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LIBERTY

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"Sins of the Flesh"

As a counselor and chaplain, I was pleased to see an informative article on clergy sexual misconduct in your November-December 1993 issue. However, one aspect of author J. Brent Walker's perspective alarmed me: the suggestion that those who have suffered childhood sexual abuse should not be hired for ministerial and counseling positions. I realize that Walker was speaking from statistics. It is true that the greater percentage of abusive adults were abused children. However, when that statistic stands alone as a determiner of clergy fitness, the former victim is forever branded as unredeemably warped.

The statistic fails to take into account the large percentage of sexual abuse victims who go on to lead healthy lives after receiving competent counseling. It also fails to take into account the fact that those who tend to enter the helping professions such as social work, pastoral counseling, psychotherapy, and ministry, have a greater likelihood of coming from a background of some form of abuse. Those fields contain the highest percentage of "wounded people" who have recovered and become healers to other wounded people.

NAME WITHHELD
Grantsville, Utah

J. Brent Walker suggests that "vicarious liability" should not be applied to a church whose minister has engaged in sexual

misconduct with a parishioner. He complains that courts are "revising traditional legal doctrines" and that "traditionally" such conduct was "properly" considered outside the scope of employment.

Courts are not revising legal doctrines in this area. Instead, our courts have acquired a better understanding of the minister's job, and are correctly applying traditional legal doctrines to the facts. Courts understand that the minister's duties include counseling, and that professionally competent counseling requires the maintenance of clear boundaries. Ministers who blur the boundaries are not doing their jobs correctly—any more than a delivery person who drives while intoxicated is doing his or her job correctly.

The church gives the minister a position of trust and authority, enabling him or her to do good or ill. The church is happy to take credit when the minister does good, yet seeks to hide when the minister does ill. One could understand such behavior by commercial enterprises. Don't we expect better from our churches?

How refreshing it would be if our churches would step forward to take responsibility for harm caused by an errant minister. Instead, thanks to the type of thinking exemplified by Mr. Walker, they have to be dragged, kicking and screaming, to the bar of public accountability.
DAVID A. SUMMERS, Attorney
Edmonds, Washington



"Bumper Sticker Theology"

As a long-time reader of *Liberty*, I was disappointed and horrified that you would allow the deicide charge against the Jews to be printed in your magazine.

In his article on church-state separation (November-December 1993), Brian Jones writes that "Jesus was killed when the religious power of His day, uniting with the state, hung Him on a cross."

This canard originated in the New Testament itself. It asserts that the Sanhedrin met to condemn Jesus. That is not possible for the following reason: If the Last Supper was a Passover seder, then the Sanhedrin would have met on a Jewish festival, something it would not do except to save a life. Therefore, if the Sanhedrin did meet in connection with Jesus, it would have been to find a way to save Him and not to condemn Him to death.

The libel of deicide resulted in the persecution of Jews by Christians for centuries and laid the cultural groundwork for the Holocaust. That this historical, religious, and moral outrage is

repeated in the pages of *Liberty* is sickening.

RABBI ROBERT MARCUS
Farmingdale Jewish Center
Farmingdale, New York

[Jesus Himself is recorded in the New Testament as saying that the chief priests and scribes would condemn Him to death and that the Gentiles would kill Him (Matthew 20:18, 19). Does that make the New Testament both anti-Semitic and anti-Gentile? (See also "Is the New Testament Anti-Semitic?," March-April 1992 Liberty)—Ed.]

It is likely that Mr. Jones' article would have been read further than the first paragraph if he had acknowledged purchasing an American-made automobile.
MICHAEL D. COFFEY, Attorney
Mentor, Ohio

[Touché.—Ed.]

"The Origin of Life"

At the heart of George T. Javor's article in your September-October 1993 issue lies a logical fallacy, which, far from supporting the author's conclusion, actually serves to discredit it.

This conclusion, presented at the end of the article, claims "Creation . . . is . . . the only logical choice" as an explanation of the origin of the first self-reproducing material, living cells.

In support of this conclusion, Javor advances case after case to show that all current scientific accounts based on regular natural law and reasoning are easily challenged and unreliable.

The trouble with this line of attack is simple. In a reasoned discourse, a conclusion is not lent support by means of casting doubt on other, opposite conclusions. Positive support for the conclusion in question—in this case the notion of Creation—is inescapably necessary. This the author fails to provide, presenting his preferred conclusion completely bare of any positive support, such as would be furnished by evidence, reasoning, or better yet some combination of the two.

Sadly enough, people who demand a high standard of intellectual integrity in argumentation are offended and discouraged from an openminded consideration of the Creation hypothesis when it is presented in a manner that contravenes the

principles of reasoned inquiry. Labeling the suspect reasoning as the only "logical" choice in this context makes the problem worse, not better.

