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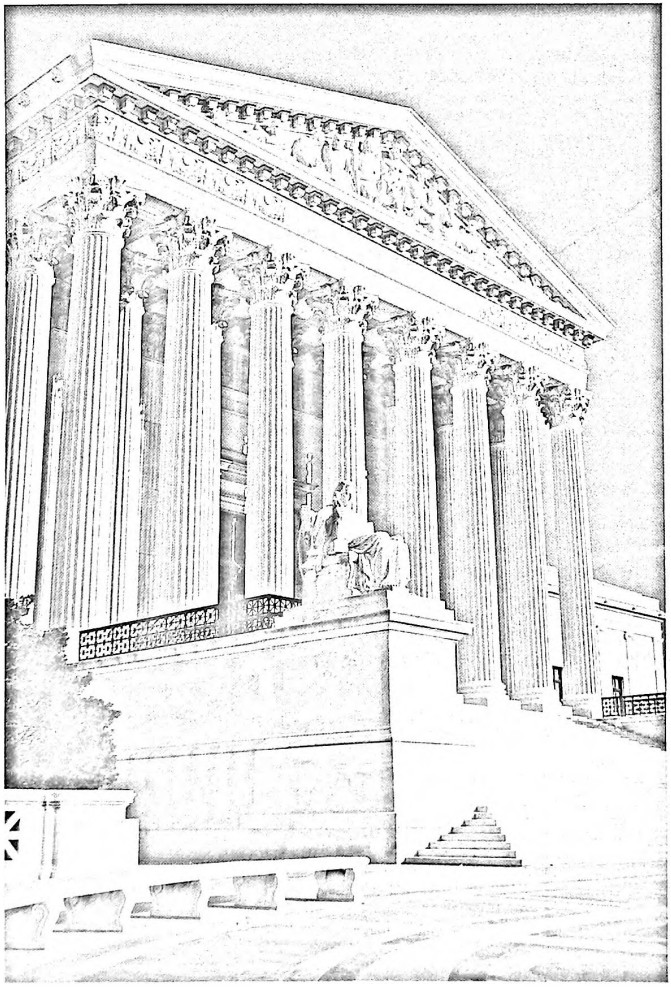
REPORT from the CAPITAL

Neutrality vs. Support



The nation's high court may redefine government's relationship with religion. The coercion test proposed by the Justice Department would end government neutrality and open the door for wide government involvement in religion.

REPORT from the CAPITAL

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

Vol. 46, No. 8 **September 1991**

Articles

Features

Cover: This majestic building houses the U.S. Supreme Court, where the BJC has filed a friend-of-the-court brief asking for government neutrality toward religion. Photo supplied from the collection of the Supreme Court of the United States.

REPORT from the CAPITAL is published 10 times each year by the Baptist Joint Committee on Public Affairs, a denominational agency maintained in the nation's capital by its ten member bodies: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; National Missionary Baptist Convention; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Religious Liberty Council; Seventh Day Baptist General Conference; and Southern Baptist conventions.

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
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Government neutrality needed

The First Amendment to the U.S. Constitution says that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The nation's high court has been asked to review its settled rule that government must be neutral toward religion. If the Supreme Court abandons the longtime *Lemon* test for a more lenient "coercion" standard, the doors for wide government involvement in religion could swing open.

The dangers of the coercion test and its impact on religious liberty are outlined in a friend-of-the-court brief filed by Texas law professor **Douglas Laycock** on behalf of a broad-based coalition that includes the Baptist Joint Committee. A small portion of the brief, as well as a news story about it, are on Pages 4-6.

Other features by **James M. Dunn** and **Oliver S. Thomas** focus on the Supreme Court. In "Reflections," BJC Executive Director Dunn explores the complexities of the inner-workings of the court, as well as a number of threats to religious liberty that high court decisions have brought (See Page 15). BJC General Counsel Thomas explores another serious Supreme Court decision that threatens the free exercise of religion in "Views of the Wall" on Page 7.

Last year, the court struck down the compelling interest test in its *Smith* decision. Previously, the court required government to show a compelling governmental interest before it could restrict religious exercise. Now the government must meet a much less stringent test before limiting the practice of religion.

Thomas urges the passage of the Religious Freedom Restoration Act (H.R. 2797) that would restore those protections prior to *Smith*.

Dan McGee, professor of Christian ethics at Baylor University, Waco, Texas, explores power in the political arena and Christians' responsibility to be good citizens. Portions of an address that McGee delivered at an annual Texas Baptist Christian Life Commission event are reprinted on Pages 10-11.

Supreme Court Justice **Thurgood Marshall** announced his retirement, raising questions about who will continue his legacy of defending the Bill of Rights and the rights of minorities in America (See Page 8).

Everett C. Goodwin, pastor of First Baptist Church, Washington, D.C., reviews William McLoughlin's *Soul Liberty* on Page 16. □

Larry Chesser
Pam Parry

WASHINGTON OBSERVATIONS

news/views/trends

THE ISRAELI GOVERNMENT has said "no" to religious liberty. Last month in this space we chronicled the struggle of the Rev. Alex Awad to obtain a permanent visa from the Israelis to allow him to pastor the East Jerusalem Baptist Church. After nearly two years of foot dragging, the Israeli authorities turned him down without comment or reason. Awad is uncertain about his future ministry plans, but he has not given up. The General Board of Global Ministries of the United Methodist Church is sponsoring a prayer vigil Oct. 2 outside the Israeli Embassy in Washington while various religious leaders meet with the Israeli ambassador on the Awad case. Awad asks for continued prayer support among his Baptist friends. (JBW) ●

THE DRAMATIC EVENTS IN THE SOVIET UNION over the past few weeks strain credulity. If Tom Clancy had made them up in a novel, they would be rejected as too fantastic to be taken seriously. The Soviet people have rejected a return to the "yoke of slavery," as the Apostle Paul put it, and have risked their very lives to "stand fast in freedom." This seems to bode well for religious liberty. Indeed, even under the old regime, the Supreme Soviet adopted last October a law on "Freedom of Conscience and Religious Organizations." (See *Report from the Capital*, January 1991, Page 4.) But, the freedom that comes with rapid change often is frightening. As the Soviet Union loosens or breaks up entirely, there is always a risk that some will seek some measure of stability by elevating to their historical prominence the Russian Orthodox Church in the western republics and Islam in the eastern republics. The situation must be watched closely. What a shame it would be to trade Soviet intolerance of religion for the *de facto* establishment of the Russian Orthodoxy or Islam. In either case, religious freedom suffers. (JBW) ●

NOW'S THE TIME! The Religious Freedom Restoration Act (H.R. 2797) is at a critical juncture. The bill now has more than 80 bipartisan co-sponsors, but we need twice this many. Pro-life members continue to be skittish about the bill's possible impact on abortion. Specifically, the Catholic Conference and National Right to Life Committee have charged that the bill would enhance the merits of religiously based claims to abortion. The Congressional Research Service now has confirmed that such concerns are meritless. The CRS report is consistent with the opinions of every law professor -- including pro-life scholars Michael McConnell and Ed Gaffney -- who has addressed the subject. RFRA is abortion neutral and will not tilt the playing field on this controversial issue. Credit is owed to the National Association of Evangelicals, Traditional Values Coalition, Home School Legal Defense Fund, Latter-day Saints, Christian Legal Society and other pro-life groups that stared down the abortion scare. If you haven't yet urged your congressional representative to support RFRA, do so now! (OST) ●

Neutrality needed

Founders rejected endorsement of religion

The classic religious establishments in the time of the Founders consisted of several elements in varying combinations. The only universal element was government endorsement of one or more religions.

The point is clearly illustrated by the experience of Virginia and South Carolina between 1776 and 1790. Before independence, the Church of England was the established church in these states. Each initially responded to independence by attempting to eliminate coercion while preserving establishment. Each state created an establishment by endorsement: it designated an established religion while eliminating all tax support and all coercion to believe or to attend services. In each case, these reforms proved insufficient to satisfy the American demand for disestablishment, and the endorsements were subsequently repealed. These episodes show that endorsement of religion constituted establishment of religion in the political understanding of the Founders' generation.[1]

The path to disestablishment in Virginia began in 1776, when the legislature exempted dissenters from the tax to support the Anglican Church. A tax on Anglicans remained on the books, but the legislature suspended collection annually until 1779, when the tax was permanently repealed. The legislature in 1776 also repealed English laws restricting freedom of worship. Some provisions for licensing clergy remained in effect but were not enforced. "Religion in Virginia had become voluntary. . . ."[2]

But the legislature "had not disestablished the Church of England."[3] Its American branch, soon to be known as the Protestant Episcopal Church, was still the official church in Virginia. This designation had no coercive effect on dissenters; no one was required to attend or support the Episcopal Church. The establishment was simply an endorsement.

