

Liberty

Did Jerry Falwell
Sell Out the Store for
Tax-Free Bonds?

The Shoemaker's Faith

"We Don't Want to See
You Anymore"

Answers to Sabbath
Questions



THE CROSS AND THE CONSTITUTION



DID JERRY FALWELL SELL OUT THE STORE FOR TAX-FREE BONDS?

Part I

r. Jerry Falwell now calls it a mistake.

His attempt to get \$60 million in tax-exempt bonds for new construction and refinancing debt at Liberty University (LU) hasn't been one of his more successful ventures.

It's been downright costly. In time, in money, and perhaps most devastatingly, to his credibility.

This is a man whose career wins and losses stack up on both sides of the page. A Lynchburg, Virginia local son, he has pastored the Thomas Road Baptist Church for 36 years, a church he started with 35 people and which now has a membership of 22,000. That's more than one-fourth of Lynchburg.

He created a television ministry, The Old Time Gospel Hour, and in 1971 started Liberty Baptist College with 141 students. Today Liberty University's full-time-equivalency student population is 11,000 and that includes a burgeoning adult education program by videotape—Liberty University School of Lifelong Learning (LUSLL).

By Pamela Maize Harris

Falwell, who visits several times a year at the White House, can invite the President to speak at graduation and Bush shows up. A public relations coup not just any university chancellor can accomplish.

Falwell recently disbanded the Moral Majority, an evangelical movement that, he says, created the conservative right and Bush and Reagan's overwhelming victories.

But things aren't real rosy in Falwell's kingdom. He had to shut down the Old Time Gospel Hour, funding source for LU, broadcast on most of 200 stations. Only three stations and the ministry's satellite network, FamilyNet continue to run the program.

The show was costing \$150,000 a week said Mark DeMoss, Falwell's administrative assistant and official spokesman. Accreditation headaches with the Southern Association of Schools and Colleges have plagued the adult education program of LUSLL, one of seven colleges within the university.

Then there was his involvement with Jim Bakker's ministry and Heritage Theme Park. Some think that's when major funding problems began for Falwell's ministry. Others say it started long before that.

But even his own students and alumni were taken by surprise when Falwell attempted to paint Liberty University as a secularized liberal arts college.

Distrust has edged in.

Why the sudden chameleon switcheroo? Could Falwell have sold the soul of the college for funding? Was he painting a secular veneer on a solidly Christian-based university?

Certainly he needed more money for construction. A new church. A stadium for big-league football. A new cafeteria. Debt consolidation. But the moment eagle-eye Lynchburg citizen Haynie Kabler saw the notice about the tax-exempt bonds in *The News and Daily Advance*, Lynchburg's hometown newspaper, Falwell's dream began to unravel.

That was November of 1989. The story is one that involves wins and losses for both sides, twists, turns, legal maneuvering, a string of attorneys, and a challenge to one of the oldest concepts in the American tradition: the tall wall between

church and state.

Some players deny church-state separation is the issue. Both sides claim the other misunderstood the issue.

In what some call a benchmark legal battle, the story linked unlikely cohorts: A Jewish lawyer, a conservative Catholic, a retired Baptist minister, and a Baptist layman.

When Haynie Kabler eyeballed the legal notice, he worried. He called attorney Jeff Somers.

"Does this mean that my house is going up for collateral for Liberty University?" asked Kabler, retired from AT&T and in his 80s.

And he called Nick Habel. They had worked together on other civic issues including fighting placement of a

Pamela Maize Harris is a freelance writer residing in Ooltewah, Tennessee. She is currently assistant professor in the department of communication and journalism at Southern College in Collegedale, Tennessee.



Attorney Jeff Somers (right) with plaintiffs Nick Habel (left) and Haynie Kabler (center): Three men who couldn't countenance loss of tax revenue for a purely religious institution.

**Attorney Ted
Craddock:
Brought suit
against the
taxpayers,
property owners,
and citizens of
Lynchburg.**

fire station in Riverside Park, and when Dr. Falwell sought forgiveness from the Virginia legislature for back taxes on property owned by the Old Time Gospel Hour. They lobbied in Richmond to make sure Falwell, instead of Lynchburg citizens, paid \$1.8 million in back taxes.

"We're both Baptists and I knew him as a Baptist minister here in town," Kabler said.

"I read that ad and I didn't understand it. Jeff Somers, our pro bono attorney, explained it was a legal process to validate the industrial revenue bonds for Liberty University. (It) didn't actually mean that individual property owners in the city would be responsible, but that overall the state and federal treasuries would lose tax revenue for the benefit of a purely religious institution."

Kabler is soft spoken, but adamant.

"I couldn't go along with that," he said simply. Neither could the retired Baptist preacher and former school administrator Nick Habel.

Early Virginia Baptist preachers were persecuted by the state for their separatist views, says Habel, who is in his 70s.

In the Falwell camp, obtaining bonds for much-needed refinancing of debt and new construction costs seemed like a simple procedure.

According to DeMoss, LU officials first met with Stephens, Inc., a Little Rock, Arkansas investment house, in July or August of 1989 "to discuss refinancing most of our debt with a tax-free bond issue through the Industrial Development Authority."

Liberty expected the bonds to be funded "within six months or so."

They hadn't counted on Habel and Kabler.

Or Jeff Somers.

Or Patrick McGuigan.

Or even the Virginia Supreme Court.

But they did hold a public hearing at the request of their underwriter Stephens Inc.'s law firm, just to make sure, DeMoss said, "a year or two down the road or sometime after these bonds were issued, a challenge wouldn't be raised or cause problems after the fact."

Later in a terse statement, DeMoss would call Habel and Kabler's involvement "harassment" and describe them as having no understanding of tax-free bonds and as "persons who believe in discrimination against evangelical Christians."

But that was after what DeMoss calls the "ordeal," a chapter he says the Falwell camp would now like to close forever.

It began September 1989 with preliminary approval of LU's application for \$60 million in low-interest, tax-exempt bonds from Lynchburg Industrial Development Authority (LIDA).

LU said this would save them \$2 to \$3 million a year in interest payments they would have to pay on taxable bonds. Their request specified that no funding would apply toward religious facilities.

"We took literally a map of the campus," explained DeMoss. "We drew a line around the school of religion building. We drew a line around a Christian radio station. . . . We drew a line around the building where chapel services and Sunday church services are held each week.

"Those areas of the property were actually excised from the map. We would not finance those properties through this bond issue."

LIDA gave the application its approval pending "validation" by the court. The Lynchburg Circuit Court would decide if Liberty University qualified. A single judge would hear the case.

Five days later the Lynchburg City Council stamped its approval. (One member, M.W. Thornhill [now mayor], who called the school discriminatory, voted against the resolution.)



Ted Craddock, of Caskie and Frost in Lynchburg, provides counsel for Lynchburg Industrial Development Authority.

Fortyish, no-nonsense, bespeckled and thorough, Craddock says it's his job as LIDA's attorney just to make sure procedures outlined by the General Assembly are followed.

"Whether the bonds are tax exempt really doesn't matter to me."

It wasn't his or the city's business to determine whether Liberty University qualified for the bonds. That's why Virginia has a validation procedure, he said. The validation procedure is simple. Sue the public, the taxpayers.

On October 30 Craddock did just that, filing a petition in court bringing suit against the "taxpayers, property owners, and citizens" of Lynchburg.

Liberty University hired the legal firm Kutak, Rock & Campbell of Omaha, Nebraska, bond specialists who became partners of sorts with Caskie and Frost, Craddock's firm. As bedfellows they faced off with Lynchburg taxpayers and their appointed attorney Richard Thompson, court-appointed guardian of infants and the disabled.

Kutak's job? According to Craddock, "They want to make sure the validation proceeding is done correctly because they're on the line. They've got to give the opinion. And if the opinion is wrong and if the bond issue is not valid, then it won't be tax exempt. And if it's not tax exempt, they're going to be on the hook for the underwriter and for every person that bought that bond, you see."

But Lynchburg taxpayers would not be paying tax money to Liberty University directly from the city coffers. Theoretically, money (interest totaling \$2-3 million yearly in this case) *not* paid in taxes by the university to state and federal coffers would leave federal and state citizens liable for dollars that *would have been paid* had the bonds been taxable.

"Conduit financing," Liberty's attorneys call it.

"If the interest on the bonds is tax-exempt, does that affect the citizens? That's the issue," Craddock contends.

Initial challenge to the bond issue came in November 1989, from Patrick McGuigan, who had been a staff member for the conservative Free Congress Research and Education Foundation whose head, Paul Weyrich, had coined the term



"moral majority." A phrase used to great political advantage by Jerry Falwell.

Conservative Catholic McGuigan told *The News & Daily Advance*, "It looked like Liberty was giving up control in order to get the bonds. They have a unique niche that no other school quite fills and we need that in the country," McGuigan said he was not anti-Falwell or anti-Liberty University. It was just a matter of policy. The bond issue would violate the First Amendment, Virginia's constitution, and the bond act itself.

Habel, Kabler, and Somers were surprised to discover McGuigan's attachment to the case and joined him as defendants on December 1, 1990, triggering one of the most controversial moments in Liberty University's history.

Liberty's DeMoss calls it "cosmetic" change.

And he admits that if Liberty University officials had known the headaches involved, and the price they were about to pay, they never would have tried it.

In response to legal counsel, says DeMoss, they pushed ahead. Attorney Lewis Stoneburner of Richmond, representing McGuigan, said a hurried teleconference took place November 21, 1989, with two-hours' notice in which board

The story is one that involves wins and losses for both sides, twists, turns, legal maneuvering, a string of attorneys, and a challenge to one of the oldest concepts in the American tradition: the tall wall between church and state.



Neville G. Solomon:
"I did an outside Christian service with a pastor, and one time the pastor did not hand in the Christian service on time and they [Falwell] threatened not to give me any grade."

"trustees softened official literature," changing religious references in the school catalog and student and faculty handbooks.

Straightforward language such as "Champions for Christ" was replaced by "code words" such as in the "tradition" of Liberty.

Secularization is nothing new in the composite history of American universities. Most colleges began as sectarian schools and gradually changed to more secularized institutions of higher learning.

Harvard. Princeton. Columbia. Brown.

But for most, the secularization process was more gradual than the tack Liberty University took. A confusing, almost instant flip-flop. "It made for a whole lot of debate with dozens of articles," DeMoss said.

During four days of testimony in January 1990, Falwell told the court that professors no longer must belong to Thomas Road Baptist Church or pay tithe.

At the trial, Liberty University's legal team circulated a new catalog in galley form which, the court and bond authority were led to believe, would soon be printed. Its changes appeared to move Liberty into the category of nonsectarian

schools.

Required "chapels" three times a week became "convocations" in the proposed catalog, and required hours in "Christian service" became "community service."

Falwell testified that the church has no ownership and no control of the school and denied that students are required to put in hours of Christian service.

These changes, he said, were made at a January 1989 board meeting to eliminate "antiquated verbiage." Attorney Stoneburner and others questioned, however, whether the changes were not semantical rather than substantive.

Surprisingly, Robert Gaunt, dean of the school of education refused to call Liberty a "Christian school" on the witness stand. He said Liberty University is "a school that consists primarily of Christians."

Falwell downplayed the Christian nature of the school and emphasized the primary role was to provide a quality liberal arts education.

Rules prohibiting movie attendance, short hair for men, bans on rock music and alcohol, he said, have no Biblical basis and are "just our preference" and called them "totally and entirely" a matter of taste.

This stance came as surprising news to Liberty College students and graduates. What was happening to their Christian university if the chancellor and their professors were downplaying its very pervasive Christian nature?

"I was devastated. I was angry," said a graduate who fears to use her name. "I went to the courthouse . . . I couldn't believe what I heard. I'll stand up. I'll tell the truth," she said.

"In court I heard with my own ears: it's not mandatory we go to church. I turned to Mark DeMoss, 'It is absolutely false and incorrect. You must think we are really dumb.'"

"Ninety percent of the average students are completely confused. They hear the man they love and respect say the opposite."

It's a topic that cuts very deep.

"We loved our years at Liberty. It was the most precious, best years of our lives. Nothing will erase those most cherished times. But it's direct deceit to deny the intent—who we are—for the motive of money," she said.

