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Can We Count on the Court?

Can We Count on the Court?

By James V. Stephens, Jr.

In a national crisis, with human rights at stake, will the United States Supreme Court stand by the Constitution?

The year is 1984. The warring dictatorships of George Orwell's prophetic book* dominate the world. In America, human rights are hanging by a thread. At last the crucial issue that will mean freedom or enslavement comes before the United States Supreme Court.

Across the land, factories are closed. Hungry mobs are scavenging the streets. A cold winter without fuel confronts the nation. Military fingers tug restlessly at nuclear triggers.

Outside the Supreme Court, religious fanatics are heard chanting that a despised minority must be exterminated if the plagues afflicting the nation are to be turned away. God is punishing the land.

And only God can save the land. If the Court rules correctly, and the obstructionist minority can be imprisoned or at least put out of the way, unity will prevail, and in its train will come peace and prosperity.

It all depends on the Court . . .

The United States Supreme Court has come to be viewed as the protector of individual rights when all other courts have failed, the bastion of civil and religious liberties when all other bastions have fallen. Is the image warranted? Will we be able to count on the Court in that future crisis that, in some form or another, seems sure to come?

The Court weighs evidence in the scales of precedents handed down in previous cases. The record is open for our inspection. Let's look at it.

A quick trip through the Court's casebook can hardly be the basis for a sure prediction of how the Court will react in a future national crisis. But evidence therein should puncture illusions about the immutability of Constitutional rights.

Evidence with case names such as *Hirabayashi v. United States*, *Korematsu v. United States*, and *Ex parte Endo*. Strange names. Strange words. And strange decisions from a Court committed to inalienable rights and self-evident truths.

But let's start at the beginning.

The Court's mandate to rule on the constitutionality of State and Federal statutes is called judicial review. The "doctrine," as lawyers call it, has evolved cautiously from an 1803 case. At first the Court lacked sufficient power and prestige to rule on legislation, even if it had desired to do so. That right was reserved for Congress and the President. During the first three years of its existence the High Court had no cases of any kind to decide.

Then, in 1803's *Marbury v. Madison*, Chief Justice John Marshall shocked the Government by declaring a section of the Judicial Act of 1789 void—the first time a law passed by Congress had been negated. Whether one cries "hurrah" or "usurpation," judicial review was on the road.

The doctrine gained prestige slowly. Not until the late nineteenth century did the Court begin to assert itself as the final arbiter of the Constitution. Not until 1926 did Chief Justice Charles Evans Hughes venture to assert that the Constitution "is what the Supreme Court says it is."

The power of the Court to touch dynamically every American citizen grew through the years. The following table shows the number of State and Federal acts declared unconstitutional by the Court during specific periods.

Years	State	Federal
1790-1861	60	2
1874-1898	125	12
1898-1937	400	50

For nearly a century now, the Court has stood upon the summit of political—as well as judicial—prestige and power. Whether this is what our forefathers intended is academic. The Court is there.

A first point to note about the Court, as we look down the road to what may be, is that it flip-flops. Constitutional

James V. Stephens, Jr., is a free-lance writer in Glendale, California.

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principles are asserted and denied, emphasized and de-emphasized, watered down and watered up. Take as one example "clear and present danger"—a doctrine that has great potential to destroy individual rights.

Justice Oliver Wendell Holmes first enunciated this principle in 1919 in *Schenck v. United States*. Explained Holmes: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

However, in 1920, in *Pierce v. United States*, the Court adopted the "bad tendency" doctrine, ignoring for the moment "clear and present danger." Holmes and Brandeis dissented emotionally, charging that "bad tendency" was not enough. But "clear and present danger" took a judicial back seat to "bad tendency" for the remainder of World War I and shortly thereafter.

In 1937 the Supreme Court revived "clear and present danger" for *Herndon v. Lowry*, which struck down the Georgia conviction of a Communist Party leader. Three years later the Court again pled "clear and present danger" in *Minersville School District v. Gobitis*, ruling the school district acted within legal boundaries in expelling two Jehovah's Witnesses children for refusing to salute the flag. Justice Frankfurter's opinion held that the interests of the majority were of more importance than the rights of the minority.

After another interval of three years, in *West Virginia State Board of Education v. Barnette*, the Court gave "clear and present danger" new life in using it to overrule *Minersville School District v. Gobitis*, though the two cases were similar. These two decisions, with several others, stand ingloriously in the Court's annals as the "Witness Cases."

What concerns us is not so much the merits of each case, but the fact that the Court has flip-flopped to such a degree on just one point of judicial doctrine. Nor does this phenomenon end with "clear and present danger."

In 1862 Congress passed the Legal Tender Act, making "greenbacks" legal currency for all public and private debts during the Civil War. The law came before the Supreme Court in 1870, a few hours before President Grant nominated Joseph P. Bradley and William Strong to the High Bench. Short two members, the Court ruled (4 to 3) the Legal Tender Act of 1862 unconstitutional (*Hepburn v. Griswold*).

Because the President strongly disapproved of the *Hepburn* verdict, the nation focused its attention on the enlarged Court. One year later, in *Second Legal Tender Cases*, the Court, as predicted, formally overruled *Hepburn* with a crisp "party-line" vote of 5 to 4, Grant's two new appointees making the new majority. Thus a President, using his input into the Court, decided the legality of suspect legislation. Court watchers were left to ponder the extent to which the Bench is affected by the winds of political thought.

The Court's inconsistency continued in another set of Jehovah's Witnesses cases. In *Jones v. Opelika* (1942), the Court determined that Opelika's (Alabama) city ordinance requiring book peddlers to secure a $10 license, was constitutional. But one year later, Justice Douglas, speaking for the new majority in *Murdock v. Pennsylvania*, overruled the Opelika case.

Another flip-flop of momentous proportions was set up by an 1876 decision. During the late 1800's the country was chafing under the last of the radical Republican Reconstruction policies that followed the Civil War. The radicals had endeavored to deny the right of suffrage and officeholding to all who took part in or gave comfort to the Confederate war effort. A backlash soon developed, as frustrated Southern whites retaliated. The Court, possibly without conscious intent, was instrumental in promoting "white supremacy" and aided Southern racist whites in setting up a *de facto* apartheid society.

The first step was taken in 1876, when the Court denied in *United States v. Cruikshank* that the Fourteenth Amendment guaranteed the private rights of individuals against discrimination by other individuals. Next, using the logic of Cruikshank, the Court declared the Civil Rights Act of 1875 unconstitutional. These decisions served as a signal to the South that the Federal Government would not—and could not—constitutionally protect the Negro from discrimination by individuals.

The much-maligned *Plessy v. Ferguson* decision of 1896 sanctioned the "Jim Crow" law requiring that "separate but equal" facilities be provided Negroes traveling on Louisiana State railway coaches. "Separate but equal" schools soon were constitutionalized under *Cumming v. County Board of Education* and *Berea College v. Kentucky*.

The late 1940's and early 1950's brought serious questions, however, as to the constitutionality of Jim Crow laws. The words of Chief Justice Hughes lingered hauntingly from *Plessy v. Ferguson:* ". . . our constitution is colorblind." Finally, in *Brown v. Board of Education of Topeka* and *Bolling v. Sharpe*, the Warren Court ruled unanimously that school segregation was unconstitutional. The "separate but equal" doctrine, as applied to schools, was overthrown.

The most auspicious case of judicial flip-flop occurred after the emotion-charged Roosevelt court-packing controversy. The 1936 election provided such an overwhelming public mandate of Rooseveltian policies that the Court was hard pressed to explain its own lack of acceptance. Before 1936 the High Court had, of course, thrown out almost every major piece of New Deal legislation as unconstitutional. This so enraged President Roosevelt that he decided upon a course of ingenious sophistry.

The President's thinly disguised program of updating the "nine old men" on the Court released a veritable avalanche of criticism. "The belief had long since grown up that the Court was an inviolable guardian of constitutional light and truth, holding forth far above the noisome sea of politics and secure against congressional muddling."[1] Though he lost the battle handily, Roosevelt won the war. The Court, beginning during the midst of the court-packing battle, executed the most astounding reversal of opinion in its history.[2]

If not versed in Supreme Court history, the reader may be wondering whether these instances of High Court vacillation represent only isolated cases. Such is definitely not the case. The Supreme Court has reversed itself at least 100 times in its 186-year history! E. S. Corwin, professor of history and politics at Princeton University and longtime Supreme Court analyst, drives the point home: "The ladder having served its

purpose—having put the Court in the second story—is kicked down."[3]

Several factors are influential in the determination of our "living Constitution." Each justice attains the Bench through nomination by a President—usually because of a philosophy held by that justice that the President believes is needed by the Court and the country. Therefore, a justice is expected, not unreasonably, to exercise his beliefs. That this is so has often been a source of irritation even among the jurists themselves. Justice Felix Frankfurter once noted how Justice Holmes constantly battled the practice of judges inserting their own socio-economic ideas into Supreme Court doctrine.[4] Justice John Marshall Harlan charged the Court in *Harper v. Virginia Board of Elections* with molding its decision after the "current egalitarian notion." In turn, Justice George Sutherland lamented that the meaning of the Constitution could change "with the ebb and flow of economic events."[5]

With a view to the High Court's capitulation to Roosevelt's New Deal, it seems fair to agree with the fictional Mr. Dooley that, "No matter whether th' constitution follows th' flag or not, th' supreme coort follows th' iliction returns."[6] Many, however, choose to side with Richard E. Morgan, assistant professor of government and legal studies, Bowdoin College: "Tidiness and symmetry and coherence are not ultimate values; they are only *among* the values which the Justices must strive to serve. *The value of doctrinal consistency may be properly jostled by the demands of political adjustment.*"[7]

The problem is that political processes, sensitive as they are to majority prejudices, may lack concern for basic minority rights.

A case in point—and a powerful one it is—concerned Japanese Americans during World War II. Under Executive Order No. 9066, 112,000 persons of Japanese descent, feared as "possible spies" who "might conspire" with the enemy, were uprooted from their homes and confined in prison camps. Some 70,000 were actually American citizens![8] Surely, we might think, the Supreme Court of the United States of America would never allow such a thing to happen in this land of respect for constitutional rights.

The Supreme Court dealt with the issue in *Hirabayashi v. United States*, *Korematsu v. United States*, and *Ex parte Endo*. Caught up in the terror of the times, the Court upheld the Presidential program of confinement in almost its entirety. American citizens, at great personal loss, were confined until the war was over.

"As a result of the Court's opinions," say constitutional scholars Kelly and Harbison, "it is now written into constitutional law that a citizen of the United States, set apart from his fellows only by race, may be expelled from his home, separated from his native community, forcibly transported to a concentration camp, and there detained against his will, at least until his loyalty has been established."[9]

And what of the future?

Kelly and Harbison are frank: "In future wars, no person belonging to a racial, religious, cultural, or political minority can be assured that community prejudice and bigotry will not express itself in a program of suppression justified as 'military necessity,' with the resulting destruction of his basic rights as a member of a free society."[10]

The year is 1984. Again we face a national crisis. And outside the Court religious fanatics are heard chanting that a despised religious minority must be exterminated if the nation is to regain the approval of God.

Is it really a farfetched scenario? Or have we forgotten that during the cold winter of the past energy crisis, demands were heard for stringent Sunday laws that would close everything on the "Lord's Day"? Only for the national good, of course. Of *course!* The fact that twenty spokesmen who testified for Sunday laws before a Massachusetts committee were all clergymen should not alarm us. After all, not one of them mentioned a religious reason for his concern. All spoke of sociological factors—the family, togetherness, the benefits of a day of rest. All put their concerns in the context of the energy crisis and national priorities. Patriotism. Loyalty.

And what of it, that two States recently introduced energy-crisis Sunday bills that for the first time place transgressions under the *criminal* code? One provided a minimum fine of $5,000 and a maximum of $25,000.

And what of it that scores of religious leaders have been quoted in religious publications and elsewhere to this effect: The energy crisis offers a God-given *secular* purpose for restoring the Lord's Day to its proper place in this Christian republic.

Can we count on the Court in a future crisis? Or is it true that no "person belonging to a racial, religious, cultural, or political minority can be assured that community prejudice and bigotry will not express itself in a program of suppression justified as . . . 'necessity,' with the resulting destruction of his basic rights as a member of a free society"?

The record is open for our inspection. *Hirabayashi v. United States . . . Korematsu v. United States . . .* □

References

* See George Orwell's *1984*.

[1] Winfred A. Harbison and Alfred H. Kelly, *The American Constitution*, 4th ed. (New York, 1970), p. 763.

[2] *Morehead v. New York ex. rel. Tipaldo* and *Adkins v. Children's Hospital* were overturned by *West Coast Hotel Co. v. Parrish*. *National Labor Relations Board v. Jones and Laughlin Steel Corporation* struck down *Schechter v. United States* and *Carter v. Carter Coal Co.* as inapplicable. *United States v. Butler* was set aside by *Stewart Machine Co. v. Davis*. *Mulford v. Smith* sustained a new Agriculture Adjustment Act, the likes of which had been declared unconstitutional in *United States v. Butler*. *Sunshine Anthracite Coal Co. v. Adkins* accepted the Bituminous Coal Act of 1937, replacing one that had been voided by *Carter v. Carter Coal Co.* Many more examples could be cited.

[3] E. S. Corwin, *Court Over Constitution* (Princeton, 1938), p. 190.

[4] Felix Frankfurter, *Mr. Justice Holmes and the Supreme Court* (Cambridge, 1939), p. 34.

[5] *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

[6] Finley Peter Dunne, *Mr. Dooley in Peace and in War*, on "The Supreme Court's Decisions" (1898).

[7] Richard E. Morgan, *The Supreme Court and Religion* (New York, 1972), p. 202. (Italics supplied.)

[8] Harbison, *op. cit.*, p. 840.

[9] *Ibid.*, p. 845.

[10] *Ibid.*, p. 846.

"Prophets With Honor"

Reviewed by Haven B. Gow

ILLUSTRATED BY JEFF DEVER

At its best, judicial dissent is a form of prophecy, in the Biblical sense of that term. Judicial dissent does not merely reflect a protest against what the dissenters deem to be errors and injustices, but also Isaiah-like warnings of pernicious consequences. Judicial dissenters shall be judged wise or foolish as the unfolding of events prove them to be correct or in error.

"A dissent in a court of last resort," wrote Charles Evans Hughes in 1928, "is an appeal to the brooding spirit of the law to the intelligence of a future day, when a later decision may possibly correct the error in which the dissenting judge believes the court to have been betrayed."

Sometimes a court—the Supreme Court, for example—does reverse itself, and the factors that motivate such a reversal are, as Alan Barth points out in his fine work, *Prophets With Honor*,* complex and difficult to isolate in particular cases. But Mr. Barth, a former editorial writer for the Washington *Post*, does suggest four explanations that help one understand better why the Supreme Court reverses itself.

1. One explanation is a change of mind by an individual justice, which, observes Mr. Barth, "affords a rather reassuring sense that justices are, after all, human" (page 16). Justice William O. Douglas, for example, in a case involving the use of a concealed microphone to obtain information from a suspected narcotics dealer (the 1942 case of *Goldman v. United States*), recalled and recanted an opinion he had expressed in a comparable case fourteen years before, when he had joined the Court in upholding a similar kind of eavesdropping. "Since that time," he wrote, "various aspects of the problem have appeared again and again in cases before us. I now more fully appreciate the vice of the practices spawned by *Olmstead* and *Goldman*. Reflection on them has brought new insight to me. I now feel I was wrong in the *Goldman* case" (*Lee v. United States*, 1952).

