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REPORT from the CAPITAL

The face of freedom and faith



SOUTHERN BAPTIST HISTORICAL
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REPORT from the CAPITAL

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

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Freedom here and there

At a time when religious liberty doors are opening in the Soviet Union, Eastern Europe and elsewhere, it is both ironic and unsettling that First Amendment freedoms increasingly are under assault in the United States. Writers in this issue of REPORT address both fronts.

Changes that swept the Soviet Union and Eastern Europe during the past two years had far-ranging effects in many areas, including religious liberty. Assessing the status of religious liberty in 1991, Elaine Furlow highlights a number of newly opened doors, as well as areas that remain points of concern. Interviews with U.S. State Department and Baptist officials shed light both on the advances and setbacks for religious liberty. Yet to be determined, Furlow writes, is whether the religious liberty gains of the past year, particularly those in the Soviet Union and Eastern Europe, will become lasting achievements.

In articles focusing on a contemporary threat to church-state separation in the United States, James M. Dunn and John M. Swomley challenge the latest proposal to use tax dollars to support parochial education under the banner of "educational choice." In "Reflections," Dunn tackles the notion that laundering public funds through parents' pockets in the form of vouchers somehow dodges the constitutional prohibition on aid to religion. Indirect aid, he asserts, is entangled with the same problems as direct aid.

Swomley, professor emeritus of Christian ethics at St. Paul School of Theology in Kansas City, Mo., criticizes the joint effort by Roman Catholic and other religious groups and the Bush administration to seek tax funds to allow parents to send children to private and parochial schools. He takes strong exception to what he describes as an effort by Roman Catholic bishops to seek tax funds from Catholics and non-Catholics alike to bolster Catholic schools.

Addressing yet another threat to First Amendment religious freedom protections, Baptist Joint Committee General Counsel Oliver S. Thomas examines a proposal by the Southern Baptist Christian Life Commission that the Supreme Court scrap its 20-year-old test for analyzing aid-to-religion cases. The problem with the test proposed by the CLC, Thomas says in "Views of the Wall," is it would allow government promotion of religion.

Al Sanders, BJC staff attorney, reviews Donald L. Drakeman's work *Church-State Constitutional Issues: Making Sense of the Establishment Clause*. Sanders is former associate general counsel at the U.S. Postal Service.

Larry Chesser

A U.S. COURT OF APPEALS has ruled that the University of Alabama may prevent a professor from interjecting his religious beliefs in the classroom without infringing his free speech or free exercise rights. The professor had made occasional comments about personal religious beliefs and held optional after-class meetings with students on school property to discuss a Christian perspective on academic topics. (*Bishop v. Aronov*) This is a difficult case. The university's restriction on classroom conduct appears justified in preventing any state endorsement of religion, but may be overbroad to the degree it prohibits the professor from making his own religious views known and from commenting on the extent to which they tend to influence his teaching. If this were a secondary school case, the court's decision would have been much easier to justify. But, limits on academic freedom and free speech at the college level should be carefully held in check. (JBW) •

MORE ON TAXES. Last month we lamented the 3 percent floor on tax deductions, including those for charitable contributions, for families making more than \$100,000 a year. Sen. Al Gore, D-Tenn., and Rep. Tom Downey, D-N.Y., recently introduced "tax fairness" bills. Among other things the legislation would give tax relief to poor and middle income families by cutting their tax bills some \$20 billion and offsetting that revenue loss with a tax increase on the wealthiest 6 million Americans. This package would repeal the 3 percent limitation of the deductibility of charitable contributions. While the BJC does not take a position on the tax bill as a whole, we applaud and support the effort to repeal the limitations on deductibility. (JBW) •

PRESIDENT BUSH HAS UNVEILED his American 2000 Excellence in Education Act. The centerpiece of the legislation is "choice in education" which would result in vast amounts of tax dollars going to private and parochial schools. Baptists concerned about separation of church and state should be categorically opposed to this part of the plan. Using public money to promote religion is unconstitutional, bad public policy and contrary to historic Baptist principles. The Baptist Joint Committee is planning a day-long Capitol Hill briefing on this issue for you, our constituents. Mark your calendars for Sept. 12 and plan to attend. We will provide more information about this later. (JBW) •

ADDRESSING THE RECENT SESSION OF THE SOUTHERN BAPTIST CONVENTION, President Bush apparently forgot something he remembered when his plane was downed in the South China Sea during World War II. This nation's separation of church and state, the president has said, is one of the cherished thoughts that crossed his mind during that frightful ordeal. Not so when he addressed the fundamentalist-dominated SBC meeting in Atlanta. There the president renewed his call for a constitutional amendment to restore state-sponsored prayer in public schools and for tuition vouchers to help parents send their children to private and parochial schools. (JMD) •

Freedom watch

Religious liberty's gains and losses

Checking the balance sheet for religious liberty around the world in the 1990s, one finds both dismaying minuses and astounding pluses.

Perhaps the most far-reaching changes have come in the Soviet Union, where thousands of citizens now exercise newly won freedoms of expression, assembly and religion. After a 1990 law on freedom of conscience passed, churches are reopening, religious music plays in open-air theaters, and several high officials even appeared at Easter services in Orthodox churches.

In one stirring event last October, a Russian Orthodox service was held at St. Basil's Cathedral—whose bright, onion-shaped domes stand across from the Kremlin—for the first time since the 1917 revolution. Hundreds of people packed the church and a thousand more stood outside, braving the 35-degree temperature for three hours.

Since Soviet President Mikhail Gorbachev assumed power in 1985, official tolerance has replaced hard-line Communist opposition to religion. Troubled by economic woes and problems such as alcoholism and unemployment, "Everybody agrees some moral fiber is needed, and religion can be a source of that," says Priscilla Clapp, deputy assistant secretary for refugee admissions at the U.S. State Department.

For years before, religious believers had been stifled by pressures of society and by government restrictions. Before, "people were allowed to think about religion, but not to fully engage in the rituals or practice," explains a Soviet desk officer at the State Department. Now all that has changed dramatically, with government propaganda against religion subsidizing and believers feeling safer about once-forbidden acts such as handing out Bibles.

"The new law has taken the KGB out of the business of harassing," notes Clapp.

Legislation approved Oct. 1, 1990, forbids the government from interfering in the practice of religion and improves the legal status for organizations such as Baptists.

The new law also makes it easier for Baptists in the United States who are helping to establish a seminary in

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—Elaine Furlow



Moscow, sending volunteers to construct a seminary in Leningrad and developing "sister church" exchange programs.

The new Soviet government tolerance for religion has opened other doors as well. In March, thousands of jubilant Ukrainian Catholics, holding red carnations and blue-and-yellow flags of the Ukraine, flocked to a cathedral in Lvov to welcome home from exile their spiritual leader, Cardinal Myroslav Lubachivsky.

Lubachivsky left the Ukraine as a young priest shortly before Stalin banned the Ukrainian Catholic (Uniate) church in 1946 and handed its church buildings over to the Russian Orthodox Church. Ukrainian Catholics then went underground for almost half a century.

After Gorbachev met with Pope John Paul II on Dec. 1, 1989, parishes of the Ukrainian Catholic Church began to be registered, and the church was legalized in 1990. Ukrainian Catholics' demands for the return of their confiscated property have led to some violence in western Ukraine, but some of the property has been returned.