The Episcopal Church found that its establishment carried the disadvantage of legislative supervision. The church sought to escape this supervision through an act incorporating the church and empowering it to govern itself. Such an act was passed in 1784, repealing all prior laws regulating the relationship between the state and the established church. This made the established church independent of the state, but it did not satisfy the opponents of establishment (Presbyterians, Baptists, etc.) who insisted that the law incorporating the Episcopal Church still gave it special recognition and a preferred status. Finally, in 1787, the legislature repealed the Episcopal incorporation act, repealed all laws that prevented any religious society from regulating its own discipline, confirmed all churches in their existing property and authorized all churches to appoint trustees to manage their property. This act finally repealed the last vestige of state endorsement of the Episcopal Church in Virginia.

An even broader attempt at noncoercive establishment appeared in Article 38 of the South Carolina Constitution of 1778. The first sentence guaranteed religious toleration to monotheists, which would have included substantially the whole population. The second sentence declared the Christian Protestant religion the established religion of the State. Another sentence forbad any tax for the support of churches.

The one coercive element was that only established churches could obtain a corporate charter. Churches desiring to incorporate were required to subscribe to five Protestant tenets set out in Article 38, and their ministers were required to swear an oath set out in Article 38. These provisions presumably had some tendency to coerce churches that desired the advantages of incorporation, but it would be myopic to say incorporation rather than endorsement was the essence of this establishment. If nonestablished churches had been allowed to incorporate, and if free exercise had been extended beyond monotheists to include absolutely everybody, but the rest of Article 38 had been retained, Protestantism would still have been the established religion of South Carolina. This establishment by endorsement was abolished by Article 8 of the Constitution of 1790.

The general strategy of eighteenth century defenders of established religion was to propose modifications that made the establishment more inclusive, less preferential, and less coercive. The extreme instances of this strategy were the bare endorsements of South Carolina's Constitution and Virginia's Episcopal incorporation act. But other proposals pursued the same strategy with even less success.

The point is illustrated by unsuccessful proposals for general assessments to support the clergy in Virginia and Maryland. In each state, the supporters of establishment proposed a tax for the support of clergy, in which each taxpayer could designate the clergyman to receive his tax.

The Virginia bill allowed taxpayers to refuse to designate any clergyman, in which case their tax would be paid to support local schools.[4] Thus no one would be forced to support religion, and Baptists would not be required to violate

"This Court's long-standing rule that government may not aid or endorse religion flows directly from the Founding generation's principle that government may not aid or support religion, even by bare endorsements in toothless laws."
—Douglas Laycock

Douglas Laycock holds the Alice McKean Young Regents Chair in Law at the University of Texas at Austin. This article contains excerpts of a brief he wrote on behalf of the Baptist Joint Committee and other organizations asking the U.S. Supreme Court to preserve its standard of neutrality in deciding establishment clause cases.

conscience by supporting their own clergy through the instruments of government. The element of choice in the taxpayers was said to make the establishment non-preferential and non-coercive. The Maryland bill went even further to eliminate coercion. Each taxpayer could pay his tax to the minister of his choice, or to a fund for the poor. In addition, any taxpayer who declared "that he does not believe in the Christian religion ... shall not be liable to pay any tax for himself in virtue of this act."[5]

Both the Maryland and Virginia assessment bills were the subject of great public debate, and each was soundly defeated. The Virginia bill was the occasion for Madison's Memorial and Remonstrance Against Religious Assessments, and for many similar memorials by Presbyterians, Baptists, and other religious dissenters.

No one suggested that the problem with these bills was that they had not gone quite far enough toward eliminating coercion. State assistance to churches was rejected as an establishment, even with the right to designate the recipient of the tax, to pay the tax to secular uses instead of religious ones, and in Maryland, to escape the tax altogether by declaring non-belief. What made these bills establishments was not coercion, but state support for religion. Dramatically reducing the coercive elements had not satisfied the opponents of establishment, and no one at the time appears to have thought that entirely eliminating the remnants of coercion would have made any difference.

These debates in the states are directly relevant to the original meaning of the federal Establishment Clause. In sweeping terms, the Constitution prohibits any law respecting an "establishment." "Establishment" is not defined. Unavoidably, the word would have been understood in light of the recent debates over disestablishment in the states. These debates are the principal evidence of "how the words used in the Constitution would have been understood at the time."[6] As Justice Rutledge observed, "the Congressional debates on consideration of the Amendment reveal only sparse discussion, reflecting the fact that the essential issues had been settled."[7]

This Court's long-standing rule that government may not aid or endorse religion flows directly from the Founding generation's principle that government may not aid or support religion, even by bare endorsements in toothless laws.

"The dispute over the Protestant Bible revealed the impossibility of conducting 'neutral' religious observances even among diverse groups of Christians."

Debates show meaning

A second thread to Petitioners' argument is that government prayer must be constitutional because the Founders did it. The premise of this argument is that anything the Founders did is OK. In fact Petitioners go further: the Constitution permits anything the Founders did and "any other practices with no greater potential for an establishment of religion."[8]

The Court has squarely rejected this argument, and properly so. The argument proves far too much. Equally important, it ignores the political origin of constitutional rights.

Constitutional rights are designed to prevent the recurrence of historic abuses. Eliminating such abuses often requires major political battles. The People create constitutional rights when the winners of one of these political battles believe the issue to be so important, and the danger of regression so great, that the issue must be put beyond reach of the usual political processes.

Because constitutional rights emerge from major controversies, we should not expect to find a consensus that unites both supporters and opponents of a constitutional provision, or even a fully consistent view of all related issues among the supporters. The winners muster a super-majority for a broad statement of principle, but they do not achieve unanimity or even consensus on either the principle or the details of its application. The attitudes that gave rise to the losing side of the controversy do not instantly disappear, and neither do the abusive practices that made the amendment necessary. Petitioners ignore reality when they propose to remove from the scope of constitutional rights any practices that survived ratification.

By Petitioners' principle, the Alien and Sedition Acts are an authoritative interpretation of the Free Speech and Press Clauses, de jure segregation of schools in the District of Columbia is an authoritative interpretation of the Equal Protection Clause, and the many devices that led to near total disenfranchisement of black voters for most of a century are an authoritative interpretation of the Fifteenth Amendment. Moreover, government could engage in any other practice no more restrictive of constitutional rights than the Alien and Sedition Acts, school segregation, and disenfranchisement of black voters.

Petitioners' principle leads to such absurd consequences because it proceeds backwards. It lets the behavior of government officials control the meaning of the Constitution, when the whole point is for the Constitution to control the behavior of government officials.

The relevant original understanding is not determined by every specific act of the Founders. Rather, as Robert Bork has said, the original understanding of a constitutional clause consists not of a conclusion but of a major premise. The "major premise is a principle or stated value that the ratifiers wanted to protect against hostile legislation or executive action."[9]

The basic principle of a constitutional clause is best identified from the controversies that gave rise to it. These controversies were consciously examined under political pressure that made the debate real and not just academic. These controversies identify the core target of the constitutional right. Interpreters can then search for a coherent principle, consistent with the constitutional text and as broad as the text, that centers on the core problem the text was intended to resolve.

The religion clauses had two great defining controversies. One was the long Protestant-Catholic conflict in the wake of the Reformation. The other was the battle over disestablishment in the states. These are the contexts in which the Founders thought about the meaning of establishment, and we should look to these controversies to learn what they meant by establishment.

Neutrality needed

Government prayer and religious proclamations, and the role of religion in public education, were not real controversies in the Founders' time. There were multiple reasons for this lack of controversy, but the most important was simply that the nation was overwhelmingly Protestant, and no significant group of Protestants was victimized by these practices. If a religious practice was not controversial among Protestants, it was not sufficiently controversial to attract political attention.

