

REPORT from the CAPITAL

Taxation without representation



"I have never supported the proposition of public money being used in private church-related schools that have as a primary function the teaching of any particular religion."

— Rep. William Ford

Who pays the bill for religious instruction?

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REPORT from the CAPITAL

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

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A Christian heritage

(Editor's Note: This commentary is provided by J. Brent Walker, associate general counsel of the Baptist Joint Committee for the past three years.)

"America's Christian Heritage Week." That's what Rep. Nick Rahall, D-W.Va., wants to dub Nov. 22-28 this year. He has filed a joint resolution designating the Thanksgiving season as a time of special recognition of our Christian heritage as a country and authorizing the president to issue a proclamation to observe such a week with "appropriate ceremonies, activities, and programs."

The cynical political observer would call the congressman's move election-year posturing. (After all, there can't be too many Muslims, Buddhists and Jews in Mr. Rahall's southwestern West Virginia district.) But, giving him the benefit of the doubt on motive, its entirely appropriate for Congress to acknowledge our "Christian heritage." It is beyond serious dispute that Christianity has had a profound influence on our culture and our institutions. Our Founders were mostly Christians, although many of their religious beliefs were not at all orthodox. William Estep, in his "Revolution Within a Revolution" (1990), points out how the Constitution was influenced as much by free-church Protestantism as by the credo of the Enlightenment. We are indeed a "religious people," as even Justice William O. Douglas recognized 40 years ago.

But Mr. Rahall's initiative has some dangers associated with it. While we certainly do have a Christian heritage, we are not a "Christian nation" in any formal, constitutional sense. Even more fundamental is our heritage of pluralism and religious liberty for everyone — for the Buddhist as much as the Baptist, for the Muslim as much as the Methodist, for the Jew as much as the Gentile. While our population in the late 18th century was preponderantly Christian (mostly Protestant), all religious groups have left their tracks in our national landscape.

The quality of one's political citizenship should not depend upon the content of one's religious confession. This country's dedication to robust religious liberty and its corollary, the separation of church and state, prevents government from officially sponsoring or privileging any religion or interfering with one's right *not* to believe.

So Mr. Rahall's measure calling attention to our religious — even Christian — roots is laudable. But it should not be taken to endorse a bogus Christian nation theory, disparage the valid contributions to our heritage of other faith groups or deny full citizenship standing to non-believers in our constitutional republic. □

— J. Brent Walker



AS THE 102ND CONGRESS WINDS DOWN on the eve of the November elections, there are several pieces of unfinished legislation that involve church-state issues. This is a quick status report:

- The Religious Freedom Restoration Act (H.R. 2797, S. 2969) continues to wind its way through the halls of Congress. The Senate Judiciary Committee plans to hold hearings, and the House Judiciary Committee expects to complete work on the bill in September. This important legislation would restore significant protection for religious liberty virtually abandoned by the U.S. Supreme Court in *Employment Division v. Smith* (1990).
- The House on Aug. 12 approved the Neighborhood Schools Improvement Act (H.R. 4323), rejecting two amendments that would have permitted public financial aid for private and parochial schools. The Senate earlier had approved an education bill (S. 2) that would allow parental choice but only within the public schools. Once the differences between the two bills are ironed out in conference and adopted by both chambers, the president likely will veto the legislation because it does not allow public aid to private and parochial schools. Bush's plan to funnel tax dollars into religious schools, the so-called G.I. Bill for Children (S. 3010, H.R. 5664), is pending.
- Under the tax bill approved by the House (H.R. 11), contributions of appreciated property to non-profit organizations made before Dec. 31, 1993, would be fully deductible and not subject to the alternative minimum tax. The Senate Finance Committee has approved a bill (S. 2979) that would make permanent the full deductibility of gifts of appreciated property. The House bill would make no change in the 3 percent floor on charitable deductions that, under current law, will expire in 1995. The Senate bill would make the 3 percent floor permanent. Sens. Daniel P. Moynihan (D-N.Y.) and Robert Dole (R-Kan.) apparently intend to offer an amendment that will address the 3 percent floor issue. The Senate bill also would require non-profit organizations, when a contribution is made in exchange for goods or services, to inform the donor that the contribution is not deductible to the extent of the value received. It also would require taxpayers to supply a written receipt from charities for gifts of \$100 or more to claim tax deductions.
- Lobby disclosure legislation (S. 2279) has been approved by the Senate Government Affairs Committee. It would require for registration and disclosure by lobbyists of certain lobbying activities. Churches and religious organizations are not explicitly exempted from this legislation. ● (JBW)

Congress rejects parochial aid — again

The on-going debate over parochial aid may be settled for now, but the issue will continue to be resurrected.

While both houses of Congress have repudiated the administration's plan to channel public funds to private and religious schools, the controversy will play a role in the 1992 elections and most likely will spill over into the 103rd Congress, which begins its first session in January.

The parochial aid issue resurfaced in April 1991 when President George Bush announced his America 2000 plan for education reform. While many elements of the plan were lauded, the school choice proposal drew immediate criticism from various circles, including the Baptist Joint Committee. That proposal would provide parents vouchers to help them send their children to the religious, private or public schools of their choice.

Both chambers of Congress have rejected private school choice in adopting major education reform bills. The latest action came Aug. 12 when the U.S. House of Representatives soundly defeated two attempts to insert school choice into the Neighborhood Schools Improvement Act (H.R. 4323).

The House rejected two choice amendments — one would have required choice while the other simply would have permitted it. Rep. Richard Army, R-Texas, proposed a requirement that 25 percent of the federal grants be used for choice programs. His amendment was defeated 80 to 328. Rep. William Goodling, R-Pa., offered an amendment that would allow choice if state laws permit it. It was defeated 140 to 267.

But the bill, approved 279-124, faces a near certain veto because the administration continues to push choice as a centerpiece of education reform.

Rep. William Ford, D-Mich., and chairman of the Education and Labor Committee, was among the strongest opponents of choice, purporting that the proposal is unconstitutional.

Ford said that he reviewed the last 45 years of U.S. Supreme Court decisions, and he came to three conclusions. First, the court clearly has distinguished between aid for elementary and secondary education and assistance for postsecondary education, he said. Second, the court has approved a very limited list of direct aids for children in elementary and secondary private schools: transportation, loan of secular textbooks, payment of standardized tests and scoring, and some diagnostic and therapeutic services. Third, the court has delineated the unconstitutionality of a long list of other

aids for children, including tuition reimbursements.

"I have never supported the proposition of public money being used in private church-related schools that have as a primary function the teaching of any particular religion," Ford said. "If I had supported that, the court has said over and over again during my adult lifetime that it is wrong because it violates the ... First Amendment of the Constitution."

A Baptist church-state specialist applauded the House's rejection of choice. James M. Dunn, BJC executive director, said, "The Congress has once again reflected fairly and honestly the public will: Public monies should be used only for public purposes."

"The Congress has once again reflected fairly and honestly the public will: Public monies should be used only for public purposes."

— James M. Dunn

The House bill would provide federal funds as incentives for public school districts to undertake reform in all parts of the education system.

A companion bill was approved earlier this year by the Senate. That bill (S. 2) would allow public school choice but rejected aid to private and parochial schools. A conference committee will have to iron out the differences in the two bills before it can be sent to President Bush.

Whatever the outcome of the probable veto battle over this bill, the parochial aid debate will remain alive during the campaign and beyond. When it became clear the administration was losing its choice battle on Capitol Hill, the administration unveiled a new choice program in June 1992 that touted a new name, "The G.I. Bill for Children," and proposed more dollars for the program.

The G.I. Bill for Children (S. 3010, H.R. 5664) was introduced July 22 in both chambers of Congress. The program would provide \$500 million in fiscal year 1993 for 1,000 scholarships to help low- and middle-income families send their children to public, private and religious schools.

Supporters of the "G.I. Bill" have said choice is an innovative way to achieve reform in a failing educational system.