2. Another explanation for judicial reversal is a change in Court personnel. Judges retire or pass away and, generally speaking, a President seeks to nominate new justices who share his political and legal philosophy. To be sure, the hope is often disappointed; but, as Mr. Barth observes, "few things that a President does more indelibly leave upon the future the imprint of his personality" (page 17).

3. Another explanation for judicial reversal is an advance in knowledge. A judge's judicial philosophy and view of what is constitutionally permissible may be influenced by new concepts of manners and morals, and new insights into human nature.

4. Moreover, there is the impact of experience on the thinking judges. Mr. Barth believes that experience probably has been the primary motivating factor in judicial reversal. Experience, he thinks, has caused the Supreme Court to realize that "doctrines and principles of law, adopted in good conscience and upon the basis of what seems compelling reason, simply do not fit the realities of life—in short, simply do not work" (page 19).

One famous and courageous dissent, which ultimately led to judicial reversal, appeared in *Olmstead v. United States*, with Supreme Court Justice Louis D. Brandeis the dissenter. The *Olmstead* case (which involved a businessman named Ralph Olmstead, federal agents, wiretapping, and the possibility of bootlegging) was considered by the Supreme Court in 1928. The Court agreed to hear the case with one distinct restriction: that the hearing should be confined to the question of whether the use of evidence of private telephone conversations between defendants and others, intercepted by means of wiretapping, amounted to a violation of the Fourth and Fifth Amendments. But in its opinions and in some of the dissents, the Supreme Court went beyond its own limitations and dealt with the issue of whether evidence obtained through a violation of State law is

Haven B. Gow is a free-lance writer in Arlington Heights, Illinois.

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admissible in a Federal court.

The Court rejected the Olmstead defense by a 5-4 decision. Writing for the majority, Chief Justice William Howard Taft rejected the view that the Fourth Amendment applied to telephone conversations. The Fourth Amendment, he argued, does not forbid the use of evidence of private conversations (telephone), intercepted by means of wiretapping. He wrote: "There was no searching. There was no seizure. The evidence was secured by the sense of hearing and that only. There was no entry of the house or of the offices of the defendant." The rational view, he believed, is that "one who installs in his house a telephone instrument with connecting wires intends to project his voice to those quite outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment." Those who intercepted the telephone conversations, he wrote, "were not in the house of either party to the conversation."

Regarding the argument that the evidence obtained through wiretapping "was inadmissible because the mode of obtaining it was unethical and a misdemeanor under the law in Washington," Chief Justice Taft replied: "A standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore."

But Justice Louis D. Brandeis, in one of the most impassioned and eloquent dissents in American legal literature, sharply disagreed. He pleaded for application of the Fourth and Fifth Amendments not in their narrow, literal terms, but rather in a larger design as a safeguard of liberty and the right to privacy essential to the idea of human dignity and freedom.

"The makers of our Constitution," wrote Justice Brandeis, "undertook to secure conditions favorable to the pursuit of happiness. . . . They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." To safeguard that right, continued Justice Brandeis, "every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." The use of evidence obtained by such an intrusion, he wrote, must be considered a violation of the Fifth Amendment.

According to Justice Brandeis, it is "immaterial where the physical connection with the telephone wires leading into the defendant's premise was made. And it also is immaterial that the intrusion was in the aid of law enforcement." Human beings accustomed to liberty are "naturally alert to repel invasion of their liberty by evil-minded rulers," but, contended Louis Brandeis, experience ought to have taught us that we must be "most on guard to protect liberty when the Government's purposes are beneficent."

The most awesome and pernicious assaults on liberty, he continued, "lurk in insidious encroachments by men of zeal, well-meaning but without understanding." For "decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen." In a government of laws rather than of men, the existence of government shall be "imperiled if it fails to observe the law scrupulously." For good or bad, government "teaches the whole people by its example." If government becomes a lawbreaker, Justice Brandeis contended, "it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy." For the Supreme Court or any other branch of our government to declare that "in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution." Against this false and pernicious doctrine, concluded Justice Brandeis, "this Court should resolutely set its face."

Almost four decades later, in 1967, the Supreme Court, at long last, acknowledged the rightness of Justice Brandeis' position. In the case of *Katz v. United States*, Justice Potter Stewart stated, "Although a closely divided Court supposed in *Olmstead* that surveillance without any trespass and without the seizure of any material object fell outside the ambit of the Constitution, we have since departed from the narrow view on which that decision rested."

Justice Stewart further contended that "the underpinnings of the *Olmstead* decision have been so eroded that the 'trespass' doctrine there enunciated can no longer be regarded as controlling." The activities of the Federal Government "in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance."

When one rereads Justice Louis Brandeis' eloquent and persuasive dissent in the *Olmstead* case, thirty-nine years before the Supreme Court embraced its essential ideas, one sees that the true importance of the dissent lies, as Alan Barth points out, "in its visualization of privacy as an essential human value and in its broad reading of the Fourth Amendment as designed to guarantee that value, treating it as an essential aspect of human liberty" (page 78).

If judicial dissenters are, in a sense, prophets, as Mr. Barth thinks they are, then such a judicial dissenter as Louis D. Brandeis (in the 1928 case of *Olmstead v. United States*) indeed is a "prophet with honor." □

High Court Waffles on Church-State Questions

By Stan Hastey

Judging from actions taken during the recently concluded term of the United States Supreme Court, some clouds appear to be gathering on the horizon of church-state relations in the United States.

In two major church-state areas, the High Court upheld most parts of an Ohio program that provides funding for parochial schools and ruled that TWA could discharge a worker who insisted on observing Saturday as a day of rest because of religious convictions.

In its Ohio parochial-aid decision the justices dissected, piece by piece, a complex program enacted by the State legislature designed to funnel more than $88 million during the current two-year period to nonpublic schools.

In a complicated set of decisions, the Court ruled that four of the six sections in Ohio's law do not violate the First Amendment ban on establishment of religion. The justices struck down the other two provisions.

One significant aspect to the actions was the margins of victory and defeat. They were as follows:

—*Textbooks*, upheld, 6-3;
—*Standardized tests and scoring services;* upheld, 6-3;
—*Diagnostic services:* upheld, 8-1;
—*Therapeutic services:* upheld, 7-2;
—*Instructional materials and equipment:* struck down, 5-4;
—*Field trip transportation:* struck down, 5-4.

Numerous religious and civil liberties groups had asked the High Court to strike down the entire Ohio program except for the textbook-loan provision. The decision upholding the loan of secular textbooks to parochial schoolchildren surprised no one. Nine years ago, in *Board of Education v. Allen*, the Court upheld such loans.

In the Ohio case the High Court for the first time upheld provision of standardized testing and scoring, reading and hearing diagnostic services to be performed on the nonpublic schools' premises, and therapeutic services to be rendered in State-owned facilities.

Of concern is the margin in the two votes striking down provisions in the Ohio law for instructional materials and equipment and field trip transportation. In each case the margin was 5-4.

In a series of similar cases over the past several years, the margin has always been larger. Most such cases have been decided by 9-0 or 8-1 decisions. Only two years ago the Court struck down similar provisions in a Pennsylvania law 7-2.

The narrow 5-4 portions of the Ohio ruling also sound a warning that the switch of only one vote would have meant declaring the entire Ohio package constitutional. The resignation, for reasons of health or age, of either of the two strongest advocates of church-state separation on the present court, Justices William J. Brennan, Jr., and Thurgood Marshall, might well result in further erosion of *Everson*.

Three justices seemed to echo this fear in strongly worded dissents. Justice Marshall attacked the majority thinking, saying that what was once a "high and impregnable wall between church and state" has been reduced to a "blurred, indistinct, and variable barrier." The latter term was used in the majority opinion to describe proper church-state relations.

Justice Brennan also objected, saying that the Ohio program may result in creating a "divisive political potential of unusual magnitude." Justice John Paul Stevens spoke of "corrosive precedents."

In two separate cases involving Sabbath observance the justices made it easier for companies to reject demands of employees who insist on having Saturdays off for purposes of religious observance. Though affirming that "the employer's statutory obligation to make reasonable accommodation for the religious observances of its employees . . . is clear," the Court left unclear just what effort or money the employer would have to expend to do so.

The key phrase in the Court's decision was "short of incurring an undue hardship." Sabbathkeepers already are finding employers less willing to shift work schedules or incur expense to accommodate religious conscience.

In other church-state actions, the High Court announced that it will hear arguments next term in a case involving a Tennessee Baptist minister's challenge to the State constitution's prohibition against clergy in the State legislature. The Court will also hear a case brought by the Calvary Baptist Church of Washington, D.C., charging that a District of Columbia law that invalidates certain bequests to churches violates the First Amendment. Also to be heard is a challenge by a Roman Catholic academy in New York that the State owes money to the school for expenses incurred under provisions of a law later struck down by the Supreme Court.

The justices declined to review cases challenging a Fairfax County, Virginia, zoning ordinance prohibiting home church services; a Nashville, Tennessee, restriction against construction of a church building in a subdivision; and a challenge by the Roman Catholic bishop of Gary, Indiana, that a National Labor Relations Board (NLRB) effort to unionize lay teachers in parochial schools violates the First Amendment.

On a more positive note, the Court upheld the First Amendment right of Jehovah's Witnesses in New Hampshire to refuse to display that State's motto, "Live free or die," on their automobile license plates. □

Stan Hastey is assistant to the director, Baptist Joint Committee on Public Affairs, Washington, D.C.

Parochiaid v. The Constitution: A Continuing Battle

By Edd Doerr

The principal argument against parochiaid is that denominational schools are religious institutions, integral components of the religious mission of the sponsoring churches.

Thomas Nast, circa 1872, New York State

Within two weeks in late June and early July of 1977 the Vatican and the United States Supreme Court both handed down significant declarations on church-state matters. The Rome-based headquarters of the Roman Catholic Church issued a document on July 5 urging its bishops, particularly in the United States, to press government for tax aid for the church's private schools. The Vatican demand came less than two weeks after the American Supreme Court had once again ruled State aid to parochial schools to be in violation of the First Amendment to the United States Constitution.

Thus was prolonged the most enduring controversy in the history of education and church-state relations, the struggle over "parochiaid"—public aid for reli-

gious schools. It has led to bitter legislative battles and hotly contested referendum elections. Rivers of ink and years of media time have been devoted to it. The Supreme Court has ruled repeatedly on the subject. Yet the controversy rages on.

Advocates of parochiaid argue that to exclude parochial students from the benefits of taxes raised for education is to interfere with their educational and religious freedom and to discriminate against them because of their religion. Some argue that public schools teach "secular humanism" and that confining public support to public schools deprives certain parents of free exercise and equal protection rights under the First and Fourteenth Amendments.

The advocates further argue that parochiaid would promote educational diversity and pluralism, that nonpublic schools relieve taxpayers and therefore deserve some public aid, that denying tax aid would mean the closing of many parochial schools and shifting of heavy burdens to public schools.

The principal argument against parochiaid stems from the fact that denominational schools are, in theory and in practice, religious institutions, integral components of the religious mission of the sponsoring churches. Otto Kraushaar recognized this when he wrote in *American Nonpublic Schools* that "Catholic, Protestant, and Jewish schools continue to conceive their religious mission as central."

Catholic theologian John L. McKenzie writes that "Roman Catholic schools have always placed religious education as the primary purpose of the schools, with no attempt to mask this under some other purpose." Pope Pius XI stressed that "it is necessary that all the teachers and the whole organization of the [Catholic] schools, and its teachers, syllabus, and textbooks in every branch, be regulated by the Christian [i.e., Catholic] Spirit, under the direction and maternal supervision of the Church; so that religion may be in very truth the foundation and crown of the youth's entire training; and this in every grade of school."

Protestant parochial schools have a similar philosophy. Because of this religious permeation, opponents assert, parochiaid is government action "respecting an establishment of religion" and violates every citizen's right to support only the religious institutions of his or her free choice.

Opponents add that parochiaid would weaken public education, subsidize the creedal, racial, and other forms of discrimination and imbalance common in nonpublic schools, and jeopardize the independence of parochial schools with regard to admissions, faculty hiring, and curriculum content. Further, parochiaid would Balkanize education, making it less efficient but more costly and unable to be administered without objectionable entanglements between religion and government.

Opponents hold that denial of public educational benefits to certain children is a decision made by parochial parents and not by government; that placing children in parochial schools is less promotive of pluralism and diversity than sending children to public schools, which draw upon the whole community for teachers and students; that public school neutrality regarding our various religious traditions cannot be identified with "secular humanism."

This summary of arguments, though sketchy, highlights the importance of the controversy and shows why it generates so much heat.

Parochiaid and the Courts

New York State was the locus of the earliest parochiaid battles. Requests for aid for Baptist schools led to action by the New York City Common Council in 1825 to bar such aid. Political battles over aid for Catholic schools led to passage of State legislation in 1844 barring aid to all schools in which the "religious sectarian doctrine or tenet of any particular Christian or other religious sect should be taught, inculcated or practiced."

In the 1800's several communities experimented with the Faribault, or "captive school," plan, which involved the incorporation of parochial schools into public school systems. The plan led to bitter controversies and to State supreme court rulings against it in Missouri in 1942 and in New Mexico in 1951. The practice survives in a few communities.

Litigation dealing with parochiaid involves both the Federal and State constitutions, and both Federal and State courts. Before 1968, when the Supreme Court recognized taxpayer standing to sue in Federal courts to challenge allegedly unconstitutional government expenditures, suits attacking parochiaid were brought in State courts. Since 1968 the Federal courts frequently have been chosen for attacks on State parochiaid plans because they provide quicker access to the Supreme Court.

Before the major parochiaid rulings of the Supreme Court in 1971, the controversy swirled around indirect aids, such as transportation and textbook loans.

The growing use of busing to enable public schools to gather students from greater-than-walking distances led to demands for similar service for parochial schools. Before the 1947 *Everson* ruling, a number of parochial transportation measures were struck down by State supreme courts. Then came *Everson v. Board of Education*, involving a New Jersey community that reimbursed parents for public transportation to public and Catholic schools in Trenton. One Arch Everson challenged the law that permitted the reimbursement. The Supreme Court held that "no tax in any amount, large or small, can be levied to support any religious activities or institutions," but by a 5-4 margin decided that the expenditure of public funds in this case was primarily for the public purpose of helping children get to school safely and expeditiously, even though indirect benefits went to the parochial school.

The Court's majority held that the plan approached the verge of the State's power. Justices Rutledge and Jackson, dissenting, argued that the plan went too far. *Everson* upheld one State's transportation-aid plan and said that such aid is discretionary, not mandatory. Since *Everson*, transportation aid has been ruled unconstitutional by State supreme courts in ten States and upheld in four.

Lending textbooks to parochial students has also been troublesome. A Louisiana program was upheld by the Supreme Court in 1930, but the statute had not been challenged on First Amendment grounds. Similar programs were ruled out by State courts in New Mexico in 1951 and in Oregon in 1962. In 1968 the Supreme Court upheld New York's program, holding that it benefitted children and not schools, and that it had a secular purpose and a secular effect. In 1975 and 1977 the Court followed this precedent and upheld Pennsylvania and Ohio textbook loan plans.

The Major Cases

Proparochiaid forces developed great political clout by the mid-1960's and got substantial benefits for parochial schools included in the Federal Elementary and

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Edd Doerr is director of communications for Americans United for Separation of Church and State, Silver Spring, Maryland.

