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REPORT from the CAPITAL

Free exercise worries

Weakened protection legacy of **Smith** decision

"The *Smith* decision, in my view, will have unfortunate consequences."

— **Sandra Day O'Connor**

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"I feel terribly vulnerable with *Smith* on the books, and you should, too."

— **Oliver S. Thomas**

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REPORT from the CAPITAL

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

Vol. 46, No. 7 **July–August 1991**

Articles

Features

Cover: Supreme Court Justice Sandra Day O'Connor talks with Baptist Joint Committee General Counsel Oliver S. Thomas following her address to the Bicentennial Conference on the Religion Clauses in Philadelphia.

Executive Director: James M. Dunn
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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
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Smith: a major target

Perhaps no decision in recent Supreme Court history has created quite the stir among religious folk as that generated by last year's *Oregon Employment Division v. Smith* ruling in which a narrow majority stripped away long recognized standards protecting Americans' free exercise right. In *Smith*, the high court held that government no longer must demonstrate a compelling state interest to justify its limitation of free exercise rights. Under the opinion written by Justice Antonin Scalia, government has only to show a reasonable basis for its action.

The *Smith* ruling was a favorite target of speakers during a Bicentennial Conference on the Religion Clauses of the First Amendment sponsored by a dozen religious, legal and educational groups recently in Philadelphia. Speaker after speaker at the conference criticized the reasoning and impact of *Smith*.

The most significant criticism was leveled by **Justice Sandra Day O'Connor**, who told conference participants she is "very worried" about free exercise rights following the *Smith* decision, which she predicted would have "unfortunate consequences." A summary of her remarks appears on Page 4 and additional conference coverage is included on Pages 5 and 6.

Baptist Joint Committee General Counsel **Oliver S. Thomas** told participants at a conference seminar that churches and religious groups are under growing pressure to comply with anti-discrimination laws and that the *Smith* ruling had removed much of the protection previously enjoyed by religious groups. Thomas views the Religious Freedom Restoration Act, a measure pending in Congress that would restore the compelling interest test in free exercise cases, as the best response to *Smith*.

Rep. Stephen J. Solarz, D-N.Y., has reintroduced the Religious Freedom Restoration Act in the House (See Page 8), where the measure has 41 co-sponsors. The bill is supported by a broad range of religious and civil liberties groups.

The *Smith* case is not an isolated result. American University professor **Gregg Ivers** contends that throughout the decade of the 1980s, a reconstituted high court has reshaped the landscape of the First Amendment so that full-blown religious liberty has downsized to grudging toleration.

In "Views of the Wall," Baptist Joint Committee legal intern **Holly Hollman** reviews an interesting case in which a federal appeals court observed that a university's interest in avoiding an establishment of religion sometimes can justify burdening a professor's academic freedom.

In "Reflections," **James M. Dunn** contends that those who would seek to shape public opinion should do their homework. And for those who would pontificate in the area of religion and politics, that homework should include historian Edwin S. Gaustad's new work, *Liberty of Conscience: Roger Williams in America*.

In another book review, Cuyahoga Falls, Ohio, pastor Jeffery Warren Scott gives high marks to *The Big Book for Peace*, a collection of stories, poems and pictures edited by Ann Durrell and Marilyn Sachs designed to help children learn about living in harmony with people and nature. □

— **Larry Chesser**

THE RELIGIOUS FREEDOM RESTORATION ACT (H.R. 2797) has at long last been reintroduced in the House by Rep. Stephen Solarz, D-N.Y., and 41 bipartisan co-sponsors. It is expected to be introduced in the Senate by Sens. Joseph Biden, D-Del., and Orrin Hatch, R-Utah. The bill would correct a tragic Supreme Court decision rendered last year, *Employment Division v. Smith*, in which the majority overruled 30 years of freedom-promoting precedent and called full-blown religious liberty a "luxury" that we cannot afford as a society. The BJC, along with about 40 other religious and civil liberties groups, supports the bill. We will work hard for its passage, but it is important that you, as constituents, contact your senators and representatives to register your views as well. Additional information about RFRA is printed on Page 8. (JBW) •

THE BAPTIST JOINT COMMITTEE has joined a broad coalition of religious and civil liberties organizations asking the U.S. Supreme Court to maintain its settled rule that requires government to be neutral toward religion. The brief, written by University of Texas law professor Doug Laycock, asks the court to reject attempts by the U.S. Solicitor General and the attorneys for the Providence, R.I., School Committee to substitute the more lenient "coercion" standard in deciding establishment clause cases. The case arose from lower court decisions holding that invocations and benedictions at Providence middle school and senior high school commencement ceremonies violated the First Amendment. Other groups represented on the brief include four Jewish groups, most mainline Protestant groups under the National Council of Churches and the Seventh-day Adventists. The Baptist Joint Committee decided to file as part of a coalition, rather than individually, because it is important for religious groups that take the establishment clause seriously to stand shoulder to shoulder and say "no thanks" to government's attempt to weaken it. Unfortunately, the court seems poised to do mischief to the establishment clause in this case in the same way that it did to the free exercise clause in the *Smith* case last year. (JBW) •

FOR THE LAST YEAR AND A HALF THE BJC has been working to help the Rev. Alex Awad immigrate to Israel. Awad is a Palestinian Christian who has been called to pastor the East Jerusalem Baptist Church. The Israeli government has refused to grant him a permanent visa, although he was allowed to visit the congregation during Holy Week this year. Numerous U.S. governmental officials and American church leaders have intervened on Awad's behalf, but the Israelis remain intractable. Even as we continue to labor on his behalf, Awad has requested that his Christian brothers and sisters devote each Thursday as a special time of prayer for him and his congregation as they continue to seek ways in which they can be united. One can hardly imagine a more serious abridgment of religious liberty than interference with the calling of a spiritual leader by a local church. (JBW) •

O'Connor concerned

Justice worried about free exercise

Americans may not be able to look to the U.S. Supreme Court to protect free exercise rights, according to one member of the nation's high court.

Addressing a Bicentennial Conference on Religion in Public Life in Philadelphia May 31, Justice Sandra Day O'Connor said the Supreme Court is "narrowly and deeply divided" over First Amendment religious freedom guarantees and likely will remain so.

"I cannot, of course, predict with certainty what path the court will take. I can say, however, that doctrinal evolution is no stranger to the court. The only certainty is that debate over the direction of the court's freedom of religion and separation of church and state doctrine will continue to divide members of the court and will not be susceptible of easy solution."

O'Connor said she is "very worried" about protection of free exercise of religion following the 1990 *Oregon v. Smith* decision in which the court majority abandoned its requirement that government demonstrate a compelling interest before burdening religious exercise.

O'Connor said she agreed with the result reached by the majority in upholding Oregon's ban on the use of peyote in worship by members of the Native American Church but disagreed with the decision to relieve government of its obligation to demonstrate a compelling interest before curbing religious exercise.

"The *Smith* decision will, in my view, have unfortunate consequences," she said.

"The free exercise clause does not mean very much if all a state has to do is make a law generally applicable in order to severely burden a very central aspect of our citizens' lives."

The obvious effect of the court majority's view, she said, "is to turn back to the legislative branch the decision about what religious practices will be burdened and how."

The Constitution's framers, she said, thought the legislative and executive branches had as much right as the judicial branch to determine the constitutionality of government action.

"The only certainty is that debate over the direction of the court's freedom of religion and separation of church and state doctrine will continue to divide members of the court and will not be susceptible of easy solution."

—Sandra Day O'Connor

"I don't know whether *Smith* is a move back toward that view or not," she said, adding that Americans have grown accustomed to the involvement of the judicial branch in protecting citizens from majoritarian actions that might infringe their rights, particularly those spelled out in the Bill of Rights.