Sen. John Danforth, R-Mo., chief sponsor of the bill, said, "The concept of school choice is an exciting idea for reform and improvement in education, particularly for America's most disad-

vantaged young people. It is my hope that our legislation will focus attention on the need for new thinking, for a measure of boldness and for expanded horizons with respect to education.

"The widely supported Pell grant program for college and university aid is a model for our approach," Danforth continued. "We would rely on students and families to select the education that is best for them, and then provide help with finances. I believe that all schools — public and non-public alike — will benefit from this infusion of new funds and, of equal importance, from the same diversity nourished by federal assistance in higher education."

Rep. Bill Gradison, R-Ohio, House sponsor, said he believed the bill will have a dramatic and positive effect on elementary and secondary education by putting powerful competitive forces in play.

"For the first time, it will enable middle- and low-income families to make choices about the education they wish to provide for their children," Gradison said. "It will make schools more responsive. It will actively engage more parents in the education of their children."

"Most importantly, it will motivate schools to succeed because, for the first time, they will know that if they do not, they will suffer the consequences."

Because of opposition to the original choice proposals, administration officials concede Congress probably will not approve the "G.I. Bill" this year but that choice would be a priority in a second Bush term. That concession led some critics to charge that Bush had given a souped-up name to an old program for political gain.

The BJC's Dunn agreed the measure had little hope for passage and called the new program an "election-year stunt."

The latest choice proposal is "pitiful political posturing without a prayer for passage," Dunn said. "Such a cynical use of the political process has a cruel dimension. Its introduction raises false hopes and impossible expectations."

Rep. Ford remarked, "President Bush has told parents of parochial school children that his G.I. Bill for Children will help them to pay for tuition at their schools. Mr. Bush is perpetuating a fraud on these people. The court will rule as unconstitutional any such scheme."

"He is campaigning for their votes in November with a proposal that cannot pass constitutional muster," Ford added. □

—Pam Parry

Battle of Beaufort

Casting pearls and the First Amendment

You probably have heard in the media about the noise ordinance passed in Beaufort, S.C., that is denying street preachers the right to preach on the corners. Bad for business, to say nothing about the Episcopalians.

In Beaufort and a lot of other places in the country, street preaching is right up there with football as a dedicated form of physical competition.

Shop owners are protesting that customers flee when the evangelists hove into view, with battered Bibles waving aloft, shirt sleeves aflutter, shouting hellfire and brimstone.

The issue would seem to be between business and the right to preach the Gospel. The issue for me, however, is just how much and how consistently we consider noise to be a pollutant. If it is the danger some say it is, then the Christian preachers have to ask if preaching the Gospel while polluting the creation is good theology. I would suspect that for these fundamentalist preachers — whose angel and brimstone

Norman R. de Puy, an American Baptist from Peterborough, N.H., edits and produces a monthly newsletter, "Cabbages & Kings," for lay and professional leaders. These articles were published in the August/September issue of that newsletter and are reprinted with permission. From 1966 to 1974, he was editor of The American Baptist Magazine.



"[I]t is far better to let them preach than to erode the First Amendment. The First Amendment is a gift of God."

— Norman R. de Puy

detectors are highly tuned—saving somebody from hell is more important than buying flowers in the shop in front of which they set up their portable pulpits. Add to this the right of free speech and the hypocrisy of the opponents of the preaching, who would themselves pollute the air and the airwaves with the most frivolous noises, and we must pause.

I doubt if these open-air theologians would be intimidated by subtle issues such as pollution; they see the Gospel as a good deal simpler than did Jesus and Paul.

We must realize that the smell of burning sulphur is a theological aphrodisiac to these people. To try to stop such folks, bewitched by brimstone, is to invariably make martyrs out of them. The more they are persecuted, the more they draw comfort from the Scriptures

that predict that true believers will be called upon to suffer.

Yet, I find it odd, on further thought to note that the Bible Belt has had so little public influence, contrary to common wisdom, on the good people of Beaufort that they value quiet more than freedom of religion.

Then again, though, there are places where street preaching is most appropriate, the streets of affluent suburbs and business districts may not be among them.

I don't want to arouse either the National Association of Evangelicals or the porcine lobby, but Jesus talked about pearls before swine. He was warning against preaching the Gospel in inappropriate ways to people who couldn't

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Don't trust government with prayer

Without appearing too much a traditional Baptist, committed profoundly and seriously to the separation of church and state, let me applaud the Supreme Court in another ruling lately: sustaining the illegality of prayer in the public schools. I don't want to be too nice to Clarence Thomas, but then again, I don't remember how he voted on this one.

Prayer is the most intimate thing in the world. We have to accept the fact that public education, paid for by taxes of all the people, cannot and should not deal with intimate matters of soul.

We should hold public education as most important to providing opportunities for social and intellectual mobility. No matter how much they fail, public schools also succeed in brilliant and thrilling ways, thrills that, oddly, are denied private education because of the nature of the elite students they admit.

Public means they can't be private. Spiritual formation is a very private matter that can only be dealt with by others committed to the same peculiar privacy.

By the same token, it is not only a matter of individual

privacy but a loss of the innate ability of government and its public schools to deal with matters of the soul.

If we take a moment to think about what government is and does, we will not want to trust deep, intimate matters to government, and if government had any sense at all it would stay far away from such eternal matters.

I am appalled at the last-minute, half-billion dollar offer of the Bush bunch to provide vouchers paid for with tax money to be used for religious schools if the parents so choose.

I can't say that I would expect the president to learn anything when he was weeping his way through the Southern Baptist Convention following Desert Storm, for Southern Baptists' fundamentalist leaders have abandoned their heritage of separation of church and state as they fight along side Bush for Protestant religion in government schools. Our forebears must be roiling in the eternal waters of believer's baptism by immersion at this ugly development. □

— Norman R. de Puy

The wall still stands

Americans hear a lot of talk nowadays bashing the wall of separation between church and state. One Baptist leader has even called it the "figment of some infidel's imagination."

The concept is not the brainchild of modern secularism. In fact, the contrary is true. It was Jesus himself who said, "Render unto Caesar the things that are Caesar's, and unto God the things that are God's."

Colonial Baptist Roger Williams first coined the actual phrase when he talked about a "hedge or wall of separation between the garden of the church and the wilderness of the world." And then, a century and a half later, Thomas Jefferson in an 1802 letter to the Danbury, Conn., Baptist Association defended the principle of religious freedom and then said: "I contemplate with solemn reverence the act of the American people which declared that Congress should make no law respecting an establishment of religion or prohibiting the free exercise thereof, thus building a wall of separation between church and state."

Jefferson articulated what Williams prophetically sensed, that the protection of full-blown religious liberty calls necessarily for a wall of separation — however many holes Americans have managed to knock in it over the past 200 years.

But some will say that the words "wall of separation" are not to be found in the Constitution or the Bill of Rights. True, the literal words "separation of church and state" do not appear there, but the constitutional reality that the "wall" metaphor points to certainly does. The words "separation of powers" or the "right to a fair trial" are not in the Constitution either, but who would dispute their constitutional origins? Even the Supreme Court has adopted the metaphor as a convenient, shorthand way of expressing the deeper truth that religious liberty is promoted and preserved best when church and state are separated and neither tries to interfere with the work of the other. *United States v. Reynolds* (1879); *Everson v. Board of Education* (1947).

The separation of church and state is good, not bad, for religion. As a result of the distance that the separation principle places between church



God and Country

Who built the wall?

First in a Series

and state, religious people are free both to utter a prophetic critique of government and to exercise their religious convictions without undue governmental interference. Separation of church and state does not require the divorce of religion from politics. It does not mean that religious people have to relegate their faith to acts of private devotion or forego their rightful place in the public forum. Religious people can speak out, become involved and participate in politics the same as anybody else.

Thus, the wall of separation is as Baptist as Roger Williams and as American as the Fourth of July. It is needed because Jesus did not commission the church to wield the sword of civil government, and he discounted any competence on the part of Caesar to discharge religious functions. Separation results in a free, pluralistic society and a healthy, robust church. Both the church and the state are a lot better off when neither tries to do the job of the other. □

—J. Brent Walker
BJC Associate General Counsel

Court ruling frees prayer, professor says

(Editor's Note: This commentary was written by Eugene Kennedy, a professor of psychology at Loyola University in Chicago, as a special to Religious New Service.)

