Like Tillich, James centers his definition around that which is most important to the believer. Notions of a deity are still manifest, but they are relegated to a lesser status than in Otto's idea of the "mystical tremendum."

It is no surprise that the first expressions of universalism appear in Supreme Court definition in the 1940s, the period coinciding with the shift away from the exclusive use of a theistic approach. Justice Frankfurter's dissent in *Barnette* is evidence of the future position of many of the members of the Court:

"... we cannot conceive religion more narrowly than in the terms in which Judge Augustus Hand recently characterized it:

"... Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow men and to his universe ... [It] may be justly regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." *United States v. Kauten*, 133 F.2d 703, 708."²⁹

Justice Jackson, through a decision of a lower court, expresses his ambivalence toward either the theistic or the homocentric definition of religion.

The separation of the two definitions is not explicit until 1961, in the unanimous decision for *Torcaso v. Watkins*.³⁰ Although a case concerning a theist (as opposed to a nontheist), Justice Black, writing for the Court, feels free to clarify the First Amendment's applicability for nontheistic religions:

"... neither (a State nor the Federal Government) can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

"Note 11 — Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism, and others."³¹

The Supreme Court declares that belief in the Judeo-Christian God, or any god for that matter, is not a test for the status of any religion. Just as Justice Douglas's "Supreme Being" statement most clearly expresses the theistic definition of religion utilized by the Court, so Note #11 best expresses the nontheistic, universalistic test for religion. Left unanswered by this footnote, though, is exactly how the Court is to determine what is and what is not a religion for the purpose of the First Amendment.

Finally, in the conscientious objector case *United States v. Seeger*,³² the Court completes its journey away from Otto's theism and acknowledges the impact of the Tillichian defini-

tion on the majority's definition of religion:

"Our question, therefore, is a narrow one: Does the term 'Supreme Being' ... mean the orthodox God or the broader concept of a power or being, or a faith 'to which all else is subordinate or upon which all else is ultimately dependent'?"³³

Justice Clark, writing for the Court in this decision, quotes Paul Tillich directly six pages later. On the question of choosing between "the orthodox God" and "a faith," the Court selects the latter.

By 1965, even Justice Douglas, the paradigm of theism on the Court, consents to the universalistic definition of religion, stating that

"... it is, in my opinion, not a *tour de force* if we construe the words 'Supreme Being' to include the cosmos, as well as an anthropomorphic entity."³⁴

What Justice Douglas agrees to, though, is more than just the inclusion of contemplation of the universe into the definition of religion. As stated earlier, the ultimate questions of the universe have always been an integral part of theistic religions. The definition adopted in *Torcaso*, and built upon in *Seeger*, admits as religion those philosophies which exclude any notion of a deity altogether. This is quite a radical departure from the theism of the nineteenth century Supreme Court. The universalistic definition does not provide the easy answers that the theistic definition does. While the theistic definition relies on the believer's notion of the deity, the universalistic definition relies on an idea even less specific. If a religion is to be defined by the believer's ultimate concerns and not solely by the presence of a deity, the Court must either define what is ultimate, or they must sit in judgement of the entire substance of a particular religion. The first task is purely subjective, the second a violation of the First Amendment. Either way, by using two different definitions of religion, and by expanding them without providing direction for their use, the Court has taken a troublesome situation and made it worse. □

END NOTES

¹Translated by John W. Harvey (New York: Oxford University Press, 1982).

²First published in 1923 by Oxford University Press.

³Otto, pp. 60-64.

⁴Otto, p. 10.

⁵Otto, p. 16.

⁶Otto, p. 25.

⁷Otto, p. 12.

⁸Otto, p. 26.

⁹*Vidal v. Girard's Executors*, 43 U. S. (2 How.) 127 (1844).

¹⁰*Vidal*, at 198, 200.

¹¹*Late Corporation of the Church of Latter-day Saints (Mormon Church) v. United States*, 136 U. S. 1 (1890), at 49.

¹²*United States v. MacIntosh*, 283 U. S. 605 (1931), at 625.

¹³*Reynolds v. United States*, 98 U. S. 145 (1878).

¹⁴*Davis v. Beason*, 133 U. S. 333 (1890), at 342.