Liberty, you can do better!
MARSHALL CASON
Guerneville, California

"Is Clinton God's Man in the White House?"

I have seldom seen a more vitriolic response than that to William G. Johnsson's article in your July-August 1993 issue. Those letters surely did not come from Christians? If they did, you could have fooled me!
GOMER E. EVANS
Holly, Michigan

"Animal Sacrifices: A Hands Off Reply"

Your response to Sal Giovanis (November-December 1993, p.3), is illogical. It is not what

happens to the animal (death) that is of concern to the human who kills it, it is what happens to the human. Christ came to do away with animal sacrifice.

Your logic would mean that it makes no difference whether a soldier is killed by a bullet or poison gas. It makes no difference to the soldier killed, but it does make a difference to the killer. I do not believe God commands that man shall not kill, I believe God commands that man shall not murder.

The Supreme Court is deficient in legal ability and devoid of common sense. O'Connor, Thomas, and Ginsburg could not make a living in the private practice of law. I would not quote the Court, any lawyer knows that it has degenerated in the last 15 years to a political organ that mirrors the ideas of socialism and lesbians. It is far removed from what the Founding Fathers envisioned it would be.

You did a great disservice to Sal Giovanis. The sacrifice of animals is an abomination. Can you imagine Jesus cutting the throat of a chicken for religious purposes?

I am a rancher and a lawyer and have killed many animals. Yet, I never killed an animal I didn't eat or that was food for someone else. I would not kill an animal to please or worship God. No one but a cruel fool would do that, and no one but a fool would sanction it.

TERRY W. BRADLEY
Cleburne, Texas

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.

POLITICAL CORRECTNESS IN THE GIRL SCOUTS:

To expand membership, the Girl Scouts now allows substitute words for *God* in its pledge. Scouts can insert the name of their personal divine being, creator, spirit guide, or whatever, in the slot once exclusively reserved for the Judeo-Christian Deity. "On my honor," the pledge goes, "I will try to serve [pick one: *God, Allah, Jehovah, Babalu Aye, Sri Krishna, Buddha, the Divine Essence, Sun Myung Moon, Odin, Mother Goddess, Gaia, George Burns, Papa Legba*, none or all of the above], and my country, to help people at all times, and to live by the Girl Scout law." Is this pluralism or polytheism?

THE JOYS OF DEMOCRACY:

America's Founders wrote the Constitution as a buffer against unbridled democracy. We should be glad they did. According to a recent poll, one third of all Americans don't know what the Bill of Rights is. What's worse is that half of those who do know would vote to scrap it in order to allow government greater leeway in solving problems from AIDS to violent crime. Of course, if that doesn't prove effective, there's always Vladimir Zhirinovskiy.

THE JOYS OF DEMOCRACY (PART TWO):

More than a century and a half ago Alexis de Tocqueville warned that "if the free institutions of America are



destroyed, that event may be attributed to the omnipotence of the majority." The framers of the Constitution, aware of the dangers of majoritarianism, established an independent federal judiciary that would, ideally, uphold the Bill of Rights and thus protect the minority from the tyranny of the majority. "The very purpose of the Bill of Rights," wrote Justice Robert Jackson, "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials." Thus, how ironic that Congress and the executive branch—the most majoritarian parts of our government and the ones supposedly the least sensitive to minority rights (after all, how many major elections have turned on the Lakota Sioux vote?)—had to pass the Religious Freedom Restoration Act (see p. 10) in order to protect religious

freedom, which the Supreme Court (the branch that is supposed to guard that freedom) emasculated in *Smith*. Let's hear it for the mob!

MISSISSIPPI BURNING: When Wingfield High School principal Bishop Knox was suspended without pay for allowing students to say a 21-word prayer over the intercom, many Mississippians haven't been so agitated since federally enforced integration. "When you get a man fired for allowing school prayer," said Bobby Clanton, president of a local conservative group, "people wake up to the fact that this is just plain wrong and we're not going to take it anymore." In protest, thousands of students have walked out of class and with their parents have gathered at

large rallies before the state capitol. Several Mississippi politicians have introduced bills into the state house that support legislated school prayer. If passed, these bills will no doubt lead to litigation, especially in light of various U.S. Supreme Court rulings that have found legislated school prayer unconstitutional. Facing everything from crack to condoms, from handguns to *Heather Has Two Mommies*, students in American public schools should no doubt be praying, but one has to question the spiritual depth of those who want laws to get them to do it.