There are many interesting footnotes and at least one ignored but profound truth to be culled from the Supreme Court ruling (*Lee v. Weisman*, to show you I can play the game) banning prayer at public school graduations.

We have all become players in this game, a choose-up contest in which we pretend that justices in black robes can actually tell us something about the nature of realities, such as prayer, that lie completely beyond the law itself.

A brief analysis of the game is valuable as a footnote to the main point of this column. The game consists of reducing the urgent spiritual questions of our time to case law. *Lee v. Weisman* follows *Roe v. Wade* in diminishing profound issues to the shorthand of the court system.

When we do that, we agree to play by rules that cannot and do not cover the human experiences that underlie them. We abandon, in effect, the broader field of morality and spiritual persuasion that provides the only satisfactory vocabulary in which the most significant human issues ultimately can be discussed.

The great changes in our understanding of the dignity of human personality and the environment it needs to flourish always take place first in the heart of the people. The courts and other institutions, such as education, catch up with rather than author the defining insights of morality.

Thus slavery and segregation fell because of the transformation of the people's internal convictions. The law spoke only after this conversion of heart had taken place.

The current game is obviously one of "let's pretend." It is choose-up because it insists that future justices of the Supreme Court must possess politically correct views beforehand as a condition for their Senate confirmation.

This notion — that everything depends on the politicization of the court — generates columns that border on hysteria. Notable among them is one by the liberal but often very wise Anthony Lewis of the *New York Times*. "In this

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VIEWS OF THE WALL

Oliver S. Thomas
General Counsel



"What is happening to the Republican Party?" That's what the Honorable Fred Schwengel, president of the Republican Heritage Foundation and the U.S. Capitol Historical Society, had to say about the GOP platform statement criticizing the separation of church and state. The statement, "America must remain neutral toward religious groups, but we must not remain neutral toward religion itself," appears to endorse the position of Chief Justice William Rehnquist, namely that the First Amendment prohibits only the designation of a single national church. Non-preferential aid to all religions would be permissible under the Rehnquist view.

Can you imagine the chaos that would result in a nation of several thousand religious groups if government were free to promote religion, even in non-preferential ways? How can one be sure if a particular policy treats all religions equally? Silent prayer, for example, once thought to be neutral among religions and, therefore, an appropriate practice for government to sponsor cannot be practiced by some Hindus, Native Americans and other religious groups. Thus, a policy that provided for silent prayer alone would appear to discriminate against these religions.

The GOP platform goes beyond a general policy statement to endorse two specific practices that are inconsistent with American notions of religious liberty: state-sponsored school prayer and aid to parochial schools. While the platform calls only for "voluntary" vocal prayer in public schools, it presumably means that students wishing not to participate must conspicuously absent themselves from the classroom, risking humiliation and ostracism from their peers. Such practices are inherently coercive to youngsters and for 30 years have been recognized as violative of the First Amendment. Simply put, it is none of the business of government to force children to pray.

No mention is made by the Republicans of the thorny question: "Whose prayer?" Many of us no doubt feel like Sen. Mark Hatfield (R-Ore.), who remarks that he hasn't the time to compose all those prayers and doesn't trust anyone else to. According to one White House memo, school boards would be free to compose classroom prayers. With due respect for school board members, turning over the sacred task of authoring prayers to almighty God to a group of

"One doesn't improve public education by diverting precious financial resources to other schools. As one educator recently noted, improving public education through the proposed voucher plan is like improving the public water supply by investing in Perrier."

elected local officials is a bit like asking Colonel Sanders to write a civil rights law for chickens. Not that school board members are ungodly, mind you, but they are representatives of the political status quo. Scripture teaches that authentic religion, on the other hand, is to serve as salt, light and heaven — a prophetic critique of the status quo.

When prayers are penned by politicians, you can be sure they will be "politically correct." In communities where one particular religion dominates, the prayer no doubt will reflect that particular religion. All others in the community will have to swallow hard and endure the subjugation of their children to an offensive, perhaps even hostile, religious exercise. In more pluralistic communities, school boards will likely opt for a dumbed-down, overly inclusive, least-common-denominator prayer to whom it may concern. Either way, authentic religion suffers.

Interestingly, the GOP platform states: "Schools should be — as they have been traditionally — academic institutions. Families and communities err when by neglect or design they transfer to the school responsibilities that belong in the home and in the community." These words must have been aimed at issues other than school prayer because the platform fails to mention that teachers aren't priests and rabbis nor are schools an evangelistic arm of the church. The schools' approach to religion should be academic, not devotional. It should be objective, not subjective. Let's settle for quality education out of our schools and leave the religious training to families and faith communities.

And what of the platform plank to divert public funds to private and parochial schools. Such a policy will foster healthy competition, say platform drafters, by fostering excellence in both public and private schools.

Bull feathers. One doesn't improve public education by diverting precious financial resources to other schools. As one educator recently noted, improving public education through the proposed voucher plan is like improving the public water supply by investing in Perrier.

Even more fundamental, taxing persons to support religious training with which they may disagree is both "sinful and tyrannical." These aren't my words, although I agree with them. They were written by Thomas Jefferson, the author of the Virginia Statute for Religious Freedom, more than 200 years ago.

What is happening to the Republican Party you ask, Mr. Schwengel? The platform drafters are listening to the voices of majoritarianism and religious intolerance. The "Grand Old Party" will be grander when it heeds the words of Theodore Roosevelt, "[I]t is essential to the existence of this Republic that there should never be any union of church and state; and such union is partially accomplished whenever a given creed is aided by the state or when any public servant is elected or defeated because of his creed."

That's real traditional values. □

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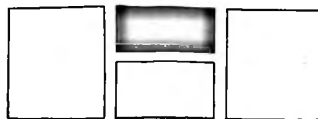
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RFRA passage urgent, says Thomas

Every Baptist church remains vulnerable unless the Religious Freedom Restoration Act is approved by the U.S. Congress, according to a Baptist church-state specialist.

Oliver S. Thomas, general counsel of the Baptist Joint Committee, said the bill (H.R. 2797, S. 2969) would protect local churches and their members by restoring a legal standard lost two years ago.

RFRA, backed by a 51-member coalition of religious and civil liberties organizations, would restore the strict "compelling interest" standard the U.S. Supreme Court formerly required government to meet before restricting religious practice. Under the standard, government could restrict religious practice only to protect an interest of the highest order, such as safety or health interests, and if the least restrictive means of safeguarding those interests had been used.

The standard was first articulated by the court in 1963 in *Sherbert v. Verner* and was reaffirmed in 1972 in *Wisconsin v. Yoder*. When the high court struck down the test in its 1990 *Employment Division v. Smith* decision, it virtually abandoned a judicial standard that took more than 100 years to formulate.

The court first addressed the free exercise clause of the First Amendment in 1879. The case, *Reynolds v. United States*, involved a Mormon who claimed a religious duty to practice polygamy even though it was illegal.

In formulating its opinion, the court said religious belief is absolute but religious practice is not. The court established a weak standard empowering Congress to determine which actions were legitimate and which actions disturbed social order.

The court continued to refine its free exercise principle, strengthening it in 1940. In *Cantwell v. Connecticut*, the court said the free exercise clause was applicable to the states. The court also recognized regulation of religion should not unduly infringe upon it.

The court continued to strengthen free exercise protections in a series of cases. The 1963 compelling interest standard is the highest protection afforded religion in the nation's history, but it never assured religious claimants they would win.

In *Smith*, the court rejected the free exercise principle that it had developed over the century. Since *Smith*, churches cannot even be assured of a fighting

"Churches have no more zoning protection after *Smith* than do adult bookstores."

— Oliver S. Thomas

chance in free exercise claims, Thomas said, adding that is why RFRA is so important.

Churches will face zoning, tax and anti-discrimination problems, Thomas said.

"Churches have no more zoning protection after *Smith* than do adult bookstores," said Thomas, pointing to *Cornerstone Bible Church v. City of Hastings*.