Theological and liturgical differences among Protestants were large, but for a variety of reasons these differences appear to have been bridgeable in the rudimentary schools of the time. Most schools were small, and many served a relatively homogenous local population. Some were run by local governments, some by associations of neighbors, some by entrepreneurial teachers, some by churches.

Historian Carl F. Kaestle describes the movement for a more organized system of state-supported schools as growing out of a "Native Protestant ideology" that was comprehensive in its scope,

including religious, political, and social reform principles. This ideology naturally incorporated religious instruction into the new common schools. The common school movement attempted to bridge the religious gaps among Americans with an unmistakably Protestant solution: by confining instruction to the most basic concepts of Christianity, and by reading the Bible "without note or comment." The Protestant leaders of the common school movement assumed that no one could object to reading the Bible, and by forbidding teachers to explain the passages read, they thought they had avoided sectarian disagreements about interpretation.

That solution was not entirely satisfactory even among Protestants. Conservative and evangelical Protestants accused Unitarians like Horace Mann of secularizing the public schools; stripped-down, least-common-denominator religion was not acceptable to them. But Protestants largely abandoned their disagreements to unite against the wave of Catholic immigration in the mid-nineteenth century.

Catholics fundamentally challenged what seemed to them Protestant religious instruction in the public schools. For one thing, Catholics used the Douay translation of the Bible, and objected to reading the King James translation, which they called "the Protestant Bible." More important, Catholics condemned the "solution" of reading the Bible without note or comment as a fundamentally Protestant practice. Protestants taught the primary authority of scripture and the accessibility of scripture to every human. Catholics taught that scripture must be understood in light of centuries of accumulated church teaching. For Catholic children to read the Bible without note or comment was to risk misunderstanding. Protestant practices were being forced on Catholic children.

The controversy over the Protestant Bible in public schools produced mob violence and church burnings in Eastern cities. The resulting controversies were major political issues for decades. Thus, in the wake of Catholic immigration, religion in the public schools produced exactly the sort of violent religious confrontation the Founders had sought to avoid.

The principle of disestablishment did not change, but the nation was forced to confront a previously ignored application of the principle. Just as government could not endorse religion in statutes or state constitutions, neither could it endorse religion in public schools. The first cases forbidding religious observances in public schools date from the latter part of this period (e.g., affirmation of a school board's elimination of Bible reading and hymns in Ohio). On

Continued on Page 14

BJC, others ask court to keep neutrality test

The Baptist Joint Committee has joined a broad coalition of Christian, Jewish and religious liberty organizations in asking the U.S. Supreme Court to maintain its settled rule that government must be neutral toward religion.

In a friend-of-the-court brief filed July 17 by University of Texas law professor Douglas Laycock, the groups asked the high court to reject requests by the U.S. Solicitor General and attorneys for the Providence, R.I., School Committee that the court replace its long-held strict standard for deciding establishment clause cases with a more lenient "coercion" standard. Under such a standard, government could support or promote religion as long as people are not forced to participate.

The Justice Department joined the case in February, asking the high court to overturn lower court decisions holding that invocations and benedictions at Providence middle school and high school commencement ceremonies violated the establishment clause of the First Amendment. The government brief also asked the high court to reconsider the scope and application of the "*Lemon* test," a three-part standard long relied upon to assure government neutrality toward religion.

The *Lemon* standard requires that government actions have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement with religion.

The bulk of the brief argues in favor of the court's neutrality standard, contending that the proposed coercion rule is inconsistent with every accepted source of constitutional interpretation, constitutional history, court precedent and sound policy toward religion.

The religious organizations represented in the brief include four major Jewish groups, most mainline Protestant groups under the umbrella of the National Council of Churches, and the Seventh-day Adventists.

"We decided to file as part of a coalition because we thought it was important for religious groups who take the establishment clause seriously to stand shoulder to shoulder and say, 'No thanks' to government's attempt to weaken the establishment clause," said BJC Associate General Counsel J. Brent Walker. "I'm sure the court will take seriously our consolidated brief—because of the number and diversity of the groups and frankly, Doug Laycock's prestige."

BJC Executive Director James M. Dunn said the religious liberty agency's focus is directed at preserving the high standard for church-state separation.

"The Baptist Joint Committee, true to Baptist insights and contributions to the Bill of Rights, is primarily interested in maintaining government neutrality," he said. "The weakness of the so-called 'coercion test' is its obvious failure to offer any protection from government meddling, intrusion and entanglement."

The coercion test, Laycock argues, would end government neutrality and open the door for wide government involvement in religion.

"The President, the Congress, or the Providence School Committee, could adopt and promulgate creeds." the brief states. "The only constraint would be that government could not coerce people to believe in these creeds."

The brief also disputes the Providence officials' argument that government prayer must be constitutional because the founder's did it. That argument proceeds backward, the brief states.

"It lets the behavior of government officials control the meaning of the Constitution, when the whole point is for the Constitution to control the behavior of government officials."

The brief further argues that the Supreme Court repeatedly has rejected the coercion test. After noting that the three parts of the *Lemon* test did not originate in the *Lemon v. Kurtzman* ruling but rather represent a convenient formulation of the criteria developed by the high court over the years, the brief disputes the Justice Department's contention that "The problem is *Lemon*."

"The government's problem is the whole history of Establishment Clause jurisprudence in this Court."

Laycock also argues that government-sponsored religious observances hurt believers as well as non-believers

"Such observances hurt all religions by imposing government's preferred form of religion on public occasions." □

The First Amendment built "a wall of separation between Church and State."—Thomas Jefferson

VIEWS OF THE WALL

Oliver S. Thomas
General Counsel

The most harebrained notion to emerge in recent years is that of deferring to the political branches of government on questions of fundamental constitutional rights. After all, the primary purpose of the Bill of Rights was to place certain national values — freedom of religion among them — beyond the reach of political majorities. What you think, say, print, read or, in the case of religion, practice is protected by the Constitution even if you find yourself in a minority of one — until now. The Supreme Court of the United States, like Pontius Pilate of old, has begun washing its hands of the great moral and legal issues of the day, tossing them back to the shouting mob in the streets.

Last year, on April 17, the Supreme Court applied its concept of deference (a euphemism for majoritarianism) to the free exercise clause. In a frenetic spasm of judicial activism, a court that prides itself on judicial restraint brushed aside nearly 30 years of precedent — twice citing a case as controlling that had been expressly overruled and deciding an issue that hadn't been briefed or argued. Not even the attorney general of Oregon had suggested the court abandon its test that required government to demonstrate a compelling public interest before burdening religious practices.

None of us was surprised that the court denied religionists the right to use peyote and other hallucinogens in their religious ceremonies, but no one had expected the court to eviscerate the First Amendment in the process. In time, every religion in America will suffer. From Jews needing to eat kosher to fundamentalists needing to conduct home Bible studies, from a synagogue's refusal to ordain women to a church's refusal to hire gays, no religion is immune.

To make matters worse, the Supreme Court is now flirting with applying the deference concept to the establishment clause. The court has agreed to hear what on its surface appears to be a rather innocuous commencement prayer case. The Bush administration, however, has asked the court to use the case to eliminate the prohibition, dating from 1947, against government endorsement, sponsorship or promotion of religion. As long as the challenged action does not threaten to establish a single national church or coerce people into violating their own religious beliefs, says the administration, it should be permissible.

"The Supreme Court of the United States, like Pontius Pilate of old, has begun washing its hands of the great moral and legal issues of the day, tossing them back to the shouting mob in the streets."

Under this lower standard of scrutiny, states and communities literally could begin sponsoring multi-denominational worship services as long as no one was forced to attend. The school prayer decisions of the '60s, parochiaid decisions of the '70s and numerous volatile issues such as creationism and on-campus programs of religious instruction would be up for grabs.

The court's apparent reluctance to enforce the religion clauses has created what noted constitutional expert Douglas Laycock has described as a backdrop for persecution. Citing several recent examples, Professor Laycock points out there is nothing to prevent a state or local government from passing laws that, though facially neutral and generally applicable, would have the effect of driving religious groups deemed undesirable from the community. For instance, a predominantly Christian community could adopt a policy that prohibited students from wearing hats or other head coverings in public schools. The ostensible reason for such a policy would be to discourage gang activity. An incidental effect would be to make it impossible for Orthodox Jewish boys to attend public school. Muslims and Jews alike could be driven from a school that relied heavily on pork in its school cafeteria or that scheduled tests on their religious holidays. None of these regulations — though burdening free exercise — could be challenged under the free exercise clause.

