

# REPORT from the CAPITAL

## In the 200th year of the Bill of Rights *ETERNAL VIGILANCE*



“... A Civil State

‘with full liberty in religious concernsments.’”

**RELIGIOUS LIBERTY DAY 1991**

Baptist Joint Committee

# REPORT from the CAPITAL

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

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## Religious Liberty Day

Annual Religious Liberty Day observances by Baptists offer more than an opportunity to review the roots of religious liberty. They present a challenge for Baptists and others to examine the status of religious liberty in today's world and discover their role in preserving and expanding freedom.

To that end, writers in this issue of REPORT focus on this year's theme: "Religious Freedom in a Civil State: Baptists and the First Amendment."

Interpreting that theme, James M. Dunn reminds proponents of religious liberty of the need to maintain "eternal vigilance." For on the 200th anniversary of the Bill of Rights, religious liberty and its corollary, the separation of church and state, are in big trouble, largely because of a willingness by the Supreme Court and governmental policy makers to water down long-held religious liberty protections. Dunn maintains that a more complete understanding of the beginnings of church-state separation would do much to diminish many of today's church-state woes. That conclusion is drawn after tracing the vital roles of both religionists and rationalists in securing and shaping the religion guarantees of the First Amendment.

In an article designed to provide practical guidance for observing Religious Liberty Day, Victor Tupitza suggests that modern-day Baptists must take their places in the parade of patriots. A helpful step in accomplishing that, he contends, is gaining a familiarity with and understanding of freedom's essential documents such as the Declaration of Independence, and the U.S. Constitution and the Bill of Rights.

Freedom involves protection of the rights of the minority as well as those of the majority, a central point in this month's "Reflections" by James M. Dunn. When people are at their best, Dunn reminds us, they can reject the temptations that accompany siding with the majority.

In Views of the Wall, Oliver S. Thomas offers an insider's look at efforts to restore the high judicial standard protecting religious freedom that was abandoned by the U.S. Supreme Court in a 1990 decision. A broad-based religious coalition is working to secure legislation that again would require government to demonstrate a compelling interest before limiting religious freedom. But apparently not all religious groups are singing from the same sheet of music.

This month's book review is provided by Bill J. Leonard, W. W. Brookes Professor of American Christianity at Southern Baptist Theological Seminary, Louisville, Ky. □

Larry Chesser

**TAXES ARE THE LAST THING ON PEOPLE'S MINDS** during the month of May. Except for those working under the grace of an extension, most taxpayers are saying "good riddance" to that dreaded annual April encounter with the IRS. However, what U.S. citizens pay in April is determined by policies established throughout the year. Citizens would do well to pay attention to them.

- In October 1990, Congress voted to limit itemized tax deductions, including charitable contributions, for individuals and families with income over \$100,000 per year. Itemized deductions for high-income taxpayers are reduced by an amount equaling 3 percent of adjusted gross income in excess of \$100,000. This change establishes a dangerous precedent, a slippery slope if you will, which eventually could put a significant damper on charitable giving. Although there is little reason to think that this provision can be eliminated anytime soon, citizens can be watchful to keep it from getting worse and allow it to expire, as it will by its own terms, after five years.

- Since 1986, taxpayers who do not itemize (those who take the standard deduction) cannot deduct their contributions to charities and churches. It is fundamentally unfair to discriminate in this way against some 78 million taxpayers who, no matter how sacrificially they give, are unable to take a deduction. Two bills are pending to restore the charitable deduction to all non-itemizers. The House bill (H.R. 1556) is sponsored by Byron Dorgan, D-N.D., and Rod Chandler, R-Wash., and the Senate bill (S. 63) is sponsored by Daniel Inouye, D-Hawaii, and Bob Kasten, R-Wis. These bills probably will not pass in the current Congress. However, this issue needs to be kept alive. Baptist Joint Committee staff has met with Sens. Lloyd Bentsen, D-Texas, and Robert Packwood, R-Ore., and Reps. Dorgan and Nancy Johnson, R-Conn., to discuss this important issue.

- In the Tax Reform Act of 1986, Congress made gifts of appreciated property subject to the alternative minimum tax (AMT). Legislation (H.R. 1557 and S. 359) is pending that would reverse this practice. This once again would encourage contributions of appreciated property to assure financial support for the work of many educational, cultural and other charitable groups. This is a particularly important concern for Baptist colleges.

- Legislation has been introduced in the House by Tom Downey, D-N.Y., to increase the standard mileage rate deduction for charitable uses of automobiles. The Tax Reform Act of 1984 established the current charitable rate of 12 cents per mile; the bill would raise the rate to 16 cents per mile. Charitable organizations are hopeful that this bill will pass. It would benefit those persons who drive for church activities, such as youth trips, Meals on Wheels and Sunday morning runs to the home for the elderly. (JBW)

# Freedom's roots

## Back to the Bill of Rights' beginning

**R**eligious liberty and its constitutional guardrail, the separation of church and state, are in big trouble today. Just listen to what they are saying (and doing) in Washington:

- Justice Antonin Scalia, and four Supreme Court cohorts, demolished the tried and true requirement that government demonstrate a "compelling interest" before it can fiddle with our religious practice. He called this invaluable safeguard a "luxury" that we can no longer afford as a society.

- The Chief Justice of the United States, William Rehnquist, believes that Mr. Jefferson's protective wall of separation between church and state is a "metaphor based on bad history" which should be "frankly and explicitly abandoned."

- The Solicitor General of the United States, Kenneth W. Starr, has asked the Court to overturn decades of legal precedent requiring government to adopt a posture of neutrality toward religion. His misconceived interpretation of the First Amendment would allow the states and federal government to engage in religious exercises so long as they do not coerce anyone to participate or threaten to set up a national church.

- President George Bush has recently called for "choice in education" as a fix for our ailing public schools—a sanitized foil thinly wrapping the decades-old attempt to get tax dollars into religious schools.

- This past fall Congress (debunking religious liberty is not a partisan practice) limited the tax deductibility of donations to churches and other non-profit organizations, thus inviting by example fiscally strapped local taxing authorities all over the country to prey on church coffers.

How ironic it is for religious liberty to be under severe attack at precisely the moment when we should be celebrating its fruition—the 200th anniversary of the ratification of the Bill of Rights! This incredible ignorance on the part of our policy makers about our heritage and the true meaning of the Bill of Rights provides a propitious, but sad, occasion to look back over the last two centuries.

Look back not for arcane argument about "original intent." Look back not for academic nit-picking. Look back to

learn the lessons we never learned or to be reminded of the truths we have forgotten. Look back to put the origins of the Bill of Rights in context, to gain perspective, to capture the essence so that when mixed with current conflict one will hear not simply the words but also the music.

Word pictures, snapshots, of four key figures in the Bill of Rights family tree hopefully will humanize the history. The roles of these chosen forebears fall along a continuum from lofty principle to low-down politics, from abstract to concrete, from Cambridge to Culpeper. Chopping the continuum of contributions by Roger Williams, Thomas Jefferson, James Madison and John Leland into arbitrary, speech-sized divisions is but one design for getting back to the Bill of Rights' beginning. Special attention is here given to the first freedoms and the first words of the First Amendment, which begins the Bill of Rights. Those words are simply "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The words "no law," as Justice Hugo Black liked to say, mean plainly "no law," favorable or unfavorable.

Roger Williams fathered philosophically the American experiment in freedom of religion. Some of his London friends thought him "divinely mad." He shaped his colony of Rhode Island into the home of the otherwise minded. Some detractors preferred to call it "Rogue's Island," or "that sewer" or "the licentious republic."<sup>1</sup>

It was a far cry from socializing with royalty as he had in London to barren New England. He was a graduate of Pembroke College, Cambridge, a Charter house scholar from 1623 to 1629. Running interference for him had been the leading legal scholar of the day, Sir Edward Coke. Williams' famous friends and classy connections included John Milton and Oliver Cromwell. Now, it had come to this: cast out into the bitter winter, the "howling wilderness," as he wrote, "not knowing what bread or bed did mean"<sup>2</sup> for fourteen weeks.