In that case, a church sued the City of Hastings, Minn., because it claimed a zoning ordinance excluded churches from commercial and industrial zones. Citing *Smith*, the court ruled for the city, comparing the church's rights to those of adult movie theaters.

Thomas also said *Smith* could pose tax problems for churches. In *Smith*, the court held that generally applicable laws that do not target religion are constitutional. Since virtually all tax provisions are generally applicable laws that do not target religion, Thomas said property, income, sales and use taxes would seem to be constitutionally permissible as applied to religious organizations.

Anti-discrimination laws also will apply to religious organizations because of *Smith*, he added.

For example, a recent Hawaii law prohibiting discrimination on the basis of sexual orientation has been interpreted by the state's attorney general as applying to churches. According to the attorney general's interpretation, the law does not apply to the selection of ministers but would apply to other staff members. Under this interpretation, a local church could not refuse to hire a potential church secretary or janitor on the basis of sexual orientation.

Another important anti-discrimination case is pending in California. John and Agnes Donahue, devout Catholics, believe sexual intercourse outside of marriage is a mortal sin, Thomas said. Out of that religious conviction, they refused to rent an apartment to a young, unmarried couple.

The couple sued, and the Donahues were ordered to rent to the couple and

pay damages. With the federal compelling interest test struck down by the high court, the California Court of Appeals reversed the lower court ruling by using its state constitution. The court concluded that California did not have a compelling reason for forcing the Donahues to violate their religion.

The California Supreme Court has not yet ruled on the case.

"RFRA does not guarantee a favorable result in any of these cases, but it does increase the chances significantly," Thomas said. "In each instance the government would have to satisfy both prongs of the compelling interest test and, as demonstrated by *Donahue*, religion often wins."

RFRA has been approved by a House subcommittee and awaits action by the full House Judiciary Committee. The bill was introduced July 2 in the Senate. □

Professor delineates six degrees of separation

The debate in America over religious liberty has more than two sides, according to Carl Esbeck, professor of law at the University of Missouri-Columbia and an expert in church-state issues.

Esbeck has written an academic paper to outline six views on church-state separation. One version of the copyrighted paper is published in the fall 1990 issue of the *Journal of Faith and Mission of Southeastern Baptist Theological Seminary*.

Here's a summary of Esbeck's six types:

- Strict separationists desire a secular state, meaning a state that is not religious but not hostile toward religion. They may be religious or non-religious people "who genuinely fear discrimination, ... should conservative Christian majorities be positioned to influence in any serious way matters of public law."
- Freewill separationists also desire a neutral state but do not want the state to exclude religious organizations from equal participation with other private-sector groups in social programs. "A free church in a free state" is a common slogan of this viewpoint, which believes religious pluralism is good for religious liberty.

- Institutional separationists view



government and the church as distinct institutions ordained by God for different purposes. They desire a state where government has a benevolent attitude toward religion. They believe the danger of establishing civil religion in America currently is overstated. They also believe the nation must be supported by moral values that can only be provided by their religion.

- Structural pluralists emphasize liberty to follow one's world view, whether based in religion or philosophy. Religious organizations should receive the same government aid as other non-political structures, they reason, because government is to distribute goods in a way that does not discriminate on the basis of world views.

- Non-preferentialists believe it is permissible for government to favor religion in general, so long as it does not favor one religion in particular. However, those professing no religious belief would not be entitled to the same. Under this view, for example, all classes in a parochial school except those that teach religion could receive state support.

- Restorationists maintain the United States was founded as a Christian nation. They believe both church and state are divinely ordained to specific roles but should reinforce each other. Although they would not establish a national church, they do believe government should be explicitly Christian in its creed. □

Congress establishes commission on Jefferson

The U.S. Congress has approved a bill that would establish a commission to plan the commemoration of the 250th anniversary of Thomas Jefferson's birth.

April 13, 1993, marks the anniversary. The measure (S. 959, H.R. 5056) notes Jefferson's legacy, including his role in the development of religious freedom.

The bill notes that Jefferson, along with James Madison, "laid the cornerstone of the American tradition of religious freedom and separation of church and state."

The legislation delineated other elements of his legacy: writing the Declaration of Independence; serving as the country's third president; doubling the size of the country with the Louisiana Purchase; promoting government based on the consent of the people; encourag-

ing American science; and championing universal public education.

The 21-member commission would plan and develop programs and activities appropriate to mark the anniversary.

The House of Representatives approved the bill July 28, and the Senate concurred two days later. □

Resolution for Christian heritage week offered

Has the U.S. government bowed to pressures to distance itself from God and religion?

A U.S. congressman who introduced a resolution designating "America's Christian Heritage Week" believes it has. Rep. Nick J. Rahall, D-W.Va., introduced Aug. 11 a resolution (H.J. Res. 540) that would designate Thanksgiving week, Nov. 22-28, as "America's Christian Heritage Week."

Rahall said that America was founded to allow "oppressed peoples to have the freedom to worship as they please."

At this time in history, America is witnessing emerging democracies' struggles with the same "potentially politically divisive questions as our Founding Fathers" wrestled with more than 200 years ago, he said. He said such questions include: To what extent should public schools recognize and teach religion? Should churches be exempt from general laws? To what extent should church and state be separated?

"And while we watch and wait for those emerging democracies to turn from the long-held atheism of communism to true religious freedoms, we find ourselves, with heavy hearts, watching our own government succumb to pressures to distance itself from God and religion," Rahall said.

A Baptist church-state specialist said there is nothing wrong with Congress acknowledging America's Christian "heritage" but he cautioned against government officially sponsoring religion.

J. Brent Walker, associate general counsel of the Baptist Joint Committee, said, "It's beyond dispute that Christianity has had a profound influence on our culture and its institutions. But, we are not a Christian 'nation' in any formal, constitutional sense.

"Even more fundamental is our heritage of pluralism and religious liberty for everyone. If Mr. Rahall is serious about promoting morality and religious liberty,

he should start by co-sponsoring the Religious Freedom Restoration Act, where his enthusiasm will do some good."

The Religious Freedom Restoration Act (H.R. 2797) would restore a high standard of protection for religious practice that virtually was abandoned two years ago by the U.S. Supreme Court.

The BJC chairs a 51-member coalition that supports RFRA. □

Religious group makes bid for surplus air base

A lawyer for a church-state separationist group has urged the federal government to decline a request from a religious group for a gift of an Illinois Air Force base.

The issue involves the Chanute Air Force Base in Rantoul, Ill., which is scheduled to close next year. Members of the Transcendental Meditation organization have applied for the site under a federal program that allows schools to receive surplus federal property.

The organization wants to use the 2,200-acre base as part of Maharishi International University, which has its main campus in Fairfield, Iowa.

Steven K. Green, legal counsel for Americans United for Separation of Church and State in Silver Spring, Md., told officials of the Federal Real Property Assistance Program that any diversion of public property to a religious group would violate the First Amendment.

Officials of the religious organization describe Transcendental Meditation as a science rather than a religion. But Green pointed out that in 1979, a federal appeals court ruled that Transcendental Meditation is an offshoot of Hinduism and as such could not be taught in New Jersey public schools. □

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

Close encounters

Forebear's legacy teaches strict separation

The call for a stronger moral influence in the government of the nation has sounded loud during the 1980s. It does not appear to be softening during the 1990s.

People of all views have stated a belief that the nation has drifted from its moorings. Some people believe that the drift has occurred because the nation has abandoned an explicitly religious world view and philosophy. These people — many of whom are devotees of the Religious Right — will note the 1963 Supreme Court decision on mandated prayer and numerous other evidences of supposed national decline.

What is the standard by which some people measure moral drift? Those of the Religious Right selectively quote the Founders to "prove" that the nation was founded as a religious nation, even a Christian one. The First Amendment is seen by these people as a very limited document that merely disallows the establishment of a state church and nothing else.

All other recent decisions that fall under the idea of church-state separation are part of the so-called decline in American society. Moreover, those people who wish the country to reflect a particular religious view claim that the Founders also intended for the nation to reflect a narrow, sectarian world view.

