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# LIBERTY

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A MAGAZINE OF RELIGIOUS FREEDOM



# DECLARATION OF PRINCIPLES

*Religious Liberty Association*

We believe in God, in the Bible as the word of God, and in the separation of church and state as taught by Jesus Christ; namely, that the church and the state have been placed side by side, each to work in its respective sphere. (Matt. 22:21; John 18:36.)

We believe that the Ten Commandments are the law of God, and that they comprehend man's whole duty to God and man.

We believe that the religion of Jesus Christ is comprehended in the principle of love to God and love to our fellowman, and thus this religion needs no human power to support or enforce it. Love cannot be forced.

We believe in civil government as divinely ordained to protect men in the enjoyment of their natural rights, and to rule in civil things, and that in this realm it is entitled to the respectful and willing obedience of all.

We believe it is the right and should be the privilege of every individual to worship or not to worship, or to change or not to change his religion, according to the dictates of his own conscience, but that in the exercise of this right he should respect the equal rights of others.

We believe that all legislation which unites church and state is subversive of human rights, potentially persecuting in character, and opposed to the best interests of the church and of the state; and therefore, that it is not within the province of human government to enact such legislation.

We believe it to be our duty to use every lawful and honorable means to prevent the enactment of legislation which tends to unite church and state, and to oppose every movement toward such union, that all may enjoy the inestimable blessings of religious liberty.

We believe in the individual's natural and inalienable right of freedom of conscience, and the right to profess, to practice, and to promulgate his religious beliefs; holding that these are the essence of religious liberty.

We believe that these liberties are embraced in the golden rule, which says, "Whatsoever ye would that men should do to you, do ye even so to them."

*Religious Liberty Association, 6840 Eastern Avenue,  
Takoma Park, Washington 12, D.C.*



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## Back Cover

Portrait of Abraham Lincoln

## Our Cover Portraits

We picture on our front cover a portrait of our first President, George Washington, whose birthday we celebrate this quarter. The original painting is eight feet two and a half inches high by five feet four inches wide. It was painted by order of Congress, at a cost of \$2,500, by John Vanderlyn. This artist was born in Kingston, New York, in 1776, and died there in 1852. He was a pupil for a time of that famous artist Gilbert Stuart. He also studied in Paris for about five years, later occupying a studio there for another twelve years, winning awards in exhibitions in that city. Among his portraits are many men of distinction—Washington, Monroe, Madison, Zachary Taylor, Calhoun, Clinton, Burr, and others. This portrait of Washington has never hung any place except at the right of the Speaker's Chair in the House of Representatives in the Capitol in Washington. On the left side is a portrait of Lafayette, the great French patriot who served with our Colonial leaders in the struggle for American freedom.

We also remember the birthday of another great President this quarter, that of Abraham Lincoln. His portrait on our back cover was painted by Albian H. Bicknell in 1864. The original hangs in the State House at Boston, Massachusetts. This artist was born in 1837 and died in 1915. During his career of over half a century as an artist he painted many portraits of distinguished and successful men of his period, Daniel Webster and Horace Mann among them.

Washington and Lincoln both stood in the forefront in the battle against tyranny and oppression. They not only defended the Constitution of their country but lived by its principles.

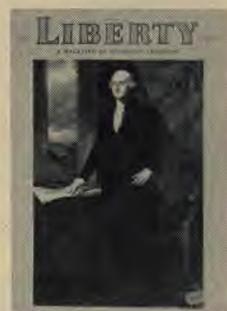
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Acme Photo

Aerial view of part of Vatican City, the residence of the Pope. St. Peter's with its impressive dome can be plainly seen.





*Burton Holmes, From Ewing Galloway*

An unusual view of St. Peter's in Vatican City.



## This Number of *Liberty*

BY THE EDITOR

This entire number of *Liberty* is devoted to a controversial subject. The editors believe that the President's nomination of an ambassador to the Vatican raises a question so vital to the welfare of this nation that it demands the careful thought of all Americans and the best efforts that can be put forth to prevent the consummation of the President's attempt.

Because the arguments against the Senate's confirmation of the appointment have been well and convincingly stated by many writers in both secular and religious journals, it has not seemed worth while for contributors to *Liberty*, or its editors, to prepare only original articles for this issue.

We offer with proper credit things that have appeared elsewhere. In some of these articles there have been references to the political considerations that the writers feel led President Truman to send General Clark's nomination to the Senate.

This journal does not deal in politics in any form and does not pretend to know what led the President to act as he did. We are concerned solely with the desire to do all we can to preserve that complete separation of church and state which has been the glory of the United States and a blessing to both church and state in this nation.

We will be misunderstood, honestly by some and intentionally by others. We will be abused, not alone by the cowards who are afraid or ashamed to sign their names, but also by those whose intensity of feeling on the matter discussed takes away their restraint and makes them appear worse than they really are. This abuse will not worry us; first, because of these words from Holy Writ: "Woe unto you, when all men shall speak well of you! for so did their fathers to the false prophets" (Luke 6:26); second, because of the purity of our motives. We have no prejudice toward any class, race, or the followers of



any creed. We would be ashamed to hold hatred for any man, since our blessed Lord died for all.

*Liberty* is not an anti-Catholic journal. Readers have never, and will never, so long as this writer is editor, find the dogmas or teachings of the Roman Catholic Church discussed in *Liberty* with one single exception—the Roman Church's teaching regarding the proper relationship of church and state. Some of the articles that follow cite authoritative statements of the Roman Catholic Church's position on this matter. Many more could be given. It is this teaching, and this alone, with which we deal from time to time. There will never be any

discussions on papal infallibility, purgatory, the celibacy of priests, or other doctrines with which we do not agree.

The fact that we do not happen to accept certain articles of the Catholic faith does not make them wrong. The fact that many do believe them does not make them right. Whether they are right or wrong is no business of the state as long as their adherents, in their adherence to them, or practice of them, do not infringe on the equal rights of other citizens. We believe that to grant to the Catholic Church any special recognition or favor is unfair discrimination against others. We believe that a state union with one or all churches is wrong. All any government should do is to protect all in the exercise of their equal rights. It has been well said that a union of a state with one church is a monogamous union, a union with many churches is a polygamous union. We have opposed and will continue to oppose any union of church and state in the United States. We have faith enough in the good sense of Americans—Protestants, Catholics, and Jews—to believe that they recognize the benefits of the separation of church and state, and that they will preserve it.





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In special ceremonies on Constitution Day, September 17, 1951, at the Library of Congress in Washington, D.C., President Truman and Chief Justice Vinson helped to encase in a helium gas-filled glass case those two precious documents, the Declaration and the Constitution. On the left the President and the Chief Justice are shown placing one of the documents in its frame. With them are two other distinguished men, the Librarian of Congress, Mr. Luther Evans (front), and U.S. Senator Theodore Green, of Rhode Island. On the right the President, with the librarian, is shown locking in one of the documents.

## Let Us Uphold the Historic Position of These United States

*Refuse to Mix the Affairs of Church and State by Sending an Ambassador to the Headquarters of the Roman Catholic Church*

**By ALVIN W. JOHNSON, Ph.D.**

**T**HE NOMINATION BY PRESIDENT TRUMAN, on October 30, 1951, of General Mark Clark as a full-ranking ambassador, "Ambassador Extraordinary and Minister Plenipotentiary," of the United States to Vatican City, has set a new precedent in American history.

The announcement by the press of this appointment aroused great opposition on the part of many Protestant leaders, both clergy and laity, and is causing many people of all ranks to make honest inquiry into the legal and political, as well as religious, implications involved.

The principle of separation of church and state, as set forth in the Constitution and the Bill of Rights,

has become a distinguishing feature of American democracy. Although there have been republics and democracies in different countries of the world in centuries gone by, a country with a Bill of Rights so comprehensive as to protect the civil and religious rights of the majority and to guarantee equal protection to the *minority*, was a new experiment in the history of nations.

In the United States it has been demonstrated that organized religions, though differing greatly from one another, may not only exist but actually flourish side by side without government control or support.

Likewise it has been demonstrated that a government of the people, by the people, and for the people

may govern a free people without including organized religion in its concern.

This principle of separation of church and state, while recognized in the general framework of the Constitution of the United States, in order that there might be no mistake about it, is specifically set forth in the First Amendment to the Constitution, which declares:

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."*

The United States Supreme Court in a number of decisions has held that the provisions of the First Amendment are made applicable to the several States as well as to the Federal Government, through the due-process clause of the Fourteenth Amendment, which provides:

"Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI of the Constitution stipulates:

"No religious test shall ever be required as a qualification to any office or public trust under the United States."

These principles of religious freedom, giving every man the right to worship God according to the dictates of his conscience, so long as these privileges do not interfere with the equal rights of others, are in harmony with the teachings of both the Old and the New Testament Scriptures.

That there are two spheres, or realms, of jurisdiction, the temporal and the spiritual, is recognized in the Ten Commandments. In the "Two Tables," as Roger Williams termed the Decalogue, the one table consists of the first four commandments, dealing with man's relations and his responsibility to his Creator; and the second table, or the last six of the commandments, deals with man's relationships with his fellow men. The Bible commands obedience to both civil and ecclesiastical authorities, but when these two authorities are in conflict, then, as illustrated in the lives of Daniel, Paul, and others, "we ought to obey God rather than men." Acts 5:29.

It is man's God-given right to worship or not to worship, as he may choose. Upon this right God will not infringe, and no man may interfere. God has made us free moral agents. He has given us the power of choice. God wants a willing obedience, not a forced obedience. A willing service is the only kind of worship that is consistent with a God of love, a God who is love.

Nowhere has the civil power been given the right to say whom man shall worship, where he shall wor-

ship, when he shall worship, how he shall worship, or if he shall worship at all. These have been left to God and to the individual.

In their desire to preserve freedom to worship God according to the dictates of their conscience, the framers of the American Constitution incorporated into that document the principles of separation of church and state. Many of them had come to America in order that they might have religious freedom. The dreadful specter of religious wars and centuries of religious persecution had forced men to flee for their lives from the tyrannical hands of state religions. Many brought their state-church ideas of the Old World along with them, and out of their Old World traditions and from their experiences in their Colonial governments a new day was to dawn. In the words of Schaff, the well-known church historian: "History had taught the framers of the Constitution that persecution is useless as well as hateful and that it is rooted in the unholy alliance of religion with politics."

The basic principle of separation of church and state has served as the cornerstone of religious liberty in America. There was incorporated into the Declaration of Independence the statement that "all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

Religious liberty can never be secure where church and state are united. When one church occupies a favored position, other religious bodies can live and work only by sufferance. In such cases no explicit consent or sanction can be given them. Toleration or tolerance may be extended, but these words under such conditions convey the idea that a prohibition is not being enforced or that tacit or passive permission is being given to something that is not really legal. This is an intolerable situation where matters of conscience are concerned. Jeremiah S. Black, noted lawyer and distinguished judge, in his *Essays and Speeches*, pages 51, 53, spoke well when he said:

"The manifest object of the men who framed the institutions of this country, was to have a State without religion and a church without politics—that is to say, they meant that one should never be used as an engine for any purpose of the other. . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason they built up a wall of complete and perfect partition between the two."

In the judgment of many this principle of separation of church and state constitutes America's greatest contribution to the science of government.



Review Pictures

The statue of Moses by Michelangelo in St. Peter's.

In harmony with the Constitutional principle of separation of church and state the Government of the United States has never appointed an ambassador to the Vatican or established diplomatic relations with the Pope as head of the Roman Catholic Church. It is of interest to note that in 1779, in the formative period of our national history, John Adams, of Quincy, Massachusetts, who was to become the second President of the United States, told Congress that he hoped that body would be "too wise" to ever send a representative to the Vatican or to receive a representative from the Pope.

For approximately three quarters of a century from the beginning of our national existence the sentiment expressed by Adams prevailed. It was in harmony with the American constitutional principle of separation of church and state that our Government was founded. It should be noted that from 1797 to 1848 the United States had consular representation in the Papal States as a temporal power.

In 1848, a period marked by revolutions in a number of countries, much political unrest, and with some change of sentiment in the United States, Jacob L. Martin was appointed as Chargé d'Affaires to the Papal States. The Papal States occupied a portion of central Italy comprising sixteen thousand square miles, with a population of over three millions of

people. Martin's instructions from James Buchanan, who was then serving as Secretary of State of the American Government, dated April 5, 1848, stated:

"There is one consideration which you ought always to keep in view in your intercourse with the Papal authorities. Most, if not all, the governments which have diplomatic representatives at Rome are connected with the Pope as the head of the Catholic Church. In this respect the Government of the United States occupies an entirely different position. . . . Your efforts, therefore, will be devoted exclusively to the cultivation of the most friendly civil relations with the Papal Government, and to the extension of the commerce between the two countries. . . .

"Our direct relations with the Papal States can only be of a commercial character."

Even with the emphasis given to the civil and commercial aspects of the above appointment, a wave of protest swept over the country. Mass meetings were held, in which the people voiced their opposition to the appointment. This opposition became so intense that in 1867 Congress refused to vote funds for the support of the legation, which brought forth the resignation of Rufus King, the incumbent, on January 1, 1868.

About three fourths of a century again passed, during which America maintained her historic position, refusing to countenance political relations with the Vatican. However, in 1940 Franklin D. Roosevelt revived representation to the Vatican by appointing Myron C. Taylor as his personal representative to the Pope, with the announcement that he was doing so in the interest of maintaining peace. War came the next year.

President Roosevelt, and later President Truman and the State Department, had frequently repeated that this appointment did not constitute the establishment of formal diplomatic relations with the Holy See, that Mr. Taylor was merely the personal representative of the President rather than an authorized and accredited representative of the United States Government, and that he was sent to His Holiness the Pope and not to the nonexistent Papal States.

It would be well to note in passing that in 1902 President Theodore Roosevelt appointed William Howard Taft, at that time governor of the Philippines, to carry on negotiations at Rome for the purchase of the Friars' lands in the Philippines and for the withdrawal of the Friars from the islands. It is generally conceded that this act did not in any sense of the term constitute the establishment of formal diplomatic relations with the Vatican.

President Truman has repeatedly assured church leaders and various groups that the appointment of Mr. Taylor was a "temporary expedient," which would "certainly terminate with the signing of the peace treaties."

Following Mr. Taylor's resignation on January 20, 1950, and the report that was current in the public press to the effect that President Truman had decided to nominate an ambassador to the Vatican, the newly formed National Council of Churches of Christ in the United States of America, and denominations not included in the National Council, as well as patriotic groups such as Protestants and Other Americans United for the Separation of Church and State, voiced their opposition to any such contemplated appointment.

These earnest entreaties were apparently of no avail. President Truman's nomination of General Mark W. Clark as ambassador to the State of Vatican City came as a surprise to many. The boldness of this appointment is emphasized by the fact that it names a man to full ambassadorial rank and contemplates the setting up of formal diplomatic relations with the Holy See. It should not be forgotten, however, that to be effective this nomination must have Senate approval. Our senators have the power to preserve the historic position of the United States by refusing to mix the affairs of church and state by sending an ambassador to the Roman Catholic Church.

The nomination of General Mark W. Clark as ambassador to the Vatican City is not a counterpart of the appointment of a Chargé d'Affaires to the

Papal States in 1848. Vatican City, as recognized by Italy in the Lateran Accord of 1929, has an area of one-sixth of a square mile, or approximately 108 acres, with a population of about 1,000. Its area and population are smaller than those of many an American college campus, and can hardly be said to be a city, much less a state. It is "solely and exclusively" the headquarters of the Roman Catholic Church.

The alleged claim that such an appointment will make accessible to the United States Government a source of information that will prove to be highly profitable in the fight against Communism and advance the cause of peace, is untenable. If such information is desired and there is a willingness to share it, surely it can be secured through the American ambassador to the government of Italy, who is a resident in Rome and is readily accessible.

The further claim that some thirty-seven other governments are accredited to the Holy See is quite beside the issue. Most of the countries maintaining such relations give special recognition to the Roman Catholic Church, and in turn recognize representation from the Vatican.

Finally, President Truman's action contemplates the kind of situation that the founders of this country endeavored to prevent. To establish diplomatic relations with one church would accord that church



Burton Holmes, From Ewing Galloway

A very fine view of the new art gallery in Vatican City.

special favor above that of any other. To accord other churches or all churches, if that were possible, similar consideration, would in no wise mitigate the wrong thus committed. Such an action would only extend a wrong policy and should be opposed as vigorously as the appointment under consideration, as contrary to the constitutional guarantees set forth in the American Constitution.

While there has been much speculation as to the motives that prompted the President to make the proposed appointment, it is not our purpose to attempt to evaluate such motives. Rather, it is the principle involved and the outcome that will result from such action that must prompt us to activity in opposing the appointment of an ambassador from the United States to the Vatican.

## The Vatican Primarily the Seat of a Religious Institution

*The Sovereign-State Claim—Little More Than Fiction*

By **EDWARD HUGHES PRUDEN, Ph.D., D.D.**  
*Pastor of First Baptist Church, Washington, D.C.*

[It is quite generally known that Dr. Edward H. Pruden is pastor of the First Baptist Church in Washington, D.C.—a church often referred to as President Truman's church. What we offer is from a Reformation Sunday address, delivered at a city-wide service at Trenton, New Jersey, October 28, 1951. Some paragraphs at the beginning of the address were devoted by Dr. Pruden to his reasons for giving the address and to absolutely denying that he was moved in any degree by prejudice or bias against the Roman Catholic Church or its members. Among other things he stated that he had "not the slightest desire to engage in a religious controversy, and if anything we say seems to involve such a controversy, it will be due entirely to the fact that a delicate and involved situation has been thrust upon us." He added that though he knew in advance that he would probably be misunderstood, his conscience required him to speak. Dr. Pruden found what comfort he could in the fact that the burden of being misunderstood, and the burden of being charged with prejudice, or even hatred, had been borne by others "in the age-long struggle of the human spirit to keep itself free." Knowing of the responsible positions that Dr. Pruden has held, and of his fine spirit of cooperation with Christian bodies generally, we look upon him as a man of a gentle, Christlike spirit and believe that he spoke in his Reformation Day sermon entirely without bigotry or bitterness.—EDITORS.]

SINCE IT HAS BEEN ANNOUNCED that one of the major factors in the decision to send an ambassador to the Vatican was the current belief that the Roman Catholic Church is a tower of strength against the spread of communism, we feel duty bound to question the validity of such a claim. We sincerely believe that the spiritual forces of the world should stand unitedly against atheistic communism and all its oppressive powers, but we cannot possibly accept



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Dr. Edward Hughes Pruden

the conclusion that this objective can be achieved by asking millions of Protestant Christians to violate their consciences, and forsake the free spiritual atmosphere which they have breathed so long, in order to enlist under the leadership of an authoritarian religious organization which has already proved itself unable to stay the march of communism in those countries which are considered to be Catholic countries. The very fact that communism in Italy has become such a tremendous force in that nation after hundreds of years of the presence there of the headquarters of the Roman Church makes us wonder if that church is really the answer to communism which is frequently

claimed for it. We believe that communism is not only wrong because it is atheistic, but because it is oppressive, and that one of its most deplorable characteristics is its tendency to force all of those under its influence to submit to the will of a few, and to accept, without question, the dictates of those in authority. If communism is to be defeated, it must be achieved as a result of men and women working together in a free spiritual and political atmosphere, and in full recognition of one another's rights and privileges as individuals. Where religious liberty prevails and the competency of individuals to find God and worship Him is fully recognized, communism doesn't have a chance. While communism is indeed a threat to the spiritual forces of the world, we have an abiding conviction that the answer to it all is to be found in the encouragement of a more vital relationship between man and his Creator in an atmosphere of complete separation of church and state, and with a full recognition of the highest expression of the principles of religious freedom.

The struggle of the Christian church in all its branches to combat communism would be far more effective if in all honesty we would acknowledge our failure in many instances in the past to demonstrate a deeper concern for the material needs of men. No amount of condemnation of communism now can atone for spiritual blindness in the years that are gone. The only way in which communism can be successfully met and overcome is to provide the world with unmistakable proof that Christianity has more to offer both for the body and the soul than communism or any other ideology can ever conceive. More repentance and more reform within our Christian spiritual household might do more to halt the spread of communistic influence than all the resolutions and denunciations combined.

In the second place, we are opposed to a Vatican diplomatic relationship because we look upon the claim that the Vatican is a sovereign state as being little more than a political fiction. It is a well-known fact that the territory covered by this so-called state is only one-sixth of a square mile; that its population has been variously estimated as being anywhere from 800 to 1,250 persons, that 165 of these are Swiss guards, and that most of the others are persons employed by or connected with the world headquarters of the Roman Catholic Church. An official booklet on the Vatican which was printed under the imprimatur of recognized Catholic officials, declares that one can walk from one wall of the Vatican area to the other within a period of fifteen minutes. Were it not for the fact that this area includes the headquarters of the Roman Catholic Church neither our Government, nor

any other government, would give it a second thought. It is therefore entirely beside the point to insist that diplomatic relationships are being established because the Vatican is a sovereign state. It is being done completely on the basis of its religious significance and connections.

In 1859 when our country had certain diplomatic arrangements with the Papal States, the area of these states comprised 16,000 square miles, and there was a population of over three million. It is therefore entirely improper to assume that what is now proposed is in line with that which prevailed a hundred years ago. At that time certain economic and commercial matters did seem to indicate the need of an American diplomatic ministry on the scene, but that situation has long since been entirely changed.

We oppose a diplomatic mission to the Vatican in the third place because we believe it to be an unquestionable abrogation of our historic belief in the separation of church and state. Since it has been already pointed out that the Vatican state coincides entirely with the buildings, property, and population of the world headquarters of the Roman Catholic Church, it can readily be seen that the officials of the Vatican can claim to be a church when that seems to be to its advantage, or make equal claims to statehood when THAT interpretation of its existence seems advan-



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The first Baptist church in the city of Washington, D.C., often referred to as President Truman's church.

tageous to its program. Because the Vatican authorities have made a claim to statehood for several hundred years does not alter the fact that the Vatican is primarily the seat of a religious institution, and any tendency on our part to create a relationship between our Government and the Vatican is clearly and unmistakably a violation of our American insistence upon the separation of church and state. Even if we should acknowledge quite frankly the political power of the Vatican, we would have to state with equal frankness that the political ambition of church bodies is frowned upon in America as being contrary to our national spirit and heritage. Yet, if we should enter into a diplomatic arrangement with the Vatican, it would seem to be a reward for those who follow a course we do not approve, and a deliberate disregard of those whose practices and ideals which have helped to make America what it is today.