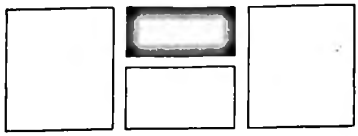
Conversely, if the court adopts the proposed coercion test, state and local governments will have much more leeway to sponsor, endorse and promote the religious sentiments of the majority. Again, this could have the effect of driving religious minorities from the community. All of this flies in the face of what Justice Sandra Day O'Connor has identified as the core value of the establishment clause — that no one should be made to feel like an outsider in the body politic because of his or her religious affiliations or lack thereof.

"The irony of the Supreme Court's actions is striking. It is the Bicentennial of the Bill of Rights. Wouldn't Mr. Madison be surprised if we celebrate the great document's 200th birthday by refusing to enforce it?"

The BJC has responded to this crisis of conscience in two ways. First, we are working vigorously to support passage of the Religious Freedom Restoration Act (H.R.2797), a bill designed to restore the protections for the free exercise of religion lost in *Oregon v. Smith*. Second, we have joined with Professor Laycock and a host of religious and civil liberties groups to file a friend-of-the-court brief urging the U. S. Supreme Court to maintain its prohibition against government sponsorship, endorsement and promotion of religion. Only when both religion clauses are enforced is there true religious liberty.

The irony of the Supreme Court's actions is striking. It is the Bicentennial of the Bill of Rights. Wouldn't Mr. Madison be surprised if we celebrate the great document's 200th birthday by refusing to enforce it? □

News in Brief



Thomas says religions at risk

No religion in America is safe from "one of the most draconian" Supreme Court opinions since *Dred Scott*, a Baptist Joint Committee attorney told the American Bar Association Aug. 11.

BJC General Counsel Oliver S. "Buzz" Thomas addressed the ABA annual convention in Atlanta that celebrated the 200th anniversary of the Bill of Rights. Thomas is the first BJC staffer to address the ABA convention.

Thomas told the ABA the high court's April 1990 decision in *Oregon v. Smith* all but erased the First Amendment's guarantee of free exercise of religion. In the *Smith* decision, the court abandoned the compelling state interest test it 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 *Smith* decision stated that government need not justify burdens on religious practice unless the law is aimed at religion.

"Never mind that legislatures do not pass laws prohibiting Catholics from attending mass or Native Americans from eating peyote or Jewish schoolboys from wearing yarmulkes. ...," Thomas said. "Never mind that the equal protection clause already protected religious claimants from laws aimed at religion.

"With the stroke of a pen, our nation's first liberty was rendered a constitutional redundancy."

The court's majority described the First Amendment test as a "luxury" this nation can no longer afford, Thomas stated, noting Justice Antonin Scalia said that if minority religious groups suffer as a result, that is the "inevitable price of democracy."

"The 'inevitable price of democracy'?" Thomas asked. "I thought that's why we had a First Amendment—as a check on democracy. Some values, including freedom of speech, religion, press and association, are so fundamental to American society that we placed them beyond the reach of legislative majorities.

"At least, that's what I thought."

Thomas was not surprised the Supreme Court denied religionists the right to use peyote in religious ceremonies—the issue in *Smith*—but "no one had expected the court to eviscerate the First Amendment in the process," he said.

The impact of *Smith* has been immediate and far reaching, Thomas said. The decision was used against Amish persons less than a week after it was handed down.

"Since then, Quakers, Hmongs, Baptists, Lutherans, Jews and Episcopalians have felt the brunt of this decision," Thomas said. "In time, every religion in America will suffer."

However, a bill introduced in the U.S. House of Representatives June 26 provides a solution, he said. The Religious Freedom Restoration Act (H.R. 2797), which has more than 80 bipartisan cosponsors, would restore the compelling interest test, Thomas said.

Dozens of religious and civil liberties groups have formed a coalition that backs the bill, he said.

"Ironically, the only opposition we have encountered is from within the religious community itself," said Thomas, who helped draft the bill and is coalition chairman.

While some pro-life groups back the bill, the National Conference of Catholic Bishops, the Missouri Synod Lutherans and the National Right To Life Committee refuse to support the bill unless it includes an amendment "to prohibit a woman from being able to make a religiously based argument for abortion," he said.

"Never mind that the issue is moot unless *Roe v. Wade* is overturned or that a woman has never been successful in making such an argument. ... Never mind that such an amendment would appear to violate the establishment clause and almost certainly would kill the bill. The opposition remains.

"The decision of these organizations to support religious liberty for some Americans and not for others is a great disappointment.

"We may disagree over whether a particular religious claimant should prevail in his or her free exercise argument, but we must never deny any citizen the right to make that argument."

Thomas thanked the ABA for its endorsement of the bill. □

Compiled from staff and news service reports, including Religious News Service, American Baptist News Service, Associated Baptist Press and European Baptist Press.

Court decision spawns First Amendment debate

WASHINGTON

How far can government go in restricting constitutional freedoms in federally funded enterprises?

Members of the Senate Judiciary Subcommittee on the Constitution recently explored that question in the wake of the U.S. Supreme Court's controversial decision in *Rust v. Sullivan*. In a 5-4 decision in May, the high court upheld a ban on abortion counseling at family planning clinics receiving federal Title X funds.

The *Rust* decision has spawned much debate in both houses of Congress, which are considering legislation to overturn the ban. While abortion has been the battleground, ban opponents say the First Amendment implications of *Rust* are much broader than abortion.

Subcommittee chairman Paul Simon, D-Ill., said, "The implications of the stone that is dropped in the lake in *Rust v. Sullivan* sends ripples far beyond abortion."

Simon introduced witnesses, representing various viewpoints, to testify before the hearing.

Leslie Southwick, deputy assistant attorney general at the U.S. Department of Justice, said, "The First Amendment does not require Congress to write blank checks."

Southwick said the *Rust* decision continues on "a path well-trod by previous Supreme Court decisions." The high court held that when a recipient of federal funds uses those dollars to speak on a certain topic, "the government retains the authority to establish limits on the use of those funds," he said.

The department "has no doubt that *Rust* reaches the correct and indeed inevitable conclusion ...," Southwick said. "The government need not fund viewpoints with which it disagrees; it simply may not interfere with privately funded expression.

"In a sense, when the government funds a certain view, the government itself is speaking," he continued. "It therefore may constitutionally determine what is to be said."

Simon took exception to Southwick's assessment that government can determine speech if funding is involved.

Southwick said *Rust* does not allow government to act as censor. "The decision merely recognizes that when the government sponsors speech for certain purposes, it has the right to regulate the content of the government-funded portion of the message."

Taking the decision outside the realm of Title X and applying it to libraries that receive federal assistance, Simon asked Southwick if *Rust* allows the government to dictate what books those institutions may put on their shelves.

Rust would not permit the government to tell libraries what books they may have on their shelves, but it could dictate what books they may purchase with federal dollars, Southwick said.

For the federal government to say what books a library may have is suppression of free speech and freedom of the press, Simon responded.

"I admonish the Justice Department about where we are going in *Rust*," Simon added.

Judith Krug, director of the American Library Association's Office for Intellectual Freedom, said there have been unverified reports of librarians being pressured to remove all materials mentioning abortion because of the *Rust* ruling.

"If this should ever come to pass," she said, "it would only be a matter of time before libraries are pressured to remove and, of course, not to acquire, material containing that day's unspeakable idea.

"The crack in the dike would rapidly widen to allow the torrent of hates to sweep away ideas and points of view with which the most powerful or the most vocal disagree."

Floyd Abrams, a New York attorney, told the subcommittee the decision will "require as a price tag for the acceptance of public funds nothing less than a forfeiture of First Amendment rights. In a manner unprecedented in our history, the court affirmed in *Rust* the suppression of speech solely because of its content simply because of the presence of government funding.

"And suppression it is."

Lee Bollinger, dean of the University of Michigan Law School, said the decision is "constitutionally unwise and unlikely to survive over the long run of constitutional interpretation. It is not unusual in a new area of First Amendment jurisprudence for a case to take a wrong turn, and that is what I believe has happened with this decision."