"People don't trust him anymore. . . . We have been crushed by what's happened," she continued. "We came to Lib-

erty because we wanted Biblical principles to live by."

When the student confronted a board member, she was told "It's just semantics. We're the same. We have the same goals."

Neville G. Solomon will go on record. A 4.0 student, Solomon completed an undergraduate degree in pastoral studies and aviation, a master's degree in religious education, and was halfway through a second master's of divinity—all at Liberty University—when he left to serve as a chaplain in the South African Army.

He recently returned to marry his sweetheart, the daughter of a former professor at Liberty.

Neville talks sitting on the floor in an apartment surrounded by several mementos from South Africa, boxes and gifts. It's 10:00 p.m. Friends and his fiancée bustle around the apartment putting away gifts from their wedding shower earlier in the evening.

Listening in on the interview is painful for his fiancée, daughter of a just-let-go professor. But he feels speaking out is the right thing to do.

Neville says that when he first arrived at Liberty in 1982, disowned by his father for becoming a Christian, Liberty became home. He was open, eager to learn, a sponge.

Now, he says, he is "disheartened." The bond issue has confirmed other disappointments along the way. Lack of creativity, academic freedom, and discouraging of questions.

"There were some professors at Liberty (at the trial) who were representing Dr. Falwell trying to say that Liberty University never pushed Christianity; that they were mostly a liberal arts university and that, for instance, Christian service was not mandatory, that chapel services were not mandatory, and that a student in no way would be penalized if they didn't go to these things.

"I did an outside Christian service with a pastor, and one time the pastor did not hand in the Christian service on time and they threatened not to give me any grade. You wouldn't get any grades if you didn't do a Christian service. And then suddenly he was saying in court that Christian service was just something that the students could appreciate; they could do it if they wanted to, but they didn't have to do it if they didn't want to. And that was not true.

"This . . . has caused me to have great distrust for this man even though he was

my chancellor for seven years.


"There's no way in the world he can ever explain to me why he said that Liberty was more liberal arts than a Christian school."

Angered by local newspaper accounts, one alumnus decided to attend the trial and learn the truth for herself.

"I listened. I heard. I studied. I came into the arena with full love, respect, and support for Dr. Falwell. And in my pursuit to support him, I found lies, deceit, sin,

**"... this corporation
is organized and
shall at all times be
operated exclusively for
religious and
educational
purposes. . . ."**

From original charter for Liberty Baptist College, Inc. Article II, #7, January 12, 1972 (amended May 6, 1985 to change name to Liberty University)

and a heartbroken spirit. . . . Of course, we still pray for him. He's one of the most loving, kind, influential men you'll ever meet. . . . But he's wrong." 

Next in Part II:

Reshuffling finances between Old Time Gospel Hour, Liberty University, Thomas Road Baptist Church, and their relationship's impact on the bond issue. Circuit Court Judge Mosby Perrow III's ruling. Appeal to the Virginia Supreme Court, their unanimous ruling and Rutherford Institute's attempt to appeal to the U.S. Supreme Court. Is Liberty University being singled out for discrimination because of Falwell's high visibility?

The Shoemaker's Faith

By Betty Gibson



The three fishermen had traveled many miles through snowy Finnish forests and over frozen lakes to reach the Kuopio winter fair. To all appearances they had come from Pohjanmaa province on the northwest coast of Finland to sell their fish at the great outdoor market. But they also had a more serious and hazardous mission in mind.

They had come to talk to cobbler Anders Hedborg about establishing a community of Baptist believers. The mission was hazardous: In the 1880s Finland required everyone to belong to the state church.

Nevertheless, the men, headed by Janne Blomqvist, went so far as to hold meetings during the winter fair. As a result, four people from Kuopio accepted the new faith.

When the men returned home, Anders Hedborg became the leader of the Baptists in Kuopio. A shoemaker with 11 children to support, he was quick-witted, decisive, and considered by some to be aggressive and quarrelsome. Whatever else might be said of him, he shared with his countrymen a fierce independence honed by centuries of national domination by Sweden and Russia. And nowhere was this more evident than in his convictions about his beliefs.

In April 1886, a missionary from Petolahti named Erik Jansson and his two assistants, Johan Liljestrand and Anders Lillviis arrived in Kuopio. With their help the Baptists organized their own community and a few converts were baptized in the creek near the vicarage.

The vicar, J. W. Calamnius, was outraged. According to law, he was responsible for the purity of the preached word in the city. Consequently, he wrote to the magistrate, demanding that the offensive missionaries be sent packing. Once again the shoemaker Hedborg was left to lead his small flock.

In 1889 a change in Finnish law made it possible to establish Protestant congregations whose doctrines differed from the established church. The Baptists of Kuopio were the first in the country to sign up. However, their numbers were few and it was not until 1893 that they received a permit to start operating. Twenty-nine

state church members indicated interest in joining the new congregation, but of those, seven withdrew and five remained uncommitted.

Hostility toward Hedborg and his family took a violent turn. His barn was burned down. And just before Christmas, his pigs were poisoned.

"Why, Papa?" wailed his youngest daughter, Mia. "Does somebody not like us?"

"Because we are Baptists, Mia," he said finally, "and not members of the state church, to some people we are *lestaatilainen* [the others]. But you

Though our Bill of Rights spells out the freedoms to be expected in this land of new beginnings, the gray-bearded grandfather of my photograph album has cured me of complacency.

mustn't worry. It is what God thinks that matters."

In the next few years, the autonomy Finland had enjoyed under Czar Alexander I came to an end with the accession of Nicholas I to the Russian throne. To local persecution, the czar's government now added repression, illegal arrests, suppression of newspapers, and restriction of association upon the entire nation.

The newspaper *Savon Sanomat* reported on October 27, 1884, "The Baptist movement in the city of Kuopio nearly disappeared. . . . The movement was torn apart because of inner conflicts and differ-

ences." The article attributed the differences to the Baptist image as a protest movement. As World War I approached, said the paper, "the movement was in deeper trouble because people wanted to be closer to the established 'real church.' During the long and hard strikes around 1905 in Finland there were 25 to 30 supporters of baptism in Kuopio. After 10 years, there were only 15 left."

By 1916, Anders Hedborg was dead.

Reported *Savon Sanomat*: "The master cobbler Hedborg did not leave his name in the history only because he was an aggressive and quarreling estate owner, but also as a person who gave his name to a Baptist meeting house in the corner of Tullinportti and Vuorikatu. It is known as Heippori Church [Heippori being the Finnish version of Hedborg] in the national church records."

Did the shoemaker Hedborg's witness end with his death? No, it didn't.

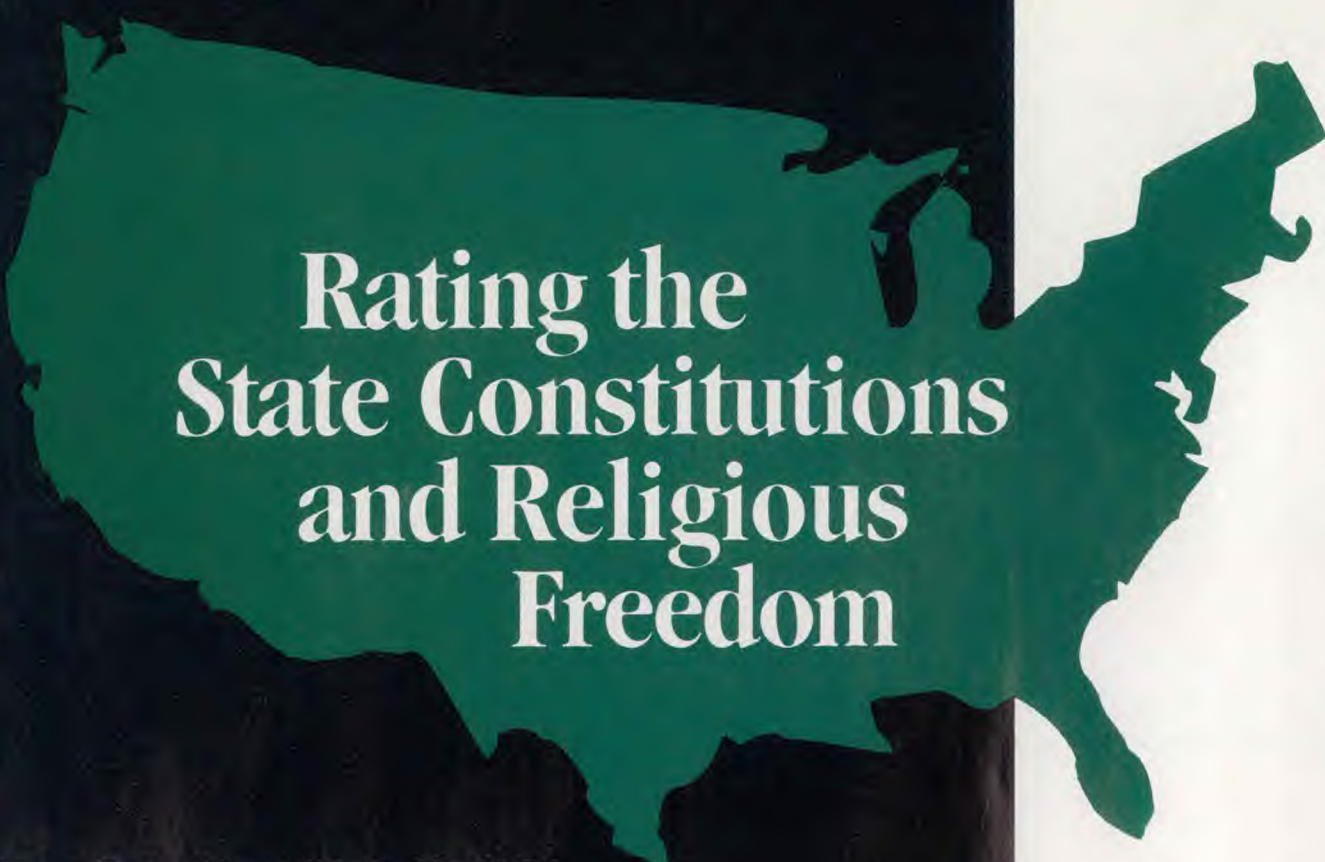
Anders Hedborg was my grandfather; his youngest daughter, Mia, was my mother. The church named after him is not the only legacy he left to future generations.

Sons and daughters and grandchildren became Baptist missionaries and adherents. His daughter Lydia emigrated to America and was a missionary with the Women's American Baptist Home Missionary Society for many years. My mother married a man from Pohjanmaa province, the place where it all started. With him, she became involved in the Baptist Church and the Baptist Mission Union of America.

As an American, I have too often taken my freedom to worship according to conscience for granted. The gray-bearded grandfather of my photograph has cured me of that. As we celebrate the 200th anniversary of our Bill of Rights, I hope his story will remind other Americans why our forefathers were so insistent on spelling out the religious rights to be expected in this land of new beginnings.



Betty Gibson is a free-lance writer residing in Fort Washington, Maryland. Her special interests are home and family, and social issues as they relate to religion.



Rating the State Constitutions and Religious Freedom

How Does Your State Rank?

Imagine a state whose constitution guarantees freedom of worship or conscience, permits no religious establishment, does not tax its citizenry to support church institutions, and forbids a religious test for public office or jury duty.

Now imagine a state whose constitution has no provisions to protect its citizens from any of the above. From the differences, one might think the two constitutions were from America and Medieval Europe respectively.

Would you believe Arkansas and North Carolina?

Of course there is the First Amendment to the United States Constitution with its prohibitions against establishment of religion and its guarantee of free exercise. And the Supreme Court, which has often overturned state laws that violate the First Amendment.