"Now I don't know where that protection is going to be in the future ... under the test adopted by the majority."

The court has admitted that its establishment clause rulings are marked by "considerable internal inconsistencies," she said.

"In my view, however, the court's jurisprudence is confusing not because the court is confused, although that may be true as well, but rather because there are inherent tensions in the religion clauses that undermine some of the attempts to achieve strict logical consistency."

Conflict in religion clause cases seems unavoidable, she said.

"Given the obstacles there is no obvious clear road map to serve as a guide for a coherent religion clause jurisprudence. And perhaps the justices might be excused for occasionally making the wrong turn, for getting a bit lost. What is needed is a compass to point us and the court in at least the right direction."

In an effort to provide that compass, O'Connor has proposed that the court use what she calls an "endorsement test" to decide whether governmental actions violate the First Amendment ban on an establishment of religion. Under that test government actions would have to avoid excessive entanglement with religion as well as endorsement or disapproval of religion.

"The government must be neutral in matters of religion rather than showing either favoritism or disapproval of citizens based on their personal religious choices," she said. "Government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to non-adherents that they are outsiders, or less than full members of the political community."

Official acknowledgement of religion can be seen in all three branches of government, she said, noting the presence of legislative and military chaplains, the inscription "In God we trust" on the nation's coins and the designation of religious observances as national holidays.

"Any acceptable theory of the religion clauses must try to explain why these practices either violate or do not violate the Constitution," she said. □

Churches face hiring standards

Churches and religious institutions are facing increasing pressure to comply with anti-discrimination laws, according to a church-state legal specialist.

Oliver S. Thomas, general counsel for the Baptist Joint Committee, told a group of attorneys, law school professors and ministers that the right of churches and religious institutions to discriminate in hiring frequently is pitted against a national public policy commitment to eradicate discrimination based on race, sex, national origin, age and handicap.

Thomas addressed the group during a session of the Bicentennial Conference on Religion in Public Life in Philadelphia. Approximately 350 people attended the three-day conference, sponsored by a dozen religious, legal and educational groups, including the American Bar Association, the National Council of Churches and the Baptist Joint Committee.

Historically, Thomas said, constitutional principles such as those forbidding government entanglement with religion, requiring government to demonstrate a compelling interest before burdening religious exercise and viewing ecclesiastical questions as beyond the jurisdiction of civil authorities have provided churches and religious institutions some immunity from anti-discrimination laws.

But a 1990 Supreme Court decision holding that government need demonstrate only a reasonable, rather than a compelling, interest before limiting religious exercise has removed much of the religious institutions' protection, Thomas said.

Thomas said the growing involvement of religious organizations in areas also occupied by secular institutions, such as health care and education, has increased pressure to subject religious institutions to the same anti-discrimination provisions applied to their secular counterparts.

Additionally Thomas said the growing involvement of religious organizations in areas also occupied by secular institutions, such as health care and education, has increased pressure to subject religious institutions to the same anti-discrimination provisions applied to their secular counterparts.

"We're beginning to play by the same set of rules," Thomas said.

Thomas said courts face a difficult task in trying to balance the competing constitutional principles of free religious exercise and church-state separation with the rights of individuals to participate fully in society.

Pervasively sectarian institutions such as churches, seminaries and parochial schools thoroughly permeated by religion are less likely to be subject to anti-bias hiring regulations than are institutions considered to be merely "religiously affiliated," such as hospitals and universities.

Absent clear direction from Congress or state legislatures, Thomas said, courts are less likely to apply anti-bias regulations to pervasively sectarian institutions.

The most difficult cases for courts involve non-ministerial employees at pervasively sectarian institutions, he said. Non-ministerial posts at religiously affiliated organizations are most likely to face anti-discrimination regulations, while ministerial positions at both pervasively sectarian and religiously affiliated institutions generally are beyond the reach of such regulations.

Thomas said a legislative proposal which was reintroduced in Congress on June 26 would restore a higher level of protection for religious organizations. The Religious Freedom Restoration Act, which would restore the "compelling interest" test the Supreme Court abandoned in *Oregon v. Smith*, was first introduced late in the 101st Congress.

"I feel terribly vulnerable with *Smith* on the books," Thomas said, "and you should, too."

Thomas said the Religious Freedom Restoration Act should be supported "not because the compelling interest test always yielded the right result — it didn't — but because it would create serious consideration of free exercise claims."

Earl Trent (left), house counsel of the Board of National Ministries of American Baptist Churches in the U.S.A., and a member of the BJC, leads a Bicentennial Conference seminar on "Accommodation of Religion in Prisons and the Military." J. Brent Walker, BJC associate general counsel, facilitated three seminars: "Civil Disobedience as Religious Public Discourse," "Confidentiality of Communications with Clergy" and "Government Regulation of Social Ministries."

Religion in Public Life

Bicentennial Conference speakers assess religion's right to participate in the public square (access), whether it receives special treatment (accommodation) and the price it pays for access and accommodation (accountability).

Access

Maximal — **Minimal**

There is no legal or constitutional question about religion's access to the public square, according to **Richard John Neuhaus**, director of the Institute on Religion and Public Life. "In a democracy that is free and robust," he said, "an opinion is no more disqualified for being 'religious' than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb. ... Religion in public is but the public opinion of those citizens who are religious." Religious institutions, he said, "are guaranteed the same access to the public square as the citizens who comprise them." Neuhaus said there is but one religion clause and no tension exists between free exercise and no-establishment. "The no-establishment part of the religion clause is entirely and without remainder in the service of free exercise. Free exercise is the end; no-establishment is the necessary means to that end."

Former government lawyer, law professor and federal judge **Marvin E. Frankel** said Thomas Jefferson's metaphor of a wall of separation between church and state is the essence of the minimal access view. "The metaphor has robust critics and opponents, including Chief Justice Rehnquist," he said. "It remains, nevertheless, a wise and salutary guide." He rejected arguments that religion is needed in "the public square" to validate democratic ideals and that it is unfair to deny religious groups tax money. "Far from promoting and preserving the highest of shared values, the proponents of access in practice seek power they can flaunt, the diminution and degrading of others, and petty conformities unworthy of great democracies." Access to public funds, he said, "ought to be, though it still is not, a universally agreed taboo."

Accommodation

Maximal — **Minimal**

Speaking in support of accommodation of religion, University of Chicago law professor **Michael W. McConnell** argued for a substantive, rather than formal, understanding of government neutrality toward religion. With formal neutrality, he said, government may not make distinctions on the basis of religion (without sufficient justification), meaning religion must be treated in the same manner other ways of thought are treated. With substantive neutrality, government may treat religion differently or accord religion special treatment in certain cases as long as it does not induce or inhibit religion. The Constitution, he noted, gives special treatment to religion. In answer to the argument that government should not confer benefits upon religion, he argued that accommodation of religion is not necessarily a benefit. "To leave something alone is not a benefit," he said.

George Washington University professor **Ira Lupu** defined accommodation as government actions that favor religion specifically. He distinguished between mandatory accommodation (accommodation required by the free exercise clause of the First Amendment) and permissive accommodation (accommodation as a matter of political discretion rather than constitutional requirement). The no-establishment clause, he said, to some extent limits permissive accommodation. While he argued that the Supreme Court's *Smith* decision goes too far in restricting mandatory accommodation, he said such accommodations should be "strictly limited by a series of sharply defined principles." *Smith* also invites legislatures to engage in permissive accommodation, which under *Smith*, he said, would likely favor mainstream religions at the expense of unpopular minorities.