Rust "has at its core a perspective on the First Amendment that is at war with the established jurisprudence," he continued. "It is one of the most deeply held principles of the First Amendment that the government not discriminate on the basis of viewpoint." □

Retiring Supreme Court Justice Thurgood Marshall answers questions during a press conference June 28, the day after he announced his retirement. Marshall, 83, is the first black man to sit on the nation's high court. As a litigator, he argued more cases before that court than any current Supreme Court justice, winning 29 of 32 cases.

Court nominee readies for confirmation hearing

WASHINGTON

The changing of the guard at the U.S. Supreme Court raises questions about how a new justice will impact religious liberty.

Thurgood Marshall, who announced his plans to retire as associate justice, has been a staunch defender of the Bill of Rights. If confirmed by the U.S. Senate, Clarence Thomas will be his replacement.

"With Justice Marshall's retirement we lose an uncompromising 'true believer' in the Bill of Rights and a staunch defender of religious liberty," said J. Brent Walker, associate general counsel for the Baptist Joint Committee. "Unlike some today who would weaken the religion clauses, Marshall always insisted that both the establishment clause and the free exercise clause be strictly enforced—keeping government from promoting religion and restricting the free exercise of religion. He will be missed."

Marshall, 83, is the first black man to be appointed to the nation's high court and began his tenure there in 1967.

Prior to his appointment, Marshall held a number of posts with the National Association for the Advancement of Colored People. In 1934 he became counsel for the Baltimore branch of the NAACP, joining the organization's national legal staff two years later. He was appointed the NAACP's chief legal officer in 1938, and then became director-counsel of its Legal Defense and Educational Fund.

While with the NAACP, Marshall argued against segregation in public schools, winning a favorable ruling from the nation's high court in *Brown v. Board of Education*. The NAACP legal team, under his leadership, also successfully argued a case before the Supreme Court outlawing segregation on buses.

Marshall argued more cases before the Supreme Court than any justice currently on the bench, winning 29 of his 32 cases.

The U.S. Senate Judiciary Committee has scheduled Thomas' first confirmation hearing Sept. 10.

The 43-year-old Thomas, also a black man, is a federal appeals court judge who opposes affirmative action. Thomas' views on civil rights and abortion are two issues expected to surface during his confirmation hearings.

Thomas attends an Episcopal parish in Fairfax, Va. In his early days, he attended Sweetfield of Eden Baptist Church in his native Pin Point, Ga., before moving to Savannah and converting to Catholicism as a youth. □

Power in Politics

What is the Christian's role?

"All of God's gifts call us to service, not to independent sovereignty. There is where we must begin. The more power we have the more responsibility we have."

—Dan McGee

Power is the ability to get your will, to accomplish some purpose. This definition, though, assumes two dimensions of power. It assumes certain capacities to affect results; it also assumes a will or purpose.

In this sense, being human necessarily involves exercising power. For example, a volcano has energy but it does not have power. Power involves not only capacities and energies but also something that is uniquely given to the human, namely the capacity to define and pursue goals. This means then that our powers involve all our human capacities and that we exercise power in all of our purposes.

I want to make three points so I will be a bit sermonic.

Point one—Power is understood by Christians as a gift from God. It is rooted in the gift of God's image in creation. It was affirmed in the task of dominion that was assigned to us. We are co-creators with God.

The New Testament images of stewardship and talents affirm the significant power roles that we have in making history. All of God's gifts call us to service, not to independent sovereignty. There is where we must begin. The more power we have the more responsibility we have.

Point two—The Christian understands power is a gift from God that comes with purpose or purposes. As stewards of power we are to use it to serve the purposes of God.

What are God's purposes? There are many of them. We turn to the biblical literature, and we find many descriptions. God is described as liberator, as judge, the one who is ordering. I want to contend that a fair reading of the entire biblical witness leads to the conclusion that the most comprehensive and central activity of God is reconciliation. From creation to the crucifixion and the birth of the church at Pentecost, reconciliation is God's program for human history.

Now, I want to come head to head against one tradition in the Protestant world—the Lutheran tradition—and disagree with it. That tradition has tended to assign different purposes of God to different social institutions, so that God acts with a left hand of judgment and right hand of grace, and God does one of those in one institution and does the other in another institution. I cannot buy that kind of schizophrenic view of God. God's activity in the political arena is every bit as directed at reconciliation as God's work in the family.

Political power is to be directed toward the purpose of reconciling all the participants within the political community. That means our power in politics is to be used first to empower the other and second to embrace the other. We are to affirm the identity, importance and significance of all within our political community.

The primary purpose is then to secure consent not just compliance. I think there are times when forced compliance may have to be a part of the political order, but compliance is not our final goal. If we stop at compliance, we have not moved to what God finally wants, which is consent and cooperation. This reconciliation requires at least four expressions in the political arena.

It requires humility. I hope that some of you remember the writings of Senator Fulbright on the arrogance of power as he traced the history of how great nations as they got more and more power became more and more arrogant. During the Vietnam War, he warned America of that very danger. I suggest that humility has yet to be learned in our political scene.

A component of humility is compromise. I know that this is a "dirty" word, but true humility recognizes that I am not perfect or all-knowing. Therefore, I must be prepared to learn from and yield to others.

It requires empathy—putting oneself in the other person's place. It doesn't always mean agreeing with or even liking them, but it does mean understanding them.

It requires forgiveness. If we really take seriously the Christian teaching that all of us are sinners, and all of them are sinners, then we will be prepared to acknowledge that a part of our relationship with the other will always involve forgiveness.

It requires repentance. We must recognize ourselves as sinners, too. Who armed Saddam Hussein? The U.S. and our allies did. We need to repent that and many other things. But we have to be prepared to engage in that, and I want to argue that can and should happen in the political arena.

Point three—Christians must take seriously the reality of sin in our lives and how this sin affects our relationship to God's gifts—especially power. I think there are two sins that are most evident: the sin of sloth and of idolatry. With the sin of sloth, we reject the responsibility that comes with the gift. To renounce political power is irresponsible. We, as Christian people, should be heartbroken at the low percentage of citizen participation in our democracy. To reject God's gift of power and the responsibility that goes with it is finally to reject God.

One other thing, I would argue that we cannot even reject the use of coercive force or violence on occasion in our lives. When I look at the entire biblical witness, and the larger Christian tradition, I finally cannot reject the occasional responsibility to run the risk of using coercive force and even violence to secure purposes in this world.

The sin of idolatry may be the one that is most prevalent. We do this with all the good gifts from God. Our constant temptation is to treat the good that God has given us as if it was God. We lift it up and treat the gift as if it was the source of security and blessings. In the process, we become enslaved by that gift, rather than being empowered by it.

Now, let me turn to the contemporary

Dan McGee, professor of Christian ethics at Baylor University, Waco, Texas, delivered an address Feb. 11 at The Annual Statewide Workshop of the Texas Baptist Christian Life Commission, at First Baptist Church, Austin, Texas. This edited excerpt of his address has been reprinted with his permission.

political scene, and some of its problems and possibilities or perils and promises.

I want to identify four problems and then have a word of hope and promise. As I look at the contemporary scene, one of the most dominant realities is a phenomenon called nationalism. Historians and political scientists indicate that it has really come on the scene in the last couple of hundred years. The nation-state has been raised to the object of ultimate loyalty. Its symbols become holy relics so that the flag and the national anthem ... think ... why don't we call it a national song or national tune? I thought anthems were what took place at church.

On the domestic scene, nationalism tends to concentrate an inordinate amount of power in political institutions. It tends to require all other institutions to serve the state. It does this in a number of ways. It will merge them so that God and country become the same in the minds and lives of many. In a thousand ways, God and country are merged in our time. Any political dissention is classified as lack of patriotism. Nationalism tends to make reconciliation impossible because it elevates the nation-state to the status of absolute loyalty. When this happens there is little room for differences or compromises.

On the international scene, nationalism turns any conflict between nations into grounds for a holy war. Any difference that my nation has with another nation quickly becomes a reason for war if my nation is always right about everything. So we find ourselves fighting for such things as national honor, prestige or reputation.