But in this year in which we celebrate the 200th anniversary of the Bill of Rights all is not well at the High Court. A recent decision, (*Employment Division v. Smith*) actually suggests religious liberty is a luxury we can no longer

By Albert J. Menendez

	Guaranteed Freedom of Worship or Conscience	No Establishment	No Required Church Attendance	No Aid to Sectarian Institutions	No Aid to Sectarian Schools	No Religious Test for Public Office	No Religious Test for Juries	No Religious Invocation in Constitution
Alabama	•	•	•	•	•	•		
Alaska		•		•	•			
Arizona	•			•	•	•	•	
Arkansas	•	•	•	•	•	•	•	
California	•	•		•	•		•	
Colorado	•	•	•	•	•	•		
Connecticut	•	•	•	•				
Delaware	•	•	•	•		•		
Florida	•	•		•			•	
Georgia	•			•		•		
Hawaii		•		•	•			
Idaho	•	•	•	•	•	•		
Illinois	•	•	•	•	•	•		
Indiana	•	•	•	•		•	•	
Iowa		•	•	•		•	•	
Kansas	•	•	•	•		•	•	
Kentucky	•	•	•	•	•			
Louisiana	•	•		•	•	•		
Maine	•	•				•		
Maryland	•		•	•		•		
Massachusetts	•			•	•			
Michigan	•		•	•		•		
Minnesota	•	•	•	•	•	•		
Mississippi	•				•	•		
Missouri	•	•	•	•	•	•		
Montana	•	•	•	•	•			
Nebraska	•	•	•	•	•	•	•	
Nevada	•			•			•	
New Hampshire	•	•			•			•
New Jersey	•	•	•	•		•		
New Mexico	•	•	•	•				
New York	•	•			•		•	
North Carolina	•							
North Dakota	•	•					•	
Ohio	•	•	•	•		•	•	•
Oklahoma	•			•		•		
Oregon	•			•		•	•	•
Pennsylvania	•	•	•	•				
Rhode Island	•		•	•		•		
South Carolina		•		•	•			
South Dakota	•	•	•	•		•		
Tennessee	•	•	•	•		•		
Texas	•	•	•	•		•	•	
Utah	•	•		•	•	•	•	
Vermont	•		•	•				•
Virginia	•	•	•	•	•			•
Washington	•			•	•	•	•	
West Virginia	•		•	•				
Wisconsin	•	•	•	•	•	•	•	
Wyoming	•			•		•	•	
No. of States	46	35	29	42	24	31	18	5

afford! Other legal trends suggest that state constitutions could soon have a greater role in determining what freedoms its citizens can, or cannot, enjoy. For instance, for the first time in living memory, the High Court accepted no church-state cases in the spring 1991 term. This omission suggests that the majority of the justices no longer sees a substantial federal question in disputes. First Amendment cases are being returned to the state courts, where constitutions may be more permissive, or explicit, than the federal.

It follows, then, that the religious freedom clauses of state constitutions may soon play a significant role in determining religious rights and wrongs. Reason enough to take a hard look at how state constitutions rank in protecting citizens' religious rights.

An Eight-Point Scale

If you live in Arkansas, Nebraska, Ohio, or Wisconsin, your state constitution offers the best guarantees of religious liberty. If you live in North Carolina, however, you reside in the state with the poorest protection.

This finding is based on an eight-point scale for evaluating state religious-liberty safeguards. One provision is positive (a guaranteed right), seven are negative (no specific prohibition against). The eight are: (1) Guaranteed freedom of worship or conscience; and prohibitions against (2) establishment of religion, (3) required church attendance, (4) aid to sectarian institutions, (5) aid to sectarian schools, (6) religious test for public office, (7) religious test for juries, (8) religious invocation.

Most states (all but Alaska, Hawaii, Iowa and South Carolina) explicitly protect freedom of worship and/or conscience. Colorado's "Bill of Rights" (Article 2), for example, says that citizens "shall forever hereafter be guaranteed the free exercise and enjoyment of religious profession and worship, without discrimination." Forty-two states have such constitutional guarantees. Four other states (Alabama, Arizona, Virginia and West Virginia) use the broader term "freedom of conscience."

Thirty-five states specifically prohibit establishment of any state religion, often in language echoing the Federal Constitution's First Amendment ban. Wisconsin says that "no preference shall be given by law to any religious establishments or modes of worship."

Twenty-nine states maintain bans on required church attendance.

Thirty-one state constitutions ban religious tests for public office, as does Article 6 of the Federal Constitution. The other 19 states do not have a religious test, but neither do they prohibit one. Minnesota says, "No religious test . . . shall ever be required as a qualification for any office of public trust under the state" or "as a qualification of any voter at any election in the state."

Eighteen states also ban religious tests for witnesses and jurors. Oregon's Article 1, Section 6 says: "No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters

State constitutions could soon have a greater role in determining what freedoms its citizens can, or cannot, enjoy.

of religion; nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony."

A majority of states (42) maintain constitutional prohibitions on appropriation of public money to ecclesiastical institutions. This historic guarantee protects taxpayers from being compelled to support religious organizations in which they do not believe. Oklahoma's provision is typical. Article 2, Section 5 reads, "No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such."

Twenty-four states prohibit public aid to sectarian religious education. This public policy dispute is one of this country's oldest, dating to the 1840s. Montana's constitution is clear: "The legislature, counties, cities, towns, school districts,

and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination."

Only five states (New Hampshire, Ohio, Oregon, Vermont, and Virginia) have no religious invocations in their constitution's preamble.

The Strongest and Surest Protection

Maintaining the strongest and surest protection for religious freedom with seven of the eight provisions regarded as essential or desirable, are Arkansas, Nebraska, Ohio, and Wisconsin.

Another 10 states have six provisions: Colorado, Idaho, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, Utah, and Virginia.

Two dozen states have four or five provisions (see map/table). Eleven states have only three protections: Alaska, Georgia, Hawaii, Maine, Massachusetts, Mississippi, Nevada, North Dakota, Oklahoma, South Carolina, and West Virginia. North Carolina has only one guarantee, a simple statement protecting religious liberty. The Tarheel State constitution says nothing about other potential impingements on religious freedom.

Regional differences are not great, though the two dozen Midwestern and Western states average five of the eight provisions. The half dozen New England states are the least likely to have strong constitutional protections, averaging fewer than four. The South is the most variable, ranging from some of the best states to the worst.

While Constitutional provisions alone do not guarantee religious freedom or an absence of religious strife, they do represent the crystallization of enlightened opinion and express our most noble values and sentiments. And, with the nation's High Court abdicating its historic role as defender of religious freedom, every little bit may help.



Albert J. Menendez is a freelance writer in Gaithersburg, Maryland. His most recent books include The Great Quotations on Religious Freedom, and Religion and Public Education, both written with Edd Doerr.

By Clifford Goldstein

CONSTITUTION AND THE

When Jesus said, "Occupy until I come," most Christians thought He meant the pews only. No longer. The rise of the New Right has proved that Christians can occupy positions of authority far beyond the local church. Moreover, their success over the past decade in bringing religious values into the mainstream of political debate suggests that "American citizenry may be in the midst of a major reassessment of the traditional blend of religion and politics."¹

The Cross

Of course, religion and politics mixed often produce a volatile brew, which is why the American Constitution separates them. The recent onslaught of conservative Christians into the political mainstream, though less visible than in the 1980s, now threatens that separation because of their overt hostility to the traditional wall between church and state. No risk would exist, however, if politically active Christians would adhere to a principle of religious liberty best expressed by the central event of their faith: the cross of Jesus Christ.

Here the Son of God Himself—nails in His hands, nails in His feet, thorns mashed in His brow—was hung beaten and bloody between heaven and earth because He gave humans the free choice to serve Him. Had He not allowed this freedom, man would not have broken God's law, suffered the consequence of transgression ("for the wages of sin is death," Romans 6:23), and Jesus Christ would not have been crucified. In essence, Jesus died because He granted mankind religious liberty.

The Lord deemed religious freedom so sacred, so fundamental to the principles of His divine government that, instead of depriving man of freedom, He paid the penalty for the abuse of it. Rather than force us not to sin, He "became sin for us" (2 Corinthians 5:21); rather than curse us with chains on our minds, He became a "curse for us" (Galatians 3:13); and rather than make us live without free choice, He "died for us" (Romans 5:8). Jesus chose suffering, humiliation, and death rather than deprive man of free will. The cross reveals religious freedom in manifestly divine terms.

At creation, God weaved into the infinite web of Adam's brain the ability to choose right and wrong, to obey or disobey. Had He not patterned free choice within Adam's mind, God would have had no need to warn him against eating produce from the tree of the knowledge of good and evil. Also, as Jesus created the first couple, He coiled deep within their loins those who would one day abuse their freedom to the point of beating, spitting on, and finally nailing their Creator to a cross!

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This moral freedom is not confined to earth, or merely to man, but reigns as a moral principle of creation. Otherwise, how could Lucifer have rebelled against God, unless he were given, as was Adam, not only the capacity to choose wrong, but the freedom to act upon that choice?

Thus says the Lord God: "You were the seal of perfection, full of wisdom and perfect in beauty. You were in Eden, the garden of God; every precious stone was your covering. . . . You were the anointed cherub that covers. . . . You were perfect in all your ways from the day you were created, till iniquity was found in you" (Ezekiel 28:12-15 paraphrased).

The Bible records those iniquities: "For you have said . . . I will exalt my throne above the stars of God; I will sit also upon the mount of the congregation: I will ascend above the heights of the clouds; I will be like the Most High" (Isaiah 14:13,14 paraphrased). Perfection, therefore, must include the ability to choose wrong, because though originally "perfect in all . . . [his] ways," Lucifer eventually became boastful, self-exalting, and jealous, all leading to his downfall.

God could have blotted out Lucifer (described in Revelation 12:9 as the dragon) and the other angels who abused their freedom, or created them unable to make wrong choices. Instead, war broke out in heaven: "Michael (Jesus) and his angels fought against the dragon; and the dragon fought and his angels, and pre-

vailed not; neither was their place found any more in heaven" (Revelation 12:7). Lucifer's fall brought man's fall, which ultimately brought Christ to the cross. Again, Jesus could have spared Himself the agony of Calvary had He forced Lucifer, the angels, mankind and all His creation to obey Him, but this He refused to do.

No wonder that while upon the earth, Jesus never forced anyone to follow Him. Better than any He knew the fearful cost of sin and disobedience, yet He allowed men to disobey, to reject, and finally to kill Him, even though by so doing they would bring ruin upon themselves, their families, their nation.

A rich young ruler asked Jesus what he needed to do to be saved. When Jesus answered, the ruler walked away. Jesus knew the consequences of that decision, and though He loved the man, *because* He loved him, He didn't force the issue. Never did Jesus defy free will. He pled, He wept, He admonished, but never coerced.

Jesus never taught that every one will be saved, or that all faiths are different paths to the Father. "I am the way, the truth, and the life," (John 14:6); "no one cometh to the Father but by me." He warned those in His time about hell, judgment, and the wages of sin, just as He warns us today. Nevertheless, now, as then, He grants all freedom to make their own choice of how, or even if, they will serve Him.

How ironic, too, because if anyone had the right to force obedience, it was Christ. As God, the Creator of the universe (Colossians 1:16), the great *I Am*, He made Lucifer, the angels, mankind, giving them form, substance, intelligence. All that they, or we, were, are or ever could be comes only from Jesus, in whom "we live, move, and have our being," (Acts 17:28). He deserves our worship, praise, and obedience, yet if He Himself won't force it, even at the cost of the cross—how dare anyone else?

The Founding Fathers of America understood this principle of free will. Thomas Jefferson wrote that God, though "being Lord both of body and mind, yet chose not to propagate it [religion] by coercions on either, as was in His Almighty power to do." In other words, even though God has the power to force us to obey, He doesn't,

and all attempts at coercion are "a departure from the plan of the Holy Author of our religion."²

James Madison wrote that "whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence that has convicted us. If this freedom be abused, it is an offense against God, not against man. To God, therefore, not to man, must an account be rendered."³

Because of these sentiments, the Founding Fathers wrote the First Amendment of the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These simple 16 words express the principle of religious liberty embodied by the life, and especially, the death of Jesus Christ. How? Because they *restrict* the government from throwing its power behind any religion, thus protecting citizens from the coercion that sectarian legislation brings.

The First Amendment says that the government shall make "no law respecting an establishment of religion." This clause restricts the government from promoting, funding, or forming any religion. The second clause is a restriction also, not allowing the government to prohibit the free exercise of religion. The clauses are linked because once religion becomes established by law, it can hinder the free exercise of others. "Put differently," writes Christian philosopher Richard John Neuhaus, "free exercise of religions requires the nonestablishment of religion."⁴

When a religion is established, it becomes the legal, official faith, and laws will reflect that faith, laws that can—and inevitably do—conflict with the belief and practices of other persuasions. If, however, government is not allowed to pass laws regarding religion, it will never be able to persecute or discriminate against on the basis of religion, thus reflecting the principles of freedom which Christ embodied. Far from being "neutral" toward religion, the religious references in the Bill of Rights reflect Christianity at its purest.