¹⁵*McCowan v. Maryland*, 366 U. S. 420 (1961), at 562.

¹⁶*Zorach v. Clauson*, 343 U. S. 306 (1952).

¹⁷*Zorach*, at 313.

¹⁸For the purposes of this paper, "universalism" is not to be confused with the Universalist movement of America, but applies generally to nontheistic definitions of religion.

¹⁹Paul Tillich, *Dynamics of Faith*. (New York: Harper & Brothers, 1957), p. 1.

²⁰Tillich, p. 1.

²¹Tillich, p. 12.

²²*Board of Education v. Barnette*, 319 U. S. 624 (1943).

²³*Barnette*, at 632-633.

²⁴Eliade, *The Sacred and the Profane*, translated by Willard R. Trask (New York: Harcourt Brace Jovanovich, 1959), pp. 25, 69-72.

²⁵*United States v. Ballard*, 322 U. S. 78 (1944).

²⁶*Ballard*, at 93-94.

²⁷William James, *The Varieties of Religious Experience* (New York: New American Library, Inc., 1958), p. 42.

²⁸James, p. 44.

²⁹James, p. 45.

³⁰*Barnette*, at 658-659.

³¹*Torcaso v. Watkins*, 367 U. S. 488 (1961).

³²*Torcaso*, at 495.

³³*United States v. Seeger*, 380 U. S. 163 (1965).

³⁴*Seeger*, at 174.

³⁵Justice Douglas, concurring, *Seeger*, at 193.

INTERNATIONAL DATELINE



Law on religion in USSR moves toward adoption

The draft of new Soviet Union laws on religion published recently has been clarified or amended after extensive discussion, according to a news article appearing in *Baptist Times*.

One of the most controversial issues has proved to be that dealing with Christian education, Deputy Ilya Zaslavsky told Keston College, a London-based research center that monitors religion in Eastern Europe.

The desire of some committee members to include Christian education as an optional extra in schools was fiercely resisted by a number of atheists.

The proposed law specifies separation of the state education system from the church and has a secular character.

Religious education in any language may be provided privately for individuals at home or on the premises of religious organizations. The new law would ban religious instruction in any educational establishment teaching general subjects.

Mr. Zaslavsky told Keston he would support the committee's position if it also banned atheism from general educational institutions.

The draft features many of the previously announced proposals, some of which already are being implemented by the religious communities:

- religious parishes and organizations are granted legal status;
- private or church-based religious education is permitted;
- property, including places of worship, may be acquired and owned;
- religious literature may be published;
- charitable activity is permitted;
- all employees of religious communities, including clergy, will be taxed at the same rate as other employed persons and will be included in the state social security and pension plans.

At its earliest, the law can be passed later this year. The Supreme Soviet has instructed the government to present comment and proposals from the public to the commission later this month. □

Christians, Muslims work for peace, famine relief

KESTON, England
Christian and Muslim religious leaders in Ethiopia, joining forces toward bringing peace and stability to their war-

wary land, issued a call for an immediate end to war and an appeal to government and rebels to allow war and famine victims to receive emergency assistance.

In 1984, the Ethiopian Evangelical Church, Mekane Yesus, the Ethiopian Orthodox Church and the Roman Catholic Church set up the Joint Relief Partnership in order to coordinate relief assistance in the country.

Earlier this year, this combined church consortium negotiated a corridor of peace called the Southern Line Operation. It enabled food to reach the war and famine zones of northern Ethiopia.

The latest action by the religious leaders laments "the loss of irreplaceable human life and of cultural heritage and properties," while calling for "open doors of tranquility." □

Funding of religion raises a concern in German unity

GENEVA

Uniting the Federal Republic of Germany (West) and the German Democratic Republic (East) will have consequences for the churches of the two countries, according to a report in *One World*, magazine of the World Council of Churches.

Some East Germans are afraid that support for church activities will soon be raised by taxing church members, as is the case in West Germany. Currently, East Germans make voluntary contributions to church authorities.

While East German church leaders say taxes are inevitable, retired Protestant Bishop Albrecht Schonherr predicted this will prompt many to resign their church membership. □

Discovery of 'golden calf' recalls Exodus experience

ASHKELON, Israel

An ancient gold and silver calf replica that resembles the mold made by the ancient Israelites in the book of Exodus has been found in the ruins of a Canaanite temple outside this Israeli city.

