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# REPORT from the CAPITAL

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# REPORT from the CAPITAL

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

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**Cover:** With the new law on religion and conscience comes freedom for the religious education of children and for engaging in charitable and social ministry. Photographer Don Rutledge of the Foreign Mission Board of the SBC captures an expressive moment during Bible study at the Rauhs Children's Hospital.

Executive Director: James M. Dunn  
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Book Reviews: J. Brent Walker

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## Separation — Another Attempt

The equitable separation of the state and religious organizations in the Soviet Union was never realized. For over 70 years that constitutional principle for the protection of both institutions, as interpreted by the state, became its license to control religious entities and to deny freedom of conscience. That should change with the new law on "Freedom of Conscience and Religious Organizations." Among skeptics, the new law undoubtedly will remain of dubious value. For believers, however, it must become the challenge to exercise vigilance. That's what makes the principle work in the United States, and that's what the Baptist Joint Committee is all about.

Criticism of the principle of separation as enunciated in the USSR's Constitution was often misdirected. While the article in itself was clear and workable, the state's interpretation of it generally was unconstitutional. More often, separation was outrightly flouted. Now, there is reason for weighed optimism over the Soviet government's stated intention of pursuing a hands-off policy on religion. And the BJC's Brent Walker, analyzing the new law, applauds that current spirit of freedom. Still he warns, "The law is far from perfect, and the Soviet Union's track record throughout its history gives pause for concern." Walker points out that freedom of practice now has been joined to freedom of belief, an improvement as significant as the elimination of the bias that has favored atheism.

Religious organizations are released to engage in works of charity, initiate a public witness and expand educational programs. While the new law grants religious entities legal status, a recognition that enables them to conduct official business, the requirement of registering with the state suggests that separation still is not total. Walker's analysis touches on Russian history and offers insightful comparisons with the U.S. Constitution.

James Dunn writes forcefully on behalf of religious liberty. After exposing the myths and misconceptions contrived to support sectarian self-interest, Dunn arrives at the conclusion that separation has been "an American arrangement that has been good to both" church and state. He finds no substance in three fictional arguments posing as fact: that Christians can hide from civic responsibility behind the wall of separation; that there is a "naked public square" where the debate lacks moral quality and the result has been widespread spiritual sterility; and that through some unidentified conspiracy (by commies, no doubt) the church is being denied the protections it alone was to have enjoyed under the Constitution.

Heavy fare? Probably. So, for another experience, see "Short Story." Eldonna DeWeese, who prepares our annual index, submitted the poem for the editor's benefit. We share it with readers. □

Victor Tupitza

**IN A DECISION HAILED BY SUPPORTERS OF THE SANCTUARY MOVEMENT**, the federal government has agreed to settle a 1985 lawsuit filed by American Baptist Churches, USA, and about 80 other religious and refugee organizations challenging the government's denial of refugee status to Salvadoran and Guatemalan immigrants. In the settlement, the government agreed to give temporary legal status to an estimated 500,000 undocumented Salvadoran and Guatemalan immigrants and reconsider asylum requests rejected since 1980.

"I think this is a good indication of justice prevailing," said Charles Z. Smith, a justice of the state of Washington's Supreme Court and former president of American Baptist Churches. "I believe that legitimate protest has its place in the protection of our freedoms. The actions of the Baptist Joint Committee on Public Affairs and the American Baptist Churches and other significant religious groups in focusing attention on problems related to asylum, particularly for Central Americans, is a good indication of the value of legitimate protest," Smith said.

Earl Trent, legal counsel of the ABC, said denominational officials "thought the Justice Department was riding roughshod over the rights of Salvadorans and Guatemalans and we thought the Justice Department should be held accountable for its discriminatory enforcement of the law." Trent also said ABC officials wanted to let ABC congregations and individuals involved in the sanctuary movement know that the national denomination stood behind them. "We thought what they were doing was right, legally and morally," he said.

"In one way, it's a bittersweet victory," said the Rev. Donovan J. Cook, pastor of University Baptist Church in Seattle. The church has been a sanctuary congregation since 1982. "Unfortunately, this victory comes too late for thousands of refugees. It is the case that justice has been denied these people for a decade," Cook said. He noted that many churches were afraid to join the effort. "Instead of joining, they sat back, letting the government tell them what is moral. What we can be grateful for is the leadership of the American Baptist Churches. From the beginning we had the full support of our denomination. What is so disturbing is that so many other congregations have remained silent." ●

**A FEDERAL DISTRICT JUDGE IN ARIZONA HAS RULED** that government investigators do not have "unfettered discretion" to infiltrate church services. The ruling by U.S. District Judge Roger Strand in a lawsuit filed by four Lutheran and Presbyterian congregations and their parent denominations imposed new restrictions on the government's ability to infiltrate religious services. The churches filed suit in 1986 challenging the covert investigation of churches suspected of involvement in the sanctuary movement by undercover informants hired by the federal Immigration and Naturalization Service.

"The government is constitutionally precluded from unbridled and inappropriate covert activity which has as its purpose or objective the abridgment of the First Amendment freedoms of those involved," the ruling stated. Additionally, the ruling said investigators "must adhere scrupulously to the scope and extent of the invitation to participate that may have been extended or offered to them."

A broad coalition of religious groups joined the case in support of the churches out of concern for First Amendment and other rights. "This case is of critical importance to all churches regardless of their views on the sanctuary movement," said Oliver Thomas, general counsel of the Baptist Joint Committee. "Churches have First Amendment rights that must be taken into account -- even by the Justice Department," Thomas said. ●

# Soviets Enact Law on Freedom of Religion

## *Church-State Separation: Hostility to Neutrality*

*Freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda shall be recognized for all citizens ... Incitement of hostility or hatred on religious grounds is prohibited. The Church ... shall be separated from the state, and the school from the Church.*

If I were to ask average persons on the street where this language comes from, a good number would say that it comes from the United States Constitution. Recently, a friend of mine posed this question to a political science class at American University. One student thought Thomas Jefferson had written it; others were not sure. The language does have a familiar ring. It uses words that we are accustomed to hearing to describe our religious liberty: "Freedom of conscience," "freedom of religious worship," and "separation of church and state." These terms run to the very heart of our thinking about the First Amendment.

Surprisingly, the quote is from Article 52 of the Constitution of the Soviet Union. And it was adopted, not with the advent of *perestroika*, but in the wake of the Bolshevik revolution in 1917!

### I.

Historically, church life in Russia has been dominated by the Russian Orthodox Church. Eastern Orthodoxy came to Russia with the baptism of Grand Prince Vladimir of Kiev in A.D. 988.<sup>1</sup> Gradually, the autonomy of the Russian church grew until a Patriarch of

Moscow was recognized in the sixteenth century.<sup>2</sup> During the reign of Peter the Great, the office of Patriarch was abolished, and a Holy Synod was substituted as the ruling body for the church. Although the prestige of the church grew during this period, the church increasingly became dominated by the czars.<sup>3</sup> Indeed, the relationship between the czars and the Russian Orthodox Church can generally be characterized as Erastian. Unlike a theocracy, where the state is under the control of religious leaders or institutions, Erastianism is the exact opposite. Here, political leadership controls religion and uses it to promote the power and prestige of the state.<sup>4</sup>

Following the Bolshevik revolution in October 1917, all of this began to change. The Russian Orthodox Church was, in Western terms, disestablished. Article 52 of the constitution — separating church and state — was adopted. Much of the Church's land and personal property, including valuable icons, was plundered or nationalized.<sup>5</sup>

But the new regime did not completely suppress religion or outlaw the churches as many people think. To be sure, neither the Russian Orthodox Church nor any other church was able to count on any governmental support, and they were highly regulated and controlled by the political bureaucracy. The kind of separation of church and state that prevailed for most of the last seventy years is what Philip Wogaman calls "unfriendly" separation. Over against the American brand of "friendly" separation — where the state adopts a posture of "benevolent neutrality" with respect to religion — unfriendly separation, as we have seen in the Soviet Union, exhibits some hostility toward religion. Religion is mostly tolerated out of some grudging concession to what might be regarded as quaint, old-fashioned beliefs of the citizens. But churches and faith survived, however tenuously.