Accountability

Maximal — **Minimal**

University of Louisville professor **Paul J. Weber** said accountability, the price religion pays for access and accommodation, is part of what he terms an "Equal Separation" doctrine. Under that doctrine's view of the no-establishment clause, religious individuals and groups cannot receive privileges or assume unique burdens that are not given to or pressed upon similar non-religious individuals and groups. The doctrine integrates free exercise protections with other constitutional rights by requiring their extension to similar non-religious groups. Both religion and government pay a price under Weber's view. Government is required to provide equal treatment to religious and similar non-religious individuals and groups. Religion would "lose any privileged position it might have, although not its protections" and be expected to promote its own interests in the public square.

Church-state attorney **William Bentley Ball** of Harrisburg, Pa., said free exercise, like free speech, is a fundamental freedom and "does not have to pay any 'price' for its enjoyment. Nor should it ever be said that it must be balanced in the scales against the public interest, since it is itself an inseparable part of the public interest." Rather than asking what price religion pays for access or accommodation, he said, it is better to ask how government will be held accountable in its relationships with religion. "To put it this way, I feel, is to get the horse where it belongs — before the cart." He said an appalling effect of the *Smith* decision is that "it eliminated almost all possibility of holding government accountable. ... Free Exercise protection must be sought mainly in the legislature, and there the politically powerless may fare ill."

VIEWS OF THE WALL

K. Hollyn Hollman
Legal Department Intern

The principle of academic freedom has long been protected by the First Amendment. In higher education, this value is almost sacred, and the courts have defended it ably. In *Keyishian v. Board of Regents* (1967) the Supreme Court stated: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned."

Academic freedom thus seemed secure. A recent federal appeals court decision, however, threatens to undermine teachers' liberty in the classroom. The case, *Bishop v. Aronov*, raises an important question: Does academic freedom — which past courts have said is of "transcendent value" — extend to a discussion of the transcendent, namely a professor's belief in Jesus Christ?

Phillip Bishop has been an assistant professor in the area of health, physical education and recreation at the University of Alabama since 1984. Bishop occasionally spoke of his religious beliefs during instructional time, prefacing his remarks as "personal bias." Bishop's comments revealed his desire to emulate the life of Jesus Christ and asked students to be aware that his religious beliefs colored everything he said and did.

In class, Bishop never prayed, read Bible passages, handed out religious tracts or arranged for speakers to lecture on religious subjects. He did hold an after-class meeting during which he discussed "Evidences of God in Human Physiology."

When the university received complaints about Bishop's comments from students, it issued a memo instructing Bishop to refrain from interjecting his religious beliefs and preferences during instructional periods and from holding optional classes in which a "Christian perspective" of an academic topic is discussed. The memo reaffirmed a commitment to Bishop's rights to academic freedom and to religious belief, but said that certain actions were unwarranted at a public institution such as the University of Alabama.

Bishop complied with the memo but petitioned the university to rescind the order. When the university refused to do so, Bishop filed suit claiming that the university's restrictions violated his right to free speech.

The district court ruled in favor of Bishop. The court determined that "the University has created a forum for students and their professors to engage in a free interchange of ideas" and therefore could not restrict Bishop's religious speech. The court also concluded that the memo was overly broad in that it prohibited statements that would not violate the establishment clause. The decision was also based on the fact that the university had never curtailed a professor's classroom discussion or extracurricular meetings with students in the past.

The Court of Appeals reversed. It dismissed the notion that this was a "open forum" case quickly and unequivocally. While the university may make its classrooms available for other purposes, the court held that during instructional periods the classrooms were specifically reserved for teaching particular courses for credit. Citing *Hazelwood School District v. Kuhlmeier*, a recent high school newspaper case, the court held that school officials have the authority to place "reasonable restrictions" on a professor's in-class speech that could not be censored outside the classroom.

The appeals court also rejected Bishop's charge that the memo was overbroad and vague. Following the reasoning of recent Supreme Court decisions, the court held that the memo was "readily susceptible" to a narrow interpretation and therefore, was constitutional. According to the court, the university asked only that Bishop separate his personal and professional beliefs and refrain from injecting the former during instructional time. It did not prohibit all religious discussions between Bishop and his students.

The Court of Appeals suggested that Bishop's after-class meetings would not have been questioned had he "made it plain to his students that such meetings are not mandatory, not considered part of the course work and not related to grading." Since Bishop held the meetings on the religious implications of class material prior to the submission of final grades, students may have perceived the sessions as coercive. Therefore, the judges said the university had a legitimate interest in restricting Bishop.

***Bishop v. Aronov** is an important case because it makes clear that there are circumstances in which a state university's interest in preventing a violation of the establishment clause is in tension with its commitment to academic freedom.*

Bishop v. Aronov is an important case because it makes clear that there are circumstances in which a state university's interest in preventing a violation of the establishment clause is in tension with its commitment to academic freedom. The court avoided a ruling on the establishment clause but noted that a teacher's speech can be taken as "directly and deliberately" representative of the school. A university's interest in avoiding an establishment of religion may justify the burdening of a professor's academic freedom.

The court further held that "the university can restrict speech that falls short of an establishment violation" and deferred to the judgment of the university in placing restrictions on Bishop. Educators in colleges and universities may fear that the decision gives universities too much power to limit classroom speech. It is unlikely, however, that this case will encourage new, tighter restrictions on academic freedom.

As the court noted, universities have an interest in protecting academic freedom to attract and retain quality professors. Universities often are measured by the degree of academic freedom their faculties enjoy; those that place excessive restrictions on teachers tend to suffer.

The lack of satisfactory cases on point led to a decision based largely on secondary school cases. Though the Supreme Court routinely distinguishes elementary and secondary schools from post-secondary institutions, the appeals court made no such distinction here. Instead, the appeals court concluded that academic freedom is not an "independent First Amendment right," even in universities where teachers are generally granted more latitude in the classroom and students are assumed to think more critically and independently.

The court, without offering specific qualifications, affirmed that universities have broad authority to set guidelines controlling professors' speech in the classroom. This discretion, the court held, is a natural extension of schools' ability to control curriculum and to pursue their basic educational mission. The immediate consequences of this decision, therefore, will be determined not in the courts but in the universities as administrators decide what level of academic freedom their teachers — and by implication — their students will enjoy. □

Free exercise bill reintroduced

RFRA designed to re-establish high court test

Legislation designed to restore a high standard of protection for free exercise of religion was reintroduced in the U.S. House of Representatives June 26.

The Religious Freedom Restoration Act (H.R. 2797) would restore the strict "compelling interest" standard the U.S. Supreme Court formerly required government to meet before restricting religious liberty.

That test permitted government to restrict the First Amendment's guarantee of religious exercise only to further a compelling governmental interest and if the least restrictive means of safeguarding that interest had been employed.

The high standard, established by the Supreme Court in 1963, was abandoned in its *Oregon Employment Division v. Smith* decision April 17, 1990. The *Smith* decision stated that government need not justify burdens on religious practice unless the law is aimed at religion.

"With the stroke of a pen, the Supreme Court virtually removed religious freedom — our first freedom —from the Bill of Rights," said Rep. Stephen J. Solarz, D-N.Y., at a press conference announcing the bill.

Chief sponsor of the bill, Solarz is joined by 41 bipartisan co-sponsors. In 1990 Solarz introduced the bill late in the 101st session of Congress, which ended before action was taken on the bill.

The 1991 bill is expected to be introduced soon in the Senate.

"The court's reading of the First Amendment is out of step with the nation and with our historical commitment to religious liberty," Solarz said.

"The court's grievous and shortsighted error must not be permitted to stand unchallenged."

The Baptist Joint Committee, which chairs the Coalition for the Free Exercise of Religion that backs the bill, lauded the legislation.

"Justice Scalia in the *Oregon v. Smith* decision with one sweeping phrase dismissed the free exercise of religion as it has been known in this nation as a legal 'luxury we can no longer afford,'" said BJC Executive Director James M. Dunn. "A Religious Freedom Restoration Act that simply and clearly restores the First Amendment to its previous stature is desperately and immediately needed."