POLLUTED RIVER:

Heart Phoenix's response to her son River's drug overdose outside a Hollywood nightclub last year is as symptomatic of our age's ills as was his death. Heart hopes that River's overdose will "focus the attention of the world on how painfully the spirits of this generation are being worn down. They are growing up with polluted air, toxic earth and food, and undrinkable water. We are destroying our forests, the ozone layer is being depleted, and AIDS and other diseases are epidemic. Drug abuse is symptomatic of an unfeeling, materialistic, success-orientated world in which the feelings of young people are not seen as important." With all due respect to the bereaved mother, what his death should really focus the attention of the world on are the consequences of a society in which moral absolutes are trashed, in which people won't take responsibility for their

actions, and in which the family unit has been torn apart. These are the factors involved in his death—not frustration over acid rain.

CRUSADE: In the keynote speech at the Focus on the Family building dedication last year, Christian author Chuck Colson gave a powerful homily on America's moral decline. "When fear begins to become pervasive," he said, "someone will come along on a white horse and say 'I'll bring you order.' That's what happened to the Germans in the 1930s, when Hitler was immensely popular. He said, 'I'll bring order to society.' Five more years of chaos in America, and someone on a white horse will offer to bring order out of our chaos. If that happens, the result will be tyranny." Well said, and we agree. Yet one wonders if Colson has ever considered that the one riding on the white horse might have a Bible in one hand and a cross in the other.

FUNDAMENTAL RISE: For years scholars assumed that the post-industrial revolution world, awash in scientific progress, would gradually evolve away from religion and religious fanaticism. Secular rationalism would be the overriding weltanschauung of humanity, while religious dogma would slowly dissipate. Well, the scholars have been wrong. Religious fundamentalism—be it Muslim in Iran, Hindu in India, or Christian in America—is

resurgent. "No one ever foresaw this a few years ago," said historian Martin Marty, who has been directing the monumental fundamentalism project sponsored by the National Academy of Arts and Sciences. "It will inevitably take down a lot of things in its path." According to Marty, this fundamentalist resurgence has come as a backlash to an overwhelming tide of secularism that threatened religious identities and beliefs. "We underestimated," said Marty, "the attachment people have to religion. When you need an explanation for what's going wrong, or need a motivation for what you hope goes right, nothing beats calling your cause God's cause."

FETAL MATTERS: Tabita Bricci gave birth to an apparently healthy boy (see p. 27), even though doctors warned that the child would die or be severely brain-damaged unless the woman underwent a cesarean. In an attempt to force the operation, the county had hired a "court-appointed lawyer for the fetus," a novel idea in a nation that has deemed abortion a constitutional right. Despite the best efforts of the county, no court—including the U.S. Supreme Court—would force Tabita, against her religious objections, to undergo the operation. Interestingly enough, it was the American Civil Liberties Union—the antichrist itself—who defended this Pentecostal's religious right not to have the cesarean.

WHAT'S THEIR NEXT STEP? MICKEY MOUSE EARS? In its attempt to keep a portrait of Jesus on the wall, Bloomingdale High School (see *Liberty*, July-August 1993) first agreed to cover up the painting until a higher court ruled on its constitutionality. Next officials were told they could uncover it if similar-sized portraits of "other historical figures" were placed up there as well. So, next to Jesus, the Son of God, went Abraham Lincoln and Dr. Martin Luther King, Jr.. School officials then posted a disclaimer that the portraits were privately funded and didn't signify an endorsement of religion. Nevertheless, U.S. district court judge Benjamin Gibson ruled, and rightly so, the picture of Christ unconstitutional. This case exemplifies how far people, in order to satisfy Establishment Clause restrictions, will water down their most sacred beliefs. Or maybe they aren't so sacred after all.

RELIGIOUS LIBERTY IN THE NEW RUSSIA: Despite all the jokes about giving Alaska back to Russia now that Vladimir Zhirinovsky's Liberal Democratic Party did so well in the parliamentary elections, one particular aspect of the vote isn't a joking matter. According to a report by News Network International (NNI), though the Russian voters approved a new constitution with strong religious liberty provisions, they also "elected a significant number of politicians who may not be willing to enforce

those provisions." Anatoly Pchelintsev, director of the Institute on Religion and Law, told NNI that "having freedom of conscience in the constitution is one thing, but in practice it is another." Pchelintsev said that he fears that nationalists and Communists in the new Parliament will try to change the laws on religion in ways that would hinder freedom for Protestants, other non-Orthodox churches, and foreign missionaries. "They tried it last summer," he said. "They will try it again." Meanwhile Boris Yeltsin, who worked as a barrier against the change last year, might now—because of nationalist pressure—make concessions that would hurt religious minorities and missionaries.

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The Restaurant That Lost Its “Prophets”

The Night They Raided Sambino’s

BY KERMIT NETTEBURG

Psychic Night at Sambino’s just wasn’t in the cards.