In many respects, conditions for Jews in the Soviet Union have improved as well. As Soviet authorities relaxed travel restrictions, Soviet Jews are getting out in numbers that would have been unthinkable before. In 1990, three times as many emigrated as the year before. About 180,000 Jews emigrated to Israel and about 55,000 Soviet citizens to the United States.

Bureaucratic obstacles to emigration continue to crop up, such as a "poor relatives" provision that requires close relatives in the U.S.S.R. to promise that they do not depend financially on the emigrants.

In January, the Soviet Union and Israel established relations at the consular level. Several synagogues were returned to Jewish communities, and the teaching

of Hebrew expanded.

Marring the improvements in human rights, however, were the grassroots signs of anti-Semitism. "With the advent of *glasnost*, one unfortunate consequence is that people's dark side comes out ... against other national groups," says an American diplomat who monitors human rights.

"There have been oral slurs, graffiti and many more rumors," he observed. "For example, word swept the Jewish community that on a certain day, some horrible mass act against them would take place. But that was not true; so far, there have been no pogroms."

"When things are not going well economically, people tend to look for external scapegoats. That's what frightens Jews there now," says Priscilla Clapp at the State Department. "The harassment comes more in an economic sense."

Across Eastern Europe and the Soviet Union, more changes are in the wind, though the process of democratization sometimes is hampered by long-suppressed ethnic antagonisms. Some highlights from Eastern European countries:

Bulgaria. A 1991 State Department assessment put it bluntly: "Bulgaria's Constitution and laws provide for freedom of religion, but under the [earlier] totalitarian system this freedom was a sham."

When Bulgaria's Todor Zhivkov was ousted in 1989, however, the climate changed, and barriers to religious freedom began tumbling down. For the first time, Easter services at Sofia's Nevski Cathedral were opened to the general public. Because security agents no longer accosted worshippers, crowds at local religious services increased.

Several evangelical churches and Bible centers have been formed and officially registered with the government. The government has not interfered with the

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importation of Bibles in Bulgaria.

The previous regime tried to assimilate the country's Muslims, even to the point of preventing men from attending services at mosques. The new government has tried to stop such actions.

Romania. Under Communist dictator Nicolae Ceausescu in the 1980s, religion was tightly controlled, and a number of churches throughout the country were destroyed.

When Ceausescu was overthrown in December 1989, the government's attitude began to change. An effort is now under way to rebuild or renovate the damaged church buildings. The government eliminated restrictions on the importation and dissemination of religious materials, on the printing of Bibles and on the ability of Romanian citizens to meet with fellow believers from abroad. In September, the government instituted religious instruction in public schools.

"With the new, avowed freedom also comes concern," notes Bill O'Brien, director of the Global Center at Samford University in Birmingham. "Will the Orthodox Church [to which 70 percent of Romanians belong] begin to exercise more control on the government activities? The jury is still out on that."

Yugoslavia. Freedom of religion expanded significantly in 1990, as restrictions were lifted on proselytizing, selling religious materials and teaching religion to young people.

Eastern Orthodox Christianity, Roman Catholicism, and Islam are the largest faiths in Yugoslavia. A small Protestant community includes Baptists, Pentecostals and Jehovah's Witnesses. The construction of new places of worship requires the consent of local government authorities, who in the past often raised bureaucratic roadblocks. Permits are now easier to obtain, but minority religions still face obstacles.

Poland. Poland is 98 percent Roman Catholic, a country where Catholic Mass is broadcast on Sundays by the state-run radio and Catholicism seems to have permeated all facets of Polish life.

Chris Hill, Polish desk officer at the U.S. State Department, puts those ties in context: "Politically, Poland has come and gone and come again," he explained, pointing to a wall map that graphically shows how various wars have shrunk and changed Poland's boundaries over the 20th century. "From 1939 to 1989, the country as they knew it

had disappeared, and the Catholic church was the embodiment of the nation. Having the cross in a classroom was a symbol of the country.

"Today, now that they have a popularly elected government, they are looking afresh at the church's relation to the government," Hill says. "Some people in Poland are questioning whether having a cross in the classroom or prayer in the classroom is proper."

While the government does not interfere with the practice of minority religions, some representatives of minority religions worry about the Catholic Church's promotion of its own agenda through government institutions.

In August 1990, the Ministry of Education decreed that religious instruction be made available in public schools. This decision was made in consultation with the Catholic Episcopate. The Polish Ecumenical Council, the umbrella organization for many of Poland's minority religions, protested the fact that leaders of other religious groups had not been included. The courts are determining the constitutionality of the decision.

Another change in Poland has come in relationships with Jews. Some reports say that anti-Semitism is increasing, but Hill thinks it is, instead, a case of exposing a situation that was there all along. "Think of it as turning a rock over and the bugs scurrying out. These things have always been around, but as the sunshine of democracy increases, these things are more obvious.

"The government is very much dedicated to putting this thing [anti-Semitism] behind them. When Lech Walesa was here [in the U.S.] in March, he talked to a host of Jewish organizations ... Polish-American organizations are working with Jewish groups ... to make sure this does not happen." The Jewish organization B'nai B'rith, for instance, is having a conference this June in Warsaw on pluralism and the treatment of ethnic minorities.

While the most publicized advances in religious liberty have come in Eastern Europe and the USSR, other parts of the world offer different stories.

Perhaps the most serious concerns come from the Middle East. O'Brien, formerly vice-president of the Southern Baptist Foreign Mission Board, warns of the "hemorrhaging" of the church in the Middle East. "There we are losing members by death, by harassment, by emigration," he says. "Should that continue unchecked, the church could be in a considerably weaker position in the next decade."

Here are highlights from around the world:

Iran. In Iran religion and government intertwine. The president and many top officials are mullahs (Islamic clergymen), and the constitution declares that "the

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official religion of Iran is Islam and the sect followed is Ja'fari Shi'ism." About 90 percent of Iranians are Shi'a Muslims.

Slightly over 1 percent of Iranians are non-Muslims—Baha'is, Christians, Zoroastrians (the pre-Islamic religion of Iran) and Jews, all concentrated mainly in urban areas. In theory, they are permitted to practice their religions and maintain schools, but in practice reports suggest that official interference and harassment seem commonplace.

India. India is a secular state in which all faiths enjoy freedom of worship, yet tensions over religious differences continue to be a problem. Officials in the state of Arunachal Pradesh have refused to issue permits for foreign Christian missionaries to enter the state; tensions had been high there because of a sharp rise in the number of conversions.

China. "There's a saying that whatever you read about China, it's true—somewhere," says O'Brien, "because the country is so huge and progress is so spotty. One province can be advancing while in another province, things are abysmal. We do have serious concerns about China."

The government restricts religious practice outside of officially recognized and government-controlled religious organizations. Across China, the bureaus of religious affairs—staffed primarily by Communist party members—manage and control religion. The government usually tolerates the existence of unofficial Catholic and Protestant churches as long as they remain small and discreet. However they occasionally rein in unregistered churches that seem to be growing too large.

Indonesia. Jehovah's Witnesses periodically are detained and their religious materials confiscated. A 1963 ban on the Baha'i faith remains in force. The government strongly opposes Muslim groups which advocate establishing an Islamic state.

Africa. In most African countries, there is no state religion and governments tolerate many forms of religious practice. But registration of church groups is common, and proselytizing is strongly discouraged, if not illegal. Groups that the government sees as disruptive are banned. Jehovah's Witnesses, for instance, are prohibited from practicing their faith in Togo, Uganda,

Continued on Page 14

VIEWS OF THE WALL

We knew it would happen, and it has. It just came sooner than some had expected. The two agencies representing Southern Baptists on church-state issues (the Baptist Joint Committee and the Christian Life Commission) are beginning to come down on opposite sides.