Also on the international scene, this spirit of nationalism turns all opposition to your national interest into a Satan. Saddam Hussein, who was a partner as long as he fought the demon of yesterday, namely the Ayatollah, is now evil personified. At the same time our memories are not so short that we will not remember that the evil empire of day before yesterday is now our colleague in the affairs of the world. One of the things that concerns me about the American scene today is that we seem to have a need for a demon.

What's wrong with that is you can never reconcile with a demon; you can only destroy it. So nationalism thwarts significantly any serious effort at reconciliation in the political process.

A second phenomenon of our time is the concentration of power. One of the things that concerns me about the way Christian ethicists of recent vintage (like Reinhold Neibuhr) have sought to deal with power is to try to secure a balance of power. The point has been made that historically the balance of power doctrine in our political system does seem to be built upon a Christian understanding of the reality of sin and the need to deal with it. One of the ways to deal with it is by making sure too much power doesn't get in too few hands. I think that is a legitimate insight and goal. But what it fails to recognize is the more unique Christian witness—the need for the redemption of power. That is, it is not enough to shove power around so that everybody has some, but we must take it and direct it at reconciliation.

"To renounce political power is irresponsible. We, as Christian people, should be heartbroken at the low percentage of citizen participation in our democracy."

The third problem I see is the prevalence of and preference for violence in our society. Violence fills our news, our entertainment and our souls. We embrace violence, and as with all idolatries, we become its captive. Now I had suggested earlier that I cannot finally conclude that there is no place for violence and coercive force, but I want to say that quietly. What we need to hear is how inadequate violence is. The emotions and destruction left in the wake of violence make it very difficult to serve peace.

A fourth phenomenon is technological messianism. The way to do everything is with technology. I see it contributing to the problems we have in politics today. It creates too much power, more than we can manage. And if you need any illustrations, look at how the nuclear weapons captivated us, and we built them hand over fist to the point that we can destroy the world over 12 times at least. Another problem is that our technology has anesthetized us to the consequences of violence. The potential of nuclear violence has upped the ante to the point that we now feel virtuous when we only pour tons of conventional weapons on people. It has sanitized war for us. Christians must point out what the world should have known since Hiroshima. It's what Christians have know since the crucifixion. Our violent power can destroy us. Christians must also point out what we have known since the resurrection—the limitations of coercive violence.

Finally our hope and our witness—First, we must witness to the necessity and potential goodness of power in the political process and to the responsibility to be good stewards of it. Second, we must witness to the inevitable sinful uses of power and the need to work for a balance of power and more importantly for a redemption of power. Third, we must witness to the limitations of violence or any coercive force in promoting the goals of peace and reconciliation. Finally, we must witness to the interdependence of all humanity. And the value to all of us that every party is empowered and embraced. If anyone is excluded then I am the loser. The church is not only gifted by its experience of reconciliation, it is gifted by a membership that cuts across all political barriers that divide humans today.

The Baptist World Alliance has been a great help to me as I have sought to envision the possibility of reconciliation in today's world, having visited with the Baptists of the Arab countries, summer before last in Amman, Jordan, and then being with them in mid-August 1990 with all the Baptists of the world in Seoul, Korea, and hearing them talk about what they see in the world.

This has lifted me above the smoke of my own provincial nationalism to discover the legitimate concerns of other parties.

I'm suggesting what we as Christians need to do is to listen to each other more. And if we listen to the Christians from around the world, it will make us better American citizens. The church has the responsibility to contribute to a political Pentecost where all the nations of the Earth are gathered together and the miracle of understanding still happens.

Now we have no utopian dream of a world without conflict, coercion or even violence. That's not my dream. What I do have is the clear command to make peace everywhere we go even—or especially—in politics.□

Romanian woes still unsolved

The children and health care crises in Romania have seen relief during the past year, but the problems are far from solved, said American doctors working in the country.

James and Barbara Bascom, doctors who began programs to help Romanian orphans last year, recently gave a progress report at The National Press Club in Washington, D.C.

The Bascoms began their work in the country as a five-year program of World Vision, an international Christian relief and development agency. They said many of Romania's institutionalized children have improved but suffer from complex, chronic problems that will take time to resolve.

The complexity of the problems stems from a "man-made disaster that took 20 years" to create, Barbara said.

To solve Romania's foreign debt crisis, then-President Nicolae Ceausescu decreed the country's population must increase to 30 million by the year 2000. The government took strong measures to ensure that goal's accomplishment: Contraceptives were outlawed and information on reproduction was classified as a state secret. The population boom placed financial duress on families, forcing them to institutionalize their children.

Ceausescu's regime also resulted in the abandonment of the country's health education system.

When the December 1989 revolution overthrew Ceausescu, the country was left with 140,000 institutionalized orphans and a health care system with no medical specialists or nursing schools, as well as medical schools lacking in up-to-date information.

To help meet those needs, the Bascoms established two training and development programs.

Barbara directs the Romanian Orphans Social and Educational Services project. Operating in six locations throughout Romania, ROSES is designed to improve the developmental progress of children who are developmentally delayed, handicapped or HIV positive and to train the Romanian staff members who work with them.

The institutions she works with also have made basic improvements, she said, including the provision of adequate food, heating and lighting, as well as toys.

Anna Maria, a 3-year-old developmentally delayed child, is one of thousands of Romania's orphans who are receiving help from efforts of two American doctors, James and Barbara Bascom. Barbara began working with Anna Maria in January, and the child is making significant progress, she says.

James is working with Romanian medical professionals to help rebuild their system through a program called Medical Educational Redevelopment Project. To help fill the health care system's information void, MERP has provided 16 computers to medical libraries and hospitals and is helping with curriculum, texts, journals and equipment.

The Bascoms said adoption is part of the answer for the orphan crisis, but World Vision is not an adoption agency, and the lack of a social services system in Romania has left room for adoption abuses. With education for social workers just beginning, Romania will have a skeletal social services system in five years, she said.

World Vision is a 40-year-old, privately-funded agency. In 1990, 80 percent of its donations—primarily from individuals, churches, corporations and foundations—went toward ministry services overseas and in the United States. The remainder of its support came from the U.S. government as gifts-in-kind (such as food commodities) and grants. ☐

Evangelist, co-workers beaten by radical Hindus

KERALA, INDIA

A Christian leader in India recently was beaten by Hindu fanatics and narrowly escaped being skinned alive, according to a report from Gospel for Asia. Two other Christian workers and the leader's teenage son also were beaten.

Moses Paulose's son, Israel, was with two other Christians distributing literature in a village near the Indian Ocean when a group of about 20 Hindus abducted them. Part of a fanatic Hindu group, the men tied each of the Christians to a tree and beat them. One man fell unconscious while another managed to escape and find Paulose.

Paulose rushed to their aid but also was captured and beaten.

The Hindu leader sent men to find a member of their group who could skin the prisoners alive, but none of them returned. Paulose later said that he heard one of the men suggest that they stop beating the missionaries or they would die, and without the skinning, the police would be able to identify them. They finally released the four prisoners. ☐

Albanian churches being restored, delegation says

An ecumenical delegation that recently traveled to Albania is calling on churches to send humanitarian aid to Albanians and to support Albanians as they "seek to restore full exercise of human rights."

Albania has long been considered among the most anti-religious nations in the world.

The five-person delegation, sponsored by the World Council of Churches and Conference of European Churches, reported that churches gradually re being restored to their communities—more than two decades after passage

of the law banning religion in the Communist-dominated country.

Evidence is emerging that religious freedom is beginning to make inroads in Albania.

The government's apparent willingness to respect religious freedom should be undergirded by legal provisions that will guarantee that freedom, the delegation said.

The delegation's visit followed one by a four-member interfaith group sent by the Appeal of Conscience Foundation. The two visits are believed to be the first to Albania in at least 40 years by an interfaith or ecumenical group. □

Latin Americans ready for fight against AIDS

RIO DE JANEIRO, BRAZIL

Latin American churches are gearing up to fight a growing AIDS epidemic here.

In southern Brazil, Catholic women concerned about AIDS prevention organized and decided to broadcast information over the local Catholic radio network.

Church hierarchies also are beginning to take action.

The Council of Evangelical Methodists of Latin America and the Caribbean and the Board of Global Ministries of the United Methodist Church met earlier this year to discuss strategies. The groups defined AIDS as an international problem with regional and cultural differences, calling on churches to work together against the disease.