This was part of the price Roger Williams paid for insisting upon freedom and not mere toleration as the standard for the treatment of religion. He despised toleration as the measure of the majority religion's relationship with dissenters. Williams understood that toleration is a human concession, but



*How ironic it is for religious liberty to be under severe attack at precisely the moment when we should be celebrating its fruition—the 200th anniversary of the ratification of the Bill of Rights!*

liberty is a gift of God. Government has no right to enforce religious uniformity or to collect taxes for support of the clergy. Indeed, Williams prefigured the freedom of religion guaranteed in the First Amendment.

Perry Miller places Williams at the foot of freedom: "Now as all the world knows, this Separatist (Williams) figures in history as the pioneer of religious freedom, even of democracy."<sup>3</sup> And, in a later work the Harvard scholar Miller praised Williams as a "prophet of religious liberty" who has molded the American character. "For the subsequent history of what became the United States, Roger Williams possesses one indubitable importance, that he stands at the beginning of it."<sup>4</sup>

Oscar S. Straus, a Jewish scholar, wrote of Williams, "He was not the first to discover the principles of religious liberty, but he was the first to proclaim them in all their plenitude, and to found and build up a political community with those principles as the basis of its organization."<sup>5</sup>

This practicing philosopher of freedom, Roger Williams, is nominated as one of the four founders most responsible for the First Amendment. He is disproportionately important because he first challenged the old world patterns of toleration, theocracy, church states and

This year's Religious Liberty Day theme interpretation is written by Baptist Joint Committee Executive Director James M. Dunn.

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state churches. He was banished, ostracized, ridiculed and thought to have windmills in his head. He died poor and rejected, nothing much to show for his labors ... except the American experiment of religious liberty and the most vital churches in the world. As Charles Kuralt says, "Today they've put him on a pedestal. The figure atop the capitol dome is called the Independent Man. He can see the whole state [of Rhode Island] from up there, the first state to be disrespectful and disreputable and free."<sup>6</sup>

Thomas Jefferson initiated intellectually the chain of legislation that led to the First Amendment and through agitation for it to the Bill of Rights. He was proud of the "Virginia Statute for Religious Freedom." Getting it passed was, he said, "the severest contest in which I have ever been engaged."

Patrick Henry, popular orator, had opposed the statute and pushed a contrary bill which would have established general assessments for the churches. Jefferson was in France and responded to letters from James Madison, who was leading the fight for Jefferson's proposed separation of church and state. Madison wrote, fearful that all was lost. Mr. Henry's taxation of all citizens to support the churches had passed two readings. It seemed certain to become law on passage of third reading. "What shall we do?" he asked Jefferson. Jefferson replied, "What we have to do, I think, is devotedly to pray for his [Henry's] death."<sup>7</sup>

As it worked out, Madison wrote the brilliant "A Memorial and Remonstrance Against Religious Assessments." Mr. Henry was elected governor—a post that did not have veto power. George Mason lobbied his peers, Baptists, Presbyterians and others produced petitions with hundreds of names, the Virginia Statute for Religious Freedom passed on January 16, 1786, and Governor Patrick Henry, with no veto, signed into law on January 19, 1786, the bill he had fought.

The importance of this one bill cannot be overestimated. Harvard historian Bernard Bailyn called the statute "the most important document in American history, bar none."<sup>8</sup> The Virginia Statute was the "model for the guarantee of religious liberty incorporated in the U.S. Bill of Rights."<sup>9</sup> What did this often forgotten law do for generations following?

● It protected the right to say "no" to all religion. One does have freedom from

religion as well as freedom for religion in this country no matter what powerful presidents and popular preachers may say. Without the freedom to say "no," all one's yeses are meaningless.

● It denied tax support to the churches. As Jefferson said, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."<sup>10</sup>

● It set out separation of church and state, later memorialized by Jefferson's metaphorical "wall" in an 1802 letter to the Danbury Connecticut Baptist Association.

● It guaranteed the free exercise of religion, not mere toleration or a condescending concession.

This Jeffersonian view of religious liberty and church-state separation found its way into the Bill of Rights. The revised standard version of the First Amendment as mentioned in the beginning of this article holds that it simply (1) rules out favoritism among religious groups and (2) prohibits an official State church, but endorses God-in-general and supports generic religion.

But, the Supreme Court, history and common sense consistently contend that the establishment clause embraces much broader—Jeffersonian if you will—restraints on government than these simple prohibitions.

The record of the Senate debates over approval of the First Amendment eloquently refutes all claims that a sort of preferential establishment was all the amendment intended to prohibit. As paraphrased from Stokes and Pfeffer's *Church and State in the United States*, the debate reveals the recommended alterations to the First Amendment.

In 1789, on the first day of debate, the Senate acted:

1. A motion was made to strike out the words "religion, or prohibiting the free exercise thereof," and insert "one religious sect or society in preference to others."

This motion was DEFEATED.

2. A second motion was made to strike out the amendment altogether. This motion was DEFEATED.

3. A motion was made to adopt the following instead of the words we have: "Congress shall not make any law infringing the rights of conscience, or establishing any religious sect or society."

This motion was DEFEATED.

4. A fourth motion was made to amend the amendment to read "Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed."

This motion was DEFEATED.<sup>11</sup>

It is clear that what the founders of

this Republic had in mind in this specific regard is *not* the aid-to-all-religions view of the revisionists. It was offered to them and they decisively rejected it.

Justice Harry Blackmun knows his history. He recently wrote: "We operate in the belief—almost the conviction—that in the United States there is a wall between religion and the State. Jefferson's influence is very strong."<sup>12</sup>

May it ever be.

***For all of Roger Williams' philosophical and practical precedents and all of Thomas Jefferson's brilliant accomplishments, yet it was little Mr. Madison who institutionalized religious liberty.***

James Madison was "the most important Founder institutionally speaking," as William Lee Miller argues, and Sam Rabinove agrees.<sup>13</sup> In our expansive tradition of religious liberty one should not minimize Madison's philosophical and intellectual gifts. For all of Roger Williams' philosophical and practical precedents and all of Thomas Jefferson's brilliant accomplishments, yet it was little Mr. Madison who institutionalized religious liberty.

To all appearances, Madison was an unlikely candidate for greatness. He was by his own description sickly, frail, timid and self-conscious. He had other liabilities among the rough-hewn frontiersmen of his day. He was small, five feet four inches tall, never weighing much over 100 pounds. One contemporary called him "little and ordinary." Another said he was "no bigger than a snowflake."<sup>14</sup> He was wealthy. His father owned 4,000 acres of land. He was brainy and bookish. He was never a fighter. Though made a "Colonel," his only duty was on the parade ground. Nowadays on campus he would be a "nerd," in the media the quintessential "wimp." Yet, what a man!

James Madison saw the need for a strong central government and worked to "enable the government to control the governed, and in the next place, oblige it to control itself."<sup>15</sup> He had learned well a sober, realistic estimate of humankind from his teacher Witherspoon at Presbyterian pre-princeton New Jersey College. "All men having power ought to be distrusted to a certain degree."<sup>16</sup> So today the checks and balances exist, given to us by the "Father of the Constitution."

Behind the scenes he plotted and

***Williams understood that toleration is a human concession, but liberty is a gift of God.***

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schemed, cut deals, engaged in every sort of chicanery to get General Washington to the Constitutional Convention and then kept the only substantial record of the proceedings that brought forth the Constitution. Only after he died, when his widow, Dolly, sold his notes of the convention debates did the nation become aware of his influence. One must agree with Fred Barbash when he says, "It is fair to say that the Constitution would not have come about without him."<sup>17</sup>

Many persons even today fail to appreciate Madison's role as author of the Bill of Rights. Since he had wavered in support for such a bill, some people fail to see that once he was convinced that the ratifying conventions made a bill of rights the condition for ratification he changed his tune. Madison pledged to work for such a bill. He was true to his word. He kept his promises. As William R. Estep says:

Those who had staked their hopes on Madison's integrity and commitment to freedom of religion were not disappointed. On June 7, 1789, Madison, considering himself bound in honor and in duty, submitted the first version of the no-establishment clause of an amendment that after ratification became the First Amendment in the Bill of Rights.<sup>18</sup>

He never needed to be converted to the cause of religious freedom. In fact, he became a "patriot" at the age of 22, specifically because of his passion for religious liberty. According to Merrill Peterson, "The cause of religious freedom became Madison's passport to Revolution."<sup>19</sup> The Virginia squire had considered the ministry and law as career options but found his vocation in the American revolution.