Secondary Education Act of 1965. The 1968 textbook ruling, with its "child benefit" theory, opened the way for imaginative new State parochiaid schemes. Pennsylvania began to "purchase secular educational services" from parochial schools. Rhode Island authorized state-paid supplements to the salaries of parochial teachers of secular subjects.

Taxpayers sued in both States. The Pennsylvania and Rhode Island suits, *Lemon v. Kurtzman* and *Earley v. DiCenso*, were dealt with by the Supreme Court in 1971. The court concluded that the two State acts fostered an impermissible degree of entanglement between government and religion. The Court affirmed a Rhode Island Federal court ruling that parochial schools constitute "an integral part of the religious mission of the Catholic Church" and are "a powerful vehicle for transmitting the Catholic faith to the next generation." Both legislatures "sought to create statutory restrictions designed to guarantee the separation between secular and religious educational functions and to insure that State financial aid supports only the former," but "the cumulative impact of the entire relationship arising under the statutes in each state involves excessive entanglement between government and religion."

The Court also referred to another type of entanglement that the First Amendment was intended to prevent, "political fragmentation and divisiveness on religious lines."

In 1972 the Court ruled that the "free exercise" clause of the First Amendment does not require States to provide financial aid for parochial education.

New aid plans continued to move from the drawing boards, through State legislatures, and into the courts. In 1970 New York enacted a program to have the State pay nonpublic schools for "mandated services," such as keeping records and conducting examinations required by the State of all schools. In 1972 New York passed another act to assist parochial schools through "health and safety" grants for building repair and maintenance and tuition reimbursements through grants and income-tax credits. The Supreme Court ruled on these plans in 1973.

In *Levitt v. PEARL*, New York's "mandated services" were found unconstitutional because the law provided no assurance that aid would not go to sectarian activities. In *PEARL v. Nyquist*, the Court held that New York's "health and safety" grants violated the Establishment Clause because their effect was "to subsidize and advance the mission of sectarian schools." The tuition reimbursement grants and tax credit tuition reimbursements had "the impermissible effect of advancing religion." This ruling led to the demise of similar Ohio, Pennsylvania, California, and Minnesota parochiaid programs, and to Congress's shelving of an ambitious Federal tax-credit aid plan.

In other developments, a Vermont Federal court in 1972 ruled unconstitutional the lending of teachers and educational materials to parochial schools. In 1973 a New Hampshire Federal court struck down "reverse shared time," the staffing of public school annexes in leased space in parochial schools. The latter plan went beyond "excessive entanglement" to a merger of church and state.

New Jersey enacted a plan to reimburse parochial school parents for the cost of textbooks, instructional materials, and supplies, with money left over to be assigned to nonpublic schools to acquire supplies, equipment, and auxiliary services. A Federal court in 1973 ruled that the program had the unconstitutional primary effect of advancing religion and created the potential for excessive church-state entanglement. The Supreme Court affirmed the ruling in 1974.

Pennsylvania and Ohio programs for lending equipment and materials and providing auxiliary services (remedial teachers, counselors, et cetera) to parochial schools were ruled unconstitutional by the Supreme Court in 1975 as having the unconstitutional effects of either aiding religious enterprises or fostering "excessive entanglements between church and state."

The ink was hardly dry on the Court's 1975 rulings when the Ohio and Pennsylvania legislatures revised and repassed the programs just ruled unconstitutional. More litigation ensued and on June 24, 1977, the Supreme Court dealt with the new parochiaid plan in a complex ruling that confused journalists and editorial writers. In the 1977 *Wolman v. Walter* ruling, the Court upheld textbook loans to parochial students—the Court was just not up to reversing its aberrant 1968 ruling—and the provision of standardized tests, on the theory that the State may test to see if private schools are meeting minimum State standards. The Court also upheld the provision of medical and psychological diagnostic and therapeutic services, under carefully restricted conditions, to individual parochial students, on the ground that the services are *not primarily educational* and are genuine "child benefit" welfare services to individual children.

Opponents of tax aid for parochial schools have thus enjoyed considerable success in the courts. They have won referendum elections in such disparate States as New York, Maryland, Michigan, and Nebraska. But the parochiaid wars are not over. Federal aid for parochial schools remains to be ruled on by the courts, as do minor State-aid plans. Members of Congress continue to seek ways of providing parochiaid without running afoul of the courts. Changes in the composition of the Supreme Court could send all the contestants back toward square one.

Americans United for Separation of Church and State and two dozen other religious and educational organizations filed suit in Federal District Court in New York in early 1976 to challenge the constitutionality of Federal aids to parochial schools under the 1965 Elementary and Secondary Education Act. The suit, at this writing, has yet to be scheduled for trial, though the 1977 *Wolman* ruling should speed up the process. The voucher plan for full public support for parochial and private schools was abandoned by Federal authorities in early 1976 when it was overwhelmingly rejected by citizens in Connecticut and New Hampshire communities who had been intensively pressured to adopt the plan. In other developments, Federal courts in Iowa and Rhode Island in late 1975 and early 1977 ruled unconstitutional the provision of transportation services to parochial schools that go beyond services provided for public schools. Finally, voters in Washington State, Missouri, and Alaska voted in referenda in 1975 and 1976 to reject proposed State constitutional amendments that would have authorized State aid to parochial schools, bringing to ten the number of referenda in the last decade in which parochiaid has been decisively defeated.

Advocates of public support for parochial education have not given up, and they are able to focus their concern on politicians with more intensity than the more numerous, though widely disparate, opponents of such support.

Would that the majority of politicians agreed with John F. Kennedy's 1960 declaration: "I believe in an America where the separation of church and state is absolute—where no church or church school is granted any public funds or political preference." □

"I'm in the Trouble Business"

A lawyer tells how a law office serves the cause of freedom.

ILLUSTRATED BY ZEB ROGERSON

By Kenneth Harvey Hopp

If you ever get in trouble, you'll probably call on someone like me for help. I'm in the trouble business; I'm a practicing lawyer.

Obviously I'm not talking about *all* troubles. Health troubles, for example, concern me only incidentally, if at all. Marriage troubles are another matter. I wish I could salvage marriages, but by the time you come to me, you're usually more interested in divorce than reconciliation.

Occasionally, I get a case involving freedom—freedom of the press, freedom of speech, freedom of religion. When these are at issue, the skills I have can be very helpful.

What factors make a lawyer valuable for this purpose? The first is independence. In my private practice no one client is so important that I cannot do without him. This independence enables me to serve you without looking over my shoulder to see if some superior disapproves of what I do.

This independence has a price. It is paid for by the fees I charge my clients. This is the way I earn my living. Some clients seem to feel that when they are in trouble through (as they see it) no fault of their own, they should not have to pay for their defense. Indigent defendants in criminal cases can get the services of good attorneys free—as, for example, through the public defender's office of California—but these resources are not independent, and the clients know it.

I recall one amusing incident in which a defendant in a minor criminal matter came to me. He had consulted me before and my advice had worked—it doesn't always—so he returned. He explained that he was out of work and couldn't pay me, but that his mother would because she wanted him to have a *real* lawyer! I told him that the local public defenders' office had some good men (and women) in it. That made no difference to mother; they were not "real" lawyers.

What made the difference? I am sure it was my independence. She knew that my energies would be directed to helping her son regardless of what some-

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Kenneth Harvey Hopp is an attorney in Yucaipa, California.

one else might think.

If you are ever accused of a crime, you'll likely discover it to be a very lonely experience—especially if you are outside the camaraderie of organized crime. You will value the help of someone who, for pay or otherwise, is wholeheartedly on *your* side. That you acted because of religious convictions may not make you feel any less lonely—as religious reformers of all ages could testify.

A second reason I'm valuable to you is because I'm experienced in dealing with trouble. The average person rarely has serious trouble, and he doesn't know how to relate to it. My training and experience with people in trouble help me to understand your problems. Further, a practicing attorney of some years' experience has run into enough different problems, and has heard enough strange and even shocking experiences, that he won't likely be shocked by anything you tell him. He has represented people whose value systems are completely foreign to his own. He is in a position to evaluate your problem in a way you are not.

Does this mean that he can be sure of getting you out of trouble? Of course not, anymore than a physician can guarantee success in his treatment of a disease you may have.

Experience is something quite different from law-school training. Such training is an invaluable foundation for experience, but I can assure you that it is not enough. I have psychic bruises to prove it!

What will my training and experience do for you? To begin with, they enable me to give you a realistic idea of the trouble you're actually in. Patient listening, combined with adroit questioning, will help me identify the problem. (Most clients have only a vague idea of what the problem really is.)

Let me illustrate the value of experience in what can be a very simple matter—drawing up a will. When I first began practicing law, if a client said he wanted to leave everything to his wife and then to his children, I drew a will that did just that. It didn't occur to either of us that this plan might not be adequate. Suppose my client had two children, one 2 years old, the other 20. To divide his estate equally between them would not be fair to the youngest, as he had not had the years of support the oldest had had. Further, the youngest will need support far longer than the oldest.

Today, besides considering these factors, I suggest that he set up a trust for his children's education. I find out if he has a preference for their education, e.g., church schools rather than public schools, and if so, I see that the will respects his preference.

Let me illustrate how I can help you when freedom is at stake. Suppose your town is vigorous in enforcing Sunday laws. You observe the seventh-day Sabbath. You wish to open your business on Sunday. But you don't want to get into trouble. So you come to me.

The first service I'll perform is to find out exactly what is forbidden and what is permitted by the local Sunday laws. Your business may be exempt. Or I may advise you that you can legally sell some items but not others. Or, even that you may open your business if you close it on Saturday.[1]

Where the law bites deep into your profits, I might suggest that you look for allies among those similarly affected, and that you cooperate in challenging the laws. What about an initiative campaign to repeal the law?

Where this is not feasible, how about a backfire? A rigidly supported Sunday law can be self-defeating. If enough members of the community can be made to feel the pinch of prosecution, they may bring pressure on the enforcers to moderate their stands.

The backfire can take another form: public debates on the Biblical basis of Sunday laws. Where religious interests are prominent in the enforcement, this tactic can put them in a serious dilemma, for they must meet you in an arena where they are bound to lose.

Finally, I may suggest a court challenge of the Sunday laws. This could be done in two ways. I may quietly inform the prosecuting authorities that each prosecution will be through a full-fledged trial by jury, complete with emotional denunciation of oppression, and appeal if conviction takes place. Usually, the prosecutor's office has such a backlog of cases that it will pass the word to the police to concentrate their efforts on other violations.[2]

Or I may advise you to seek injunctive relief—to challenge the constitutionality of your Sunday law. This approach is the one most generally suggested by the client, but it is apt to be the least productive course—and the most expensive.

I do not wish to overstate my value. I lose cases as well as win them. But I sincerely believe that the law office of a lawyer in private practice is the first line of defense for your freedom. It is not the only line of defense. But like many first lines of defense, it makes those farther back more effective.

Come in. □

References

[1] The advice can take another form. Acts that might violate a valid Sunday law if done in public might be protected if done in private, even aside from the obvious problem of proving what is done privately. The advice to a farmer, for example, might be: "You want to work on Sunday? Use the day to maintain your equipment, go over your books, order supplies, and inspect your fields." This distinction is one that naturally occurs to a lawyer concerned with problems of proof; laymen probably would not think of it.

[2] The impact of such a statement will be greater when it is delivered by an attorney personally acquainted with members of the district attorney's staff. In many instances a relationship of mutual respect and friendship develops between attorneys. This relationship can be a very real asset. I have seen instances in which the unsupported word of a highly respected attorney was sufficient to break the ice in settlements, both civil and criminal, and to avoid what would have been costly and wearing trials.

Ten-Fingered Peace, Double-Edged Sword

By Phillip Whidden

ILLUSTRATED BY JEFF DEVER

At His birth, angels sang "Glory to God in the highest, and on earth peace, good will toward men." Why, then, did He say, "I came not to send peace, but a sword"?

When I was in college the great battle against the Vietnam War was rocking campuses. The gospel song of this skirmishing was, "All that we're asking is give peace a chance."

When I was younger still, statesmen were attending *Pacem in Terris* conferences; and John Kennedy, in his inaugural address, called on the world to "heed . . . the command of Isaiah—to 'undo the heavy burdens and to let the oppressed go free.'"

I once fasted for five days for peace in Vietnam. I got very hungry.

I was a dilettante on peace.

Christ was not. Caesar Augustus was not. Peace was not a pastime, not a superficial, sometime concern to either. But their concepts of peace were radically different, as were their governments. While the Christian world is tuning up for a rousing rendition of "Peace on earth, and mercy mild, God and sinners reconciled" this would seem a good time to contrast the two rulers and their respective governments.

Augustus' government was merely a stopgap solution for malcontents who refused to live as law-abiding citizens of Christ's government. Those who lived as converted members of the kingdom of God (and there are no other kind) had no laws to fear. They were free (Galatians 5:13, 22, 23). Those not so converted were coerced by the laws of the Roman Empire. They were slaves to law and to personal faults. The emperor was the sword of God for punishing his citizens

Phillip Whidden works at Action on Smoking and Health (ASH), Washington, D.C., and lives in Takoma Park, Maryland.

Jesus was to tell of a world saved not by a man who became a god, but by God who became man.

(Romans 1:24-32; 13:1-5).

But the Augustan Romans came to consider the state itself to be a type of divinity. Writes Malcolm Muggeridge: "There was, it seems, some sort of census being taken . . . by Caesar Augustus, then at the height of his fame. He had already been proclaimed a god, with appropriate rites for worshiping him; and his regime was considered to be so enlightened, stable and prosperous that it would go on forever."[1]

John Buchan takes a more moderate view of Augustus' worship. Buchan says that Augustus, realizing the Roman Empire needed a cohesive factor that had been missing in the Greek Empire, set about to establish a religion that would be widely accepted. It would be hard to worship the "idea" of Rome, but easy to worship *Roma et Augustus*. "Augustus was as free as any man who ever lived from whimsies about his own divinity. He could laugh at such propensities as readily as Vespasian, who, on his deathbed, exclaimed, 'Alas! I fear I am becoming a god.'"[2]

"It was one thing," Buchan continues about Imperial Rome, "for a great man to become a god after death, and quite another for him to be like the Ptolemies, a god in his lifetime. Augustus kept aloof from such folly. . . . The most he claimed was a share in the divinity of the state." Not that full-steam-ahead cultish emperor worship didn't flourish in Augustus' lifetime:[3]

"This cult devised with a cool judgment of facts . . . met the demands of a world which was looking for a Messiah by pointing out that one had come, who had proved his title by bringing gifts of peace and fortune to men."[4]

And, of course, like Vespasian, Augustus died. Jesus was a teen-ager then. Buchan's comment on the adolescent Jesus is telling: "When the news of the death of the master of the world [Augustus] came to the Galilean hills, and the neighbors were troubled lest this should mean the end of the Augustan peace and an orderly Empire, He [Jesus] did not seem greatly concerned, for His thoughts were on a different peace and another empire." Indeed, Jesus "was to proclaim a kingdom mightier than the Roman, and to tell of a world saved not by a man who became a god, but by God who became man."[5]

It is in this framework that we find ourselves puzzled by the angels' message to the world at the time of Christ's birth. I find myself asking, was there not some larger meaning than just *Pax Romana* to the angels' statement about peace on earth?

The assertion that the world was at peace that night because the Roman Empire was at peace is usually (always?) expressed with Occidental ignorance of Oriental, Oceanic, and pre-Columbian history, and is usually couched in poetic and mystic imaginings. Two notions predominate: Christ's birth caused at least a fleeting, momentary world peace, or it came at a time that God had foreordained to be peaceful.