Smith already has impacted some 20 reported cases. Its brunt has been felt by minority sects and mainline denominations. Under the new standard, free exercise claimants won only four of the 20 cases, and in three of those instances the state court based its decision on other grounds.

Oliver S. Thomas, BJC general counsel, said the RFRA "is without a doubt the most significant bill affecting religious liberty in our lifetime. Anyone who opposes it would have opposed enactment of the First Amendment."

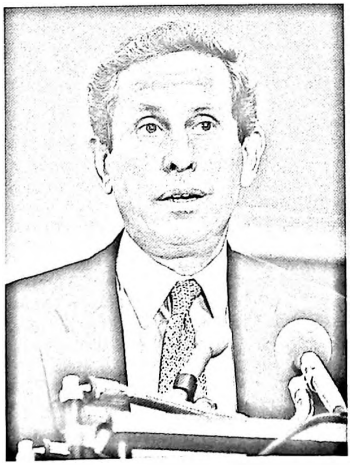
Thomas noted the coalition supporting the bill is as remarkable as the legislation itself.

"Several dozen religious and civil liberties groups ranging from the American Civil Liberties Union to the Traditional Values Coalition, from the National Council of Churches to the National Association of Evangelicals, from Agudath Israel to the Muslim Council have been willing to lay aside their deep differences ... and join in a common vision for the common good — religious liberty for all Americans."

While the coalition supporting the bill is religiously and politically diverse, some pro-life groups have declined to endorse the Solarz bill. In the event *Roe v. Wade* is overturned, some RFRA opponents claim the bill could recreate a constitutional right to abortion based on religious beliefs and practices.

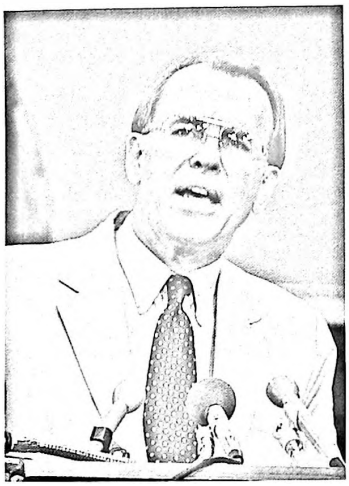
However, not all pro-life groups see the RFRA as an abortion threat.

Joining Solarz in the press conference, Robert P. Dugan Jr., director of public affairs for the National Association of Evangelicals, said his organization "is staunchly pro-life and would never support legislation which could effectively be used to endanger the pro-life cause.



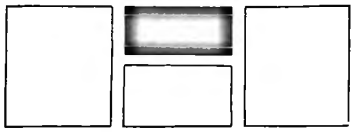
"The court's reading of the First Amendment is out of step with the nation and with our historical commitment to religious liberty."

— Rep. Stephen Solarz



"We think the argument that the Supreme Court might overturn* Roe v. Wade *and then discover a right to abortion under a different label is little short of frivolous."

— Robert P. Dugan Jr.



"RFRA poses no such threat; the bill itself is abortion neutral," Dugan said. "We think the argument that the Supreme Court might overturn *Roe v. Wade* and then discover a right to abortion under a different label is little short of frivolous. RFRA simply restores a legal standard; it confers no new substantive rights, whether to abortion or any other claim based on free exercise of religion."

Responding to a question, Solarz said the bill scrupulously avoids tipping the scales for or against abortion, as well as other religiously related issues. To do so would jeopardize the broad-based coalition, Solarz said. Coalition members could not agree on the decisions of every free exercise case, but they could concur on the standard by which these cases should be decided, he said.

"There is no hidden pro-abortion agenda" in the bill, he added. □

'Choice' proposal faces congressional skepticism

WASHINGTON

Education Secretary Lamar Alexander defended the "choice" aspect of the Bush administration's educational reform package when he testified before House and Senate panels in June.

Alexander, speaking before the House Subcommittee on Elementary, Secondary and Vocational Education June 18, outlined the administration's America 2000 proposal. While elements of the proposal have gained acceptance, the choice components have drawn fire since President George Bush first announced the package April 18.

The bill would allow the use of tax dollars to help parents send children to private and parochial schools. The plan offers incentives to school districts to run choice programs, allowing parents to select which schools their children attend.

Federal remedial education funds (Chapter 1 program) also would follow the students to public, private and parochial schools.

The America 2000 plan calls for a transformation of the country's educational system by strengthening existing schools and creating a new generation of schools for tomorrow. The initiatives also emphasize lifelong learning and the development of communities that foster a learning environment.

Alexander said America 2000 is not just a federal program; it is a "nine-year crusade to help America move itself toward the national education goals."

Rep. Nita Lowey, D-N.Y., said the term crusade made her nervous "because some of us take seriously (the) separation of church and state."

Critics of the choice components have said the use of public monies for parochial schools would breach the wall of church-state separation.

Alexander said he cannot understand why choice is an issue in a society based on personal freedoms, predicting that in five years the issue will be non-existent.

Rep. Patsy Mink, D-Hawaii, asked Alexander to explain his contention that the use of Chapter 1 funds primarily would impact disadvantaged children, offering them the same choice that privileged children have. Mink noted most families are limited in school choice by their neighborhoods — not their economic situation.

Alexander responded that wealthy families frequently examine school districts before they locate in a community. The poor families do not have such an option, he added.

Alexander was referring to only 10 percent to 20 percent of the population, she countered. Most people locate near their work place, she said.

Rep. John F. Reed, D-R.I., said, "This choice argument is a policy of avoidance" of substantive issues, such as funding and school structures.

"Are we just passing out parachutes instead of fixing the plane?" Reed asked.

"I think we are imagining the telegraph when we are using the pony express," Alexander responded.

Reed said the system of choice is based on a flawed economic model that does not attack fundamental problems.

The choice battle could jeopardize the reform package, members of the Senate Labor and Human Resources Committee said during a June 10 hearing.

Sen. Howard Metzenbaum, D-Ohio, said the choice proposals could lead to the "destruction of the American public school system." Metzenbaum said the choice voucher plan would compound — not alleviate — the problems in public schools. □

Supreme Court declines to hear tithing challenge

WASHINGTON

The U.S. Supreme Court has refused to hear an Oregon couple's challenge of a bankruptcy court's rejection of their Chapter 13 debt reorganization plan because it designated a tithe of their monthly income to their church as a reasonably necessary living expense.

In 1987, Steven C. and Charlene Ivy filed for Chapter 13 protection in U.S. Bankruptcy Court for the District of Oregon. The couple presented a reorganization plan showing they owed $8,525 in back taxes and $53,360 in unsecured debts. Under the plan, the Ivys would make 36 monthly payments to creditors totaling about 27 percent of their unsecured debt.

Under Chapter 13 provisions, debtors must pay all their disposable income to creditors. Disposable income is defined as "income received by the debtor and which is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor."

Bankruptcy Judge Henry L. Hess Jr. refused to approve the Ivys' plan, holding that the monthly tithe did not constitute a reasonably necessary living expense. Excluding the tithe from the Ivys' disposable income, the court held, would effectively require the creditors to contribute to the Ivys' chosen charity.

But in denying the plan, Hess told the Ivys he would approve a plan that allowed their proposed monthly tithe if they extended their $745 Chapter 13 payments an additional 18 months. The extension would allow their creditors to receive the same amount from the Ivys that they would have received from non-tithing debtors, the judge reasoned. □

Southern Baptists reject heritage, says ABC exec

VALLEY FORGE, PA.

The Southern Baptist Convention rejected centuries of Baptist history and tradition when it voted to cease funding the Baptist Joint Committee on Public Affairs, said Daniel Weiss.