It is inconceivable that we can strengthen America's position in the world by ignoring or nullifying one of the ideals which has made our country great. Historians frankly point out that the experiment of religious liberty was a unique development among the nations of the earth, and that when Roger Williams established the colony of Rhode Island, and invited all dissenting groups to come there and find refuge, he was doing a thing which never before had been done in the history of mankind. Much of our American way of life has developed out of that spirit of human freedom and soul liberty, and it will be a dark day for America when we decide to weaken in the slightest degree our determination to keep church and state separate.

It serves no useful purpose to pretend that there is no difference of opinion on the subject of church-state

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relations. While it is generally assumed that Roman Catholics and Protestants are mutually agreed that the church should be kept separate from the state, this is an erroneous assumption, and the writings of recognized authorities within the Roman Church underscore the fact that the difference in view is vital indeed. In the magazine, "America" for February 15, 1947, Father John Courtenay Murray has referred to separation of church and state as "that negative, ill-defined basically un-American formula with all its overtones of religious prejudices." In 1939 Monsignor George B. O'Toole, Professor of Philosophy at Catholic University in Washington, declared that "it is clear, then that no Catholic may positively and unconditionally approve of the policy of separation of church and state. But given a country like the United States, where religious denominations abound and the population is largely non-Catholic, it is clear that the policy of treating all religions alike becomes, all things considered, a practical necessity, the only way of avoiding a deadlock. Under such circumstances, separation of church and state is to be accepted, not indeed as the ideal arrangement, but as a *modus vivendi*." In Section VI of his SYLLABUS Pius IX denounced the separation of church and state as one of "the principal errors of our time." In view of these very definite and positive statements from recognized Catholic authorities, we must admit quite frankly that there is a considerable difference of opinion among Catholics and Protestants on this vital matter about which we are now so seriously concerned.

Our fourth objection to the sending of an ambassador to the Vatican is based on our refusal to believe that formal diplomatic relations with the Vatican are necessary in order to obtain information from the Vatican which might be useful to us in combating communism. A great deal has been said and written to support the contention that the Vatican is the best diplomatic listening post in the world, and that its sources of information are not available to others. It should be pointed out, however, that any information we receive from the Vatican will be definitely of a selective character. The Vatican authorities will turn over to us only such information as they choose to impart, and only that which will be advantageous to their own interests. We do not make this point by way of criticism but merely to cite certain facts which should not be ignored. It would seem inconceivable too that the Vatican authorities would insist upon exacting from us formal diplomatic relations as the

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**“Where religious liberty prevails and the competency of individuals to find God and worship Him is fully recognized, communism doesn’t have a chance.”**

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only basis upon which this information, whatever its worth, would be shared with us. We assume that it is as much to the Vatican’s advantage to cooperate with America in its struggle against communism as it is to America’s advantage to work in cooperation with any other nation which shares its ideals. Since we believe that the Pope of the Roman Catholic Church is sincerely interested in peace, we feel equally sure that he is sufficiently resourceful, and has the necessary authority, to confer with American officials at any time when a mutual discussion or sharing of information would be of benefit to us both. Our Ambassador to Italy is stationed in Rome, and the Vatican authorities are as close to this American diplomat as they are to the nearest telephone. Even if we accept without question all that has been said regarding the value of the information which the Vatican can share with us, we sincerely believe that there are other ways in which the sharing could be done which would not require of us the violation of a very basic and sacred principle.

In connection with this particular phase of the subject, one cannot help but consider the possible effect upon individual Catholics, as well as Catholic officials, behind the Iron Curtain if this point of a superior listening post is constantly emphasized. If the Vatican is indeed a source of information which is not available to other groups, the question naturally arises as to the source of this information. It would seem to be an impossible task to protest on the one hand the innocence of all Catholic officials who are accused of espionage in Iron Curtain countries, and on the other hand to urge the appointment of an Ambassador to the Vatican on the basis that the Vatican possesses avenues of information which are not available to others. The establishment of an American embassy at the Vatican on this argument would jeopardize the welfare and safety of every Catholic now living in a communist-dominated country.

A fifth objection to the establishment of diplomatic relations with the Vatican is the fact that it would complicate tremendously our diplomatic situation here at home. While it is true that a number of nations maintain diplomatic relations with the Vatican at present, most, if not all of these nations which have *full* diplomatic connections, with representatives known as Ambassadors, are nations which are normally considered to be Catholic countries—countries with which the Vatican has concluded a concordat, and countries in which the Vatican’s representative,

known as a Nuncio, is automatically the Dean of the diplomatic corps. England avoids this situation by maintaining a Minister at the Vatican rather than an Ambassador, and receives in turn from Rome a Papal Delegate rather than a Nuncio. If the United States should establish *full* diplomatic connections with the Vatican, we would be one of the few, if not the only, predominantly Protestant country which maintains such a relationship. Already the newspaper columnists in the Washington papers are speculating upon whether or not the Vatican representative in Washington would become the Dean of the Diplomatic corps there. Up until now, the Dean has been selected on the basis of seniority, and the post at present is held by the Norwegian Ambassador. One can readily see the embarrassing and delicate complications which would arise in Washington if our relationships with the Vatican should be established on a full diplomatic basis and a Nuncio should be sent to the Nation’s Capital expecting to occupy the same place of superiority which is now occupied by Nuncios in other countries. This is no academic or trivial question, and should it develop in all of its intricate complications, it would have a serious effect not only upon the situation in Washington but upon church-state relationships throughout the nation.

One other objection to the proposal to establish an embassy at the Vatican is the degree of dissension and debate which has already been created in a land where there is such a division of opinion on such a vital matter. The desire has been expressed more than once by those in authority that a greater sense of spiritual unity is needed among the peoples of the believing world in order that a united front might be presented to communism in a time of international crisis. There

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**“We have an abiding conviction that the answer [to communism] is to be found in the encouragement of a more vital relationship between man and his Creator in an atmosphere of complete separation of church and state, and with a full recognition of the highest expression of the principles of religious freedom.”**

**“If communism is to be defeated, it must be achieved as a result of men and women working together in a free spiritual and political atmosphere, and in full recognition of one another’s rights and privileges as individuals.”**

**“Christianity has more to offer both for the body and the soul than communism or any other ideology can ever conceive.”**

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Every reader is urged to write to both of his U.S. Senators and protest the sending of an ambassador to the Vatican.

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appeared to be some substantial reason to believe that such an ideal might be realized before the announcement broke upon the world that diplomatic relations between our country and the Vatican had been proposed. That unity which had been gaining momentum is now seriously threatened. As much as we would like to keep the discussion of our differences on a high and considerate plane, we know that there are many on both sides of this question who approach it with deep emotions, and who are constitutionally incapable of discussing the matter dispassionately. We have seen in other periods of our Nation's life what the injection of religious issues into political situations can do to divide our people. This we sincerely deplore. However, it would be unthinkable that men of conviction would muffle their voices and refuse to speak on a matter of such far-reaching consequences merely for the sake of maintaining a semblance of unity in a time of crisis. The critical nature of our world situation would become even more acute if serious Christians should stifle their conscientious objections to the proposal now before us, and submit supinely to almost anything which those in authority might propose.

In this connection we are reminded of the struggle which must have taken place in the minds and hearts of those early colonists in this country, when in the midst of their numerical and material weakness they

were confronted by continued provocations from the mother country. Speaking out of deep convictions, and with the most patriotic spirit, Patrick Henry voiced the feelings of many of his fellow colonists when he said, "Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death." We too desire peace and harmony with all men, and spiritual concord with those who seek to follow Christ, but there are times when we must voice our protests even though it runs the risk of being interpreted as a deliberate effort to create dissension, or an evidence of ill-will toward those for whom we have only the kindest regard.

While we cannot determine the reaction of all sorts and conditions of men, nevertheless we sincerely hope that all of those who speak in any official capacity for the organized religious groups of America, regardless of their attitude toward this particular question, will speak with the utmost charity and consideration, and will support principles rather than attacking personalities. This is surely an ideal time for a demonstration of the true American spirit—a spirit which recognizes every man's right to differ, and which refuses to impugn the motives of those with whom we differ. This type of discussion, regardless of how deep our differences may go, would provide the world with an eloquent testimony to the power of Christian democracy, and be a mighty weapon in our common struggle against the cruel and godless nature of communist tyranny.

May God help all of us, Protestants and Catholics alike, to agree to differ but to unite to serve.

## **An Ambassador at the Vatican?**

### ***Shall the United States Subvert the Constitutional Principle of Separation of Church and State by Sending an Envoy to the Pope?***

**P**RESIDENT TRUMAN HAS NOMINATED General Mark W. Clark to be the first United States "Ambassador Extraordinary and Plenipotentiary to the State of Vatican City." By this act he confronts the American people with a momentous decision affecting the constitutional principle of separation of church and state. It is highly important, therefore, that the nation shall give immediate and careful attention to the issues involved in this nomination. The President's appointment of General Clark as U.S.

envoy to the pope cannot become effective until it is ratified by the Senate, which will convene again, after its current recess, on January 8, 1952.

Do the American people want this nomination to go into effect? They should not answer until they know what issues are involved. They cannot even discuss the proposal intelligently until these issues have been brought out into the open. The reasons for the embassy so far advanced, by President Truman at the time he made the nomination and by those who

have since supported his act, do not bring these vital issues into the open. They deal with marginal aspects of the matter and tend to ignore the central and vital question, which is, Shall such an embassy at the seat of the Roman Catholic Church be established if it violates the principle of separation of church and state as that is embodied in the Constitution of the United States?

I

Let us look first at some of the arguments in favor of sending a U.S. ambassador to the pope. President Truman said that his action was taken in the national interest and for "the purposes of diplomacy and humanitarianism." He also said that diplomatic contact with the Vatican "would assist in coordinating the effort to combat the communist menace." Another argument closely connected with this is that the Vatican is the world's most advantageous "listening post," and that an American ambassador stationed there can obtain information useful to this country in its struggle against worldwide communism which can be obtained nowhere else.

Again, it is contended that since 37 other nations send envoys to the Vatican, the United States should follow their example by doing the same thing. (The point seems to be overlooked that none of these other nations operates under the U.S. Constitution.) Added to this is the argument that the unofficial embassy

maintained for ten years at the Vatican, when first President Roosevelt and then President Truman sent Myron C. Taylor there as "personal representative with the rank of ambassador," accomplished so much that now an official, permanent embassy should be established.

Finally, there is the argument employed by Cardinal Spellman, head of the Roman Catholic archdiocese of New York. In the chorus of praise from Catholic sources which greeted the President's act, Cardinal Spellman said: "I am pleased at the action of President Truman in appointing an ambassador to the Holy See. Certainly the United States and the Holy See have identical objectives of peace, and it is most logical therefore that there should be a practical exchange of viewpoints in the search for this peace so devoutly desired by all peoples and especially little peoples." (Note that Cardinal Spellman speaks of the Holy See, not Vatican City.) This is a political argument. The United States and the Vatican, it holds, are two political entities with similar political aims. Since their political aims are the same, they should have formal diplomatic relations.

This, we believe about sums up the arguments which are being brought forward in support of the Vatican embassy. Perhaps there is one more, namely, that the United States once had regular diplomatic representation at the court of the pope (it ended in 1868) and should have it again. We shall comment on this later, but it is so peripheral to the main issue that it need not be considered with the serious arguments favoring the President's proposal. The serious arguments in favor of sending an ambassador to the pope, it will be seen, boil down to one—it will help this nation fight communism. Will it?

We do not believe that it will. We believe, on the contrary, that it is more likely to weaken the front which this country is trying to build and maintain against communist power and ideas. It has already brought domestic discord, and hence weakness, inside this country. Most of the other arguments used to paint the Vatican embassy as a new source of anticommunist strength also will not bear examination. Take, for instance, the "listening post" argument. Does anyone think that the Vatican will be less opposed to communism if the U.S. does not send an ambassador? Surely not. Then is it being argued that up until now the Vatican has withheld from the United States information it needs to map the struggle against the Kremlin as a means of forcing us to give this special status to the pope?

Neither does the argument based on the Taylor mission stand up under scrutiny. Mr. Taylor acted as the "personal representative" of two presidents in a mission to the pope which lasted for ten years. Two books and a number of White House statements and state department documents have been put out to



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Myron C. Taylor was sent to the Vatican in 1940 as the personal representative of President Roosevelt. Later he served in the same capacity for President Truman.

acquaint the American people with the nature and results of that mission. It may, to be sure, have engaged in secret intrigues through Vatican channels which could not be allowed to see the light. But so far as the public record shows, not one bit of evidence has been offered that Mr. Taylor ever obtained one piece of information or ever rendered one act of humanitarian service which the U.S. ambassador to Italy could not have. If this is not so—and we make this statement after reading what we believe to be all the relevant documents—then it is incumbent on the President to bring forward proof to the contrary.

Of course, there are other aspects to this “listening post” argument which will occur to any thoughtful American. If there is a kind of intelligence information which this country can get only at the Vatican, yet so important that we are expected to subvert our constitutional principles in order to get it, then other nations can obtain the same sort of supersecret intelligence concerning the United States when the Vatican has regular access to our diplomatic sources. The process is bound to work both ways.

Again, have the newspapers, politicians and Roman Catholic churchmen who have hailed the Vatican embassy nomination stopped to think of the position in which the “listening post” argument leaves the papal church? It places the entire structure of the Roman Catholic Church, from the pope and hierarchies down to the lowliest parish priest, in the position of maintaining an international spy ring. This is exactly what the Communists allege in their persecutions of the church and their trials of priests in Europe and China. It is no service to the Roman church to have it so considered.

## II

But no more space can be given to these flimsy arguments in favor of placing an American Ambassador at the Vatican. All of them, as has been said, are marginal. All evade the central issue. That issue, which every American who loves his country and believes in its form of government will want to have answered before he makes up his mind in this great debate which President Truman’s act has precipitated, is the issue of constitutionality. Would the appointment of an ambassador to the Vatican be legal under the U.S. Constitution? Would it subvert the fundamental American constitutional principle of separation of church and state?

These are the two questions which lie at the core of this whole matter. Answer these, and the problem raised for patriotic Americans by the nomination of General Clark has been answered. Dodge these, and the fundamental issue is being dodged. To these, however, a third, though somewhat subsidiary, question must be added. It rises out of the fact that a number of Roman Catholics in the United States—headed by the American hierarchy of bishops and by Attorney

General J. Howard McGrath—deny that there is any principle of separation of church and state fundamental to the structure of the U.S. government. The third question, therefore, is this: Is there a principle of separation of church and state which can be clearly defined and for which the United States has stood from the start and still stands?

We believe that there is such a principle. We believe that it is embedded in the Constitution. We believe that it is sufficiently clear so that it has controlled the verdicts of the Supreme Court of the United States. We believe that an official embassy to the Vatican would be an infringement of this principle. We therefore believe that the Senate should reject the nomination made by President Truman and that Congress should refuse to appropriate for the expenses of an ambassador to the pope. Here are the grounds on which these beliefs rest.

The Bill of Rights which constitutes the most important part of the U.S. Constitution—so important that ratification of the Constitution could not be secured until the states had been assured that it would be made part of it—is made up of the first ten amendments. The very first clause in the First Amendment reads: “Congress shall make no law respecting an establishment of religion.” From the start, this has been interpreted to mean that the Constitution embodies the principle of separation of church and state. For example, President James Madison, who is acknowledged as the “father” of this portion of the Constitution, said that “strongly guarded . . . is the separation between religion and government in the Constitution of the United States.”

Until very recently it has been almost universally agreed by Americans that this separation is the intent of the First Amendment. Even Ryan and Boland, in what is still the standard textbook used in most Catholic colleges, *Catholic Principles of Politics* (1940), write: “Our federal and state constitutions forbid the legal establishment of any form of religion, thereby ensuring the separation of church and state.” As long ago as 1878 the Supreme Court *unanimously* affirmed that the First Amendment was intended to erect “a wall of separation between church and state” (*Reynolds vs. U.S.*, 98 U.S. 145, 164).

But what does this separation of church and state, as embodied in the First Amendment, mean? Fortunately, in view of the debate now starting, a clear answer has recently been given by the Supreme Court in two historic decisions. The first was *Everson vs. Board of Education*, the so-called New Jersey bus case, decided in 1947. The second was *McCullum vs. Board of Education*, the so-called Champaign, Illinois, released time case, decided in 1948. It is worth remembering that at the time the first decision was rendered, by the narrowest possible margin of a 5-to-4 court, because it upheld the right of a New Jersey

school board to pay for the bus transportation of children to a Catholic parochial school it was hailed with applause in the Catholic press.

This Catholic applause, apparently, overlooked the definition of the meaning of the First Amendment which the Supreme Court wrote into its decision:

"The 'establishment of religion' clause in the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"

A year later the Supreme Court's interpretation of the meaning of the First Amendment was attacked in the *McCullum* case. The whole legal attempt to secure approval of the system of released time for religious education then in effect in Champaign, Illinois, rested on the ability of counsel for the defendants to induce the court to reverse the inter-

pretation laid down in the *Everson* case. This the court refused to do by a vote of 8-to-1. In its decision, on the contrary, it quoted and reaffirmed what it had said in the *Everson* case.

The American citizen has thus been provided, by the Supreme Court, with a yardstick by which to measure the constitutionality of actions of his government relating to religion and churches. Does the proposed action "aid one religion"? Does it "prefer one religion over another"? Does it involve the use of tax funds "to support any religious activities or institutions"? Does it involve the U.S. government "in the affairs of any religious organizations or groups"? Does it open the way for "any religious organizations or groups" to "participate" in the affairs of the U.S. government? If it does any of these things, says the Supreme Court, it is unconstitutional, and it is an infringement on the principle of separation of church and state.

We hold that the establishment of an embassy at the Vatican would do every one of these forbidden things. The case is so clear that in only one instance—the prohibition against the use of tax funds "to support any religious activities or institutions"—does there seem to be any real argument. With regard to that, let the American citizen decide whether the placing of a U.S. ambassador at the court of the pope would help to support the activities and institutions of the Roman Catholic Church. If it would, then the appropriation by Congress of tax money for such an embassy would be unconstitutional.

### III

Once the clear-cut nature of this definition of the meaning of the First Amendment began to be understood, Catholic opposition burst forth. The Catholic hierarchy, composed of archbishops and bishops in the United States, announced its intention of using every possible legal means to secure a reversal of the *McCullum* decision. It has, of course, every right to do this, if it can. A professor of speech at Brooklyn College, New York, James M. O'Neill, published a book, *Religion and Education under the Constitution*. In it he argued that the intention of the First Amendment was not to prohibit the U.S. government from coming to the aid of religions and churches, but simply to prohibit preferential aid—the government doing something to help one church, such as appropriating tax money for parochial schools, which it did not do for all churches.

Mr. O'Neill's argument has been the main reliance of Catholic spokesmen ever since it appeared. It formed the core of the argument which the Supreme Court so decisively rejected in the *McCullum* case. It has been accepted by a few—a very few—non-Catholic commentators. In a statement issued by the Catholic hierarchy at Washington on November 20, 1948, this argument was advanced in this manner:



U.S. Army Photo

General Mark W. Clark recently nominated to serve as United States Ambassador to the Vatican.



Burton Holmes, From Ewing Galloway

An interesting view of the governor's palace in Vatican City.

"Throughout English and Colonial history 'an establishment of religion' meant the setting up by law of an official church which would receive from the government favors not equally accorded to others in the cooperation between government and religion. . . . Under the First Amendment, the federal government could not extend this type of preferential treatment to one religion as against another, nor could it compel or forbid any state to do so.

"If this practical policy be described by the loose metaphor 'a wall of separation between church and state,' that term must be understood in a definite and typically American sense. It would be an utter distortion of American history and law to make that practical policy involve the indifference to religion and the exclusion of cooperation between religion and government implied in the term, 'separation of church and state,' as it has become the shibboleth of doctrinaire secularism."

For a competent review and refutation of the entire O'Neill thesis, the reader may be referred to an article\* which appeared in the *University of Chicago Law Review* (Vol. 19, No. I, Autumn 1951) by Leo Pfeffer, "Church and State: Something Less Than Separation." Mr. Pfeffer, who is associate general counsel of the American Jewish Congress, delivered this as an address before the University of Chicago law school last May. The article, in pamphlet form, may be obtained from the American Jewish Congress, 15 East 84th St., New York 28, N.Y.

In the light of the fact that our final court has

already rejected this O'Neill-Catholic hierarchy theory it is not necessary to deal with it here at length. But there is one aspect of the issue raised by this theory which must not be overlooked. Suppose, by some miracle of change in the minds of our Supreme Court justices, or by some political maneuver to pack the court, the court should reverse itself and say the O'Neill-hierarchy interpretation of the meaning of the First Amendment was correct. How much better off, from a constitutional viewpoint, would the proposal for a Vatican embassy be? For the essence of the O'Neill argument is that the First Amendment is a bulwark against government favoritism in dealing with churches, or what the Catholic hierarchy calls giving "preferential treatment" to a church. And a U.S. embassy to the pope would involve the greatest act of preferential treatment for the Roman Catholic Church by the government of the United States—short of making that church the official church of the U.S.A.—of which we can conceive.

#### IV

Roman Catholics are beginning to see this. Hence, the ground of their attack is shifting. It is shifting to an attack on the whole idea of separation of church and state and a denial that this constitutes any true part of the American heritage or can be given any practical application which will not commit the United States to religious indifferentism and approval and encouragement of secularism. In a speech before the National Catholic Educational Association meeting in Cleveland on March 30 of this year [1951], the attorney general of the United States, J. Howard

\* This article appears in this issue of LIBERTY, beginning on page 36.

McGrath, asserted that an amendment intended only to prohibit the setting up of an established church and "a phrase in a letter of Thomas Jefferson" had been twisted into the idea that the Constitution erects "a wall between the church and state which must be kept high and impregnable." Not so, said Mr. McGrath. There must be no wall. "If anything, the state and church must not have any fences [let alone walls] between them."