On the legislative front, Secretary of Education Lamar Alexander is proposing a "choice" plan that would divert more than 220 million in public tax dollars to private and parochial schools. According to BJC 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." CLC Director Richard Land has suggested the issue deserves further consideration.

In the courts, the CLC has just filed a brief asking the Supreme Court to scrap its 20-year-old test for analyzing aid to religion cases. The test requires that government action, in order to pass constitutional muster, must (1) have a legitimate secular purpose, (2) have a primary effect that neither advances nor inhibits religion and (3) not cause excessive governmental entanglement with religion. In its place, the CLC proffers a variation of the "coercion" test championed by Supreme Court Justice Anthony Kennedy and Solicitor General Ken Starr. Under this test, a government action is constitutional as long as it (1) does not threaten to establish a single national church or (2) coerce anyone into violating his or her religious convictions.

Many, like myself, have criticized the proposed coercion test. Under this test, for example, the government could sponsor nondenominational religious services as long as no one was forced to attend. Obviously, this would be a sea change in America's understanding of proper church-state relations.

To its credit, the CLC distances itself from the coercion test by adding for consideration a third factor originally pro-

posed by Professor Michael McConnell of the University of Chicago Law School: Does the government action facilitate the exercise of religious beliefs and practices adopted through private, as opposed to governmental, influences?

Underneath the legal jargon, is there really any difference in the test proposed by Justice Kennedy and that set forth by the CLC?

Under both tests, government can promote religion. The CLC's proposal varies in that it keeps government out of the business of writing prayers or actually leading religious exercises. It also rejects the notion of "nonsectarian prayer," surely as oxymoronical as "Grape-Nuts." No watered down, least-common-denominator religion for the CLC. Make it a real prayer, if you please, and don't let the government write it.

Bravo! I have long maintained that if public prayer is to occur, it should be genuine prayer, not religious pablum that neither offends nor inspires anyone.

The problem, of course, is that the CLC has merely substituted preacher-led prayer for teacher-led prayer. An improvement, no doubt, but inappropriate nonetheless. In both cases, government is sponsoring, endorsing and, yes, actively promoting religion — even a specific religion. Anyone with an ounce of Baptist blood can't be comfortable with such an incestuous relationship between church and state.

Complaining that public schools are aggressively hostile toward religion, the CLC suggests that outlawing minister-led or student-led religious exercises at school-sponsored events is tantamount to treating religious speech as "super-obscenity" that is beyond the pale of First Amendment protection. Overlooked in their argument is the critical distinction between public forums where religion is a welcome participant and school-sponsored events where religious exercises are inappropriate. Consider, for example, whether you would think it appropriate for your daughter's middle school to sponsor a voluntary assembly program in which a Satanic priest was given the opportunity to peddle his wares. Yet, who can distinguish this scenario from what the CLC proposes?

Similarly, the way to teach tolerance and respect for the religious beliefs of others is not by sponsoring each religion on a rotating basis or by giving its ministers a shot at a captive audience of school children. Teaching about religion in the curriculum and accommodating the needs of students to exercise their

Oliver S. Thomas
General Counsel



Neutrality, or as Warren Burger liked to refer to it, "benevolent neutrality" is the only appropriate posture for government to take regarding religion.

religion privately or in groups (as with the Equal Access Act) are far better methods of equipping children to live in a pluralistic society.

Neutrality, or as Warren Burger liked to refer to it, "benevolent neutrality" is the only appropriate posture for government to take regarding religion. Once the sacred precincts of religion are invaded by the state, both church and state are undermined. The state ceases to be the representative of all its citizenry and begins to cater to the whims of the religious majority. It may be Mormon in Utah, Jewish in New York and Baptist in Mississippi, but it is majoritarian nonetheless. As Justice Sandra Day O'Connor has argued, no person should be made to feel like an outsider in the body politic because of his or her religious beliefs.

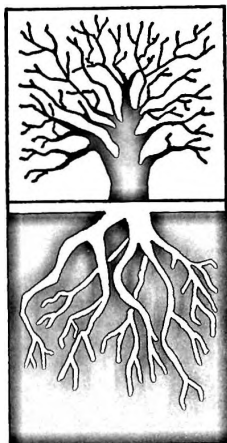
The effect on religion is even more devastating. People embrace authentic religious faith voluntarily or not at all. Even the most sincere effort on the part of government to assist religion compromises the church's independent role in society and dilutes its prophetic witness. One need go no farther than Europe to discover the devastating effects government sponsorship has on religious exercise. There is prayer in the public schools and aid to parochial schools, but the churches are empty. Enough said.

The case in which these great issues will be debated is *Lee v. Weisman*, the Rhode Island commencement prayer case. While the question of whether a public school ought to be able to have a brief invocation prior to its annual graduation exercises may be a trifle, what's at stake in *Weisman* is not. Will we continue with the American experiment of a free church in a free state envisioned by Roger Williams and carried forth by Jefferson and Madison? Or, will we fall prey to the ever-present temptation to allow government to use religion to accomplish its temporal goals and majority religious groups to use government to accomplish their spiritual goals?

The answer could come as early as next fall. □

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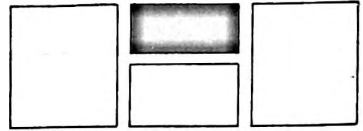
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Religious Liberty Council OKs bylaws, officer slate

The Religious Liberty Council, a national organization formed primarily to support the Baptist Joint Committee, approved during its May 10 annual meeting a constitution and bylaws, elected officers and named nine representatives to serve on the Baptist Joint Committee.

The Baptist Joint Committee is a Washington-based religious liberty agency comprising 10 national Baptist bodies.

Elected as co-chairmen of the organization are former Southern Baptist Sunday School Board President Grady Cothen of Coral Springs, Fla., former Baylor University President Abner McCall of Waco, Texas, and Gardner Taylor, pastor emeritus of Concord Baptist Church in Brooklyn, N.Y. Jerry Martin, pastor of Kensington (Md.) Baptist Church, was elected secretary-treasurer.

Elected to serve three-year terms on the BJC board are Sarah Frances Anders of Pineville, La., Homer Carter of Rockville, Md., and Patsy Ayres of Austin, Texas.

Members to serve two-year terms are John Wood of Waco, Texas, Jeanette Holt of Silver Spring, Md., and Greg Clements of Hampton, S.C.

Elected to one-year terms are Robert Wayne of Vinton, Va., James Ralph Scales of Winston-Salem, N.C., and Doug Watterson of Knoxville, Tenn.

In addition to serving as a support organization for the Baptist Joint Committee, the Religious Liberty Council functions as a transitional vehicle to provide representation on the Baptist Joint Committee for supportive state conventions, regions, cities, churches and other associations of Baptists.

Membership on the Baptist Joint Committee was granted to the Religious Liberty Council by the BJC board in October. The need for additional representation on the BJC board arose when a number of Southern Baptist state conventions, organizations and churches took steps to replace funding lost when the Southern Baptist Convention drastically reduced its annual allocation.

BJC board members elected May 10 by the RLC include representatives of state conventions and organizations, including the Cooperative Baptist Fellowship

and the Southern Baptist Alliance, that provide financial support for the BJC.