The replica, discovered by a team of U.S. archaeologists, measures five inches high and five inches long. It was virtually intact; one of the calf's legs was detached but was reconnected by scientists.

Dr. Lawrence Stager, an archaeology professor at Harvard University and

head of the team, said "I think this (calf) was a symbol of god himself or the image of the animal on which the deity stood."

The calf was found at a temple site inside a ceramic cylinder and dates back at least to 1550 BCE, the most prosperous point in the Canaanite period.

The body is made up of a copper alloy that has a gold tone and the legs and head are covered with silver sheetmetal. The result is a replica that appears to be part gold and part silver.

Dr. Stager believes "this practice of calf images being part of deities goes back to the second millennium. The Canaanites portrayed their god, El, as standing on a bull, while ancient Israelites residing in the north also saw their god as being a cow."

On the other hand, the Southern Israelites living around Jerusalem regarded their deity as invisible, said Dr. Stager. The Northern kingdom was destroyed in 720 BCE. □

Spain acting to recognize equality for Evangelicals

BILBOA, Spain

Representatives of Evangelicals in the northern Basque region of Spain met with the vice president of the regional government to begin working out procedures for implementing the accords signed by the national government.

These national agreements must be ratified and put into practice by each of the autonomous regional governments.

Concrete questions presented dealt with religious education in public schools, impediments to full-time evangelical workers, participation in the social security system, and the need for fairer reporting about Evangelicals in the mass media.

One of the issues resolved gives evangelical pastors the same freedom enjoyed by Roman Catholic clergy — that of visiting their hospitalized members at any hour. Strides have also been made in the area of communication, with the allocation of weekly broadcast time to the evangelicals. □

Democracy activists erect 'City of Truth' in Sofia

The "City of Truth," consisting of about 160 tents set upon in what has been renamed "Democracy Square," is now one of the symbols of public sup-



NEWS-SCAN

port for further radical reform in the Bulgarian capital of Sofia.

Academics, including members of the Bulgarian Academy of Sciences, and prominent writers, poets, painters and other artists established and inhabit the Square in their continuing struggle for democracy and freedom.

The whole operation, an obvious embarrassment to the majority Socialist Party, has functioned effectively and is now being imitated in other Bulgarian cities. □

Church-state relations

suffer by Mexican action

MEXICO CITY

Church-state relations in the Mexican state of Chiapas, strained during the past 10 years as Roman Catholic leaders became increasingly involved in advocating for the poor, reached a new low recently with the detention and expulsion of a Belgian priest.

The deportation of the Rev. Marcelo Rotsaert, who worked in the San Cristobal Diocese since 1982, is being characterized by church officials as another example of a systematic campaign of persecution to undermine the church's efforts on behalf of the landless.

In the last 18 months, the church's human rights office has documented 514 cases of abuse by police and land owners in the Diocese. The vast majority involve disputes between indigent peasants and large landowners. □

Harassment in Vietnam belies religious liberty

KESTON, England

New information received about the harassment of Protestants in Vietnam has disclosed that the guarantee of religious freedom is belied by the practice of arresting Christian leaders and denying evangelical churches their constitutional rights.

For example, Pastor Nguyen Chu and his son Nguyen Hao were taken into custody on Easter Sunday afternoon in Kontum, accused of supporting a resistance movement.

Other Vietnamese pastors and church elders have suffered similar fates. One incident was based on the charge of conducting house meetings for Christians whose churches have been closed, another charged with "disturbing the peace."

Japanese Lutheran Pastor Suguru Matsuki, who serves as executive secretary for International Cooperation of the National Christian Council of Japan, was fined for meeting evangelical church leaders in Hanoi without state permission.

The situation has been further aggravated by postponing until 1993, permission granted in 1987 to open a badly needed Bible School for training new pastors. The evangelical church's five present pastors are all aged over 70. Pastor Matsuki commented that "although the state says that freedom of faith is guaranteed by law, it is difficult for us to understand fully the meaning of freedom in this context." □

Fear over church influence evident in Czech elections

Observers are surprised at the poor showing of Christian Democrats in the June elections in Czechoslovakia, where the Civic Forum gained a small overall majority.