There will be many patriotic Catholic laymen who have not realized that their church's position has so shifted on this issue since 1928 when Alfred E. Smith, during his campaign for President of the United States, wrote the famous article in the *Atlantic Monthly* in which he affirmed his complete acceptance of the principle of separation of church and state and insisted that in this he represented the position of American Catholics. Today, as Mr. Pfeffer documents in the article to which we have referred, Catholic spokesmen speak of the principle of separation as a "metaphor," a "figure of speech," a "spurious slogan," a "shibboleth" which has no standing in American law or tradition.

Roman Catholics are understandably embarrassed by this issue. They know perfectly well that their popes are on record as rejecting the principle of separation. It was one of the "errors" which Pius IX picked out in his *Syllabus of Errors* in 1864 (another was the idea of non-sectarian schools) to denounce. Other popes have echoed that denunciation. Ryan and Boland, in *Catholic Principles of Politics*, insist that the Roman Catholic idea of a good state is one in which the papal church is established by law:

"Justice therefore forbids, and reason forbids, the state to be godless; or to adopt a line of action which would end in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the state, that religion must be professed which alone is true, and which can be recognized without difficulty, especially in Catholic states, because the marks of truth are, as it were, engraven upon it." The Roman Catholic meaning of "that religion which alone is true" needs no explanation.

As to the other aspect of this argument, that any effort to apply the principle of church and state separation will involve abandonment by this government of interest in the concerns served by religion and active support for the spread of secularism, this is a complete *non sequitur*. It certainly was not true for the Founding Fathers who wrote the First Amendment; it is not true today. In practice, what observance of the principle of separation involves, and all it involves, is that there must be no interlocking of the official processes of the U.S. government with the official processes of any church or religion. That has

been so often pointed out in the pages of *The Christian Century*, and its implications made so clear . . . that it need not be argued here again at length.

## V

One other point remains to be discussed. This is the argument that "Vatican City" is a sovereign state, the pope a sovereign temporal ruler, and that therefore the question of preferential treatment for a church, or of the interlocking of the official apparatus of the U.S. government with that of the Roman church, does not arise. It does arise. If President Truman's nomination of an ambassador is ratified by the Senate, the papal apostolic delegate now stationed in Washington to oversee the operations of the American portions of the Roman Catholic Church will thereupon be transformed into a member of the diplomatic corps accredited to the government of the United States. As such, he will have immediate, official and permanent access to the state department and White House. If that is not interlocking the official processes of this government with those of the papal church, what is it?

Moreover, the claim that Vatican City is a nation, and that an ambassador should be sent to it as, in the past, diplomatic representatives were sent to the Papal States, is casuistry. "Vatican City" is the 108 acres of the Vatican. The Vatican is nothing but the seat of the Roman Catholic Church. Its entire population is engaged in furthering the interests of that church. Its sole interest is the government and enlargement of the Roman Catholic Church. The Papal States, to which this country first sent consuls and later a minister, were a true nation, consisting of most of central Italy. Pius IX lost them to the nationalistic revolution led by Garibaldi when the papal rule grew so insufferable that the Italian people would not put up with it any longer. There were no other American diplomats in Rome when our former legation to the Papal States was located there.

No such situation obtains today. There is an American embassy in Rome, accredited to the Italian government, and fully capable of serving all the legitimate interests of the U.S. government in that city. Mr. Taylor's recent unofficial mission to the pope maintained its offices in this U.S. embassy. "Vatican City" is a piece of political subterfuge, invented by Mussolini to save the face of Benedict XV in the negotiations leading up to the Lateran treaty, and now resorted to by the church to get around the intent of the U.S. Constitution and the separation principle of the American government.

However, this is another of the points in the debate over sending an ambassador to the Vatican which the Roman Catholic Church, for its own good, had better not win. For if the pope is to be treated by the U.S. government as the reigning ruler of a foreign state, where does that leave the bishops and archbishops of

the Roman Catholic Church in this country? They have all taken oaths to this foreign ruler, in which they have sworn: "I will be faithful and obedient . . . to our Lord the Pope and to his canonically elected successors. . . . I will help them to hold and defend against all the Roman pontificate and the sovereign rights of St. Peter. . . . The rights, honors, privileges and authority of the Roman church of our Lord the Pope, and of his successors as aforesaid, I will take care to preserve, defend, increase and forward."

How are men who have pledged such allegiance to a foreign ruler to be treated except as foreign agents

in this country, subject to the registration requirements and penalties of the Foreign Agents act (U.S. Code, 1946 edition, Titles 16 to 26)? And where would this contention that the pope is head of a foreign state leave the American cardinals? They have voted in the election of this foreign ruler, hence would be subject to that loss of U.S. citizenship which is the penalty for voting in a foreign election. They are even in theory candidates for this foreign throne. No, for the protection of its own leaders in this country the Roman church would do well not to press this particular argument.—*The Christian Century*, November 7, 1951.

## Will It Go Through Without You?

By JOHN ALEXANDER McELROY

*Minister of Philadelphia's Famed Arch Street Methodist Church*

ON SATURDAY, OCTOBER 20TH, in the closing hours just before Congress was to adjourn, President Truman nominated General Mark Clark to be the first full-fledged United States ambassador to the Vatican. Many of us have strong feelings against this action. We are tempted to express our feelings by citing the extreme examples of what we believe this action would eventually mean here in America if it goes through. Sooner or later, it may be necessary to dramatize what it will mean to have a favored church in America. If it is necessary, the churches can and ought to do so. President Truman is like Karl Barth's man climbing the steps in the steeple of an old church. In the darkness he reaches out to steady himself. His hand takes hold of a rope and now he is startled to hear the "freedom of religion" bell ringing out. That bell is ringing now and it must be answered. This message does not seek to spread Paul Revere's alarm to the "minute men" of religion, although the time may soon come for just that. This message only seeks to make clear certain issues that all of us ought to recognize.

First of all, President Truman's action brings to a new crisis of decision the old, old issue of church and state. This is an old-new issue and the issue is simply this—freedom of religion! What is freedom of religion? Dr. Harold Bosley (See "What Is Freedom of Religion?" Harold Bosley—*Zions Herald*, September 27, 1950.) gives a most helpful answer when he says that freedom of religion grows out of "the passionate desire of men to worship God according to the dictates of their own conscience." Not the dictates of an absolute church or denomination, not the dic-

tates of an absolute ruler or person, not the dictates of an absolute state or form of government. Freedom of religion is based on a man's passionate desire to worship God according to the dictates of his own conscience.

Before the pilgrims came to America, great European churches (both Catholic and Protestant) were "state" churches. These "state" churches used their privileges and favored position to stamp out or control any religious freedom except their own. That is why the pilgrims left England and went to Holland. The pilgrims were English people who refused to conform to the religious laws of England. They wanted freedom to live their own kind of religious life, therefore, they went to Holland. But things were not satisfactory in Holland. That is why the pilgrims came to America. They came in order to find a place where they could worship God according to the dictates of conscience.

Soon other religious groups followed after: Puritans, Quakers, Roman Catholics from England, Huguenots from France, Moravians from Germany, Presbyterians from Scotland and Ireland, many religious groups came into the different colonies of early America. What did they find here? Frankly, they found the same old European ideas in almost every colony. Always some one church was favored and any other kind of church, if it was allowed at all, was only allowed as a sort of "second class" church. And what happened? For 100 years early America was a shameful story of constant and bitter religious quarrel. It was this condition of affairs that caused our forefathers to try a daring experiment. In drafting

the Constitution of the United States, our forefathers dared the experiment of trying a new thing in history. They dared to try complete freedom of religion.

Into the Constitution itself, our forefathers wrote this basic freedom—every man was granted the right to worship God as he pleased! There would be no church-state and no favored church. Church and state would be separate. All churches, large or small, poor or wealthy, would stand the same before the state. This experiment was both new and difficult. It involved a certain amount of risk because there was no precedent to follow. It has more than justified itself as a way of peaceful living for all religious groups. The actual record of what has happened to all churches in America has proved that “freedom of religion” is the right foundation on which churches ought to build.

Dr. Bosley says there are three ways whereby any government can deal with religious groups; subjugation, toleration, freedom. Subjugation is when the government authorizes one church and seeks to stamp out all others. There are some countries today, notably in South America, where subjugation is the way the government works. In such countries, The Roman Catholic Church is approved, all other churches are illegal. Toleration is when one church is favored but others are permitted to exist. The favors are very concrete. For example, when the government helps support favored church schools or shrines. Toleration can be very strict so that other religious groups are just barely allowed to exist. That is how it is in Roman Catholic Spain today. On the other hand, toleration can favor one church and yet be very gen-

erous to other religious groups. That is how it is in Church of England Britain today. But toleration, no matter how generous, is not freedom of religion. Freedom of religion is when all churches have the same rights, when no one church is favored, and when the government grants to one church only what it grants to all. America is not built on the subjugation of other religious groups with freedom for one. America is not built on the toleration of other religious groups with special recognition for one. America is built on the freedom of all religious groups with favors for none. That is freedom of religion.

Now then, what is the Roman Catholic state, the Vatican, the Holy See? The “1951 Diplomatic Year Book” reports 92 sovereign states. Alphabetically, on this list, the Holy See stands between Haiti and Honduras. Of the 92 states, President Truman pointed out that 37 countries maintain diplomatic relations with the Vatican. The present definition of the Vatican State is based on a treaty between Italy and the Pope made in 1929 in the time of Benito Mussolini. That is the legal background with which it is now proposed that we associate ourselves. The territory of the Vatican is 108 acres. That is one-sixth the size of Central Park in New York City. It could all be put inside an 18-hole golf course. You can walk across it in 20 minutes. It has 970 citizens, but they neither vote nor pay taxes. It has a post-office and issues stamps. It has its own coined money. It issues license plates for about 3,000 cars. The Vatican does have a technical existence as a state. But it does not do business the way a state ordinarily does. It does its business the way a church does. Basically the Vatican State is only a legal creation in order to provide an independent headquarters for The Roman Catholic Church.

A full ambassador from the Vatican is titled: an “Apostolic Nuncio” or “Inter-Nuncio.” Since the Congress of Vienna in 1815, the Vatican ambassador in any capital city has always been regarded as the head or dean over all other diplomats in matters of ceremonial precedence and dignity. This means a Vatican ambassador in Washington, D.C., would expect to be the ranking diplomat over all others with whom our government now deals.

This is the technical state with which President Truman now proposes full diplomatic relations. His proposal basically means, that by diplomatic relations, the United States shall grant The Roman Catholic Church-state a favored place. If it goes through, The Roman Catholic Church will no longer be one among other churches on the basis of equal freedom and privilege for all churches. Instead, The Roman Catholic Church will be a “favored” church with full toleration for other churches. But toleration is not freedom! Freedom of religion, as we know it in America, can



Acme Photo

This news photograph was taken some time ago of a meeting between the President's personal representative, Mr. Taylor, and the Pope.

only exist when church and state are separate. The recognition of the Vatican as a state requires recognition of the Pope as the head of that state. The Pope as the head of The Roman Catholic Church-state considers himself to be the sole representative of Jesus Christ here upon earth. The Pope is the only absolute ruler now living. He claims absolute spiritual authority. You cannot recognize the Pope as a political person without sooner or later becoming involved in his claims as a spiritual ruler.

The Roman Catholic man on the street has grown up with our American ideas. He is both accustomed to, and generally accepting of, our American ideas about freedom of religion. But Roman Catholic authorities do not accept this American idea. For example, Francis J. Connell wrote a pamphlet that was published under the imprimatur of the Archbishop (now cardinal) of New York, Cardinal Spellman. The pamphlet is entitled, *Freedom of Worship—The Catholic Position*. (See article, "We Must Disenthrall Ourselves About Roman Catholicism." J. Claude Evans—*The Christian Advocate*, April 28, 1949.)

"(Roman Catholics) believe that The Roman Catholic Church is the only organization authorized by God to teach religious truth and to conduct public religious worship . . . from this it follows that, as far as God's law is concerned, no one has the real right to accept any religion save the Catholic religion, or be a member of any church save the Catholic church, or to practice any form of divine worship save that commanded or sanctioned by the Catholic church. . . .

"Such then is the first Catholic principle relevant to religious liberty—that man has not an unqualified right to practice any religion he may choose. . . . Neither does it necessarily oblige others to allow him the unrestricted practice of his religious beliefs."

The Roman Catholic Church believes God must be worshiped in the right way. So do we Protestants. Who shall decide what is the right way to worship God? The Roman Catholic Church unhesitatingly claims it alone has the right to decide. It dictates to its people on the authority of the church vested in the Pope. The Protestant churches believe each individual person must decide for himself according to the dictates of conscience. We Protestants offer to all people the authority of the Bible interpreted in our own lives by the guidance of God's holy spirit. The Roman Catholic Church and we Protestants agree on The Apostles' Creed. We hold the same lord Jesus Christ who gave himself for us all upon the cross. But we deny the dictatorship authority of The Roman Catholic Church. We affirm the authority of the Bible as God speaks through it to command our personal lives. Here is the basic Roman Catholic Protestant cleavage that runs straight down through history.

What shall the United States Government do in the face of this cleavage? Shall it accept one church and suppress all others? That is unthinkable. Shall it favor one church and tolerate all others with full freedom and privilege? That is what President Truman now proposes. Why? Does he propose to take away any of the freedom American churches now have? Of course not. Evidently, President Truman considers it possible to grant favors to one church without compromising the freedom of others. But why would he want our government to grant favors to The Roman Catholic Church-state? Because he believes we will receive benefits in return. For example, our government recently recognized the dictatorship of Spain. This was not because our government wanted to favor dictatorship (although favor it we certainly did!). It was because we wanted the help of Spain in our struggle with communism. That seems to be the reason why President Truman wants to recognize the Vatican. Perhaps that is the reason he nominated a military general as ambassador to a church. However, if President Truman had any other reason involving the coming presidential election, then he is answerable for the most despicable kind of dishonorable politics.

The question is: can the United States Government freely co-operate with the Vatican in facing the communist threat without granting a favored position to The Roman Catholic Church? We Protestants believe it can! Does The Roman Catholic Church-state demand favored position as a price for its co-operation against communism? If so, then democratic America, with its freedom of religion, can still successfully win its way over communism without the assistance of The Roman Catholic Church-state.

We are not now at the place, nor shall we ever really be at the place, where we must choose either to abandon freedom of religion or else to suffer defeat from communism. Basically, this is the question the United States Senate must decide for us all, when it convenes next January and takes up the proposal of the President's nomination.

The Roman Catholic Church is against communism. So is Protestant America! That is not the issue and no one should be unanswered who tries to make it seem so.

The Protestant Church is not against the Roman Catholic Church. Their church and ours should always have exactly the same freedom of religion in this land of democracy. That is not the issue. No one should be unanswered who tries to make it seem so. But we Protestants do believe that complete separation of church and state is the foundation basis for freedom of religion in America. Therefore, we oppose the favored status of diplomatic relations with any church or church-state.

How can we oppose it? Only on the basis of the rights we still have, to do according to the dictates

of our own conscience. The Senators of the United States will not have to reckon with The Methodist Church as a political state. Or with The Baptist Church, or with The Presbyterian Church. Nor should they have to deal with The Roman Catholic Church on the basis of a political state. But the Senators of these United States do have to reckon with the individual rights of loyal Christian citizens. Citizens whose loyalty to God is not represented by a diplomatic ambassador from the Vatican.

How do Senators reckon with individual citizens? By the letters that we write expressing our convictions to them. And by the votes that we cast. Roman Catholics and Protestants alike have the freedom and the right to express their conviction. Every individual Senator ought to know how the citizens of his state feel concerning freedom of religion. Are we "for" or "against" this new step that would break the historic separation of church and state on which American freedom of religion is based? Perhaps the nomination will go through. We Protestants hope it will not go through. It must not go through without our protests in writing, as individual citizens. It is important for each one of us to recognize this basic old-new issue that is now once again at stake.

Long ago, in the city of Corinth, St. Paul was the pastor of a Christian congregation. His enemies brought him into court and wanted the Roman governor to close up Paul's church and put him in prison. The name of that Roman governor was Gallio.

But Gallio did not realize what was going on. He thought this was only a squabble about religion. Gallio considered the politics involved. Gallio considered the business interests that would be affected. As far as

politics and business were concerned, it made no difference either way. So he threw the whole affair out of court and refused to pay any further attention. The Bible says, as far as religion is concerned, "And Gallio cared for none of those things." (Acts 18:17.) There is a danger that American people shall look at this new proposal to favor The Roman Catholic Church-state. People will figure the politics and the business interests involved. Some people will be blind to the fact that freedom of religion is the one issue of supreme importance. Such blindness will show itself by the indifference that does not express any conviction concerning this freedom that has so blessed America. It will be a tragedy if it is true of us as it was of Gallio. Shall we shrug this off as an unimportant squabble of religion? Shall history write of us as it did of Gallio? Shall it be that we care for none of these things?

Bishop Corson of our Methodist church recently returned from Germany. He tells of a poster there that is everywhere expressing a certain frame of mind. It shows a lovely woman being savagely assaulted by a beast of a man. The only words on the poster are, "Ohne Mich!" (Without Me!) That poster accuses the people of Germany who say to themselves, "No matter what happens, count me out! I'll have nothing to do with it, let them do as they please—without me!" America was founded by men and women who came here to find "freedom of religion." Now, once again, in our own time, we are faced with a clear cut issue of church and state. Shall there be a favored church or shall all churches be the same in the dealings of our government? Dare you let it go through without you?—*Zions Herald*, Nov. 7, 1951.

## Press Comments

### **Time Magazine Comments on Clark Appointment**

COMMENTING ON PRESIDENT TRUMAN'S nomination of Gen. Mark Clark as Ambassador to the Vatican, *Time*—(October 29) said that no matter what considerations had led to the nomination, "Truman had kicked up the hot ashes of a long-smoldering controversy." The White House's announcement concerning the nomination referred to the fact that thirty-seven countries maintained some kind of diplomatic relations with the Vatican. This fact was emphasized as a reason for the appointment of an official representative from the United States,

but apparently the argument, which was considered the strongest in favor of the President's action, was found in these words, "It is well known that the Vatican is vigorously engaged in the struggle against Communism. Direct diplomatic relations will assist in coordinating the effort to combat the Communist menace." This appears to us to be an assertion without proof.

*Time* said that when Vatican officials have been "asked to comment on events in the U.S., they were inclined to reply somewhat peevishly: 'We have no information on anything that goes on in America.'" In the next sentence the same *Time* article says, "The President's announcement brought 'utmost joy

at the Vatican.' " *Time* does not say from what source it quoted when it credited the Vatican with "utmost joy." It must be clear to anyone that the words did not come from the lips or the pen of one who understands the principle of separation of church and state or the danger involved in this new relationship which the President proposes.

H. H. V.

## The Clark Fracas

AT HARRY TRUMAN'S PRESS CONFERENCE last week, he pondered his answer to a question, twisting the gold masonic ring on the little finger of his left hand. The question was: Why had he nominated General Mark Clark to be U.S. ambassador to the Vatican? Slowly, the President answered that he had studied the matter ever since January 1950, when Myron Taylor resigned as his special representative. Truman had finally decided that the cause of peace would be served by the presence of a U.S. ambassador at the Vatican.

**A Listening Post.** Through a salvo of newsmen's questions, Harry Truman stood his ground. Behind his determination was a point which he did not bring out: he has been told by some of his top advisers that an embassy at the Vatican would be an important listening post in the struggle against Communism. Much of the debate in Washington last week turned on the value of the Vatican as a source of intelligence in Communist-dominated areas.

The efficiency of the Vatican's "worldwide information service" has probably been exaggerated for many years. In recent years, its information channels from Eastern Europe have been effectively clogged by Communist restrictions. The Vatican (and the rest of the Western world) undoubtedly gets a true general picture of what goes on behind the Iron Curtain, but the Vatican's information about specific events in Eastern Europe often arrives in Rome too late to be of use.

Vatican officials were completely baffled last year when the communized Warsaw government announced the signing of an agreement with Polish Catholic bishops. At first, they expressed doubt that any such document had been signed; two weeks later, they confirmed much of what Warsaw announced. When the Communist government in Czechoslovakia banished Archbishop Beran from Prague this year, again the Vatican did not know what was happening. When Archbishop Grösz was tried and sentenced by the Communists in Hungary, Rome had to depend for its information on regular press reports.

**A Matter of Attitudes.** Better than the listening post argument was the fact that Vatican attitudes are important in the international picture. Some of these attitudes might be influenced by the presence

of a U.S. ambassador. For instance, Truman was careful to say that he wants to appoint an ambassador to the "State of Vatican City." But Vatican officials last week privately and insistently said that a U.S. ambassador should be appointed to the Holy See rather than to the minute, temporal State of Vatican City. This attitude indicates that the Vatican does not appreciate Truman's problem and does not understand American Protestant opinion.

Last week Protestant protests continued to rise across the land. Letters and telegrams to the White House last week were running 6 to 1 against the nomination. One Protestant leader revealed that Truman offered him the ambassadorship last January. "I declined and advised against it," said Charles P. Taft of Cincinnati, brother of Senator Robert A. Taft and a board member of the National Council of Churches.

Harry Truman had decided against giving Clark a recess appointment, because he wanted Congress to pass a special act permitting the general to stay in military service while holding the diplomatic post. Despite the roar of protest, Truman was confident. His listening posts in Congress had told him that the fight over the appointment would be bitter and close, but that he would win.—Courtesy of *Time*, Copyright Time Inc., 1951.

## The Vatican City Embassy

THE FIRST CONSEQUENCE of Mr. Truman's appointment of Gen. Mark Clark to the newly created embassy to Vatican City was to split the country on religious lines—the worst thing a President could do. It is difficult to believe that anything the country may gain from the embassy can compensate for the cleavage at home that has already developed, to say nothing of what may develop as the debate continues.

The sending of an ambassador is explained on the ground that our government, like the papacy, is anti-Communist and therefore the two should be in a position to exchange facts and harmonize policies directly and with a minimum of delay.

The assumption that our government is anti-Communist is surely open to argument. On the same day that the establishment of the new embassy was announced, it became known that our administration had authorized the shipment of a million dollars' worth of truck parts behind the iron curtain. Mr. Truman yesterday appointed Prof. Jessup as an American delegate to the United Nations despite his record. If the administration's decision to go to war in Korea is to be regarded as anti-Communist, its rejection of Gen. MacArthur's plan for winning the war cuts the other way.

It is interesting to note that some of those who have expressed themselves most strongly in opposition to the new embassy are the same people who

have indorsed every step taken by the New Deal toward committing our country to its present foreign policy of intervention everywhere. They have regarded it as America's role to throw its strength in men, money, and industrial facilities into a new balance of power in world politics.