Weiss, general secretary of the American Baptist Churches in the U.S.A., expressed disappointment in the SBC action taken June 4 during the denomination's annual meeting in Atlanta. The action follows an 87 percent cut in SBC funding of the agency from the previous year.

The 55-year-old Baptist Joint Committee is supported by 10 member bodies, including the ABC.

In registering his disappointment, Weiss said the BJC is "an eloquent and courageous mouthpiece for religious liberty (whose) statements and actions have been well within the mainstream of Baptist thought and practice." □

Freedom in retreat

Have religious rights been demoted?

"The thrust of the Justice Department's brief is not directed toward the narrow school prayer issue but instead asks the court to jettison the use of the Lemon *test."*

—Gregg Ivers

For reasons that have little to do with the law, the Supreme Court decided in March 1991 to accept an obscure church-state case for oral argument this fall that will allow it to revisit a question long thought to have been settled. The case, *Lee v. Weisman*, involves the question of whether the establishment clause of the First Amendment prohibits invocations at public school graduation ceremonies. Two lower federal courts have ruled that it does.

On first glance, the legal issue does not appear to raise new or significant constitutional questions. The Supreme Court has ruled on numerous occasions over the past three decades that state-supported religious exercises in the public schools are unconstitutional.

But the Providence, R.I., school district appealing the case received a tremendous boost when the U.S. Department of Justice filed a friend-of-the-court brief. In the brief the Solicitor General asked the court not only to accept the case to reverse the decision but to reconsider a fundamental component of its establishment clause jurisprudence.

The thrust of the Justice Department's brief is not directed toward the narrow school prayer issue but instead asks the court to jettison the use of the *Lemon* test, a rule the court created 20 years ago in a case involving government financial assistance to parochial schools, *Lemon v. Kurtzman*. In that case, the court held that for a statute implicating the establishment clause to survive constitutional review, it could not promote a religious purpose, advance nor inhibit religion nor create excessive entanglement between church and state.

The Bush administration has asked the court to replace *Lemon* with a far less rigorous "non-coercion" standard that would permit governmental sponsorship of religion as long as it does not result in forcing persons to believe or act against the dictates of their religious conscience. This move represents another in an unfortunate sequence of attacks on church-state separation over the last decade, beginning with the ascent of the Reagan administration and its open call for a return to state-sponsored school prayer and the promotion of other practices in public life associated with majoritarian religion. The Bush administration's desire to continue that drive to reintroduce majoritarian religion into the civic culture is not at all surprising when considered against the changes that have reverberated throughout church-state law in the last decade.

The last decade will be remembered as one in which established constitutional doctrine interpreting the meaning of the First Amendment religion clauses underwent profound and important alteration. Under a reconstituted Supreme Court, full-blown religious liberty has been tamed nearly to grudging toleration if not virtual destruction.

As undesirable as the church-state decisions of the Supreme Court were during this period, equally disconcerting were the energetic, provocative and occasionally nonsensical arguments coming from academic circles and elsewhere contending that these decisions and the jurisprudence used to reach them represented an important and long overdue return to the original meaning of the religion clauses.

The arguments advanced in support of a "non-preferential" reading of the First Amendment religion clauses represented just a fraction of the much larger debate that came to the fore during the 1980s of the meaning of the Constitution. Since the great Chief Justice John Marshall first gave explicit recognition to the authority of courts to review the constitutional fitness of the executive and legislative action in *Marbury v. Madison*, judicial power has been used to further the political ends of those in whose hands it rests, as well as to discern the meaning of the Constitution.

It was inescapable then that intellectual debate over the constitutional interpretation often becomes overshadowed by the constitutional politics that flow from them as happened during the period from 1980 to 1990.

It is difficult to pinpoint the moment that the unusually passionate debate over constitutional interpretation became such a central component of public discourse during the decade. Arguments over the proper role of history in constitutional interpretation, the obligation of judges to confine themselves to the constitutional text in interpreting the document and the relevance of the founders' original intent had long occupied a significant place in academic dialogue. It is nothing short of remarkable that those arguments found a path into our public discourse, convulsed our politics with such verve and forced participants on all sides of debate to re-examine their fundamental understanding of the American constitutional and political tradition.

The protagonist responsible for bringing forward the public exchange over constitutional interpretation was not a writer or commentator from the influential academic and legal circles in which this debate had simmered for years but then-Attorney General Edwin Meese III. In a 1985 address to the American Bar Association, Attorney General Meese called for judges to return to "a jurisprudence of original intention" in their interpretation of the Constitution and argued that the exercise of judicial power in the modern constitutional era had failed to respect the original design of the framers. It was strange for the U.S. attorney general to call into question, in full public view, the worth of our constitutional jurisprudence.

Even more unusual was the response that his remarks generated from Justice William J. Brennan. In a speech given at Georgetown University shortly after Meese's address to the American Bar Association, Justice Brennan rejected the attorney general's call for a return to "a jurisprudence of original intention" in

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Gregg Ivers is assistant professor of government at American University in Washington, D.C. This article is adapted from the conclusion of his book, *Lowering the Wall: The Supreme Court and Religion, 1980-1990,* to be published later this year.

candid and even hostile terms, arguing that "it is arrogant to pretend that from our vantage we can gauge accurately the intent of the framers. ... Those who would restrict claims of right to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress and eschew adaptation of overarching principles to changes of social circumstances."

The Meese-Brennan exchange painted over the broad canvas of American constitutional law, but front and center in this debate were vastly different visions of the meaning of the First Amendment religion clauses and the constitutional place of religion in American public life. Throughout his 34-year career on the Supreme Court, Justice Brennan remained on the vanguard against frequent and sometimes clever attempts to encroach upon the constitutional principles of church-state separation and religious freedom enshrined in the First Amendment, authoring several important opinions decided under each of the religion clauses and issuing poignant dissents in numerous others.

On the other hand, Meese assumed the political mantle for the non-preferentialists. He called on the court to reconsider its church-state jurisprudence in light of the framers' original understanding — which he argued meant prohibiting "the establishment of a particular religion or a particular church, favoring one church, or one church group over another (and did not) preclude federal aid to religious groups so long as that assistance furthered a public purpose and so long as it did not discriminate in favor of one religious group against another."

Furthermore, Meese argued that the high wall of separation fostered a climate of government hostility toward religion. The non-preferentialists, including those writing from on and off the judicial bench, maintain that government advancement of private religious beliefs and neutral funding schemes that aid religion without regard to denominational preference are consistent with this vision of the establishment clause and reflect the original design of the framers.

The Bush administration has asked the court to replace* Lemon *with a far less rigorous "non-coercion" standard that would permit governmental sponsorship of religion as long as it does not result in forcing persons to believe or act against the dictates of their religious conscience.

Too often, however, the non-preferentialists have used the cloak of constitutional prerogative to disguise the advancement of their own sectarian policy agenda — urging government support for religious exercises in the public schools and financial aid to parochial institutions, as if judicial humility, and not political enthusiasm, mandates this interpretive approach. These claims persuasively have been rebutted by constitutional historians such as Leonard W. Levy, the prominent church-state lawyer Leo Pfeffer and several legal academics, including Geoffrey Stone of the University of Chicago law school and Douglas Laycock of the University of Texas. Their views differ on the limits that the First Amendment imposes on the relationship between religion and the state but agree that the framers never intended to permit non-preferential support for and aid to religion.

Indeed, Professor Laycock, whose writings on church-state relations frequently have been cited as authority by the Rehnquist court, has commented that the "non-preferentialist account flies in the face of the data. Non-preferentialism was the last compromise offered by the defenders of establishment, and the founding generation repeatedly rejected it."