"The religious community is much more open to helping and mobilizing in comparison to society as a whole," said Jane Galvao, executive director of ARCA, Religious Support Against AIDS. ARCA holds monthly meetings in Brazilian churches working on AIDS-related projects.

The World Health Organization has released figures showing 16,000 people in Brazil have the AIDS virus, ranking the country third in the world behind the United States and Uganda. Brazil has another estimated 250,000 to 500,000 HIV carriers.

Galvao cited a Baptist congregation's ministry as an example of religious response to AIDS. The Baptist congregation ministers in Acari, a ghetto in Rio de Janeiro where drug dealers trade drugs for favors, such as prostitution or drug running.

"The mothers of this Baptist church have gotten together to organize the whole community and to educate their children, to prevent AIDS before it's a problem. They have meetings at night; they go around and talk to the youth one by one. It's so refreshing to work with them. Trying to get lawyers, businessmen, even medical professionals to do anything is so difficult," she said.

The religious community faces social and cultural obstacles to AIDS ministry that are not faced by Americans and Europeans. The country does not have AIDS testing readily available or protection from discrimination for certain groups, she said. Poverty and health also are related.

"AIDS becomes just another life and death problem" in the poor communities already worn down from chronic diseases, such as tuberculosis, malaria and malnutrition, she said. The lack of common antibiotics in Latin America—much less the AZT drug used for AIDS patients—compounds the problem. □

Haiti leader promises Protestants fair play

PORT-AU-PRINCE, HAITI

Church-state relations in Haiti that have been in shambles for years recently took a hopeful turn as the new president, Jean-Bertrand Aristide, met with about 500 Protestant pastors at the National Palace.

"As a Roman Catholic priest, I know that the Protestants have been mistreated," Aristide told the pastors. A Liberation theologian, he promised to change the situation; he repeated his pledge to a delegation from the Evangelical Lutheran Church in America and the Lutheran World Federation.

"I promise to broaden the (all-Catholic) government to include Protestants," he told the Lutherans.

Church relations have been stormy in Haiti as revealed in Francois "Papa Doc" Duvalier's 1964 "Catechism of the Revolution." It included a version of the Lord's Prayer that began, "Our Doc, who art in the National Palace for life, hallowed by Thy name by present and future generations."

Duvalier exiled the archbishop of Port-au-Prince and expelled the Jesuits but in turn was excommunicated by Rome. Tense relations with the Vatican were stabilized only after he signed a concordat giving him the power to appoint Catholic bishops in Haiti. Protestants were mistreated during the Duvalier dictatorships. □

NEWS-SCAN

The Baptist World Alliance sent an appeal to U.S. President George Bush asking him to help secure religious freedom in the Soviet Union. There have been reports of the destruction of Baptist buildings and the confiscation of literature in the Soviet Republic of Georgia, according to the BWA letter from its general secretary, Denton Lotz. The Orthodox Patriarch of Georgia, Ilia II, recently assured Baptists that religious freedom and equality of all Christian denominations will be guaranteed in the Georgian Republic. ... **Polish Baptists** have reported evidence of greater discrimination in favor of an increasingly powerful Roman Catholic Church. Discriminatory practices touch every area of life in Poland—especially the return of church properties seized after World War II. With the Solidarity Movement, Poland has begun to restore these properties to church groups, but Catholics are receiving preferential treatment. ... **Sudanese officials** promised they will lift a four-year ban on relief organizations operating in the country during a meeting in Washington, D.C. Officials of the human rights agency World Vision said they will believe it when they see it. ... **The wife of Guatemala's president** has called on Christians to pray for peace talks in the 30-year civil war between leftist guerrillas and the government. Magda Bianchi de Serrano, wife of Guatemala's first elected evangelical president, Jorge Serrano, requested prayers during a recent meeting with Baptist leaders at the governmental palace in Guatemala City. ... **Carl W. Tiller**, a former official of the Baptist World Alliance and American Baptist Churches, died of cancer July 6 at his home in Mars, Pa. Tiller, 75, was president of American Baptist Churches in 1966-1967. ... **Evangelist Billy Graham** addressed the first-ever evangelism training conference for church leaders in the Soviet Union. More than 4,000 pastors and lay leaders packed out the Moscow sports arena for the five-day School of Evangelism. Graham challenged the Soviets to proclaim the gospel boldly. Upon arrival in Moscow, Graham told reporters he had seen many changes between his first speaking visit in 1982 and his current one. □

Compiled from staff and news service reports, including Religious News Service, American Baptist News Service, Associated Baptist Press and European Baptist Press.

Neutrality, from Page 6

the other hand, some schools whipped or expelled Catholic children who refused to participate in Protestant observances, and some courts upheld such actions. Neither side drew the line between coercion and noncoercion. Those who understood the grievance of religious minorities abandoned the offending practice; those who saw no grievance saw no reason not to coerce compliance.

The dispute over the Protestant Bible revealed the impossibility of conducting "neutral" religious observances even among diverse groups of Christians. Protestant education leaders did not set out to victimize Catholics; they genuinely thought that reading the Bible without note or comment was fair to all and harmful to none. What seemed harmless from their perspective was not harmless when applied across the full range of American pluralism.

Today, the range of religious pluralism in America is vastly greater. The possibility of "neutral" religious observance remains a fiction. ☐

ENDNOTES

[1]These events are summarized in several sources. Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776-1787* (1977); Thomas Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* 134-51 (1986); Hamilton Eckenrode, *Separation of Church and State in Virginia* (1910); Anson Phelps Stokes, 1 *Church and State in the United States* 366-97, 432-34 (1950).

[2]Buckley at 36.

[3]*Id.* at 37.

[4]The bill's reference to "seminaries of learning" meant secular schools. *See* Buckley at 108-09, 133.

[5]Curry at 155.

[6]Robert Bork, *The Tempting of America* 144 (1990).

[7]*Everson*, 330 U.S. at 42 (dissenting).

[8]Pet. Br. at 30 n.31, quoting *County of Allegheny v. ACLU*, 492 U.S. 573, 670 (1989) (Kennedy, J., dissenting).

[9]Bork at 162-63.

Court watching, speculation, gossip, intrigue and second guessing have become a light industry.

REFLECTIONS

James M. Dunn
Executive Director

Do you know the difference between chopping onions and chopping up lawyers? Easy, you cry when chopping onions.

There is no end to "bad lawyer" jokes. Shakespeare did it. "First, let's kill all the lawyers." Why do you suppose we continue such abuse, often only half in fun?

Several reasons surface. First there is a bit of mystery about lawyering. We often make jokes about things we do not understand. Then, ordinary mortals experience a certain helplessness at the hands of lawyers. How often have you heard: "Well, I don't understand it, but the lawyers say . . ."? Of course, there is also a possible element of jealousy in our poking fun.

If this is true of lawyer jokes, the same sort of popular ignorance, frustration and resentment, only more so, fuels the mythology that surrounds the Supreme Court. Politicians revel in it. Average citizens are bamboozled by it. Media meisters perpetuate it. Court watching, speculation, gossip, intrigue and second guessing have become a light industry.

On one hand, there is the immensely well-received attempt to oversimplify the function of the Supreme Court: "I simply want a court that will interpret the law not make law." You have heard empty sloganizing from the barber shop to the television talk show.

It is not so simple. Since *Marbury v. Madison*, the Supreme Court has been interpreting the law in such a way that it does make the law. Making law in our nation is not a "once-for-all," "that's that" or "nice-and-easy" transaction. Maybe we should revisit our civics class or review our political science course.

Remember, after a bill is finally passed by legislators and signed into law by a chief executive, the process of making it work has just begun. The bureaucracy charged with implementation begins to interpret (or misinterpret) the new law. Guidelines and regulations follow. Mechanisms for enforcement often fail miserably. Money to move ahead is sometimes missing.

Then, when a law has been sufficiently challenged, the courts may have to decide if it was ever a valid law. Thank God we have a court system to test against a constitutional standard laws passed by the majority of the moment.

This appreciation for the courts is especially sincere since elected representatives from city hall to Congress seem increasingly inclined to cop out on their responsibilities and to violate their oath of office to uphold the Constitution. Pass-the-bill-let-the-courts-decide has become a glib and gutless way out of difficult, unpopular decisions.