The advocates of this course should have realized that a nation which accepts such a commitment is going to be subjected to grievous internal stresses and strains, and that some cherished traditions are destined to be crushed in the process.—*Daily Tribune* (Chicago), Oct. 23, 1951.

## **A Great Disservice to the Nation**

**I**N APPOINTING AN AMBASSADOR to the Vatican, President Truman has committed an unpardonable offense against the 50 million Protestants of America and has done the nation as a whole a grave injury.

The appointment of an ambassador to the Vatican, timed to postpone a showdown in the Senate, was made in cynical contempt of the strong and often expressed opposition by spokesmen for the great majority of American Protestants to any such political recognition of Catholicism. It is but another indication that Mr. Truman and his advisers think they are so securely entrenched in political power that they can get by with anything they wish to do, without regard for public opinion.

American Protestants were greatly displeased by the appointment of a "personal representative" to the Vatican by the late President Roosevelt. The appointment of a full-scale ambassador to the Vatican will be much more objectionable.

The action taken by Mr. Truman is regrettable because inevitably it will increase disunity among Americans and it may stir up controversy in this country which will be harmful to relations between this nation and countries which are predominantly Catholic.

Condemnation of the appointment has already poured into Washington from all over the United States. Protestant leaders are planning a vigorous campaign against Senate confirmation of the nomination of Gen. Mark W. Clark to the post of ambassador to the Vatican, and this campaign will and should be strongly maintained.

Senators are reported reluctant to commit themselves on this suddenly and unnecessarily created issue. It is understandable that many senators do not like the spot on which the President has put them. It is not pleasant for a politician to have to take a stand on such a question—when a stand on either side is certain to offend large bodies of citizens.

The people, however, should call upon their senators

to take a stand. The President has forced this issue upon the country. Since the issue is now here, it will have to be faced—and settled. This is not an issue on which "no comment" should be accepted.

In their opposition to this high-handed action, American Protestants should put the blame where it belongs—on President Truman and his advisers, not on their Catholic fellow citizens. Catholics may be pleased by our Government's diplomatic recognition of the Vatican. But Catholics did not make the appointment. Mr. Truman, a Baptist, did the nation that disservice.

Mr. Truman's own minister, Dr. Edward Hughes Pruden, pastor of the First Baptist Church of Washington, gave sound expression to the prevailing Protestant view when he said:

"I would equally oppose a like appointment to the world Baptist headquarters or the headquarters of any other religious body.

"It is my conviction that this is entirely contrary to our historic American position regarding the separation of church and state."

Another appropriate comment was that by Bishop C. C. J. Carpenter, head of the Episcopal diocese of Alabama, who, describing the appointment as "most unfortunate and regrettable," said:

"It is just another case of political expediency versus principle that has been the *modus operandi* of the Administration in Washington."

It is ironic that this action was taken by President Truman for the announced purpose of co-ordinating opposition to Communism. Causing disunity at home is a poor way to fight Communism.

The people, however, should strive to prevent the President's action from causing bad feeling among fellow Americans. Take it out on the man who did it. He deserves the blame.—*Chattanooga News-Free Press*, Oct. 22, 1951.

## **An Unfortunate and Divisive Action**

**T**HE DESIGNATION BY PRESIDENT TRUMAN of an ambassador to the Vatican poses a question which for millions of Americans has profound implications going to the depths of their feelings regarding relations of church and state. It is a question on which multitudes could not surrender their opinion without violating their civic conscience.

The question inevitably is a divisive one at a time when national unity is gravely needed. And the issue is an unfortunate one both because it tends to divide citizens who should work together and because it tends to distort into an outgrown mold the pattern of a great nation's diplomacy.

Let it be clearly understood from the very outset that religious prejudice has no legitimate place in the

motives of those who oppose diplomatic representation to the Vatican, any more than political motivation has any proper place in the designs of those who propose it.

This is not a religious issue. It is an issue of statecraft. Roman Catholics have every right to the practice of their religion under the American constitutional tradition of religious freedom. They deserve the respect of other Christians for their devotion to their faith. The decision on diplomatic representation by the United States deals not with what the form or mission of a church should be but with the pragmatic American concept of the state and its function.

Among the major contributions which America has made to history in the perspective of centuries is the perception that ecclesiasticism and statecraft have each their own realms, that these can in practice be separated, and that both faith and patriotism are stronger when each stands on its own feet.

The appointment of an ambassador may seem a small inroad on these generalities. But would anyone pretend that if the only importance of the Vatican were its sovereignty over one-sixth of one square mile and over a population of 1,250 it would receive even a consul from the United States or more than, at most, a secretary in the embassy at Rome?

On what ground is an ambassadorial rank to be justified unless it be in recognition of the Roman Pontiff as the head of a state within other states, a spiritual ruler over citizens in many nations already represented in Washington by their own diplomats, the occupant of a throne which historically has claimed the power to crown emperors and absolve subjects of their loyalties?

This is inconsistent both with the basis on which the United States apports diplomatic recognition to the other countries of the world and with the spirit of the First Amendment to the Constitution, which says, "Congress shall make no law respecting an establishment of religion."

Entirely apart from the obvious merits of Gen. Mark Clark as an appointee, we cannot but enter the gravest objection to the confirmation of any diplomat of ambassadorial or ministerial rank as an envoy to the Vatican State. We believe that citizens, regardless of religion, should see the injurious potentialities in such a precedent.—*The Christian Science Monitor*, Oct. 23, 1951.

## General Clark and the Vatican

WHAT GENERAL MARK W. CLARK, war-time hero of the campaign in Italy and a staunch Episcopalian, thinks of the political maneuvering of the Vatican does not appear in the public prints, but how President Truman values the Catholic vote is abundantly clear. His appointment of the general to the proposed Vatican ambassadorship is politics, not so pure and not so simple either.



Burton Holmes, From Ewing Galloway

The magnificent church of St. Peter's as viewed

The four-star leader's action in refusing a recess appointment that, without concurrence by both houses of Congress, would have required him to give up his uniform, really has nothing to do with the case, and it certainly was not brought about by the outspoken opposition of Protestants. That opposition was well known before the appointment. Harry Truman, a cold and calculating politician, had weighed it carefully and had decided that it would subside before



across the Piazza Di San Pietro in Vatican City.

the Senate reconvenes in January to consider the appointment. The presidential primaries get under way shortly afterward.

It is obvious that Mr. Truman is making a play, on behalf of his party if not himself, for the Catholic vote in the large industrial centers. What is not so obvious is that he is bidding for Catholic support in Europe, where the Roman Catholic church is on the wane, but is still strong enough to dominate the gov-

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ernment of western Germany. Nor are Italy and Spain to be forgotten in Mr. Truman's calculations; the former for its wavering attitude on Communism and the latter for its supposed influence in protecting western Europe. Besides, there is the Far East, where Catholicism is strong in both China and India. In Latin America, where the Roman Catholic church is almost as decadent as in Europe, the appointment of a United States ambassador to the Vatican has long been urged.

As *The Christian Advocate* has repeatedly declared, and as the brilliant series of articles by Paul F. Douglass clearly proved, the Vatican appointment is a move in the wrong direction, not because it may be called favoritism to one church, but because it recognizes a fusion of religious and political institutions which is repugnant to American ideas of both religion and politics. The dictatorial characteristics of the Vatican state, in which citizens neither vote nor pay taxes, and in which they have nothing to say about the government, violate our conception of democracy. And it is no comfort for us to note that such a state stands squarely across the path of Communism. An ecclesiastical dictatorship seems to us little, if any, better choice than an economic dictatorship.

The stock arguments for the Vatican appointment have been dealt with previously in these columns. The idea that secret information gets to the Pope from his priests and lay workers around the world, and that we need this information in peace negotiations, is vastly overrated. Besides, what secret information must we share with the pontiff to get the facts that he has for us? The other idea that we must follow the example of other nations in setting up diplomatic relations with the Vatican is also poor argument. Why must we ape the moves of others?

Such pleading for a Vatican ambassadorship in the name of world peace is contradicted further by the Vatican's opposition to the World Council of Churches and all other efforts to bring Christian forces together in opposition to war. There is no other way of doing the only peacemaking that counts. And the fact should be clear, even to politicians.—*The Christian Advocate*, Nov. 8, 1951.

## Politics and Prestige

**J**UST WHAT ARE THE POLITICAL ANGLES TO President Truman's appointment of Gen. Mark Clark as Ambassador to the Vatican? Much of the initial discussion of the subject deals with it in terms of political finesse or ineptitude, which leaves the fundamental issue of separation of church and state rather to one side.

Had there been an intention to make a recess appointment, the last-hour manner of filing the nomination with the Senate might have been protested. But

apparently no such plan existed, since General Clark says it was understood he did not wish to retire from the Army and since under those circumstances he could not fill the diplomatic post until Congress should exempt him from the law against men in active military service holding civil offices.

Significantly, Mr. Truman has not revived the device of sending a personal representative to the Pope. Presumably he feels that thereby he fulfilled his reported assurances to certain Protestant churchmen that he would ultimately allow the Myron Taylor mission to lapse. But the churchmen gained the impression that Mr. Truman was moving away from any form of representation, not toward more formal and permanent ties.

The Vatican itself, according to Rome reports, has assisted in the demise of that improvised arrangement by insisting on nothing less than a permanent embassy from the United States. The appointment of an ambassador to serve under the State Department requires confirmation by the Senate; hence to that extent a question of legislative ratification is posed. The need for a special enactment to allow General Clark to serve while retaining military status requires also a vote from the House of Representatives.

Political observers generally are assuming that President Truman hopes to collect credit for his party from the Roman Catholic voters for having at least submitted the proposition. If the chief motive was political, it is anyone's guess whether he believes the plan would really strengthen freedom's front or would just as soon see the trial balloon shot down.

At any rate, the situation affords more than two months for a kind of national referendum on the subject insofar as citizens express their convictions to their senators and representatives. Within that period there should develop much more acute awareness of the damage done to the structure of a cosmopolitan state by lending its prestige to a single religious denomination.—*The Christian Science Monitor*, Oct. 25, 1951.

## The Vatican Debate

**P**ROTESTANTS ARE, IN GENERAL, being very careful in their utterances concerning Mr. Truman's appointment of an ambassador to the Vatican. This is as it should be, for the issue is political and in no way implies prejudice against our Roman Catholic neighbors. If we were asking for the appointment of an ambassador to some Protestant group, the matter would be a prejudicial fight and would result in bigotry: but we are insisting that no one church shall be given priority consideration over another church by relating it to the state.

The letter Senator Lodge of Massachusetts is sending to those who ask him for his opinion indicates that he has swallowed the idea that Roman Catholicism constitutes the greatest opposition to communism.

This is not so, as is proved by the simple statistical information that in Roman Catholic nations, where Roman Catholicism is the state church, communism thrives and, in Italy, is the largest single political party. The Senator implies that Protestantism is not opposed to communism by his insistence that the United States should ally itself with the Vatican—surely he does not mean this. Protestants are opposed to communism and are perfectly willing to join hands with any and all religious groups in that opposition: we will not do it by diplomatic or state controls and negotiations, however, because spiritual concern cannot be regimented by governmental fiat.

Let us make short work of this controversy. Your Senator is waiting to hear from you, and so is your Representative in Congress. Write to these men today. Our feeling is that there is little point in bothering Mr. Truman with the matter.—*Zions Herald*, Nov. 21, 1951.

## A Serious Mistake

**B**Y HIS PRECIPITATE APPOINTMENT of an Ambassador to the Vatican—the first in the nation's 162 years—President Truman has set off a controversy of incalculable proportions and no one knows what eventual consequences.

This is a time when every effort should be made to unite the diverse population elements of the country in efficient, sacrificing opposition to totalitarian rule in the world. Yet the nation is now to witness an internal struggle between those who approve the President's course and the many others who are equally certain that he has done a grievous disservice to the historic separation of church and state in our democracy.

Mr. Truman cites Franklin D. Roosevelt's appointment of Myron C. Taylor to the Vatican as precedent for the nomination of Gen. Mark W. Clark. The cases are not parallel, as the President himself surely knows. Myron Taylor went not as an Ambassador with diplomatic status but as Mr. Roosevelt's *personal representative*. Moreover he was sent in 1940 after the outbreak of war in Europe when the Vatican was a listening post on a warring continent.

The brief and very general statement of justification, released by White House Secretary Joseph Short, says that "the President has decided it (the appointment) is in the national interest." The immediate and far-ranging opposition from other church groups and leaders makes plain that whatever Mr. Truman may think, countless Americans do not agree. It is a strange conception of "national interest" which divides the people sharply along sectarian lines when unity is urgent.

This White House statement points out that 37 nations maintain diplomats at the Vatican. There is no infallible guide for the United States in that.

Britain, for example, is one of the countries which keeps a diplomatic representative at the papal court. But Britain has an established church while the United States Constitution declares expressly that "Congress shall make no law respecting an establishment of religion." This country is not alone in not having had a Vatican diplomat. The Scandinavian nations, among others, also have gotten along satisfactorily without one.

The United States is a land of more than 250 religious bodies. If not on the basis of communicants over the world then on principle at least each has a claim to recognition similar to that which Mr. Truman accords the Roman Catholic group in his surprise announcement. But it is obvious that no such equal treatment can or should be attempted. Few religious groups would want such recognition if they could get it.

The White House move holds embarrassments for Catholics as well as for Protestants, Jews and citizens with no church. Heretofore all American Ambassadors have been accredited to foreign powers. If the Vatican is recognized as a governmental state, is it Mr. Truman's intention that the many thousands of Catholic clergy in this country are now to be regarded as representatives of a foreign state? That would be a grave injustice to a lot of intensely loyal American citizens.

Americans generally, regardless of church connection, have sympathized deeply with the saintly Pope Pius XII as he has led Catholics in their struggle for survival in the Iron Curtain countries. The Communist persecution of Cardinal Mindszenty was distressing and saddening throughout the Western World. But the bitter lesson is that state authority which favors a church can also turn against a church. Even today in almost wholly Roman Catholic Spain there is a controversy between Franco and the church over which is to select the bishops.

If the world situation is so critical that the President is justified in making this unprecedented appointment without consulting the people or their representatives, then Mr. Truman cannot be justified in taking a brilliant soldier like Gen. Clark away from military duties. Surely the heroic commander of the wartime Fifth Army can serve the nation much more effectively in helping plan and develop our defense forces than in functions at the Vatican—or anywhere else.

The timing of the appointment is one of its most unfortunate aspects. By sending it to the Senate only three hours before planned adjournment, the President in effect gave the confirming body its choice of continuing in session or going home without acting on the nomination. Surely a step of such historic magnitude could have been taken while there was time for the Senate to consider it. Or it could

have been delayed until Congress returned in January.

Will Mr. Truman send Gen. Clark to the Vatican in the recess? Not if he gives the deeper implications of this issue the thought he has not accorded them up to now. For this sudden blow at the wall which the Founding Fathers raised between church and state is unnecessary and unwise, while the hour of the act bears every sign of an attempt to reduce the opportunity to debate it through that great forum of the people, the American Senate.—*Post-Dispatch* (St. Louis), Oct. 22, 1951.

## Embassy at Vatican

THE PRESIDENT'S APPOINTMENT of Gen. Mark Clark as ambassador to the Vatican profoundly changes this nation's relations with the small area around the Pope's residence.

Myron C. Taylor, last representative at the Vatican, was sent there only as the personal representative of the late President Roosevelt. He continued in the same relation to President Truman until early this year.

The United States has not had representation at the Vatican since Congress, out of sympathy with the Garibaldi revolution in 1868, declined to appropriate money for its legation. Within two years the unification of Italy was accomplished, and the Papal States disappeared.

The popes thus lost temporal power over the central Italian provinces, although they continued to claim it. This remained a moot question until 1929 when Mussolini's accord, the Lateran Treaty, recognized the Popes' temporal authority over the tiny area in Rome known as the Vatican State.

It is to this state that Gen. Clark is to be accredited as an ambassador from the United States. Presumably the Vatican will reciprocate by sending to Washington a papal nuncio, the Vatican's equivalent of an ambassador.

Many Protestants regard the statehood of the Vatican as pure fiction and bitterly resent the appointment. The administration replies that the move was made in the interest of unity in the fight against Communism.

In view of the issues involved, it is regrettable that the appointment, long considered, was slipped over on the last day of the session of Congress without an opportunity for discussion.—*Times-Union* (Rochester), Oct. 22, 1951.

## The Vatican Appointment

ON OCTOBER 20, PRESIDENT TRUMAN ANNOUNCED the appointment of Gen. Mark Clark, chief of the Army Field forces, as the first United States ambassador to the Vatican. In former years this government had maintained diplomatic relations with

the Vatican State. In 1847 President Polk sent this country's first chargé d'affaires to the Vatican with instructions only for relations "of a commercial character." Diplomatic relations were broken off in 1868 when Congress cut off all funds for representation at the Vatican. Semiofficial relations were established in 1939 when President Roosevelt appointed Myron C. Taylor as his personal representative at the Vatican.

### **Called Expedient by President**

President Truman offered, as an explanation of his action, his belief that both the broad national interest and the purposes of diplomacy and humanitarianism would be served by the appointment and that a return to direct diplomatic contact with the Vatican "would assist in coordinating the effort to combat the Communist menace." Some of the President's friends suggest that he was motivated by the idea of trying to unite the world's spiritual forces against Communism. His opponents and some of his party supporters believe that his action was purely political, designed to catch the support of the bosses of the Democratic political machines in our large cities, most of whom are Catholics, and win the support of Catholics in general.

The action of the President may be in harmony with the letter of the Constitution but not its spirit. It is a direct negation of the American principle of separation between church and state. While the Pope claims temporal sovereignty and tries to exercise it as fully as possible in all countries with the aid of his hierarchy, his real claim to distinction and influence lies in his position as head of a great Church. The 109-acre tract, with its 1,000 inhabitants which constitutes the political domain over which the Pope exercises totalitarian control, is the smallest political state in the world. If it were not for the ecclesiastical importance of the Pope his little state would be utterly insignificant. Technically we propose to send an ambassador to this little state but actually we are giving official recognition to the Pope as head of the Roman Catholic Church.

### **Called Un-American by Protestants**

This idea is repugnant to Protestants and all others who understand the genius and spirit of this democracy. The President's action is un-American. It is an act of contempt for the Protestant population of our land. It has been met with sharp condemnation from the heads and prominent ministers of our large Protestant denominations. It has introduced a note of disunity in the life of the country at a time when unity is essential to our welfare. Administration circles and good citizens condemn acts and words that tend to promote credal or racial strife, yet the head of the Administration has distinguished himself as a promoter of strife and disunity. His action may be

good politics but it is not good for the country. Our Roman Catholic brethren are hailing with delight the prospect of full diplomatic representation at the Vatican. In the end this is likely to contribute to their disadvantage as it will put the emphasis on divided allegiance and raise the question as to whether one can be a good American and a good Catholic at the same time.

### **To Have Congressional Consideration**

Official announcement has been made that there will be no recess appointment and this leaves the final settlement of the matter to the next session of Congress in January. The President is hoping that agitation will die down before that time and that Congress will confirm his action. The prospect of defeating the proposal lies in effective organized opposition that will continue up to the time of decision. Human nature being what it is, there will be a gradual weakening of concern over this un-American proposal unless a persistent effort is made to educate our citizens as to the menace of this move against the fundamental principles of our democracy. This appointment will be ratified unless good citizens take the trouble to let their congressmen and senators know how they feel about it.—S. E. IRVINE in *The United Presbyterian*, Nov. 12, 1951.

### **Protestant Groups Take Official Action on Diplomatic Relations With Vatican**

**Council of Bishops of the Methodist Church, May 8, 1947**

We call for the end of the anomolous situation in which the President of the United States maintains a personal representative to the Pope without the consent of the representatives of the people and in violation of what an overwhelming majority of the American people believe to be an American principle.

**The United Lutheran Church in America, October 4-12, 1950**

We Recommend: That the United Lutheran Church in America in convention assembled emphatically reaffirm its belief in the absolute separation of Church and State and record its unalterable opposition to the establishment of any kind of diplomatic relations, or resemblance thereto, between the United States Government and the Vatican or any other religious group.

**Evangelical and Reformed Church, General Synod, June 21-28, 1950**

The General Synod of the Evangelical and Reformed Church, meeting in triennial session at Col-

legeville, Pennsylvania, representing 727,000 members, reiterates its opposition to the appointment of a personal representative of the President of the United States or an ambassador to the Vatican on the ground that it violates the American principle of the separation of Church and State, and further instructs its executive officers to transmit this resolution to the President of the United States, the Department of State, and the Senate Committee on Foreign Relations.

### **International Convention of Disciples of Christ, October 9-15, 1950**

*Be It Therefore Resolved:*

1. That the International Convention of Disciples of Christ declares its unalterable opposition to the establishment of diplomatic relations with the head of any religious sect, society or church, whether by executive action of the President or within the diplomatic service of the nation.

2. That it is our conviction that such representation would be a violation of our historic American tradition of separation of Church and State; that it would confer upon such sect, society or church a recognition not accorded to it by the majority of Americans; and that such representation would give the color of credibility to the charge that the United States is supporting the religio-political policies of that religious communion.

### **The Baptist Joint Committee on Public Affairs, October, 1951**

We urge that as individual citizens and through joint resolutions we:

1. Communicate immediately with the U.S. Senators from our states and register vigorous opposition to the establishment of an Ambassador or other official representative from the United States to the Vatican. Any such proposal must be confirmed by the Senate to become effective.

2. Make similar statements to the President and to the U.S. Congressmen from our districts.

### **Evangelical United Brethren Church, Council of Administration, October, 1951**

WHEREAS, for all these reasons we are firmly opposed to the establishment of diplomatic relations between the United States and the Vatican; therefore be it **RESOLVED**, that we, the Council of Administration of the Evangelical United Brethren Church, a Church with a constituent membership in the United States of over 700,000, hereby proclaim our strong protest to the maintenance of such relations with the Vatican; and, further

**RESOLVED**, that the Executive Secretary of this Council of Administration be and hereby is in-

structed to convey this action to the President of the United States and to the Chairman of the Senate Foreign Affairs Committee.