In addition to this historical revisionism, the non-preferentialists have argued that the separationist decisions of the Warren court and the early Burger court resulted in a moral climate hostile to religion, in which secularism gained ascendancy over American religious heritage and its historical place in our civic culture. As discussed earlier in this essay, the political configuration behind the drive to reintroduce religion in the public schools, to urge municipalities to support seasonal religious displays and to obtain government aid for parochial institutions consisted, for the most part, of conservative religious groups that advocated a return to their view of the framers' vision. The more forceful among them, including Richard John Neuhaus and Robert Cord, have argued that allegiance to the metaphorical wall of separation promotes a civic environment in which the forces of "irreligion" are preferred over those of religion. In their view, the current movement toward greater government accommodation of sectarian religion in public life represents a much overdue correction of constitutional interpretation and a period of healing for our civic culture.

These charges are not only plainly and utterly false but also are insensitive to those who have fought long and hard for the effectuation of the constitutional promises embodied in the First Amendment religion clauses. Separationism does not have its moral anchor in "irreligion," but rather in religious liberty for all. It seeks to ensure that all individuals,

"Non-preferentialism was the last compromise offered by the defenders of establishment, and the founding generation repeatedly rejected it."
— Douglas Laycock

regardless of their denominational or religious affiliation, remain free from the unequal burden and sense of isolation that government preferences for certain segments of organized religion impose upon those who are not among the beneficiaries. Moreover, nothing in the religion clauses prohibits individuals from incorporating their religious values into the conduct of their personal and civic life. Indeed, Alexis de Tocqueville had noted the moral value of religion in tempering the individual and collective excess of democratic societies, writing that "[o]ne cannot therefore say that in the United States religion influences the laws or political opinions in detail, but it does direct mores and ... helps to regulate the state."

This Tocquevillian understanding of the relationship between religion and civil government offers much to students of the current debate over church-state relations. In our rich, multi-religious, multi-denominational tradition of organized American religion, it is naive to believe that the Constitution requires or even makes possible governmental sponsorship of an ecumenical religious tradition in our public life. It does not.

The framers themselves recognized that the growing denominational pluralism among American Protestantism alone, not to mention the small number of Catholics, Jews and other religions present in the founding era, made constitutionalized religious establishments impossible, as it did restrictions on individual conscience and the free exercise of religious beliefs, including conduct linked to those beliefs. When one considers that the diverse, plural character of American religious life has since expanded to include faiths, sects and religions such as Christian Scientists, Jehovah's Witnesses, Mormons and other non-Western religions that were not present when the First Amendment was ratified, it becomes even more rhapsodical to argue that government has an affirmative obligation to nurture and support pan-Protestant religious values at the expense of all others in our public life.

Nonetheless, this is the road on which the Supreme Court chose to travel during the 1980s, and its decision of *Weisman* might well indicate a desire to maintain that course as we enter the 1990s.

Continued on Page 14

INTERNATIONAL DATELINE

Romanian president asks Baptist leaders for help

BUCHAREST, ROMANIA

Romanian President Ioan Iliescu has asked Baptist leaders to help rebuild Romania's moral fiber.

In a 45-minute conversation with 12 Baptist leaders, Iliescu said, "In this process of renewal the church must have a vital role. The deepest crisis we face in this country is not economical or political, but moral."

President Iliescu, who does not profess to be a Christian, described the Romanian people as disheartened and said they are suffering from feelings of inferiority and moral degeneration.

"It is in this area that we can see the positive role religion should have in Romania. The church has an important role to play in the future of our nation. We hope you as Baptists can help us rebuild our nation and restore the moral values in our people."

Knud Wumpelmann, president of the Baptist World Alliance, responded, "This will be good news to be read by Baptists all over the world. They will be encouraged to hear that the State, as you have said, now wishes to ask church authorities for our cooperation.

"We live democratically in our Baptist churches," he continued. "You will find Baptists ready to help re-establish democracy and moral values in your society."

Nicolae Gheorghita, the new general secretary of Romanian Baptists, told Iliescu, "Thousands of Baptists are praying for you daily." □

Middle East peace vital to growth, says bishop

ATLANTA

A leader of the Middle East's Christian minority declared during a visit here that his region's churches probably will continue to decline unless a peace settlement is reached in the Israeli-Palestinian conflict.

Anglican Bishop of Jerusalem Samir Kafity, president of the Middle East Council of Churches, also said U.S. Christian fundamentalists must share the blame for the conflict because of their strong financial and political support for Israel.

Kafity, whose council embraces Catholic, Orthodox and Protestant churches with about 14 million members, said Christian Arabs steadily are leaving the region to escape political turmoil.

He added that younger Christians in the occupied territories "are emigrating because of the absence of justice and peace and the lack of a future."

Though Christianity started in Jerusalem nearly 2000 years ago, the bishop said there are now "more Christian stones than Christian people" in the city where Christ ended his ministry and was crucified. Things will continue to deteriorate if the situation is unresolved, he added. □

Soviet citizens request Bibles from the West

SOVIET UNION

Owning a Bible — much less requesting one from overseas — was unsafe in the Soviet Union for decades. Churches had to resort to underground smuggling for much of their Scripture distribution.

With Glasnost helping to overcome those barriers, millions of emboldened Soviets are requesting Bibles from the West.

A Christian radio network based in California is responding to the demand by sending thousands of Bibles to individuals in the Soviet Union in response to requests received through a tract-distribution program.

As of late May, Family Radio Network, based in Oakland, had sent 5,000 Bibles to the Soviet Union. Distribution of another 50,000 Bibles was planned for June.

Family Radio has about 20 stations in the United States and has been broadcasting programs to the Soviet Union by short-wave radio for several years. □

German Baptists reunite after 22-year separation

SIEGEN, GERMANY

Two thousand Baptists from East and West Germany stood in silence as their elected leaders signed the official unification document. Then, with tear-filled eyes, their voices united to sing "Bless Be the Tie That Binds."

The 22-year separation, forced on them by the Berlin Wall, had ended. A reunited German Baptist Union was formed, and the Baptist unions of the former German Democratic Republic and the Federal Republic of Germany were dissolved. □

Polish lawmakers reject thorough abortion ban

WARSAW, POLAND

The Polish Parliament recently rejected legislation that would have banned abortions — the first political setback for the Roman Catholic Church in Poland since the fall of communism in 1989.

The decision disappointed Poland's Catholic leaders, who had been lobbying to have a comprehensive abortion ban passed to honor Pope John Paul, who visited his homeland in June. Instead, legislators adopted a non-binding resolution that calls on the government to ban abortions by private doctors. The resolution does not mention state hospitals, where abortions have been performed since 1956.

Public opinion in the overwhelmingly Catholic nation opposes the abortion ban that is supported by church leaders. Abortion is the leading form of birth control in Poland, where an estimated half of all pregnancies end in abortion.

Support for the church is high in Poland, but its popularity may be declining according to an April opinion poll. The poll, taken for Polish television, showed the church had slipped from its position as the nation's most trusted institution for the first time. It was supplanted by the army.

The church is pushing for closer ties with the new Polish government. □

Human rights in Libya worsening, says Amnesty

NEW YORK

The human rights situation in Libya has been deteriorating since 1988, according to Amnesty International USA.

In 1988, 400 political prisoners were freed and legal reforms to safeguard human rights were promised.

But hundreds of political prisoners — including prisoners of conscience — have been imprisoned in the past two years, the worldwide human rights organization said. The Libyan authorities have not responded to repeated appeals by the organization about wide-ranging concerns, Amnesty International said.

The organization's latest report says that more than 450 political prisoners are still being held, including five known prisoners of conscience. The five have been in prison since 1973, and Amnesty International has been campaigning for their release for more than 10 years.

The majority of political prisoners now incarcerated were arrested after 1988 when Col. Gadaffi pledged to introduce legal reforms to make Libya a place where "human rights are respected."