For a while every palm seemed to hold money, then police raided the respectable Michigan restaurant, and now the crystal ball—and maybe soon the bank account—is blank. The restaurant owners claim loss of business and reputation, and the psychics say their religious rights have been violated. What’s behind the amazing case of a city turning thumbs down on reading palms face up?

In April 1993 Sambino’s, a family Italian restaurant on Capitol Avenue in southwest Battle Creek, started Psychic Night to spice up the regular Wednesday night fare. Wednesdays were slow, and owners Jane and Lee Wilkinson figured psychic readings might predict future profits. The “good clean” entertainment would fit the restaurant’s family image.

“I saw other restaurants doing it with tremendous results,” says Jane. “So we decided to give it a try.”

Sambino’s psychics weren’t the garden variety who read palms in the front rooms of houses in rundown sections of town. This is high-tech cult religion, with one psychic who uses a laptop computer to generate astrological charts.

So every Wednesday evening at Sambino’s customers signed up to see a psychic. While they waited in the clean, well-lit restaurant, patrons dined on pasta, seafood, chicken, and self-serve salad from the salad bar resting under a stained-glass overhang in

the middle of the room. When their name was called, customers headed for the psychic’s tables, located in a dark corner of the restaurant between the kitchen door and the salad bar. For a \$7 “donation,” they got a 12-minute reading.

Psychic Night exceeded all the Wilkinsons’ dreams. Wednesday became the restaurant’s most popular night. More than 100 diners jammed the restaurant. The Wilkinsons thought all the cards were coming up aces.

So many aces, in fact, that the Wilkinsons hired Bill Loftus to line up the psychics. Loftus, a retiree from Florida, had once tried to start an all-psychic radio station. When that project failed because of lack of advertisers, he began coordinating psychics at restaurants around southern Michigan. Loftus credits psychic phenomena with healing an intestinal disease that could have otherwise cost him his colon. Because he’s a true believer, he charges restaurants only \$25 a night per psychic.

“Sure, we use it for entertainment,” said Lee, “but we believe it’s a public service.”

The Wilkinsons have sought psychic advice themselves. Jane Wilkinson went to a psychic for the first time several years ago. Surrounded by an incessant cloud of cigarette smoke, she

said psychics have told her things about herself she had never realized.

“I find it remarkable that they could tell me exactly how I am,” she says, lifting her hands, covered with rings, into the air. “You have an opportunity to help yourself because they give

Kermit Netteburg, Ph.D., teaches communication at Andrews University in Berrien Springs, Michigan.

ALL PHOTOS BY AUTHOR



Above: Rose Smith reading tarot cards at another restaurant: "When you're working with police you're a psychic. Otherwise, you're a fortuneteller."



Left: Jane and Lee Wilkinson: They never thought the police would really raid their restaurant.

you insights into your life. Psychic reading isn't so much about reading the future as it is about reading yourself. It offers you the chance for self-improvement because it tells you so much about yourself."

Lee, also surrounded by cigarette smoke, compares Psychic Night at Sambino's to the evangelistic work of Christian churches. "It's not any different than having a missionary in Africa."

Lee draws on his Catholic background to explain the religious nature of psychic readings. "It's like the virgin Mary and Catholics—like saying a Hail Mary. She is a medium."

Jane and Lee, married 15 years, have been in the restaurant business since 1986. Previously Lee was an accountant and Jane a computer operator. While working as an accountant, Lee had a customer who wanted to sell his restaurants. Lee bought him out. Today the Wilkinsons own nine restaurants in five states.

With Psychic Night, Sambino's was doing well. Business at the restaurant looked even better when the July 14 Battle Creek *Enquirer* ran a full-page feature called "Psychics Serve Up Readings at Restaurant." Written by *Lifestyle* editor Leslie Rardin, the article quoted several psychics and restaurant patrons about the good things that happened on Psychic Night. "Customers can dine and converse," wrote Rardin, "then take a look into the future for desert."

One of the psychics, however, should have warned the Wilkinsons that the article was also a bad omen. Battle Creek city attorney Clyde Robinson explains, "We have a city ordinance that says you can't do fortunetelling for remuneration or profit." The ordinance (General Offense Code 660.02), based on a state statute, dates back to 1913, when the major concern was Gypsies. The Battle Creek ordinance outlaws "pretending for money or gain to predict future events by cards, tokens, trances . . ."

Deborah Owens, the Battle Creek city clerk, read the article and called Robinson's office to ask if he was planning to prosecute Sambino's for breaking the ordinance. Robinson said someone needed to call the police and complain that the ordinance was being broken.

Owens did. Every year she turns down about five fortunetellers who want to set up a business in Battle Creek. "You have to treat everyone fairly. I just couldn't ignore this. I would be doing an injustice."