Finally, John Leland symbolizes the sort of founder who provided politically for the Bill of Rights, especially the First Amendment. A Roger Williams philosophy, a Jeffersonian rationale and a Madisonian structure would have all been useless without popular support. Bailyn says that the revivalists supplied the troops for the Bill of Rights. History supports this.

Thomas J. Curry gives credit to Leland, the least well-known of these four founders. "Until Leland," Curry writes, "no religious thinker matched the thought on Church and State of Roger Williams of the previous century."<sup>20</sup>

In his critical role Leland brought together in his own life and work the converging streams that made the lively experiment of religious freedom possible. Both rationalism and pietism, according to Mead, "were but obverse sides of a single movement which gathered enough power and momentum during the eighteenth

century to sweep in religious freedom and the separation of church and state over the opposition of traditional orthodoxy in the churches."<sup>21</sup>

The merging lines of dissent made possible, rather virtually demanded, the hitherto unheard of departure from the earlier concepts of the way religion regulates society. From the Constantinian symbiosis and the sacral society that came from it until this American impertinence, all the philosophical presuppositions, structures of religion and government and awful bloodlettings had taken place in the bedroom of the incestuous marriage of church and state, a damnable union.

***The Enlightenment leaders teamed up with the frontier preachers of a liberating religion. Together they brought about the first nation on the face of the earth with real religious freedom, full religious freedom for all, even those who are not religious.***

The fatal attraction that had brought the two together was the appeal to have the support of the flesh for the battles of the Lord. Theodosius the Great had issued decrees for the church that finalized the union begun by Constantine.

The Holy Roman Empire had with its two-swords concept propped up the ill-fated marriage that brought forth the progeny of crusades and inquisition. The Protestant Reformation brought timid reformulation of the relationship but dared not consider divorce. It took the combined and collective strength of the rationalists and the radical religionists to produce in the context of the American revolution the religious freedom guarantees of the Constitution and the First Amendment. This was a new thing on the earth. It was, as many have suggested, the only distinctive contribution of the American revolution.

Estep traces convincingly the converging lines of dissent in his *Revolution within the Revolution*.<sup>22</sup> He lists as champions of the uncoerced conscience under the rubric "rationalists" such thinkers as Marsilius de Padua (1325), Castellio (1555), John Locke, Voltaire, David Hume, Rousseau and, finally, Jefferson and Madison. Estep's honor role of religious radicals includes Balthasar Hubmaier (1524), Menno Simons (1539), John Smyth, Thomas Helwys, Leonard Busher, Roger Williams, John Clarke, Isaac Backus and, finally, Leland. They all shared the dangerous doctrine that Christ alone is Lord.

The peculiar individualism that sprang up on this continent was the product of these two strong streams of thought. It is curious that so many scholars have somehow been able to ignore one-sidedly the partnership.

On one hand the Religious Right, as if

in "hoss blinds," has seen only the evangelical contribution. The fervor of the "enthusiasts," especially in colonial Virginia, was critical to shaping America's way in church-state relations. This is especially true since they were the most politically active and numerically significant segment of the citizenry.

On the other hand, admirers of the enlightened have acted as if their third-grade social studies text offered adequate and sufficient explanation of the roots of civil and religious liberties by attributing them solely to the work of Jefferson and Madison. Either partial perspective is in error. Many of today's church-state con-

flicts might be diminished with a more complete understanding of the beginnings of church-state separation.

No one more than Leland captures the color and people power of those who demanded guarantees for religious liberty and civil rights. He was a giant of a man, on the road, among the folks. The big red-haired preacher was stumping southwestern Virginia denouncing state support for religion. On one occasion an Anglican clergyman challenged him saying "the minister should get tax support so he will not have such a hard time preparing his sermons." Leland said, "I can expound the scriptures without any special preparation." "Let's see if you can," replied the clergyman. "What ... would you do with Numbers 22:21, 'And Balaam ... saddled his ass?'"

Leland gave the setting and proceeded, "(1) Balaam, as a false prophet, represents a state hired clergy. (2) The saddle represents the enormous tax burden of their salaries. (3) The dumb ass represents the people who bear such a tax burden."<sup>23</sup> Leland's humor and logic prevailed. Leland argued effectively, "Experience has informed us that the fondness of magistrates to foster Christianity has done it more harm than all the persecutions ever did."

The Enlightenment leaders teamed up with the frontier preachers of a liberating religion. Together they brought about the first nation on the face of the earth with real religious freedom, full religious freedom for all, even those who are not religious.

It was Leland and hundreds like him who turned the tide for religious freedom and even the Bill of Rights. J. Bradley

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# Nurturing freedom at church

**R**eligious Liberty Day, as observed by churches related to the Baptist Joint Committee, annually focuses attention on themes that deal with religious liberty and (1) its biblical foundations, (2) Baptist heritage or (3) a contemporary issue. This year, on the first day of worship in June, Baptists are being asked to join all citizens in directing their thoughts to the anniversary of the Bill of Rights. That document's First Amendment is considered to be the most significant addition to the Constitution of the United States. Its importance has led many of the nation's most outstanding constitutional historians and legal scholars to designate it to be the "first freedom."

## Interpreting the theme

Perhaps never in all the years that the Baptist Joint Committee has produced materials for the observance of Religious Liberty Day has any theme proved to be as timely as that selected for this year. The First Amendment, with its carefully worded clauses in reference to religion: there shall be free exercise but no establishment, has for the past 200 years set the guidelines for religious freedom and the relationship of church and state. The past year has seen those two "religious liberty" clauses under attack.

There is no question that, for Baptists in America, the sanctity of individual conscience was paramount. The experience on the continent of the repression and persecution of dissenters from majority opinion was fresh in their minds. George Washington, sensitized to the importance Baptists placed on religion unfettered by government restrictions or abetted by government favor, in a letter to the United Baptist Churches in Virginia wrote:

"...if I could conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution."

The founders, Washington, James Madison and Thomas Jefferson foremost among them, were among the first Americans to practice freedom's "eternal vigilance," without which liberty of conscience for all Americans is severely jeopardized. A reading of the history of



## Religious Freedom in a Civil State: Baptists and the First Amendment

Baptist involvement for a bill of rights — crusading, if you will — adds names such as John Leland and Isaac Backus, Roger Williams and Obadiah Holmes to a list of early Christians whose influence helped shape the character of the American experience of religious liberty.

How can, perhaps must, we take our place in that parade of patriots? We must remember that in determining to bring about the First Amendment guarantees, Baptists never sought freedom for themselves alone. In current language, they had their eyes on "the big picture," or "the bottom line," understanding that the abridgement of any person's religious freedom brought threat to their own.

## Planning your observance

The temptation for government to tamper with historical precedent must be resisted, particularly when the principle of religious freedom is clouded by particulars with which many citizens might disagree. We are today witnessing disruptive government activity from an unexpected quarter. The feature article in this issue of *REPORT from the CAPITAL* refers to the Supreme Court and its track record over the past decade.

How can we accent the importance of observing Religious Liberty Day? Our theme raises the question, "How familiar are you with the Declaration of Independence, and how long has it been

since you read the nation's Constitution?" Shockingly, response to a survey taken a few years ago placed church-state separation not in the Bill of Rights but in the Constitution of the Soviet Union. This was not a sign that the respondents were not loyal Americans, but it was evidence of widespread ignorance. We should not add our voices without some understanding of the issues.