In 1785, Patrick Henry introduced a bill in Virginia that would levy a general tax "for the support and maintenance of

several Ministers and Teacher of the Gospel who are of *different persuasions and Denominations*." In response James Madison, the author of the First Amendment, penned his famous *Memorial and Remonstrance*, in which he called the Henry's bill "a dangerous abuse of power" that threatened the nation's most basic freedoms. He warned that fifteen centuries of "ecclesiastical establishments" have given birth to superstition, bigotry, and persecution, and this bill could do the same in America. So alarmed was Madison at this "first experiment on our liberties," that he compared it to the Inquisition! "Distant as it may be in its present form from the Inquisition, it differs from it only in degree."

All this against poor Henry's little bill that wanted only some taxes for "different persuasions and Denominations"?


Yes, because Madison understood the essence of the Christ's principles of religious freedom, and he knew that to protect those principles the government must be kept from hindering or promoting religion. "There is not a shadow of a right," he wrote, "for the general government to intermeddle with religion." In a recent book, evangelical pastor and New Right activist Joel Hunter displayed rare sensitivity and awareness on this issue: "Institutional expression is not without force. As has been mentioned, the power of government and its various institutions is force. . . . And all activities carried on by governmental institutions can't help but convey the force linked with governmental institutions. To believe otherwise is amazingly naive."⁵ And force, as Jesus taught, lived, and died for, is not what God wants, needs, or advocates.

Unfortunately, many Christians have manifested insensitivity, if not hostility, to the establishment clause of the First Amendment. In 1798, Presbyterian elders complained to George Washington that the Constitution lacked any explicit recognition of "the only true God and Jesus Christ, whom he hath sent."⁶ Over the years, well-meaning Christians have tried to pass legislation that would promote religion, especially theirs, either by pushing laws that would allow government-sponsored prayer in school, or by seeking constitutional amendments that would declare America a Christian nation under "the Lordship of Jesus Christ."

In the past century, the courts have had to stop attempts to promote devotional Bible readings in public schools (*Abington School District v. Schempp*, 1961), legislated prayer in public schools (*Engel v. Vitale*, 1962; *Wallace V. Jaffree* 1985), and endless attempts to divert tax dollars for private, religious education. In 1985, conservative columnist William Rusher advocated a constitutional amendment that would "acknowledge . . . the existence of a Supreme Being."⁷

However innocuous these issues might seem, all represent violations of the principle that governmental authority is not to promote any religious activity. Those opposed to this legislated support are branded anti-God and anti-religious, yet in most cases they are seeking to protect faith, not hinder it, when they advocate a strong separationist stance.

The problem many Christians have is that the phrase church-state *separation* doesn't sound good. It implies a void, a chasm, an alienation. Church-state *accommodation* sounds so much more benign. Yet the Founding Fathers knew *accommodation* wasn't worth the persecution, bloodshed, and suffering that it often caused.

No question, Christians *have* the right to be involved in government, to help enact laws, and to bring their values into society. Drugs, violent crime, and poverty rot America from within, and this country needs many of the values that conservative Christians offer. Nevertheless, as they seek to minister to America's ailing soul, Christians, in their zeal for their Lord Jesus Christ, must be careful not to crush out the principles of religious freedom for which He died. 

FOOTNOTES

¹ Erling Jorstad. *The New Christian Right: 1981-1988* (Lewiston/Queenston: The Edwin Mellon Press, 1988), p. 230.

² Thomas Jefferson. "A Bill for Establishing Religious Freedom."

³ James Madison. "A Memorial and Remonstrance," 1785.

⁴ Richard John Neuhaus. "Free exercise of religion—not establishment of religion—is the issue." Quoted in *NFD Journal*, Aug. 3, 1987, p. 3.

⁵ Joel Hunter. *Prayer, Politics, and Power* (Wheaton, Ill.: Tyndale House Publishers, 1988), p. 37.

⁶ Edwin S. Gaustad. *Faith of Our Fathers* (San Francisco: Harper and Row, 1987), p. 78.

⁷ *Church and State*, Oct. 1985, p. 3.

"We don't want to see you anymore."



**A mother
explains the
painful
other side
of the *Mendez*
story**

By Rosalie Duron

Deprivation of a relationship with one's child is a high price to pay for the exercise of one's religious beliefs. On this point I agree with the conclusions drawn by Mitchell Tyner in his article "Who Gets the Kid?" (May-June *Liberty*). And certainly the court in the *Mendez* case allowed what appears to be an unreasonable bias against an unpopular religion to influence its one-sided decision.

That being said, I ask you to consider additional facts and, as the story concerns my own child, an emotional aspect that cannot and should not be ignored in the quest to react sanely and nonjudgmentally to such basic issues of life as religion,

constitutional liberty, and the preservation of family.

I was a third generation Jehovah's Witness before my departure from that religion in 1975. I am married to a second generation former Witness. My husband and I, with a combined total of nearly 60 years of exposure to Witness beliefs and activities, have spent many hours, both separately and together, searching for rationality in our lives. The focus of that search, aside from trying to learn how to rebuild our lives after living through the intense spiritual upheaval of rethinking all our moral, reli-



gious, social, and personal values and beliefs, was also to deal rationally with "who gets the kid?" We each had two children to think about.

We were both faced with the unbendable rule of Jehovah's Witnesses that persons who leave their organization, either voluntarily or by expulsion, are subject to being shunned by all their family members who remain in the church. Minor children of Witness parents are taught that they must gradually, as they grow up, lessen the amount of communication and relationship with the parent who has left the church. When the child is considered old enough to be personally accountable before God for his or her actions, he or she is expected—indeed pushed—to terminate the relationship with the non-Witness parent. Those who leave the church, either to join another or to be nonreligious,

are considered to be heinous, and it is believed that associating with them, even if they are your parents (or children, brothers, sisters, cousins, grandparents, etc.), will result in God's disapproval and ultimate condemnation. Witnesses are prevented from associating with family members who were once church members by the threat of being excommunicated themselves if they do so. For a Witness, being excommunicated is tantamount to eternal destruction, since they believe salvation can be obtained only through their organization.

These issues did not arise in the *Mendez* case because Mr. Mendez, a Catholic, had never been a Jehovah's Witness. Therefore, he was not viewed by the Witnesses as a person who had known the "only true religion" and had left it for a devil-supported "false religion." In the

Witnesses' eyes, Mr. Mendez, although belonging to a religion they deem false, still has a chance to see the "truth" of what the Witnesses teach. That puts him in a much more favored position, since the jury is, in effect, still out with regard to Mr. Mendez's eternal fate. On the other hand, Witnesses who leave the church are referred to as "dogs who return to their vomit"—meaning that they once believed the only truth and are now contaminating themselves with false doctrine. Witnesses believe that everyone in the world except themselves will be destroyed by God at the Battle of Armageddon, the "end of the world," and that former members are particularly reprehensible and deserving of eternal death.

It is now 16 years since I left the Witness religion. My daughter is grown. I will not watch her graduate from high school this month. Nor will I be a participant in her wedding, or even know about it. I will not meet or even see my grandchildren. I will do none of these things unless and until my daughter is no longer a Jehovah's Witness.

I participated in the demise of the relationship with my child for many reasons: fear, ignorance, the overwhelming confusion and almost unbearable emotional pain brought about by the belief that I had failed myself, my family, and God, and that I would be destroyed by Him and had better "protect" my children by making sure they stayed in the Witness environment. I voluntarily gave custody of my children to their father. For years thereafter an attempt was made to discredit me and to wean the children from any relationship with me under the guise that my visits were severely disrupting their lives. My son, now 16, recalls signing blank pieces of paper upon which his sister would later write: "We don't want to see you any more because you don't serve Jehovah [God]." She later wrote me saying she really did want to have a relationship with me, but she felt she could not because of the church. This from an 11-year-old child. The years went painfully by, punctuated by additional trauma for all of us, a total alienation from both children that lasted three years, a subsequent reunion after I initiated court action (that resulted in my gaining custody of my son), and a final parting with my daughter last summer.

Of course, my daughter would be the first to say that she reached her conclusions on her own, without pressure from

her church. I know better, through my own personal experience and through those of the many, many former Witnesses I know who are also living daily without family relationships.

At this point, I quote from your article a portion of Judge Baskins dissenting opinion in the *Mendez* case: "To be forced to choose between one's religion and one's child is repugnant to a society based on constitutional principles." To that I would add that it is repugnant to be forced to choose between one's religion and one's parent.

The alarming part of this scenario is that Jehovah's Witnesses have been enabled by the sympathy engendered in the wake of the *Mendez* decision to see themselves once again as an innocent, beleaguered group of misunderstood citizens who just love their families and are trying to do what is right. This is certainly the face they present to the world at large. They have published several lengthy articles in their *Watchtower* and *Awake* magazines dealing with divorce and child custody issues, in which they purport to believe that children have a moral right to have a warm and affectionate relationship with both parents—indeed, that both parents have a right to expose their children to their own divergent religious beliefs.

What they will not acknowledge publicly (shunning is not mentioned even once in these articles) is that in the event one of the parents has been a member of the church, if there is a divorce and the Witness parent obtains custody, every effort will be made by that parent to terminate the relationship of the nonmember parent and the child. It may take years, as it did with my daughter, but it will happen unless the child rebels and denounces the church's teachings.

Further, the Witnesses will not acknowledge that a publication designed for their internal use in helping their members prepare to discuss custody matters in divorce hearings encourages Witness children, under oath, to present a distorted view of the opportunities a Witness child has to assume a place in the larger world. An example of this is the comment in this publication that Witness children could become journalists (a vocation requiring a college degree), when attending college is

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at best strongly discouraged, and at worst condemned by the Witnesses as a vehicle through which Witness children can lose their faith and be subjected to immoral association. And finally, in presenting themselves as fit and worthy parents—albeit with an antisocial and condemnatory attitude to the larger world—Witnesses seldom actually state succinctly that they would not hesitate to allow their minor child to die rather than allow the child to receive a blood transfusion.

Unless the factual circumstances of these situations are publicized, the Witnesses will continue to present themselves to the courts as innocent victims of religious persecution. As Judge Barkin said, it is repugnant to be forced to choose between one's religion and one's child. Yet Jehovah's Witnesses coerced my child into choosing between her religion

and her mother, the very result that Judge Barkin decries the *Mendez* court for perpetuating.

Now suppose you are a former Jehovah's Witness, embroiled in a divorce and fighting to obtain custody of your children. The courts are notoriously leery of appearing to be religiously biased, so discussion of you and your spouse's religious convictions will most likely be disallowed. Yet you are very aware that, if custody goes to your spouse, you will be the object of a church-supported systematic effort by your ex-spouse to eliminate you as a parent on the basis that you are an unworthy associate for your children. What do you do? If all else is equal, and you are both fit and worthy parents, would you not try anything rather than risk losing a relationship with your children? Would you not perhaps—against what you know would be your decision if it were based solely on intellect—hope for a "biased" court such as the one which heard *Mendez*?

All things are not as they appear. I realize that your magazine is published by an organization that, like Jehovah's Witnesses, is often thought of as "fringe"—a nonmainstream group. It would be in your best interest, and indeed in the interest of all freedom loving people, to ensure that religious bias does not enter the courtroom. But we also need to be very aware that religious bias exists in many forms, and the very groups who protest the most vehemently about being persecuted often inflict their own cruel brand of prejudice and persecution upon others who do not share their beliefs.

Jehovah's Witnesses have availed themselves of the due process of law many times to ensure their own right to practice their religion as they choose. Yet, when a member decides to exercise that same right to choose a spiritual belief different than the Witnesses, the ex-member is branded as an unfit parent. Mrs. Mendez did not like it when the court told her that she could not share her most closely and dearly held beliefs with her child. I do not like it when a church teaches my child that I am unsuitable to be her parent any longer because I do not subscribe to its beliefs. It seems to me that Mrs. Mendez and I share the same problem. 