### **American Lutheran Conference, Executive Committee, October 25, 1951**

(Reiteration of resolution adopted at November, 1950, convention)

The American Lutheran Conference declares itself emphatically opposed to any representation of the United States of America or its President at the Vatican, since that would be a manifest violation of the principle of separation of church and state, would give offense to those not members of the Roman Catholic Church and would aggravate religious antagonisms which threaten the unity of the American people.

### **American Baptist Convention, May 26, 1950**

WHEREAS, On the recent retirement of Mr. Myron Taylor, as personal representative of the President to the Vatican, the mission has been closed and the staff called home; and

WHEREAS, Northern Baptists, along with other Protestant bodies have repeatedly challenged the President's right to maintain this semiofficial mission from a democratic and political state to an official church-state, as violating the historic principle of separation of Church and State; therefore, be it

**RESOLVED**, That the Northern Baptist Convention meeting in annual session in Boston, May 22-26, 1950, commends the President on his decision to close the mission, and respectfully and prayerfully petitions him that in the interest of improving the relationships between Protestants and Catholics in this country, he resist all pressures to reopen this highly controversial mission, transferring back to the State Department its former prerogatives of conducting foreign affairs through its officially established embassies in foreign countries.

### **General Conference of Seventh-day Adventists, Assembled in Autumn Council, 1951**

Whereas, In the appointment of an ambassador to the Vatican by the President of the United States, we see a deplorable disregard of Protestant and democratic sentiment and a departure from, and weakening of, the constitutional principle of the separation of church and state, and an inevitable deepening of religious rivalries and controversies:

**RESOLVED**, That the General Conference Committee of Seventh-day Adventists, in Autumn Council assembled, hereby expresses a most earnest protest against the appointment of an ambassador from the United States to the Vatican.

## Vatican Mission—Right or Wrong?

THE PUBLIC SHOULD NOT JUDGE whether the President is right or wrong in trying to establish full diplomatic relations with the Vatican until he gives all the facts for this sudden reversal of policy.

Whether the new policy proves justified or not, we think the President has gone about it in the wrong way. By creating a brand-new ambassadorship only a few hours before Congress adjourned, he left the Senate no chance to consider the nomination, and left Congress no chance to exercise its control over appropriations for the proposed new mission.

The President thus set aside the co-ordinate constitutional powers of Congress, at least temporarily. That would be wrong at any time. It is particularly dangerous in a controversy that promotes disunity.

The President claims to be acting "in the national interest." Certainly the national interest requires a maximum of national unity in this world crisis. When the chief executive deliberately causes division, as he has done in this instance, the burden of the proof is upon him to convince the public with facts that such a course is necessary. Whatever the considerations that influenced the President's decision, they must have developed over a period of some weeks or months. They didn't just happen to come to a head on the afternoon that Congress left Washington.

There is no issue regarding Gen. Mark Clark personally—he has earned the high regard of America.

But it is not enough to say, as the White House does, that "direct diplomatic relations will assist in co-ordinating the effort to combat Communist influence." That leaves unanswered such questions as the following:

Why could not such co-ordinating of anti-Communist effort be carried on by the American ambassador to Italy, who is resident in Rome a short distance from the Vatican?

Or why could not the job be done through a personal representative of the President, functioning as Myron Taylor did during and after the war.

The American tradition of separation of church and state is fundamental. On this point we believe that American Catholics and Protestants are of one opinion, and that both object to any undermining of that principle. American representation at the Vatican city state, in our view, is not an undermining factor as such. It depends on how representation is arranged and for what purpose.

If the purpose is to get American Catholic votes it is despicable, and should be resented by Catholics as much as by Protestants. If it is done to curry favor with the Vatican, it is unworthy. But if such a relationship could in fact—which is not yet proved—contribute in some unique way to the security of this nation and the free world against Communist

aggression and subversion, in our opinion it would be justified.

The President has raised an issue which divides the country. He has done it in a way to produce the maximum of heat and the minimum of light. It remains for our citizens to try to consider this problem as Americans, not as sectarian partisans.—*World Telegram* (New York), Oct. 22, 1951.

## We Oppose an Ambassador to the Vatican

LIKE A BOLT FROM THE BLUE, the President announced the appointment of General Mark W. Clark as Ambassador to the Vatican. The appointment was so timed that a weary Congress, then adjourning, could be counted on not to stay and debate it.

General Clark is still a controversial figure, particularly in Senator Tom Connolly's home state. In addition, as a military man, he is a legitimate target for those who are rightly concerned over the increasing dominance of the military in our public life. Also, he must be approved by both houses through modification of the law of 1870, which makes military men ineligible for this office. One wonders, if the President were serious in his desire to establish diplomatic relations with the Pope, why he would, in this delicate issue, have chosen a man so difficult to confirm.

The appointment was made in the face of informal assurances to Protestant churchmen that the question was a "dead issue," etc. If these assurances were not intended to be taken seriously, then they are dangerously close to the category of words spoken "with intent to deceive."

Reasons given in support of establishing such an office don't stand up.

Vatican City, with its area of one sixth square mile (108 acres) and population of 1,000, and no foreign commerce whatsoever, is no *state* in the accepted use of the term.

It is not comparable to the Papal States with their area of 16,000 square miles and population of 3,124,758, with which we had limited diplomatic relations from 1848 to 1868. The limitation was described in the words, "Our direct relations with the Papal States can only be of a commercial character." They therefore established no precedent for the type of relationship now proposed. On the contrary, they make it clear that such a relationship would not then have been tolerated.

Vatican City is a mere token state set up in the concordat with Benito Mussolini for the sole purpose of enabling the Catholic Church to function as a political power in exchange for its support of Mussolini's regime. It is not a state. It is a church masquerading as a state in order to gain political power.

Every Roman Catholic cardinal, archbishop, priest, monk, and nun is under the primary and abso-



Burton Holmes, From Ewing Galloway

A formal garden in Vatican City.

lute jurisdiction of the ruler of a foreign state, if the Pope's claim and President Truman's action are validated by Congress. This jurisdiction applies to their political and social as well as to their religious life. (Note the Pope's requirement that all priests withdraw from Rotary Clubs.) As such, under our present laws they ought to register as agents of a foreign government.

"Now that the United States has officially recognized the Vatican as a political state," Professor Henry Pratt Fairchild points out, "it is absurd to assume that its representatives in this country are engaged exclusively in religious, scholastic, academic, or scientific pursuits or [in] the fine arts."

The President has placed American Catholics in an intolerable situation against which they, as good Americans, should be the first to protest. He has created a serious division in the nation at a time when national unity is needed as never before.

We should protest to our representatives in Congress now. As the implications of the proposal become clear, reaction against it will be immense and it will be cumulative.—*Presbyterian Life*, Nov. 10, 1951.

## Protestant Leaders Protest President's Appointment of Clark

THESE TWENTY-SIX well-known Protestant leaders in the New York area signed the following statement of protest against the appointment of an ambassador to Vatican. Their standing is such that

their opposition can hardly be brushed aside as being inspired by prejudice.

*The Rev. Dr. John Sutherland Bonnell*, pastor of the Fifth Avenue Presbyterian Church in New York City since 1935. Dr. Bonnell is a well-known radio preacher and lecturer at different theological seminaries.

*The Rev. Dr. Roelif Brooks.*

*The Rev. Dr. Henry Sloane Coffin*, one of the best-known Presbyterian ministers, lecturer and writer in the United States.

*The Rev. Dr. Clarence T. Craig*, Methodist preacher, lecturer, teacher, and author. Member of American Standard Bible Translation Committee.

*The Rev. Dr. Phillips P. Elliott.*

*The Rev. Dr. L. Wendell Fifield*, Congregational-Christian. Pastor of the Plymouth Church of the Pilgrims, New York City, 1927-41. Member of the Executive Committee of the Congregational-Christian Church of the United States.

*The Rev. Dr. Charles B. Foelsch.*

*The Rev. Dr. Harry Emerson Fosdick*, Pastor Emeritus of Riverside Church in New York City. Professor of Practical Theology in Union Theological Seminary 1915-1946. One of the best-known religious writers in the country.

*The Rev. Dr. Franklin Clark Fry*, Lutheran. Has held high posts in both the Lutheran Church and the Federal Council and World Council of Churches.

*The Right Rev. Charles K. Gilbert*, Bishop of the Protestant Episcopal Church.

*The Rev. Dr. Douglas Horton*, Congregational-Christian. Member of the Central Committee of the World Council of Churches. Author and lecturer at different theological seminaries.

*The Rev. Dr. A. L. Kinsolving*, pastor of St. James Church, New York City.

*The Rev. Dr. Robert P. McCracken.*

*The Rev. Dr. John A. Mackay*, President of Princeton Theological Seminary, Professor of Ecumenics since 1936.

*The Rev. Dr. Welsey Megaw.*

*Bishop G. Bromley Oxnam*, Methodist.

*The Rev. Dr. Norman Vincent Peale*, Presbyterian pastor of Marble Collegiate Reformed Church, New York City.

*The Rev. Dr. Albert J. Penner.*

*The Rev. Dr. Louis W. Pitt*, Episcopal. Pastor of Grace Church, New York City, since 1950. Trustee of the Cathedral of St. John the Divine.

*The Rev. Dr. Edgar F. Romig*, Reformed Church in America. Member or chairman of many church organizations.

*The Rev. Dr. Theodore F. Savage*, Presbyterian.

*The Rev. Dr. Joseph R. Sizoo*, Reformed Church in America. President of New Brunswick Theological Seminary. Well-known lecturer and author.

*The Rev. Dr. Ralph W. Sockman.* Minister of Christ's Church in New York City since 1917.

*The Rev. Anson Phelps Stokes, Jr.*

*The Rev. Dr. Henry Pitney Van Dusen.* Presbyterian. President of the Faculty of Auburn Theological Seminary. Trustee of Princeton University. Lecturer and author.

*The Rev. Dr. Paul Austin Wolfe.* Presbyterian. Pastor of Brick Church, New York City, since 1928.

"We welcome the announcement that President Truman will not dispatch the first American Ambassador to the Vatican until Congress has acted, but this does not dispose of the major issue. We believe that the President should immediately withdraw the nomination.

"At a time when national unity is of utmost importance the President has needlessly started a controversy, which, throughout the Congressional recess and when Congress again assembles, will bitterly divide our people and do immeasurable harm. He has forced millions of our citizens into a position where, motivated by no anti-Catholic prejudice and hating religious dissension, they must nevertheless, for conscience' sake, protest against what seems to them an intolerable negation of basic American principles.

"We who sign this statement have worked long and hard to achieve more fraternal relationships with our Roman Catholic fellow citizens; we oppose the appointment of an American Ambassador to the Vatican from no intolerant and bigoted motive. We would equally oppose any similar preferential treatment of any other church, including our own. We oppose the President's action because it singles out for preferential official recognition a particular church; because the pretense is invalid that the Vatican State and the Church of Rome are so distinct that an ambassador to one is not an ambassador to the other; and because we cannot accept the plea that, since other nations have ambassadors to the Vatican, we should violate the basic American principle of equality of all religious faiths in the eyes of our government in order to have one too.

"We recognize the importance of Roman Catholic influence in the struggle against Communism, and we understand the President's desire to secure co-operation between the Vatican and the free governments. But Protestantism also is prevailingly anti-Communist, and in the World Council of Churches is organized on a world-wide scale. Protestant co-operation with the free governments, in general, and with the United States, in particular, could also be

legitimately sought. But to suppose that, in order to make such co-operation effective, the appointment of an American Ambassador is necessary is incredible. There are ample means, short of such violation of American principles, by which the co-operation of both Roman Catholic and Protestant leaders in the struggle against totalitarianism can be achieved.

"We are convinced, therefore, that the President's action is a needless and tragic blunder; that it will issue in deplorable dissension among our people; that in the end, it would prove to be as practically imprudent and ill-advised as it certainly is false to the traditional principles of our republic; and that the mistake can be remedied only by a prompt and final withdrawal of the nomination of an American Ambassador to the Vatican."

### **National Council of Churches on an Embassy to the Vatican**

THE NATIONAL COUNCIL of the Churches of Christ in the United States of America is saddened and profoundly disturbed by the controversial issue that has been precipitated by President Truman's nomination of an ambassador to the Vatican. As Christians and as Americans we repudiate prejudice against Roman Catholics and deplore religious dissension. This issue now thrust upon us, however, forces us, because of conscience, to protest against what is to us an alarming threat to basic American principles. We believe that the appointment of an ambassador to the Vatican would be wrong in principle, useless in practice and would produce consequences both far reaching and disastrous to the national unity of the American people.

Taking a step which arouses religious controversy, the President has done a grave disservice to our country. We are especially distressed by the published reports of his suggestion in a press conference that this is a time to "fight it out." It is normal and wholesome in a democracy to "fight it out" on political issues; but this is different. Religious convictions lie deeper than politics.

Authorized and representative leaders of great bodies of American Christians have made it unmistakably clear on frequent occasions since 1939 that the question of sending an ambassador to the Vatican is a seriously divisive matter. Conscience and conviction with regard to religious liberty, combined with loyalty to an essential principle of American democracy and gratitude for a national tradition consistently defended by our fathers, have compelled us to take a resolute position. The President has known this through an extended correspondence and consultation over several years. We are making the record public in a separate document.

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Every reader is urged to write to both of his  
U.S. Senators and protest the sending of an  
ambassador to the Vatican.

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This issue is not of our making. There had been no public controversy over the matter in recent months. The situation was quiescent and might have remained so except for the President's action. We now have no choice but to be loyal to our deep convictions and to the national welfare as we see it.

Three major reasons are advanced in support of the President's proposal, none of which bears scrutiny.

It is alleged in the first place that the United States should establish formal diplomatic relations with the Vatican in order to gain access to an unique source of information, achieve effective cooperation against communism and advance the cause of peace. The fact is that formal diplomatic relations constitute no binding agreement for either party to reveal any information except what it chooses to reveal. On the other hand, if both parties desire that all resources of information be utilized and coordinated against communism, this can be achieved through our ambassador to the government of Italy, who is resident in Rome and readily accessible to the Vatican. Eager allies in a common cause are not frustrated in their common efforts by considerations of protocol or prestige.

All Christian bodies stand together in opposition to communism. The National Council of the Churches of Christ in the United States of America holds unequivocally that communism, in its basic philosophy and in its practice of disregarding many essential human rights, is opposed to Christianity. Our conviction in this matter has already been stated in these words:

"It (communism) is atheistic in its conception of ultimate reality and materialistic in its view of man and his destiny. Its utopian philosophy of history lacks the essential Christian notes of divine judgment, divine governance, and eternal victory. Its revolutionary strategy involves the disregard of the sacredness of personality which is fundamental in Christianity. Such differences can never be resolved by the compromise or surrender of faith by Christians."

We continue to stand ready to cooperate with Roman Catholics and other men of goodwill in working for peace. We have worked with them in the past and intend to do so in the future. We work also with our government in informal but effective cooperation without any necessity for any legal diplomatic agreement. Our constituent bodies are related to the World Council of Churches which has similar channels for international cooperation in the furtherance of peace.

The second reason given for the President's proposal is that there is precedent in American history, notably in the middle of the last century. The fact is that the present proposal for an ambassador to the Vatican is without precedent. The Chargé d'Affaires of the United States accredited to the Papal States in 1848 was instructed to deal "exclusively" with civil

and commercial matters with a state which comprised some 16,000 square miles of territory and a population in excess of 3,000,000. In contrast, the present "State of Vatican City" comprises an area of one-sixth of a square mile and a population of some 1,000. It has no civil courts or civil administration distinguishable from ecclesiastical authority. It should be remembered that in 1867 Congress cancelled appropriations for the representative to the Papal States in response to public indignation over the reports of a prohibition of public Protestant worship within the city walls of Rome. The protest was against the infringement of religious liberty and in support of the separation of church and state.

The third reason offered in support of the President's proposal is that other nations send ambassadors to the Vatican. This is a most unsound argument for abandoning our distinctive American tradition which has served us well. Most of the other countries that have diplomatic relations with the Vatican give special recognition and status to the Roman Catholic Church and recognize the diplomatic representatives of the Vatican to their own capitals as deans of the diplomatic corps. Our nation on the other hand has always refused to give any church preferential status.

The President's action precipitates precisely the kind of situation which our forefathers sought to prevent in the interest of the national welfare by constitutional separation of church and state. To establish formal diplomatic relations with the Vatican would be to concede to one church, the head of which has only nominal secular power, a political status in relation to our government which could not possibly be given to all churches and which could not, as a matter of principle, be accepted by most. Thus tension and controversy would be induced in our national life at the very time when unity is most essential. . . .

We earnestly express to the President and the Congress our conviction that only a prompt withdrawal or rejection of the President's proposal can save this country from a most unfortunate and unnecessary controversy, with reactions that will be cumulative as the issues become more widely recognized. We did not choose this controversy. We deplore it. But we cannot and will not evade it. We have been in the past and will continue to be in the future unalterably opposed to the establishment of diplomatic relations with the Vatican.—Adopted unanimously by the General Board of the National Council of the Churches of Christ in the U.S.A. (successor to the Federal Council of Churches) at special meeting in New York City, October 31, 1951.

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Every reader is urged to write to both of his  
U.S. Senators and protest the sending of an  
ambassador to the Vatican.

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D. W. Corson, From *A. Devancy*

## Church and State: Something Less Than Separation\*

By LEO PFEFFER †

IN 1947, THE UNITED STATES Supreme Court, in *Everson v. Board of Education*,<sup>1</sup> was required to consider the scope and applicability to the states of that portion of the First Amendment to the Constitution which declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The issue in the *Everson* case was the constitutionality of a New Jersey local law which provided for the reimbursement of children's transportation expenses to a Catholic parochial school. The constitutionality of the law was sustained in a five-to-four decision, but both majority and minority agreed that the restriction imposed upon Congress by the First Amendment was incorporated in the Fourteenth as a restriction upon state power, and that the states, no less than Congress, are prohibited from making "any law respecting an establishment of religion." The majority held that the New Jersey law approached "the verge" of the power retained by the states under the "establishment of religion" restriction; the minority contended that the verge had been transgressed.

All the Justices also agreed that the First Amendment was to be given a broad interpretation and that its intent was not merely to prohibit the establishment of a state church but to preclude any governmental aid to religious groups or dogmas. In words which have now become well known, Justice Black, speaking for the Court, said:

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force

nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"<sup>2</sup>

The decision aroused a storm of controversy, particularly along sectarian lines. Catholic spokesmen hailed the decision as a victory for religious liberty,<sup>3</sup> while Protestants criticized it as impairing the principle of separation of church and state.<sup>4</sup> The significance of the Court's interpretation of the First Amendment was overshadowed by the attention which the specific holding of the case attracted. There were only a few who saw that the broad principle on which the Court had agreed was far more important than the majority's ruling that the First Amendment was not violated by the law under attack. One of these few, James M. O'Neill, a professor of speech at Brooklyn College, deemed the Court's definitive announcement of the broad interpretation of the First Amendment as "historically and semantically indefensible" and wrote a book to establish his contention

<sup>1</sup> 330 U.S. 1 (1947).

<sup>2</sup> *Ibid.*, at 15-16.

<sup>3</sup> See, e.g., Murray, *The Court Upholds Religious Freedom*, *America*, p. 628 (Mar. 8, 1947).

<sup>4</sup> See, e.g., Editorial, *The Protestants Get a Licking*, *The Churchman*, p. 4 (Mar. 1, 1947); Dawson, *Separate Church and State* (New York 1948).

\* This article is based on an address delivered at the Law School of the University of Chicago on May 10, 1951.

† Associate General Counsel, American Jewish Congress.

and that the Constitution did not prohibit nonpreferential governmental aid to all religions.<sup>6</sup>

Several months after the *Everson* decision was announced, the Supreme Court was again required to pass upon a state law which had been challenged under the "establishment of religion" clause of the First Amendment. In *McCullum v. Board of Education*,<sup>6</sup> a system of released time for religious education in operation in the public school system of Champaign, Illinois was attacked as violating the principles announced in the *Everson* case. It was clear that unless these principles were repudiated, the Champaign system could not stand. Counsel for the Champaign Board of Education used the manuscript of O'Neill's book, and urged the Court to reinterpret the Amendment to conform to the O'Neill thesis. The Court, however, was not convinced and, by a vote of eight to one, invalidated the released time program. In doing so, it made its position clear by quoting at length the *Everson* decision's definitive interpretation of the First Amendment.<sup>7</sup> The Court held that, in the words of Justice Frankfurter, "[s]eparation means separation, not something less."<sup>8</sup>

#### THE ATTACK IS LAUNCHED

Although rejected by the Court, the O'Neill thesis found ready acceptance in sectarian circles and marked the basis of an all-out effort to persuade the American people and ultimately the courts that separation does mean something less. The leadership in the attack was taken and has been retained by the Catholic Church. Indeed, it is not unfair to say that the O'Neill thesis is the official position of the Catholic Church; at least it is the position asserted in a statement by the American Hierarchy. The statement, issued on November 20, 1948 through the National Catholic Welfare Conference, declared:

"To one who knows something of history and law, the meaning of the First Amendment is clear enough from its own words: 'Congress shall make no laws [sic] respecting an establishment of religion or forbidding [sic] the free exercise thereof.' The meaning is even clearer in the records of the Congress that enacted it. Then and throughout English and Colonial history 'an establishment of religion' meant the setting up by law of an official Church which would receive from the government favors not equally accorded to others in the cooperation between government and religion—which was simply taken for granted in our country at that time and has, in many ways, continued to this day. Under the First Amendment, the Federal Government could not extend this type of preferential treatment to one religion as against another, nor could it compel or forbid any state to do so.

"If this practical policy be described by the loose metaphor 'a wall of separation between Church and State,' that term must be understood in a definite and typically American sense. It would be an utter distortion of American history and law to make that practical policy involve the indifference to religion and the exclusion of cooperation between religion and government implied in the term, 'separation of Church and State' as it has become the shibboleth of doctrinaire secularism."<sup>9</sup>

It is not surprising that the O'Neill thesis should command the support of the Catholic Church.<sup>10</sup> While dedicated to the principle that the ideal state is the Christian state in which the Catholic faith is the established religion and the only one entitled to governmental recognition and protection,<sup>11</sup> the Church is nevertheless aware that such a system is not likely to be achieved in the United States in the foreseeable future.<sup>12</sup> The position of the Catholic Church is that governmental support of the Church is not merely desirable but morally obligatory. A constitutional interpretation prohibiting the establishment of a specific church by permitting governmental aid to all churches on a non-preferential basis is more acceptable to the Church than a blanket prohibition against governmental aid to all churches.