Christian Democrats trailed a poor third behind the Communists and only slightly ahead of a regional party.

This poor showing by the group that had hoped to come in second in the Czech republic and to be the largest party in Slovakia, is thought to be the result of a fear among Czechs and Slovaks of the church yielding too great an influence in public life.

Vaclav Dvorak, vicar general of the Ceske Budejovice diocese, said that people were afraid of a new clericalism and of a church that might exercise political power. □

Religion being restored in Cambodia after lapse

Following an appeal by eight Christians, permission has been granted by the government of Cambodia to re-establish the Catholic Church in the country.

The favorable response was communicated by the Central Committee of the Popular Revolutionary Party of Kampuchea in a letter to the President. Opening of the church was conditioned upon adherence to the policy aims of the Party and the laws of the country.

Protestants were legalized in January, 1990, when nine churches were re-opened. □

Five Baptists from the Soviet Union have arrived to study theology at the Slavic Gospel Association headquarters in Wheaton, Illinois. The course forms one part of a program to train young leadership of the Union of Evangelical Christians in the USSR. ... Hare Krishnas are suffering as a result of popular identification by the Georgian people with the Georgian Orthodox Church. Baptists there have also experienced discrimination. With the abolition of the Council on Religious Affairs, religious communities must deal directly with local authorities who often are prejudiced against non-Orthodox believers. ... An agreement reached will lead to the printing of 300,000 Bibles in Bulgaria by mid-1991. Leaders of the Synod of the Orthodox Church met with a United Bible Societies delegation and resolved to work toward establishing a Bulgarian Bible Society... The Chinese government has decided to exercise greater control over Muslim activity in Xinjiang province, according to a local daily newspaper. With half of the province's 15 million inhabitants of Muslim faith, the paper accuses a counter-revolutionary group of using the cloak of religion to promote separatism. ... An unusual inauguration ceremony took place in Rovno recently, according to *Moscow News*. Communist party member and chairman of People's Deputies Vasily Marchuk and independent candidate Ivan Fedin, chairman of the Executive Committee, were sworn into office by taking an oath on the Bible. Peeling of bells from a nearby cathedral marked the occasion. ... Warsaw announced early in August that a joint commission of the government and the Roman Catholic Church reached an agreement on the reintroduction of voluntary religious instruction in public schools. Non-Catholic denominations oppose such instructions, preferring the present arrangement of classes organized on church premises. The State must now insure that the decision does not create conflict with minority churches. ... Atheism has fallen on hard times, according to Professor Alexander Krasnikov of Moscow State University. He says the once-prime force of Soviet philosophy and politics has seen its glory days. In the new cultural and religious openness of Soviet society, atheists "are considered second-rate people" and are on the defensive. □

for private education presents the threat of both "interreligious rivalry" and, eventually, the destruction of public education.¹¹ In the latter instance, if one religious group received tuition benefits at the expense of public revenue, it follows that many more groups will seek the same benefit, depleting funds for the public school system and leading to its demise.

In regard to the former idea, once tuition credits are allowed, rivalry will arise among various religious groups with regard to some sects receiving more money. It is not far fetched to assume a division in American society along theological lines, a result contrary to the founding principles of the nation.

Finally, tuition credits to finance religious school systems raise the specter of becoming an "opening wedge."¹² Once tax credits are given, what will the private system next demand? These

groups are on record as wanting even more direct subsidies in the form of "supplies, ... textbooks ..." and even salaries of "lay instructors teaching secular subjects."¹³ The best way to prevent these extreme church-state violations is to prevent the erosion of historic principles, an erosion represented in tuition subsidies and credits.