In a financial report, John Womble, director of denominational relations and development at the Baptist Joint Committee, told RLC members that most of the agency's fiscal 1991 budget has been pledged, but that cash flow still remains a problem. □

Federal court upholds parochial aid scheme

WASHINGTON

A federal appeals court has rejected a lower court ruling that the way the Secretary of Education distributes remedial education funds to parochial schools violates the First Amendment.

In overturning a federal district court ruling in *Pulido v. Cavazos*, the 8th U.S. Circuit Court of Appeals approved the department's plan that results in a disproportionate allocation of federal remedial education dollars to private and parochial schools.

"This case illustrates how difficult it has become to get federal courts to enforce the religious liberty clauses of the First Amendment," said Baptist Joint Committee General Counsel Oliver S. Thomas. "The lesson is plain: If Americans wish to preserve the separation of church and state they must become more active in the legislative process."

The parochial school aid arrangement was challenged by a group of Missouri taxpayers, including the Rev. Rudy A. Pulido, pastor of Southwest Baptist Church in St. Louis, and Americans United for Separation of Church and State.

The challenged regulations allow two sets of costs associated with providing remedial education to private and parochial schools to be taken "off the top" of a state's remedial education budget. One set of costs, known as "bypass costs," are additional administrative costs incurred when outside contractors are used to provide remedial services to private schools.

The second set of expenses, known as "Felton costs," are expenses incurred in providing remedial education outside parochial school buildings. These expenses, which include such costs as

mobile classrooms, arose after the U.S. Supreme Court ruled in *Aguilar v. Felton* that public school teachers could not provide remedial instruction in parochial school classrooms.

Challengers of the plan argued that the off-the-top allocation method resulted in much higher per-pupil spending in private schools.

The Federal District Court for the Western District of Missouri agreed in part, holding that because of the small amount of money involved, "bypass costs" could be taken off the top of the federal allocation to Missouri. The court held that the "Felton costs" must be attributed to the state's private school allocation. In addition, the district court ruled against placement of mobile classrooms on parochial campuses but upheld placement of the classrooms on adjoining property.

The 8th Circuit reversed the parts of the case won by challengers, holding that "Felton costs" could be taken off the top of a state's allocation and that mobile classrooms could be located on parochial school property.

A broad coalition of religious and educational groups, including the Baptist Joint Committee, filed a friend-of-the-court brief at the 8th Circuit, arguing that the parochial aid plan was unconstitutional because it lacked a secular purpose, advanced religion and created excessive entanglement between government and religion. □

N.Y. mayor asks clergy to appeal to altruism

NEW YORK

New York Mayor David Dinkins has asked clergy to appeal to the "altruistic impulses" of their flocks to help the city climb out of its financial and social crises.

He made the appeal May 16 in an address to nearly 2,000 people attending a celebration of the bicentennial of American Baptist Churches of Metropolitan New York held at Riverside Church. In addition to the mayor and American Baptist officials, speakers included Jewish and Muslim leaders, Episcopal Bishop Richard Grein and Bishop Khajag Barsamian, primate of the Armenian Church of America.

Dinkins told the gathering that "even when church and state are separate, there are times — many times — when they travel parallel paths, seeking similar goals. At such times, their agendas complement one another, and so should their strategies." □

Baptist moderates: free at last

Last Saturday (May 11), the Cooperative Baptist Fellowship was born in Atlanta. It is now the principal agency of the moderates who, for the past twelve years, have found themselves on the losing end of the moderate-fundamentalist struggle to control the Southern Baptist Convention (SBC). That struggle is now, more or less officially, over.

Is the Fellowship a new denomination?

Its officials say no, but they also insist they have created a permanent organization. According to them, a denomination is too centralized, too bureaucratic, for what they have in mind.

Historically, Baptists stood for religious freedom—the freedom of individual believers not to be bound to a specific creed, the freedom of congregations to govern their own affairs, the freedom of church from state. But in the course of this century, Southern Baptist churches have voluntarily surrendered more and more of this freedom to denominational headquarters in Nashville, Tenn.

As Nancy Ammerman, director of Baptist studies at the Candler School of Theology, noted, "We had pledged never to get a pastor from anything but an official denominational seminary. We loyally accepted whatever doctrine came to us in Sunday School quarterlies from Nashville. And we promised to build our churches, plan our programs, train our leaders, educate our youth, robe our choirs, tag our visitors and pray our prayers according to calendars and programs and handbooks that came to us from Nashville."

And, since 1980, the SBC leadership has all but signed on as a wing of the national Republican Party.

The Baptist Fellowship is animated, as much as anything else, by the desire to restore the Baptist freedom of old. This means it is to be commodious enough to accommodate doctrinal differences, inclusive enough to make a place for women and laity in the ordering of Baptist life and scrupulous enough not to put its spiritual sword in the hands of any political party.

It also recognizes that many moder-

ates may not yet be prepared to surrender all ties to the institutions of the SBC. Three different giving plans allow individuals and churches to disengage from the SBC to varying degrees. Already, however, a traditional Southern Baptist church can have access to global missions, seminarians, religious literature, a Baptist news service and political action solely through the Fellowship.

There have been times when the multiplicity of denominations has been seen as a cause of scandal in the Christian world. Why should the House of Christ require so many mansions? But spiritual needs, like spiritual gifts, are diverse, and it is clear that the SBC, as presently constituted, is no longer meeting the needs of a significant number of Southern Baptists.

The Cooperative Baptist Fellowship will have its headquarters in Atlanta. We should be grateful to have this pluralistic body in our midst. □

This editorial appeared in the May 14 edition of the *Atlanta Constitution* and is reprinted with permission. □

Pam Parry named BJC writer

Pam Parry, associate editor of the *Baptist True Union*, has been named information services associate at the Baptist Joint Committee.

Parry, who has been in her current position at the news journal of the Baptist Convention of Maryland/Delaware since 1988, joined the Baptist Joint Committee staff June 3.

At the BJC, Parry will serve as congressional correspondent for Baptist News Service, news service of the Washington-based religious liberty agency that comprises 10 national member bodies.

In addition, she will serve as associate editor of *Report from the Capital*, the agency's monthly magazine.

Parry, 28, earned a bachelor of journalism degree with emphasis in magazine editing and writing from the University of Missouri-Columbia School of Journalism in 1985. She received a master of religious education degree from Mid-

western Baptist Theological Seminary in Kansas City, Mo., in 1988.

Prior to joining the *Baptist True Union*, Parry served as a news writer at *Word & Way*, news journal of the Missouri Baptist Convention; as news writer in the public relations office of Midwestern Seminary; and as communication/media intern at Clay-Platte Baptist Association, Kansas City.

While a student, she worked as a sports reporter for *The Columbia Missourian*, daily newspaper of the University of Missouri-Columbia, and as a school correspondent for the *Rolla (Mo.) Daily News*.

Parry's writing has earned high recognition from Associated Church Press and the Baptist Public Relations Association.

"Pam brings to the Baptist Joint Committee first-class professional skills and a strong commitment to high journalistic standards," said BJC information director Larry Chesser. □



Church-state alliance

Bush, bishops seek parochial school aid

The Roman Catholic bishops, meeting in November 1990, decided to launch a major campaign for government aid to Roman Catholic schools. The crusade, modeled after the Catholic anti-abortion thrust, called for the formation of diocesan, state and national parents' organizations to lobby for government funds for Catholic schools. The bishops agreed to spend \$2 million in seed money for a national office and expert staff to establish the national parents' organization to provide ongoing direction to state and diocesan groups.