Support of the narrow interpretation of the First Amendment is by no means limited to Catholics. Professor Edward S. Corwin, a non-Catholic, has ardently urged this interpretation,<sup>13</sup> and Professor Alexander Meikeljohn, a non-Catholic, has also adopted the narrow interpretation.<sup>14</sup> It remains true, however, that Catholics represent its most assiduous proponents.

The O'Neill thesis has recently received an unusual form of support. On March 30, 1951, United States Attorney-General J. Howard McGrath stated in an address before the National Catholic Educational Association that:

"A [constitutional] amendment, which was intended to prevent the creation of an established church, and a phrase in a letter of Thomas Jefferson have been

<sup>6</sup> N.Y. Times, p. 63, col. 4 (Nov. 21, 1948).

<sup>7</sup> Besides the statement of the Catholic Bishops see Parsons, *The First Freedom* (1948) (Imprimatur Archbishop O'Boyle); articles by Joseph C. Duggan in *Boston Pilot* (official organ of Boston Archdiocese) (Mar. 17, Apr. 3, Apr. 10, 1948); Murray, *Law or Prepossessions?* 14 *Law & Contemp. Prob.* 23 (1949); Fahy, *Religion, Education and the Supreme Court*, 14 *Law & Contemp. Prob.* 73 (1949).

<sup>8</sup> Ryan and Boland, *Catholic Principles of Politics* 313-21 (1940). "Justice therefore forbids, and reason itself forbids, the State to be godless; or to adopt a line of action which would end in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the State, that religion must be professed which alone is true, and which can be recognized without difficulty, especially in Catholic States, because the marks of truth are, as it were, engraven upon it. This religion, therefore, the rulers of the State must preserve and protect, if they would provide—as they should do—with prudence and usefulness for the good of the community." Pope Leo XIII, *Encyclical on Human Liberty*, in *Great Encyclical Letters* 150-51 (1903).

<sup>9</sup> Ryan and Boland, *op. cit.* supra note 11, at 320-21.

<sup>10</sup> The Supreme Court as National School Board, 14 *Law & Contemp. Prob.* 3 (1949). The article was originally published in 43 *Thought* 665 (1948).

<sup>11</sup> Educational Cooperation between Church and State, 14 *Law & Contemp. Prob.* 61, 69-71 (1949).

<sup>6</sup> O'Neill, *Religion and Education under the Constitution* (1949).

<sup>6</sup> 333 U.S. 203 (1948).

<sup>7</sup> *Ibid.*, at 210-11.

<sup>8</sup> *Ibid.*, at 231.

distorted to create, in the words of United States Supreme Court Justice Black . . . 'a wall between the church and state which must be kept high and impregnable.' . . . If anything, the state and church must not have any fences between them."<sup>15</sup>

This cavalier construction of the Constitution by the country's chief law enforcement officer prompted The Christian Century, leading Protestant publication of the nation, to call for Mr. McGrath's removal.<sup>16</sup>

It is the purpose of this article to assess the validity of the attacks on the Supreme Court's twice-asserted conclusion that the objective of the First Amendment was not merely to prohibit the establishment of a single church but to deprive the government of "all power to tax, to support, or otherwise to assist any or all religions,"<sup>17</sup> and to impose upon it a duty "to

be a neutral in its relations with groups of religious believers and nonbelievers."<sup>18</sup> Since the O'Neill thesis rests primarily on historical data, it is that data which will be examined in this article. No effort will be made to present the affirmative arguments in support of the principle of complete separation. They are fully set forth in the Supreme Court decisions in which the O'Neill thesis was considered and rejected. It is sufficient to say here that the writer believes that the overwhelming majority of Americans agree<sup>19</sup> with the Court that "religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere,"<sup>20</sup> that the operations of government must be kept "free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered,"<sup>21</sup> and that this view "does not . . . manifest a governmental hostility to religion or religious teachings."<sup>22</sup>

#### THE THESIS STATED

The principal premise of the O'Neill thesis can be divided into the following elements:

1. "Separation of church and state" or "a wall of separation of church and state" is only a "metaphor,"<sup>23</sup> a "figure of speech,"<sup>24</sup> a "spurious slogan,"<sup>25</sup> or a "shibboleth"<sup>26</sup> which is not part of our American tradition or constitutional history. Its promulgation as constitutional law is a recent invention of the *Everson-McCollum* Court.<sup>27</sup>

2. The First Amendment was not intended to divorce religion from government or to impose governmental neutrality between believers and disbelievers but only to meet in a practical manner the problems raised by a multiplicity of competing sects by prohibiting Congress from establishing any one



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<sup>15</sup> N.Y. Times, p. 16, col. 4 (Mar. 31, 1951).

<sup>16</sup> 63 Christian Century 451 (1951).

<sup>17</sup> *Everson v. Board of Education*, 330 U.S. 1, 11 (1947).

<sup>18</sup> *Ibid.*, at 18.

<sup>19</sup> See, e.g., Freeman and Bronheim, In the Democratic Tradition, 18 Congress Weekly 4 (1951) for an account of the overwhelming vote in the democratically convened Mid-Century White House Conference on Children and Youth which defeated every carefully planned attempt by sectarian groups to endorse religious instruction in connection with public education.

<sup>20</sup> *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948).

<sup>21</sup> *Ibid.*, at 216.

<sup>22</sup> *Ibid.*, at 211.

<sup>23</sup> O'Neill, *op. cit.* supra note 5, at 82.

<sup>24</sup> Fahy, *op. cit.* supra note 10, at 83.

<sup>25</sup> O'Neill, *op. cit.* supra note 5, at 72.

<sup>26</sup> Statement of Catholic Bishops, supra p. 37.

<sup>27</sup> O'Neill, *op. cit.* supra note 5, at 4, 152, 197; Corwin, *op. cit.* supra note 13, at 9; Parsons, *op. cit.* supra note 10, at 24, 28, 49, 168, 171; Brief for Appellees at 27, *McCollum v. Board of Education*, 333 U.S. 203 (1945) (cited hereafter as *McCollum* Brief).

#### THE STATE

Force, the power of life and death over its citizens, as represented by the sword, has always been the prerogative of the state. Christ taught that this power has limitations when He discussed taxes by saying, "Render to Caesar the things that are Caesar's, and to God the things that are God's."

sect, i.e., granting it "monopolistic recognition" or conferring upon it a preferred or privileged status.<sup>28</sup>

3. There was no intent on the part of those who drafted and adopted the First Amendment to bar the general support of religion by the federal government, and the First Amendment, therefore, does not prohibit the nonpreferential expenditure for religious purposes of funds raised by general taxation.<sup>29</sup>

4. The First Amendment does bar preferential treatment of a particular religion or sect short of according it monopolistic recognition of formal dominant status. It was for that reason that President Madison vetoed an act seeking to incorporate the Protestant Episcopal Church in the District of Columbia and another act granting some federally owned land in Mississippi to a Baptist church.<sup>30</sup>

Construing the Amendment to bar preferential treatment short of establishment is implicit in the recent innovation claim. In 1899, the Supreme Court in *Bradfield v. Roberts*<sup>31</sup> distinguished between a hospital corporation and the order of nuns which controlled it, and held that a Congressional appropriation to the corporation did not violate the First Amendment. In 1908, the Court in *Quick Bear v. Leupp*<sup>32</sup> distinguished between appropriations from governmental funds for the support of religious education and appropriations from funds held in trust by the government for the benefit of Indian tribes, and held that such trust funds could be expended for the upkeep of Catholic mission schools at the direction of the Indian beneficial owners. These decisions would

have no meaning unless a grant of federal funds to an order of nuns for religious purposes or to Indian mission schools would have been unconstitutional.

#### IMPLICATIONS OF THE THESIS

Before considering the bases of the O'Neill thesis, its implications should be clearly understood. In the first place, if the "establishment" clause is limited to requiring neutrality among sects, but not as between believers and non-believers, the clause forbidding laws "prohibiting the free exercise" of religion likewise protects only believers. In other words, the Constitution does not guarantee freedom of non-belief.

Father Parsons recognizes this:

"As for those who profess no religion, or who repudiate religion, it is difficult to conceive how they can

<sup>28</sup> O'Neill, op. cit. supra note 5, at 56, 109, and passim; McCollum Brief, at 43, 86, 93, 159; Corwin, op. cit. supra note 13, at 10, 13, 20; Murray, op. cit. supra note 10, at 41; Meikeljohn, op. cit. supra note 14, at 70-71; Fahy, op. cit. supra note 10, at 74, 80-84; Parsons, op. cit. supra note 10, at 23, 28, 42, 145.

<sup>29</sup> O'Neill, op. cit. supra note 5, at 58, 74-76; Parsons, op. cit. supra note 10, at 48, 145.

<sup>30</sup> O'Neill, op. cit. supra note 5, at 100-101. See also McCollum Brief, at 86: "[T]he action taken by the defendant Board of Education is clearly not within the proscription of the First Amendment. No preference between religions or between sects has been pointed out, and the undisputed testimony is that the same plan is open to all . . ."; and at 93 it was said that "unless there is a preferment of one or more sects or religions over other sects or religions, a law, whether or not it involves a tax or an appropriation, is not a law 'respecting an establishment of religion.'" Corwin, op. cit. supra note 13, at 20: "The historical record shows beyond peradventure that the core idea of 'an establishment of religion' comprises the idea of preference; and that any act of public authority favorable to religion cannot, without falsification of history, be brought under the ban of that phrase." Parsons, op. cit. supra note 10, at 28: "If the federal government had any favors for religious groups, these were to be available to them all." Fahy, op. cit. supra note 10, at 81: "Government cooperation with or encouragement of religion, without preference and without interference with individual freedom, has also found expression in exemptions granted to ministers under laws relating to military service."

<sup>31</sup> 175 U.S. 291 (1891).

<sup>32</sup> 210 U.S. 50 (1908).

## THE CHURCH

In the Bible the church is symbolized by a woman. This is appropriate, for in the realm of the spirit the only force that may be used is the power of love and persuasion. The union of the church with the state for legal purposes is in the Bible called adultery, for the church is the bride of Christ.



appeal to the First Amendment, since this document was solely concerned with religion itself, not its denial. By its very nature as regards what it says about religion, they are outside its ken."<sup>33</sup>

This concept has been put in the form of a maxim which has gained wide acceptance in sectarian circles,<sup>34</sup> and has been adopted by at least two courts, which have stated that the First Amendment guarantees "freedom of religion, not freedom from religion."<sup>35</sup> Since about half of our population today are not members of any church,<sup>36</sup> there is a real danger that under the O'Neill thesis a substantial part of the American people may be adjudged beyond the pale of constitutional protection in respect to religious matters.

Even if it is assumed that atheists, agnostics and other persons without religious affiliations should not be accorded the benefits of the First Amendment, the doctrine that only adherents of religion are constitutionally protected requires government officials to determine what constitutes religion and who are believers. One of the reasons James Madison in 1784 opposed the Virginia Bill Establishing a Provision for Teachers of the Christian Religion was that "it would devolve upon the courts of law to determine what constitutes Christianity, and thus, amid the great diversity of creeds and sects, to set up by their fiat a standard of orthodoxy on the one hand and of heresy on the other, which would be destructive of the rights of private conscience."<sup>37</sup> Under the O'Neill thesis, the courts would be required to determine only what constitutes "religion" rather than what constitutes Christianity. But when it is remembered that in 1784 Christianity and religion were, as a practical matter, synonymous in Virginia,<sup>38</sup> it is obvious that Madison's fears are still relevant. The parallel today would be a statute granting federal or state aid to all teachers of religion. Such a statute would require courts and administrators to determine whether Theosophists, Ethical Culturists, Unitarians, deists, or Jehovah's Witnesses were qualified for aid.<sup>39</sup>

Acceptance of the O'Neill thesis would permit direct use of federal funds and property for religious purposes, so long as a practicable method could be

evolved for the nonpreferential distribution of these benefits among the various sectarian groups. While state constitutions generally prohibit use of public funds for sectarian purposes,<sup>40</sup> any state could, without violating the federal Constitution, eliminate or amend the state constitutional prohibition and open the treasury to churches seeking to use public funds to spread their sectarian beliefs.

In 1930, the Supreme Court ruled that a state could constitutionally provide parochial schools with secular text books, since the children, and not the parochial school, were the direct beneficiaries of the state's bounty." Similarly, "in the *Everson* case, the majority of the court allowed New Jersey to expend public funds to transport children to parochial schools because secular subjects were also taught there.

Under the O'Neill thesis, the limitations implicit in these decisions would be abandoned. Public funds could be used to benefit sectarian schools directly, to pay for their books, sectarian as well as secular, to transport children to schools in which only religious subjects were taught and to pay the salaries of the teachers in such schools.

Far more important, the doctrine threatens the secular nature of the American public school by depriving it of federal constitutional protection against compulsory religious instruction. Consequences as grave as these should not be accepted without careful consideration of the premises upon which they are based.

#### THE "ESTABLISHMENT" CLAUSE AS A RESTRICTION ON STATE ACTION

Before we consider the validity of the main aspect of the O'Neill thesis, something should be said of a secondary point. Counsel for the appellees in the *McCullum* case, arguing on the basis of O'Neill's research, urged the Court to reverse its holding in the *Everson* case that the Fourteenth Amendment impliedly incorporates the "establishment of religion" clause of the First as a restriction on state action.<sup>42</sup> In this they were no more successful than in their plea for a reinterpretation of the "establishment" clause. However, as in the latter case, they found considerable acceptance outside the Court.

The extent, if any, to which the Fourteenth Amendment incorporates as restraints on the states the guarantees of the Bill of Rights as contained in the first eight amendments has been the subject of much controversy<sup>43</sup> which cannot be adequately treated here. It

<sup>33</sup> Parsons, *op. cit.* supra note 10, at 79.

<sup>34</sup> See, e.g., *ibid.*, at 136.

<sup>35</sup> *Zorach v. Clauson*, 99 N.Y.S. 2d 339, 344 (1950); *Gordon v. Board of Education*, 78 Cal. App. 2d 464 (1947).

<sup>36</sup> U.S. Dept. of Commerce, *Census of Religious Bodies* 17 (1936).

<sup>37</sup> I Rives, *History of the Life and Times of James Madison* 604 (2d ed., 1859).

<sup>38</sup> There probably were not a half-dozen Jewish families in Virginia in 1784. See U.S. Bureau of Census, *A Century of Population Growth, 1790-1900*, (1909) at 116; Goodman, *American Overture*, 148-49 (1947).

<sup>39</sup> See, e.g., Murray, *op. cit.* supra note 10, at 29 n. 29. "Justice Frankfurter in the *McCullum* case says that 'the deep religious feeling of James Madison is stamped upon the Remonstrance.' *McCullum v. Board of Education*, 333 U.S. 203, 216 (1948). Possibly, it depends on whether one can attribute depth of religious feeling to one steeped in eighteenth-century deism, which I personally consider a rather superficial and conventional form of religion. At all events, it ought to be added that likewise stamped on the Remonstrance is Madison's radically individualistic concept of religion, that is today quite passé."

<sup>40</sup> *Catholic Schools and Public Money*, 50 *Yale L. J.* 917 (1941); *National Education Association Research Bulletin, The State and Sectarian Education* 11 (1946).

<sup>41</sup> *Cochran v. Louisiana State Board of Education*, 281 U.S. 370 (1930).

<sup>42</sup> *McCullum Brief*, at 101-102.

<sup>43</sup> See, e.g., *Adams v. California*, 332 U.S. 46 (1947); Flack, *The Adoption of the Fourteenth Amendment* (1908); Warren, *The New Liberty Under the Fourteenth Amendment*, 39 *Harv. L. Rev.* 431 (1925); Green, *Liberty Under the Fourteenth Amendment*, 27 *Wash. U.L.Q.* 497 (1942); Meyer, *The Blaine Amendment and the Bill of Rights*, 64 *Harv. L. Rev.* 939 (1951).

is well, however, to point out that while O'Neill denies that any part of the First Amendment is incorporated in the Fourteenth,<sup>44</sup> other proponents of the narrow interpretation argue that the clause barring laws "prohibiting the free exercise of religion" is incorporated in the Fourteenth Amendment.<sup>45</sup>

The dichotomy is thus expressed by Corwin:

"... the Fourteenth Amendment does not authorize the Court to substitute the word 'state' for 'Congress' in the ban imposed by the First Amendment on 'laws respecting an establishment of religion.' *So far as the Fourteenth Amendment is concerned, states are entirely free to establish religions, provided they do not deprive anybody of religious liberty.* It is only liberty the Fourteenth Amendment protects. . . ." <sup>46</sup>

Others have expressed the dichotomy in terms of means and end. Father Murray states it this way: " . . . separation of church and state . . . put in its proper grounds . . . in its true relation to the free exercise of religion . . . [is] instrumental to freedom, therefore . . . a relative, not an absolute in its own right." <sup>47</sup>

Nothing in American constitutional history or tradition justifies this apportionment of values or indeed the dichotomy itself. The draftsmen of the First Amendment regarded freedom of religion as incompatible with an establishment. Whatever may have been the experience in other countries,<sup>48</sup> the struggle in the United States for religious liberty and for disestablishment were parts of the same evolutionary process which culminated in the First Amendment.

Roger Williams opposed an "enforced uniformity of religion" because it "confounds the Civil and Religious" <sup>49</sup> and Madison fought a bill establishing a provision for teachers of the Christian religion because it violated the "fundamental and undeniable truth 'that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.'" <sup>50</sup> The proposed versions of the First Amendment submitted by the states and considered by Congress before adopting the Amendment in its final form<sup>51</sup> all combined both aspects of the dual

prohibition without any indication that one was superior and the other subordinate.<sup>52</sup> In 1878, shortly after the Fourteenth Amendment was adopted, the Supreme Court first stated judicially that the First Amendment was intended to erect "a wall of separation between church and state," in a case in which a statute proscribing bigamy was attacked as an infringement of religious liberty.<sup>53</sup> In the words of Justice Rutledge in his dissent in the *Everson* case, " 'Establishment' and 'free exercise' were correlative and coextensive ideas, representing only different facets of the single great and fundamental freedom." <sup>54</sup> Whatever considerations require incorporation of the "free exercise" clause into the Fourteenth Amendment apply equally to the "establishment" clause.

#### THE ARGUMENTS FOR THE THESIS

The various arguments presented by the O'Neill school to show that the sole effect of the First and Fourteenth Amendments was to prohibit preferential governmental support of religion may now be considered.

1. *Separation, a recent invention.* The O'Neill school argues that the First Amendment does not mention "separation of church and state"; the term is nowhere to be found in the Constitution, but is a mere figure of speech, coined by Jefferson in 1802 in a letter to the Danbury Baptist Association, which was not intended as a characterization of the First Amendment or the American constitutional tradition. Elevation of Jefferson's phrase to the status of a constitutional principle is a recent invention of the *Everson-McCollum* Court.<sup>55</sup>

At first glance there would seem to be little value in much of the argument around the phrase "separation of church and state." No magic attaches to the particular verbalization of an underlying principle or concept. Indeed, the concept at issue here is more accurately expressed in Madison's phrase "separation between Religion and Government," <sup>56</sup> or in the popular maxim "religion is a private matter." Nevertheless, the O'Neill school has so strenuously urged that identification of the phrase "separation of church and state" with the Constitution is a recent invention of the *Everson-McCollum* Court that it merits consideration.

It would unduly extend the length of this discussion to set forth even a fraction of the numerous references to the "constitutional principle" or "American tradition" of separation of church and state. Justice Frankfurter, in his concurring opinion in the *McC*

<sup>44</sup> O'Neill, op. cit. supra note 5, at 124-26.

<sup>45</sup> McCollum Brief, at 109; Meikeljohn, op. cit. supra note 14, at 70; Parsons, op. cit. supra note 10, at 20-73; Corwin, op. cit. supra note 13, at 19.

<sup>46</sup> Corwin, op. cit. supra note 13, at 19.

<sup>47</sup> Murray, op. cit. supra note 10, at 32. See also Keehn, Church-State Relations, Social Action, p. 31 (Nov. 15, 1948), cited by Murray.

<sup>48</sup> Corwin points out that contemporary England manages to maintain as complete freedom of religion as exists in this country alongside an establishment. This, however, begs the question. It assumes that Jefferson, for instance, who drafted the Virginia Bill for Establishing Religious Freedom in order to assure that "no man shall be compelled to . . . support any religious worship place, or ministry whatsoever," would agree that the English taxpayer enjoys "complete freedom of religion" even though he is required to support the Anglican establishment.

<sup>49</sup> The Bloody Tenet of Persecution, in Blau, Cornerstones of Religious Freedom in America 37 (1949).

<sup>50</sup> Memorial and Remonstrance, the Virginia Bill Establishing Provision for Teachers of the Christian Religion, in Blau, *ibid.*, at 81.

<sup>51</sup> O'Neill and his disciples make much of these. See *infra* p. 44.

<sup>52</sup> The several versions are set forth in Parsons, op. cit. supra note 10, c. 3.

<sup>53</sup> *Reynolds v. United States*, 98 U.S. 145, 164 (1878).

<sup>54</sup> Dissent in *Everson v. Board of Education*, 330 U.S. 1, 40 (1946).

<sup>55</sup> O'Neill, op. cit. supra note 5, at 81-83; Parsons, op. cit. supra note 10, at 154; Corwin, op. cit. supra note 13, at 14; Fahy, op. cit. supra note 10, at 83, 90.

<sup>56</sup> Fleet, Madison's "Detached Memoranda," 3 *William & Mary Quarterly* 534, 555 (3d ser., 1946).

lum case, mentioned President Grant's advice, "Keep the church and state forever separated"; Elihu Root referred to "the great American principle of eternal separation between church and state"; and Justice Jeremiah S. Black made the statement that the constitutional fathers "built up a wall of complete and perfect partition between" church and state.<sup>57</sup> Other representative instances might be added.