### II.

The past five years have brought revolutionary change to the Soviet Union equal to that of 1917, and church-state relations have not been immune. World-wide scrutiny of the treatment of prisoners of conscience, such as Andrei Sakharov, along with the overall policy of across-the-board *perestroika*, prompted a radical reassessment of the government's relationship to the church. Indeed, Mikhail Gorbachev's public admission that he was baptized in the Russian Orthodox Church as a youngster and that his mother continued to be a practicing member of the church may have helped to lift the opprobrium on religious belief in the Soviet Union.

On October 1, 1990, the Supreme Soviet of the U.S.S.R., by vote of 341-1, passed a law on "Freedom of Conscience and Religious Organizations." This rather comprehensive piece of legislation represents a major step forward on behalf of freedom of conscience and religious liberty in the Soviet Union. Among other things, it recognizes complete freedom of worship, permits proselytizing, allows religious education and officially puts to rest any *de facto* state support for atheism. The passage of this act formally legitimates the increase in religious tolerance that has occurred since 1987.

Although the approximately 4,000-word statute is too lengthy to bear a detailed examination here, it may be fruitful to select several important features and key provisions in the new law and compare them with the analogical provisions and concepts in First Amendment jurisprudence in the United States. Despite the giant strides that the Soviet Union has made in the passage of this legislation, it still does not measure up to what we have in this country in many cases; and questions remain as to how the law will be interpreted and applied by the secular Soviet state.

Under the rubric of the separation of

Brent Walker is the associate general counsel for the Baptist Joint Committee. Walker was engaged in the practice of civil law for 10 years in Florida prior to pursuing a formal theological education. He served the Richland Baptist Church in Falmouth, Kentucky.

church and state, Article 5 of the new law provides that religious organizations will not perform any functions of the state and the state will not intervene in the activities of religious organizations unless they violate the law. Article 5 expressly provides that, "the state shall finance neither the activities of religious organizations nor the propagation of atheism." State-funded research projects are to be neutral, neither advancing nor detracting from religion or atheism. The act goes on to provide, in Article 6, for the separation of school from church. That is, public education is to be secular in nature, even though Article 6 does permit private religious education.

Articles 5 and 6 are both different from and similar to our First Amendment. The First Amendment to our Constitution is written in terms of a limitation on the power of the state, which inures to the benefit of individuals, churches and religious groups. Although the Soviet Constitution (Article 52) guarantees freedom of individual conscience and religion, the protection in the new law seems to run solely to "religious organizations." Thus, while it embellishes the scope of institutional liberties, the new law does little by its express terms for individuals.

On the other hand, the idea of governmental neutrality *vis a vis* religion, so endemic to our American system, seems to have found its way into Articles 5 and 6. This is seen in the provision calling for evenhanded treatment as between religion and atheism. Moreover, while religious education is permitted, it is not to be publicly financed. This has traditionally been the case in the United States, although some religious groups continue to press for public aid to parochial schools.

Concerning the general area of "free exercise," Article 3 of the new law provides that "the exercise of the freedom to confess a faith or proclaim convictions shall be subject solely to those restrictions that are necessary in the interest of maintaining public safety and order, protecting life, health and morality, and also upholding the rights and freedoms of other citizens." As mentioned, Article 5 provides that the state "shall not intervene in the activities of religious organizations, unless they should be in contravention of the law."

These provisions roughly are comparable to free exercise jurisprudence in this country, at least after the Supreme Court's decision in *Employment Division v. Smith* last year.<sup>7</sup> Before that case was decided, the government could burden the free exercise rights of American citizens only if it demonstrated a "compelling interest" and that it had selected the "least restrictive means" of accomplishing that interest. This test was

stronger than the present Soviet test. The less stringent "reasonableness" test, which the Supreme Court adopted in *Smith*, looks much more like the provision in Article 3 of the Soviet statute.

Under the new Soviet law, churches and religious organizations are officially recognized as "juridical persons." That is, churches and religious organizations in the Soviet Union have independent existence and freestanding legal rights — other than those enjoyed derivatively from their members. In this country, the same is true. Whether a church is formed as an unincorporated association, a corporation or in some variation thereof under state law, generally it is regarded as enjoying First Amendment protection apart from the individual First Amendment rights of its members.<sup>8</sup>

In order to qualify as a "juridical person" (and, arguably, even apart from an attempt to achieve that status), religious organizations in the Soviet Union are required under the new law to register with — and thus have their legal existence by leave of — the state. The church or other religious organization must file its "statutes" (apparently comparable to articles of incorporation or bylaws) with the executive committees of

other issues upon termination, and the like.

To require religious organizations to register and divulge such information creates at least the appearance of the state reserving the right to sanction religion rather than simply recognizing its prior existence. In our country, on the other hand, most churches can and do exist indefinitely without ever filing any paper with the government and certainly do not need to seek approval from the state. Many churches operate as unincorporated associations; it is only if they choose to incorporate that they have to file articles of incorporation and other information with the secretary of state in the state of incorporation. Churches are not required to file Form 1023 seeking a tax exemption under the federal tax laws; rather, they are presumed to be tax-exempt.

Churches and their integrated auxiliaries do not even have to file annual information returns with the IRS as do other non-profit organizations.

Although under the new Soviet law religious organizations are treated as equals with other public organizations and associations, Article 5 provides that they may not "take part in the activities of political parties nor render them financial support." It goes on to provide, however, that "clergy ... shall be entitled to take part in political life as equals of all other citizens."

In the United States, religious organizations are entitled to take part in political activities as a matter of free speech and free exercise of religion under the First Amendment. The main limitation on this right is found in the tax laws. In order to maintain their tax-exempt status, churches cannot participate in political campaigns on behalf of candidates or be involved in more than an insubstantial amount of lobbying. But, there is no constitutional or statutory impediment to doing so if the church is willing to forgo tax-exempt status. As in the Soviet Union, members of the clergy, individually, are entitled to participate in the political process and to run for public office.<sup>9</sup>

Article 18 of the new law provides that religious organizations shall have their donations and other assets exempt from taxation. But, Article 19 goes on to provide that "profits derived from production activities and other incomes of enterprises of religious organizations shall be subject to taxation."

Again, this is similar to what we have in American law. Generally speaking, churches and religious organizations are exempt from taxation. However, to the extent they generate income from activities not substantially related to their exempt purpose, they are subject to

Continued on page 14

"WELL, HEY—NOW THEY CAN ASK SOMEONE ELSE TO GIVE THEM THEIR DAILY BREAD"



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the District (city) Soviets of People's Deputies. The statutes must disclose such information as the location and denomination of the organization, the organization's assets, internal procedures for settlement of property and

## VIEWS OF THE WALL

Oliver S. Thomas  
General Counsel



**R**eligious organizations seeking ways to protect themselves from expensive, and oftentimes illegitimate, litigation by disgruntled members or employees will find some consolation in a recent decision by a New Jersey appellate court [*Elmora Hebrew Center v. Fishman*, 570 A.2d 1297 (N.J. Super. A.D. 1990)].