That Christ's birth caused a few moments of total peace is the prettier of the two notions. Jesus emerges a newborn infant, and suddenly no thorn in the world is lashing in a bitter wind. In other regions all roses open into, or pause at, their moment of fullest perfection. Gladiators drop their gory swords and kiss each other, while the crowds in the arenas sigh sentimentally. Songbirds find their mouths open, with the sweetest note issuing in one universal chord. In the depths of the seas unspeakable monsters pause in their dark-jawed slaughter.

We could defend such a notion as beautiful—if it were true. But all this is claptrap, though some today would willingly believe it.

And what of the Roman world on that day of His birth? Were robbers less rapacious that day? thugs less vicious? consciences less haunted? No, evil agencies did not call off their goon squads in honor of Christ's birth. Even the most visible type of peace, political peace, was lacking in an Israel spoiling for conflict with foreign rulers and their local sycophants.

The closer we get to the Baby the more we find cause for disquiet. Joseph finds himself engaged to a woman whose pregnancy threatens to ruin his name. The long trip to Bethlehem is exhausting, and there is no room for them in the inn. Mary gives birth in a stable. And her birth pangs are as those of other women; sweat beads her brow, cries sound from whitened lips. And does it soothe her to know that she was pregnant with God?

A moment of universal peace at Christ's birth would have been a tragic foil, a tortured pause in the eye of a hurricane, a light so momentary as to have emphasized the whirling darkness.

Have we forgotten that a mangled angel was slouching around that stable, stalking the Baby for his own dark gullet? The "dragon stood before the woman which was ready to be delivered, for to devour her child as soon as it was born" (Revelation 12:4, 9). Can we forget that this dragon-angel swallowed hundreds of other babies in his rage at not being allowed to eat this one? In our discussion of Christmas peace, dare we forget that he sent out a tongue made of many swords, that he spilled blood from

This child was *Himself* peace on earth — and at the same time God's sword, bared and flaring.

all the male babies in the region? "Then Herod, when he saw that he was mocked of the wise men, was exceeding wroth, and sent forth, and slew all the children that were in Bethlehem, and in all the coasts thereof, from two years old and under, according to the time which he had diligently inquired of the wise men. Then was fulfilled that which was spoken by Jeremy the prophet, saying, In Rama was there a voice heard, lamentation, and weeping, and great mourning, Rachel weeping for her children, and would not be comforted, because they are not" (Matthew 2:16-18).

Can we yet speak of the peaceableness of Christ's birth?

While still a child, Jesus probably was told the story of the massacre of the innocents. No wonder He was first to understand the awful and paradoxical nature of His role in destiny: "Think not that I am come to send peace on earth: I came not to send peace, but a sword" (Matthew 10:34).

Were the angels who sang about peace on earth ignorant of that truth? Naive? Were they winged Polyannas sentimentalizing a death grapple between reptilian and righteous spiritual powers? Glossing spiritual carnage into soft Christmas card scenes? Or *were* they in some real sense singing the truth?

To answer these questions we must pose one more: Why was such a titan-sized war being fought over this one Baby?

The answer is stark and yet paradoxical. This child was *Himself* peace on earth—and at the same time God's sword, bared and flaring. This Baby was laid down on earth—hence, there was peace on earth. This Baby, made with one human edge and one divine edge, was now unsheathed as the sword made perfect to slice through the divine/human dilemma. This child was to be the blade to sever the Gordian knot of sin and deliver from the righteously required death penalty. Upon this infant—this ten-fingered peace, this double-edged sword—hinged the fate of humanity.

God had made Himself the perfect weapon of peace, a sword as of transparent crystal, so that all might see into His purity.

Now we can see clearly several binary stars of paradox swimming in the night sky of Christmas: God, yet man; virgin, yet mother; peace, yet a sword.

Whenever the enemies of God might cry out against Him, this sword could answer for Him in the tournament of the right against might. If they should say, "What has this unjust God done for us that we should swear fealty to Him?" the divine edge of this sword would shine and flash the answer, "The Son of God has become as you, suffered and died in darkness, so that you might thrill and live in light." If the enemies of light should cry out, "What good is it for a God to prove that the redeeming life of righteousness is a possibility on earth?" the human edge of this Christmas sword could glisten with the answer, "The Son of man has struggled and triumphed so that sons of men may receive victory through His flaming grace."

This tournament is heralded wherever true peace engages its enemies. They may include even those we love best—our families, our friends. These enemies include our own natures. Evil rages against this crystal scalpel when it offers open-heart surgery to us. We need this Baby born in our warring natures to free us for love and peaceableness.

No wonder cataclysm hunched around this child's birth; no wonder fury and violence stalked His trail. The world of darkness erupted with hatred because it knew what Augustus never knew. This child was not just the Prince of Peace. He was King Peace Himself, with holocaust and death led captive to His stable palace, with destruction, war, disease and wickedness—even slavery—groveling in thwarted malevolence at His manger throne.

Pacem in Terris! And are not we made of earth? Is it not God's purpose to conceive peace in little bits of earth—in us? When Jesus said, "Think not that I am come to send peace on earth: . . . but a sword," did He not *really* mean, "I am come to put the ultimate weapon—Myself—in you"? "The Lord will give strength unto his people; the Lord will bless his people with peace" (Psalm 29:11). We are dust, but through Christ we have the peace of knowing we can return to life everlasting—"Christ in you, the hope of glory" (Colossians 1:27).

No one need fast for peace this Christmas. Don't dismiss *Pacem in Terris* as a foreign language to your soul. Ask Peace Himself into your earthy, stable-dirty heart. He will come in perfection. He will come in the power of a crystal sword. □

References

[1] *Jesus: The Man Who Lives* (New York: Harper & Row, 1975), p. 30.

[2] *Augustus* (London: Hodder & Stoughton, 1941), p. 271.

[3] *Ibid.*, p. 273.

[4] *Ibid.*, p. 274. "Peace and fortune to men" is a phrase remarkably like "peace, good will toward men."

[5] *Ibid.*, p. 327.

ILLUSTRATED BY ZEB ROGERSON

Facts to Fill a Christmas Stocking

By Jerry D. Lewis

Would you believe Christmas was not made a legal holiday in Massachusetts until 1856?

If you can believe science, no person today can be in more than one place at the same time. However, during the early years of the Christian Era, a person could be in six different places at noon on Christmas Day. Depending on where he was in the world, a traveler could observe the Nativity on January 6, February 2, March 25, April 19, May 20, or November 17.

Pope Julius I, realizing he could not expect the world to number years as the Romans did—from the founding of the Immortal City—assigned a monk named Dionysius, a respected Roman scholar, to establish a date and year for the birth of Christ. In A.D. 350, December 25 was chosen, and most of the Christian world soon adopted both the date and the method of numbering the years.

Christmas was first observed as a holiday in England in 521, when King Arthur retook York on that day. To celebrate his victory, he proclaimed the holiday, setting up a worship session and a feast at the Round Table.

Christmas has witnessed other important events throughout the years. In 1214, important members of the Court in England called on King John to demand that he sign the Magna Carta, the inspiration for our Bill of Rights. On Christmas Eve of 1492 Christopher Columbus' ship, the *Santa Maria,* was wrecked on a coral reef off Haiti. And on Christmas Day in 1776 George Washington guessed that the Hessian mercenaries had celebrated Christmas Eve as if they'd been back home in Germany. Ferrying his ragtag troops across the half-frozen Delaware, he attacked while the hired Redcoats were trying to sleep off their overindulgence in food and liquor.

Christmas, like freedom, must constantly be defended. Down through history, the holiday has undergone political attack. When Oliver Cromwell and his Puritans seized power in England in 1642, one of his early dictatorial edicts attacked "the heathen celebration of Christmas." His puppet Parliament soon passed a law forbidding festive observance of the Nativity. It took the restoration of Charles II to the British throne in 1660 to make it safe to enjoy the holiday.

It should also be noted that Boston, which gained attention and ridicule earlier in this century by banning many innocuous books, plays, and movies, came by its habit naturally. In 1659 the Pilgrim colony of Massachusetts passed the following law: "Whosoever shall be found observing any such day as Christmas and the like, either by forebearing labor, feasting or any other way, shall pay for any such offense five shillings as a fine to the country."

That law remained on the books for 22 years. It was another five years after its repeal before Governor Andros conducted the first legal Christmas service in Boston's Town Hall. That service, incidentally, was held not on Christmas Day but on December 8, 1686. And, believe it or not, Christmas was not made a legal holiday in Massachusetts until 1856.

Many people abhor the use of Xmas as a substitute for the word Christmas. They feel it is disrespectful. The word Xmas, however, is an ancient one, coming to us from that source of so many words, the Greek language. In Greek, *X* is pronounced *Ch,* which for many years was the Grecian symbol for the word Christ.

The Kremlin, in its never-ending efforts to "save" the people from religion, which it still regards as an emotional opiate, is, for a change, employing subtlety in its attack on Christmas. A Christmas tree, for example, is now officially known in the Soviet Union as a New Year's tree, and, according to *Pravda,* the name of the jolly, bearded, red-cloaked figure who brings gifts to children is Grandfather Frost.

The campaign is something less than 100 percent successful. At Santa Claus, Indiana (zip code 47579), the American Legion Post annually answers some 100,000 letters addressed to Santa Claus. One arrived last year from a child in Moscow, asking Santa for, of all things, a cowgirl outfit. Ordinarily, only letters of reply from Santa are sent, but this time 82-year-old Jim Yellig dug into his pocket and made the young Muscovite's dream come true.

Each year, the tiny one-story post office in Santa Claus, Indiana—a village of

Jerry D. Lewis is a free-lance writer in Pacific Palisades, California.

about 300—remails some three million Christmas cards for people who want that fascinating postmark on their seasonal greetings. All in all, the American people mail some four billion holiday cards every year, so Washington's annual postal deficit is certainly no fault of Saint Nick.

Christmas, Florida, is another small town that annually remails a mountain of holiday cards for people throughout the nation. The village got its name because it is built around the remains of an Army fort completed on Christmas Day, 1835.

One of the first Christmas cards was designed in 1846 by British Royal Artist John Calcott Horsley for Sir Henry Cole, who found affairs of Court keeping him too busy to follow the custom of handwriting notes of holiday greetings to his family and close friends. That printed card, a triptych, created something of a furor, because it showed members of a family toasting the recipient of the card with upraised glasses of wine. Critics claimed it encouraged drinking.

The Magi, who appeared before the Christ child on that long-ago January 6, were from a sect of Persian priests famous for their great knowledge, especially of astronomy. Most lay people of that era had little faith in science, however, and felt that any accurate prediction about the stars and heavens simply had to involve some kind of trickery. Thus, the Magi gave us the root and meaning for our word *magic*.

Originally, Christmas was to have been only a religious ceremony, not a festive holiday. Pagan traditions, such as using greenery for decoration, were strictly *verboten*. Some sects maintained this taboo for many centuries. As late as 1753, for example, when King's Chapel in Boston was destroyed by fire and members of nearby Old South Church graciously offered its sanctuary for the Christmas Mass, they stipulated that "no spruce, holly or other green shall desecrate the premises."

During World War II, the British sent a small, swift ship into Norwegian waters each December. Under cover of night, a commando unit landed in the Nazi-occupied nation, secured a fir tree and brought it back to England. There it was presented to King Haakon, exiled in London. Since that time, the city of Oslo each year sends a magnificent giant spruce, erects it in Trafalgar Square, and decorates it as a gift of gratitude.

If you like Christmas in America, you'd love it in Scandinavia. The festivities there last for a full month—from December 13 (Saint Lucia's Day) to January 13 (Saint Canute's Day.)

Saint Nicholas was, of course, an actual person, and a fascinating one. Born of wealthy parents in the Mediterranean seaport of Patara, he grew up and became a priest in the nearby waterfront town of Myra. Both were in the region then called Asia Minor, and now known as Turkey. He was canonized in the sixteenth century.

According to one legend about Saint Nicholas, a parishioner had no dowries for any of his three daughters. That meant they would have to be sold into slavery. To keep his generosity a secret, Nicholas approached the man's cabin one night and threw a bag of gold through an open window. That allowed the first daughter's marriage. He later did the same for the second daughter. His third bag of gold accidentally landed in a stocking the third daughter had hung to dry by the fireplace—which is why we hang our Christmas stockings there.

As that legend circulated, European bankers adopted three bags of gold as the industry's logo. The symbol was later borrowed from the bankers by other moneylenders, including pawnbrokers, who still use it today as their occupational identification.

December 6, Saint Nicholas' Feast Day, is not the anniversary of his birth, but of his death.

Long before the Christian Era, people in northern Europe celebrated the winter solstice—the midwinter period each year when the sun was "reborn." That holiday was known by a name that still survives—Yule, for in the ancient Norse language *yul* meant feasting or revelry.

The biggest mystery about the crèche is why it is called a creche, which is the French word for cradle. St. Francis of Assisi built the first manger scene in 1224 in the agricultural community of Greccio, Italy, and it was many years before the practice spread to France or any other country. His purpose was to get the people of Greccio thinking of Christ as a person who really lived, rather than as a mysterious, fictional deity such as Saturnalia or Mithra.

The Christmas Carolers Association of St. Louis brings not only cheer but cash to the holiday season. For many years now they've roamed the city in costume during the holiday season, serenading one and all. They accept cash donations, which are turned over to the local Children's Aid Society. More than a thousand small groups of carolers lend their voices and kind hearts to the effort.

In Israel, Christmas is observed on three dates. Roman Catholics and Protestants celebrate on December 25; the Greek Orthodox, Syrians, and Abyssinians on January 6; the Armenians on January 18.

Walking to work one December day in 1903, a young Danish postal clerk named Einar Holboell witnessed the funeral procession of a neighbor's child, who had died of tuberculosis. That was not unusual, because in those days TB was so devastating it was known as the "White Plague." While at his job of sorting the Christmas mail, Holboell brooded about the tragedy. Suddenly, an idea came to him. Why not get the Post Office to sell a special Christmas stamp for a penny, then use all the pennies to build a children's TB hospital? That was the birth of Christmas seals, now sold to raise funds for health in 65 countries around the world.

Partisans of woman's liberation will be happy to learn that Italy has a female Santa Claus. Her name is Bafana. According to the legend, the Magi asked Bafana for directions when they were looking for Bethlehem. She offered to show them the way, but asked them to wait until she finished her sweeping. They were in a hurry, and went on. When she finished, she took off after them, but never caught up . . . so now she rides through the skies on her broom each year, and comes down the chimney of every Italian home, searching for the "Bambino."

The present image of Santa Claus is an American contribution to the world. In 1809, Washington Irving was the first to write of Santa arriving via sleigh, drawn by reindeer. Thomas Nast, the brilliant political cartoonist who originally drew the donkey and elephant as symbols of the Democratic and Republican parties, was the first to depict St. Nick as a happy senior citizen with a long white beard and a red robe trimmed in white ermine. That cartoon appeared in *Harper's Illustrated Weekly* in 1863.

In China, Santa Claus is known as Lan Khoong—Nice Old Father—though very few Chinese observe Christmas as a holiday. Their big celebration is New Year's. However, Christmas is, of course, celebrated in many lands and under many names—Kerst-Misse in Holland, Noel in France, Il Natale in Italy, Weihnachten in Germany, and El Natal in Spain, to name only a few. In every land and in every language, though, the prayers ask for the same blessing—peace on earth, good will to all.