A police detective visited Sambino's on July 15. He showed the Wilkinsons the ordinance and warned that Psychic Night was illegal. They



Sambino's: Business hasn't been the same since the police busted Psychic Night.

didn't believe him. First, they said psychics are not fortunetellers. "Calling a psychic a fortuneteller," says Jane, "is like calling a doctor a quack." Second, the Wilkinsons argued that the psychics at their restaurant weren't being paid for checking palms and crystal balls—or hard drives. Instead they accepted whatever donations people gave. The Wilkinsons also reminded the detective that the police department employed a psychic to help them solve tough crimes. Just a week earlier a psychic had helped police in another Michigan city locate the body of a 3-year-old girl.

This point especially galls Rose Smith, a psychic who was reading tarot cards every Wednesday night at Sambino's. "When you're working with the police, you're a psychic," says Rose, who looks like the woman everyone wants for a grandmother. "Otherwise, you're a fortuneteller."

The detective said none of these facts mattered. If the practice didn't stop, police would raid the restaurant. The Wilkinsons didn't think they were doing anything wrong—and they didn't believe police would raid them. They put a sign on the marquee outside the restaurant: "Psychic Night Wednesday night."

Thanks to the newspaper article and the marquee, a huge crowd appeared the next Wednesday night. One hundred eighty-seven people signed up. Seven psychics read palms and tarot cards and gazed into crystal balls and laptop computer screens. One even used a duck lamp to "see" the future. The crowds were so great that people were forced to wait in the lobby. The police came about 8:00 p.m.

Five squad cars, lights blazing, assumed assault positions at the front of the restaurant. Two plainclothes detectives and four uniformed officers burst through the open front door. They confiscated donations given the psychics, taking tarot cards and crystal balls.

"It looked like a drug raid," said Greg Cosby, an Indianapolis businessman in the restaurant that evening.

Police warned patrons that they'd return in 30 minutes to arrest anyone who remained. About 150 of the customers immediately left. The police never returned, but neither has Psychic Night—or the Wednesday night crowd! Sambino's hasn't been full since.

Several police snidely suggested that the psychics should have known the place would be raided. Smith said she knew. "I read Jane's tarot

Lee, also surrounded by cigarette smoke, compares
Psychic Night at Sambino's to the evangelistic
work of Christian churches. "It's not any different
than having a missionary in Africa."

cards the week before the raid, and I told her that some legal problem loomed in her future."

And Battle Creek might have a few too. The Wilkinsons sued the city, asking the court to overturn the ordinance as well as award them damages for the lost business and the stain on their reputation. Lee claims that he lost \$5,000 the week after the raid because people stayed away. The suit also claims that the ordinance violates the free speech and religion rights of both the psychics and the Wilkinsons.

"We're not trying to prohibit any person who believes in this from doing it," says city attorney Robinson. "It's not prohibited if they do it for free. The donation doesn't change the fact that there is remuneration. If someone offers a prize for a donation, the state law says it's a lottery just as surely as if they charged for the ticket."

Robinson notes that hiring Loftus to broker the hiring of psychics makes this "seem like a business promotion for a midweek crowd."

The Wilkinsons say it's more than that just business. "This has turned into a moral and religious issue. If the psychics have a talent, they have a God-given right to practice this."

The argument has its weaknesses. Con artists may have a real talent at swindling people; few people defend their God-given right to practice swindling.

Images like con artists concern the Wilkinsons. "We're on the verge of starting a spiritualist church to combat this preception," Lee said.

The Divine Light spiritualist congregation in nearby Grand Rapids, Michigan, provides a haven for several psychics.

"A true psychic never brings evil," Jane added. "We have never had a psychic come in and tell people something bad. Their place is to help people." She added that a true psychic wouldn't even foretell something like a death in the family, because it is bad news.

In any event, the case of Psychic Night at Sambino's could open a sticky area in religious freedom issues: defining a religion. A group that

helps people? A belief in some form of divinity? An ability to see the future?

The courts have tried to ignore the question: what is a religion? They have also strenuously avoided deciding whether a religion is true. Fifty years ago the Supreme Court, in a decision overturning a law that hurt an unpopular religion (*West Virginia v. Barnette*, 1943), said, "If there is any fixed star in our constitutional system, it's that no official, high or petty, can prescribe what is orthodox in politics, nationalism, religion, or other matters of opinion."

When cult leaders were charged with using the mails to defraud people with claims that they could supernaturally heal disease, a lower court judge instructed the jury that it needed to decide not if the claims were true, but only if the defendants believed that they were. The U.S. Supreme Court (*United States v. Ballard*, 1944) agreed, saying that even if the religious views of the defendants "might seem incredible, if not preposterous, to most people," that was of no concern to the court. On the other hand, the Supreme Court warned (*Cantwell v. Connecticut*, 1940) that "nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public."