On the other hand, there seems to be a counter tendency to complicate the work of the Supreme Court. People in and out of government throw up their hands and say, "We are at the mercy of the court." There is no way, many think, to comprehend it.

It is not beyond understanding. True, the law may not mean what it says, but mean what it means. Yet, one can grasp something of the purpose, function and direction of Supreme Court decisions if he or she tries.

We legal laypersons must work at reading the court. Just now, many of us are very disturbed by what we read.

Justice William Rehnquist's assessment of the "wall of separation between church and state" as, in his words, "a metaphor based on a bad history" that should be "frankly and explicitly abandoned" is by any measure dangerous revisionism. The chief justice has missed the point of the no establishment clause.

Justice Antonin Scalia's glib dismissal of the need for a compelling state interest before government can regulate religion is by any thoughtful standard an outburst of judicial activism. Following Scalia's lead, the court has abandoned the free exercise of religion.

The solicitor general's eagerness to set aside the long-held tests of a secular purpose, absence of advancing or inhibiting religion and no excessive entanglement as the measure of any church-state law is a devastating challenge to religious liberty.

If Americans were given the opportunity to ratify the Bill of Rights now, 200 years after the fact, would we do it? There is little evidence that as people we even know the content of these freedom guarantees.

Many scholars suggest that we do not care. If we are not upset by the apparent direction of the present Supreme Court, we may allow our first freedoms to be stricken from the books by justices too tuned to the temper of the times.

The typically calm and placid NBC commentator John Chancellor recently sounded the alarm. When evaluating recent Supreme Court decisions, he saw a frightening tilt. He pointed out the historic role of the high court in protecting the citizen from government, and he correctly remarked on how often this court sides with the state against the individual.

Dean Kelley is an astute authority on church-state issues. He is often ahead of his time. His writing tends to provide early insight into trends. For example, he dealt with 1970s trends in "Why Conservative Churches Are Growing." Now he is sending clear, urgent and repeated warnings of the "statist" nature of the Supreme Court. The presupposition that government is automatically presumed to be right and good, just and fair, and, yes, law abiding is a notion downright unfaithful to the American Experiment.

Justice John Paul Stevens, dissenting to a ruling in favor of harsh mandatory sentences, accused the court majority of yielding to public opinion and government arguments with "strong political appeal." A.E. Dick Howard, distinguished law professor at the University of Virginia, commented, "If that is a motive at the court today, it is sad. The court is supposed to be removed from politics, to be countermajoritarian."

One focusing full-time on religious liberty, or any other freedom for that matter, may be put down for taking alarm too quickly. Please listen to the alarm—if only out of curious interest.

One trying to learn from history is almost always patted on the head and pitied for living in the past. Too many Americans share Henry Ford's view that "history is bunk." Do not say that no one warned you. Some of us who are labeled "watchdogs" may have barked so often, after all that is our nature and our job, that you have become inured to our sounding off. Hey! This time you had better listen. We *mean* it!

Ten years from now if we see no serious diminution of religious freedom, if free exercise rights have been restored, if church and state are separate enough that religion can speak prophetically to government and government can be made more humane and protective of individual liberties, then good for us. Maybe this warning and a thousand like it were unnecessary. Or maybe it was heeded. This is no time for business as usual in defending religious liberty. □

REVIEWS

Soul Liberty: The Baptists' Struggle in New England, 1630-1833

McLoughlin, William Gerald, Brown University Press: University Press of New England, 1991, pp. 303.

Reviewed by Everett C. Goodwin, pastor, First Baptist Church of Washington, D.C.

William McLoughlin's *Soul Liberty* is a collection of 15 essays that focus on aspects of Baptist development in the early New England colonies. All of the essays previously were published during the late 1960s and 1970s as pioneering articles, exposing the struggle for religious liberty—especially among Baptists. They are a welcome presentation, especially in the current context of American religious trends and First Amendment issues.

Normally the republication of significant essays by an important scholar is a welcome event, if for no other reason than because it makes them readily available in a single source. This volume, however, is far more significant.

McLoughlin is a premier historian of American social, intellectual and religious currents in the best sense. He tells the story accurately, treats sources responsibly, maintains a critical sensitivity to the personalities involved and does not hesitate to confess his personal evaluation of or even his passion for the importance of their contribution.

It is hoped that this volume will open the treasures of early Baptist contributions to religious liberty and First Amendment guarantees to the general reader. (And equally, it is hoped that scholars are already familiar with them). The essays include an insight into Baptists' struggles against established church taxation, harassment and oppression. Equally, several essays reveal the internal struggles Baptists endured as they defined their own principles, purpose and emerging political and social perspectives.

Readers will discover that far more than the form of baptism, Baptists were identified by their view of infant baptism. McLoughlin demonstrates how Baptists, headed for extinction in the early 18th century, were re-born as a result of the Great Awakening of the 1720s and '30s, and by division within the Congregationalist tradition.

They also will be confronted by the unique challenge that the movement toward revolution presented to Baptists in the 1760s and '70s, for they had relied on the king for justice and redress of grievances against established religion. In the person of Isaac Backus, they will glimpse something of the strong character and personality of one who gave form and purpose to early Baptist life.

In brief masterstrokes, McLoughlin's introduction and conclusion help place Baptists in the context of the formation of the American religious and political experience. Indeed, the concluding chapter, in one brief section, succinctly describes six states that, in McLoughlin's view, encompass the struggle for religious liberty. One who has little working knowledge of Baptists—or early American history—will find it helpful. It also should prove a warm invitation to become familiar with other of McLoughlin's work in the same area, notably his *New England Dissent: The Baptists and the Separation of Church and State, 1633-1833; Isaac Backus and the American Pietistic Tradition*, and the work that gave birth to much of the rest, *The Diary of Isaac Backus*, which McLoughlin edited. All of these give life and light to the proud contribution of the ordinary people called Baptists, who helped shape a denomination, a tradition of freedom and the soul of a nation.

Baptists are now as American as apple pie, motherhood and Honda. McLoughlin argues that the transfer from irrelevant sect to establishment mentality occurred at the time of the American Revolution. Subsequent success has not always worn well on us. He concluded with the sharp observation that "the Mighty and the respectable should not forget their humble origins" Wince, we might—Baptists are still inclined to think of themselves as underdogs—but his sense is right.

We are often on the verge of trading long sought freedoms for the more comfortable currency of stable preservation of "values." In that temptation, Baptists threaten to become more like the establishment we fought against than the spiritual subversives who insisted on spirit-inspired expression.

I first discovered these materials in graduate school, partly as a result of working with the author on the Isaac Backus project. Reading them again has been an important and enjoyable personal task of rediscovery. But this volume will help any reader to rediscover—or first explore—what values the earliest Baptists were willing to fight for and for which they frequently suffered.

McLoughlin makes us proud of our ancestors in faith: "Today the world is full of scenes of internecine violence among people of opposing faiths unwilling to grant the free exercise of religion and religious equality to those who dissent from them. Those who struggled so hard for so long to implant these principles in our Constitution deserve at least our commitment to sustain them."

To which we ought all say: "Amen." □

Correspondence

In an article on "Freedom Roots," written by Baptist Joint Committee Executive Director James M. Dunn, in the May issue of *Report from the Capital*, you quote Thomas Jefferson's remarks about the Virginia statute that became the model for the guarantee of religious liberty incorporated in the Bill of Rights. You state that it ensured one freedom from religion as well as freedom for religion in this country no matter what powerful presidents and popular preachers may say.

Without the freedom to say no, all one's yeses are meaningless, you add. As Jefferson said, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

I am proud of the historic Baptist witness for religious liberty and separation of church and state. At the local level, there does not seem to be much awareness of it. It is rarely mentioned; I wonder if many church members are aware of it. Thank you for the work you do.

Obviously, you were quoting Jefferson in the context of the point you were making about religious liberty. In another context, it grieves me to have supported our government's adventure in the Persian Gulf with my tax dollars. Yet, there seems to be no lawful alternative. Jefferson's words apply: "to compel a (wo)man to furnish contributions of money for the propagation of opinions which (s)he disbelieves, is sinful and tyrannical."

Marilyn van Dyk
McMinnville, Ore. □

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