Part of the assumption is that if one is religious, one must desire a Christian state. That is, one must desire a Christian state if one wants to be faithful to one's religious tradition. This assumption is unfortunate for many reasons, but perhaps the best reason is that many people did not want a state-imposed religious view. To be certain, the Massachusetts theocrats wanted a church state. But there were other people who were faithfully religious and yet did not want state-imposed religion. Roger Williams was one such person.

Williams' opponent John Cotton voiced the opinion that parallels much of the modern assumption. Cotton believed that religious dogma had a just place in the governing of a civil state. In fact he saw the internal life of the church as a legitimate concern of the state. When the church departs true doctrine (Cotton's idea of true doctrine), then the peace of the state will decline. Since incorrect doctrine threatened the order of the

"... Williams reminds us that a commitment to separation of church and state is compatible with religious, even evangelical devotion. Far too many people today associate a belief in church-state separation with hostility toward a religious world view."

— Merrill Hawkins Jr.

state, the state had an interest in punishing the dissenters. Of course, Cotton thought anyone who dissented from the Puritan interpretation of Christianity had departed true doctrine. In Cotton's world, Baptists, Quakers, Jews and non-religious people by their very presence threatened domestic peace. These people were in error, and for Cotton, error had no rights.

Enter Roger Williams. Williams was, indeed, a product of the Puritan heritage, just as was John Cotton. Yet Williams departed Puritanism on the idea of a Christian society. While Cotton argued that religious conformity brings social peace, Williams argued the opposite. He contended that enforced uniformity, not diversity, caused more problems in the civil order. The founder of Rhode Island had no delusions about the value of religious dogma in the creation of a peaceful state. Roger Williams saw religion as potentially divisive. In fact, in *The Bloody Tenent*, he wrote that the greatest threats to the average person were not political but of a spiritual nature.

When Williams expressed this view, he stood opposed to more than the Massachusetts church leaders who expelled him. The practices of the "Christian World," which referred to Europe, had little in common with the teachings of Christ. Williams noted the "bloody, irreligious, and inhumane oppressions and destructions under the mask or veil of the name of Christ." Far too many nations that were officially Christian nations engaged in activities that, according to Williams, had little to do with his understanding of the teachings of Christ. Especially irreligious were the numerous wars that various nations attempted to justify with religious reasons.

Williams rejected Cotton's notion that

the state needs to impose religious views. First, Williams believed that the errant parties faced divine punishment, which is certainly more severe than punishment meted out by the state. This position is especially interesting, because it reminds the 20th century person that Williams was quite sectarian in his views. He was not some 17th century free thinker. Williams held to many narrow dogmas. In many ways, he was still most Puritan in his thought. Since the God in which he believed would punish those with deviant beliefs, Williams saw no need for the state to do so.

Second, Williams argued that punishment by the state was not an effective way of persuasion. Approaching the issue from a pragmatic basis, Williams stated that the use of force against people with dissenting views only serves to reinforce them in their beliefs. Likewise, a person who embraces Christianity under compulsion has not truly converted as Williams understood it.

Third, Williams argued that the state does not have the ability to assign people their religious views. Even though a person might be in error as Williams understood it, that person could only be persuaded to change, not compelled. In the world of religion, the end did not justify the means for Williams.

Williams did acknowledge the concept of heresy. Heresy, however, was an ecclesiastical issue, not a political issue. The remedy was not state action but action in the church. The church had every right to expel a person with heterodox views. The state had every obligation to protect the same person. One might think that the pluralism Williams had in mind referred only to the several understandings of Christianity. It did not. Williams would extend

Merrill Hawkins Jr. is a doctor of philosophy student in church history at Baylor University in Waco, Texas.

-the full rights of citizenship to "a Turk, a Jew, a Pagan (or) an antichristian." Yes, even pagans and the non-religious had a right to participate in the civil order. Those modern revisionists of the Religious Right that draw a distinction between freedom of religion and freedom from religion can lay no claim to the mantle of Roger Williams. A person has every right to be free from religion in Williams' world. Even the Quakers, whom Williams strongly opposed and who did not fall under his definition of Christianity, had every right to live in his colony.

How was the state to be properly related to the church? In *Queries of Highest Consideration*, Williams presented several statements on creating good relations between the religious and political orders. First, the state should limit its actions to the "civil realm." Second, the church, in working out its relation to the civil order, should follow the life of Christ, which Williams understood placed a certain distance between the two realms. Finally, Williams believed that all groups have a right to "absolute freedom of conscience."

In no manner did Williams think that one could create a Christian society. When he started his settlement at what would become Rhode Island, he did not think that he was creating a religious society. Of course, people in the 17th century probably did not have in mind the modern secular state. The modern secular state, however, is far more similar to Williams' hopes for the political order than any idea of a Christian state. Williams felt that the state's role toward religion was to create an environment where the various religions could express their faiths.

Indeed, he saw it to be an impossible task for any government to take a position on a sectarian question. The government was obligated only to defend the right of all faiths to exist. In *The Bloody Tenent Yet More Bloody*, Williams wrote that the magistrate does not have the ability to evaluate "what is spiritually right and wrong." Writing a personal letter to Ann Sadleir some years after he wrote *The Bloody Tenent* and *The Bloody Tenent Yet More Bloody*, Williams developed his ideas. The government, he wrote, was ineffective in settling religious debates. He wrote her that he hoped he could show "that in soule matters no weapons but soule weapons" can be successful.

After he wrote the letter to Anne Sadleir, he wrote another statement that reinforced his concept of church-state relations. The magistrate had two functions toward religion: the removal of barriers to religious liberty and "free and absolute permission" for all groups to practice their faiths, whatever these faiths may be.

"... Williams argued that the state does not have the ability to assign people their religious views. Even though a person might be in error as Williams understood it, that person could only be persuaded to change, not compelled. In the world of religion, the end did not justify the means for Williams."

Many people today argue that a common religious view is necessary to social tranquility. Most of Williams' contemporaries argued the same. How can people with different religious views co-exist? Well, they will not co-exist if they impose their dogmas. Civil peace will disintegrate and groups will compete for the role of champion persecutor. This breakdown always lurks beneath the surface in modern societies without a common religious view. One might see this danger as an argument for a uniform religious view. But in reality, a uniform religious view is not an option in the modern world. Those who dream of religious uniformity need only look to Ireland, Lebanon or Sri Lanka to see the dangers of mixing dogma and politics.

Williams too saw the dangers involved in a pluralistic society. But he also saw that the formation of a religious uniform society was mythic. He provided an analogy to illustrate how people with most differing views could peacefully coexist. Writing at large to the town of Providence, Williams compared the civil society to a great ship carrying "Papists and Protestants, Jews and Turks" as passengers. Since so many divergent viewpoints were traveling on this ship, a method had to be devised so that the passengers would neither harm each other nor destroy the ship (the state). The magistrate's way of dealing with all these subjects is to use force in civil matters to preserve order.

Once civil justice is accomplished, how does the magistrate keep the parties from sectarian strife? Williams said that such freedom mandated that no person be "forced to worship" and that no person be prohibited from worshipping or not worshipping. On this mythical ship, all parties recognize the right of all

others to passage. The magistrates sole responsibility toward religion is to ensure the right of all to worship or to abstain from worship. Few analogies from the past provide a better example of how pluralistic societies of the present can operate. Williams' statements remind all of us that we owe respect to people whose views differ from ours. That Williams was a strongly religious person reminds us that tolerance does not compromise anything essential about Christian teachings.

What can the modern world learn from Roger Williams?

First, Williams gives us an idea of the nature of the modern state. His understanding of religion as a personal, experiential matter meant that the civil state could not have a Christian character. To put his 17th century thought in 20th century words, Williams believed that the state should be neutral toward religion. The state is not able to evaluate whether or not a particular dogma is correct. Consequently, all opinions about civil rights, even those views that departed orthodoxy or that were not Christian.