A synagogue and its rabbi had been engaged in a lengthy dispute over whether he should be allowed to continue his employment as the congregation's spiritual leader. When the parties were unable to resolve their differences, the synagogue filed suit seeking to terminate the rabbi's employment on a number of grounds, including dereliction of duties and dishonesty.

Concluding that the dispute was essentially ecclesiastical, the trial court referred the dispute to a board of rabbis (Beth Din) for resolution. Both parties agreed and signed a document providing in part:

Blessed be the Lord:

This is to certify that we the undersigned fully accept upon ourselves the following judgment of the Beth Din of the Union of Orthodox Rabbis of the United States and Canada ... to adjudicate between us according to their judicious wisdom, we affirm hereby that we have accepted upon ourselves to obey and fulfill the judgment which shall issue forth from this Beth Din ... without any appeal whatsoever before any Beth Din under Jewish Law or any civil court.... All of the above was entered into voluntarily through the legal transfer and acquisition of rights through "Sudur," the agreement is made without any reservations whatsoever in a recognizable and legally binding manner and is entered into in a manner so to be completely and lawfully binding.

After "lengthy oral testimony" and the submission of "voluminous documentary evidence," the Beth Din rendered its decision. The synagogue was ordered to pay the rabbi \$100,000, and he was asked to resign his position. The synagogue refused and again sought relief in the civil courts.

The trial judge threw out the case, finding that both parties had freely and voluntarily consented to the Beth Din's adjudication. Even were the dispute not ecclesiastical in nature, the court found ample cause for dismissal:

The scope of judicial review of any arbitration award is extremely limited. Absent proof of fraud, partiality, misconduct on the part of the arbitrators, and there was no such showing, or that they exceeded their authority, which the Court has decided contrary to the [synagogue], the obligation of the court is to confirm and enforce the award. The law favors dispute resolution through consensual arbitration, and so the award is presumed to be valid. So it is here. On this record the Beth Din's decision and award must be confirmed.

The decision has obvious implications for churches beyond the facts of this case. For example, why couldn't an arbitration agreement be included in the employment contract between a church and its ministers? More importantly, why couldn't a similar agreement be incorporated in the church bylaws and made applicable to all disputes between members and the congregation? Obviously, members would have to be notified of the agreement in advance of joining, but this could be accomplished easily by furnishing all prospective members with a copy of the bylaws (a good practice for other reasons as well) with the pertinent facts underscored for easy identification. Those who already belong to the church should be notified both from the pulpit and in writing if such a bylaw change is adopted by the church.

A well-drafted arbitration or conciliation provision could protect a church from a variety of lawsuits ranging from claims of "clergy malpractice" to simple negligence. Such an agreement might be particularly important for resolving employment disputes as well as questions of church discipline.

The Association of Christian Concili-

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**A well-drafted arbitration or conciliation provision could protect a church from a variety of lawsuits, ranging from claims of 'clergy malpractice' to simple negligence.**

ation Services recommends the following language for consideration:

Any claim or dispute arising out of or relating to this agreement shall be settled by mediation and, if necessary, arbitration in accordance with the rules of procedure for Christian conciliation of the Association of Christian Conciliation Services, and judgment upon an arbitration award may be entered in any court of competent jurisdiction.

A representative of Christian Conciliation Services in Billings, Montana, says that such a clause will hold up in most states, but there are some exceptions. For example, in Montana the first page of any document containing an arbitration agreement must include the following statement underlined and in capital letters: "This contract includes an arbitration provision." California apparently has a similar provision, only the words must appear in red ink. Churches wanting to use an arbitration agreement for any purpose should consult with a local attorney to see if there are any requirements peculiar to their home states.

If a church prefers to resolve disputes "in house," as opposed to referring them to an outside conciliation service, the BJC's Office of General Counsel suggests the following language:

In consideration of the privilege of belonging to XYZ Church and in obedience to the commands of I Corinthians 6, each member, including its ministers, agrees to submit any and all disputes with XYZ Church, its ministers, employees or other members to the Board of Deacons and to relinquish any right each might otherwise have to seek resolution of the dispute before a court of law, administrative body or other civil authority. The decision of the majority of the deacons present and voting at a properly called deacons' meeting shall be binding on all parties involved in the dispute. If any party is dissatisfied with the decision, appeal may be made to the congregation as a whole. Appeals must be made within thirty days of the deacons' decision and shall be addressed in writing to the church moderator, who shall cause the matter to be placed on the agenda at the next regular or specially called business meeting of the church. The decision of the majority of the congregation present and voting shall

be final and not subject to review by civil authorities.

Certainly, there are limitations to any such arbitration agreement. For example, minors ordinarily cannot waive their claims before reaching the age of majority. In addition, some courts conceivably might find such an arbitration agreement in violation of public policy. But this is unlikely, given the courts' preference for arbitration over litigation and their hesitation to accept jurisdiction over ecclesiastical disputes anyway.

While there are no guarantees, the New Jersey decision is encouraging to those who wish to stem the rising tide of litigation against churches. For friends of religious liberty, that's good news. □

[This column provides accurate, although general and non-exhaustive, information about the rights and liabilities of churches and their ministers and members. The Baptist Joint Committee does not hereby undertake to render specific legal advice or other professional services. If readers have a particular, fact-specific legal question or if churches want to use an arbitration agreement such as suggested here, the opinion of a qualified attorney in their home state should be sought.]

## SHORT STORY

A fragile creature  
of summer  
Caught my attention  
between the bites of cereal  
and the words of St. John  
He swooped in  
and then became still  
as though inviting  
contemplation  
his tentative sensors  
wafting the winds  
of my breath  
Who taught you, slender one,  
to overdress your pastel body  
in long-oval gossamer wings  
of green-tinted net?  
Who taught you to wash your face  
and preen your antennae  
under your short arm  
in graceful, curving parabolas  
that flip straight  
when the long tip  
escapes you?  
There are expensive details in your  
design  
Yet, who knows  
the destiny  
you dressed for?  
Are you one tiny syllable of the Word?  
Book closed,  
breakfast ended,  
I go to do the wash.

Eldonna DeWeese

# Teaching about Religion

By Albert Shanker

Progress doesn't always follow a straight line. Take the case of religion and the public schools. When I was young, public education still reflected this country's largely Christian and Protestant origins. Most kids, no matter what their faith — or lack of it — started the day listening to a passage from the King James [version of the] Bible and saying the Lord's Prayer. And this was hard for many of us.

But when the U. S. Supreme Court abolished state-mandated prayer and devotional use of the Bible in public schools, things went to the other extreme — teaching about religion became a bigger taboo than teaching about sex. And this happened even though the Supreme Court was careful to distinguish between teaching religion in public schools and teaching about religion. In fact, by the 1980s, religion had disappeared so completely from the public schools that one popular text series for children in elementary school identified the Pilgrims as "people who made long trips" — 17th-century tourists, perhaps — and Christmas as a "warm time for special foods."

It's not hard to see how this happened. People in schools worried about the line between acknowledging the role of religion in American society and history and appearing to favor a particular faith. Would yearly concerts of Christian religious music cross the boundary into favoring Christianity? Could a teacher speak about the importance of Christian values in Martin Luther King's life and work without being accused of promoting the Christian religion? Did mentioning one religion — or religious holiday — mean you needed to give equal time to others? (And if so, which others?)

But as the description of the Pilgrims suggests, "When in doubt leave it out" isn't a responsible, or a practical, answer. If students don't know anything about the religions that helped shape our cultural heritage, they'll have a very limited appreciation of that heritage. And if they're ignorant about the religions practiced in our multicultural society, it will be difficult for them to understand — or live harmoniously with — the people who practice them. Most important, if students don't get a chance to discuss religion in their American history classes, they won't learn about our unique tradition of religious freedom or how and why the separation of church and state was established and maintained — and they won't find out about the role they must play in carrying on these essential features of our democracy.