"Urgent action is needed by the government to free prisoners of conscience and prevent the imprisonment of people for the peaceful expression of their beliefs," Amnesty International said in a news release. □

Bible sales in Cuba show growing toleration

HAVANA

Five thousand Bibles are going on sale in Cuban book shops, showing further signs of growing tolerance by Cuba's Communist authorities towards religious teaching and worship.

The Cuban news agency Prensa Latina reported that the Bibles were handed over by Cuba's Ecumenical Council to the National Book Institute, a state organization responsible for the distribution of books.

The Bibles, printed in Spanish, are a donation from the United Bible Societies.

Bibles and religious literature had not been sold openly in Cuba's state book shops for 30 years — a result of the hostility that characterized church-state relations following the 1959 revolution that eventually introduced communism to the island.

Protestant and evangelical churches in Cuba grouped in the ecumenical council recently have enjoyed increasing access to Cuba's state-run media as part of improved relations with the Communist government. The state radio has broadcast Christmas and Easter services organized by Protestant churches in the past six months. □

Seville Baptists ready for EXPO '92 ministry

SEVILLE, SPAIN

The Evangelical Baptist Church in Seville is preparing to make Christ known during the Universal Fair, EXPO '92.

This will be "one of the greatest events that the world has yet to see," according to Pastor Ruben Gomez. EXPO '92 is only the third universal exhibition in history, with the last one taking place more than 20 years ago, he explained.

The event's import, coupled with the church's desire to minister effectively to the 20 million national and international visitors who are anticipated in Seville next year, has led the 125-member congregation to think big, he said.

First, they sold their old building. Next, they procured land in one of the city's most strategic areas and are in the process of constructing the largest Protestant church facility in Seville.

During EXPO '92, they plan to hold evangelistic campaigns, concerts, cultural tours, theater, choirs and much more. The new building will have a coffee house and space for various types of ministry. Not far from Seville, the church already maintains a Drug Rehabilitation Center that currently ministers to 10 young men. □

Brazilians take new step to evangelize country

SAO PAULO

Brazilian evangelicals are taking steps to evangelize their country, establishing the Brazilian Evangelical Association.

The AEB's new president Caio Fabio D'Araujo Filho said the association aims to testify to the unity of the Brazilian evangelical churches, to define what it means to be an evangelical and to provide a prophetic voice on social issues such as abortion.

Membership in AEB is open to local churches, state conventions, denominations, missionary agencies and pastors. The AEB already has received 2,000 membership applications. □

Human rights agency calls for single standard

WASHINGTON

Amnesty International USA, a worldwide human rights organization, called on the United States to engage a single human rights standard at a press conference here July 9.

Amnesty representatives, following the press conference at which the organization released its 1991 report, delivered to the White House nearly 40,000 petitions calling for the standard.

"There will be no end to the perpetual cycle of human rights violations worldwide until governments are ready to make the commitment to upholding a single human rights standard at home or abroad, regardless of foreign relations or political expediency," said John G. Healey, AIUSA executive director. □

NEWS-SCAN

Missionaries Elam and Barbara Stoltzfus recently returned to Guatemala after being forced out by guerrillas, who torched the family's home, clinic, canning factory and small plane in retaliation for the times the missionaries helped the military, the rebels said. Elam said they did not side with the military and were only trying to provide health care and education to local Indians. ... **Seventeen religious institutions** that own stock in Procter & Gamble are calling on the company to investigate its own ties to El Salvador's coffee producers, a dominant force in that country's ruling class. The institutions have signed a shareholder resolution that says the Salvadoran coffee industry — a supplier of Procter & Gamble's subsidiary, Folgers Coffee Company — has been an economic engine behind the long and bloody civil war in El Salvador. The resolution refers to officials who have testified that the Salvadoran coffee growers exert a decisive influence in the right-wing ARENA party that rules El Salvador. Wendy W. Jacques, a spokeswoman for Procter & Gamble, said the company will stand by Folgers' purchases of Salvadoran coffee beans: "We do not believe there is any evidence directly linking Folgers to any wrongdoing." ... **Students at Baptist Theological Seminary in Ruschlikon, Switzerland,** have collected nearly $10,000 to support their financially troubled institution. The seminary's trustees acknowledge the severity of inflation and the high cost of living in Switzerland, but intend to keep the school at its present site for the immediate future. ... **The American Baptist Convention World Relief Office** has released $25,000 in emergency funds to aid Kurds on the Iraqi-Turkish border. The World Relief Office also has released $25,000 in emergency funds through Church World Service in response to the cyclone that claimed at least 125,000 lives in Bangladesh. Millions have been made homeless, and crops in the area have been destroyed. Relief officials are attempting to ward off widespread malnutrition and disease. ... **Religious belief in Eastern Europe** — despite nearly half a century of communist repression — remains as high as in many parts of Western Europe. Recent Gallup surveys in Hungary, Czechoslovakia and Lithuania discovered that about half of adults questioned in those countries considered themselves religious. □

Rights, from Page 11

Placing in moral escrow the elemental American constitutional principle that to secure certain rights it is necessary to remove their fate from the whim and impulse of the popular branches, the court transgressed the design and meaning of the First Amendment to permit greater government encouragement of majoritarian religion while reducing to perilous levels the protection accorded for religious free exercise.

Religious minorities have come out on the short end on both counts, having witnessed their rightful place as equals under the American Constitution recede into the mist. Such is the current state of the religion clauses, their robust interpretation no longer commanding under a Supreme Court, to paraphrase James Madison, ever less vigilant in its zeal to take alarm at the first experiment with our liberties. ☐

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It is not unreasonable to demand some expertise from one who wants to sell his books or inform our politics.

REFLECTIONS

James M. Dunn
Executive Director

Would it not be nice if those who mold public opinion would do their homework before they start molding? Should we not examine the credentials of the radio religio-entrepreneurs before swallowing whole their message?

Can we not question the motives of those television tradesmen in public opinion who seem to be more dedicated to "will it sell" than to "is it time"?

We seem to have fallen on a time when more people know the opinions of James Dobson than of James Madison. Most folks appear to think Roger Williams is a pianist famous for "Autumn Leaves."

Edwin S. Gaustad can help us overcome that cultural flaw, if we do our homework. For starters one should buy and read his *Liberty of Conscience: Roger Williams in America* (Eerdmans, 1991, 229 pp.). That is an unqualified and enthusiastic endorsement. We suffer too many self-styled experts on the American experiment who are, quite frankly, abysmally ignorant of its sources, shapers and saints.

Gaustad's work, part of the long-needed Library of Religious Biography, is one illustration of even-handed, well-documented, reader-friendly writing on the peculiarly American way in church, state and society. There's a lot of junk out there with little hint of scholarship or honest history. This work runs counter to the trend.

Turn to Dr. Gaustad for an antidote to the toxic red, white and blue revisionists who sell well but do not tell the truth. It is not unreasonable to demand some expertise from one who wants to sell his books or inform our politics. Ed Gaustad, professor emeritus of history at the University of California, Riverside, is a bona fide scholar with a life-long study of colonial American history, especially religion's story. His biography of Roger Williams is a window on the distinctive American approach to religion's role in public life.

Freedom of conscience requires that government stay out of religious affairs totally and completely. "Plenty of precedent might be found in the Old Testament for creating laws, religious laws for a whole nation — namely Israel. But, asked Williams, are you followers of Moses or of Christ?" (Page 66) Gaustad finds Williams warning of 1990's dangers. "Persecution was, of course, an evil, but it had the advantage of keeping the church pure. Nero, said Williams, was less the enemy of Christianity than Constantine." (Page 67)

Williams was seen as a "polemical porcupine" by John Quincy Adams, and Gaustad admits that he "did not always speak, his piece with economy or grace, but he unfailingly spoke it with courage and passion." (Page xi) The result of this one powerful life is, as Sen. Claiborne Pell said on Oct. 8, 1984, "the first genuine democracy — also the first church-divorced and conscience-free community in modern history."