Second, Williams reminds us that a commitment to separation of church and state is compatible with religious, even evangelical devotion. Far too many people today associate a belief in church-state separation with hostility toward a religious world view. A glance at Williams' statements should dispel that notion. This man from the past was no moral relativist. He was in many ways quite narrow in his religious views and most sectarian. Yet, he separated sectarian issues from broader issues of public concern.

Finally, Williams shows the religious community a middle way between social withdrawal on the one hand and civil religion on the other. Williams was a very religious person with some very strict views, many of which one might reject. At first thought, one might conclude that Williams would be forced either to reshape his world to his own views or withdraw from the world to fashion a private community. These two options are taken by many today. Yet, Williams reminds us that a person with strong religious views can be engaged with the larger society without any intention of creating a Christian society. Just because an issue is important in the church house does not mean it must become important in the state house.

Williams reminds us that a religious person is under no obligation to withdraw from society. That same person, however, is under no authority to reshape society into a more sectarian system. With so much zealotry in religion these days, Williams reminds us of the virtue of private belief and public tolerance. □



Israeli prime minister offers hope, peace

Israeli Prime Minister Yitzhak Rabin lauded America's example of separation of church and state as a "unique phenomenon" and offered hope for peace in his region of the world at the National Press Club here Aug. 12.

Rabin said that most of the Western civilized countries did not have anything like the American example of separation of church and state. However, in his country the concept would be difficult because Israel is a Jewish state, he said.

Rabin, the newly elected prime minister, met with President George Bush, top cabinet members and congressional leaders while in the United States. He told National Press Club members that those meetings with U.S. officials "brought about a beginning for change, more confidence, more trust" between the two nations.

"I believe that the basis for good relationships between the United States and Israel is, first and foremost, to build trust," Rabin said.

Rabin said he and U.S. leaders were able to talk frankly about areas in which they could agree and disagree. Rabin and Bush came to an agreement for \$10 billion in U.S. loan guarantees to Israel; the U.S. Congress must approve the proposal.

Rabin emphasized to the group that the U.S. aid was in the form of loans, not grants, and that Israel always has paid its debts.

Israel's policy under the new government is to negotiate peace, Rabin said, adding that the country is changing the order of its national priorities to focus on its economy and society.

Israel is negotiating with the Palestinians for a permanent solution — autonomy in the West Bank and Gaza Strip — to their long history of strife. A solution will take time, he added.

"We will try to be more forthcoming in negotiations without endangering Israel's security," he said. "And hopefully, we will start a new chapter in the long tragic story of the relationship between the Palestinians and Israel."

"Tomorrow I go back to Israel ... with good feelings. Something has moved in the right direction in the relationship between the United States and Israel. I hope that the results will prove ... for the benefit of Israel, for the benefit of the Middle East and for the benefit also of the interests of the United States in the region."

"Therefore I look forward with great hope that the future will be brighter than it was in the past." □



Israeli Prime Minister Yitzhak Rabin offers hope for peace in his region of the world at an address at the National Press Club Building in Washington, D.C.

Senate records first vote for nuclear testing curbs

For the first time, the U.S. Senate has approved legislation that would curb and eventually end nuclear weapons testing by the United States.

The Senate overwhelmingly approved the testing limits as an amendment offered by Sens. Mark O. Hatfield, R-Ore., George J. Mitchell, D-Maine, and Jim Exon, D-Neb., to an energy and water development appropriations bill.

Approved by a veto-proof 68-26 margin, the Hatfield-Mitchell-Exon amendment would impose a nine-month moratorium on nuclear weapons testing until July 1993. After the moratorium period, nuclear tests would be limited to

five per year for the next three years and completely banned after Sept. 30, 1996, unless Russia conducts a test after that date.

The legislation also would require the president to report annually to congressional armed services and appropriations committees on the weapons remaining in the U.S. arsenal, the proposed safety measures and plans to achieve a comprehensive test ban by 1996.

The House of Representatives approved in June a one-year moratorium on nuclear weapons testing as part of a defense authorization bill. The vote, 237-167, was short of the two-thirds majority needed to override an expected veto by President George Bush.

While the House repeatedly has voted in favor of halting nuclear weapons testing, the June 4 action by the Senate marked the first time that body has done so, prompting Majority Leader Mitchell to call the action a "truly historic vote."

"It reflects the truly enormous scope of change that has occurred in the world in the past few years," said Mitchell, who credited Hatfield as being "the man who has done the most to lead the effort in this direction."

Hatfield said the moratorium would give the nation a chance "to get a fresh outlook toward our post-cold-war arsenal" as well as add "weight to the United States' role as the primary advocate of nonproliferation worldwide."

The testing limits received significant bipartisan support as 17 Republicans joined 51 Democrats in voting for the measure.

The Senate's action drew applause from Glen Stassen, professor of Christian ethics at Southern Baptist Theological Seminary, Louisville, Ky., and a leading Baptist peace advocate. Stassen is a member of the board of the Baptist Peace Fellowship of North America and an advisory board member of the Baptist Center for Ethics.

"Many of us in the Baptist Peace Fellowship have been working hard to convince our senators and representatives that it's way past time to stop nuclear bomb testing," Stassen said. "Now we've finally succeeded, so I'm really grateful."

Stassen cited a list of reasons why Baptists should be encouraged by the prospects of a testing ban.

"First, because we're called to be



— NEWS SCAN —

peacemakers," he said. "Second, because the process of developing new kinds of nuclear bombs and then testing them and then manufacturing them costs us about \$15 billion a year, which we can't afford when there are so many serious economic needs in the United States and the world.

"Third, because the new kinds of bombs that are developed are more dangerous and more likely to start a nuclear war because they become more accurate. Fourth, because Russia has already stopped nuclear bomb testing as a transforming initiative and has accepted on-sight inspections and is inviting us to join in this major peace-making step.

"And finally, because it puts a stop to several kinds of spreading nuclear pollution and radiation in the United States that come from the bomb production process."

Stassen, author of "Just Peacemaking: Transforming Initiatives for Justice and Peace," said his interest in ending nuclear weapons testing was heightened following a trip last summer to the republic of Kazakhstan, where the former Soviet Union conducted nuclear tests. The Baptist Convention of Pennsylvania and South Jersey sponsored the trip, made by 330 Baptists.

"There we learned of the strong movement of the people of Kazakhstan that successfully persuaded their government to stop nuclear bomb testing in spite of the pleas from (former Soviet leader Mikhail) Gorbachev that they keep testing because the United States was still testing," Stassen said.

"We were really moved by their uphill struggle in a country that had been very unfriendly toward protest movements by the people or democracy. Because they succeeded the former Soviet Union stopped its bomb testing and that made this vote in Congress possible." □

Evangelists to Olympics fleeced by travel agent

Americans carrying a gospel message to the Barcelona Olympics under auspices of the evangelical group Youth With A Mission were allegedly fleeced out of tens of thousands of dollars by a dishonest travel agent.

Matthew Emiohe, a Nigerian citizen who operated Absolute Tours and Travel Inc. in Charleston, W. Va., recently was

indicted there for fraud by a federal grand jury charging that he made off with more than \$32,000 in airline ticket payments.

The money was channeled to him by individuals planning to travel to Barcelona under the auspices of the evangelical organization.

According to the indictment, about 115 travelers were affected by the alleged scam. Some had made full payment, while others had made deposits of \$100 or \$200.

Emiohe is being held in jail without bail pending trial. □

Religious leaders decry atrocities in Bosnia

Outraged by reports of atrocities in an alleged "ethnic cleansing" campaign by Serbians in Bosnia, religious leaders in England have called for military intervention to save Muslim Slavs.

The televised images of death and torture in concentration camps in the former Yugoslav republic have touched a raw nerve of Nazi memories among British Jews.

Speaking on BBC Radio, Chief Rabbi Jonathan Sachs said failure to act against atrocities in the Balkan conflict is an inhumane response.

"If all else fails direct force must be applied," he said. "We must show we will never allow atrocities like this to happen again."

A leading Anglican traditionalist said it is the duty of the churches to push for military intervention. "Evil only triumphs when good men remain silent or do nothing," said the Rev. George Austin, Dean of York.