Fortunately, people of all political and religious persuasions now agree that it's

important to introduce teaching about religion into the curriculum. That doesn't mean it will be easy to avoid some of the pitfalls, but materials that should help are appearing. For example, *Religious Freedom in America: A Teacher's Guide*, by Charles C. Haynes (Silver Spring, MD: Americans United Research Foundation, 1986) includes articles about the tradition of religious freedom in this country and about Supreme Court decisions on the subject, as well as a list of resources. And this fall, a curriculum series called *Living with Our Deepest Differences: Religious Liberty in a Pluralistic Society*, which was developed and pilot-tested for upper elementary school, junior high and high school by the Williamsburg Charter Foundation, is scheduled to come out.

*Religion in American History: What To Teach and How*, by Haynes (Alexandria, VA: Assoc. for Supervision and Curriculum Development, 1990) is particularly useful because it suggests ways of integrating religious issues and questions into a standard American history course. Besides listing and providing bibliography for 29 religious influences in American history, Haynes offers nine original documents that illustrate important religious issues, and he provides excellent supporting material for each.

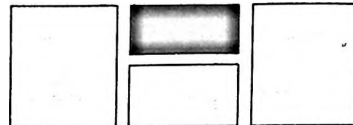
The documents show our country at its unique best — and at its worst. And they raise issues that we are still dealing with and will as long as our country exists. George Washington's moving letter to the Jewish congregation of Newport, RI, which lays out the distinction between religious toleration and religious freedom, ought to make students feel proud and humble; it's a remarkable tradition they have to live up to and continue. On the other hand, an 1837 petition to Congress arguing for a curtailment of the rights of Catholics reveals a darker side of our heritage. Some of the arguments it advances were still current when John F. Kennedy ran for president in 1960 — and they'd play well in a number of circles today.

The best protection religious freedom can have now and in the future is for all of us to understand the challenges it has faced in the past. Teaching about religion in the public schools, and particularly in American history classes, is belated but welcome; it will help protect this uniquely American — and uniquely precious — freedom. □

Albert Shanker is president of the American Federation of Teachers in Washington, D. C. This article is used by permission of the AFT.



# News in Brief



## 'Surge for freedom' marks human rights struggle

WASHINGTON  
Significant strides in human relations were made during the past year, but much work remains to be done.

That assessment repeatedly was underscored by top government officials Dec. 10 during observances commemorating the 42nd anniversary of the Universal Declaration of Human Rights.

"There is a strong surge for freedom all over the world," former U.S. Supreme Court Chief Justice Warren Burger declared at a State Department observance of Human Rights Day. But Burger warned that the struggle for continued human rights gains "will not be easy."

Burger, chairman of the Commission on the Bicentennial of the United States Constitution, noted that the course of freedom in the United States was not always easy and that rights spelled out in the Bill of Rights were not always carried out. As examples, he cited Africans brought to the United States in chains, the 1857 Supreme Court ruling that denied citizenship to former slaves and an 1896 ruling upholding segregated rail cars in Louisiana.

"I mention these things because it took a long time to determine our present posture, and we have a long way to go."

During a ceremony at which he signed documents proclaiming Dec. 10 as



Human Rights Day and Dec. 15 as Bill of Rights Day, President George Bush described 1990 as a year in which "the collapse of the communist idea, and the end of four long decades of Cold War and conflict enabled the world to look with new hope toward an era of peace, an era of freedom."

"With freedom's advance comes new challenges," Bush said. "This is especially true in Europe, the continent that for so long stood at the heart of the East-West conflict. There, the Revolution of '89 has given way to the Renaissance of 1990, to the difficult business of democracy building."

"The hard work of consolidating these great gains has just begun," he said.

Earlier at the State Department gathering, Richard Schifter, assistant secretary for human rights and humanitarian affairs, also noted strides made in the human rights field, particularly changes in eastern Europe and the Soviet Union.

"There appears to be no precedent for the steps taken by the Soviet leadership in recent years," Schifter said. "Having inherited absolute power, President Gorbachev and his associates deliberately and intentionally relinquished it and gave the people the opportunity to assert themselves in an entirely new atmosphere of freedom and expression."

Schifter added that the "shift toward an open, democratic society has not taken place only on one continent, Europe. In the Western Hemisphere we witnessed during 1990 the installation of a democratically elected government in Chile and the election victory of democratic forces in Nicaragua. In other countries of Latin America the peaceful change from one elected government to another has demonstrated that the democratic gains of earlier years are being consolidated."

Schifter said the United States traditionally has viewed the Bill of Rights as setting the "standards which all governments should adopt in their conduct with their own citizens. We have judged foreign governments not so much in terms of the attitude of these governments toward the United States but in terms of their treatment of their own citizens."

During the State Department session, reports were presented by representatives of democratic movements in Czechoslovakia, Nepal, Chile, Nicaragua and Africa. □

## Religious groups caution against using force in Iraq

NEW YORK

U.S. religious leaders and church groups, while applauding President Bush's decision to engage in talks with Iraq, are continuing to voice reservations

about the use of force in his Mideast policy.

Some leaders have also emphasized the importance of the public debate on the crisis, and in one instance called for congressional debate as a necessary prelude to U.S. involvement in a Mideast war.

In testimony before the Senate Foreign Relations Committee in December, the U.S. Catholic Bishops' International Policy Chair Archbishop John Roach of Minneapolis-St. Paul commended the president's diplomatic opening to Iraq.

At the same time Roach restated the bishops' "profound concerns about the moral dangers and human costs" of a shooting war in the Middle East.

The General Board of the American Baptist Churches in the U.S.A. passed a resolution urging diplomacy and restraint in seeking solutions to the confrontation with Iraq, and applauded the president's "crafting of a multilateral United Nations coalition opposing Iraq's aggression."

The ABC's policy-making body urged Mr. Bush "to call a special session of Congress to debate U.S. action against Iraq (and) to clarify the process" of how the president and the Congress commit the country to war.

Dr. Daniel Weiss, the denomination's general secretary, was among 16 mainline Protestant and Orthodox church leaders who visited the Middle East and Baghdad in December. □

## Colorado courts reject 'choice of evils' defense

DENVER

Colorado courts recently ruled against the "choice of evils" defense in cases involving the abduction and attempted deprogramming of a member of a religious group and a demonstration that blocked access to a nuclear weapons plant.

The "choice of evils" defense, which has also been used by abortion protesters, maintains that certain illegal actions are less of an evil than the activities they are trying to prevent. Protesters cite religious motivation in support of their actions.

The deprogramming case involves 29-year-old Britta Adolfsson, who was abducted from a street in Denver in 1987 at the request of her parents, who wanted to have her deprogrammed from the Unification Church. Her abductors



were acquitted in 1988.

In a 3-0 decision in November, the Colorado Court of Appeals ruled that the trial judge should not have allowed defense lawyers to delve into the church's recruiting practices, its methods of securing obedience and its fund-raising and political activities.

Judge Jose Marquez acknowledged that there was evidence "that the church dominates and controls the personal lives of its members, including the victim." But he added that the right of the woman "to make her own decisions about religion and lifestyle far outweighs her parent's claimed right to protect her from the folly of her ways."

The Colorado Supreme Court held that 51 protesters could not use the "choice of evils" argument in their defense.