Apparently there are three major reasons for this campaign: (1) The costs of operating parochial schools have increased more than 500 percent in the last 20 years, with employment of lay teachers rather than relying on nuns who largely contributed their services.

(2) Some 4,000 Roman Catholic schools have closed since 1964, and since 1966 fewer than 200 new Catholic parochial schools have opened, chiefly because Catholic families have moved into affluent suburbs which have not had as many parochial institutions. However, the closing of Catholic parochial schools is not usually a loss, as Thomas J. Reese, S.J., author of *Archbishop: Inside the Power Structure of the American Catholic Church* (1989), pointed out: "Often the decision is not to close a school but to consolidate

The bishops hope to reverse the statistical decline in their schools and expand the Catholic parochial school system, using the tax funds collected from Jews, Protestants and the non-churched, as well as from their own constituents.

—John M. Swomley



it with a neighboring school. This strengthens the financial and academic viability of both schools by combining their enrollments."

Those who ask for government funds do not emphasize the strength of the consolidated schools, but statistics show the loss of schools that led to such consolidation. There are now about 9,000 Roman Catholic elementary and secondary schools with 2.6 million students nationwide, according to *Education Week* (Nov. 21, 1990).

The bishops hope to reverse the statistical decline in their schools and expand the Catholic parochial school system, using the tax funds collected from Jews, Protestants and the non-churched, as well as from their own constituents.

Instead of asking Roman Catholics to increase their contributions by at least 5 percent of their income, the bishops tabled that proposal until a later date. In effect, they want the federal and state governments to tax Roman Catholics and non-Catholics alike to pay for the expansion.

(3) To increase their success in enrolling minority students in the inner city, the book *Archbishop* explains, "Catholic schools are the most successful evangelizing tool available to the church in the black community. ... Most schools teach the Catholic faith to both Catholic and non-Catholic students."

One illustration of this is Chicago's Holy Angels School which President Reagan visited to propose tuition tax credits for parents to send their children to non-public schools. Reagan called it "the nation's largest black Catholic school" and asserted that "the people who will benefit most are the minorities and the poor." The *Washington Post* (April 12, 1981) reported that to attend that school both the children and their parents must be instructed in Catholicism, which means about 80 to 150 conversions a year.

No one can question the use of church schools for the purpose of proselytizing children and parents of other faiths, but no government should directly or indirectly fund such schools with American

John M. Swomley is professor emeritus of Christian ethics at St. Paul School of Theology in Kansas City, Mo., and associate editor of *The Human Quest*. The article is reprinted with permission from the May-June issue of *The Human Quest*.

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tax money.

The bishops' proposal, which has been adopted by President George Bush, is to ask Congress and state legislatures to provide government money "to all parents which will ensure that they can afford to choose the type of schooling they desire for their children."

The bishops and George Bush, who oppose the pro-choice option for pregnant women, are asking the option of choice for parochial schools. The issue is not freedom of choice but Vatican policy which opposes abortion and contraceptive birth control. The Catholic church wants government support for its church-owned and operated institutions.

The issue is also not the inability of Roman Catholic families to fund church projects. "Catholics, in fact, contribute a smaller portion of their income to their church than do Protestants and Jews," wrote Thomas Reese, even though Catholics' per capita income is higher than that of Protestants.

Although the bishops are spearheading the campaign for parental choice, other denominations which have church schools would also profit from government vouchers given to parents. These include chiefly the Missouri Synod Lutherans, the Christian Reformed and various fundamentalist Protestant groups that use Christian day schools.

The fact that the bishops have launched the campaign for parental choice does not mean it will be supported by all or even a majority of Roman Catholics. Like other Americans, many support separation of church and state and oppose government financing of church institutions. Others resent the idea that the bishops want to raise church funds by taxation rather than by voluntary contributions, and still others, at least half of all Roman Catholics, send their children to public schools and would prefer that the church concentrate on religious education for all of its children rather than concentrate so heavily on parochial schools.

The arguments against parental choice vouchers that would be used in church and other private schools:

1. The beneficiaries of such vouchers would be only those religions that can afford to operate schools.

2. Vouchers for parochial and private schools would come out of the public

education budget, thus undermining the nation's public school system.

3. It is argued that parental choice provides more freedom in education. But such freedom is only for those who are not handicapped, slow learners, discipline problems, or those whose future depends on vocational education, since church and private schools are not equipped to provide such education.

Freedom is not confined to freedom of choice. The public schools provide greater freedom than church and other private schools because they have academic freedom of teachers and students. Public schools have more democracy in decision making. Public schools in the 16,000 public school districts are responsible not only to their elected boards, but to parent-teacher organizations, other forms of public opinion and to law. Although taxpayers would be subsidizing vouchers for parental choice, they would have no voice in the operation of the church schools or the private academies of the elite.

Non-public schools also deny some protections of the Constitution to their students. The "due process of law" provision in the 14th Amendment requires procedural safeguards from arbitrary suspension or expulsion from public schools. For example, a sixth-grader in a Decatur, Ill., church school was expelled from school because her mother did not attend Sunday Mass regularly. When 182 parents protested, Bishop Joseph McNicholas replied, "Catholic education is the extension of the mission of the church. How best to fulfill this mission in individual cases rests with the pastor." Presumably other less well-publicized cases have occurred in non-Catholic schools.

The government ought not to subsidize schools that insist on their right to use lower standards than are constitutionally required in public schools.

4. Freedom of choice usually means choice of schools other than the neighborhood public school. However, if the only non-public schools in a given city or county are administered by one denomination, such as the Missouri Synod Lutheran in various counties in Missouri, there is no real choice for members of other denominations who object to Missouri Synod theology.

Although the bishops are spearheading the campaign for parental choice, other denominations which have church schools would also profit from government vouchers given to parents.

5. Another argument used for vouchers is that the competition of non-public schools will improve the public schools. There is no evidence that this happens. Some cities have had parochial and private schools for years. Such competition has not made public schools in their vicinity any better than public schools in cities and towns where there are no private schools. In fact, the history of parochial schools is that they have tried to emulate the advances pioneered by public schools and have for the most part yet to provide teacher salaries, textbooks, electives and other facilities that are comparable to public schools.

In fact, it is not possible to speak of competition because private schools do not follow the same rules. They tend to select students on the basis of religion, class, ethnic background and academic ability, whereas public schools must accept and serve all children. □

Another argument used for vouchers is that the competition of non-public schools will improve the public schools. There is no evidence that this happens.



Polish church-state union sought

The demise of the Communist Party as the dominant voice in Poland and the weakening of Solidarity as its successor has created a power vacuum, a situation which the Roman Catholic Church appears to be using to great advantage, according to some Poles.

Critics in Poland believe that growing influence became more evident recently when Polish bishops called for an end to the nation's constitutional separation of church and state.

Fears of a return to Roman Catholicism as the official state religion has led to the organization of NEUTRUM, "The Association for a Non-ideological State."

Wanda Nowicka, a member of that organization, voiced her concerns over a church-dominated society during a recent informal meeting here with representatives of church-state separation bodies.

She said the proposed introduction to the constitution would make Poland a Catholic state with serious consequences for minority religions.

"Merger of church and state in Poland seems more medieval than modern," said James M. Dunn, executive director of the Baptist Joint Committee, a Washington-based religious liberty agency.