Ten years after the First Amendment was adopted, Thomas Jefferson referred, in his letter to the Danbury Baptists, to "that act of the whole American people which declared that their legislators 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."<sup>58</sup> Jefferson had long waited for a proper occasion to express the views contained in this letter and had, in fact, consulted his Attorney General, Levi Lincoln, in drafting it.<sup>59</sup>

Madison, principal draftsman of the First Amendment, stated that "[s]trongly guarded . . . is the separation between Religion and Government in the Constitution of the United States."<sup>60</sup> A unanimous Supreme Court in 1878, seventy years before the *Everson-McCollum* decisions, introduced the Jefferson metaphor into a court opinion, citing it as "an authoritative declaration of the scope and effect of the Amendment."<sup>61</sup> This does not bear out a recent invention theory of separation. Indeed, if identification of the metaphor of separation with the Constitution is an error, the Catholic Church shares in the error, for the most authoritative Catholic text on Church and State in America, published four years before the *Everson* decision, stated: "Our Federal and State constitutions forbid the legal establishment of any form of religion thereby ensuring the separation of Church and State. . . ."<sup>62</sup>

Nor is the proposition that the Constitution declares religion to be outside the jurisdiction of the Government and requires neutrality between religious belief and disbelief a recent invention. More than half a century before the *Everson* decision, Philip Schaff in his classic work remarked that "the state must be equally just to all forms of belief and unbelief which do not endanger the public safety."<sup>63</sup>

Francis Lieber, an authority cited by the Supreme Court in *Reynolds v. United States*,<sup>64</sup> in his work *Civil Liberty and Self-Government*, published in 1852, stated:

"It belongs to American liberty to separate entirely that institution which has for its object the support

and diffusion of religion from the political government. We have seen already what our constitution says on this point. . . . No worship shall be interfered with, either directly by persecution, or indirectly by disqualifying members of certain sects, or by favoring one sect above others; and no church shall be declared the church of the state, or the established church; *nor shall the people be taxed by the government to support the clergy of all churches*, as in the case in France."<sup>65</sup>

James Bryce, in 1889, said:

"It is accepted as an axiom by all Americans that civil power ought to be not only neutral and impartial as between different forms of faith, but ought to leave these matters entirely on one side, regarding them no more than it regards the artistic or literary pursuits of the citizens. There seem to be no two opinions on this subject in the United States."<sup>66</sup>

Four years before the *Everson* decision, Charles A. Beard wrote in language anticipatory of the *Everson-McCollum* paragraph interpreting the First Amendment:<sup>67</sup>

"Congress can make no law respecting an establishment of religion. This means that Congress cannot adopt any form of religion as the national religion. It cannot set up one church as the national church, establish its creed, lay taxes generally to support it, compel people to attend it, and punish them for non-attendance. Nor can Congress any more vote money for the support of all churches than it can establish one of them as a national church. That would be a form of establishment.

"The Constitution is a purely secular document.

"The Constitution does not confer upon the Federal Government any power whatever to deal with religion in any form or manner. . . .

"The First Amendment merely confirms the intentions of the framers."<sup>68</sup>

2. *The semantic argument.* The O'Neill school argues that the term, "establishment of religion," as used in the First Amendment, had and has a well defined meaning: "A single church or religion enjoying formal, legal, official monopolistic privilege through a union with the government of the state."<sup>69</sup> The *Encyclopedia Britannica* is quoted as defining "establishment as of the nature of a monopoly."<sup>70</sup>

<sup>55</sup> Quoted in 3 Stokes, *Church and State in the United States* 176-17 (1950) (emphasis added).

<sup>56</sup> 2 The American Commonwealth 766 (3d ed., 1894).

<sup>57</sup> See pp. 36-37 supra.

<sup>58</sup> Beard, *The Republic* 165, 166, 170 (1944).

<sup>59</sup> O'Neill, op. cit. supra note 5, at 204. Substantially similar definitions are found *ibid.*, at 56; Corwin, op. cit. supra note 13, at 13; Catholic Bishops' Statement, p. 37 supra; Parsons, op. cit. supra note 10, at 46. *McCullum* Brief, at 57; O'Neill, op. cit. supra note 5, at 57; Parsons, op. cit. supra note 10, at 46-47; Fahy, op. cit. supra note 10, at 80.

<sup>60</sup> The definition, in full, is as follows: "ESTABLISHMENT, a word applied to certain religious bodies in their relation to the State. Perhaps the best definition which can be given and which will cover all cases, is that establishment implies the existence of some definite and distinctive relations between the State and a religious society (or conceivably more than one) other than that which is shared in by other societies of the same general character. It denotes any special connection with the State, or privileges and responsibilities before the law, possessed

<sup>57</sup> 333 U.S. 203, 218-19 (1948).

<sup>58</sup> The letter appears in full in O'Neill, op. cit. supra note 5, at 286.

<sup>59</sup> Butts, *American Tradition in Religion and Education* 93-94 (1950).

<sup>60</sup> Fleet, op. cit. supra note 56, at 555.

<sup>61</sup> *Reynolds v. United States*, 98 U.S. 145, 163-64 (1878).

<sup>62</sup> Ryan and Boland, *Catholic Principles of Politics* 312 (1940).

<sup>63</sup> *Church and State in the United States* 10 (1888).

<sup>64</sup> 98 U.S. 145, 166 (1878).

It is urged that if the framers of the First Amendment had intended to bar nonpreferential aid to all religions they would have said so in express terms. This argument is subject to a number of basic difficulties.

First: It proves too much. It would permit an outright grant of public funds, property or other aid to a single sectarian group so long as the assistance given falls short of the grant of formal dominant status contemplated by the quoted definitions. Yet, as we have seen, the O'Neill school agrees that such a grant is inhibited by the First Amendment.

Second: It ignores the word "respecting." The amendment does not say "Congress shall make no law establishing religion," but "no law respecting an establishment of religion." It may reasonably be argued that the latter phraseology imposes a broader prohibition than the former.<sup>71</sup>

Third: The term "establishment" was used much more loosely in 1791 than it is today. It was used by Jefferson in the title of his Statute for Establishing Religious Freedom. It was used in describing a measure as closely approximating nonpreferential aid to religion as could practicably be conceived—the Virginia Bill Establishing a Provision for Teachers of the Christian Religion. (There were no teachers of non-Christian religion in Virginia in 1784<sup>72</sup> and taxpayers not desiring that their money go to any Christian sect could direct that it be used for general educational purposes.)<sup>73</sup> Madison used the term "establishment" to denote chaplaincy in Congress and again chaplaincy in the armed forces.<sup>74</sup>

Moreover, during the debates preceding adoption of the First Amendment and after its adoption, the term "establishment of religion" was used synonymously with "religious establishment." Roger Sherman argued that the First Amendment was unnecessary because "Congress had no authority whatever delegated to them by the Constitution to make religious establishments."<sup>75</sup> In vetoing two separate measures, Madison twice referred to the First Amendment as prohibiting any law respecting "a religious establishment."<sup>76</sup> A constitutional prohibition against

laws "respecting religious establishments" is obviously not far removed from a prohibition of laws supporting or aiding religious establishments. Most important, Presidents Jefferson, Madison and Jackson interpreted the First Amendment's ban on laws "respecting an establishment of religion" as prohibiting such nonpreferential and nonmonetary aid as a Presidential proclamation of thanksgiving to God.<sup>77</sup>

Fourth: The "if-that's-what-they-wanted-why-did-they-not-say-so?" argument works both ways. If Congress did not expressly bar nonpreferential aid to religion it also did not expressly limit the bar to preferential establishment. It had two occasions to do so and refused both times. Twice when the First Amendment was debated in the Senate it was proposed to substitute the following for the House versions:

"Congress shall make no law establishing one Religious Sect or society in preference to others, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed."

And:

"Congress shall make no law establishing any particular denomination or religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed."

These versions expressly and unambiguously spell out what the O'Neill school says was intended by the First Amendment. Yet both proposals were rejected.<sup>78</sup>

3. *The practices in the states.* It is argued that the prevalent practices among the states when the First Amendment was proposed and adopted were to use tax-raised funds for religious purposes, and the Amendment must be construed in harmony with prevailing practices.<sup>79</sup> This argument also proves too little or too much.

If the practice in Virginia is considered, it proves too little, for that state, as a result of the defeat of the Assessment Bill, did not aid religion even on a nonpreferential basis. If, on the other hand, the practices in Massachusetts or North Carolina are considered, the argument proves too much; for these states maintained just the type of preferred establishment, which, according to the O'Neill school, it was the limited intent of the First Amendment to prevent on a national scale.<sup>80</sup>

by one religious society to the exclusion of others; in a word, establishment is of the nature of a monopoly."

<sup>71</sup> See Morrison, *The Separation of Church and State in America* 4.

<sup>72</sup> See note 34 supra.

<sup>73</sup> See last paragraph of the Bill in *Everson v. Board of Education*, 330 U.S. 1, 74 (1947) (Appendix).

<sup>74</sup> Fleet, op. cit. supra note 56, at 559: "The establishment of the chaplainship to [Congress] is a palpable violation of equal rights, as well as of Constitutional principles. . . . Were the establishment to be tried by its fruits, are not the daily devotions conducted by these legal Ecclesiastics, already degenerating into a scanty attendance, and a tiresome formality? Better also to disarm in the same way, the precedent of Chaplainships for the army and navy, than erect them into a political authority in matters of religion. The object of this establishment is seducing; the motive to it is laudable." (Emphasis added.)

<sup>75</sup> 1 *Annals of Congress* 732 (1789).

<sup>76</sup> In vetoing a bill to incorporate the Episcopal Church in the District of Columbia, Madison said: ". . . the bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions, and violates in particular the article of the Constitution of the United States which declares that 'Congress shall make no law respect-

ing a religious establishment. . . . This particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration."

One week later he vetoed a bill giving certain land to a Baptist Church. "[b]ecause the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and a precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that 'Congress shall make no law respecting a religious establishment.'" 1 Richardson, *Messages and Papers of the Presidents* 489-90 (1900). (Emphasis added. Note plural "societies.")

<sup>77</sup> Fleet, op. cit. supra note 56, at 560-62; 1 Stokes, op. cit. supra note 65, at 697; Butts, op. cit. supra note 59, at 94.

<sup>78</sup> See *Journal of the First Session of the United States Senate* 116-17 (1820). Neither O'Neill nor any of his disciples mentions these proposals and the Senate's rejection of them.

<sup>79</sup> O'Neill, op. cit. supra note 5, at 58, 46; Parsons, op. cit. supra note 10, at 49.

<sup>80</sup> The Massachusetts Constitution of 1780, provided for municipi-

In any case, it must be remembered that the First Amendment had no application to the states at the time it was adopted. It established the principles of freedom and separation only for the federal government. It is reasonable to assume and the O'Neill school argues<sup>81</sup> that Congress did not then believe it desirable or practicable to impose these principles on those of the states which still maintained an establishment.

By 1868, however, when the Fourteenth Amendment was adopted, the situation had changed. As noted by Justice Frankfurter in his concurring opinion in the *McCullum* case:

" . . . long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. . . .

"In this respect the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people."<sup>82</sup>

Thus the prevalent practices among the states when the First Amendment became applicable to them were more consistent with the *Everson-McCollum* interpretation than with the O'Neill theory.

4. *The prior versions.* The versions of the First Amendment proposed by the states and considered by Congress before adoption of the Amendment in its present form are offered as evidence that the intent of the states and Congress was only to prevent Congress from establishing a national religion and according it the preferential dominant status implied in the term "establishment of religion."

Thus, the first version submitted by Madison and considered by Congress read:

"The civil rights of none shall be abridged on account of religious belief, *nor shall any national religion be established*, nor shall the full and equal rights of conscience in any manner or on any pretext be infringed."<sup>83</sup>

pal support and maintenance of "public Protestant teachers of piety, religion and morality in all cases where such provision shall not be made Voluntarily." Thorpe, *Constitutions, Colonial Charters and Other Organic Laws*, Art. III (1889). The North Carolina Constitution limited public office to Protestants by providing that "no person who shall deny the being of GOD, or the truth of the Protestant religion, or the divine authority of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office or place of trust or profit in the civil department within this state." Thorpe, *ibid.*, Art. XXXII.

<sup>81</sup> O'Neill, *op. cit.* supra note 5, at 97; Parsons, *op. cit.* supra note 10, at 49.

<sup>82</sup> *McCullum v. Board of Education*, 330 U.S. 203, 215 (1948).

<sup>83</sup> O'Neill, *op. cit.* supra note 5, at 103; Parsons, *op. cit.* supra

The second version considered by Congress read:  
"*No religion shall be established by law*, nor shall the equal rights of conscience be infringed."<sup>84</sup>

The O'Neill school argues that these prior versions of the First Amendment should be considered as showing what Congress intended.

It would seem that unaccepted versions of a bill or constitutional amendment would be more probative of what the legislature intended not to adopt than of what it adopted. However, even if we consider unaccepted prior versions as possessing evidentiary value, the weight of the evidence is small.

In the first place, it helps little to point out that the first version submitted by Madison provided that no "national religion be established" or that the second version provided that "no religion shall be established by law" unless the meanings of these terms are clear—which they are not. It is fairly arguable that "no religion shall be established by law" means what the *Everson-McCollum* Court interpreted "no law respecting an establishment of religion" to mean. Adding the word "national" does not remove the ambiguity. Madison himself used the term "establishment of a national religion" in expressing his opposition to chaplaincies in Congress.<sup>85</sup>

In the second place, if the meaning of the First Amendment is to be found in versions which Congress failed to adopt, all such versions should be considered, not just some of them. The versions cited by the O'Neill school do not present the whole picture. At the Constitutional Convention itself, Charles Pinckney, who was second only to Madison in his contributions to the framing of the Constitution,<sup>86</sup> proposed that "The Legislature of the United States shall pass no law on the subject of religion."<sup>87</sup> The proposal was referred to committee and was apparently dropped—which is not surprising in view of the general agreement that Congress in any event had no jurisdiction over religious matters.<sup>88</sup>

Moreover, if we consider only prior versions of the First Amendment and not of the Constitution itself, certainly at least evidentiary weight equal to that given the first two versions should be accorded to the third version, which was requested by New Hampshire and proposed in the House of Representatives by Samuel Livermore. This version, strikingly similar to Pinckney's original version, read:

note 13, at 30; Corwin, *op. cit.* supra note 13, at 11; *McCullum Brief*, at 38; Fahy, *op. cit.* supra note 10, at 79; Murray, *op. cit.* supra note 10, at 41. (Emphasis added.)

<sup>84</sup> Parsons, *op. cit.* supra note 10, at 32; Murray, *op. cit.* supra note 10, at 47; *McCullum Brief*, at 38-50; Fahy, *op. cit.* supra note 10, at 79.

<sup>85</sup> "Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principles of religious freedom? In strictness the answer on both points must be in the negative. The Constitution of the U.S. forbids everything like an establishment of a national religion." Fleet, *op. cit.* supra note 56, at 558.

<sup>86</sup> 1 Stokes, *op. cit.* supra note 65, at 351.

<sup>87</sup> *Ibid.*

<sup>88</sup> See supra, p. 41 et seq.

"Congress shall make no laws touching religion, or infringing the rights of conscience."<sup>80</sup>

Stokes' comment on the Livermore proposal is significant:

"This, it will be noticed, is in its first half a more inclusive prohibition than that proposed by Madison, and it had its important influence on the ultimate wording of the First Amendment. Livermore wished not only to prevent a national Church but also the adoption of any federal laws touching religion. Some remarks by Mr. Gerry followed, criticizing Mr. Madison's proposal, principally because he considered the government a federal rather than a national one. Then comes this epoch-making entry: 'Mr. Madison withdrew his motion, but observed that the words "no national religion shall be established by law," did not imply that the government was a national one, the question was then taken on Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it.' *And so the general form which the religious-freedom guarantee later took in our Federal Bill of Rights was largely due to Samuel Livermore.*"<sup>80</sup>

5. *Congressional debates.* The debates in Congress on the proposed First Amendment are offered as proof that the limited interpretation was intended. Most frequently quoted is the following extract from the Annals of Congress:

"Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not *establish a religion*, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, which served to entertain an opinion that under the clause of the Constitution which gave power to Congress to make all law necessary and proper to carry into execution the Constitution, and the laws under it, enabled them to make laws of such a nature as might infringe the rights of conscience and *establish a national religion*; to prevent these effects he presumed the Amendment was intended, and he thought it was as well expressed as the nature of the language would admit."<sup>81</sup>

This passage, of course, is no freer of ambiguity than the prior versions of the amendment on which O'Neill also relies. Madison's phrases, "establish a religion" and "establish a national religion" cannot be assumed to have on their face the narrow meaning which O'Neill assigns to the term "establishment."

As we have seen, Madison had opposed a bill for the support of religious teachers of education on the

ground that it would "establish" the Christian religion.<sup>82</sup> Later he opposed congressional chaplaincies and vetoed bills which would incorporate a Protestant Episcopal Church and grant federal land to a Baptist Church because he regarded such measures as effecting a "religious establishment."<sup>83</sup>

Moreover, the Madison extract from the Annals cannot be understood without reference to the remark which evoked it. Justice Rutledge relates the incident and comments as follows:

"At one point the wording was proposed: 'No religion shall be established by law, nor shall the rights of conscience be infringed.' I Annals of Congress 729. . . . Representative Huntington of Connecticut feared this might be construed to prevent judicial enforcement of private pledges. He stated 'that he feared . . . that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meeting houses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers or building of places of worship might be construed into a religious establishment.' I Annals of Congress 730.

"To avoid any such possibility, Madison suggested inserting the word 'national' before 'religion,' thereby not only again disclaiming intent to bring about the result Huntington feared but also showing unmistakably that 'establishment' meant public 'support' of religion in the financial sense. I Annals of Congress 731."<sup>84</sup>

6. *Friends of religion.* The O'Neill school argue that Americans are and always have been a religious people, that those who framed and adopted the First Amendment were the friends, not the enemies of religion, and that they, therefore, could not have intended to harm religion by depriving it of governmental support.<sup>85</sup> This argument is misleading if not inaccurate in its premise and a non sequitur in its conclusion.

The premise is misleading because it uses the term religion as synonymous with church or, at least, organized religion. Actually, the period in which our Constitution and the First Amendment were adopted

<sup>80</sup> 1 Annals of Congress 731 (1789).

<sup>81</sup> 1 Stokes, op. cit. supra note 65, at 317 (emphasis added).

<sup>82</sup> O'Neill, op. cit. supra note 5, at 96; Murray, op. cit. supra note 10, at 42; Fahy, op. cit. supra note 10, at 79; Parsons, op. cit. supra note 10, at 35; McCollum Brief, at 40-44. (Emphasis added).

<sup>83</sup> See pp. 40-41 supra.

<sup>84</sup> See p. 39 supra.

<sup>85</sup> Everson v. Board of Education, 330 U.S. 1, 42 n. 34 (1947).

<sup>86</sup> O'Neill, op. cit. supra note 5, at 85; McCollum Brief, at 31, 83, 90; Corwin, op. cit. supra note 13, at 14; Fahy, op. cit. supra note 10, at 77; Parsons, op. cit. supra note 10, at 25, 153.

was an era of widespread indifference if not hostility to church religion.<sup>96</sup> Many of the political leaders of the Revolutionary and post-Revolutionary period had come under the influence of eighteenth century deism and enlightenment and not a few were apathetic to formal religious worship. As the Beards put it:

“When the crisis came, Jefferson, Paine, John Adams, Washington, Franklin, Madison and many lesser lights were to be reckoned among either the Unitarians or the Deists. It was not Cotton Mather’s God to whom the authors of the Declaration of Independence appealed; it was to ‘Nature’s God.’”<sup>97</sup>

To the extent that the premise of friendliness to religion is accurate, the conclusion that prohibition of government support of religion could not have been intended does not follow. Madison himself exposed the fallacy of this reasoning during the debate on the Virginia Assessment Bill. The issue, he said, was “not is Religion necessary—but are Religious Establishments necessary for Religion.”<sup>98</sup> In a letter to Edward Livingston in 1822, Madison referred to “the old error, that without some sort of allegiance or coalition between government and Religion neither can be duly supported.”<sup>99</sup> According to Madison, governmental support was not only unnecessary for religion but detrimental thereto. In the same letter to Livingston he referred to the “lesson that Religion flourishes in greater purity, without than with the aid of government.”<sup>100</sup> He presented the same argument in the Remonstrance against the Assessment Bill.<sup>101</sup> The Presbytery of Hanover, in a memorial against the Bill, made the same argument.<sup>102</sup>

The Baptists’ resolution in opposition similarly argued “that the holy Author of our religion needs no such compulsive measures for the promotion of his cause; that the gospel want not the feeble arm of man for its support. . . .”<sup>103</sup> Another petition pointed out that “Christianity was first planted and propagated through the World for three hundred years without and often against the Use of Secular force and that it is plainly denying the power thereof to say it would soon fail if not supported by Tax and Compulsion.”<sup>104</sup>

<sup>96</sup> Not more than one out of eight Americans, and possibly as few as one out of every twenty-five, then belonged to any church. 1 Stokes, *op. cit. supra* note 65, at 229-30; Garrison, *History of Anti-Catholicism in America, Social Action*, p. 9 (Jan. 15, 1948). Today, about one out of every two Americans is a church member. Census of Religious Bodies, *op. cit. supra* note 36.

<sup>97</sup> Beard, *Rise of American Civilization* 449 (1927).  
<sup>98</sup> Eckenrode, *Separation of Church and State in Virginia* 85 (1910).

<sup>99</sup> Blakely, *American State Papers on Religious Freedom* 193 (3d rev. ed., 1943).

<sup>100</sup> *Ibid.*, at 194.

<sup>101</sup> “Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion have had a contrary effect.”

<sup>102</sup> “[W]e are persuaded that if mankind were left in the quiet possession of their invaluable religious privileges, Christianity would continue to flourish in the greatest purity, by its own natural excellence, and under the all-disposing providence of God.” Blakely, *op. cit. supra* note 99, at 104.

<sup>103</sup> 1 Stokes, *op. cit. supra* note 65, at 373.

<sup>104</sup> *Ibid.*, at 363.