The court said that radiation hazards and dangers of nuclear war associated with the weapons plant "are long-term and speculative," while the "choice of evils" defense applies only when illegal action is directed against a "specific, definite and imminent injury." □

## Amish finally gain victory in vehicle signs dispute

ST. PAUL

For the second and apparently final time, the Minnesota Supreme Court has decided that the state's Amish residents are exempt from a state traffic law they say conflicts with their religion.

A unanimous decision filed in November held that Amish cannot be forced to use orange triangular slow-moving vehicle signs on their horse-drawn buggies.

The ruling of the seven-member court said that public safety can be adequately protected by alternative means, such as the use of reflective tape and lighted lanterns. It based its judgment on Minnesota's state constitution, which provides even greater protection for religious freedom than the First Amendment of the federal Constitution.

Writing for the court, Chief Justice Peter Popovich noted that the First Amendment "establishes a limit on government action at the point of prohibiting the exercise of religion."

Section 16 of the Minnesota Constitution prohibits infringement on the right to worship as one sees fit and any "interference with the rights of conscience."

Justice Popovich said, "government actions that may not constitute an out-

right prohibition on religious practices could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution." □

## Judge's public prayer habit violates U.S. Constitution

RALEIGH

A North Carolina county judge's habit of opening sessions of his court with prayer violates the U.S. Constitution, according to the ruling of Federal District Judge James McMillan.

Mecklenburg County District Judge H. William Constangy plans to appeal the ruling that his use of a nonsectarian prayer was an unconstitutional establishment of religion.

A brief filed in the case by the American Jewish Congress argued that by opening his session with prayer, Constangy was communicating to people in his courtroom that religion was to be preferred over non-religion.

The Rutherford Institute defended Constangy's prayers, arguing that "imposing an absolute restriction on any acknowledgment of deity would itself violate the Constitution's establishment clause by imposing a standard that fosters hostility by the state toward religion." □

## AU voices opposition to funding of church schools

WASHINGTON

Americans United for Separation of Church and State (AU) announced strong opposition to a policy statement issued by the U.S. Catholic bishops that seeks taxpayer support for Catholic schools.

The bishops' statement requests broader public assistance for Catholic schools under the rubric of "parental choice." It also calls for the creation of national and local Catholic parents' groups to lobby lawmakers for government aid.

Robert L. Maddox, executive director of AU, said his group strongly opposes the public funding section of the plan because it violates church-state separation.

"The bishops," said Maddox, "are on the right track when they ask American Catholics to contribute more to their church." But, "Obviously, it is not proper to underwrite sectarian religious instruction with taxpayers' money."

"Parental choice" is a very misleading term," Maddox continued. "When it comes to religious schools, only the clergy that run them have a choice about how the schools operate. Taxpayers would have no choice in how their money is spent." □

## Trial OK'd for man fired over letters on race

ST. PAUL

A judge has ruled a man who was fired from his job for mailing thousands of anonymous letters espousing racial and religious purity is entitled to a trial on his claim that he was dismissed illegally because of his religious beliefs.

Ramsey County District Judge Otis Godfrey denied a motion by West Publishing Company, St. Paul, to throw out the wrongful-discharge suit filed by Elroy Stock. The judge said the former head cashier is entitled to argue in court that his firing violated West's affirmative action policy.

The 1983 policy states, in part, that West employees will be hired and retained without regard to religion. Stock's attorneys argue that his anonymous letters are expressions of his deeply held religious conviction that God created all the human races and that the races should be preserved. (RNS)

## Religious Affiliation of Members of Congress

	Election		Change
	'90	'88	
Catholic	142	139	+3
Methodist	75	76	-1
Episcopalian	59	63	-4
Baptist	59	55	+4
Presbyterian	51	51	0
Jewish	41	39	+2
Protestant	30	26	+4
Lutheran	22	24	-2
Mormon	13	11	+2
UCC	12	12	0
Unitarian	10	10	0
Unaffiliated	5	4	+1
All others	16	25	-9

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# INTERNATIONAL DATELINE

## Public outrage counters anti-Semitism in USSR

Passing of a prison sentence of two years in strict regime labor camp for public anti-Semitic statements has sparked widespread discussion in the Soviet media, according to the newsletter *Jews in the USSR*.

Moscow's World Service reporter Sergei Vorobeyev, observing that the trial and persecution of Konstantin Ostashvili was the first of its kind under Article 74 of the RSFSR criminal code, said it "provoked a mixed response in a country torn apart by internal disputes."

The case provides a significant example of the new civic society that the country is attempting to bring about through adequate legal protection of the individual, according to Vorobeyev.

The court had managed to prove that Ostashvili's actions were premeditated and were consciously carried out, although the investigating police officers tried to play down their anti-Semitic tone.

"But for the public and media outrage, the hearings may not have taken place at all," Vorobeyev wrote.

Writer D. Guy, hoping that the custodial sentence on Ostashvili will prove a deterrent to similar anti-Semites in Soviet Society, echoed the demand of Public Prosecutor Andrei Makarov. The official believes action should be taken against the right-wing nationalist organization *Pamyat* (memory) itself.

In a popular TV discussion program, "Top Priority," a deputy director of the Institute of U.S. and Canada Studies, Sergei Plekhanov, said that the Ostashvili case "if allowed to develop further could have very serious, almost fatal, consequences for this society. We should not play with the fire of ethnic hatred." □

## BWA appeal calls for end to discrimination in India

McLEAN, VA

The Baptist World Alliance (BWA) joined Baptists in India and other world religious bodies in an appeal to the government of India to end social and economic discrimination against Christians of Scheduled Castes.

Responding to the concern of the Samavesam of Telugu Baptist Church in Nellore, India, Denton Lotz, BWA general secretary, wrote to Ram Vilas Pawsan, the minister for Labor and Welfare, asking that the same social and

economic benefits recently granted by Parliament to neo-Buddhists be extended to Christians.

Lotz' letter noted that "It is our concern that benefits should go to all people of need and that there should be no discrimination on a religious basis.... Christians of Scheduled Castes should also receive the same benefits."

"As we approach the 21st century," Lotz wrote, "it is important that we overcome intolerance and prejudices, especially in legislation that affects the poor." □

## Polish demonstrators fear religion in public schools

Demonstrators in Gdansk, Krakow, and Warsaw have protested the introduction of religious instruction in public schools and demanded that education be without political or religious indoctrination.

They carried banners that read, "Communist totalitarianism is being replaced by national-Catholic totalitarianism" and, "We don't want the Khomeinification of our schools."

Polish television reported in October that the results of an opinion poll indicated that compulsory religious instruction was supported by 22 percent, voluntary teaching of religion by 37 percent, and teaching of religion outside the schools by 39 percent. □

## Immigration Act change to reduce exclusions

WASHINGTON

House and Senate conferees approved legislation that revised the 1952 Immigration and Naturalization Act (McCarran-Walter), increasing yearly immigration levels and significantly limiting exclusions that restrict entry into the United States.

Changes under the law permit the number of persons entering the country in 1991 to be raised from 500,000 to 750,000, and drop to 700,000 in 1992-94, and 675,000 thereafter.

The new legislation "provides for a comprehensive revision of all the existing grounds for exclusion, including the repeal of outmoded grounds, the expansion of waivers for certain periods, the substantial revision of security and foreign policy grounds, and the consolidation of related grounds to make the law more rational and easy to understand."

The secretary of state maintains authority to exclude individuals if their entry would clearly have serious adverse foreign policy consequences, result in damage to lives and/or property here and abroad, or violate international treaties or agreements adhered to by the U.S.

Both Chairman Dennis DeConcini and Steny Hoyer supported passage of the legislation and voiced opposition to McCarran-Walter restrictions at meetings of the Commission on Security and Cooperation in Europe (CSCE).