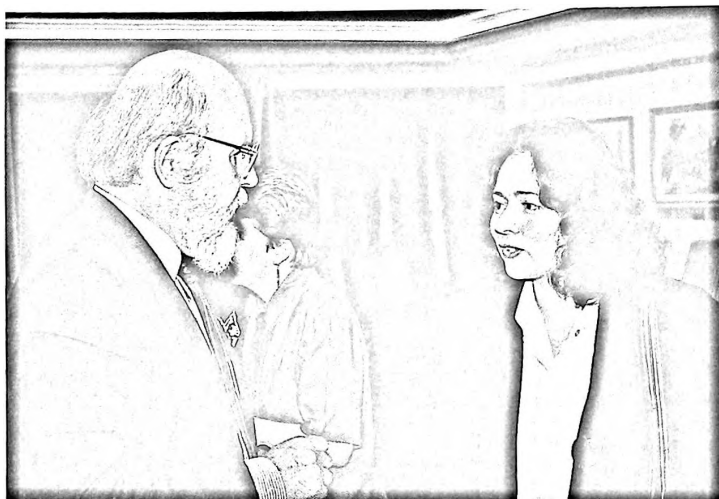
In addition to seeking the end of separation of church and state in Poland, the church is also supporting a strict ban on abortion and promoting the restoration of religious teaching in public schools.

According to Nowicka, who was invited to the United States by Catholics for Free Choice, the church already is acting to suppress dissent from its view on the abortion issue. The sacraments are being withheld from those seeking baptism or other rites until they pledge their support on the abortion issue, she said.

She said that a national referendum, by law, cannot deal with religious issues and as a consequence, the matter of church-state separation cannot come before the people for their decision.

Religion has already been reintroduced into the public schools in spite of wide opposition, she said. Although classes are to be "non-denominational" in nature, the prevailing perspective is that of Roman Catholicism, owing, no doubt, to the fact that 95 percent of the population lays claim to that faith.

"Although I am a Catholic," Nowicka said, "I do not like Catholic influence in the schools." Public school religion



Victor Tupitza (left) discusses Polish situation with Wanda Nowicka.

classes already reflect the church's condemnation of abortion.

NEUTRUM, whose main goal is to act in support for a secular state that guarantees freedom of conscience and religion, is in a formative stage as an organized body. It does not identify with any political party or movement and has a membership consisting of both believers and non-believers.

It holds that equality for all citizens presupposes a religiously neutral state in which no ideology is either privileged or penalized, religious or atheistic activity receive no government funds, religious symbols and ceremonials are banned in state institutions, and education is secular. □

South African churches seek return of land

Anti-apartheid activists in the South African church community are calling on the government to return land that was taken from blacks without compensation, as the country now reforms its land ownership laws.

In a four-page document drafted by the South African Council of Churches, the church leaders said much of the

land that was taken from an estimated 3.5 million blacks is in government hands and could easily be returned.

The disposition of seized properties, taken under the country's racially discriminatory land laws, could be determined through a claims process set up to be "just and fair to all," the document says.

Although the South African government has promised to repeal the discriminatory laws and open ownership of land to all racial groups, the government has ruled out as impractical any restoration of—or compensation for—seized properties.

Scheduled to be repealed are all racially based ownership laws, including the Land Acts of 1913 and 1936, the Group Areas Act of 1966, and the Black Communities Development Act of 1984.

Five proposed new laws expected to be acted on by Parliament in June include making all South Africans eligible to own property and upgrading about 1 million plots from 99-year lease-holds to full title deeds.

Notwithstanding the government's claim that new laws would benefit thousands of black households, the SAC warned that there would be opposition to the proposed land reform package by



the country's black majority unless it is redrafted.

It says the proposed bills should be replaced by a process that will allow maximum participation of all South Africans in determining future policies on land in preparation for a new, non-racial South Africa. □

British Baptists oppose national lottery plan

The Baptist Union of Great Britain's Secretary for Social Affairs has voiced his opposition to the government's plan to introduce a national lottery, an issue due to be discussed by the House of Commons.

Baptist Secretary John Black said the bill was an endeavor to "avoid responsibility to the community by relying on the greed of some individuals to gain income for social welfare purposes."

He alluded to the government's official stand as one that has been to oppose rather than to encourage gambling, and to control it at both the advertising and outlet levels.

British Baptists are among other church groups denouncing the government's proposal.

"Lotteries make poor people even poorer," said Brian Duckworth, general secretary of the Methodist Church. "People bet money they haven't got on numbers which won't come up." □

Fatal stabbing incident curtails pilgrimages

BETHLEHEM

A surge of pilgrimages to this biblical city was disrupted in April with the death by violence of a French Catholic visitor, the first such slaying, according to Bethlehem officials, in 70 years.

Anne Ley, 64, who was stabbed to death in a bathroom next to a restaurant, has led Christians in Bethlehem to fear that the killing may keep pilgrims away, just as they had begun to return in significant numbers following the Persian Gulf war.

Ms. Ley's alleged killer, a 19-year old Arab Muslim, surrendered to Israeli authorities, confessing to the murder. Those who knew the suspect said he hated Americans, regarding them as pro-Israel and anti-Palestine, and that he mistook the French woman for an American pilgrim. □

Religious leaders label Guatemalan talks success

GUATEMALA CITY

Religious leaders in Guatemala called recent peace talks between the government and rebel leaders "successful" and are hoping that a peace accord can be reached soon.

The results of the three-day talks in April led to agreement on 12 problem areas that they say are holding up the cease-fire. A follow-up meeting was planned in May.

Protestant church groups, however, said a cease-fire agreement must be reached before social changes are implemented. Land reform and changes to Guatemala's constitution are among the issues to be resolved.

"If the guerrillas hope to see social conditions improve considerably before they reach a cease-fire, there may never be a cease-fire agreement and many more people will be killed," said Edmundo Madrid, president of Guatemala's Evangelical Alliance.

"A cease-fire should be reached first," he said, "and then an agreement that will eventually lead to social change. There still may be a lot of mistrust on both sides but there is no lack of sincerity." □

Soviet Baptists plan to develop new town

Thirty Baptist families in various parts of the Soviet Union are making plans to establish what will amount to a new town.

A group of about 70 adults and 30 children were hoping to leave their homes this spring to move to a tract of land they will develop.

A 5,500-acre plot about 250 miles from Moscow in the Riazan region and an existing 16th century village, consisting of several original wooden houses, will form the core of buildings for the first arrivals.

The group of Baptists includes people of many skills who have formed themselves into a private legal entity known as "The Transfiguration Peasants' Association."