Following are some suggestions for your observance:

- Plan to give high visibility to the two most important national documents. Copies of both the Declaration of Independence and the Constitution are easily accessible. During a worship service, point out their references to God and religion and encourage members to secure their own copies (perhaps from their U.S. senators or representatives) for further study.

- Secure copies of these papers that are printed on paper stock that resembles the originals. A youth group or one of the church school classes can create an effective "interest center." Promising to give it a prominent location in the church will add encouragement to those responsible for this activity.

- Advise families planning a vacation trip to the nation's capital that these documents are always on display at the National Archives building.

- Discuss legislation affecting religious liberty. One option is the Religious Freedom Restoration Act. This legislation is expected soon to be reintroduced in Congress and is simply designed to restore a judicial standard that required government to demonstrate a compelling interest before inhibiting the free exercise of religion.

- Music also expresses the aspirations of those who believed America to be a singular nation. We often use two songs — "America the Beautiful" and "America" in worship services. Explore them, line by line, for added appreciation of the importance attached to the heritage of the nation as a sanctuary from oppression. But note the tension between faith and state — individuals, not nations, become Christians. □

—Victor Tupitza



# News in Brief

## Private school aid plan draws prompt criticism

**B**ush administration proposals to use tax dollars to help parents send children to private and parochial schools are coming under fire from several congressional, educational and religious quarters.

The administration plans to ask Congress for authorization to spend \$200 million to provide incentives to school districts to operate "choice" programs that allow parents to choose which schools their children attend and another \$30 million for states and local districts to set up "choice" demonstration programs. The administration plan also calls for existing Education Department program funds to follow students to public, private or parochial schools they attend under "choice" programs.

The educational "choice" proposal is part of a reform package announced April 18 by President Bush. The president's America 2000 strategy touts better and more accountable schools for today's students and a new generation of schools for tomorrow's students. The plan also emphasizes adult education, lifelong learning and the development of communities that nurture learning outside the school setting.

President Bush's announcement speech and Education Secretary Lamar Alexander's April 23 testimony before a Senate committee sketched a broad outline of the strategy but left many specifics unanswered. Alexander told the Senate Labor and Human Resources Committee the department would provide Congress specific legislative proposals by the end of May.

The administration is expected to propose legislation that would authorize grants to provide incentives to school districts to operate voucher programs that allow parents to choose which schools their children attend. The federal grants would not be used to finance the "choice" programs but to serve as incentives for states and districts to establish them.

The general push for educational reform and parts of the administration package have been applauded, but the "choice" proposals that would channel tax dollars to private and parochial

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—James M. Dunn

schools drew immediate criticism from several sectors.

"While there may be other elements in the grand plan that are acceptable, 'choice' is a misleading banner for the same old repeatedly rejected schemes to divert tax dollars to private and parochial schools," said Baptist Joint Committee Executive Director James M. Dunn. "Such approaches are unconstitutional, regressive, unfair, destructive of the public schools, expensive, inflationary, undemocratic, intrusive and divisive in the religious community. Other than that they may be all right."

Representatives of major education organizations and Capitol Hill lawmakers have also raised questions about the "educational choice" portion of the strategy.

In opening remarks at the Senate committee hearing, panel chairman Sen. Edward M. Kennedy, D-Mass., told Alexander that the Senate has endorsed the idea of choice for public schools.

"But the administration's proposal goes overboard on choice," he said. "By offering public dollars to private schools, including religious schools, the administration is reopening the bitter and divisive policy and constitutional debates of the past about aid to private schools."

Another panel member, Sen. Paul Wellstone, D-Minn., questioned whether the program would be well-funded enough to make private schools a realistic option for children in lower-income families. "I think this could very well widen inequities," he said.

Alexander told the Senate panel he

suspects the most divisive elements of the proposal will be those connected to "choice." The former Tennessee governor also said First Amendment provisions separating church and state and Supreme Court rulings in that area may also present obstacles in providing aid to parochial schools.

Asked by Kennedy whether private and parochial schools would be subject under the administration's "choice" plan to the same requirements and regulations that apply to public schools, Alexander said any school in the program, including parochial schools, would have to be publicly accountable. □

## Bonds for church school revoked by Lynchburg

LYNCHBURG, VA.

The Lynchburg Industrial Development Authority has revoked its decision of October 1989 to issue tax-free bonds to the Rev. Jerry Falwell's Liberty University, after the state supreme court described it as a primarily religious organization.

In an unrelated matter, a federal agency has ruled that the university is liable for improperly distributing federal aid to students participating in a branch of the university that the government said is actually a correspondence school.

The Lynchburg development authority said it had based its approval for the \$60 million bond issue on the university's declaration that it is an "institution of collegiate education." After the Virginia Supreme Court ruled in January that Liberty is a pervasively religious institution, the authority said it could not legally issue the bonds.

The university planned to use the proceeds for new construction and to refinance existing debt.

The Rutherford Institute has appealed the Virginia court's ruling on behalf of Liberty. The Rev. Nathaniel Habel, a retired Baptist minister, and fellow Lynchburg resident Haynie Kabler challenged the bond issue with the assistance of Americans United for Separation of Church and State.

Meanwhile, the U.S. Department of Education has ruled that Liberty University's School of LifeLong Learning is a correspondence school and not an external-degree program. The ruling holds the college liable for \$2 million in penalties and makes it responsible for buying \$4 million worth of Guaranteed



Student Loans from lenders. Correspondence school students are not eligible for the same level of financial aid as those in external-degree programs.

The penalties will affect the university, not the aid recipients. Liberty plans to appeal the ruling. □

## 7 ministers say Utah law violates religious liberty

SALT LAKE CITY

Seven members of the clergy have joined in a legal challenge to Utah's new abortion law, charging that its restrictions would force them to violate their religious principles by prohibiting them from helping women to obtain abortions.

The seven clergy were among 24 plaintiffs taking part in a lawsuit filed April 4 in U.S. District Court in Salt Lake City seeking repeal of the law. The statute, approved Jan. 25, is the strictest abortion law in the country. It outlaws abortion except in cases of rape, incest, fetal defect and grave threat to the mother's medical health.

An agreement approved April 8 by U.S. District Judge Thomas J. Greene led to a restraining order against enforcement of the law, pending a court ruling on the law's constitutionality. □

## Judge upholds van use for parochial schools

A federal judge has upheld the use of government-funded vans to offer remedial education classes to students in religious schools in San Francisco as long as the vans are located off school property.

In an April 1 ruling, U.S. District Judge William H. Orrick upheld an "off-the-top" distribution plan that gives parochial school more federal remedial education funds than public schools are given through the U.S. Department of Education's Chapter 1 program.

Americans United for Separation of Church and State, which supported a legal challenge to the San Francisco plan, had a mixed reaction to the ruling.

"We are pleased that Judge Orrick has reaffirmed the principle that tax dollars may not be used to provide instructional services on the premises of parochial schools," said the Rev. Robert Maddox, executive director of Americans United. "But we are disappointed that the court did not adequately address the larger church-state issues."



## Distinguished Service Award

*Dr. James M. Dunn (right), executive director of the Baptist Joint Committee, receives The Churches Center for Theology and Public Policy's Distinguished Service Award from Dr. Charles Bergstrom, vice president of the Churches Center and a retired Lutheran governmental affairs official. In presenting the award, Bergstrom called Dunn a friend, a person of faith and a staunch advocate of freedom. The center is a 16-year-old Washington-based organization that serves as a research resource, generally known as a "think tank," for churches dealing with political issues. (Baptist Joint Committee Photo)*

Maddox, a Baptist minister, said the San Francisco plan "clearly entangles church and state in an unconstitutional way. It also gives parochial schools an unfairly large share of remedial education funds."

He noted that federal courts in Kentucky and Missouri ruled that parochial schools could not constitutionally be given a disproportionate share of federal remedial education funds. Maddox predicted Orrick's decision would be overturned by higher courts. □

## Lawsuit challenges ban on religious group funds

The Rutherford Institute has charged that the University of Hawaii is violating the Constitution by denying religious student organizations activity funds that are available to non-religious student groups.