U.S. delegations to CSCE meetings often faced criticism for McCarran-Walter restrictions for its curtailment of the free movement of people and ideas. Hundreds of individuals over the past 10 years were denied entry or deported on the basis of beliefs and/or affiliations, Nobel laureate Gabriel Garcia Marquez among them. □

## Draft law pointed toward separation, full freedom

The draft of a new law on religion that will guarantee citizens full religious freedom and the religious communities unhindered activity has been under discussion by the committee for religious and humanitarian issues of the Czech parliament.

Deliberations over the draft law are taking place separately in both the Czech and the Slovak parliaments, where it is hoped agreements can be reached and the law adopted in the near future by the Federal Parliament.

While the genuine separation of church and state is the ultimate goal being sought, the transition from state funding to funding by the religious organizations is the immediate concern awaiting resolution. □

## Rumors flying of angels hitchhiking in Australia

AUCKLAND, New Zealand

Angels, disguised as hitchhikers, are making mysterious visits to earthly drivers here to tell them of Christ's imminent return.

"Are angels hitchhiking around New Zealand to get a heavenly message across to Kiwi Christians?" asked Brian Finn, a reporter with *Challenge Weekly*, a New Zealand publication.

Numerous reports circulating like

"Some of us are not in full accord with everything said in this conference, but on this we are all agreed, namely, the unequivocal rejection of apartheid as a sin. We are resolved to press forward in fellowship and consultation toward a common mind and program of action."

"We believe ... that we stand on the threshold of new things. There appears to be the possibility of a new dispensation and the promise of reconciliation between South Africans as some of our black and white leaders prepare to negotiate together for a new and liberated nation of equity and justice."

"... We confess our own sin and acknowledge our heretical part in the policy of apartheid which has led to such extreme suffering for so many in our land. We denounce apartheid, in its intention, its implementation and its consequences, as an evil policy. The practice and defense of apartheid as though it were biblically and theologically legitimate is an act of disobedience to God, a denial of the Gospel of Jesus Christ and a sin against our unity in the Holy Spirit."

"Some of us actively misused the Bible to justify apartheid, leading many to believe that it had the sanction of God. Later, we insisted that its motives were good even though its effects were evil. Our slowness to denounce apartheid as sin encouraged the government to retain it. Some of us ignored apartheid's evil, spiritualizing the Gospel by preaching the sufficiency of individual salvation without social transformation. We adopted an allegedly neutral stance which in fact resulted in complicity with apartheid. We were often silent when our sisters and brothers were suffering persecution."

"Those of us who are the victims of apartheid acknowledge our own contribution to the failure of the church. ... Many of us have responded with timidity and fear, failing to challenge our oppression."

"The Bible reveals God as a God of compassionate love who has a special care for the sinner, the downtrodden, the poor and all who suffer injustice."

"Confession and forgiveness necessarily require restitution. Without it, a confession of guilt is incomplete."

"As a first step toward restitution, the church must examine its land ownership and work for the return of all land expropriated from relocated communities to its original owners. 'White' schools must be opened to people of all races and programs of affirmative action embarked upon at all levels of black education." □

[Excerpts from "The Rustenburg Declaration," a seven-page statement issued by representatives of 80 denominations, including both black and white churches, and 40 other organizations attending a November conference on apartheid in Rustenburg, South Africa.]

## NEWS-SCAN

wildfire in local churches and in some cases from the pulpit testify to the veracity of the rumors. It seems that the angels catch lifts with Christian motorists, inform them about Christ's imminent return, and then mysteriously disappear from the moving autos.

Finn reported that "the only problem is that there don't appear to be any eyewitnesses who can testify to actually having picked up one of these hitchhikers — and this reporter has made more than 40 inquiries to follow up the story."

Finn concluded his article with the observation that "There are three kinds of lies: black lies, white lies, and sermon illustrations." He urged that the story of the visiting angels is "one sermon illustration that should not be passed on — unless, of course, it happened to you." □

## New Christian strikes in protest over treatment

An Estonian criminal prisoner now in the 13th year of his sentence began a hunger strike in October to protest the refusal of the labor camp administration to transfer him to a penal settlement (open prison).

The prisoner, U. Oks, believes that he should be considered for a transfer, arguing that since he became a Christian, his behavior has improved dramatically over the past year and a half.

He had already been refused a reduction in sentence under the 1987 amnesty that marked the 70th anniversary of the October revolution. A fellow prisoner in favor with officials, however, benefited from amnesty although he was guilty of more infringements in a two and a half year period than Oks had had in nine years. □

## Legal status no barrier to Pentecostal meetings

Pentecostals in Moscow and Saratov have been able to hold evangelistic public meetings recently, despite their lack of legal status as unregistered religious societies.

In Saratov, southeast of Moscow, the Pentecostals secured permission to hold an evangelistic service at a sports stadium seating 10,000 people. After initially refusing the request, city authorities decided the service was a worthwhile cause and allowed the church free use of the facility. □

A group of tourists were watching the Oberammergau passion play when one person turned to another and exclaimed, "It sure would be easier to follow if they had explained the plot." Funny or tragic, asks David Dewey in a *Baptist Times* column, before concluding, "spiritual ignorance abounds, but so does spiritual hunger." ... **Believers in Bulgaria** are anxious that a "draft law for the denominations" be among the several legislative proposals mentioned in a recent press release emanating from the Council of Ministers. In that document, the passage referring to the proposed new law on religion "... guarantees the full freedom of believers to profess their religion and ... to fulfil their religious mission." No time frame has been given for passage of the bills now before parliament. ... **The University of Fribourg**, a Swiss state institution with a Catholic theological faculty, has been barred from conferring an honorary degree on American Archbishop Rembert C. Weakland of Milwaukee. The head of the Vatican Congregation of Education, Archbishop Pio Laghi, citing the confusion created by Weakland's "positions relative to the question of abortion," said the granting of an honorary doctorate would only add to the confusion. ... For the second time this year, the imposing **People's Palace of Culture** in Bulgaria has been the scene of a large Christian gathering — both Adventists and the Pentecostal Church have met there. The Social Party's news daily has reported in depth on how Pentecostal believers adhere to the word of God and tend to depend on the spontaneous inspiration of the Holy Spirit in their worship. ... **An Orthodox Church** dedicated to Sts. Peter and Paul has opened in the Ulan-Ude strict regime labor colony in the Buryat Autonomous Republic, the first such church behind barbed wire in the USSR. The first baptism took place there on the feasts of the patron saints in July. ... **Bugging devices** have been removed from residences of Czechoslovakia's Catholic bishops, following a parliamentary report on the secret police's surveillance methods under the Communists. ... **Eastern-rite Catholics** in Romania started a sit-in protest over the return of their church property in the town hall of Baia Mare. Their church has been re-legalized but they must still worship in the open air, in parks, cemeteries or town squares, even in cold weather. □

# V.T.

*In appreciation for Victor Tupitza as he retires from the Baptist Joint Committee*

Rock solid, cause-bound champion of soul freedom, covered with a layer of nice;

Second fiddle player with grace, loyalty and all it takes to make teamwork work;

Presider over the lunch table, arbiter of spontaneous seminars on God, the universe and other things, pontificator when called for;

Child of The Depression with appropriate respect for dwindling dollars;

Wordsmith who knows what words mean but wants no mean words;

First generation American who carries in his genes a sure memory of why the old country was left behind;

Fecund generator of ideas and alternatives, many of them good, some of them do-able;

Patient counselor who suffers fools, dawdlers, novices, zealots and bumbler but never puts up with legalists with a hatchet to grind;

Friend.