One of the factors leading to the project arose out of a prison witnessing visitation program and the difficulty of finding employment faced by new converts upon their release. Founders hope their new community will meet some of these needs. □

NEWS-SCAN

Italian Baptists have named a woman to head their Department of Evangelism. The Rev. Adriana Pagnotta Cavina has several degrees and currently serves as minister of the Rome-Garbatella Baptist Church. ... **The Baptist Seminary at Ruschlikon**, Switzerland, is offering Christians traveling in Europe this summer an opportunity to spend all or part of their holiday there, from May through August. Located about 20 minutes from historic Zurich, the seminary is easily reached by car, train, bus or even boat. (Write the seminary at: Gheistrasse 31, CH-88-3, Ruschlikon, Switzerland.) ... **Christian Churches in England** continue a disturbing trend downward, according to MARC, Europe's 1989 census of English churches. Results show that 0.5 million people stopped attending church between 1979 and 1989, seven out of 10 of these under the age of 20. The survey also showed independent churches have grown 42 percent during the decade. English Baptist attendance, which had shown decline up to 1985, grew by 2 percent thereafter. ... **The Rev. Oden Marichal** has a job that few Christians in his native Cuba know exists. He is the head of Seminario de Teologia in Matanzas, Cuba, the country's only interdenominational seminary. The current student body of 34 represents a remarkable increase since the 1970s, when the government's attitude toward religion was less tolerant. Students are supported by their churches, as are professors whose voluntary service is made possible because congregations maintain their salaries. ... **The moderator of the Free Church Federal Council** has called upon the Church of England to share with Free Churches and the Roman Catholic Church the privileges and opportunities it enjoys as the Established Church. William Davies, a former president of the Methodist Conference, said, "Such a revision ... would have implications for the appointment and work of chaplains in education, hospitals, the armed forces, prisons and, not least, would give other churches similar rights to those of the Church of England in relation to the House of Lords." □

Freedom, from Page 5

Ethiopia, Zaire, Gabon, Ghana, Malawi and Rwanda, to name but a few.

Egypt. Christian missionaries who engage in proselytizing Muslim Egyptians may be prosecuted under the penal code. In September an Egyptian Christian was arrested for "preaching and converting." Conversion from Islam is discouraged by the government, and even more so by social pressure.

Non-Muslims must obtain authorization, which is extremely difficult, to build or repair places of worship.

Sudan. In practice, the government favors Islam. Radio and television time are available to Muslims, but restricted for Christians. Christian churches cannot be built without permits, and none have been issued for 10 years.

South America and Central America. There is an active missionary presence in many countries, and foreign mission-

aries are often allowed to proselytize. Roman Catholicism is predominant, and minority groups sometimes have to register, bringing bureaucratic problems with paperwork, building codes and the like.

Ruth Sampson, chairman of the Baptist World Alliance's Human Rights Commission, notes that even in communist countries like Cuba hope persists for wider religious freedom. "A BWA delegation met with Castro last year and was surprised to hear him talk about what a powerful influence the Bible had been on him as a youth. They asked, 'So why then do you refuse to let Bibles into your country?' He then agreed to let a large shipment in. Just last week someone was at a Baptist service in Cuba and heard the Cuban National Choir singing gospel songs to be televised. So Cuba astonishes me and gives me hope," she says.

While official government discrimination based on religion may not be as prevalent as in other countries, missionaries and clerics often find themselves endangered when their activities touch on social and political problems.

"Concern is registered repeatedly in Central and South America because there is intense persecution of anything that is a ministry of care and compassion," says Sampson. "If you dare to feed hungry people you risk trouble. And these stories never abate."

In Cuba, relations between the Catholic church and the government worsened in 1990. The Catholic bishops reportedly asked Fidel Castro for broader popular participation in the policy-making process, but Castro ignored the letter. A visit from the Pope was postponed indefinitely.

It is not uncommon for religious workers in various spots around the world to be arrested or killed for upholding the rights of the poor and oppressed. In Peru, for instance, several religious workers were executed by Sendero Luminoso (Shining Path) Maoist guerrillas. In November 1989, six Roman Catholic priests were killed in El Salvador.

David B. Barrett, who compiles statistics on repression of church workers, projects a worldwide average of 1,000 church-employed workers killed annually for their faith (*World Christian Encyclopedia*).

The numbers—and the sacrifice they represent—stand in stark contrast to the newly-opened doors of religious liberty in the USSR and Eastern Europe. As we draw up the balance sheet for 1990, one of the key questions is this: Have the human rights gains in Eastern Europe and the Soviet Union been lasting achievements? And will the gains be consolidated, and the effects felt not only in Soviet Union but elsewhere around the world as well? □

Reviews, from Page 16

ity's ability to control the government." Amen and Amen!

The primary strength of Drakeman's suggested approach is that it asks only one question to determine if there is an "establishment," that is, has the government endorsed religion? One of its weaknesses, it seems to me, is that ingenious lawyers would always come up with good arguments as to why a case was a "mixed First Amendment case," requiring the Court to seek to accommodate the challenged action, rather than to find it was a "pure establishment case," requiring little evidence of governmental endorsement to bring a verdict of unconstitutionality.

The bottom line of Drakeman's proposed test is not likely to be acceptable to either the strict separationists or to those who strongly favor an accommodationist approach. It thus fails to find the common middle ground that would "afford all Americans their constitutional rights" without "appearing hostile to vital cultural linchpins." Moreover, it does not seem to provide the clarity and certainty for which Drakeman searched because, as he says, the test requires the Court just to use its best judgment in balancing the competing interests in what he calls "mixed First Amendment cases."

Although Drakeman fails in the self-assigned and nearly impossible task of finding a new establishment clause approach that is so clear and comprehensible it will be readily acceptable to most Americans, he has, nevertheless, produced a valuable work. His work, indeed, is a step in the right direction albeit, at \$39.95 for 143 pages, it is a short and expensive step. □

—Al Sanders

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"Choice" indeed! It's more a matter of chance.

REFLECTIONS

Funny mental tricks are needed to justify taking public money for nonpublic purposes. Yet, there are those who are making the mind leaps and doing the ethical contortions necessary for such stunts.

"Choice" schemes attempt to launder public funds by passing them through parents' pockets in the form of vouchers. Defending voucher plans as indirect aid to religious institutions rather than direct support for sectarian schools is a distinction without a difference.

It is a well-established principle of law that one cannot do through the back door what could not be done through the front. Educational vouchers are a blatant attempt to do exactly that. If it is unconstitutional for public schoolteachers to teach secular subjects in parochial schools, as the Supreme Court has ruled, then the use of public monies to pay parochial schoolteachers is even more offensive to the Constitution.

As Justice William O. Douglas wrote, concurring in *Abington v. Schempp*, "[I]t is the use to which public funds are put and not to whom they are provided that is controlling. ... What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery." Justice Jackson wrote in comments on *Everson v. Board of Education*, "The prohibition against establishment of religion cannot be circumvented by a subsidy, bonus, or reimbursement of expense to individuals for receiving religious instruction."

Church-related schools hardly have a reason to exist without providing religious instruction and indoctrination. Even if it is not precisely the religious dimensions of the institution that are supported, no fast book work by accountants, no shifting the government money from one pocket to another to maintain the fiction that no taxes teach religion will keep the ethical slate clean for church schools indirectly receiving federal funds. Religious school folks of all stripes were shocked when the *Grove City* decision demonstrated that regulation of church schools results *even when financial aid is received indirectly* in the form of student assistance such as Pell Grants or vouchers.

How in the world, then, when vouchers promise a morass of governmental regulations that many "choice" supporters oppose, can any reasonably well-informed church leader indirectly invite "regs" and guidelines? Why would anyone who pays even token tribute to separation of church and state welcome this false advertising in educational reform? "Choice" indeed! It's more a matter of chance.

Do such schemes, so counter to quality and equality in education, merit serious discussion? Should one spend time and energy addressing proposals for yet another expensive entitlement program when funds are not available for proven educational programs?

One shouldn't have to dignify with debate such ploys for political advantage, but one must. If one learned nothing else from the 1980s, surely it is now clear that slick slogans by the media masters can, in fact, alter the political landscape and thrust the entire nation into uncharted territory. Recent history demonstrates that Congress, the courts and the citizenry seem to think that the First Amendment can be set aside by majority vote.