Dr. Gaustad points out that through American history Roger Williams has been rediscovered when the country has needed a reminder of our radical roots. This is such a day. Williams heard arguments that "Magistrates and clergy needed to work together to achieve common ends; in a hostile wilderness." (Page 27) Does that sound familiar? As we face educational crises, drugs and crime in the streets, some would turn to a bit chummier partnership between religion and government.

Roger Williams, however, rejected any role at all for government in spiritual matters. Freedom of conscience was for him absolute. "Demanding that men believe was, said Williams, like requiring 'an unwilling Spouse ... to enter into a forced bed.' Even the Indians ... abhor that." (Page 31)

This insistence on liberty earned him banishment, persecution and misery for most of his days. As he tried to build bridges with the Narraganset — in 1836 he rowed, alone in a canoe "30 miles in great seas, every minute in hazard of life." (Page 50) So much for physical courage.

Much of Gaustad's contribution lies in unscrambling Williams' best-known writing, *The Bloudy Tenent of Persecution, for cause of Conscience,* "a messy book." (Page 69) Published in London in 1644, it makes Williams' powerful plea that "mere toleration was not a worthy goal: only freedom would suffice." (Page 70) His message came through "with all the clarity and shock of a lightning bolt." His peers had real trouble believing that "'true civility and Christianity may both flourish' in that state or kingdom which had the courage to guarantee liberty to 'diverse and contrary consciences, either of Jew or Gentile.'" (Page 70)

This was, indeed, a wild idea from the left wing of the Reformation, and it would have, as it has had, drastic consequences. Williams "was out to do nothing less than alter the institutional structure of the Western world." (Page 75) In doing so he set out a pattern that we take for granted today. Jefferson wrote that "the only effect of official religion was to make one half of the world fools, the other half hypocrites. Williams phrased it this way: The sword may make a whole nation hypocrites, but it cannot bring one single soul in genuine conversion to Christ." (Page 79) America a "Christian nation"? No such thing can be.

Roger Williams' long-running feud with the Puritan John Cotton is instructive. It illustrates the fundamental incompatibility of puritanism, whether then or now, and the radical reformation principles of the Baptists. Gaustad has clearly captured the heart and mind of Williams and delivered him to the 20th century. As David E. Harrell Jr. wrote on the cover blurb, "Few scholars have the literary ability to combine good storytelling with complex interpretation as Ed Gaustad has done in this remarkable book."

The spirit of Roger Williams fairly oozes through the word processor of Ed Gaustad. No one could have written of Williams as Gaustad has without first having captured the essence of this troubling founder of Rhode Island. It is that visceral understanding of soul liberty in this book that is so rare and welcome.

The William B. Eerdsmans Publishing Company has done us all a great service by bringing out William R. Estep's *Revolution within the Revolution* last year and following it this year with *Liberty of Conscience.* Come on Eerdmans, give us more!

I recommend both books to interested laymen, serious citizens, all shapers of public policy and especially to anyone who has the urge to comment on the role of religion in American life. If you are tempted to talk about "our precious heritage," "the faith of our Founders," "the meaning of church-state separation," wait, hold it, resist the temptation.

Do your homework. At least read these two books. The educational experience may modify your message, but it will significantly add to your credibility. ☐

REVIEWS

Liberty of Conscience: Roger Williams in America

Edwin S. Gaustad, Eerdmans: Grand Rapids, 1991, 229 pages.

Edwin Gaustad, professor emeritus of history at the University of California, Riverside, has written an engaging biography of Roger Williams—the original American Baptist, persecuted theological gadfly and passionate defender of religious liberty. James M. Dunn reviews Professor Gaustad's penetrating account in his "Reflections" column this month on Page 15. □

The Big Book for Peace

Edited by Ann Durell and Marilyn Sachs, Dutton Children's Books, New York, 1990, 118 pages. Hardcover, $15.95.

Reviewed by: Jeffery Warren Scott
Pastor, Broadman Baptist Church, Cuyahoga Falls, Ohio

Like many young parents, I am constantly on the look out for books that are interesting, well-illustrated and carry a message that will engage and help shape young minds. *The Big Book for Peace* is such a book.

Ann Durell and Marilyn Sachs have done a marvelous job of editing this collection of stories, pictures, poems and a song about different kinds of peace. Children will learn about living in harmony with their brothers and sisters, their next-door neighbors, people of different races and nationalities and even with nature.

One of the book's most refreshing aspects is its eclectic nature. The children will hear or read of American Indians, Eskimos on both sides of the international date line and about a little girl who was active politically. Some stories are in important historical settings such as the story of a Quaker man living in the South during the Civil War, or a letter from a Japanese-American boy being held in a U.S. internment camp during World War II. Current issues such as the plight of the homeless are even addressed in a marvelous story of a high school boy's encounter with a "bag-lady" named Rosie.

Each story in this 118-page volume gives parents an excellent opportunity to engage their children in dialogue. Avoiding the temptation to preach to the readers, the authors have given parents a marvelous tool to use in developing their children's ethical foundation. The stories ideally are suited for family discussion at the dinner table or during a family evening at home.

Many readers will be pleased that the authors and illustrators of the book have donated their royalties to these organizations that are working for a peaceful world: Amnesty International, The Carter Center's Conflict Resolution Program, Greenpeace, SANE/FREEZE and the Lion and the Lamb Peace Arts Center at Bluffton College.

Quoting

Glenn Turner
The Auburn Baptist

In the recent issue of *Facts and Trends*, the publication of the Southern Baptist Sunday School Board, there was a brief promotional piece about a new patriotic anthem soon to be released. It is clear from the timing that it is aimed at a market where patriotism has never been more popular. In the anthem is an opportunity for the congregation to stand and pledge its allegiance to the flag of the United States.

There is something about this sort of religious patriotism or patriotic religion that makes me uneasy. It is not the fact that it is patriotic which bothers me. I hope I am patriotic. I am a loyal American and am pleased for the most part to be one. What makes me uneasy is the wedding of this patriotic spirit with the worship of God who must be Lord above all the nations if he is Lord of all. There must be, from the perspective of scripture and from our Baptist history, a healthy distance and tension between faith and country. The tension will be there because our loyalty to Christ is above any form of nationalism. Our commitment to the gospel means we must be willing to hold our own government to account on issues of peace, justice and compassion, just as surely as we do others.

We should most certainly be glad to receive our troops home again, but not in a spirit of proud triumph so much as in gratitude to God for their safety. And even in that gratitude certainly any believer will have his/her joy tempered with the sobering reality that thousands lost their lives, millions of Iraqis (mostly Kurds) are homeless and living in daily fear, and the tiny country of Kuwait is an ecological disaster. Further, we are just now hearing news reports of trials in Kuwait for suspected Iraqi sympathizers, one of whom, according to reports, received a jail sentence of 15 years for wearing a Saddam Hussein T-shirt. Others are being tried without any formal witnesses called against them. Such are not only the tragedies of war, but the continuing tragedies.

We can always be grateful that the war was as brief as it was and no more lives were lost, but the fact remains that this was a very costly war. War is the result of human sin and the sins continue.

As believers our enthusiasm and commitment must not be simply to the political and military euphoria sweeping our land, but to the prince of peace, Jesus the Christ, who died at the hands of a government and has now called us into a Kingdom, which knows no earthly boundaries.

Editor's Note: This "Pastoral Reflections" column was printed in the May 26 issue of *The Auburn Baptist*. It has been reprinted with permission from Glenn Turner, pastor, First Baptist Church, Auburn, Ala.

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