May this be the year we have that prayer granted. □

Hanukkah

By Charles Ludwig

The eight-day celebration is more than a festival; it is the memory of a miracle and a determination to remain Jewish.

Since the Temple in Jerusalem was central in maintaining Jewish determination not to adopt Greek culture, Antiochus Epiphanes determined to ruin it forever. Possessing a fertile brain, and knowing the history of the Jews, Antiochus did not tear down the Temple. No, that would not crush Judaism, for the Temple could be rebuilt. And so he decided on something far more drastic!

He ordered troops into Jerusalem, converted the Temple into a shrine for the worship of Jupiter, sacrificed a pig on the altar and sprinkled its blood in the Holy of Holies, cooked a pig—and poured the broth over the scrolls of the Law.

He also prohibited circumcision and any worship of Jehovah. Those who violated these decrees were severely punished. Most were executed. Mothers who had their sons circumcised were, in several instances, crucified.

To understand the impact of these events on the Jews, we must go back to the death of Alexander the Great in 323 B.C. At that time his hastily assembled empire was divided among his generals. Eventually

Charles Ludwig is a free-lance writer in Tucson, Arizona.

[1] 2 Maccabees 4:14, 15, N.E.B. All texts credited to N.E.B. are from *The New English Bible*. © The Delegates of the Oxford University Press and the Syndics of the Cambridge University Press 1970. Reprinted by permission. These books are a must for one who would study this period.

Seleucus became the ruler of a large section of Asia. Seleucus had been a brilliant officer during all of Alexander's campaigns, and now he ruled with a heavy hand. Devoted to his father, Antiochus, he named sixteen cities after him. And so there were sixteen Antiochs! Only two of these are mentioned in the New Testament—Syrian Antioch, and Pisidian Antioch.

The empire founded by Seleucus lasted from 312 to 64 B.C. The ruling dynasty was filled with some of the most sinister and arrogant tyrants of history. He, himself, demanded to be worshiped as "Zeus victorious." Antiochus I called himself Soter (Saviour); and Antiochus IV—the one in this story—assumed the blasphemous title "Epiphanes," which means "God manifest"!

All Jews did not refuse to be Hellenized. Indeed, many followed the new ways eagerly. It became smart to act and dress like Greeks. With the zeal of an evangelist, each ruler worked to change the thought patterns of the Jews. Gymnasiums were built, and youth were encouraged to compete in the Olympic games. The new ways became increasingly popular. Soon a new generation was speaking Greek and ignoring the Temple.

The second book of Maccabees is bitter about such men: "As a result, the priests no longer had any enthusiasm for their duties at the altar, but despised the temple and neglected the sacrifices; and in defiance of the law they eagerly contributed to the expenses of the wrestling-school whenever the opening gong called them. They placed no value on their hereditary dignities, but cared above everything for Hellenic honours." *

Simple country life, with its emphasis on farming, three annual pilgrimages to Jerusalem, and a study of the Torah, began to give way to the new vigor. Greek-oriented cities sprang up. They had straight, wide streets with rows of marble columns; and there were theaters, public baths, and non-Jewish temples. The Greeks emphasized beauty, and they achieved it. A string of ten of these cities formed the Decapolis.

These Greek-dominated towns are frequently mentioned in the New Testament. In Mark 5:20 we read: "And he departed, and began to publish in Decapolis how great things Jesus had done for him."

As Hellenization proceeded, the rabbis became increasingly hostile. One rabbi even said that it was as wicked to speak Greek as it was to eat pork! Eventually this culture clash produced a society of the pious known as Hasidim. In the beginning overt clashes were avoided. But the seeds of conflict were there, and like cancer cells they multiplied and grew.

Antiochus did not respond to pressure. His way, he had decided, was the way. And many listened with attentive ears. He liked to dress in ornate robes, crown his head with roses, and swagger through the streets of Antioch. And often as he moved from place to place he handed out gold rings and valuable gems to anyone who happened to please him at the moment.

In the beginning, Antiochus did not attack the Jewish faith. But as the rabbis continued their resistance, he turned on them with tigerlike ferocity. He decreed that it was illegal to worship Jehovah, abolished the Sabbath, and burned all the copies of the Jewish sacred books that his agents could find. In addition, he built pagan altars throughout the land and insisted that the Jews worship at them. After he had taken Jerusalem by force of arms, he entered the Temple. The story is told in 2 Maccabees 5:15, 16. "Not satisfied with this, the king had the audacity to enter the holiest temple on earth, guided by Menelaus, who had turned traitor both to his religion and his country. He laid impious hands on the sacred vessels; his desecrating hands swept together the votive offerings which other kings had set up to enhance the splendour and fame of the shrine." (N.E.B.).

But amid this turmoil there were, as always, the faithful. One was Eleazar, an old man who lived in Antioch. Having been seized by the law, he was taken into the presence of Antiochus.

"It is," said a leader, "the will of our mighty king Antiochus that you eat of the swine meat which has been sacrificed to our god Zeus. If you do the king's bidding, your life will be spared, and the king will make you rich and powerful. Should you disobey, our mighty king's command is that you shall die a horrible death."

"Silver and gold mean naught to me," replied Eleazar, "and death holds no horrors. . . . I will remain faithful to my God and His law to the very day of my death."

The officer admired the old man's spunk and offered to free him if he "would eat meat that is not forbidden by your Law . . . in front of Zeus. The rest of the people," he continued, "thinking you are eating of the forbidden meat, will follow your example."

When Eleazar continued to refuse he was tortured to death. This story is one of the many—some even more dramatic—that have come from this period.

Adults were not the only ones who suffered. Many recently circumcised babies were put to death by Syrian soldiers.

At last the anger that had seethed beneath the surface for many years frothed to the top. Openly the opposition began to call Antiochus Epiphanes a new name. They dubbed him "Epimanes"—the maniac.

Sometime around 166 B.C. open rebellion flared. It was led by an aged priest, Mattathias, and his five sons who lived at Modin, a little town thirteen miles north of Jerusalem. Approaching the priest in the presence of many of his friends, an officer said to him, "You are a leading man, great and distinguished in this town; now be the first to come forward and carry out the king's command, and you and your sons will be counted among the friends of the king."

Promptly, and in a loud voice, Mattathias answered, "If all the heathen in the king's dominions listen to him and forsake each of them the religion of his forefathers, yet I and my sons and my kinsmen will

live in accordance with the covenant of our forefathers. God forbid that we should abandon the Torah and the ordinances. We will not listen to the king, or depart from our religion to the right hand or to the left."

Mattathias had barely finished when a Jew went up to the altar and began to perform the sacrifice demanded by the king. Unable to control himself, the old priest killed both the man and the officer. Next, he shouted, "Let everybody who is zealous for the Torah and stands by the Covenant come after me!" He then led the way into the mountains. Here, he and his friends and sons were joined by many members of the Hasidim.

The old man did not live long. But his words burned in people's hearts. Soon his third son, Judas, surnamed Maccabaeus (perhaps meaning "Hammerer"), took up the fight. Although usually outnumbered, he led his men from victory to victory. Each victory brought more volunteers until he had a respectable army. And then, following his triumph at Emmaus and Beth-Zur, Judas felt he was strong enough to take Jerusalem and cleanse the Temple.

The story of what followed is recorded in the first book of Maccabees: "So the whole army was assembled and went up to Mount Zion. There they found the temple laid waste, the altar profaned, the gates burnt down, the courts overgrown like a thicket. . . . They tore their garments, wailed loudly, put ashes on their heads, and fell on their faces to the ground. . . .

"They rebuilt the temple and restored its interior, and consecrated the temple courts. They renewed the sacred vessels and the lamp-stand, and brought the altar of incense and the table into the temple. . . . When they had put the Bread of the Presence on the table and hung the curtains, all their work was completed" (1 Maccabees 4:17-51, N.E.B.).

On the day of dedication, they got out the menorah—candelabrum—in order to light the flame that would continue to burn in the Temple.

Alas, they found the menorah was dry; and search as they would, they could find only one jar of the sacred oil. And this was just enough to burn for one night. Nevertheless, according to Jewish historians, "to the great delight of victorious worshipers . . . a miracle occurred: the small amount of oil lasted eight full days." And this is the story—perhaps legend—of Hanukkah.

Hanukkah—the Hebrew word means dedication—is thus, like the Passover, filled with memories. The eight days of Hanukkah at this time fall in December, and, although it "is not central in Judaism as Christmas is in Christianity," it is an important festival.

The first candle is lit on the evening of the 25th of Kislev—the anniversary of the day when Judas Maccabaeus entered the Temple to restore it—after the stars are out. Each candle burns only about half an hour, and each day a new candle is lit until all eight of them are burning. The candles are never lit from a match, but rather from a ninth candle retained in the extra branch of the candelabrum and known as the *shamesh*.

Light from the candles is considered sacred. It cannot be used for work—not even to read the Torah!

During Hanukkah, the children beg for and receive *Hanukkah gelt*, that is, Hanukkah money. Latke—potato pancakes—are served to guests, and if you were to visit a Jewish home at this time you might be given a four-sided top with a Hebrew letter carved on each side.

A new Hanukkah tradition has developed in Jerusalem. On the evening of the first night, runners are sent to the village of Modin. There they kindle a torch from the town's Hanukkah candelabrum. This torch is then taken to Jerusalem, where it is used to light the candelabrum on the traditional site of King David's tomb on top of Mount Zion. The torch is then also applied to the candelabra rescued from the Nazi holocaust. Altogether seventy candelabra—rescued from Auschwitz and other extermination camps—are lit.

The lighting is done by survivors of Nazi concentration camps. It must be an impressive sight! □

When a profligate king sought to ease his conscience by exterminating Protestants, they could only

flee before the storm

By Virgil Robinson

In the year 1685, Louis XIV, king of France, was, like Nebuchadnezzar of old, "flourishing in his palace." Having ruled for forty-two years, *le Grand Monarque*, as he loved to style himself, had good reason for feeling satisfied with his accomplishments. As the most powerful king ever to rule the French, he had enlarged his country's borders, fought three successful wars, and presided over a brilliant age. The elaborate court etiquette he instituted was imitated by all other rulers in Europe. For three years he had been living with his court in his magnificent new $100 million palace at Versailles.

His conscience, however, was not altogether easy. In the days of his youth he had lived a flagrantly immoral life. His numerous progeny by half a dozen mistresses were a constant reminder of his sins. How could he best atone for the profligate years and make his peace with Heaven? This was the question he put to his confessor, Père Lachaise.

The answer of the priest was emphatic: Let the king extirpate Protestantism in France, and all would be forgiven. The haughty king bowed his head submissively before Père's shaven crown. On October 18, 1685, he revoked the Edict of Nantes. By that edict, drawn up by his grandfather Henry IV nearly a century before, the Huguenots had been promised religious freedom for all time. Louis XIV now commanded them to surrender their religious scruples and enter the Church of Rome.

The king's action was disastrous for France. A small minority trembled and obeyed the commands of the king, but thousands of others went underground and defied all efforts to destroy them. The largest number, probably four hundred thousand, fled across the frontiers into Switzerland, Germany, Holland, and Great Britain, carrying their particular skills to enrich the dominions of Louis' enemies. When war involving much of Europe broke out four years later, thousands of Huguenots fought with the armies arrayed against the French king. A general decline started in France, which remained unchecked, until the Revolution a century later.

Having eradicated heresy within his dominion, the king looked around for other areas where he might similarly serve the church. His eyes fell upon the settlements of the Waldenses living in the Alpine valleys separating France from Piedmont. Here was a people who had worshiped outside the Church of Rome for centuries. An ambassador was forthwith dispatched from Versailles to Turin, and Victor Amadeus II was peremptorily commanded to deal with the Waldenses as the king of France had dealt with his Huguenots.

The dictate came at a particularly inopportune time for the duke of Savoy. The Waldenses were among his most loyal subjects. Only recently he had written them a letter thanking them for their valuable aid during his war with Genoa. To draw the sword against them now would be the height of ingratitude.

As a student of history, the duke understood well the character of his Waldensian subjects. Knowing that they would die before surrendering their faith, he chose to ignore the order from Louis. To a second and more imperative note he gave an evasive answer.

Louis XIV was not easily thwarted. His third command to the duke to rid his domains of heresy was accompanied by a veiled hint. If Victor Amadeus found it inconvenient to exterminate the Waldenses, the French king would happily do it for him. When the campaign was over, of course, the valleys would be annexed to France.

This threat was enough for the duke, who promptly entered into an alliance with Louis, whereby a French army, cooperating with the Piedmontese troops, would compel the Waldenses to submit to the Roman Church.

On the 31st day of January, 1686, the edict commanding surrender under threat of extermination was promulgated throughout the Waldensian valleys. All pastors and teachers were commanded to be reconciled with the Church of Rome within fifteen days or to leave the country. The people were forbidden ever again to practice their ancient religion.

Despair swept through the valleys. A delegation of the wisest and most revered men of the nation went to Turin to plead for mercy. They pointed out how loyal they had always been. They called attention to the treaties that had been signed by former dukes of Savoy, promising them liberty of conscience for all time. Brusquely they were told that the matter had been settled: the edict would not be changed.

Swiftly news of the threat to the Waldenses was carried to every country in Europe. It was soon evident that political conditions made it unlikely that any tangible help for the threatened people could be expected. On the throne of England, that strong champion of Protestantism, sat James II, himself a member of the Roman Church. Holland was in no position to challenge the armies of France. The Swiss cantons sent deputies to Turin to intercede for their brethren on the other side of the mountains, but their protests were rejected. One incautious minister of the duke revealed the real source of the threat to the Waldenses.

"Potent entanglements with France," he remarked, "have dictated our conduct." So desperate did the situation seem to the Swiss representatives, that they advised the Waldenses to move to some Protestant land where they might continue to practice their religion unmolested.

The people of the valleys were reluctant to accept such good advice. They loved their native land passionately—its mountains and valleys, magnificent forests and clear crystal streams, fruitful vineyards and orchards, pleasant cottages and humble churches. They recalled the many times God had brought deliverance during past centuries in the face of overwhelming dangers. They resolved to defend themselves.

The army of Victor Amadeus numbered between fifteen and twenty thousand men, nearly half of whom were French under the command of Marshal Catinat. Though greatly outnumbered, the Waldenses beat back their enemies as they swept into the valleys. But the people were divided, each valley fighting to defend itself, while their enemies were united. One by one the valleys fell before the Piedmontese. Three thousand Waldenses were killed in the war. The remainder, numbering about fourteen thousand were driven to Turin, where they were thrown into Italian jails.

The following six months were tragic for this brave people. The food they received barely sustained life. The water was polluted. Their only sleeping place was the cold, stone floor of their cells, over which a small amount of vermin-infested straw had been thrown. The Waldenses sickened and died by the thousands.

Swiss representatives never ceased interceding for their imprisoned brethren. After negotiating for six months, the duke agreed to free the Waldenses on one condition—that they go into exile, nevermore to return to their native valleys. The Swiss reluctantly agreed to these hard terms as the only way to save the remnant of the nation.

In December, prison doors were opened. Fourteen thousand strong mountain people had entered the dungeons. Only three thousand emaciated skeletons crawled out. Of the efforts of the Swiss on their behalf they had been kept ignorant. When released they expected to return to their homes in the valleys. All too soon they were told this could not be. A wail of bitter anguish went up as with heavy hearts they took the road that led toward the Alps.