In addition to the historic and social basis, there is a legal and constitutional barrier to tax credits for parochial schooling. The obvious constitutional basis for disallowing tuition credits lies in the *no establishment* clause of the First Amendment. Until the present, the policy of this nation has held that tuition credits "violate the constitutional principles of the separation of church and state."¹⁴ Religious schools are based on a sectarian approach to education, an approach resting on the tenets of a particular religion. A tax credit, which is money paid to a private school rather than the government fund, is a contribution to a religious institution by the government — and that is unconstitutional.¹⁵

Many court cases have clarified the constitutional principle which forbids tax dollars in the form of tuition credits. In *Committee for Public Education v. Nyquist*, the U.S. Supreme Court ruled unconstitutional a law which allowed "tuition grants to the parents of children attending private schools."¹⁶ While the courts have allowed some assistance that indirectly aids private religious schools, it has established principles which do not permit the aid when it goes for the direct support of religion. In *Lemon v. Kurtzman*, the court established a three part test for public funds allocated to religious schools. First, the purpose must be secular; second, it must not advance or inhibit religion; third, it must not create "excessive government entanglement with religion."¹⁷ While some are divided over whether or not education supervised by a religion is secular in purpose, none could argue that the determination of such could be achieved without "excessive entanglement." The entanglement clause in *Lemon* is what struck down tax subsidies. In *Nyquist*, tax credits were struck down because they had "the effect of advancing religion."¹⁸ Clearly, the constitution and the courts reject the validity of tax credits for private religious education.

The United States is a pluralistic society which recognizes a sect's right to exist and to create schools that reflect a sectarian worldview. Any Christian should be so tolerant as to accept the right of the existence of these schools. However, the public good, as well as historical and legal precedents, forbids government financing of any religious

that spans the religio-political spectrum. Thus, the resurgence of religion is "ambiguous" because of its manifold expressions, from Christian fundamentalism to Catholic liberation theology in Latin American to the experience of the American Black churches.

By and large, Cox views this resurgence as "good news." Indeed, he writes that, "politics without morality is reduced to a kind of plumbing. Morality without politics inevitably becomes trivial and exotic." (p. 130). However, Cox also notes the down side of this. He claims that religion in the public sector can become "trivialized," offering Shirley MacLaine's "curious amalgam of psychic flim-flam" and the antics of Jim and Tammy Faye Bakker as examples of this. The second item of bad news is that it can become an "imposition." Here, Cox is speaking of the "Christian America" thesis as politically expressed most recently in the aborted campaign of Pat Robertson for president. Thus, Cox applauds the resurgence of religious ethics in the public realm, but counsels caution and circumspection in how it is done.

This book is well worth reading. The essays are timely, readable and are put together in a well-balanced way covering most of the waterfront of current church/state issues. Although written mainly from the point of view of "mainline" protestantism, it is not an apologetic for strict separationism. Rather, it appears to be balanced and fair in how it treats various philosophical approaches. The book will be particularly valuable for the student and novice. It does not presuppose a whole lot of learning in this area and can be read and profited from by the individual in the pew as well as the student in the classroom.

Finally, an added benefit from the book is a select, but fairly comprehensive, annotated bibliography on a variety of issues touching the relationship between religion and politics. (JBW)

movement, including primary and secondary schools. Those who choose private education may do so, but they must not ask the public to pay for the religious convictions they hold. Parents should not receive tax credits for church-related education. □

END NOTES

- ¹Samuel Hill, *The New Religious Political Right in America* (Nashville: Abingdon, 1982), 15. ²Leo Pfeffer, *Church, State, and Freedom* (Boston: The Beacon Press, 1953), 435. ³J. M. Dawson, *Separate Church and State Now* (New York: Richard R. Smith, 1948), vii. ⁴*Ibid.*, 58. ⁵*Ibid.* ⁶Pfeffer, 282. ⁷*Ibid.*, 281. ⁸Dawson, 60. ⁹Pfeffer, 437. ¹⁰*Ibid.*, 438. ¹¹*Ibid.* ¹²*Ibid.* ¹³John Wilson, *Church and State in American History* (Boston: Beacon Press, 1987), 291. ¹⁴*Ibid.* ¹⁵*Ibid.*, 287. ¹⁶*Ibid.* ¹⁷*Ibid.*, 293.

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We settle the massive issues of what belongs to God and what belongs to country one small issue at a time and only provisionally at that.

REFLECTIONS

James M. Dunn
Executive Director



The words of Jesus, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matthew 22:21), have abiding relevance.

Through Christian history that charge of Jesus has been taken seriously. It has meant at least that 1.) there is a difference between the mortal ruler and divine Providence, 2.) that followers of Jesus can tell the difference, and 3.) that one has some duty in both earthly and heavenly directions.

Elaborate "two kingdom" theories have been constructed. Doctrinal systems have been accommodated to medieval political reality. Sharp, unrelenting dualism has justified a chasm between the sacred and the secular.