*"Open Thou
mine eyes, that
I may behold
wondrous
things out of
Thy law"*
Psalm 119:18

In the modern era, when technology reigns supreme, the Bible, written ages ago, appears to many to be obsolete. Even to lawyers, who possess a professional reverence for precedent and historical norms, the Bible seems too far removed from the ordinary sources of law to which the practitioner—or even the scholar—turns for guidance. In fact, a separate subject heading for "Bible" has only rarely appeared in the *Index to Legal Periodicals* and, perhaps in testimony to an ever more secular society, no article on the Bible appears to have been specifically listed since the 1940s; even the separate subject heading for "Re-

iblical Parallels in American Law

ligion" slipped from the pages of the *Index* following the issuance of volume 10 in 1955. Yet the Bible offers a fascinating variety of contemporary legal parallels. This article offers an introduction to some of the parallels between biblical and American law. (I have turned to the version with which I am most familiar—i.e., the Old Testament according to the Masoretic text, or the so-called Jewish Bible.)¹

The Bible is, fundamentally, the story of man's encounter with God and the triumph of faith. It is also a practical guidepost for living—the basic rules for man's relationship with God and his fellowman. Yet in this latter role as a

rulebook for man's dealings with his fellowman the Bible is, importantly, a book of law. Indeed, the longest psalm contained in the Bible—Psalm 119—is a psalm in praise of the law. The Bible, somewhat like the United States Constitution, was the basic legal source against which all legal actions in its time were measured. Common law judges can interpret the Constitution just as the Talmudists or modern theologians interpret the Bible—and much can be done under the aegis of interpretation—but neither has power to amend the basic document. Under the American system of law, ultimate sovereignty rests with the people, who may change even the Constitution. The Bible, however, while vesting temporal power in the people, supposes the sovereignty of God so that, under orthodox teaching, the Bible is immutable. In this fundamental respect the Bible and the Constitution are different.

But a wide variety of similarities nevertheless exists between biblical or so-called Mosaic jurisprudence, on the one hand, and the American system of jurisprudence, including basic constitutional principles, on the other. The early criminal codes of the Plymouth Colony and Massachusetts were actually modeled in large measure on the rules laid down in the biblical books of Exodus, Leviticus, and Deuteronomy,² and the early law of the Province of Pennsylvania accorded the eldest son a double inheritance portion, following the rule established in Deuteronomy.³ Such direct biblical reference, however, has largely passed out of American law.

A Basic Jurisprudence

A democratic legal system must, first of all, guarantee the life, liberty, and dignity of the human being. The Ten Commandments, apart from establishing a relationship between people and God, represents a simple yet complete summary of each person's principal legal responsibilities—a classical trichotomy of per-

Gary J. Edles received his law degree from New York University and earned LL.M. and S.J.D. degrees from the George Washington University Law School, where he was a teaching fellow. Mr. Edles is a member of the New York Bar. Reprinted with permission from the New York State Bar Journal. Copyright 1977, New York State Bar Association.

By Gary J. Edles

sons, things, and actions, with an additional section dealing with what might broadly be called procedure. The sixth commandment, explicitly prohibiting murder, and implicitly prohibiting all crimes against the person, and the eighth commandment, prohibiting crimes against property, establish the first two fundamental individual protections for persons and things. The seventh commandment, prohibiting infidelity and precluding the violation of the most sacred of contracts, has broad implications for protecting the societal fabric while the ninth commandment prohibits false witness, libel and slander, and, implicitly, a full range of tortious conduct. Taken together, they govern the regulation of human ac-

cordance with formal, legal process, and as far as possible punishment that is the exact equivalent of the injury, in place of personal revenge or self-help.⁶ Second, the phrase codifies the critical notion that all persons are equal before the law. As expressed by the biblical scholar John D. Michaelis, "... the poorest inhabitant has the same rights as the aristocratic assailant. . . . It deems the tooth of the poorest peasant as valuable as that of the nobleman."⁷

In eighteenth-century America the constitutional fathers wrote the first concept into the Bill of Rights by establishing, in the Fifth and Sixth Amendments, a requirement of legal process as a necessary precondition for punishment, and by outlawing, in the Eighth Amendment, cruel and unusual punishment. But it was not until the nineteenth century that the United States formally guaranteed to each citizen, through the Fourteenth Amendment, the equal protection of the laws.⁸

Similarly, a modern democracy must be fundamentally a nation of law and not men. Although the normal form of government for the children of Israel in the Bible was the monarchy, the king was not able to disregard the basic rules established in the Torah.⁹ Rather, the biblical king was responsible to the people who were free to impose conditions on each new monarch at his accession.

A refusal to accept such conditions cost Solomon's son, Rehoboam, the greater part of his kingdom¹⁰ and the prophets were not afraid to chastise their nation's leader if he violated legal or ethical principles. Indeed, one of the best-known stories in the Bible is the encounter between King David and the prophet Nathan in which the prophet induces the king to condemn himself by his reaction to the parable of the poor man's pet ewe lamb that was stolen to provide meat for a rich man's table.¹¹ The Book of Leviticus specifically requires repentance from a ruler who has deviated from God's law and, importantly, prescribes the same repentance from a commoner.¹² The Bible states: "And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book. . . . And he shall read therein all the days of his life . . . that his heart be not lifted up above his brethren."¹³

Biblical rulers would not have been at all surprised to read, in the chief justice's recent opinion in *United States v. Nixon*,¹⁴ that an earlier Court decision suggesting



tions. Finally, the third commandment, prohibiting perjury and precluding the invocation of God's name for false statements, establishes a basic procedural rule, namely veracity.⁴

Equally essential to a mature legal system, and an important part of American jurisprudence, are the concepts of due process and the equality of all persons. As pointed out by the late Chief Rabbi Hertz, these fundamental concepts are established in the Bible—although many fail to appreciate its significance—through an interpretation of the well-known phrase "life for life, eye for eye, tooth for tooth."⁵ In the first place, the language represented a major due process advance over existing legal thinking in biblical times by requiring the substitution of punishment in ac-

that a president was not "an ordinary individual . . . cannot be read to mean in any sense that a president is above the law."¹⁵

Finally, a basic insistence on the impartiality of judicial administration was a touchstone of biblical law. Judges of old, like their modern counterparts on the federal bench, were appointed and had lifetime tenure.¹⁶ Women as well as men served as judges—a remarkably advanced practice given the societal norms in other cultures during biblical times.¹⁷ The book of Exodus expressly precludes the taking of gifts by decision-makers, for "a gift blindeth them that have sight, and perverteth the words of the righteous,"¹⁸ while the book of Job outlaws bribery.¹⁹

Specific Parallels—Criminal Law

Numerous specific biblical parallels are found in American jurisprudence. One interesting parallel between the Bible and the U.S. Constitution is revealed by an examination of Article III. The Founding Fathers, after defining the crime of treason, established a critical procedural prerequisite for conviction.

"No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."²⁰

The Constitution then expressly limits the punishment for treason to the guilty party alone.

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained."²¹

The Bible required, in connection with all crimes, that "one witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth; at the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established."²²

And, under biblical law: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin."²³

The book of Exodus establishes the requirement that the poor are entitled to the equal protection of the laws. The Bible insists on strict equality. Thus, while "thou shall not wrest the judgment of thy poor in his cause," "neither shalt thou favour a poor man in his cause."²⁴

An accused, under biblical criminal procedure, was never compelled to testify against himself, and a confession of guilt,

although admissible in evidence, could not, standing alone, support a conviction.²⁵ From the book of Ezra modern criminal practice gets the requirement of a speedy trial,²⁶ and from the practice of having biblical judges first establish all arguments in favor of the defense the presumption of innocence has evolved.²⁷

The sophistication of biblical law can be demonstrated through a comparison of the degrees of criminal homicide and the notion of punishment and repentance under biblical and American law. First-degree murder under modern statutes is

"whereby a man may die . . ." *i.e.*, under circumstances likely to produce death.³¹ Homicides committed without malice (or without the requisite disregard for life) were ordinarily grouped together as manslaughter at common law. Under biblical law, killing a person "without enmity," that is, through error, is likewise manslaughter rather than murder, and subjected the perpetrator to exile rather than execution.³²

Punishment for crime and restitution for the victim of a crime were—contrary to modern practice in most jurisdictions—

"It will be of little avail to the people that laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow."

—James Madison, *Federalist Papers*, 1788.

often defined, at least in part, in terms of "malice" or "malice aforethought."²⁸ A leading example of malice, and one which is in fact expressly included in the statutory definition of first-degree murder in a number of states, including Michigan, is "murder which shall be perpetrated by . . . lying in wait."²⁹ An identical example of murder with malice is found in Numbers 35:20. In many states an intentional act under circumstances likely to cause death or serious bodily injury also constitutes first-degree murder even if there is no specific intent to kill.³⁰ Similarly, the Bible includes as murder the striking of a person with a stone or a weapon of wood

interrelated concepts under biblical law. As mentioned above, the concept of "eye for eye, tooth for tooth" was never literally applied, since monetary compensation was already a phenomenon under biblical law.³³ There is an affirmative requirement that a thief return a stolen article, and the Bible even makes provision for a form of punitive damages in certain circumstances.³⁴ It is interesting to note, in this connection, that compensation was not available in the case of murder—another example of the equal treatment of rich and poor. Murder carried a mandatory death penalty under biblical law, in recognition of the sacredness of human life. It is

interesting to compare, in this regard, a twentieth-century concept advanced by Justice William O. Douglas in an opinion concerning the death penalty in *Furman v. Georgia* that "...discretionary statutes... are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection that is implicit in the ban on 'cruel and unusual' punishments."³⁵

Justice Douglas, in reciting the history of the doctrine of cruel and unusual punishment under English common law, mentions that three chapters of the Magna Carta were devoted to the regulation of so-called "excessive amercements [punishments]."³⁶ The book of Deuteronomy had already established, generations before, the prohibition against excessive punishment.³⁷



Aliens

The fair treatment of "outsiders" is another measure of an advanced legal system and the rights of aliens under biblical and American law show a remarkable similarity despite the centuries that separate their adoption. Under American law, aliens are entitled to many of the same protections as U.S. citizens.³⁸ The same was true under biblical law where the books of Exodus and Leviticus prescribe the same rules for the "homeborn" and the "stranger."³⁹ The Ten Commandments bring the alien within the protection of the Sabbath, and the so-called cities of refuge were available equally to aliens and citizens.⁴⁰ Interestingly, aliens were even permitted to own Israelite slaves.⁴¹ In return for the protection accorded aliens, American law requires a form of tempo-

rary allegiance.⁴² In like fashion, the alien under biblical law, although not required to worship the God of Israel, was nonetheless specifically prohibited from desecrating the holiness of his temporary home through blasphemy.⁴³ The United States government may require the registration of aliens just as the numbering of aliens was required by Kings David and Solomon.⁴⁴ One avenue of endeavor was foreclosed to the alien under biblical law. He could not become a king—a model undoubtedly understood by the constitutional fathers when they limited the U.S. presidency to native-born Americans.⁴⁵

Consumer and Environmental Protection

Consumer and environmental protection, although thought to be largely creatures of twentieth-century law, also have strong antecedents in biblical jurisprudence. Section 10 of the District of Columbia Act of 1906 "to provide for the appointment of a Sealer and Assistant Sealer of Weights and Measures..." undoubtedly employs proper legislative drafting techniques when it recites that "no person shall sell, or offer for sale, anywhere in the District of Columbia, any provisions or produce, or commodities of any kind for a weight or measure, less than the true weight or measure thereof."⁴⁶

The book of Proverbs more simply yet eloquently teaches: "A false balance is an abomination to the Lord; but a perfect weight is His delight."⁴⁷

And, in the area of environmental protection, Isaiah admonishes, "Woe unto them that join house to house, that lay field to field, till there be no room, and ye be made to dwell alone in the midst of the land!"⁴⁸

Theodore Roosevelt might well have had that admonition from Isaiah in mind when he ordered the creation of the first national park. Twentieth-century zoning commissioners might likewise take notice. Similarly, in an era of increasing urban development, lawmakers can hearken to God's injunction: "When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by wielding an axe against them; for thou mayest eat of them, but thou shalt not cut them down."⁴⁹

Selective Service

One of the most fascinating biblical parallels in contemporary law is found in the area of the law of military defer-

ments—an area of law that, although recently of great interest, is not of recent origin. Chapter 20 of the book of Deuteronomy establishes a comprehensive list of exemptions from military service.⁵⁰ American law has historically provided exemptions from military service for husbands and fathers but biblical law establishes, among other things, an exemption for fiancés. Biblical law also evinces a fascinating understanding of human psychology by providing an express exemption from military service for the “fearful and faint-hearted” but nevertheless requiring a confession of fear.⁵¹ Rabbi Hertz, in his commentary on this section of Deuteronomy, suggests that the military danger inherent in a “contagion of cowardice” was recognized by biblical military leaders but points out that the

Bible, by requiring a public confession of fear, might well produce a “contagion of courage.”⁵²

Conclusion

Lawyers, it seems, were unknown to the biblical legal system, and in many cases litigants pleaded their own causes.⁵³ But modern American lawyers would probably have been reasonably comfortable with the statutory and case law approach that developed during the time of the Bible. For example, in a decision that contemporary common law lawyers would refer to as a “landmark” case—the so-called case of Zelophehad’s daughters—a new principle of the law of inheritance was established that daughters would inherit in the absence of sons, and the overall rules of intestate succession

were enunciated.⁵⁴ Similarly, Hillel, a scholar who lived during the first century B.C. and the first century A.D., introduced a number of legal reforms—including a reform that kept private debts alive despite the statute of limitations literally imposed under Torah legislation. This reform through “statutory construction” was designed to encourage the lending of money by the rich to the poor by abolishing the automatic cancellation of debts at the end of each six year period.⁵⁵

In the mid-1930s a book was written entitled *We Need Mosaic Law Now*.⁵⁶ That thesis may or may not be true today. Nonetheless, as we reflect on 200 years of American legal history, it is interesting to consider that some ancient legal history may well be precedent for some not so ancient problems.