The majoritarian motto seems to be "You can fool most of the people all of the time and that's enough."

Why, then? Why would tolerably well-educated, religiously-inoculated, politically-aware persons who should know better sound a timid note in opposition to any so-

James M. Dunn
Executive Director



called "choice" plan?

Three reasons come to mind.

Bad faith. One must not rule out a certain devious stripe. It runs through all humankind...total depravity, original sin, ontological limits, human frailty and all that. One need not impute motives. The opposite is the case. Despite the yuppie decade, godly greed, holy war and sanctified selfishness are still oxymorons. Subscribers to those socially sanctioned secular modes are suspect in the churches, synagogues and temples of this land.

Supporters of schemes to direct money, energy and attention to vouchers veiled as choice probably didn't sit down and say to themselves, "I think I'll be hypocritical, inconsistent and flip-floppy." The result is the same as if they had. Just a few years ago, for instance, Baptist leaders were virtually unanimous in opposition to all diversions of tax money to sectarian causes. Now many of those very same people are on the bandwagon for a proposal masquerading as choice.

What is different? Does one oppose parochial schools until one has parochial schools? An ethic shaped by economics? Does one accept the party line of an ultra conservative political agenda which openly advocates destruction of the public schools? An ethic for private school parents? Does one in the protesting mainstream of religious life do an about face and accept the push for aid to parochial schools he has protested all those years? An ethic flexible enough to be dissenting then, established religion now?

Care, great care, should be exercised in evaluations of this sort. "Judge not" the scripture enjoins. Yet, one also reads "by their fruits ye shall know them." A little "fruit inspection" is called for.

Again, why this surge of support for a plan bearing the misleading word choice?

Some have an *anecdotal understanding of public policy* rooted in bad history. Yes, there were founders who wanted non-preferential aid to all religion. They were the ones who lost the battle 200 years ago. The ones who won wanted more specific, explicit, binding constitutional language: "Congress shall make no law respecting an establishment of religion." The proponents of government guided funding of church-run schools fail to see that public policy in this country is rightly built on the presupposition that religious institutions must generate their own support without any sort of propping up by the state.

Over and over in the last 30 years the electorates in state after state have overwhelmingly rejected every plan for promoting nonpublic schools at the expense of the common school. The most recent such victory for public education was in Oregon in November 1990.

Finally, one must conclude that some big backers of educational revisionism simply have a *truncated theology*. Desperately eager to be biblical they do not take sin seriously or socially enough. Understanding the need for personal salvation they somehow miss the nexus between theology and public policy.

Sinful, social beings that we are we need separation of church and state to protect church from state, state from church and to protect us all from each other.

When it comes to forsaking the common school, too much is at stake, don't defect from tried and true, constitutional common sense, safeguards for liberty. Forswear fundamentalism.

REVIEWS



CHURCH — STATE CONSTITUTIONAL ISSUES: Making Sense of the Establishment Clause.

Donald L. Drakeman. Westport, CT:
Greenwood Press, 1991. 143pp \$39.95.

Donald Drakeman, an incisive writer with impressive credentials, has written a provocative and prescient study of the establishment clause. Drakeman holds a Ph.D. in American religious history from Princeton University and a law degree from Columbia. His significant contribution to the current debate surrounding the impending reconsideration by the Supreme Court of its establishment clause doctrine will go a long way toward enhancing his reputation as a scholar in this area of constitutional law.

A book on the establishment clause could not have been published at a more propitious time because on March 18, 1991, the Supreme Court agreed to review *Lee v. Weisman* after having received an amicus brief from the Justice Department asking the Court to make fundamental changes in the test laid down in *Lemon v. Kurtzman* for deciding establishment clause cases. Drakeman anticipated this development and writes:

It is impossible to predict whether there will be a complete swing to the strongly accommodationist views often displayed by Justices Rehnquist, Kennedy, and Scalia, or to the more moderate position staked out by Justice O'Connor, but there is no question but that the Court will search for—and find—a new approach.

The first chapter consists of a concise and well-written overview of all of the Supreme Court's decisions interpreting the establishment clause. It is particularly helpful that Drakeman treats the cases in their chronological order, making it easier for the reader to grasp the development of the law and to remember the cases. Although his discussion is objective and balanced, he does critique the Court's performance in a lively, interesting and often humorous manner. For example, in discussing *County of Allegheny v. American Civil Liberties Union*, he writes "... the Court heard another crèche case, thus bringing the nine justices to the scene of Jesus' birth more often than the Magi." With regard to the Court's condemnation of the crèche display because there were

not enough nonreligious elements in the display to detract from its religious theme, Drakeman comments "... the Court did not specify in its opinion the ratio of elves to angels required to withstand an establishment clause challenge."

The second chapter, containing an overview of the legislative history of the adoption of the establishment clause, is likely to be regarded by scholars as controversial and many will disagree with the author's analysis. He concludes that there is hardly any useful guidance to be found in the records of the adoption of the establishment clause.

The writer makes a very persuasive case that there is no one "true meaning" of the establishment clause based on the history of its adoption and that the clause's political strength in the turbulent early period is that it probably had different meanings for different groups. Thus, I tend to agree that we must cure ourselves of the desire to invoke the Founding Fathers as the last word on interpretation. Nevertheless, regardless of the difficulties, most readers will still agree that constitutional interpretation must include such clear and applicable evidence of intent as can be found. The establishment clause's background, despite Drakeman's analysis, likely will remain ground for historical excavation.

Having debunked the effort to find the original meaning of the clause in the intent of the Founding Fathers, the author asserts in the final chapter that the text-based "plain meaning" approach is also inadequate. He points out that the Supreme Court has already rewritten the words "Congress" and "law" by making the First Amendment applicable to the other branches of the federal government and, through the Fourteenth Amendment, to the states as well. He then discusses several alternative approaches to interpretation that have been suggested by various scholars. Curiously, he does not discuss and analyze the "coercion test" suggested by Justice Kennedy, which is the basis for the Justice Department's sug-

gested new theory, recently advanced in its brief urging the Court to review *Lee v. Weisman*.

Drakeman's own suggested new approach involves, as I understand it, first a division of the cases into two categories: "mixed First Amendment cases," which include competing establishment and free exercise concerns, and "pure establishment cases." Then, after deciding whether the complained of activity is religious, he would adopt Justice O'Connor's endorsement standard (without the accompanying entanglement test) to determine whether something unconstitutional has been done under the establishment clause. In applying the endorsement test to pure establishment cases, very little evidence of governmental endorsement would be required to bring a verdict of unconstitutionality, i.e., a strict separationist approach. However, with regard to "mixed First Amendment cases," the Court would be free to exercise its accommodationist leanings, and the justices should put their collective thumbs on the side of free exercise.

Drakeman says virtually all the establishment clause cases in which state actions have been struck down would also be found unconstitutional under his approach, except for parochial school aid cases. In addition some (but not many) that have been upheld, such as the legislative chaplain case also would be found unconstitutional. He says that fundamentally he is asserting that the right to be religious is held by the American people and safeguarded by the free exercise clause, while at the same time that right is withheld from the government under the establishment clause. Thus, apparently, he would hold the nondenominational prayer involved in the *Weisman* case to be unconstitutional. He says; "The traditional prayer at public events that mentions God but not Jesus may accommodate a substantial majority of Americans, but one of the primary purposes of the Bill of Rights is to protect the rights of minority groups (religious or otherwise) from the major-

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