Whatever the legal issues, the Wilkinsons now face the more mundane problem of finances. "I think that it's unrealistic to say long-term how much damage the raid has caused," says Lee. "If people feel that they can return without police raiding the place, it will go back to normal."

Meanwhile, Michigan state representative Richard Allen is trying to repeal the Michigan statute that resembles Battle Creek's ordinance. "Times have changed," he said. "The law is really out of date with the 1990s."

Until then, Sambino's now serves its chicken parmesan with thyme but no tarot cards, and the Wilkinsons haven't heard anyone tell them what the future holds. 



What Americans Won With the

RELIGIOUS FREEDOM RESTORATION ACT

“Is this Religious Freedom Restoration Act really that significant? Will it make that big a difference? Every time you lawyers start to explain what it’s all about, you lose me in your legalese.”

The question came from a friend who supports religious liberty but has become dubious of the sometimes sensational rhetoric of its defenders.

How’s this for significant? Congress reversed the effect of a U.S. Supreme Court decision (it doesn’t do that very often) and for the first time did so because of a decision that reduced religious freedom. It took a three-year campaign by a coalition of religious and civil rights groups, including everybody from Jerry Falwell to the ACLU, to get the job done!

Unfortunately, the Religious Freedom Restoration Act (RFRA) is so technical that it’s hard to explain without a lot of legalese. But the answer to her other question is yes, it will make a difference!

If a Seventh-day Adventist applies to take a master plumber examination given only on Saturday, his Sabbath, he can require the state agency involved to prove that it would be a major hardship for it to give the exam on another day. Before RFRA, he could not do that.

If a prisoner, for religious reasons, avoids certain foods, he can now require the state to either give him an alternative diet or show why it can’t. Before RFRA, his case would have been addressed under a standard that gave all the advantage to the state and none to him.¹

If a teenager is killed in an automobile wreck, his parents can protest, on religious grounds, the state’s right to force an autopsy. In one such instance before RFRA, a federal judge told the parents that although he personally considered the autopsy unjust, he was required to deny their claim.²

BY MITCHELL A. TYNER

Yes, RFRA will make a difference in these and countless other situations. To understand why, you have to get a bit technical.

The U.S. Supreme Court establishes not only the meaning of the Constitution but also the rules under which it approaches cases involving constitutional provisions. Over the years the Court has decided that in claims involving governmental actions that burden fundamental freedoms, government should be required to justify its action by a high standard of proof.³ Such cases are said to be given “strict scrutiny,” meaning that government must show that its action was necessitated by a “compelling public interest” that couldn’t be met by any “less intrusive means.”⁴ Other cases, involving lesser claims, are reviewed under a much more lenient standard: the challenged action will be upheld if it bears a “rational relationship” to a “legitimate governmental interest.”⁵ Because a modern government is assumed to have a legitimate interest in practically anything, government usually wins under that test. Obviously, the test applied by the Court may by itself determine the outcome of the case.

Which test is applied to cases involving religious freedoms? For the past several decades, strict scrutiny. When that happened, government didn’t often win. But in 1990 the Supreme Court ruled, in *Employment Division v. Smith*,⁶ that strict scrutiny would be applied only if the challenged action was intended to burden religion or was an application for exemption in a situation where exemption could be granted for a variety of reasons. If government unintentionally makes the practice of your religion more difficult and doesn’t allow any exceptions, you lose.

Put another way, the Court said that no religious exemption was constitutionally mandated from laws that are facially neutral and generally applicable. Unfortunately, some of the worst

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and legal advisor to
LIBERTY.

episodes of religious persecution in American history involved just that type of law. *Minersville School District v. Gobitis*⁷ involved Jehovah's Witnesses' objection to a facially neutral, generally applicable law requiring all public school students to salute the flag. The Supreme Court's ruling that no religious exemption was required set off a nationwide outburst of violence against Jehovah's Witnesses. It was also the precedent relied on by Justice Antonin Scalia, who wrote the majority opinion, to justify the Court's rationale in *Smith*. Curiously, Justice Scalia neglected to mention that *Gobitis* was overruled just three years later in *West Virginia v. Barnette*.⁸

Smith was not followed by the physical violence that followed *Gobitis*, but violence to religious freedom has been done in dozens of cases in which courts were forced to follow the Supreme Court precedent. One example: *Minnesota v. Hershberger*⁹ involved a law requiring slow-moving vehicles to display a bright orange triangle. The Amish protested that their religious belief forbade the use of bright colors, but offered to use a silver reflector that was just as visible as the orange marker. Lower courts applied the strict scrutiny standard and found that while a compelling public interest in highway safety justified the requirement that Amish buggies have safety markers, the silver reflector was a less intrusive alternative that the state must allow. The Supreme Court sent that ruling back for reconsideration in light of *Smith*. Minnesota could give relief to the Amish, but was not constitutionally required to do so.