Many other contemporaneous statements can be noted to indicate a widespread view that religion does not need government support. They can be summed up in Jefferson’s aphorism:

“It is error alone which needs the support of government. Truth can stand by itself.”<sup>105</sup>

7. *Virginia’s dissatisfaction.* When the First Amendment in the form in which it was finally adopted was presented for ratification it was opposed by eight members of the Virginia Senate on the ground that

“The . . . amendment recommended by Congress does not prohibit the rights of conscience from being violated or infringed; and although it goes to restrain Congress from passing laws establishing any national religion, they might, notwithstanding, levy taxes to any amount for the support of religion or its preachers; and any particular denomination of Christians might be so favored and supported by the general government, as to give it a decided advantage over the others, and in the process of time render it powerful and dangerous as if it was established as the national religion of the country.”<sup>106</sup>

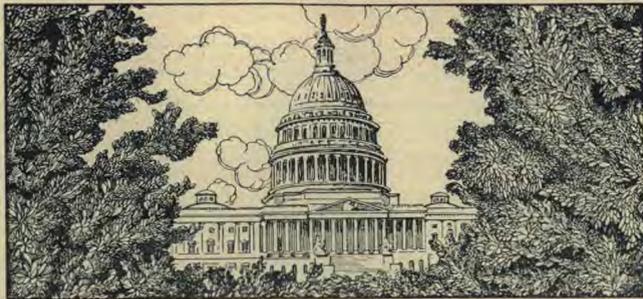
Notwithstanding this argument, the Virginia legislature ratified the Amendment. From this it is inferred that the Amendment had only the limited intent seen by the eight Virginia Senators and that the states in adopting the amendment accepted that limited interpretation.

Unsuccessful arguments against a measure on the ground that it would have certain consequences may give rise to the inference that those who adopted the measure wanted or at least were willing to accept those consequences. But it is at least equally inferrable that those who adopted the measure did not agree that the consequences would follow. In other words, the Virginia legislature may have ratified the amendment, not despite the fact that they believed it would permit Congress to support a particular creed and suppress religious freedom, but because they believed it would have no such effect.<sup>107</sup>

<sup>105</sup> Notes on Virginia in Blau, *Cornerstones of Religious Freedom* 79 (1949).

<sup>106</sup> McCollum Brief, at 53-54; Corwin, *op. cit. supra* note 13, at 12; Murray, *op. cit. supra* note 10, at 43 (emphasis added).

<sup>107</sup> “The fears and doubts of the opposition are no authoritative guide to the construction of legislation.” *Schwegmann Bros. v. Calvert Distillers Corp.*, 71 S. Ct. 745, 750 (1951).



Moreover, the latter inference seems more probable. For even under the O'Neill theory, the author of the quoted statement was wrong in saying that "any particular denomination of Christians might be so favored and supported by the general government, as to give it a decided advantage over the others. . . ." It was exactly this consequence which the O'Neill school claims the First Amendment was framed to avoid. The author was also wrong in arguing that the "amendment recommended by Congress does not prohibit the rights of conscience from being violated or infringed." Is it not more probable that the Virginia legislature deemed him wrong entirely than that it was willing to accept from the federal government consequences which but a few years earlier had been rejected when proposed in the state legislature?

8. *Practical construction.* By far the most frequently cited and undoubtedly the most potent argument in support of the O'Neill thesis is the practical construction argument, i.e., that numerous instances of governmental support of religion at the time of the adoption of the Amendment and since then indicate that it could not have been the intent of the Amendment to prohibit such support. Many examples are cited. For the purpose of this discussion, only those most frequently mentioned will be considered. (They are typical and the comments on these are equally applicable to the others.) They are: chaplaincies in Congress; chaplaincies in the armed forces; presidential Thanksgiving proclamations; tax exemption for religious institutions; compulsory chapel attendance at West Point and Annapolis; and the presence of "In God We Trust" on our coins.<sup>108</sup>

Some of these items may be constitutional under any view of the First Amendment. Chaplains in the armed forces may be necessary under the constitutional guarantee of freedom of conscience. A soldier drafted into the armed forces and sent to camp far from home is deprived of the opportunity to visit his church. To the extent that such deprivation is necessary to the overriding consideration of national defense, it is constitutional.<sup>109</sup> But the deprivation is

<sup>108</sup> O'Neill, *op. cit.* supra note 5, at 102, 110-11; McCollum Brief, at 61-62, 108; Fahy, *op. cit.* supra note 10, at 80-81; Parsons, *op. cit.* supra note 10, at 123-24, 174.

<sup>109</sup> See *Hamilton v. Regents*, 293 U.S. 245 (1934); *Selective Draft Law Cases*, 245 U.S. 366 (1918).

constitutional only to the extent that it is necessary, and if the government can practically furnish a substitute in the form of a traveling church, the soldier may well have a constitutional right thereto. So, too, much of the exemption which religious property enjoys may likewise be justified under the "free exercise" clause.<sup>110</sup>

Items such as the reference to God on coins<sup>111</sup> are insignificant almost to the point of being trivial. It is difficult to justify governmental expenditures of tax-raised funds for religious institutions on the basis of so meaningless an act of ceremonial obeisance. Nor is there much probative value to regulations promulgated by superintendents of military academies, the constitutionality of which has never been judicially tested and which is doubtful under any view of the Constitution.<sup>112</sup>

Finally, some may not be justified even under the restricted O'Neill interpretation. Thus, while President Washington's proclamation recommending a day of Thanksgiving embraced all who believed in a supreme ruler of the universe, President Adams' proclamation called for a Christian worship.<sup>113</sup>

In any event, the probative weight of any of these items is by no means as great as the O'Neill school would have it. The value of practices under a statutory or constitutional provision as evidence of the framers' intent lies in the uncontroverted acceptance of those practices. The value is greatly decreased if not completely vitiated if the statutory or constitutional validity of these practices is seriously contested by persons having responsibility for enforcement of the statute or constitution.

Long before the *Everson-McCollum* decisions, the constitutional validity of every one of these practices was seriously controverted by persons whose views are entitled to great weight in interpreting the First Amendment. Thus Presidents Jefferson, Madison and Jackson all considered Presidential Thanksgiving proclamations to be violative of the First Amendment.<sup>114</sup> Madison considered "the appointment of Chaplains to the two Houses of Congress" as an "establishment" not "consistent with the Constitution."<sup>115</sup> He viewed chaplaincies in the armed forces as an "establishment" prohibited by the Constitution.<sup>116</sup> He referred to a proposal "to exempt Houses of Worship from taxes" as an "encroachment" upon

<sup>110</sup> *Jones v. Opelika*, 319 U.S. 103 (1943) vacating 316 U.S. 584 (1942). *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). Cf. *Grosjean v. American Press Co.*, 297 U.S. 233 (1936). It is sometimes a difficult task to determine where "establishment" ends and "free exercise" begins. See Justice Jackson's dissent in *Kunz v. New York*, 340 U.S. 290, 295 (1951). But the difficult task of drawing lines cannot be avoided in constitutional law.

<sup>111</sup> "In God We Trust" was placed on American coins for the first time in 1864. 3 Stokes, *op. cit.* supra note 65, at 602.

<sup>112</sup> U.S. Const., Art. VI provides that "no religious test shall ever be required as a Qualification to any Office or public Trust under the United States."

<sup>113</sup> Fleet, *op. cit.* supra note 56, at 561.

<sup>114</sup> See p. 43 supra.

<sup>115</sup> Fleet, *op. cit.* supra note 56, at 558.

<sup>116</sup> *Ibid.*, at 559.

“the separation between Religion and Government in the Constitution of the United States.”<sup>117</sup>

Moreover, the practices cited by the O'Neill school, when considered alone, present an incomplete and misleading picture. Contrary practices with respect to other matters are of at least equal evidentiary consequence. Much significance should be attached to the fact that the Constitution contains no invocation to God, nor even mention of God. Indeed, the only mention of religion in the text of the Constitution is the negative one contained in the prohibition of religious tests for office.<sup>118</sup> Most significant of all is that in the 160 years since the First Amendment was adopted Congress has never enacted a general appropriation bill for religion on the nonpreferential basis which the O'Neill theory holds constitutionally permissible.

Anyone familiar with the American political scene can readily appreciate that what holders of political office do is not an infallible guide to what they believe. Madison felt it politically unwise to refuse to proclaim a day of thanksgiving even though he believed it inconsistent with the constitutional prohibition of establishment.<sup>119</sup> A contemporary of Jefferson commented on the President's attendance at chaplain's services in Congress: “The political necessity of paying some respect to the religion of the country is felt.”<sup>120</sup>

Finally, the area of religion and government is not the only one in which practice lags behind principle. The validity of the constitutional principle of freedom of expression is not vitiated by the widespread limitations upon that freedom in actual practice. The Congress which framed the First Amendment's bar on laws abridging freedom of speech or press was pretty much the same Congress which enacted the Alien and Sedition laws. Similarly, the validity of the principle of equality in the Fourteenth Amendment is not destroyed by the widespread unequal treatment accorded to Negroes. Indeed, the gap between principle and practice is far narrower in the area of government-religion relations than in the area of civil liberties and race relations. If the practical construction argument is to be applied universally, not only the “establishment” clause, but all of the First Amendment and the Fourteenth as well might fall.

#### 9. *The Virginia Bill and Madison's Remonstrance.*

A basic difficulty with the whole O'Neill theory is the historical fact that Madison, who played so leading a role in the drafting and adoption of the First Amendment, had only a few years earlier successfully led the opposition to a general appropriation bill in Virginia for the support of religion. During the course

of this struggle he wrote the great Remonstrance setting forth his arguments against establishment.

Madison's role in the drafting and adoption of the First Amendment is not disputed by the O'Neill school.<sup>121</sup> However, O'Neill meets the problem in two ways: he argues, first, that Madison opposed the Assessment Bill because it would establish the Christian religion, and that he would not have opposed it if it were truly nonpreferential;<sup>122</sup> and secondly, that his opposition to a general assessment bill in Virginia is not evidence that he opposed similar action by the federal legislature. The Remonstrance is therefore not to be considered relevant in ascertaining his intent with respect to the First Amendment.<sup>123</sup>

In support of the first argument, O'Neill stresses the following passage in the Remonstrance:

“Who does not see that the same authority which would *establish Christianity, in exclusion of all other Religions*, may *establish with the same ease any particular sect of Christians, in exclusion of all other Sects*? That the same authority which can force a citizen to contribute three pence only of his property for the support of *any one establishment*, may force him to conform to *any other establishment* in all cases whatsoever.”<sup>124</sup>

Madison's Remonstrance, however, presented fifteen arguments against the Assessment Bill. Only this one can be viewed as referring to the exclusive establishment of Christianity. The other arguments are germane whether one or all religions were to be supported by the Assessment. For example, the second argument in the Remonstrance was that “if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body.” There is no reason to assume that this argument was considered by Madison of lesser importance than the argument that establishing Christianity permits the establishing of a particular Christian sect.

The position taken by Madison and Jefferson and their supporters during this period was that religion was exempt from and entirely outside of state authority. Their objection to the fact that the Assessment Bill provided for the support of the “Christian Religion” stemmed at least as much from that reason as from opposition to preferential treatment.

Nor can the Assessment Bill realistically be viewed as preferential. Eckenrode in 1910 called it a proposal for “taxing all citizens for the general support of religion.”<sup>125</sup> Washington did not regard the Bill as supporting Christianity only, believing that its terms permitted grants to non-Christian religious

<sup>117</sup> *Ibid.*, at 555. President Grant, too, opposed tax exemption for church property. 3 Stokes, *op. cit. supra* note 65, at 421.

<sup>118</sup> U.S. Const., Art. VI. It should be noted that this prohibition is difficult to reconcile with the O'Neill theory of non-preference, since the Constitution does not even permit requirement of belief in God as a condition of federal office.

<sup>119</sup> 1 Stokes, *op. cit. supra* note 65, at 491.

<sup>120</sup> *Ibid.*, at 500.

<sup>121</sup> O'Neill, *op. cit. supra* note 5, at 87-88; McCollum Brief, at 38-39; Parsons, *op. cit. supra* note 10, at 30, 36; Meikeljohn, *op. cit. supra* note 14, at 71; Fahy, *op. cit. supra* note 10, at 79.

<sup>122</sup> O'Neill, *op. cit. supra* note 5, at 59-60, 89-90, 240; McCollum Brief, at 29, 43; Corwin, *op. cit. supra* note 13, at 10.

<sup>123</sup> O'Neill, *op. cit. supra* note 5, at 103, 194.

<sup>124</sup> *Ibid.*, at 89.

<sup>125</sup> Eckenrode, *op. cit. supra* note 98, at 53.

teachers.<sup>129</sup> And the Bill even provided for those who professed no religion, Christian or non-Christian, by permitting them to direct that their tax be used for general educational purposes.<sup>127</sup>

If the Jefferson-Madison group had favored general support of religion and objected to the Bill only because it was preferential, they would not have opposed it in toto. It would have been a simple matter to propose amending the Bill to provide for all religions, particularly since none other than the Christian religion existed in Virginia.<sup>128</sup> Instead they opposed the fundamental theory of the Bill, as is clear from the fact that they followed the successful campaign against the Bill by bringing about the enactment of Jefferson's Act for Establishing Religious Freedom. The preamble of that Act asserts, *inter alia*, that "Forcing [a person] to support this or that teacher of his own persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern." The Act then provides "that no man shall be compelled to frequent or support *any* religious worship, place or ministry whatsoever." (Emphasis added.)

Jefferson's Act and the struggle against the Assessment Bill which preceded it represented incidents manifesting a growing American tradition of voluntary support of religion which culminated in the adoption of the First Amendment. The tradition can be traced back to Milton<sup>129</sup> and Locke<sup>130</sup> in England. Roger Williams, Benjamin Franklin<sup>131</sup> and George Mason<sup>132</sup> were some of the better known molders of public opinion in America who expressed the same tradition. It was because the Assessment Bill violated the principle of voluntariness rather than because Christianity was selected as the exclusive beneficiary of the State's bounty that Jefferson and Madison opposed it so strenuously.

It is therefore not surprising that apparently only Corwin follows O'Neill in arguing that Madison opposed the Assessment Bill only because it was preferential.<sup>133</sup> The other supporters of the narrow interpretation rest their argument on the contention that although he opposed non-preferential support by the Virginia legislature, he did not oppose such support by the federal legislature. The considerations he set forth in the Remonstrance are therefore not relevant to a determination of his intent in respect to the First Amendment. In the words of O'Neill:

<sup>129</sup> 1 Stokes, *op. cit. supra* note 65, at 312. See letter to George Mason commenting on Madison's Remonstrance, in 28 Writings of Washington 285 (Fitzpatrick ed., 1938): "I am not amongst the number of those who are so much alarmed at the thoughts of making people pay towards the support of that which they profess, if of the denomination of Christians; or declare themselves Jews, Mahomitans or otherwise, and thereby obtain proper relief."

<sup>127</sup> See p. 48 *supra*.

<sup>128</sup> See p. 40 *supra*.

<sup>129</sup> 1 Stokes, *op. cit. supra* note 65, at 127.

<sup>130</sup> *Ibid.*, at 143.

<sup>131</sup> *Ibid.*, at 297.

"Even if Madison had advocated legislation in the State of Virginia which totally prohibited any contact between government and religion, any support of religion by public money (which he never did), it would not follow that he believed in similar provisions in the Constitution and laws of the United States."<sup>134</sup>

This reasoning does not prove anything of value if, as has been indicated, Madison used the term "establishment" in the First Amendment as he used it elsewhere to describe the nonpreferential institutions of chaplaincies in Congress and in the armed forces, and, above all, the type of support contemplated by the Assessment Bill. There is no reason to believe that Madison favored a narrower restriction on the powers of the federal legislature than on the Virginia legislature. The arguments presented in the Remonstrance would hardly have been less relevant if the Assessment Bill had been introduced in Congress. There is no evidence that Madison changed his views between 1784 and 1791; all the evidence is to the contrary. As Father Murray says:

"For Madison, as for John Locke, his master, religion could not by law be made a concern of the commonwealth as such, deserving in any degree of public recognition or aid, for the essentially theological reason that it is of its nature a personal, private interior matter of the individual conscience, having no relevance to the public concerns of the state."<sup>135</sup>

This was Madison's philosophy, expressed in the Remonstrance in the maxim: "religion is wholly exempt from its [government's] cognizance." It was the philosophy of Locke,<sup>136</sup> Roger Williams,<sup>137</sup> Isaac Backus,<sup>138</sup> Tom Paine,<sup>139</sup> and Jefferson.<sup>140</sup> That philos-

<sup>132</sup> *Ibid.*, at 305.

<sup>133</sup> Corwin, *op. cit. supra* note 13, at 10.

<sup>134</sup> O'Neill, *op. cit. supra* note 5, at 103, 73, 194. See also McCollum Brief, at 28, 43; Corwin, *op. cit. supra* note 13, at 11, 13; Murray, *op. cit. supra* note 10, at 28-31; Meikeljohn, *op. cit. supra* note 14, at 70-71; Fahy, *op. cit. supra* note 10, at 79-80, 86; Parsons, *op. cit. supra* note 10, at 31, 36-38, 43, 143, 145.

<sup>135</sup> Murray, *op. cit. supra* note 10, at 29.

<sup>136</sup> "Now that the whole jurisdiction of the magistrate reaches only to these civil concerns, and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls, these following considerations seem unto me abundantly to demonstrate. First, because the care of souls is not committed to the civil magistrate, any more than to other men." Letters Concerning Toleration 172 (Appleton-Century ed., 1937). Locke finds the Commonwealth "a society of men constituted only for procuring, preserving, and advancing their own civil interests." *Ibid.*

<sup>137</sup> "All Civil States with their Officers of Justice, in their respective constitutions and administrations are . . . essentially Civil, and therefore not Judges, Governors, or Defenders of the Spiritual, or Christian, State and Worship." Bloody Tenet of Persecution, in Blau, *op. cit. supra* note 49, at 36.

<sup>138</sup> "That the Representatives in former Assemblies, as well as the present, were elected by virtue only of civil and worldly qualifications, is a truth so evident, that we presume it need not be proved to this Assembly; and for a civil Legislature to impose religious taxes, is, we conceive, a power which their constituents never had to give; and is therefore going entirely out of their jurisdiction. . . ." Resolution of the Warren Association (said to be under the influence of Backus), quoted in 1 Stokes, *op. cit. supra* note 65, at 308.

<sup>139</sup> "As to religion, I hold it to be the indispensable duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith." Common Sense, in 1 Writings of Thomas Paine 108 (Conway ed., 1894).

<sup>140</sup> "But our rulers can have no authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God." Notes on Virginia, in Blau, *op. cit. supra* note 49, at 78.



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ophy has become immortalized in Jefferson's "wall of separation between church and state" and has become universally accepted in the popular expression that "religion is a private matter." It has truly become an American tradition. Acceptance of the O'Neill thesis means the destruction of that tradition. The evidence presented by O'Neill and his followers does not justify such a result.

#### CONCLUSION

Acceptance of the O'Neill thesis would pervert the First Amendment to an end directly opposite to its purpose, for all in the O'Neill school agree that, absent the First Amendment, the federal government had no power to aid religion on a preferential or non-preferential basis.<sup>141</sup> As Madison put it, "there is not a shadow of right in the general government to intermeddle with religion."<sup>142</sup> The purpose of the First Amendment was to make this assurance doubly sure. The result, if the O'Neill school is to be believed, is that by the prohibition *against* laws respecting an establishment of religion, the "shadow of right" which did not exist was made a reality. This is the sum and all of the O'Neill theory.

<sup>141</sup> O'Neill, *op. cit.* supra note 5, at 94; Parsons, *op. cit.* supra note 10, at 19-21, 95; McCollum Brief, at 31, 40; Fahy, *op. cit.* supra note 10, at 78.

<sup>142</sup> 5 Madison 176 (Hunt ed., 1920). "The government has no jurisdiction over it." *Ibid.*, at 132. "Mr. Sherman thought the Amendment altogether unnecessary inasmuch as Congress had no authority whatever delegated to them by the Constitution to make religious establishment." 1 Annals of Congress 729 (1789). See also 3 Elliot's Debates 93, 204-205 (1836).



#### Sorry

On the center pages of the last issue of this magazine we used this very fine pen drawing of the Pilgrim Thanksgiving of 1623. It was drawn by Norman Price for the International Nickel Company, Inc., of New York, and it was copyrighted by them. This company very courteously gave us special permission to use this picture, but we inadvertently failed to give proper credit. We are very sorry.



Washington with his family in his beloved Mount Vernon home.

E. Percy Moran, Artist

## George Washington on Religious Laws

NOTE.—The quotations from Washington used on this page were taken from the 1939 edition of J. C. Fitzpatrick, which was published by the authority of the Library of Congress, or from the letter books in the Manuscript Division. In Washington's day there were no carbon copies made of letters which he sent out, but every letter was copied by hand in what was known as a letter book.

### To the Baptists

[In response to an address of the General Committee representing the United Baptist Churches in Virginia, assembled in the city of Richmond, May 8, 9, 10, 1789, Washington said:]

**I**F I COULD HAVE entertained the slightest apprehension, that the constitution framed in the convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it; and, if I could now conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution—For you doubtless remember, that I have often expressed my sentiments, that every man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshipping the Deity according to the dictates of his own conscience.—Writings of George Washington (J. C.

Fitzpatrick, ed.), vol. 30, p. 321 (from *George Washington Papers*, Letter Book 29, p. 84, Manuscript Division, Library of Congress).

### To Methodists

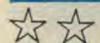
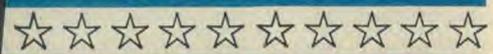
[In addressing the bishops of the Methodist Episcopal Church in the United States of America, May 29, 1789, Washington declared that he believed in preserving civil and religious liberty for the American people, not only in the letter but in the spirit, and he promised:]

It shall still be my endeavor to manifest by overt acts, the purity of my inclinations for promoting the happiness of mankind, as well as the sincerity of my desires to contribute whatever may be in my power towards the preservation of the civil and religious liberties of the American People.—*Ibid.*, Letter Book 29, p. 26; see also *The Writings of George Washington* (Sparks ed.) vol. 12, pp. 153, 154.

### To the Presbyterians

[In a communication to the General Assembly of the Presbyterian Church in the United States of America, Washington admonished Christians to live up to their profession since the state had become a protector of the rights of conscience:]

While all men within our territories are protected in worshipping the Deity according to the dictates of their consciences; it is rationally to be expected from them in return, that they will all be emulous of evincing the sincerity of their professions by the innocence of their lives, and the beneficence of their actions.—*Ibid.*, vol. 30, p. 336 (from Letter Book 29, p. 28).



# Lincoln

on the  
**CONSTITUTION**

“Our safety, our liberty, depends upon preserving the Constitution of the United States as our fathers made it, inviolate.”

“The people of these United States are the rightful masters of both Congresses and Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution.”

Review Pictures

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