Surrounded by soldiers who relentlessly drove them forward, the weak and feeble survivors plodded on. Scores dropped out and died, unable to keep up. In the evening of the third day they reached the foot of the pass. A storm was raging in the mountains, but no rest was allowed the weary marchers. All through that dreadful night they struggled forward. Hundreds of mothers and children sank into the drifting snow, never to rise again. It was a pitiful band that finally reached the land of their exile.

For three years the Waldenses remained among the Swiss cantons. Never could they forget their homeland or cease to pray that they might eventually return. By the summer of 1689 their longing had become so overwhelming that they secretly determined to send a band of men to try and recapture their valleys.

Heading the expedition was one of the bravest and daring of the exiles, Henri Arnaud. Selecting eight hundred of the strongest men available, he began the perilous march back. Not daring to take one of the strongly fortified regular passes, he led his band through the heart of the Alps, crossing lofty mountains, following winding streams, enduring pouring rains. Ten days after leaving Switzerland they reached the valley of Dora on the border of their own country. Here their progress was barred by an army of twenty-five hundred French regulars. The Waldenses attacked at night, routing their foes. They passed on to other valleys and more struggles.

For two months Arnaud maintained his band and successfully led it against greatly superior numbers, who tried in vain to trap and capture it. But his band steadily grew smaller, for he could get no recruits. In October the Waldenses retired to a strong fortress known as the Baceglia at the head of the San Martino valley. Reduced in numbers to only four hundred, they seized such supplies as they could find and prepared to spend the winter there.

On the 29th of October, four battalions of French infantry arrived and made a determined effort to capture the fort, but were beaten back with heavy losses. As the snows had already begun to fall, the French general gave up the attempt to reduce the Baceglia, and took his army into winter quarters. Before retiring, he sent word to Arnaud, assuring him that he would return in the spring.

True to his word, ten thousand French soldiers with fourteen thousand Piedmontese returned the following May. Commanded by Marshal Catinat, they expected to subdue the Waldenses quickly. With them they had brought four hundred ropes with which to hang the heretics.

The first general assault cost the French dearly. Convinced that he could not subdue the fort by frontal attack, Catinat spent two weeks dragging his cannon onto a plateau across the gorge from the Baceglia. One day's bombardment was sufficient to destroy the fortifications, and a grand assault was ordered for the following morning. As evening fell, the Waldenses looked out from the ruins of their fortress and saw their enemies' campfires burning brightly on all sides of them. Would they ever see another sunset? Would they ever see their wives and children again? The situation was desperate.

But deliverance was at hand. On the summit of the mountains rising behind the Baceglia they noticed great clouds forming. Fascinated, they watched as the clouds dropped lower and lower, until the entire valley was engulfed. Not a fire could be seen. Courage revived as a guide who knew every path in that area offered to lead them out. Silently they passed single file along a path so close to the enemy they could hear the soldiers talking. They crossed the stream at the bottom of the gorge, and started climbing up the mountain slope on the other side.

As the first beams of the morning sun touched the mountains, the French army made their grand assault. But to their astonishment they found the enemy gone. Far up on the mountain they saw the Waldensian enemy moving steadily upward. The snare was broken: the prey had escaped.

A weary but thankful band of Waldenses struggled over the pass and reached the valley of Angrogna. Here to their surprise and joy they found deputies from the duke of Savoy offering to make peace. A general war had broken out involving most of Europe. The duke had decided to abandon the French king and ally himself with England, Holland, and the Holy Roman Empire. Into whose hands, he asked himself, could he more safely entrust the mountain passes between France and Savoy than those of his faithful Waldenses?

As leader of the Waldenses, Henri Arnaud signed a peace treaty with the representatives of the duke. All ancient privileges were restored. All who had been captured in the war were released. The exiles returned from Switzerland. Once more the valleys were inhabited, and the bells of freedom rang out, calling the people to worship in their ancient sanctuaries. □

Virgil Robinson is instructor of religion and history at Solusi College, Rhodesia, Africa.

URUGUAY: Nation at the Crossroads

By Robert G. Wearner

Ask any American what he knows about Uruguay and he is likely to admit that he knows very little. He may locate the gaucho republic in Central America or even Africa. If he has kept up with the news, he will probably recall stories about urban-guerrilla raids,[1] kidnapping of foreign diplomats, economic turmoil, and a welfare state gone wild.

Asked what he knows about church-state relations in the little nation, Mr. Average American is likely to shrug his shoulders and say: I suppose it's like most of its South American neighbors—Catholic-dominated, with religion taught in public schools, and little freedom of press and religion.

He will be surprised to learn that Uruguay has a wall of separation between church and state even higher than our own: a Uruguayan president does not take his oath of office with his hand on a Bible. There have been no classes in religion, no Bible reading, and no prayers in Uruguayan public schools since 1919. The state gives no subsidies, no textbooks, and no transportation to church-supported schools. No public funds are used to construct schools or hospitals owned by religious organizations. Parliament, when in session, does not have a chaplain and does not open its sessions with prayer.

As in the United States, Uruguay does not require a religious test of its president (in contrast to neighboring Argentina, where the president must be Catholic). Citizens are free to accept or reject religious creeds. Church properties are exempt from taxation. Churches may elect officers and carry on their affairs without government interference. They may build schools, churches, and hospitals and are free to evangelize through radio, television, publications, and church-supported schools.

How did such an unusual state of civil and religious liberty come to exist on a continent often associated with religious intolerance?

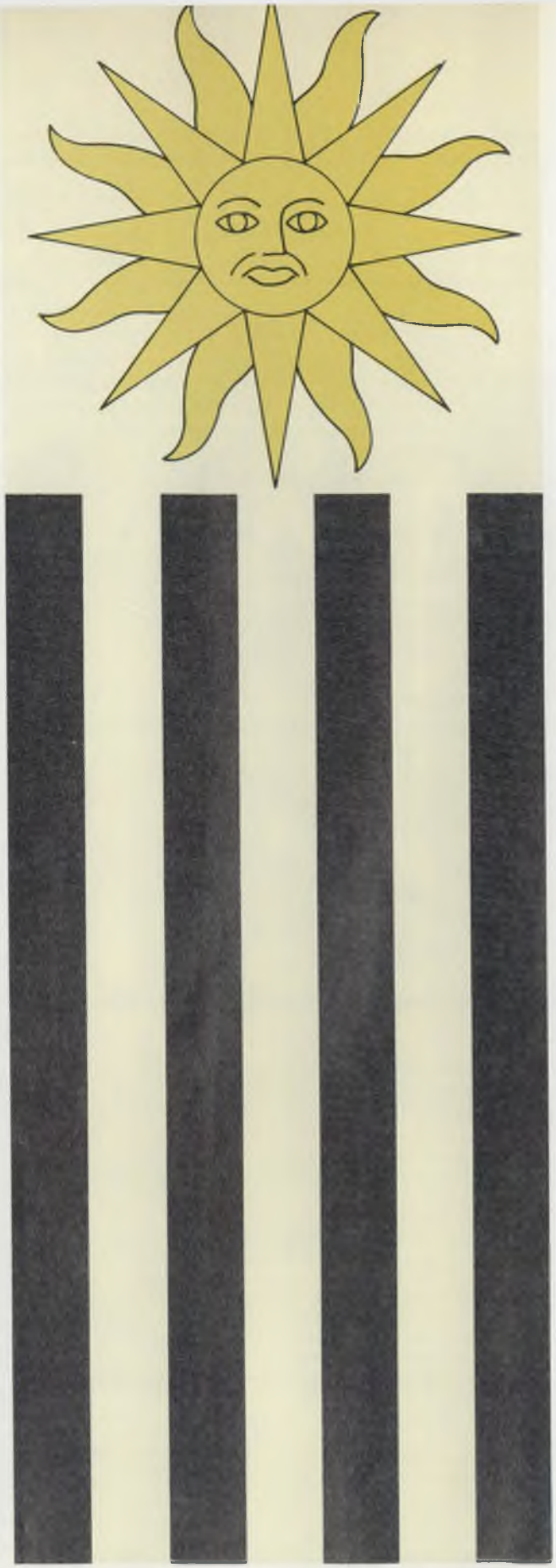
Any schoolboy or girl knows that the Spanish conquistadors who planted colonies in South America were accompanied by Roman Catholic priests. These religious leaders attempted to convert the indigenous populations. Colonial governments were a firm union of church and state. Dissent was vigorously repressed. In this respect the colonies were following the example of Spain. After the colonies declared their independence in the early part of the nineteenth century, the new republics perpetuated the same system of government, with the Roman Catholic Church as the state church. When Uruguay declared its independence on August 25, 1828, it was no exception. But the next century witnessed profound changes under three great defenders of liberty.

First of these heroes was Jose Gervasio Artigas, the George Washington of his country. A former cattle rustler, he led his revolutionary armies against both Brazil and Argentina. He was a strong believer in both religious and civil liberty. However, the country was not prepared for his advanced ideas. The constitution, adopted on July 18, 1830, stated in Article 5 that "the religion of the State is the Roman Catholic Apostolic." Both the preamble and the wording of the presidential oath of office contained the names of Deity, revealing the influence of the state church. These references to God in the supreme law of the land were to remain in the document for nearly a century.[2] But no clause was added prohibiting other religious beliefs in the republic, as was the case in Peru.[3] From the beginning Uruguayans have been ahead of other nations on the South American continent in their tolerance of minority religious groups.

Thus the "Father of Uruguay," Artigas, did exert a positive influence in favor of tolerance. He is remembered by a department (state) and its capital, named in his honor. His statue is to be seen in many public parks, and his likeness looks down on children in every school in the country and appears on postage stamps.

The second defender of liberty in Uruguayan history was José Pedro Varela (1845-1879), the father of education in his country. During his short lifetime he fought for coeducation and secular schools. A disciple of Horace Mann, he derived many ideas from the

Robert G. Wearner is a teacher of theology at Northeast Brazil College, Pernambuco, Brazil.



North American educator. His portrait shares a place with Artigas in classrooms. A cedar tree in the central plaza of the departmental capital of Canelones is dedicated to public education. Under the tree is a monument with the three words Varela held as an ideal for public education—"*Obligatora, gratuita, laica*" ("compulsory, free, secular"). He died at the age of 34, before his ideals were realized.[4]

Greatest of the three giants of liberty was José Batlle (pronounced Ba'zhay) y Ordoñez (1856-1929).[5] Without a doubt he was the founder of modern Uruguay. Sometimes called "the great liberal statesman" and "the man of the moment," he was a big man, more than six feet tall, with a gruff voice, heavy features, and a monumental mustache. Under his influence church and state were finally separated. He improved the lot of the working class, gave a place to women in modern life, provided medical care to all, advanced education, built roads and railroads, increased foreign trade, and changed the country from one notorious for revolutions to Latin America's most stable democracy.

His father, General Lorenzo Batlle, president of the republic from 1868 to 1872, sent young José to Paris for a year of study (1880). After he returned home, he became a journalist and founded the newspaper *El Día*. Don Pepe, as he was affectionately called, used its columns to fight for reform—to legalize divorce, to end state subsidies for a Catholic seminary, to remove crucifixes from sickrooms in public hospitals, and finally to separate church and state.

Don Pepe's call for reform stirred up bitter opposition. The country, however, was ripe for reform. During the last half of the nineteenth century the influence of rationalism and materialism imported from Europe turned many away from the old traditions. Thousands of Waldenses immigrated from Italy. Methodism put down its roots. The Waldenses established a high school in Colonia Valdense (the first in the interior) and the Methodists started another in Montevideo.[6] An ever-growing sector of freethinkers and Protestants favored complete liberty of conscience and separation of church and state.

Batlle was elected president in 1903. His enemies

called him an atheist. Others called him a deist or a freethinker. He would not even capitalize the names of Deity in his newspaper. One thing is clear: he was an implacable foe of ecclesiastical control of governmental institutions.

When his first term ended in 1907, he traveled in Europe to study the governments of Switzerland and other countries. He picked up many progressive ideas that he later introduced into his own country. After returning to Uruguay he ran for a second term and served again as president from 1911 until 1915. During this second term he pushed through much social legislation. He fought waste and corruption, eased the life of the working man, established free schools in rural areas, and pushed for complete separation of church and state.

Shortly after Batlle's second term a Constitutional Convention was called. There was a great debate in regard to separation. The pro-Catholic Unión Cívica party opposed disestablishment. Dr. Juan B. Rocca, however, "declared that religious sentiment would gain in prestige when the Catholic Church was freed absolutely from the influence of the State."[7] With remarkably little opposition the new constitution was approved; complete separation was a reality. The names of Deity were deleted from the preamble and the presidential oath of office.

The article on the subject of religion reads as follows: "All religious cults are free in Uruguay. The State does not recognize any religion. It recognizes in the Catholic Church ownership of all temples which have been in whole or in part constructed with funds from the national treasury, excepting only the chapels dedicated to the service of asylums, hospitals, jails, and other public establishments. It also declares exempt from all kinds of imposts churches consecrated to the actual use of diverse cults."[8]

The new constitution was approved on October 15, 1917, and went into effect March 1, 1919. Although it has been revised several times since, as recently as 1967, no change has been made in the religious liberty clauses. Thus the shadow of the ponderous form of José Batlle y Ordóñez is still clearly visible today.

Grateful citizens have named a town and countless parks and streets in Batlle's honor. His likeness appears on a series of postage stamps. He indeed is the "Man of the Century" in Uruguay, and his country has become one of the most advanced in the world. He showed what true religious and civil freedom can do for a country.

But modern Uruguay is finding that liberties cannot be taken for granted. Violence and unrest have replaced pastoral tranquillity. In a country where the army has not taken an active part in politics for many decades (in striking contrast to most of its neighbors), a partial military coup took place on February 12, 1973. Parliament was dissolved a few months later, on June 27. During the ensuing tug of war between military factions the political freedoms for which Uruguay had long been noted virtually disappeared.

One Uruguayan observer calls the present government a "hybrid"—part civilian, part military—where the president is elected by the people, but the Parliament is dissolved. The military backs up a civilian "Council of State."

Whatever its demerits, the regime has returned a degree of stability to the nation. Public education is progressing more smoothly than it has for years. There is less student unrest in the universities and colleges. Religion and private education are showing growth. However, government controls are felt as never before. Religious groups meeting outside their places of worship must secure police permission. Private education is carefully supervised, down to tuition charges and content of nonreligious subjects. Catholic prelates are seen on the platform with government leaders more frequently than in decades past.[9]

A recent incident shows that the government still has a heart. April 19, 1975, a national holiday, fell on a Saturday. All school children were expected to participate in the festivities. Parents of Seventh-day Adventist children did not feel free to send their children on a day they considered sacred. Church leaders presented the problem to officials in the Department of Education, who assured them that children from Adventist homes would be free to observe the Sabbath of their church and would be excused from the patriotic event.

Whither bound, Uruguay? You now stand at the crossroads. Will you continue to support and sustain the liberties forged for you by your gallant national heroes Artigas, Varela, and Batlle? Or will you allow the present emergencies to pressure you into restricting the liberties that have made you great? The world awaits your decision. □

References

[1] Apparently the urban guerrillas take their name *Tupamaros* from Tupac Amaru, an Inca ruler who resisted the Spaniards near Cuzco, Peru. He was executed in 1571. See Thomas E. Weil, *et al.*, *Area Handbook for Uruguay* (1971), p. 380.

[2] See the author's article, "Peru Under the Generals," LIBERTY, May-June, 1975.

[3] Agustín Rodríguez Araya, *Génesis Constitucional de la República Oriental del Uruguay* (1955), pp. 314, 315, 325.