Justice Scalia, in *Smith*, advised religious groups to look to the legislature for further protection, and that's exactly what they did. The result of their effort was passage of RFRA, signed into law by President Clinton on November 16, 1993.

RFRA restores the protection of religious freedom to its pre-*Smith* position. It may do even more. In several cases before *Smith*, the Court declined to apply strict scrutiny to religious claims, specifically those involving prisoners¹⁰ and members of the military.¹¹ It stated that greater deference was due the authorities in those situations. Under RFRA, courts will now be required to apply strict scrutiny to those cases as well. Religion-based claims by Native Americans also did not often fare well before *Smith*. They too should be a major beneficiary of RFRA. The Court has described compelling interests as being "of the highest order." It has used superlatives like *paramount* and *gravest*,

explaining that use of such interests to burden religion must involve "only the gravest abuses, endangering paramount interests."¹² This higher standard should lead to a very different result when substituted for rational relationship.

In the litigation thus spawned, some defendant will almost surely challenge the constitutionality of the Religious Freedom Restoration Act. Did Congress have the authority to remedy what it perceived to be a judicial blunder?

The source of congressional authority for RFRA Section 5 of the Fourteenth Amendment, which gives Congress the power "to enforce, by appropriate legislation, the provisions of this article." The scope of Section 5 power was articulated a century ago in *Ex Parte Virginia*:¹³ "Whatever legislation is appropriate, that is adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of civil and equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

That ruling was used by the Court in *South Carolina v. Katzenbach*¹⁴ to uphold Congress's enforcement power under the Fourteenth Amendment. In that case the Court upheld a ban of literacy tests under the Voting Rights Act of 1965, even though the Court had held that such testing did not violate the Fourteenth Amendment. Because the power to enforce the Fourteenth Amendment includes the power to enforce the First Amendment, Congress arguably had full authority to enact RFRA. That Congress may provide statutory protection for constitutional rights that the Court is unwilling to protect on its own authority was affirmed by the Court as recently as 1990.¹⁵

There could, however, be a catch: note that *Ex Parte Virginia* gave Congress authority to enforce constitutional freedoms *unless* prohibited by some other constitutional provision. Perhaps the only serious challenge to the Act would be a reading of the Establishment Clause broad enough to characterize RFRA as an unacceptable effort by government to aid religion.

In late 1993 the Court granted review to a group of cases that invite it to reconsider the meaning of the antiestablishment provision of the First Amendment.¹⁶ The Court will hear those cases in early 1994, and could use them to alter or reject outright the understanding of that clause in use since *Lemon v. Kurtzman*.¹⁷ Yet even if a new analytic framework is adopted, the

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Fourteenth
Amendment
includes the
power to
enforce the
First
Amendment,
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RFRA.



President Clinton Signing RFRA.

Rob Boston/Church & State magazine

Amish buggy with required orange reflector. After RFRA, the silver reflector might come back.



Dennis Corvus

recent direction of the Court has been to widen the scope of acceptable governmental aid to religion. Therefore an Establishment Clause challenge to RFRA is unlikely to succeed.

The Act has made governmental efforts to resist accommodating religious conduct vastly more difficult. Defenders of religious freedom have been given a fine new tool. The results will in all likelihood be salutary. Yet *Smith* is still the law of the land. RFRA does not reverse *Smith*; that is beyond the power of Congress. The Act merely establishes a new right of action.

RFRA may also make the reversal of *Smith* even more difficult. Courts will base a decision on constitutional guarantees only if no statutory protection is available. Thus even if a plaintiff files an action under both RFRA and the Free Exercise Clause, a court will reach the constitutional argument only if RFRA does not offer the desired relief. And if the religious claim does not prevail under RFRA, it will not under the Free Exercise Clause using strict scrutiny or any other imaginable standard either. Thus the Act may eliminate the practical possibility of reversing *Smith*.

Yet that problem too might be avoided if RFRA is amended. Imagine that, because of the increased volume of such litigation, the Act is amended so as not to apply to prisoners' rights. Lawyers representing prisoners would then base claims on the Free Exercise Clause and invite the Court, after a change in personnel indicates the possible success of such an appeal, to revisit and reconsider *Smith*. Such a scenario, of course, is speculative.

Though she still doesn't understand all the technicalities, my friend now understands this: the Religious Freedom Restoration Act has restored necessary protection to the keystone in the arch of human freedoms. 

FOOTNOTES

¹ *Shabazz v. O'Lone*, 482 U.S. 342 (1987).

² *Yang v. Sturmer*, 750 F. Supp. 558 (D.R.I. 1990).

³ *Roe v. Wade*, 410 U.S. 113 (1973).