The lawsuit was filed March 22 in

U.S. District Court in Honolulu on behalf of three students at the university, one former student and Maranatha Campus Ministries of Hawaii.

The suit asserts that before May 1989 all student groups were eligible to receive monies from a student activities fund, although religious groups were given funding only for activities with a secular purpose.

The lawsuit contends that after the American Civil Liberties Union threatened litigation against the university for alleged church-state violations, the Hawaii attorney general's office and the state university agreed to deny all funding to groups which would "use the funds to promote a particular religious point of view, even in a secular context."

The lawsuit argues that the policy excluding funding for religious groups violates religious students' rights to free speech, free association, free exercise of religion and equal protection under the laws. □

## VIEWS OF THE WALL

Oliver S. Thomas  
General Counsel



**B**etrayed!  
That's how many of us felt recently when we learned that the U.S. Catholic Conference was preparing to introduce an alternative bill to the Religious Freedom Restoration Act (RFRA). RFRA is the bill designed to restore the protections for religious freedom that Justice Antonin Scalia scrubbed in *Oregon v. Smith*, last year's peyote decision. Their attorneys had assured some of us that the Catholic Church would maintain a posture of neutrality toward RFRA. But, in a closed meeting several weeks ago with Republican Congressman Henry Hyde we learned that, in addition to drafting their own bill, the Catholics had (1) pulled key co-sponsors (including Mr. Hyde) off the original bill,

*The notion that any group would ask for special favors in a bill designed to restore the lofty legal principle of religious liberty is offensive to this Baptist.*

and (2) attempted (with some success) to raid the coalition of organizations supporting RFRA.

At the heart of the Catholic alternative is a special provision that bars completely three types of free exercise claims.

First, the Catholic proposal would forbid a person from challenging any law restricting access to abortion services or funding. Even in cases where her own life was endangered, a woman would not be allowed to argue that her religious convictions required her to procure an abortion as would be the case with many orthodox Jews. Leading constitutional scholars from the anti-abortion camp have characterized this provision as completely unnecessary since: (1) no woman has ever successfully challenged an abortion law on the basis of a free exercise of religion argument, (2) the issue is moot unless *Roe v. Wade* is overturned and (3) if the Supreme Court overturns *Roe*, it would not recreate a right to abortion under another legal theory.

The Catholics' concern that because RFRA is remedial in nature it will be broadly interpreted so as to tilt the playing field in favor of abortion claimants may have some merit. But, RFRA drafters have offered to include language

that would make clear the bill is not to be interpreted in a way that would create advantages or disadvantages for claimants that would not have existed anyway but for the *Smith* decision. Not good enough, said the Catholics. We don't even want such arguments to receive a hearing.

Second, the alternative proposal would forbid any person from mounting a challenge to an organization's tax-exempt status. Again, the provision is superfluous. Recently, the Supreme Court *unanimously* held that persons do not have legal standing under the constitution to challenge the tax-exempt status of a church. RFRA drafters have offered to include a provision that would make legal standing under the bill subject to the same rules applicable to First Amendment litigation. Even this ironclad protection isn't good enough for the Catholic Conference.

Finally, the Catholic alternative would prevent persons from challenging "the use or disposition of government funds or property derived from or obtained with tax revenues." Translated: No Baptist whose religious beliefs are violated by paying tax to support a parochial school could even raise an objection under this bill. Ironically, this provision, like the other two, is needless. Any dispute involving government aid to religious institutions will almost certainly be decided under the establishment clause, not a statute that codifies free exercise principles.

Even if one agreed with the Catholic Conference's positions on all three of these substantive issues, it would be inappropriate to include them in a bill designed to protect *everyone's* religious liberty. No person — not even Congress — has the right or the power under the Constitution to say that certain types of free exercise claims can be raised but not others. Dozens of religious and civil liberties groups (ranging from the National Association of Evangelicals to the American Civil Liberties Union) have laid aside personal differences over how individual free exercise claims ought to be resolved to unite behind a constitutional principle that has been settled for decades — each person's religion is entitled to be protected unless the state can demonstrate that restricting that religion is essential to accomplish a "compelling" governmental interest. Restoring this legal standard is precisely what the Religious Freedom Restoration Act would accomplish — nothing more, nothing less.

*Even if one agreed with the Catholic Conference's positions on all three of these substantive issues, it would be inappropriate to include them in a bill designed to protect everyone's religious liberty.*

The notion that any group would ask for special favors in a bill designed to restore the lofty legal principle of religious liberty is offensive to this Baptist. One is left wondering whether this particular group would have opposed enactment of the First Amendment, unless it contained a similar set of exemptions.

It's time to start telling Americans the truth about what's holding up the Religious Freedom Restoration Act. Would you believe it's a church? ☐

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### JUNE 1992

SUN	MON	TUE	WED	THU	FRI	SAT
	1 1946: Ambassador Life, publication for the Rural Ambassadors, was begun.	2 1828: Joe Ball Williams, N.E. WM leader in Georgia, was born in Cantonville, GA.	3 1881: A Scandinavian Baptist church was formed in Seattle, the first on the West Coast.	4 1768: Five Virginia Baptists imprisoned by the state for "disturbing the peace."	5 1934: Franklin College of Indiana established as The Indiana Baptist Manual Labor Institute.	6 1899: Samuel Franklin Lowe born in Houston Co., TN, converted the site of an SBC campus.
7 1759: The New Connection met in London to cause the "Articles of Religion."	8 1789: James Madison, with Baptist support, proposed the First Amendment to the Constitution.	9 1844: William Carey died at the age of 72 in his 43rd year as a missionary to India.	10 1921: J.B. Lambert, Texas Baptist leader and SBL president from 1917-1920, died at the age of 79.	11 1957: The first trustee meeting of Midwestern Baptist Theological Seminary held in Kansas City.	12 1714: The first record of Baptists in North Carolina, in the Chowan parish.	1879: The Swedish Baptist General Conference held their first annual meeting in Village Creek, IA.
14 1814: The first issue of the Sabbath Recorder, published by Seventh Day Baptists.	15 1784: Isaac McCoy, missionary and advocate of Native American rights, born in Fawcett Co., PA.	16 1862: Fannie Foster Brinkley Black was born, served as WM president for 15 years.	17 1905: Arrian Haralson died: WM pastor and first German student at Rochester Theological Seminary.	18 1854: First Baptist Church in Stockholm, Sweden, organized by D. Forsell and P.F. Heydenberg.	19 1841: Charles Haddon Spurgeon born in Kenton, England; preacher, evangelist and author.	1899: Howard Payne College founded in Princeton, TN by J.D. Roberts.
21 1681: William Stevens, founder of Kittery Church, was baptized in Kittery, ME.	22 1886: John Walter Cooper was elected as the first president of Georgia Baptist College in Aft.	23 1790: the first organization of Baptists in Canada formed in Cornwallis, Nova Scotia.	24 1813: The Baptist Union of Great Britain and Ireland was formed.	25 1862: The American Baptist Home Mission Society used to send missionaries to "Southern Field."	26 1868: Black minister Charles S. Caldwell pledged to meet and all preachers not found in Scripture.	1822: The Georgia Baptist Convention was organized in Peachtree.
28 1946: Seventh Day Baptist Historical Society incorporated in New Jersey.	29 1886: The first meeting of the Baptist General Convention of Texas was held in Waco.	1866: Black Baptists of the North, western and Southern Baptist Convention met in Nashville.				

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# INTERNATIONAL DATELINE



## Canadian church leaders oppose land decision

VANCOUVER, B.C. National and British Columbia church leaders have expressed dismay at a ruling by the British Columbia Supreme Court saying that the land rights of Native Americans were "lawfully extinguished by the Crown in the colonial period."

In a judgment that ran nearly 400 pages, Chief Justice Allan McEachern said, "It is the law that aboriginal rights exist at the pleasure of the Crown, and they may be extinguished whenever the intention of the Crown to do so is clear and plain."

The ruling, in what has been described as the biggest land claim in Canada, denied the contention of the Gitksan and Wet'suwet'en tribes that they have exclusive title to 57,000 square kilometers (about 22,000 square miles) of land in north central British Columbia.