"If that means a limited military intervention, it must be undertaken," he said. "How many lives will be lost if something isn't done?"

Senior Muslim leaders have gone further in their comments, accusing the Christian countries in the West of avoiding the plight of Bosnians, most of whom are Muslim Slavs. Most Serbians are Orthodox Christians.

Britain's second largest Muslim community, Bradford, about 150 miles north of London, has 70,000 Muslims. A spokesman for the city's council of mosques accused Britain and other Western nations of deliberately delaying sending in troops to aid Bosnian Muslims.

"They want to see the Muslims eradicated from Bosnia ...," he said. □

The Church of Scotland called for outlawing boxing for youth, supporting the British Medical Association's condemnation of the sport. The medical association called for a legal ban on boxing for young people under 16 after a 15-year-old Manchester boy died in a boxing bout. The church rendered its opinion in an editorial in its official magazine, *Life and Work*. Boxing, the editorial says, is the only major sporting activity in which the prime purpose is to maim an opponent in a manner that may cause permanent incapacity. ... Karen Baptists are victims of continuing repression in Myanmar (formerly Burma), according to international Baptist eyewitnesses. Vandalism, rape and theft by government soldiers have forced many Karens to flee to camps in neighboring Thailand. Baptist World Alliance aid has helped to provide food for refugees, but their long-term status is uncertain, the BWA reports. During the past year, the government of Myanmar has expanded its crackdown on civil rights in the country, with Christians and churches special targets of abuse. ... Six black women from South Africa, activists for women's rights, are touring the United States in August in an effort to spotlight the oppressive treatment of women and children in their country. On visits to New York and Washington, the activists are delivering this message: women's issues in South Africa have too long remained hidden beneath the turmoil of the wider political struggle to end apartheid. In New York, the women urged the U.S. leaders to take a closer look not only at the political struggle to end white rule but also at such little-discussed issues as the disparities between black males and females. Black women in South Africa are double victims of discrimination because of apartheid and their gender, they said. ... Africa's worsening famine is going unnoticed while the world's attention has been riveted to civil strife in Sarajevo, according to the anti-hunger organization Bread for the World. "Even though the causes of hunger in Eastern Europe and Africa are similar, solutions are being determined by skin color and not by the severity of the situation," wrote Sharon Pauling, Africa policy analyst with Bread for the World. □

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

Public

Continued from Page 6

ion year," he wrote recently, the ds of appointments" a prospective ident would make is "fundamental." undamental only if you accept the nise that the court is the source and itor of ethics and morality when in it is neither.

another footnote hangs from the reme Court's baggage in the prayer e like a piece of ill-packed laundry. justices inadvertently revealed the illowness of their reasoning by acyting the "subjective discomfort" ument of the young girl who claimed at she felt coerced into standing etly while, in this case, a rabbi offered raditional graduation prayer.

"I, for one, do not judge it a wrong that prayer has been freed, as a lifeless dove suddenly taking wing from a statue's hand, from the abuse it has suffered at the hands of preachers and politicians at public gatherings for generations."

This notion of measuring reality by whether or not we are "comfortable" with it is one of the corruptions of psychology that passes for wisdom these days. The problem is, comfort versus discomfort are empty standards to measure ethics by.

Now for the profound truth, unintended by the court and, alas, unremarked on by those who say the ruling shows hostility to religion rather than the neutrality the Constitution requires.

I, for one, do not judge it a wrong that prayer has been freed, as a lifeless dove suddenly taking wing from a statue's hand, from the abuse it has suffered at the hands of preachers and politicians at public gatherings for generations.

Tell me if you can recall a sincere prayer ever escaping the lips of a public official. When the president of the United States invokes the deity during a televised speech, do you feel his words are prompted by religious fervor or political manipulation?

For that matter, have you ever been propelled to mystical heights by the generally pro-forma prayers uttered, occasionally audibly, by clergy at graduations. Fourth of July celebrations or other public gatherings?

The chances are that most people wait out the invocations, benedictions and closing prayers at public events knowing that they have lost most of their vitality,

that they lack the resonance of real faith. Prayers in public places have already become so denatured and homogenized that prayer itself has suffered greatly in the process.

Prayer will not disappear because of this Supreme Court decision. But it may regain some of its power and dignity. □

Battle

Continued from Page 5

understand it anymore that a pig can wear pearls. I would be attentive to this text.

But if these fundys must preach loudly in the streets, it is far better to let them preach than to erode the First Amendment. The First Amendment is a gift of God. □

Reviews

Continued from Page 16

allocate public funds to parochial institutions, citizens on the grassroots level when given the chance consistently have rejected parochial statutes.

The other 10 essays in this section focus on the broader issues that surround public subsidies for religious education and "school choice." All share a common theme: whatever the motive, pure or invidious, attempts to recast our public schools from their historic role as leveling and democratic institutions to market-driven commodities whose resources are available to the highest bidder will not benefit America's millions of school-age citizens but an elite few. Worse, to strengthen religious education in such an exploitative manner suggests that the Bush administration and its supporters are not hesitant to abandon, wholesale, one of our most powerful instruments to combat prejudice, encourage tolerance and promote democratic ideals — the common public school.

Art Must and his colleagues have reminded us that the salad era of private religion's severance from the public purse is over. Legislatures continue to enact elaborate parochial schemes over intense public opposition; with the court much more deferential than ever before to majoritarian impulses, Americans stand ready to witness a radical restructuring of the financial relationship between government and religion.

Three decades ago, when confronting the first of what became a lifetime of these battles, the great church-state lawyer Leo Pfeffer wrote that the public educational system in the United States

was the finest fruit of the principle of separation and better than anything it manifests democracy in action. Because public schools were the major medium in shaping and transmitting the values of American culture, Pfeffer warned that it should be expected that they will be subjected to sectarian pressures to a greater degree than perhaps any other agency of society.

Pfeffer helped to found PEARL in the late 1960s. With this book, Art Must has ably carried on PEARL's commitment first established 25 years ago to support, strengthen and preserve our public schools and the separation principle. Those who share his concern should read this book, think about it and then act on the lessons imparted. □

— Gregg Ivers
Assistant Professor of Government
American University
Washington, D.C.

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ELECTIONS

James M. Dunn
Executive Director



It is our task, in a society of increasingly complex articulation, to complete the effort of Madison in moving religion from state ceremony and proclamations. ... We value more those who follow science to deny that a once-Christian culture must be a Christian state." (p.382)

... would say a thing like that? Didn't he or she watch national political conventions?

We have had a professed ideal of constitutional separation. That gave to religion an initial, if minimal, freedom from crippling forms of cooperation with the state. That, more than anything else, made the United States a new thing on the earth, setting new tasks for religion, offering it new opportunities. Everything else in our Constitution — separation of powers, balanced government, bicameralism, federalism — had been anticipated both in theory and practice. ... We combined a number of these features in a way that was suitable to our genius, as the drafters put it — to what Montesquieu called the national esprit. But we wanted nothing, except disestablishment." (p.383)

... ends as if this writer believes in that explosive ideal of separation of church and state doesn't it?

"The later history of the doctrine of separation, which makes conservatives lament progressive moves to separate church and state, is just what he (Madison) and Jefferson were hoping for." (p.378)

... sentence like that might lead one to believe that the intentions of the Founders should be taken seriously and interpreted accurately. What a novel notion, eh?

"The courts have, in recent years, made new applications of the doctrine of separation — going further, on matters like school prayer, than custom once allowed (though not farther than Madison wished). ... It is false to think that recent court decisions have made religion less important or effective in America or even in our politics." (p.379)

... ould this have been said in the summer of 1992 after the national prayer decision?

"To Arthur Schlesinger, talk about 'blasphemy' toward the flag is a sign that some people are secularizing the secular. But to the Religious Right, the flag is not a secular symbol."

... it? You couldn't tell by listening to political talk in an election year.

"Each of the fifty states has at least one section in its constitution affecting church-state relations. ... By far the most usual are clauses that state more fully than the U.S. Constitution a concept of no support for religious groups." (p. 378)

... o you suppose most state constitutions would rule out all "choice" plans and voucher schemes that bootleg dollars into private and parochial schools? Yep!