[4] George Pendle, *Uruguay* (2d ed., 1957), p. 25.

[5] Milton I. Vanger, *José Batlle y Ordóñez of Uruguay, the Creator of His Times, 1902-1907* (1963), a scholarly biography but unfortunately does not include the climax of Batlle's career; Russell H. Fitzgibbon, *Uruguay, Portrait of a Democracy* (1956), pp. 230-244; *Encyclopædia Britannica* (1961), vol. 3, pp. 212, 213.

[6] Alberto Methol Ferre, *Las Corrientes Religiosas* (1970), pp. 40-53.

[7] J. Lloyd Mecham, *Church and State in Latin America* (1966), p. 257.

[8] *Ibid.*, p. 643.

[9] Letter from Ataides Luz, Paraná, Argentina, dated July 9, 1975. Letter from Eduardo Gordienko, Montevideo, Uruguay, dated July 10, 1975. The former is a colleague and the latter a former student of the author, who spent ten years teaching history, religion, and English in Uruguay Academy (1955-1965).

INTERNATIONAL

USSR Expels Danish Tourists for Smuggling in Bibles

COPENHAGEN—Two Danish tourists were recently expelled from the Soviet Union for smuggling 700 Bibles into the country.

Pastor H. K. Neerskov of the Danish European Mission said that Kirsten Steffenson and Ijlen Bramsen had been touring the USSR in a van, in which they had concealed the Russian-language Bibles.

Pastor Neerskov commented that he did not know why they were expelled, "because the Soviet government claims there is religious freedom in the Soviet Union and that 10,000 Bibles were printed there last year."

The two Danes were arrested at Vinnitsa in the Ukraine as they were distributing the Bibles, which had been printed in Denmark. Officials confiscated their car, bought them rail tickets to Bucharest, Romania, and escorted them to a railway station.

Pictures of the two, who were called "spies," were sent to the Romanian television network, which pictured them in news bulletins. When they arrived in Romania, the Danes went to their country's embassy, which assisted them to return home.

English Editor, Magazine, Fined for Blasphemy

LONDON—An editor of a magazine for homosexuals has been convicted of blasphemy for publishing a poem depicting Jesus Christ as a homosexual.

Denis Lemon, editor of Gay News, the publication that carried the poem, was given a nine-month jail sentence, suspended for eighteen months. He was also fined $850. The magazine was fined $1,700 and court costs.

Suspension of the sentence means that Mr. Lemon will not have to go to prison if his conduct meets the court's standards during the next eighteen months.

In the six-day trial, the first of its kind since 1922, the jury, by a vote of 10 to 2, found Mr. Lemon and his paper guilty of "unlawfully and wickedly" publishing a blasphemous libel on the Christian religion.

The offending poem concerned a Roman centurion's love for Jesus as His body was taken down from the cross.

Orthodox, Nonreligious Jews Battle Over Sabbath Issue

TEL AVIV—Hundreds of religious and nonreligious Jews clashed over the issue of driving on the Sabbath in or through the largely Orthodox suburb of Bnei Braq, a community north of Tel Aviv.

Riot police and soldiers were rushed to the area when fist fights erupted between the two groups.

A bitter national controversy has mushroomed in Bnei Braq, where Orthodox Jewish residents in the town of 12,000 have been attempting to block traffic on the Sabbath on Hashomer Street, a road that runs through the town and links a main thoroughfare.

Trouble began when nonreligious youths staged a march to protest against the blocking of the Bnei Braq road. Observant Jews do not drive on the Sabbath.

Contraceptive Ban Continues Under New Irish Government

DUBLIN—The Irish Republic's newly elected government says it has no intention of changing the laws banning the sale of contraceptives.

Prime Minister Jack Lynch, whose Fianna Fail Party defeated the Fine Gael-Labor Party coalition government in June elections, said he is opposed to contraception and would take steps to put an end to the private mailing of condoms from Britian to Ireland.

Last May, under the government of Prime Minister Liam Cosgrave, an attempt to pass a law legalizing the sale of contraceptives was defeated in the Senate.

Several bills aimed at legalizing the sale of contraceptives in the Irish Republic have failed, including one promoted by the Cosgrave government. Mr. Cosgrave himself was opposed.

Though sales of contraceptives are outlawed, Dublin has two clinics, backed financially by the International Planned Parenthood Federation, that dispense contraceptives. The clinics claim legal immunity.

A recent survey conducted under Irish Roman Catholic Church auspices showed that 33.6 percent of the republic's population of 3 million thought that the use of contraceptives was "always wrong."

County School Board Authorizes Controversial Bible Program

OCALA, Fla.—Rejecting a Florida Department of Education ruling and its own attorney's advice, the Marion County School Board has set aside an earlier agreement and voted to continue a controversial Bible program in its schools.

The board voted 3-2 to allow Ocala Bible in the Schools, Inc., a private nonprofit group, to hold Bible study classes in elementary classrooms during regular school hours.

An earlier agreement reached last spring had restricted such studies to school libraries and lunchrooms.

Ocala Bible in the Schools is funded by churches, United Way, and individuals in Marion County. The Bible study program, the last of its kind in Florida, has been operating for thirty-one years.

Parents will be required to request in writing that their children be permitted to attend Bible classes. Ocala Bible in the Schools will pay the school board five dollars an hour for schoolroom use.

John P. McKeever, attorney for the school board, said he wouldn't be able to defend the program in court. He called attention to the fact that the board last spring bowed to the challenge of a parent to have the program revised to conform with a legal opinion issue by the Florida State Department of Education to the effect that the program was "constitutionally infirm."

Threat of a suit was dropped by the parent in March when the board agreed to his demands for separation of Bible study from actual classroom time.

Bible in the Schools contends that the classes are not religious per se, but represent an objective study of Bible history. The school board attorney, Mr. McKeever, dissents.

"After reading the material presented by the Bible group, I find it difficult to

believe this isn't a religious course," he argues. "There's a difference between saying, 'God led the Hebrews out of Egypt,' and 'The Hebrews believed God led them.'

"The law does not contemplate and the constitutions of Florida and the United States do not permit the school board to conduct or cooperate in a program of religious instruction in the public schools."

Scientologist Who Won't Testify Supported by Council of Churches

WASHINGTON, D.C.—In a brief filed in the U.S. Court of Appeals, the National Council of Churches has supported an employee of the Church of Scientology in refusing to testify before a grand jury.

Arthur Maren, director of public relations for the church, was asked to testify before a grand jury investigating the alleged theft of government documents. He refused to answer certain questions on the ground that they constituted unwarranted government interference with the internal affairs of a church.

The brief argues that church workers should not be forced to testify before a grand jury unless the government can show that they have personal knowledge about a particular "probable" crime, that the information can be obtained only from church workers, and that the testimony would serve a "compelling and overriding societal interest."

"This minimal showing by the government is, of course, not the ordinary test required when the government seeks testimony," the brief declares. "However, we are not dealing here with ordinary cases, but First Amendment ones."

The NCC argues further that "once church workers are used by the government as an easy source of community information, those to whom church missions are directed—people already in large part disaffected from society—will distrust and shun them as they do others they believe to be part of the establishment."

Dean Kelley, director of religious and civil liberties of the NCC, declared, "We must guard against any possible infringement of the First Amendment right to the free exercise of religion, whether or not we agree with the precepts or practice of the religious group that is threatened."

The brief notes that the National Council "takes no position at this time as to the qualification of the Church of Scientology as a 'church,'" but that for purposes of the brief it is accepting a previous court ruling that the organization qualifies for religious liberty protection guaranteed by the First Amendment.

Mr. Kelley noted that the issues raised in the case are the same as those raised in the case of the two Episcopal Church workers now imprisoned for refusing to testify before a federal grand jury in New York in connection with bombings, allegedly by Puerto Rican terrorists. The pair, Maria Cueto and Raisa Nemikin, employees of the Episcopal Church's National Commission on Hispanic Affairs, have the support of the NCC in their refusal to testify.

Churchgoer Who Quit Job Is Denied Unemployment Benefits

SAN FRANCISCO—A worker in a vegetable packing plant who quit her job, refusing to work on Saturday for religious reasons, has been ruled ineligible to receive unemployment benefits.

In a 6-1 decision the California Supreme Court upheld the Unemployment Insurance Appeals Board's refusal to pay benefits to Tommie Ann Hildebrand.

Four years after she became a seasonal worker in 1966, Ms. Hildebrand became a member of the Worldwide Church of God. After telling her employer, Cel-a-Pak, Inc., that she could no longer work Saturdays because her church teaches that that day is the Sabbath, she was replaced.

The board noted that Ms. Hildebrand had accepted the job knowing that she would be required to work six, and perhaps seven, days a week. Therefore, it said, she could not "in good faith" be

Thousands Leave Northern Ireland—Scenes such as this, of a lonely soldier standing guard in Belfast, are increasingly commonplace as people leave strife-torn Northern Ireland by the thousands. It is one of the biggest population shifts in Western Europe since World War II. British officials estimate that 16,000 people left the area in 1976, and at least the same number will have left by the end of 1977.

permitted to raise religious convictions as a good cause for leaving her job.

Although the court majority upheld the unemployment board in ruling that Ms. Hildebrand "must be deemed to have left work voluntarily without good cause," Justice Stanley Mosk dissented. He wrote that "the denial of benefits which are available to others because of this plaintiff's religious practices constitutes overt hostility to religion and should not be upheld."

City Hall's "Window Cross" Upheld by California's Appellate Court

LOS ANGELES—A display of crosses formed from lighted windows in the City Hall tower during the Christmas and Easter holidays may continue.

A state court of appeals has reversed a superior court judgment blocking the lighting display.

The appellate panel, in a 2 to 1 vote, lifted a preliminary injunction granted by Superior Judge Norman R. Dowds, who held in January, 1976, that the thirty-year tradition was unconstitutional because it violated the doctrine of separation of church and state.

Judge Dowds had also held that the display violated California's constitution. His injunction was granted at the request of Beverly Hills Attorney S. Dorothy Metzger, who had tried unsuccessfully to stop a 1975 Christmas Eve lighting display of tower windows in the shape of a cross.

She claimed that the city's expenditure of $103 to arrange the lights was an illegal use of tax funds. Judge Dowds in his opinion said the evidence "makes it clear the purpose is a religious one."

But the Los Angeles City Council subsequently appealed the ruling, contending that the crosses "represented a symbol of the spirit of peace and good fellowship toward all mankind on an interfaith basis."

The appellate court's majority opinion asserted that Judge Dowds's finding that the practice promoted religion was "unsupported by the record."

In a dissenting opinion, Presiding Justice Otto M. Kaus said he concurred with the superior court judge's ruling. "The court emphasizes," he said, "that it does not suggest that religious purposes are not wholly admirable ones, the question being only whether it is a permissible purpose for a governmental body."

NLRB Ruled Out of Bounds in Cases Involving Catholic School Unions

CHICAGO—A three-judge Federal appeals court has struck down a mandate by the National Labor Relations Board ordering Catholic bishops in Chicago and northern Indiana to bargain with unions representing lay teachers in seminaries and high schools.

The Seventh Circuit Court of Appeals ruled that the NLRB has no jurisdiction in teacher-employer relationships in parochial schools, because such an involvement by a Government agency would violate First Amendment guarantees of church-state separation.

Donald Rueben, an attorney for Cardinal John Cody, of Chicago, called the appeals court decision "a great, great victory," and said it would be "precedent-setting all over the country." Similar cases are pending in Philadelphia and Los Angeles.

The ruling in effect reinforces arguments against financial aid by Government to parochial schools, as it uses these arguments to exempt parochial schools from NLRB jurisdiction.

The appeals court put it this way: "The board [NLRB] is cruelly whipsawing the schools by holding that institutions too religious to receive governmental assistance are not religious enough to be excluded from its regulation."

The NLRB last year ordered union representation elections for both Quigley North and Quigley South preparatory seminaries in Chicago and for five Catholic high schools in the Fort Wayne-South Bend, Indiana, diocese, ruling that the schools were not "completely religious" and therefore subject to NLRB jurisdiction.

After the election was held and the union won collective-bargaining rights, the Chicago archdiocese refused to bargain with the Quigley Education Association, claiming that the NLRB had no right to intervene in church affairs, particularly in light of the United States Supreme Court rulings that barred non-public schools from receiving public aid because of the possibility of "entanglement of church and state."

In the unanimous opinion written by Judge Wilber F. Pell, the court said, "A church that chooses to educate its own young people in schools that it is required essentially to finance without Government aid should, because of the essentially religious permeation of curriculum, be equally freed of the obviously inhibiting effect and impact of the restrictions of the National Labor Relations Act in conducting the teaching program of these schools."

The court called for "an evenhanded approach to justice" so that the religious clauses of the First Amendment that served as a "buckler to stop financial aid . . . should not now be any less effective to ward off the inhibiting effect of the Government's regulation."

The court added that there was "not only sovereign involvement" by the NLRB in the religious activity of the church but also "undoubtedly, in our view, also curtailment of the free exercise of religion."

In determining that the NLRB did not have jurisdiction, the court said that Catholic schools do not become "merely religiously associated" because they

100-Year-Old Church Member—Martha Willie, a 100-year-old Miccosukee Indian, decided recently that Christianity wasn't just a "white man's religion" and took her stand for Jesus Christ. She is believed the oldest American Indian to be baptized.

teach secular subjects. "If history demonstrates, and it does, that Roman Catholics founded an alternate school system for essentially religious reasons and continued to maintain them as an 'integrated part of the religious mission of the Church,' courts and agencies would be hard pressed to take official and judicial notice that these purposes were undermined . . . by the determination to offer such secular subjects as mathematics, physics, chemistry, and English literature."

The court claimed that the NLRB order to bargain "inhibits the bishops' authority" to maintain doctrinal teaching in their schools. "The real difficulty is found in the chilling aspect that the requirement of bargaining will impose on the exercise of the bishops' control of the religious mission of the schools."

The ruling went on to note that entanglement in doctrinal affairs of the Church was inevitable. "We are unable to see how the board can avoid becoming entangled in doctrinal matters if, for example, an unfair labor practice charge followed the dismissal of a teacher . . . at odds with the tenets of the Roman Catholic faith" or who adopted a life style "contrary to Catholic moral teachings."

Claiming that specific examples of entanglement are not required, the court said the tenor of the First Amendment religious clauses involving state aid never required a "trial run, but only the reasonable likelihood or possibility of entanglement."

Brief Argues Against Ban on Clergy Running for Office

WASHINGTON, D.C.—Ten religious and civic organizations have joined in a brief defending a Tennessee minister's right to run for public office.

The brief, submitted to the Supreme Court of the United States by Leo Pfeffer, special counsel to the American Jewish Congress, argues that a Tennessee law banning clergy from elective state office violates constitutional guarantees of freedom of religion.

The case involves the Baptist pastor Paul A. McDaniel of Chattanooga, who ran as a delegate to the 1977 Tennessee Constitutional Convention. His eligibility was challenged on the grounds that the state constitution bars clergy from serving in the state legislature. Qualifications for eligibility as a constitutional convention delegate were the same as those for a legislator.

A lower court in Tennessee ruled the exclusion of clergy invalid under the United States Constitution, but that decision was reversed by the Tennessee Supreme Court. The U.S. Supreme Court is expected to hear arguments in the case in the fall.

Tennessee is believed to be the only state with prohibitions against priests and ministers running for public office.

Mr. Pfeffer argues in the brief that the statute is unconstitutional because "it imposes the penalty of disqualification from public office upon those whose religious conscience impels them to serve as ministers of their faith." He also points out that the Constitution prohibits religious tests as qualifications for Federal office.