"We are alarmed and shocked by the judgment," five British Columbia church leaders said in a joint statement. "We share the hurt and sense of betrayal felt by aboriginal peoples."

A statement that was issued by the Canadian Council of Churches said that "the judgment appears to reflect a colonial view of society toward aboriginal people which is not acceptable." The statement said the decision "is a tragic commentary on the continuing colonial attitudes that pervade our legal system."

Michael McDonald, head of the University of British Columbia's Centre for Applied Ethics, said the legitimacy of Canada and its entire legal system is at stake. "It's really scary to say to anyone: 'We want you to respect the law, but ultimately our laws are based on force, sanctified by tradition,'" he said. According to Mr. McDonald, the law in such cases becomes "morally arbitrary." □

## Interfaith legal battle continues in Jerusalem

JERUSALEM Nearly a year after 150 Jews touched off a major interfaith confrontation by moving into the 72-room St. John's Hospice in the Christian quarter of Jerusalem, the legal battle over their presence is entering its final stage.

A Jerusalem magistrate is presiding over a trial in which the Greek Orthodox patriarchate, which owns the hospice,

argues that the lease that allowed the Jews to enter was illegal.

The occupation of the hospice in April, 1990 led to riots and brought Christian groups together in a show of unity that closed down Jerusalem's holy sites in a one-day protest.

So far, the church's legal battle has been uphill. In December, the Jerusalem District Court dismissed all of the previous eviction notices against Jewish families. The court also ruled that the church could not fire the agent who sublet the hospice to the Jews.

Two subsequent church appeals of the district court decision were rejected. Still, the church says it remains optimistic. "We must win. This is our right," said Bishop Kholvolus Sidkaris, the custodian of patriarchate property. □

## Religious freedom gains more ground in U.S.S.R.

A meeting of religious leaders called by Soviet President Mikhail Gorbachev and a massive Scripture distribution project are the latest pieces of evidence that religious freedom is continuing in the U.S.S.R.

"There has been a complete reversal of the Soviet government's attitude toward religion," Rabbi Arthur Schneier, president of the Appeal of Conscience Foundation, reported in New York following a week-long visit to Moscow.

"Religion is no longer considered the enemy of the state but its potential ally — no longer the opium of the masses but the vitamins," said Schneier.

Gorbachev had invited religious leaders to meet with him March 12 — five days before the nationwide referendum on the future of the Soviet Union. In so doing, said Schneier, the Soviet leader was acknowledging "the contribution that religious groups and their leaders could make in providing a moral context to Soviet life at a time of moral vacuum and disillusionment with Marxist ideology."

The Scripture distribution project, known as the Moscow Project, brought Russian Orthodox, Pentecostal and independent evangelical churches together with parachurch agencies in the West to distribute 4 million free New Testaments throughout the U.S.S.R.

The first shipment of 500,000 of the Russian-language New Testaments has already arrived in Leningrad. Coordinating the project on behalf of 14 Soviet, three European and five American

organizations is the International Bible Society of Colorado Springs and the Evangelical Christian Publisher's Association, based in Tempe, Arizona. □

## WCC executive urges reappraisal of U.N. office

NEW YORK A top international affairs executive of the World Council of Churches says the time has come to examine the role of the United Nations secretary general in view of that office's limited role during the Persian Gulf war.

Ninan Koshy, director of the WCC's Commission of the Churches on International Affairs, told a group of journalists here that the U.N. must invest the secretary general's office with some flexibility or risk having an office that has little power to pursue peace aggressively.

The role of the general secretary has been ambiguous from the very beginnings of the U.N., said Koshy, resulting in differing sets of expectations and tensions that pit the five permanent members of the Security Council against "the peoples of the world."

Permanent Security Council members — the United States, Soviet Union, China, France and the United Kingdom — expect the secretary general to be an agent for maintaining the status quo. Others, said Koshy, expect the secretary general to be "a promoter of change, human rights, peace and justice."

Koshy said a confidential U.N. report, recently made public, of Perez de Cuellar's trip to Baghdad underscores the limited peacemaking role the secretary general played in the crisis.

That report, says Koshy, revealed that Iraqi President Saddam Hussein had asked Perez de Cuellar to use his "good offices" to bring about a negotiated settlement to the crisis.

However, in public comments he made after the trip, Koshy claimed, the secretary general had said nothing about the Iraqi leader's request, and Perez de Cuellar never brought the parties together to negotiate. □

## Reports claim Noriega professed faith in Christ

Deposed Panamanian dictator Manuel Noriega has reportedly made a personal commitment to Jesus Christ in the Miami prison where he is being held.



## NEWS-SCAN

According to reports released by the Florida Baptist Witness, Noriega wrote in Spanish that "I received Jesus Christ as my savior the 15th day of May of 1990 at 11 a.m. in a small room, like unto a cave, in the Metropolitan Correctional Center of Dade County, Fla."

Noriega's new faith began when he received a New Testament sent to him by evangelist Clift Brannon of Longview, Texas, in response to a televised report showing the deposed dictator emerging from the Vatican Embassy in Panama Jan. 3, 1990.

"I saw that scene and it touched my heart," Brannon said. "I thought, here is a man searching for God. God spoke to my heart and told me to send the general a Soul Winner's New Testament."

In January, Noriega wrote thanking Brannon for the "inspiring and spiritual communication" and saying that he had begun to study the scriptures. Later, he telephoned Brannon, who said he began his conversation by saying, "General, God loves you and gave his son for you. Your mother was inspired when she named you Emmanuel."

Noriega has not been allowed to speak to the media since he surrendered to American agents. Brannon says he has witnessed thousands of conversions and is convinced that Noriega's turnaround is authentic.

The deposed dictator's conversion will have no legal impact on his trial. "We do not prosecute based on religious principles but on violations of federal law," said Diane Cossin, executive assistant to the U.S. Attorney's office in Miami. Noriega's attorney agreed that his client's religious conversion "would be outside the scope of evidence in the trial." □

### U.S. neighbors alerted by Mexican bishop

#### CALGARY

According to Mexican Bishop Samuel Ruiz, the 500th anniversary of Columbus' arrival in America must lead Canada and Mexico to act together to protect themselves against exploitation made possible by free trade agreements. The two neighbors, said Ruiz, should be wary of becoming subordinate to traditional U.S. economic strategies, where the U.S. would reap the profits of Canadian natural resources and a cheap Mexican work force. The U.S. recently signed a free trade agreement with Canada and is negotiating now with Mexico. He believes the 500th anniversary would be

a good time for North and South American countries to re-evaluate and restructure the New World on an equitable friendship, in which the well being of people is more fundamental than purely economic considerations. It is an opportunity "to reconstruct the Christian view of the New World," he said. □

### Irish Baptist pastor urges prayer for peace

A Baptist pastor from Dublin thinks churches are "part of the problem and therefore must be part of the solution" to the conflict in Northern Ireland. Robert Dunlop, former president of the Baptist Union of Ireland, said that while "the troubles" are not primarily a religious war between majority Protestants and minority Catholics there, it is naive to say they are not a factor. Dunlop was in the United States promoting March 17 as a day of prayer for peace in Ireland. He also encouraged Southern Baptist churches to communicate with Irish Baptist churches. There are about 100 Baptist churches with about 20,000 members in all of Ireland. □

### Churches aid Peru

An outbreak of cholera in Peru has prompted several organizations to send needed supplies to that area. The Southern Baptist Convention Foreign Mission Board approved \$60,000 from relief funds to purchase and transport medical supplies to Peru. Texas Baptist Men helped to coordinate air shipments of supplies in March. Lutheran World Relief has shipped 1,380 health kits and 10 bales of blankets to its office in Lima in response to the epidemic.