... ese quotes came from the conclusion of a 1992 book. ONG, 1990.

... me Baptist or Jew wrote this separationist stuff. ONG, a Roman Catholic.

... uly these ideas came from an activist, religious domination lobby. WRONG, author, scholar, professor of American culture and public policy.

... he sampler of provocative quotes above came from *Under God: Religion and American Politics*, Garry Wills and Schuster. New York, 1990), \$12, paperback, 445 pages.

... larly reviews are not overstatement. *The Washington Post* did it "a devastating analysis." "A brilliant examination of

the connection between religion and politics in American life" said the *Milwaukee Journal*, and *Booklist* raved: "the best written book on American politics in many, many moons." No exaggerations these jacket blurbs.

In this election year, one must "amen" Wills' analysis of the secular news coverage of religion generally and the abysmal ignorance displayed when the media attempts to comment on religion and politics. He is correct in assessing the uneasy way journalists "talk about religion." Much confusion is due to the know-nothings who attempt to write about American politics and culture. "Some of the glibest persons in the nation are oddly tongue-tied when the Bible is brought up. And editors seem to prefer inarticulacy on the subject." (p. 18)

Herein lies much of the strength of *Under God*. Wills has done his homework. He exposes politics and religion to the laypersons in both fields. His readable vernacular will not satisfy the theologians. No one could possibly offer a popular analysis that would bring the shadings and subtleties scholars want. Nor will the general reader find this book dumbed down to the level of the evening news.

Yet, here with great clarity is culture, history, religion, political science, theology and philosophy within the reach of ordinary mortals. Here are fresh, usually slighted insights into William Jennings Bryan, Woodrow Wilson, Thomas Jefferson, James Madison and others. Here one finds exposed aspects of popular figures including Jesse Jackson, Gary Hart, Andrew Young, Pat Robertson and Francis Schaeffer. He puts them in their place in the larger scheme of things.

Wills offers an ingenious and fascinating tapestry that brings together the main struggles in the religio-political arena. *Under God* is a reasoned, researched, principled, literate explanation of religion in recent American politics. In fact, if it has a weakness its flaw may lie in its rational, careful, measured treatment of that devil's brew, political religion. Religious politics, if nothing else, is wildly emotional, hardly manageable even for purposes of scholarship, especially up close. Despite that difficulty it's no noble task that Wills has set for himself and he succeeds admirably. Surely, no informed religionist or serious politician would want to go through an election year without reading this magnificent work.

To these Baptist ears, Wills misuses the word "evangelists" when he really means "evangelicals" (p. 79) and with all his appreciation for Roger Williams amply spelled out, he still manages to use that weasel word "toleration" approvingly. Williams saw it as a "concession of men" and held out for "freedom, the gift of God." But this is nitpicking. And it was hard to find any nits to pick.

This hard-hitting indictment of cynical politicians and pondering preachers yet has the soft edge of one who understands human frailty, identifies with religious aspiration and has an incomparable grasp of the political process. The book is timely as an antidote for the poisonous patriotism or patriotic piousness. Can one tell them apart?

The book is timely because the nation seems to be awash in this sort of silliness that threatens both good government and authentic religion.

All who read it will be a bit more likely to reject the politicians who reduce prayer to a political plaything and who prey on parents with false promises of phony choice schemes.

Right on! Write on, Garry Wills. □

REVIEWS



Why We Still Need Public Schools

Art Must Jr., ed., Prometheus Books, Buffalo, N.Y., 1992, 307 pages.

Since the U.S. Supreme Court's historic decisions in *Engel v. Vitale* (1962) and *Abington v. Schempp* (1963) that prohibited state-sponsored religious observances in the public schools, the desire of a determined coalition of conservative religious denominations and their representative bodies to undo the imprint of these cases on establishment clause law has never ebbed. These organizations have been persistent in their judicial and legislative efforts to remove the constitutional constraints on government power to use the public schools to inculcate sectarian religious values.

The Reagan administration created a receptive political and legal climate for advocates of the restoration of government-endorsed religion in public life, especially Christian evangelicals and fundamentalists, to advance their interests. President Ronald Reagan spoke often and forcefully of the need to lower the metaphorical wall separating church and state and pledged that his administration would support this goal through legislation and, if necessary, constitutional amendments.

But this energetic new alignment between the executive branch and its conservative religious supporters wanted more than to return sectarian religious practices to the public schools. Equal on their wish list was to renew and then bolster the access of church-supported schools and social service institutions to public funds. Catholic and Orthodox Jewish organizations that had long clamored for public funds to support their parochial programs banded together with Protestant fundamentalists in, at the risk of understatement, a most unusual ecumenical coalition whose collective objective was to harness their power into an assault on the public till. Here, too, President Reagan, and later President George Bush, extended their hands to their allies in the conservative religious movement. The continued influence of the religious far-right in

Republican party politics is testament to the dint of their efforts.

One is tempted to characterize the church-state battle of the last decade or so as old wine in new bottles. From the dawn of the modern constitutional era, the public schoolhouse has occupied center stage of the endless debate over the meaning of the religion clauses. The court's leading decisions interpreting the establishment clause, with some important exceptions, turned on the constitutional limits of sectarian influence in public education and government financial assistance to parochial schools.

In "Why We Still Need Public Schools: Church/State Relations, and Visions of Democracy," Art Must Jr., the executive director of the National Coalition for Public Education and Religious Liberty (PEARL), has assembled an impressive panel of distinguished members of the church-state bar, scholars and political activists to comment on the recent challenges to subvert the separation principle in our public schools and to undermine the entire primary and secondary education system under the false pretense of reform so that religious schools would have full access to massive public subsidies. The contributors to this book offer compelling rebuttals to the twin designs of these would-be reformers and do so in a fashion that avoids scholarly obtuseness and allows the interested non-specialist to learn something from these essays.

The book is divided into two sections. The first, "The Need for Separation of Church and State," focuses on the historical and philosophical roots of religious disestablishment and the application of the separation principle to the nation's public schools. The essays range from Sam Rabinove's plaintively titled but eloquently written "Religious Liberty and Church-State Separation: Why Should We Care" to the more scholarly and erudite contributions from Robert S. Alley and T. Jeremy Gunn on the meaning behind the text and intent of the establishment clause.

Rabinove argues that respect for and adherence to the separation principle matters because it allows religion to prosper free from government intrusion

independent of religious allegiance, to remain just that — civil and neutral, "not partisan, in matters religious, even when neutrality may be painful to some." (p. 26)

Professor Alley weighs in with a superb essay that reduces to a shambles the non-preferentialist conception of the establishment clause. Building on Rabinove's theme, Professor Alley suggests that the non-preferentialists' motives are not rooted in a penchant for historical accuracy but rather in the desire to "establis[h] a moral tone for the nation and a 'return' of the country to a specific set of values. Those values are clearly identified as Christian in origin." (p. 62-63)

Other contributors to this section, including Charles V. Bergstrom, former Washington director for the Lutheran Church, and Oliver S. Thomas, general counsel for the Baptist Joint Committee, offer assessments from the practitioner's perspective. Each notes that religious lobbies are not immune from the pull and push of the Madisonian model of factional pluralism and that these organizations represent sophisticated and active constituencies. When one considers that political deference is now a controlling principle in the current Supreme Court's jurisprudence, Bergstrom and Thomas are correct to emphasize that future clashes between religious organizations will take place in legislatures and at the grassroots.

The book's second section, "The Need for Public Schools," concentrates on the consequences that legislative subsidies for private and religious schools have for public education and some of the newer plans to allow students, with government vouchers, to attend the parochial schools of their choice.

Ex-public school instructors Edd Doerr and Albert J. Menendez, now co-directors of Americans for Religious Liberty, contribute an outstanding essay on popular support for parochialism that might confound the settled wisdom on this subject. Doerr and Menendez demonstrate that, while Congress and state legislatures receive intense pressure from powerful organized interests to

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