Victor, we will miss your "one quick question."

JMD

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS  
200 Maryland Ave., N.E., Washington, D. C.

Soviets, from page 5

Unrelated Business Income Tax. This appears to be the intent of the Soviet law as well.

### III.

This is a quick summary of some of the more important provisions of the Soviet law and how they compare with the laws concerning church and state in this country. However, there are at least two other questions about the implementation and interpretation of the Soviet law that warrant some comment.

First, there is some legitimate concern, particularly among free-church Christians in the Soviet Union (including Baptists), that the Russian Orthodox Church will attempt to regain its position of hegemony among the other faiths represented in the Soviet Union, which, even by American standards, are varied and pluralistic.<sup>10</sup> Although a good-faith application of Article 52 and the separation principle embedded in the new law should block any such attempt to regain a "state church" status, Alexei Bichkov (Vice President of the Union of Evangelical Christians-Baptists) is not sanguine. Remembering the suffering endured at the hands of the Orthodox Church, he said, "When atheism oppressed us, we were together. When oppression disappeared, [Orthodox leaders] repudiated 70 years of experience. We are afraid they will become the national, institutional church."<sup>11</sup>

Another concern with the implementation of this law has to do, not with the attempt of the Russian Orthodox Church to achieve favored status, but with the opposite problem: sabotage from secular governmental officials. While the old Council for Religious Affairs has been abolished, a new Council of Ministers has replaced it. This Council will appoint the "state authority" for religious affairs. Although the act provides that the new state authority will simply be a "center for information, consultation and qualified advice," and not a monitoring or oversight body, there is still potential for bureaucratic footdragging and even resistance. Olga Hruby, a religious liberty advocate, is another person not entirely optimistic. She frets over the many opportunities for the law's interpretation at the local level and has predicted that there will be resistance to its implementation because "atheists, hardcore Communists, don't like it."<sup>12</sup>

### IV.

Nevertheless, the Soviet Union has made great strides in the direction of genuine religious liberty. It appears finally to have acknowledged and adopted the sentiment expressed in the Universal Declaration of Human Rights, Article 18, first promulgated 42 years ago:

The Soviet situation bears close watch-ing, however. The law is far from per-

fect, and the Soviet Union's track record throughout its history — alternatively discouraging religion and then using the church for the state's benefit — gives some pause for concern. But the new spirit of freedom in the Soviet Union must be applauded and the possibilities for religion's fullest expression celebrated as a cause for greater optimism. □

### End Notes

<sup>1</sup>Frank S. Mead and Samuel S. Hill, *Handbook of Denominations*, Eighth Edition (Nashville: Abingdon Press, 1985), p. 190.

<sup>2</sup>Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 100 (1952).

<sup>3</sup>Ibid. at 101.

<sup>4</sup>The term "Erastianism" comes from the sixteenth century Swiss-German Thomas Erastus. J. Philip Wogaman, *Christian Perspectives on Politics* (Philadelphia: Fortress Press, 1988), p. 189.

<sup>5</sup>Valeri Lobachev and Vladimir Pravtorov, *A Millennium of Russian Orthodoxy* (Moscow: Novosti Press, 1988), pp. 66-68.

<sup>6</sup>Wogaman, pp. 189-190.

<sup>7</sup>U.S. \_\_\_\_\_, 110 S.Ct. 1595 (1990).

<sup>8</sup>Esbeck, *Five Views of Church-State Relations in Contemporary American Thought*, 2 B.Y.U.L. REV. 371, 383, 388, 393 (1986).

<sup>9</sup>McDaniel v. Paty, 435 U.S. 618 (1978).

<sup>10</sup>Peter Reddaway, an expert on religion in the Soviet Union, estimates that there are 50 million Muslims, 30 million Russian Orthodox, 6 million Catholics, 2 million Jews, and 1 million Baptists in that country.

<sup>11</sup>Quoted by Martha Skelton, "Soviets Adopt Historic Religious Freedom Law," Baptist Press, 10/1/90.

<sup>12</sup>Quoted by Gary O'Guinn, "U.S. Religious Leaders Hail Passage of Soviet Religion Law," Religious News Service, 9/28/90.

## CORRESPONDENCE

Taken out of context, the quotation (REPORT, Nov.-Dec.) ascribed to me — namely, that I hailed the free exercise of religion as a "superior, preferred, fundamental right... the Constitution allows for no exemptions for the free exercise of religion. None." — will appear to the reader to mean that I do not believe that the Free Exercise Clause allows for the free exercise of religion.

The nuance — all important — in my address was that the free exercise of religion is not a matter of exemption, but that it is an outright liberty. The whole point was to attack the very limited idea of saying that we have religious freedom by virtue of an exemption from state power. Not at all. I tried to stress that religious liberty is not an exemption, or an exception, to some general rule of state power.

William Bentley Ball  
Harrisburg, Pennsylvania

[Ed: Attorney Ball was one of the principal speakers at the BJC's 22nd National Religious Liberty Conference.]

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The clear separation of church and state provides the distance from which the church can speak prophetically to the state ... [an] American arrangement that has been good for both.

## REFLECTIONS

James M. Dunn  
Executive Director



There is a silliness going around. It's not new. Patrick Henry suffered from it for a spell and then almost recovered.

Henry, in opposing Virginia's proposed Statute for Religious Freedom, suggested that public decency depends upon government support for religion. He, like some notable religious figures today, thought that society could be made more moral by a certain coziness of church and state. Happily, John Leland, James Madison, George Mason and Thomas Jefferson prevailed and disestablishment became the American way. Leland lamented, "sad experience has taught us that the fondness of magistrates to foster religion has done it more harm than all the persecutions ever did."

The current silliness doesn't stop at supposing that organized religion must have a certain favored status; it assumes that an evil conspiracy is preventing a persuasive proclamation of the gospel in the public square. No one that I know of, not the most dedicated separationists, not even the organized advocates of neutrality, is denying full and free expression of the Christian message in the marketplace. In fact, some of the most purely secularist people are among the first to defend the full religious expression.

Baptists certainly have never been intimidated or timid about attacking social evil. We and our forebears have fought demon rum, dirty books, drugs, gambling, and prostitution. Baptist ancestors struggled for social justice, peace, and world order. Towering figures in the application of the gospel to the political process have been Baptist preachers, Walter Rauschenbusch and Martin Luther King, Jr. among them. We forget sometimes that George W. Truett in 1919 led a march up Constitution Avenue to the steps of the U.S. Capitol. There, in a famous speech, he pled for the ratification of the League of Nations. In prophetic wisdom he said that to fail to support President Woodrow Wilson's visionary plan for peace would be a "gravely immoral act." (The U.S. Senate, led by Henry Cabot Lodge, Sr., committed that "gravely immoral" deed. The League of Nations never amounted to much. One need only recall WWII to appreciate Truett's insight.)

These same public men, prophets to the political system, believed in and practiced the separation of church and state as an essential corollary for religious freedom. They knew that separation of church and state did not mean separation of God and government, or separation of Christians from their citizenship, or separation of religion from politics.

No, there's a disingenuousness in claiming that Christians cop out of their political responsibility by hiding behind the wall of church-state separation. Laziness — maybe, cowardice — surely, ignorance — often, can all contribute to the evasion of good citizenship. Most of us know in our innermost depths that we have no excuse for avoiding political engagement. We surely cannot use church-state separation to dodge our duty. It is a straw man set to be knocked down to argue that Baptists use "separation" as an excuse for non-involvement.