The Peruvian Ministry of Health reported in mid-March that over 50,000 cases were confirmed and more than 260 people had died as a result of the disease. □

The Baptist World Alliance in a letter of encouragement to Baptists in the Middle East promised to enlist funds to alleviate the problems caused by the Gulf War crisis. BWA leaders plan to visit there "as soon as safe and suitable arrangements can be made." ... The Executive Committee of the Baptist World Alliance has urged Baptists worldwide to respond to the need for food and medical supplies in war-torn Liberia. The BWA noted the "Baptist heritage" of Liberia, which was settled in 1822 by freed slaves from the United States. Baptist World Aid, the relief and development arm of the BWA, has sent food and medical shipments to the country, which has suffered from civil war, social turmoil and wide-scale malnutrition for the past several years. Dr. Charles G. Adams, pastor of Hartford Memorial Baptist Church in Detroit and president of the Progressive National Baptist Convention, Inc., is among the BWA leaders who have worked for peace among Liberia's warring factions since last year. Their efforts have contributed to a temporary cease-fire in effect since early March. ... The regime of Saddam Hussein has killed more than 20,000 Christians, expelled 75,000 and destroyed nearly 100 churches, according to a report issued by a European human rights group. Presenting a report at a news conference in Jerusalem, the German-based Society for Threatened Peoples said that since 1968 Saddam has targeted the Kurds and Assyrian Christians for persecution and extermination. An estimated 400,000 Assyrian Christians live in Iraq and are descendants of a religious community that is at least 1,500 years old. They speak Aramaic, the language used by Jesus Christ. ... Lord (Immanuel) Jakobovits, the recipient of the 1991 Templeton Prize for Progress in Religion, believes religion has been a contributing factor to many wars but it can also help to foster peace by helping people to "feel the anguish even of the enemy." The 70-year old honoree, the retiring chief rabbi of Great Britain and the Commonwealth, is the first Jew to receive the award. Of the Gulf war he said, it was "proclaimed as what I can only regard as the ultimate obscenity, a holy war" and said he "could not think of a greater perversion of religion other than to use the word 'holy'."

## Bill of Rights, from Page 5

Creed in his 1986 dissertation on Leland summarizes his contribution as the political engineer of the First Amendment:

While his doctrine of the human conscience was an essential contribution to the debate over church-state issues, he did not break much new ground in terms of political theory. His genius lay in his ability to take the insights of leading political figures and make them intelligible to the common man. At party meetings and in Fourth of July speeches, he effectively mixed the basic tenets of liberal democracy with strong doses of common-sense pragmatism and pietistic fervency. John Leland and the Separate Baptists of Virginia cannot be given sole credit for the ratification of the Federal Constitution, but their role was essential. They acted as a bridge between the more landed politicians and the general populace which clamored for greater protection of individual freedoms.<sup>24</sup>

Warren E. Burger, former Chief Justice of the United States, is correct in his recounting of history regarding the Bill of Rights. The delegates who met in Philadelphia had decided not to have a bill of rights. "But," as Burger reminds, "when the Constitution went to the states for ratification, there was a popular demand for additional individual liberties."<sup>25</sup>

The Constitution just squeaked by in three key states' ratifying conventions. In each instance it was clear that the people were demanding a bill of rights. In Massachusetts and Virginia it became the condition for ratification without which there would have been no constitution. The final vote in Massachusetts was 187-168 in favor of ratification: a 10-vote shift would have defeated it. Champions of a bill of rights Samuel Stillman and Isaac Backus led the motley mix of 25 Baptists and other separatists who agreed to vote for

ratification if they were promised a bill of rights.

In Virginia it was 89 to 79. The deal was clear and unmistakable. Votes to ratify depended upon pledges to support a bill of rights. It was the people who wanted and got the Bill of Rights. The folk of the frontier in their fear of an oppressive state and corrupt church demanded protection from both. As Senator Sam J. Ervin, Jr. said, "When religion controls government, political liberty dies; and when government controls religion, religious liberty perishes."<sup>26</sup>

Some religionists today see the First Amendment as a one-way street designed only to protect religion from the state. These revisers hold that the Bill of Rights restricts and limits only government. While they may have the letter of the law on their side, the spirit of religious liberty and its corollary the separation of church and state are much broader.

Edwin M. Yoder, Jr. would agree with Madison in his theological pessimism regarding religionists. He writes, "Ours is a world in which hot-eyed people are on the prowl, seeking to thrust their creeds into your space and mine. If they had their way, would America escape the fate of Persia [or Iraq], Lebanon or Ireland? Optimists obviously believe that Americans are immune to the pitfalls of spiritual pride that have ripped those societies apart. I'd as soon not run the risk."<sup>27</sup>

Hence we have, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. ..."

## ENDNOTES

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<sup>3</sup>Perry Miller, *Roger Williams* (Indianapolis: Bobbs-Merrill Company, 1952), p. 26.

<sup>4</sup>*Ibid.*

<sup>5</sup>*Op. cit.*, p. 233.

<sup>6</sup>Kuralt, *op. cit.*

<sup>7</sup>Jefferson to Madison Dec. 8, 1784, *The Federal Edition of the Works of Jefferson*, IV, ed. P. L. Ford, pp. 381-5.

<sup>8</sup>Quoted in Joy Hakim, "A Forgotten Fight for Religious Freedom," *Wall Street Journal*, July 26, n.y.r., p. 26.

<sup>9</sup>William Lee Miller, "The Bicentennial of the Virginia Statute," *The Christian Century*, Dec. 18-25, 1985, 1171.

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<sup>11</sup>Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States*, (rev. one vol. ed.; New York: Harper & Row Pubs., 1964), p. 98.

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<sup>13</sup>William Lee Miller, *The First Liberty: Religion and the American Republic* (New York, Alfred A. Knopf, Inc., 1986), as reviewed by Sam Rabinove in *Judaism: A Quarterly Journal of Jewish Life and Thought*, XXXV, No. 4, (Fall 1986), 502.

<sup>14</sup>Fred Barbash, "A Man for 1987," *Washington Post*, March 15, 1987, n.p.

<sup>15</sup>Quoted in Barbash, *op. cit.*

<sup>16</sup>*Ibid.*

<sup>17</sup>Barbash, *op. cit.*

<sup>18</sup>William R. Estep, *Revolution within the Revolution: The First Amendment in Historical Context, 1612-1789* (Grand Rapids, Mich.: Wm. B. Eerdmans Pub. Co., 1990), p. 168.

<sup>19</sup>Merrill D. Peterson, *James Madison* (New York: Newsweek, 1974), p. 26.

<sup>20</sup>Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (New York: Oxford University Press, 1986), p. 182.

<sup>21</sup>Sidney E. Mead, *Lively Experiment: The Shaping of Christianity in America* (New York: Harper & Row, Pubs., 1963), p. 38.

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<sup>23</sup>Joseph M. Dawson, *Baptists and the American Republic* (Nashville: Broadman Press, 1956), p. 97.

<sup>24</sup>J. Bradley Creed, "American Prophet of Religious Individualism," Ph.D. diss., Southwestern Baptist Theological Seminary, 1986, p. 200.

<sup>25</sup>Warren E. Burger, "What It Means To Us," *Parade Magazine*, January 27, 1991, 4-5.

<sup>26</sup>Sam J. Ervin, Jr., "The Meaning of the First Amendment," Address in the United States Senate, April 23, 1971.

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## REFLECTIONS

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Why is it that "majoritarian" has become a dirty word? Doesn't it just mean one who believes in majority rule?

Unfortunately, no, it has come to mean one who participates in or approves of the tyranny of the majority; who is insensitive or even unaware of minority rights; who would fudge on the rule of law, disregard fair play and revise the "Bill of Rights."

James MacGregor Burns in *The Crosswinds of Freedom* reminds us that "the Framers of the Constitution had been deeply ambivalent toward the idea and practice of majority rule." He says "they had to accept the ultimate power of the people as expressed in electoral and legislative majorities." Yet, "they wished to curb the power of popular majorities, composed perhaps of debt-ridden farmers, to invade property rights." And so, the founders "shaped a constitution that would thwart sudden and passionate expressions of popular will."

A more appropriate question for this page is what is it in each of us that encourages heavy-handed majoritarianism? A little confession is good for the soul.