In the American context the biblical teaching has taken on a more practical, tangible shape. It has undergirded the concept of the separation of church and state. On May 16, 1920, from the east steps of the U. S. Capitol, George W. Truett quoted the Matthew verse and said, "That utterance of Jesus ... is one of the most revolutionary and history-making utterances that ever fell from those lips divine. That utterance, once for all, marked the divorce of church and state. It marked a new era for the creeds and deeds of men. It was the sunrise gun of a new day ..."

While the principle of separation is suggested, the practical consequences are far from clear. What is Caesar's? What is God's? How does one tell the difference? What is involved in "rendering" to each realm its due?

No neat, simple system offers answers. Most Americans, certainly those in the free churches, reject the complicated casuistries of medieval theologies, both Catholic and Protestant. Nor has secular society found any consistent juridical formula that fixes once and for all the boundary between church and state.

It is a struggle. It's never settled once and for all. It is an important dimension of everyday ethics.

One resolves church-state conflicts only for the time being. We settle these massive issues of what belongs to God and what belongs to country one small issue at a time and only provisionally at that. Let's face it, we must learn to live with that tension. At best we can make it a creative tension, an instructive conflict resolution, a redemptive experience.

Or, to put it another way, determining where to put the wall of separation between church and state is a delicate balancing act. The most mundane political decisions that believers make involve the divine-human nature of the church, the divine-human dimensions of the Bible, the divine-human tugs at the individual's heart.

Then, with concrete examples let us apply the principle of creative tension and ask which things are Caesar's?

Child care legislation since March, 1990, awaits action in a House-Senate conference committee. The tension between competing goods is abundantly present in this proposed legislation. Yet, a large portion of the \$27 billion to be spent over the next 5 years would go into church-related day care programs.

As citizens we should not want tax dollars to support the programs of religious institutions. It matters not if the government funds would not go *directly* for religious instruction. As public monies flow into sectarian operations, the money is simply shifted from one pocket to the other to insure federal aid for the religious institution. It's merely a

matter of bookkeeping. The freedom essential to witness is compromised with the acceptance of the public's money.

It is none of Caesar's business to fund the child care ministries of the churches.

Then, on April 17, 1990, in the case of *Employment Division v. Smith* the United States Supreme Court tinkered with the delicate mechanism that protects the free exercise of religion in this nation, the First Amendment. Supreme Court Justice Antonin Scalia in a stroke of judicial activism discarded the traditional test by which the Supreme Court has decided whether it may meddle in religion. He declared religious liberty a "legal luxury."

For decades the Court has insisted upon a high threshold in the wall of separation — the state must have a "compelling state interest" before it can set aside a religious liberty.

Already, the BJC, along with a diverse coalition of other religious groups, is spearheading support for the Religious Freedom Restoration Act of 1990 (HR 5377). This bill reaffirms the compelling state interest test and restores the religious liberty that the Court, in *Smith*, took away.

It is none of Caesar's business to make a rule restricting the free exercise of religion without grave cause.

On June 3, 1990, the United States Supreme Court found Equal Access legislation to be constitutional. This 8-1 decision allows secondary school students to gather in student-led prayer and Bible study groups before and after school hours on public school property within certain reasonable limits.

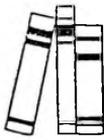
The decision authored by Justice O'Connor restored a proper balance between the separation of church and state and the constitutional guarantees of free speech and free exercise of religion.

The Baptist Joint Committee with a number of other religious organizations is committed to seeing to it that this important decision is fairly interpreted and implemented.

It is none of Caesar's business to rule out student religious gatherings when the free expression of ideas is otherwise permitted.

One may see the "no establishment" and "free exercise" clauses of the First Amendment as held in creative tension. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Because the Bill of Rights is a vital, living document and because the institutions of this pluralistic nation are in such constant flux, no rigid rule of thumb about which things are Caesar's will work for long.