FOOTNOTES

¹ The Masoretes were Hebrew scribes in the first century. They fixed the wording and spelling in the Bible, which has remained unchanged since then. I have relied heavily on the two-volume translation and commentary contained in the American edition of a text prepared by Dr. J. H. Hertz, former chief rabbi of the British Empire—Hertz, *The Pentateuch and Haftorahs, Hebrew Text, English Translation, and Commentary* (1941). Scripture references in this article are taken from *The Holy Scriptures According to the Masoretic Text* (Philadelphia: Jewish Publication Society, 1955).

² See generally, Z. Chafee, “Colonial Courts and the Common Law,” and G. Haskins, “Beginnings of Partial Inheritance,” both printed in *Essays in the History of Early American Law*, Flaherty ed. (1969), pp. 72, 73, 237.

³ Deuteronomy 21:17. See also J. Gest, *The Influence of Biblical Texts Upon English Law* (1910), p. 26.

⁴ The Ten Commandments are found in chapter 20 of the book of Exodus and are repeated, with some modification, in chapter 5 of the book of Deuteronomy. See generally, Hertz, Vol. I, pp. 294-300.

⁵ Exodus 21:23-25.

⁶ Hertz, Vol. I, p. 405.

⁷ *Ibid.*

⁸ *Ibid.* It should be mentioned that the literal application of “eye for eye, tooth for tooth” was not permitted under biblical law and there is no instance in Jewish history of its literal application ever having been carried out.

⁹ The Torah, in the technical sense, refers to the first five books of the Bible, also known as the Pentateuch, or the Five Books of Moses. In a broader sense, the Torah refers to all law, doctrine, ethics, and philosophy and is divided into the written law, as embodied in the Bible, and the oral law, consisting of the rabbinic teachings and literature. The word “Israel,” which was originally a religious term referring to the 12 tribes united by the covenant at Mount Sinai following the exodus from Egypt, acquired a political meaning in 922

B.C. with the establishment of a separate northern kingdom consisting of 10 of the 12 tribes. Jeroboam, who had been an officer appointed by King Solomon but was not of royal blood, was the first king of the northern kingdom of Israel. The so-called southern kingdom, called Judah, was ruled by the Davidic line of kings starting with Rehoboam, the son of Solomon. See generally, B. Anderson, *Understanding the Old Testament*, 2nd ed. (1966), pp. 195-198.

¹⁰ 1 Kings 12:16.

¹¹ 2 Samuel 11, 12. See also Jeremiah’s criticism of King Jehoiakim for employing forced labor. Jeremiah 22:13-19.

¹² Leviticus 4:22-27.

¹³ Deuteronomy 17:18-20.

¹⁴ 418 U.S. 683 (1974).

¹⁵ *Ibid.*, p. 715.

¹⁶ Exodus 18:25 and Ezra 7:25. Samuel, the last of the judges, actually rode circuit until his retirement. 1 Samuel 7:16 and 12.

¹⁷ Deborah was among the more well known of the judges. Judges 4. Biblical judges, it might be mentioned, were not strictly limited to judicial functions but were military and political leaders as well. See Anderson, *Understanding the Old Testament*, 2d ed. (1966), pp. 110, 111.

¹⁸ Exodus 23:8.

¹⁹ Job 15:34.

²⁰ Article III, section 3.

²¹ Article III, section 3.

²² Deuteronomy 19:15. See also Numbers 35:30.

²³ Deuteronomy, 24:16.

²⁴ Exodus 23:6, 3.

²⁵ See J. Ehrlich, *The Holy Bible and the Law* (1962), p. 96.

²⁶ Ezra 7:26.

²⁷ See Ehrlich, p. 96.

²⁸ See, by way of example, chapter 40 of the New Mexico Statutes of 1953, 40A-2-1 (rev. 1972).

²⁹ Mich. Comp. Law 750.316 (1948), 28 Mich. Stats. Ann. 548 (1972). See also Title 18-2.32 of the Virginia Code of 1950 (rev. 1975).

³⁰ See, for example, *Commonwealth v. Chance*, 174 Mass. 245, 252, 54 N.E. 551, 554 (1889).

³¹ Numbers 35:17, 18.

³² Numbers 35:22-25.

³³ See note 8.

³⁴ Leviticus 6:4. Leviticus 5:16 requires that a guilty person add “a fifth part” in restitution, i.e., a part equivalent to one quarter of the original value. See also Exodus 21.

³⁵ 408 U.S. 238, 256, 257 (1972).

³⁶ *Ibid.*, p. 243.

³⁷ Deuteronomy 25:1-3.

³⁸ See, by way of example, *Home Ins. Co. v. Dick*, 281 U.S. 397, 411 (1930).

³⁹ Exodus 12:49 and Leviticus 24.

⁴⁰ Exodus 20 and Numbers 35:15. There were six cities in biblical Israel that were designated as places of asylum for unintentional murderers.

⁴¹ Leviticus 25:47. The term *slave* is somewhat of a misnomer in the biblical context. Slaves, whether Hebrew or not, had to be set free under biblical law after seven years of servitude—a considerable “advance” when compared with nineteenth-century America. See Dimont, *The Indestructible Jews*, Signet ed., (1973), p. 47.

⁴² See *Carlisle v. United States*, 16 Wall. (83 U.S.) 147 (1873).

⁴³ Leviticus 24:16.

⁴⁴ Compare Act of June 27, 1952, 66 Stat. 224 (1952), 8 U.S.C. 1302 (1971), and *Davidowitz v. Hines*, 30 F. Supp. 470 (D. Pa. 1939), aff’d 312 U.S. 52 (1941) with 2 Chronicles 2:16, 17.

⁴⁵ Compare Deuteronomy 17:15 with Article II, section 1, of the U.S. Constitution.

⁴⁶ See 34 Stat. 315, quoted in *District of Columbia v. Gant*, 28 App. D.C. 185 (1906).

⁴⁷ Proverbs 11:1.

⁴⁸ Isaiah 5:8.

⁴⁹ Deuteronomy 20:19.

⁵⁰ Verses 1-9.

⁵¹ Verse 8.

⁵² Hertz, Vol. II, p. 831.

⁵³ 1 Kings 3:16-28. See also Ehrlich, p. 146.

⁵⁴ Numbers 27:1-11.

⁵⁵ See, *The New Jewish Encyclopedia*, Bridger ed. (1962), p. 206.

⁵⁶ Hamshire, *We Need Mosaic Law Now* (1935).

ANSWERS TO SABBATH QUESTIONS



5. Paul Taught that the Sabbath Was Nailed to the Cross

It is not surprising that Colossians 2:14-16 is the text most quoted in the letters to the editor. After all, this is the text historically used to prove that Paul taught his converts they had no obligation to observe the seventh-day Sabbath. Great importance has been attached to this passage, inasmuch as it explicitly speaks of Christ's nailing something to the cross (verse 14) and warns against paying heed to regulations regarding several things, including "a sabbath" (verse 16).** My 30-page analysis of this passage is found in the appendix of *From Sabbath to Sunday*. In this context I can submit only a few brief observations.

The Colossian Heresy. The reference to the observance of "Sabbaths" in Colossians 2:16 is only one aspect of the "Colossian heresy" refuted by Paul. Most scholars define the Colossian heresy as syncretistic teachings incorporating both Hellenistic and Jewish elements. Such a false teaching had both a *theological* and *practical* aspect.

Theologically, the Colossian "philosophy" (verse 8) was competing with Christ for man's allegiance. Its source of authority, according to Paul, was human "tradition" (verse 8) and its object was to impart

true "wisdom" (verses 3, 23), "knowledge" (verses 2, 3; Colossians 3:10) and to assure access to and participation in the divine "fulness" (Colossians 2:9, 10; 1:19).

To attain divine fulness, Christians were urged to do homage to cosmic principalities (Colossians 2:10, 15), to "the elemental spirits of the universe" (verses 8, 20), and to angelic powers (verses 15, 18), and to follow ritualistic ascetic practices (verses 11, 14, 16, 17, 21, 22). Essentially, then, the theological error consisted in interposing inferior mediators in place of the Head Himself, Jesus Christ (verses 9, 10, 18, 19).

The practical outcome of the theological speculations of the Colossian heretics was their insistence on strict ascetism and ritualism. These consisted in "putting off the body of flesh" (verse 11—apparently meaning withdrawal from the world); rigorous treatment of the body (verse 23); prohibition to either taste or touch certain kinds of foods and beverages (verses 16, 21), and careful observance of sacred days and seasons—festival, new moon, Sabbath (verse 16).

The Written Document Nailed to the Cross. To combat the above false teachings, Paul chose to extol the centrality and superiority of Christ

In this issue I conclude my response to the letters regarding "How the Sabbath Was Changed to Sunday" (January-February *LIBERTY*). Interested readers may wish to read a fuller treatment in my books, *From Sabbath to Sunday*, *The Sabbath in the New Testament*, and *Divine Rest for Human Restlessness*.*

**By Samuele Bacchiocchi, Ph.D.
Professor of Theology
Andrews University**

who possesses the "fulness of deity" (verse 9) and provides full redemption and forgiveness of sin (verses 11-14). To emphasize the certainty and fulness of Christ's forgiveness, Paul utilizes three metaphors: circumcision, baptism, and "the written document" (verses 11-14). Of the last he says that God through Christ has "cancelled . . . set aside, nailed to the Cross" the written document—*cheirographon* (verse 14).

Traditionally, the "written document" has been interpreted to be the Mosaic law with all its ordinances, including the Sabbath, which God allegedly set aside and nailed to the cross. This popular interpretation is unwarranted for at least two reasons. First, because as E. Lohse points out in his scholarly article on "the Sabbath" in *The Theological Dictionary of the New Testament*, "in the whole of the epistle the word law is not used at all. Not only that, but the whole significance of the law, which appears unavoidable for Paul when he presents his gospel, is completely absent."

Second, this interpretation detracts from the immediate argument (verses 12, 13) designed to prove the fulness of God's forgiveness. The wiping out of the moral and/or ceremonial law would hardly provide Christians with the divine assurance of forgiveness. Guilt is not removed by destroying law codes. The latter would only leave mankind without moral principles.

The occurrence of *cheirographon* in apocalyptic literature indicates the term was used to refer to the "record book of sins" or a "certificate of sin-indebtedness" but not to the moral or ceremonial law. This meaning fits the context in Colossians in which Paul uses several imageries to emphasize the fulness of Christ's forgiveness. Support is also provided by the clause "and

this he has removed out of the middle" (verse 14 paraphrased). "The middle" was the position occupied at the center of the court or assembly by the accusing witness. In the context of Colossians, the accusing witness is the "record book of sins" that God in Christ has erased and removed out of the court.