Which one of us does not want to be on the winning side? Uncle Bob, my favorite uncle, always seemed most concerned at election time with how many votes he'd "lost." He watched the returns carefully to announce that of votes he had cast for all candidates he had "lost" only 3 or 5 or whatever small number. He was good at his game. His game, however, was "predict the winners." I couldn't understand it. Idealistic youngun' that I was, I believed one should know what a candidate stood for and vote one's convictions. Silly kid, I did not understand that winning wins, them what has gets. Part of the reason that politics in both major parties seems to be on the brink of a gutless, lowest-common-denominator appeal to the masses is that individually there are lots of "Uncle Bobs" trying to pick the winners. They think that by doing so they demonstrate *superiority*.

Then, things are much neater when one can say: Majority rules. That makes it right. That makes it good. That makes it best. It's gotta' be this or that.

Harry Truman half jokingly said he hated "those two-handed fellars," who were always saying "on the one hand, but on the other hand." Which one of us does not prefer to deal with simple problems? Mark Twain in *Huckleberry Finn* pointed to the popularity of easy answers. "Hain't we got all the fools in town on our side?" A bumper sticker, or television sound bite offers the simple answer. It doesn't seem to matter that it's often the wrong answer. We all crave *simplicity*. Offering it is a good way to assemble a majority.

Next, who among us would not prefer to get some of society's vexing problems settled once and for all. That's that. John Updike in *A Month of Sundays* offers evidence for that universal eschatological urge that all human beings possess to engage last things. He points to the disproportionate and inexplicable joy one knows when he or she finishes off a tube of toothpaste. Finally, the last squeeze! No more! Sadly, there is seldom that sort of resolution to political problems and social struggles. A piece of music may happily come to a final cadence (IV-I or V-I), most of us in my generation deem any pseudo-musical offering that doesn't "settle in" to be nothing but

noise. But public policy questions aren't like that.

Reinhold Neibuhr was right when he cautioned that all legislative and political solutions are but "proximate" solutions. Being in the majority on any question simply does not signal or satisfy our hunger for *finality*.

Who is there among us who would not prefer to move among others with some agreement. We would all like for people to get along together. Not many people are comfortable with conflict. In fact, most of us will go around the block to avoid confrontation. Upon reflection, however, we do not want everyone to be alike, we do not require others to think as we do and we value highly the diversity that marks America. We do not want sameness especially in religion, philosophy and politics. As Roger Williams said in *A Bloudy Tenent of Persecution*, "An enforced uniformity of religion throughout a civil state confounds the civil and religious, denies Christianity, civility and that Jesus Christ is come in the flesh." Emil Brunner saw collectivism forming society as if with so many "briquets of pulverized individuals." As much as we may think we'd like serene similarity and a sort of blended blandness, no tug toward being a part of majority thinking would make us accept *uniformity*.

While we may hanker for *superiority*, *simplicity*, *finality* and *uniformity*, most of us would reject those temptations on our good days. We know that the desire to be in the winning majority with easy answers once and for all for everyone alike is a dangerous deception. At our best we are not majoritarians. Yet, the temptation is real even to those whose forbearers have suffered persecution. John Mecklin mused upon the classic contradiction. "When a persecuted and disinherited group has become entrenched, rich, and powerful, it has become so concerned with preservation of its own peculiar type of piety that it has looked askance upon the spirit of free criticism and inquiry that made its success possible."

Baptists, Roman Catholics and other "majority" religions should take heed.

Those in any religion once despised and persecuted should be especially wary of taking comfort in being part of the comfortable majority.

Happily in this land we have a "Bill of Rights" that protects minority thinking however bizarre and however far from the mainstream. On September 17, 1990 in questioning Supreme Court nominee David H. Souter, Sen. Howard Metzenbaum asked: "Do you believe that the Supreme Court has the obligation to enforce fundamental rights no matter how unpopular the cause...?" Justice Souter replied, "Senator, there is no question about it. If that were not the case, there would be no point in having a Bill of Rights."

Minorities have rights, too.

Burns wraps up the argument about majority rights. "Jefferson, as a libertarian and democrat, set as a 'sacred principle' that if the will of the majority is in all cases to prevail, that will, to be rightful must be reasonable"—it must not violate the minority's "equal rights."

But he had confidence that a majority of free Americans would never trample on the liberties of fellow Americans as guaranteed in bills of rights. □





## A Religious History of America New Revised Edition

Edwin Scott Gaustad. San Francisco: Harper and Row, 1990.

**T**his book, first published in 1966, has been a favorite introductory text in American religious studies for a generation of college students. Edwin Scott Gaustad's survey of American religion was known for its order, insight and literary quality. It paralleled and preceded other introductory texts by Sydney Ahlstrom, Martin Marty and Catherine Albanese. Now Gaustad, professor of history at the University of California, Riverside, has produced a revised version of this classic work. Long concerned with the impact of pluralism on American religious life, Gaustad gives new attention to such issues as ethnicity, ecology, fundamentalism, the women's movement and the continuing challenge of modernity.

The book is divided into five sections: the Age of Exploration, the Age of Colonization, the Age of Expansion, the Age

*Gaustad observes that "A careful study of the past will, however, make the novelties of the year 2000—whatever they may be—less intimidating, less confounding."*

of Empire and the Age of Limits. The latter category is a sobering and realistic survey of religious life on the threshold of the 21st century. Indeed, in a brief preface Gaustad observes that "A careful study of the past will, however, make the novelties of the year 2000—whatever they may be—less intimidating, less confounding."

Gaustad's great gift is his ability to survey the massive, diverse and sometimes confusing story of religious Amer-

ica without becoming encyclopedic or obscurantist. He succeeds brilliantly, providing an excellent overview of the multifaceted religious traditions which compose the American mosaic. The book opens with an introduction to the pluralism of Native American religious expressions which were present long before Europeans arrived. The early section also offers insight into the obsession for colonization which sent Europeans—Protestant and Catholic—to the "new world." The second section moves from colony to colony chronicling the religious diversity which characterized colonial life and the debates as to the acceptance of diversity.

Gaustad's own Baptist identity is evident in his chapters on the founding of the Republic, the struggle for religious freedom and Baptist participation in such endeavors. His brief but insightful description of Jeffersonian ideals is particularly helpful in light of the contemporary tendency to ignore, misinterpret or caricature the nation's third president. He quotes Jefferson's wish that all could know that "our Savior did not come into the world to save metaphysicians only." Sound advice, then and now.

Freedom also impacted the frontier spirit in America, and Gaustad explores the role of religions—new and old, Protestant, Catholic and Jewish in the frontier, urban and rural. He discusses the rise of abolitionism, the social gospel, the women's rights movements and the changes wrought by massive immigration. A chapter on "Mainstreams and Other Streams" surveys the contribution of so-called mainline denominations and their evolution throughout the 20th century. This is particularly helpful to a new generation of students who, if they have heard of mainlines at all are apt to know them in decline and the subject of extensive analysis and unceasing criticism. Another chapter, "The Courts, the Schools and the Streets," focuses on legal battles which have consumed the energy and attention of religious groups in the 20th century. These include desegregation, civil rights, school prayer, abortion and conscientious objection. Many of those questions remain

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unanswered.

The last section of the book examines evidence of the one thing the early colonists never imagined: limits to American resources and expansion. Gaustad sees ecclesiastical limits (he notes the debacle of the Southern Baptist controversy here), theological limits and political limits as characteristic of much contemporary religion. He even concludes with a segment on the limits of pluralism, a provocative conclusion indeed. Yet pluralism remains a "given" in American national life. It is a force to be reckoned with as America confronts a new century in a "new world" which is itself a global village.

The book also includes numerous photographs of important individuals and events from the period under discussion. A helpful bibliography is provided at the end of each section.

*A Religious History of America* may disappoint those who want extensive detail about particular issues. It is an introductory text and Gaustad cannot tarry over even the most intriguing events or popular topics. It is a valuable survey which, now revised, offers guidance to another generation of students seeking to understand the maze of American religion. □

Bill J. Leonard