The lawyer went on to say that if it is feared that religious belief might influence a clergyman's vote, "should not then all citizens having strong feelings in respect to religion, from pietists to atheists, be disqualified, leaving the franchise to those, if there are any, who are completely neutral in respect to religion? This conclusion may be absurd, but it is the only one that can validly sustain the constitutionality of the challenged law."

Syrian Discoveries Not Major Key to Old Testament—Two Italian archeologists who uncovered evidence of a flourishing Semitic culture in northern Syria have warned that the new information should not be hailed as the ultimate key to the ancient Near East or to Old Testament history. Paolo Matthiae and Giovanni Pettinato, of the University of Rome, said that the 16,000 tablets of the Kingdom of Ebla, discovered at Tell-Mardikh, 30 miles south of Aleppo, Syria, have as yet produced no data either to prove or disprove historical accounts of the Old Testament. They confirmed, however, that the tablets contain references to a great flood, a Creation account, and a god whose name may have the same root as the Hebrew "Yahweh."

Witnesses' Campaign Will Stress Position on Blood Transfusions

ST. PAUL, Minn.—Jehovah's Witnesses, who believe that the Bible prohibits blood transfusions, are planning a new national campaign that will seek understanding of their position by the medical and legal professions.

Specifically, they hope to prevent recurrence of cases in which doctors and hospitals have gone to court and forced Jehovah's Witnesses to undergo transfusions in medical emergencies.

The church claims court-ordered transfusions violate the civil rights of Witnesses and are medically unnecessary.

Church members will deliver a leaflet and booklet to doctors, nurses, hospital administrators, judges, and lawyers across the country, explaining the position of Jehovah's Witnesses on blood transfusions.

A church spokesman cited Bible passages upholding the "sacredness" of blood and prohibiting the eating of blood. He said Witnesses who willingly accept a transfusion are "cut off spiritually" from fellowship with a congregation of Jehovah's Witnesses.

Paul Peterson, a Chisago City, Minnesota, farmer, said medical advances make it unnecessary to give transfusions. Unable to find a Minnesota surgeon who would perform heart surgery without transfusions, he went to the Texas Heart Institute in Houston, where, he said, a surgical team headed by Dr. Denton Cooley performed a triple artery bypass operation in March, 1974, without giving him blood.

PERSPECTIVE

Sample This

Inevitably, toward the end of the year the editorial bin contains a number of clippings that we intended to give our views on but didn't. Here is a sampling, with a sampling also of what we might have said.

▶ A Soviet magazine, the *Literary Gazette,* in August expressed approval of unwed motherhood, saying that "morality should not stand in the way of human happiness." The magazine cited statistics to show there are 170 unwed Soviet women for every 100 single men, the result, in large part, of war. The *Gazette* suggested that the government, which has been trying to increase the birth rate, subsidize the raising of children by unwed mothers. The article called unwed motherhood the "back door to happiness."

Our viewpoint: Happiness has no back door.

▶ In Orlando, Florida, churchgoers won a battle to prevent witches, warlocks, psychics, hypnotists, and astrologers from becoming the central feature of a leading mall's third-anniversary celebration. The "Para Extravaganza" was called off following dozens of telephone calls from Scripture-quoting churchgoers who threatened to boycott the mall's merchants.

Our viewpoint: Boycott is a coercive weapon from the devil's armory. Thus we have an example of the pot calling the kettle black.

▶ In July the Vatican issued a 32-page document calling on national governments to fund parochial education. The Vatican cited the "very heavy burden of cost" imposed on the church by its educational system. Only a few weeks later, newspapers reported that jewels stolen from a Roman Catholic cathedral in Oviedo, Spain, were valued at more than $50 million.

Enough said? Or should we have noted that the provost of a Catholic university in the United States had observed ruefully that government aid to church-related colleges brought with it an updated version of the golden rule: "He who has the gold makes the rules"?

▶ A Federal district court in Philadelphia ruled that the National Labor Relations Act cannot be applied to teachers in church-related schools, because it would interfere with religious freedom. The decision upheld a major argument of the Roman Catholic Archdiocese of Philadelphia, which had opposed involvement of the NLRB in union efforts to organize some 2,300 lay teachers in Catholic schools. One church argument: If the schools are too religious to be supported by public tax funds, they are too religious to be under the National Labor Relations Act. Right on!

SATIS VERBORUM

Tolerance is nothing but the rotten fruit of indifference.—

Credited to a German Protestant churchman at the time of Bismark.

▶ Now, about that presidential envoy to the Vatican. Other presidents than Jimmy Carter have named a personal envoy, beginning with President Franklin Delano Roosevelt's appointment of Myron Taylor, an Episcopalian. Carter, however, went further than his predecessors by appointing a Roman Catholic attorney, David M. Walters, and clearing the appointment with top officials of the Roman Catholic hierarchy in the United States. On the one hand, it's not what one would expect of a "born again" Baptist, supposedly committed to separation of church and state, as in Christ's teaching: "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matt. 22:21). On the other hand, it's what one would expect of a Protestant president. That is, politics being politics, it's what one would expect. Kennedy, a Catholic, said, "I believe in an America where the separation of church and state is absolute—where no church or church school is granted any public funds or political preference." Again, what one would expect. But that "born again" label, which means in part that its wearer's first loyalties are to Christ, had led us to expect more than mere politics.

For a review of the arguments against a special envoy, the text of a wire to the President from Andrew Leigh Gunn, the executive director of Americans United for Separation of Church and State, is comprehensive: Such an appointment, said Gunn, "1. Would violate the constitutional principle of separation of church and state.

"2. Would grant preferential treatment to one Church and discriminate against all others, enhancing the prestige of one Church while putting all other faiths in a second-class position.

"3. Would bypass the normal process of submitting a proposal for diplomatic relations to the Senate.

"4. Would create an excessive entanglement between church and state, especially in view of the Vatican's July 5 document urging Catholic bishops to seek Government aid for denominational schools, a policy clearly in violation of American constitutional principles.

"5. Would create interfaith divisiveness and weaken interfaith harmony.

"6. Would constitute American Government intrusion into the internal affairs of the Catholic Church; many Catholics, like the late President John F. Kennedy, oppose such an entanglement.

"7. Is not necessary, as any information that the Vatican needs to communicate to the U.S. Government can be transmitted through existing legitimate channels.

"8. Would be a form of acceptance by the Administration of the old Vatican position that the Pope should receive special recognition and be allowed to advise temporal rulers."

Baptist papers, too, without exception, as far as our reading revealed, opposed the appointment. Attorney Walters did not help his case or the President's by coming down with "hoof-in-mouth disease." One of his objectives, he said, would be to further "ecumenical" goals. Ah, well, maybe the next Catholic president will appoint a personal envoy to the Southern Baptist Convention.

▶ On a lighter note, in Harrisburg, Pennsylvania, Governor Milton J. Shapp signed a bill that prohibits the use of blasphemous or obscene words in corporate titles. One is left to wonder whether corporate acts that "profane the Lord's name" will be dealt with as courageously.—R. R. H.

LETTERS

Puritan Put-down

Thank you for the excellent articles in the July-August issue. The Puritan caricature in society has become an easy out for all kinds of permissiveness. The articles exposing and very ably discussing the evils of pornography are very helpful for the person who is pressured to be tolerant.
ARTHUR M. CRAWFORD
Meadville, Pennsylvania

I commend you for printing the excellent article "The Great Puritan Put-down."

As a lover of the Puritans, I have been dismayed to see the vehemence with which they are despised. Probably no group in America's history has been so maligned for so long for so little cause—other than their identification with the Lord Jesus Christ, who was similarly "despised and rejected."

I have often felt the way the author expressed himself about Puritans, but lacked the time and/or the resources to do anything about it. I hope your article will receive wide circulation and possibly be reprinted by other magazines so that this real injustice (in a day of many so-called injustices) may be rectified.
EUGENE W. WEST
Pastor
Bethel Baptist Church
Torrington, Wyoming

Your July-August issue has just come to my hand. It is the first issue I have seen, and I want to protest the horrid illustrations both on the front cover and for the article "The Great Puritan Put-down," by Richard Utt. Nothing could put the Puritans down worse than these grotesque illustrations. I hope all of Ted Ramsey's drawings are not so repulsive. They are not even funny, if that was the intent.

I did not know that the Salem Puritans later admitted the wrong they had done in the Salem witchcraft deaths. I had an ancestor who was stoned as a witch in Salem.

Our society today is greatly in need of some old Puritan values, such as hard work and an honest day's work, but I don't think we need any return of religious bigotry. The Puritans put God first, and that we might emulate. We should close all retail stores on Sundays, saving energy and giving people more opportunity to attend church and visit friends. I think we should return to the old Yankee pay-as-you-go way of life, and make schoolwork the job it should be and not the pleasure some would permit. We could stand a little more attendance at the home hearth and mother's time in the kitchen. Also, girls should learn to sew.
BERENICE J. GRIMMER
Omaha, Nebraska

Just saw a copy of the new LIBERTY that features on the cover an article by one of your favorite writers.

Whoever Ted Ramsey is, please tell him he is great. You are great, too, for picking an artist with that kind of talent. The Review and Herald is also great for allowing itself to be clobbered (I presume) into paying for that kind of art instead of using something cheap and stodgy. It is a privilege to write for a magazine that so enhances what I am trying to say with ne plus ultra illustrations.
RICHARD H. UTT
Wrightwood, California

I just finished reading "The Great Puritan Put-down," "Pornography Is Not the Harmless Recreation It Is Said to Be," and a couple of other articles in this issue.

I enjoyed the above-mentioned articles so much.
KEN TIERCE
Pastor
Calvary Baptist Church
Hayward, California

Some years ago an Adventist friend thought I needed some moral improvement and sent me LIBERTY.

I find the articles of historical interest, as well as being informative on the Bill of Rights. Your July-August issue is the best. I have enjoyed the articles about the Puritans, Anthony Comstock, pornography, and the Bible.
JOHN H. PURSEL
Attorney
Phillipsburg, New Jersey

I recently had access to your July-August issue of LIBERTY. The whole issue is excellent. Please enter my subscription for one year.
PHILIP L. BAILEY
Pastor
First Baptist Church
Aberdeen, Maryland

Your July-August issue just arrived and is, as usual, admirably well worth reading from cover to cover.

The collection of articles on censorship, pornography, community standards, free speech, et cetera, is exactly what I would like to use in my graduate classes in librarianship to help my students understand these issues.

In addition, I will be helping to lead a panel discussion on these topics at a meeting of professional librarians, and I feel the participants would appreciate and profit by reading your magazine's current issue.

Would you please send and bill me for one hundred copies of the July-August issue?
RINEHART S. POTTS
Assistant Professor
Glassboro State College
Glassboro, New Jersey

LETTERS

Baby Porn

So you don't believe in pornography? Good! But what about the new child-porn? The picture on page 30 of the July-August issue could be used by the advocates of said type very effectively. Babies (and small children) are innocent, of course, and their nude bodies are no offense to mothers. But when a baby's picture is crudely publicized, the effect can be disgusting, defiling—pornographic!!!

That one was so offensive—so unnecessary!

ANONYMOUS
San Luis Obispo, California

[It is a shame you don't have the courage to sign your name to your convictions. We did.—Eds.]

Shame on you!

L. A. GUINN
Lubbock, Texas

[Is this better?—Eds.]

World Congress

It is intriguing to see that the Amsterdam congress (LIBERTY, May-June, 1977) could not collectively view religious freedom in a simple, straightforward light. One would have thought religious freedom was self-evidently a matter of a free conscience before God, with no governmental pressure exercised to steer that conscience in any specific direction.

Religious freedom can stand on its own feet, without needing to be propped up by social or political privileges. When the apostle Paul sent Onesimus for conscience' sake back into a position associated with social odium and even oppression, he was not depriving him of his religious freedom. Paul said, "Were you a slave when you were called? Do not let that trouble you. . . . For the man who as a slave received the call to be a Christian is the Lord's freedman" (1 Cor. 7:21, 22, N.E.B.).*

When men try to turn every subject, even religious freedom, into a social gospel concerned with human politics, I can't help but wonder whether they are not making themselves the ready tools of confusion.

Revelation 13 shows us what happens when national leaders in their concern for their brand of morality and human rights turn to concerted economic boycotts against those who do not tow the line. Their social action carries them into the domain of conscience; and they "shall drink of the wine of the wrath of God" (Rev. 14:10).

I sincerely appreciate your stand for undiluted, basic freedom of conscience. Your labors on behalf of religious freedom are, in God's design, a timely restraining influence on elements of confusion leading to persecution.

FREDERICK C. PELSER
Cape Town
South Africa

* From *The New English Bible*. © The Delegates of the Oxford University Press and the Syndics of the Cambridge University Press 1970. Reprinted by permission.

Hardison Case

I have just read the United States Supreme Court opinion in *Trans World Airlines v. Hardison*. I am relieved to discover that this case is not the total disaster that the press portrayed. The most important point is that the Court recognizes that an employer does have an affirmative duty to accommodate a religious practice. However, in the case of *Hardison*, which had peculiar facts in terms of the conditions of Hardison's employment, accommodation is not required. The Court indicated that they would not require TWA to bear more than a *de minimus* cost in order to give Hardison Saturdays off. In most cases there probably would not be any cost incurred at all.

ROBERT H. WAGSTAFF
Attorney
Anchorage, Alaska

Left to right: Dorothy Detwiler, James Cavil, Robert Conway, Robert Cunningham, Muriel Rudge. (Not pictured: Glenn Stone.)

The Editor's Editor

Checking LIBERTY copy for accuracy is no easy task, according to Robert Cunningham, head copy editor of the Review and Herald Publishing Association, which produces LIBERTY. "We have to follow scrupulously the credo of copy editors: 'verify, verify, verify!' "

His staff is one of the most intense and thorough at the publishing house. At an "unrealistic" average speed of eight manuscript pages an hour, staffers scrutinize LIBERTY copy (which can run more than a hundred typed pages each issue) for inaccuracies. Checking for grammar, punctuation, and spelling is only the beginning. Of the thirty-one magazines the copy editors regularly read, LIBERTY is considered the most difficult to work on, because of its more technical, philosophical, juridically oriented editorial slant.

One minor style change appears in this issue: henceforth legal citations will appear as *Hirabayashi v. United States*, rather than *Hirabayashi* v. *United States*. The reason: the new style has become respectable and demands less effort. The copy editor must also be concerned that the style be consistent throughout LIBERTY.

For those now contemplating tackling a job as a copy editor, Robert Cunningham advises you must "(1) have the genes that make a perfectionist, (2) learn to live with boredom, (3) be able to get along with people [not all of whom have taken a course in human relationships], (4) build a scale of values and stick to it, (5) have a natural facility for language, (6) read *widely* in order to guard the editor, author, and reader as much as possible against error, and above all, (7) be able to do your work honestly and let someone else take the credit."—C. M. L.

In a national crisis, with human rights at stake, will the United States Supreme Court stand by the Constitution?—See "Can We Count on the Court?" p. 2.

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FEATURES

DEPARTMENTS

STAFF

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LIBERTY correspondence: Please send to LIBERTY, 6840 Eastern Avenue NW., Washington, D.C. 20012.

There is no liberty

There is no liberty to men whose passions
are stronger than their religious feelings;
there is no liberty to men in whom ignorance
predominates over knowledge;
there is no liberty to men who know not
how to govern themselves.

—Henry Ward Beecher

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