By this daring metaphor, Paul affirms the completeness of God's forgiveness. Through Christ, God has "cancelled," "set aside," "nailed to the cross" "the written record

feel incomplete and to seek the help of inferior mediators, since Christ has provided complete redemption and forgiveness.

We conclude then that the document nailed to the cross is not the law in general or the Sabbath in particular, but rather the record of our sins. Any attempt to read into it a reference to the Sabbath, or to any other Old Testament ordinance, is unwarranted, gratuitous fantasy.

Condemnation or Approbation of the Sabbath? Having

has been interpreted as a warning from Paul against the five mentioned practices. This interpretation is totally wrong because in this passage Paul is warning the Colossians not against the observances of these practices as such, but against "anyone" (*tis*) who passes judgment on how to eat, to drink, and to observe sacred times.

By warning against the effort of false teachers to "pass judgment" on how to observe festivals, Paul is challenging not the validity of the festivals themselves but the authority of the false teachers to legislate on the manner of their observance. The obvious conclusion then is that Paul in this text is expressing *not a condemnation but an approbation of the mentioned practices*, which include Sabbathkeeping.

It is noteworthy that this is the conclusion reached even by D. R. De Lacey in the symposium *From Sabbath to Lord's Day*, published by Zondervan under the auspices of the Tyndale Bible Fellowship. In spite of his view that Paul did not expect Gentile converts to observe the Sabbath, De Lacey concludes: "Here again [Colossians 2:16], then, it seems that Paul could happily countenance Sabbathkeeping." This conclusion represents a clear repudiation of the historical interpretation of Colossians 2:14-16 as a Pauline condemnation of Sabbathkeeping.

The Nature of the Regulations. The nature of the "regulations" promoted by the Colossian false teachers consisted of "self-abasement and worship of angels," "rigor of devotion . . . and severity to the body" (verses 18, 23) and the teaching: "Do not handle, Do not taste, Do not touch" (verse 21).

These catchphrases indicate that the regulations did not derive from the Levitical law, since nowhere does the

The document nailed to the cross is not the law in general or the Sabbath in particular, but rather the record of our sins. Any attempt to read into it a reference to the Sabbath, or to any other Old Testament ordinance, is unwarranted, gratuitous fantasy.

of our sins which, because of the regulations, was against us." The legal basis of the record of sins was "the binding statutes, regulations" (*tois dogmasin*); but what God destroyed on the cross was not the *legal ground* (law) for our entanglement into sin, but the *written record* of our sins. By destroying the *evidence* of our sins, God has also "disarmed the principalities and powers" (verse 15 paraphrased), since it is no longer possible for them to accuse those who have been forgiven. No reason exists, therefore, for Christians to

refuted the *theological* speculations of the Colossian false teachers by reaffirming the supremacy of Christ and the fulness of His redemption (verses 8-15), Paul turns to some *practical* aspects of their religious practices, saying: "Therefore let no one pass judgment on you in questions of food and drink or with regard to a festival or a new moon or a sabbath. These are only a shadow of what is to come; but the substance belongs to Christ" (verses 16, 17).

Historically this passage

latter contemplate such an ascetic program. Though the nomenclature of the festivals is Jewish, the motivation and manner of their observance stems from a syncretistic ideology.

In the ancient world many believed that asceticism and fasting enabled a person to come closer to a deity and to receive divine revelation. In the case of the Colossian "philosophy," the dietary taboos and the observance of sacred times were apparently regarded as an expression of subjection to and worship of the cosmic powers (elements) of

festival or a new moon or a sabbath" (Colossians 2:16). Commentators agree that these three words represent a logical and progressive sequence (annual, monthly, and weekly), as well as an exhaustive enumeration of sacred times. This interpretation is validated by the occurrence of these terms in similar or reverse sequence five times in the Septuagint and several other times in other literature (see 2 Chronicles 2:4; 31:3; Nehemiah 10:33; Ezekiel 45:17; Hosea 2:11; also Jubilees 1:14; *Justin Dialogue With Trypho* 8:4).

2:16 cannot refer to any of the annual ceremonial sabbaths.

The plural "sabbaths" (*sabbaton*) is used in the Scripture to designate not only the seventh-day Sabbath but also the week as a whole (LXX Ps. 23:1, 47:1; 93:1; Mark 16:2; Luke 24:1; Acts 20:7) because the weekdays were numbered with reference to the Sabbath. This suggests the possibility that the term may refer to weekdays in general rather than to the Sabbath in particular. This view harmonizes better with the sequential enumeration that suggests yearly, monthly, and weekly festivities.

Assuming for the sake of argument that the "sabbaths" in the Colossians do refer to or include the Sabbath day, the question to be considered is: What kind of Sabbath observance would the false teachers advocate? Their rigorous emphasis on the observance of dietary rules would undoubtedly be carried over to Sabbathkeeping as well. The veneration of "the elemental spirits of the universe" would also affect the observance of the Sabbath and of sacred times, since it was commonly believed that the astral powers, which direct the stars, control both the calendar and human lives.

We know that in the pagan world Saturday was regarded as an unlucky day because of its association with the planet Saturn. In view of the prevailing astral superstitions associated with the days of the week, any Sabbath observance promoted by the Colossians' ascetic teachers—known for their worship of the elements of the world—could have been only of a rigorous, superstitious type. To warn against such a superstitious type of Sabbathkeeping would have been not only appropriate but also desirable. In this case Paul would be attacking not the principle of Sabbath-

The adoption of pagan holidays such as Sunday (the day of the Sun), and Christmas (the birthday of the invincible Sun), show how easy it is for Christians to become culturally conditioned. Our challenge today, as in the past, is to resist the pressure of cultural conformity by retaining our commitment to the teachings of God's Word.

the universe.

Paul's warning against the "regulations" of the false teachers can hardly be interpreted as a condemnation of Mosaic laws regarding food and festivals, since what the apostle condemns is not the teachings of Moses but their perverted use by the Colossian false teachers. A precept is not nullified by the condemnation of its perversion.

The Sabbath in Colossians 2:16. The "regulations" advocated by Colossian "philosophy" had to do not only with "food and drink" but also with sacred times referred to as "a

Some view the "sabbaths" (*sabbaton*) as a reference to annual ceremonial Sabbaths rather than the weekly Sabbath (Leviticus 23:6-8, 21, 24, 25, 27, 28, 37, 38). Such a view, however, breaks the logical and progressive sequence and ignores the fact that in the Septuagint the annual ceremonial Sabbaths are never designated simply as "sabbath" (*sabbaton*), but always with the compound expression "Sabbath of Sabbaths" (*sabbata sabbaton*). Indications such as these compellingly show that the word *sabbaton* used in Colossians

keeping, but its perversion.

Shadow of the Reality.

Paul continues his argument in the following verse, saying: "These are only a shadow of what is to come; but the substance belongs to Christ" (Colossians 2:17). The relative pronoun "these" (*ha* in Greek) most probably refers not to the five mentioned practices as such, but rather to the "regulations" regarding such practices promoted by the false teachers.

This conclusion is supported by two considerations. First, in verse 16, Paul is not warning against the merits or demerits of the Mosaic law regarding food and festivals, but against the regulations regarding these practices advocated by the false teachers. Thus, it is more plausible to take the regulations rather than the actual practices as the antecedent of "these."

Second, in the verses that immediately follow, Paul continues his warning against the deceptive teachings, saying, for example, "Let no one disqualify you, insisting on self-abasement" (verse 18); "Why do you submit to regulations, 'Do not handle, Do not taste, Do not touch'?" (verses 20, 21).

Since what precedes and what follows the relative pronoun "these" deals with the regulations of the Colossians false teachers, we conclude that it is the latter that Paul describes as "a shadow of what is to come" (verse 17). Presumably the false teachers represented their "regulations" to be a copy that opened the believer's way to reality ("fulness"—verse 9). Paul turns their argument against them by saying that their regulations "are only a shadow of what is to come; but the substance belongs to Christ" (verse 17). By emphasizing that Christ is the "body" and the "head" (verses 17, 19), Paul indicates that any

"shadow" cast by the regulations has no significant value.

I conclude that what Paul calls a bygone "shadow" is not the Sabbath but the deceptive teachings of the Colossian "philosophy, which promoted dietary practices and the observance of sacred times as auxiliary aids to salvation."

6. Sunday Is Observed in Honor of Christ's Resurrection

Many Christians, as Anderson's letter indicates, believe the resurrection and appearances of Jesus on the first day of the week to provide a valid theological reason for observing Sunday rather than Saturday. I find this popular view to be devoid of biblical and historical support. My reasons are given at length in the third chapter of *From Sabbath to Sunday*. In this context I will limit myself to six brief observations.

No Command in the New Testament. The New Testament contains no command or suggestion by Christ or the apostles enjoining or hinting at a weekly or annual Sunday celebration of the Resurrection. This omission is all the more surprising in view of the explicit instructions that are given regarding other practices such as baptism, the Lord's Supper, or foot washing.

No "Day of the Resurrection." In the New Testament, Sunday is never called "day of the Resurrection" but is consistently called "first day of the week." It is not until the fourth century that the designation of Sunday as "day of the Resurrection" first occurs in Christian literature. The absence of such a designation indicates that during the first three centuries Sunday was not viewed as the weekly memorial celebration of Christ's resurrection.

No Invitation to Rest and Worship. If Christ wanted the

day of His resurrection to be memorialized, He would have invited and instructed the women and/or the disciples to celebrate His resurrection on a weekly Sunday and annual Easter. However, the words He uttered on the day of His resurrection are an invitation to work rather than to rest and worship. The Savior did not say "Come apart and worship . . ." but rather "Go and tell my brethren to go to Galilee" (Matthew 28:10).

No Lord's Supper Commemoration of the Resurrection. The Lord's Supper, which many Christians view as the core of their Sunday celebration of Christ's resurrection, was initially celebrated at night on *different days* of the week (1 Corinthians 11:18, 20, 33) and was seen as the commemoration of Christ's *sacrifice* and Second Advent, rather than of His resurrection. Paul explains that by partaking of the bread and wine, believers "proclaim the Lord's death until He comes" (verse 26).

No Sunday Celebration of the Resurrection. For at least a century after Jesus' death the Passover, which many Christians today observe on Easter as a celebration of the Resurrection, was observed not on a Sunday but on any day of the week on which Nisan 14 fell. This fact implies that no special significance was attached to the actual day of the week on which Passover was celebrated. Moreover the earliest documents indicate that Passover was a celebration of the Passion-death, rather than of Christ's resurrection.

Resurrection Given As a Secondary Justification. The earliest explicit references to the Christian observance of Sunday, which are found in the writing of Barnabas (about A.D. 135) and Justin Martyr (about A.D. 150), mention the Resurrection but only as the second of two reasons. The first theological reason given

by Barnabas for Sunday observance is the eschatological significance of the "eighth day" which, he claims, represents "the beginning of another world." Justin's first reason is the commemoration of the inauguration of creation: "Because it is the first day on which God, transforming the darkness and prime matter, created the world." These testimonies indicate that Christ's resurrection was not seen initially as the predominant justification for Sunday observance.

These brief observations should suffice to discredit the contention that Christ's resurrection on the first day of the week provides a valid theological justification for adopting Sunday observance instead of Sabbathkeeping.

The real issue in the Sabbath/Sunday debate is not the question of different numbers or names, but rather the question of biblical authority. The history of the Christian church has been to a large extent a constant struggle between cultural conformity and commitment to the teachings of Scripture. The adoption of pagan holidays such as Sunday (the day of the Sun), and Christmas (the birthday of the invincible Sun), show how easy it is for Christians to become culturally conditioned. Our challenge today, as in the past, is to resist the pressure of cultural conformity by retaining our commitment to the teachings of God's Word.



*These books can be ordered (\$12.95 each, postpaid) from Biblical Perspectives, 4569 Lisa Lane, Berrien Springs, MI 49103.

**Unless otherwise noted, Bible texts quoted in this article are from the *Revised Standard Version of the Bible*, copyrighted 1946, 1952, © 1971, 1973.

FROM OUR READERS

"How the Sabbath was Changed to Sunday"

I was dumfounded at the reasoning of those who took exception to Dr. Bacchiocchi's article about the Sabbath-Sunday controversy.