That does not deny the validity of the principle. In fact, if anything, the wisdom and usefulness of the biblical teaching is reinforced as each generation must apply it to its own test cases. □



REVIEWS

AN UNSETTLED ARENA: Religion and the Bill of Rights

Ronald C. White, Jr. and Albright G. Zimmerman, Editors. Grand Rapids, MI: Eerdmann's Publishing, 1990. 171 pp., \$14.95

"Two hundred years after its creation, the Bill of Rights is an unsettled arena." White and Zimmerman thus preface their collection of essays on religion and the Bill of Rights as we approach the bicentennial of the Bill of Rights in 1991. Clearly, the First Amendment, which was all but gathering dust at the turn of the century, is today the focus of both academic debate and political controversy. The editors believe that this lack of consensus will continue as our country becomes even more pluralistic as we move into the 21st century.

But, for White and Zimmerman, this pluralism does not mean that the public sector needs to be stripped of moral or ethical values. Rather, it simply requires that we "bring thoughtful people together at the local and national levels in search of the best ways to express religious ideas and values in the public arena." (p. xiii). This is exactly what the editors propose to do in this book. They declare, "this volume is presented as grist for this continuing discussion. We offer it because we believe there is a need for light and not just heat." (p. xiii).

The editors have assembled seven incisive essays penned by a number of recognized scholars from a variety of different academic disciplines and learned professions, including American History, church history, ethics, law, political science, and sociology.

Zimmerman himself introduces the book with an initial essay describing the "religious backdrop" to the debate and adoption of the constitution. He describes the theological lay of the land from ardent theocrats in New England to deistic (if not atheistic) followers of the Enlightenment in Virginia. He

also clearly differentiates between colonial religious toleration and constitutional religious freedom. Wilson Kerry McWilliams, a political scientist from Rutgers, writes of the relationship between the regnant liberal political philosophy and religion. His primary thesis is that most of the framers, following Locke, believed that political society needs the support of religion and that they sought to make an accommodation with Christianity for self-seeking political purposes.

Ronald White assays the "trajectory of disestablishment" in which he traces the dethronement of the established churches in the various states — from passage of the Virginia Statute for Religious Freedom in 1785 through the experience of Connecticut and Massachusetts which tenaciously held on to its established Congregational church until well into the 19th century. White then focuses on 19th century developments tending to "privatize" religion and then carries the trajectory towards personal religion to the present. White does not argue for accommodationism as a cure, but calls for a renewed sense of the importance of group religious expression and the public articulation of religious ethics as the norm.

Robert Handy, church historian from Union Seminary, renders an informative piece which seeks to explain why church/state jurisprudence did not come to the fore of constitutional litigation until after World War II. And, Leo Pfeffer, a constitutional lawyer and patriarch of "strict separationism," explores the fundamental philosophical differences between a First Amendment absolutist and an accommodationist, as well as highlighting the differences between fundamentalism and "secular humanism."

Two of the best essays were written by Baptists, Max Stackhouse and Harvey Cox. Stackhouse teaches at Andover-Newton and is a contributing editor to *Christianity Today*, and Harvey Cox, from

Harvard Divinity School, authored the now classic *The Secular City* (1965).

In a sweeping essay Stackhouse claims two sentences "frame" our constitutional system. The first is taken from the Declaration of Independence: "We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness." The second comes from the First Amendment to the constitution: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." The first sentence expresses the "metaphysical-moral principle" of our constitutional system and the second the "structural-organizational principle" by which it is guided. The first gives us a "public theology," and the second the "viable hermeneutic" by which we interpret it and enforce it.

According to Stackhouse, the "inevitable influence of theology on public life," must be held in tension with a "rather rigid insitutional separation of church and state." (p. 108). This tends to diffuse power, ensure pluralism, and force the religious structures in society to "live by the power of persuasion." (p. 112).

Cox likewise gives us an expectedly engaging essay. He addresses the issue of the appropriate role religion should play in the formation of public policy. Although religion has never been completely absent from the realm of public policy, Cox nevertheless sees a genuine world-wide resurgence — from the mid-east, to India, to the Soviet Union, to the rebirth of state Shinto in Japan. Having predicted in *The Secular City* that the role of religion in the public policy realm was already in eclipse, Cox concedes that this resurgence came as some surprise to many, including himself. "Instead of the death of God what we witnessed was the rebirth of gods." (p. 124.) Thus, the rebirth of religion in the public realm is not in any sort of narrow fundamentalistic Christian sense, but in a pluralism

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