In fact, the clear separation of church and state provides the distance from which the church can speak prophetically to the state. The distinction between the institutions of government and religion is a peculiarly American arrangement that has been good for both church and state. As Garry Wills reminds us in his new book, *Under God* (Simon and Schuster), "The success of the Madisonian ideal has vindicated Madison's maxim that 'religion flourishes in greater

purity without [rather] than with the aid of government.'" Wills goes on to say, "America has remained deeply religious while taking ever more seriously the idea of separation. It is false to think that recent court decisions have made religion less important or effective in America, or even in our politics."

Further, the possibility of an effective impact upon the formation of public policy requires space between the believer and the object of one's prophetic witness, the structures which one would affect. Wills again: "If Madison is any guide, our churches are not, even now, too separated from political support. They should be freer still, which would make them more powerful and, paradoxically, more political. That is one of the American paradoxes we can be most proud of — that our churches have influence because they are independent of the government."

"Separation" is not a bad word. It's a Baptist word, a constitutional concept, an American idea. It seems clear that there must be another agenda driving the present attempts at the revision of history. Could it be that the current re-evaluation of the principle of separation is fueled by an institutional greed for government goodies? Could it be that some see that they must reinterpret historic insistence upon disestablishment before they can fund religious programs with public monies? These tactics are not succeeding.

Tax credits and vouchers for church-related schools and preschools have not fared well at the polls. Such public funding for private and parochial institutions was rejected in November by Oregon voters. So now, we hear of the schemes to take tax dollars for religious entities referred to under the innocuous banner of "choice." The all-American value of "competition" is appealed to as a way of diverting everyone's tax trust into someone's parochial program. Could it be that the reassessment of church-state separation is related to these pragmatics?

Surely some *real* reason drives those who seem compelled to challenge the American experiment of church-state separation. There are tensions. The delicate balance of "no establishment" of religion with the "free exercise" of self-sustaining sects of every sort is a formula for chaos. Yet, the experiment is worthy of continuing. It's the chaos of liberty.

Garry Wills in *Under God*, subtitled "Religion and American Politics" (to be reviewed in the February REPORT), concludes with this eloquent assessment: "No other government in history had launched itself without the help of officially recognized gods and their state-connected ministers. It is no wonder that, in so novel an undertaking, it should have taken awhile to sift the dangers and the blessings of the new arrangement, to learn how to best live with it, to complete the logic of its workings. We are still grappling with its meaning for us." May it ever be so.

Maybe the compulsion to revise the standard of church-state separation is a serious threat to religious freedom and more than a silliness.

Maybe we'd better be busy explaining why it's necessary to maintain the separation of church and state.

But for certain, as Baptists we must recognize the urgency of upholding the Baptist Joint Committee — a cooperative endeavor of ten national Baptist bodies in the United States — at the forefront in support for the separation of church and state, that most vital link to and guarantor of religious liberty for all Americans. □



# REVIEWS



## THE SCATTERED VOICE: Christians at Odds in the Public Square

James W. Skillen, Grand Rapids: Zondervan Publishing House, 1990. 252 pp.

James Skillen, the Director of the Center for Public Justice, has written a valuable book on the relationship between religious values and public policy. Focusing primarily on Christianity's impact on American politics, Skillen notes that American Christians utter their message in the public marketplace of ideas with a most "scattered voice." He then sets out to describe and contrast seven of these "voices" along the religio-political spectrum, offering a critique of each. As one reviewer has pointed out, this book provides a "scorecard ... for identifying the players representing competing 'Christian' political options today."

The political perspectives that Skillen recognizes among Christians today are these:

- *Pro-American conservatives* extol the virtues of traditional values and seek to recover the "America" that they believe once existed. They emphatically endorse the "Christian nation" thesis. They seek above all a moral revival and rely heavily on the political processes to enforce it. Jerry Falwell and Pat Robertson are examples of this voice.

- *Cautious and critical conservatives* are less likely to affirm America's Christian foundations in a constitutional sense or to regard the United States as the "new Israel." They believe human sinfulness infects government as much as the rest of the society. They have a more limited list of problems that legitimately can be solved in the political arena. Champions of this view include Charles Colson and Doug Bandow.

- *Sophisticated neo-conservatives* nucleate around Richard Neuhaus' "naked public square" thesis. They tend to view politics, although important, as being inextricably rooted in a larger social and cultural context, including the expression of religion. Their goal is to revitalize the religiously rooted American experiment in freedom. Neuhaus, along with Michael Novak and Peter Berger, are advocates of this school of thought.

- *Traditional and reflective liberals* part company with the three strains of conservative thought. They believe government should take a greater initiative in many areas to promote justice and to

bring about the "common good" — particularly economic equality. Government does not simply mediate among competing influences within a society but actively helps to shape a just society consistent with biblical norms of public justice. Examples of this approach include the social gospel movement (Walter Rauschenbusch) and present-day mainline Protestantism.

- *Civil-rights reformers* have much in common with the traditional and reflective liberals. They seek a gospel that is social as well as personal; their message flows existentially from the real world of discrimination. The priests and prophets of this school are, of course, Martin Luther King, Jr. and his successors through Jesse Jackson today.

- *Pro-justice advocates* form the left wing of evangelicalism. "Christ against the powers" is a common theme, but the extent to which political involvement is called for varies. Jim Wallis (*Sojourners*) seeks less Christian engagement in the political realm than does, for example, Ron Sider (Evangelicals for Social Action). Pro-justice advocates, particularly those following a liberation theology, struggle with the legitimacy of using force and governmental coercion to achieve one's social goals.

- *Theonomic reconstructionists* seek to establish a minimalist government in a society that is based on the Old Testament legal code. They see the covenant that God made with Israel as being normative for us today. R. J. Rushdoony and Gary North are proponents of this view.

In explicating these seven perspectives, Skillen does a good job describing what *is*. But this does not exhaust Skillen's ambition. He also has normative designs — to prescribe what *ought to be*. The book aims to encourage Christians to listen carefully to each other and then move from "contention to communication" — to develop a more consistent and coherent approach to politics. That is, Skillen wants to fashion a "principled framework" through which a Christian public philosophy will emerge.

At the end of the book Skillen gathers up these disparate strains of thought in

an attempt to construct an overarching Christian public philosophy. He suggests four elements to this new approach:

1. A Christian approach must deal with the "full reality of politics and government." It cannot be parochial; it must see the big picture.

2. This perspective must come to grips with the "real history of American politics." It should help us meet present political responsibilities, be familiar with the variety of ideological ingredients, and pay due attention to critical historical events.

3. This Christian political philosophy must account for its "biblical roots" and the larger stream of "Christian tradition."

4. The new approach must deal both with our "highly differentiated society" alongside our "rapidly shrinking world." Skillen calls Christians to make public arguments that go "beyond biblical quotations, general moralism, naive nationalism, simple individualism, utopian communalism and relativistic pragmatism" (p. 184).

Unfortunately, Skillen's ability to describe far exceeds his ability to prescribe. He never clearly sets forth how he plans for the cacophony of Christian voices to come into harmony — even under these four overarching criteria. He concludes that "Christians have much to argue about, but we have even more to share. Without pretending that our political voice is not scattered, we should seek diligently to recover a common voice for justice." (p. 224). But Skillen doesn't say how we build any kind of Christian consensus on what public justice means or which would bridge the vast disagreement on how we achieve those ends in the public arena.

Despite its prescriptive limitations, this book is an invaluable tool to understanding the presently "scattered voice" of the public articulation of Christian ethics in our society. Even though Skillen does not offer a specific, well-integrated "public philosophy," he nevertheless proffers some loose criteria for us to analyze and build upon as we Christians seek to be "salt" and "light" to secular culture. □ **JBW**

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