In the beginning of the Bible we find "Thus the heavens and the earth were finished and the host of them. And on the *seventh* day, God finished His work which He had done, and He rested on the *seventh* day from all His work which He had done. So, God blessed the *seventh* day and hallowed it, because on it God rested from all His work which He had done in creation" (Genesis 2:1-3).

Again, Jesus said: "Sabbath was made for man, not man for the Sabbath" (Mark 2:27).

When Moses, at God's direction, brought the Israelites from Egypt, he took them directly to Sinai where amid thunder, smoke, and fire God spoke His law and wrote it on two tables of stone. In the fourth commandment God pointed back to creation when He said: "Remember the Sabbath day and keep it holy. Six days shalt thou labor . . . but the *seventh* day is the *Sabbath* of the Lord thy God. . . ." (Exodus 20:8-11).

Mankind cannot make a day holy just by keeping it. God alone can make a day holy by pronouncing it so and sanctifying it.

RICHARD SMITH
Nevada City, California

[Please see Dr. Bacchiocchi's response to reader questions in the July-August issue on page 20, and in this issue on page 24.]

"The Hidden Message of the Book of Job"

Clifford Goldstein's article claims that a central issue in the book of Job was religious liberty. Goldstein claims that all previous commentaries have missed this theme. I must confess that I missed it too--and still do.

Yes, historically civil and ecclesiastical tyrants have tried to destroy religious freedom. The two main motives have been (1) religious freedom is subversive of the state and (2) error does not have a right to exist. However, in Job, Satan has no such specific motivation. Satan, like John Claggart in Melville's *Billy Budd*, is pure nihilistic evil personified. Satan does not seek to rob Job of his religious freedom as did, for example, the Roman emperor Domitian at the time Revelation was written. Satan simply seeks to *destroy* Job because Job is a good man, and Satan cannot abide goodness. Far from being "coerced" by Satan, Job is merely the experimental pawn of a wager between God and Satan, a wager of which Job is totally unaware.

In the book of Job, Satan is merely an episodic figure in the frame of the story. He vanishes after Job 2:7. The frame is abandoned and what ensues is Job's confrontation with his losses and his demand to get ultimate answers from God.

It is of course every commentator's right to read novel insights into an old text. However, I see no evidence that Mr. Goldstein's interpretation is supported by the text.

WILLIAM E. OYLER
Minnetonka, Minnesota

"The Preachy Professor"

Professor Phil Bishop needs to read *The Philosophical Scientists*, a book written by Cambridge professors. They concluded that the universe is too complex and well-organized to spring from anything less than the mind of

God. They cite the complexity of DNA as leading evidence.

I have recommended this book to many groups caught in the creation-evolution struggle and the reactions so far are very favorable.

I will disagree with the Rabbi who said that the Holocaust was the greatest shame and failure of the human conscience of the twentieth century. In the 1920s and 1930s, Stalin literally starved millions of his own people when he forced collectivized farming. During Mao Tse Tung's struggle for dominance, he killed more people than Hitler killed Jews. Between the Russians and the Chinese, more than 60 million people lost their lives. We Gentiles are human too.

R. W. ROBINSON
Sequim, Washington

"Are Landmark Preservation Laws Eroding the First Amendment?"

In response to the article by Samuel Rabinove in your May-June issue: The Detroit city council has not "rejected a request . . . to grant historic designation to a former Catholic church," as is asserted.

The building at issue was a residence. Those who wished to preserve it were not only "residents," but a community group with religious leadership based in other buildings of the former Catholic parish who wanted to use it for a charitable purpose. The council decided not to proceed with a study of possible historic designation on the grounds that the situation had nothing to do with the First Amendment.

The adjacent church building is modern and no one ever proposed it for historic designation. The correct name of its purchaser is Clinton Chapel A.M.E. Zion Church. They bought the church to worship in it, and are doing so; there was never an intent to demolish it. Demolition of the adjacent residence was actually done by the Archdiocese of Detroit, not by Clinton Chapel.

Detroit has a fine designation program with excellent relationships in our religious community, and Mr. Rabinove does a disservice to suggest otherwise. Furthermore, the general tone of Mr. Rabinove's article, the inaccuracy in describing a Detroit incident that is actually irrelevant to the issue, and apparent inaccuracies or omissions in descriptions of other situations, might lead a reasonable reader to conclude that the author was not interested in a balanced presentation of the issues.

MARYANN MAHAFFEY, President
Detroit City Council

"In Quest of Knowledge"

Author Arnold Burron decries the castigation of Aurora, Colorado, high school English teacher, Dorothy Groteluschen, for her revisionist view of the murder of 6 million Jews during the Holocaust which she shared with students in her classroom. Dr. Burron asserts that Ms. Groteluschen was merely providing her students with lessons in critical thinking. Under the guise of "academic inquiry" Burron not only supports Groteluschen's questioning of the Holocaust, he also claims that her critics constitute a threat to the pursuit of truth.

Views like Groteluschen's are promulgated by the so-called Institute for Historical Review (IHR), founded in 1979 as a propaganda arm of the anti-Semitic Liberty Lobby, which has served as vanguard of the movement to

deny the reality of the Holocaust. Operating under a guise of scholarship, the California-based Institute has solicited membership from academic figures and from the public.

Questioning the Nazi genocide of the Jewish people, in a classroom, under the guise of "academic inquiry," is not the same as questioning a British scientific journal's article on acid rain as Dr. Burron would have us believe. It is making use of the deliberate weapon of anti-Semitic extremist groups operating in the United States and Europe today. BOBBIE TOWBIN, Associate Director Rocky Mountain Regional Office Anti-Defamation League of B'nai B'rith

Compatible

Two articles in your May-June issue, "In Quest of Knowledge," and "The Patagonian-Zionist Plot," are very compatible.

In "In Quest of Knowledge," Arnold Burron's defense of Dorothy Groteluschen's quest for truth regarding the accuracy of the Holocaust was excellent. The cry of "anti-Semitic" is raised when scholars attempt to verify Holocaust statistics. Proponents of the Holocaust refuse to debate their version of history in a scholarly manner. Holocaust and Zionist apologists are like the Shakespearean lady who protested her innocence too vigorously.

With regard to "The Patagonian-Zionist Plot," Clifford Goldstein would do well to read "The Thirteenth Tribe" by Arthur Koestler for proper usage of the term "anti-Semitic." In his carefully researched book, Koestler states, "most

Jews of the contemporary world did not come from Palestine and are not even of Semitic origin."

Other scholars have maintained for more than 50 years that the bulk of world Jewry, the Ashkenazim Jew, is a direct descendant of Khazaria, and is of Khazar-Turkish, rather than Semitic, origin. Arthur Koestler published "The Thirteenth Tribe" in 1976. Koestler is of the Judaic faith and an honest scholar. He notes that the present occupation of Palestine by the non-Semitic Israelis, "begins to look like the most cruel hoax history has ever perpetrated." The Palestinians, brutalized by Zionism's hoax, would be the first to agree.

In light of Koestler's book and the Israeli government's actions, how can world Jewry and Zionists expect not to be criticized?

Liberty, keep up your quest for truth.
NEIL P. BOYD, D.D.S.
Kennewick Washington

Religious Liberty Assassinated in *Employment Division v. Smith*?

The right to religious liberty in the United States was killed by the U.S. Supreme Court decision *Employment Division v. Smith* (110 S. Ct 1595) in 1990.

It happened so quietly that I wouldn't have known about it if it weren't for Mitchell Tyner's article in *Liberty*. Your excellent magazine has had at least three articles about this case. The news media have not given it any significant coverage.

There would be a relentless uproar by the news media if any serious encroachment were made upon freedom of the press. Religious liberty is cherished by most Americans, especially religious minorities, and they deserve to know when something serious threatens it.

JACK C. WERNER
Dunedin, Florida

"Chronicles of Wasted Time"

I was thrilled to read this article by Haven Bradford Gow. For some years I've been impressed by the late Malcolm T. Muggeridge's trenchant analysis of the Soviet Union. As recently as 1978 I visited that country on a Radio Moscow/Sputnik Youth Organization-sponsored trip and, in two weeks, became quite disillusioned by the reality of Soviet life and politics.

Interestingly, I wrote Muggeridge in 1989, inquiring into the status of the third and final volume of his *Chronicles of Wasted Time*. He wrote me shortly before his death, "At 89, I have said all there is to say." He had indeed experienced the "everlasting supremacy of the gospel of love," and evidently no further expostulation was necessary.

Rev. BURTON K. JAMES
Newfoundland, Canada

"Who Gets the Kid?"

After reading this article by Mitchell Tyner, my faith in the judicial system was greatly shaken.

In the case of *Mendez v. Mendez*, it was obvious that Rita Mendez was unfairly treated and a victim of religious discrimination by the courts. The judge's decision was based on narrow-mindedness and religious prejudice.

Thank you *Liberty* for keeping us informed of these issues.

BERNARD NICKERSON
Jackson, Mississippi

I found this article informative, provocative, and upsetting. The injustice rendered in this court decision is a tarnish on the scales of justice.

Mendez v. Mendez illustrates that while Americans respect the constitutional privilege of freedom of religion, we could care less about the religious rights and practices of our fellow men.

JAMES EARL
Stallo, Mississippi

[For another perspective, see page 16.]

"Secular Pilgrims"

In the May-June "From the Editor" the question is asked whether the risk of turning public education into "tax paid five-day-a-week Sunday schools" was worth it, referring to the perceived need to teach more about religion in the public schools, in light of the religious emasculation that has occurred in the last half century in public school curriculums.

The answer, it seems to me, depends, as do most of the important questions in life, on how we answer the most important question of all: Was Jesus of Nazareth who He said He was?

If Jesus is the Son of God, and no one comes to the Father but by Him, then the primary role of education is not career preparation, etc., but to bring students to a saving knowledge of Jesus and of His teachings.

To the extent that the public schools are failing in this most important of endeavors, we believers have one of two options: (1) try to reintroduce a saving knowledge of Jesus as the primary goal of public education, or (2) move toward what I believe to be a constitutional, workable system of educational choice.

Nonbelievers can send their children to non-Christ-centered schools, and believers vice versa. Believers can channel their energies into providing schools which offer the best academically, spiritually, and discipline-wise. Schools can vie for students based on performance and ideology. The

taxpayers, the students, and our society will all be winners. We already do this for post-secondary education; this is not a revolutionary or radical concept.

The business community and now the Bush administration have weighed in on the side of parental choice in the name of competition and better education. As soon as the taxpayers and parents weigh in, I believe the votes will materialize to bring about this overhaul in our educational system.

CHARLES D. HURLEY, State Representative
District 28
Fayette, Iowa

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FROM THE EDITOR



Of Firm Grips and Sinking Ships

A few months ago Soviet President Mikhail Gorbachev told visiting French President Francois Mitterrand that he had a "firm grip" on the Soviet "ship," even though the "weather is very bad . . . the instruments are out of order, and the crew is not as united as it might be."

So much for firm grips.

On August 10 I shared concerns with a Russian friend attending Andrews University, in Berrien Springs, Michigan, about the future of the Soviet Union. On the first, we were agreed: The future held much more suffering for the Soviet peoples. My next three scenarios were more controversial: A coup, with emergence of a dictatorship; and a subsequent civil war. And then the ultimate nightmare: loss of control of nuclear weapons.

Early Wednesday morning, August 21, I awakened to hear, through my bedside radio ear plug, that Gorbachev was "sick," and the government was in the hands of his Communist "friends."

Some sickness! Some friends! And some sequel over the next few days—including information that the plotters had possession of the codes necessary to unleash nuclear terror.

I've believed that the "prince of the kings of the earth" (Revelation 1:5) instigated the opening of the Soviet Union and Eastern Europe to the gospel. My reaction to the coup, which could have turned back the clock to the repression of earlier years, was an instinctive question: "Well, I wonder what the prince of the kings of the earth is going to do about this?"

Now we know. And somehow the quibbles about First Amendment problems at home don't seem so monumental after all.—R.R.H.

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DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice and promulgate religious beliefs or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the Golden rule—to treat others as one wishes to be treated.

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I know of no safe depository
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society but the people them-
selves; and if we think them
not enlightened enough to
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wholesome discretion, the
remedy is not to take it from
them, but to inform their
discretion by education.

—Thomas Jefferson in a letter to William Charles Jarvis, 1821.