⁴ *Sherbert v. Verner*, 374 U.S. 398 (1963).

⁵ *REA v. New York*, 336 U.S. 106 (1949).

⁶ 494 U.S. 872 (1990).

⁷ 310 U.S. 586 (1940).

⁸ 319 U.S. 624 (1943).

⁹ 494 U.S. 901 (1990).

¹⁰ *Shabazz v. O'Lone*, 482 U.S. 342 (1987).

¹¹ *Goldman v. Weinberger*, 475 U.S. 503 (1986).

¹² *Wisconsin v. Yoder*, 406 U.S. 1526 (1972).

¹³ 100 U.S. 339; 345, 346 (1880).

¹⁴ 383 U.S. 301 (1966).

¹⁵ *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990).

¹⁶ *Board of Education of Kiryas v. Joel Grumat*, Docket No. 93-517; *Board of Education of Monroe-Woodbury v. Grumat*, Docket No. 93-527; *New York v. Grumat*, Docket No. 93-539.

¹⁷ 403 D.S. 602 (1971).

WRONGS

*A Pastoral Warning About A Present Danger
Greater Than "The Old Threat of Communism"*

BY ROBERT H. MENEILLY

R

eligion can be the greatest thing on earth or the worst. It can be the greatest healing therapy in society or its greatest health hazard. It can be a democratic republic's greatest good or its worst threat.

Look at the hot spots of the earth today: religious extremists are lighting fuses in Northern Ireland, Israel, Bosnia, and the U.S.A, and fomenting all kinds of "culture wars." Religion can breed harassment, bigotry, prejudice, intolerance, and deception.

We have only to look back to Jesus' day. His greatest problems were not with the atheists or agnostics but with religious extremists. When religionists think they have all the answers and that everyone should be compelled to live by their beliefs—because they have an "exclusive" on righteousness—you have the worst dangers knocking at your door.

Religion is peculiar. When it is not in earnest, it doesn't hurt anyone; but it doesn't do any good either. When it is in earnest, it is a most powerful force for good or evil. If religion can persuade someone that an idea is the will of God, that person, not wanting to displease God, may feel compelled to act on it.

We Christians must admit that our religion has propagated, in the name of Jesus, devilish acts, bloody wars, awful persecutions, hate crimes, and political chaos. We have seen leaders of Operation Rescue harassing neighbors

and demonstrating at women's clinics in most detestable and criminal ways—in the name of Jesus! The hate that certain extreme elements of the Christian community have cultivated toward neighbors of a homosexual orientation resembles the environment of hell. It causes the community to wonder if they have ever heard of the first and second greatest commandments of God.

One of the not-so-obvious Christian religious movements in our country is the Religious Right, or the New Right. So many good and well-meaning people are being drawn in and are supporting its agenda, without considering the ultimate consequences. The movement is led by charismatic leaders, like Pat Robertson, James Dobson, Tim LaHaye, and Jerry Falwell. Their message sounds good, righteous, and Christian on the surface. What unthinking person can listen to clean-shaven, well-dressed, and patriotic-sounding Pat Robertson talk about his Christian Coalition and not think, *This is exactly what this country needs—This is good old American patriotism?* The thousands of good Christians who gather to hear James Dobson present his *Focus on the Family* crusade may think, *Wow, that's the greatest, and every American should hear and heed.* "Discipline our kids, don't spare the rod and spoil the child; indoctrinate them with our exclusive doctrines; make divorce impossible; don't teach about sex until kids are

**Robert H. Meneilly is
pastor of the Village
Presbyterian Church in
Prairie Village, Kansas.**

ILLUSTRATION BY MARCIE WOLF-HUBBARD

The feminist agenda is not about women. It is about a socialist movement that encourages husbands, kill their children, destroy capitalism and believe in what television wrote in a recent year. —American World Workers

Christian Coalition Steps Boldly

Into Politics

Tax-Exempt

Robertson Group

Has Raised \$13 Million

Eyes GOP Takeover



Pat Robertson



Jerry Falwell



James Dobson

Prayers in the Schoolhouse?



Once elected, they can begin to implement Robertson's Christian Coalition extremist views, and from there they can seek higher offices. They have put out a detailed manual, spelling out how to lead and manipulate the legislative process. They means justify sign quietly own church served to

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more mature and can understand it; don't permit the teaching of sexuality to youth in public school, because it will end up making them prematurely curious, and that leads to promiscuity." Preaching "Mom at home in the kitchen and Dad bringing home all the bacon" orthodoxy appears to be a commendable mission. But it is a mission that is out to get the state to legislate what Dobson's religion can't seem to do. Any religion that needs the government to support and subsidize it doesn't deserve to survive. It is not the state's business to carry out the churches' ministries!

The Religious Right's mission is twofold. First, it seeks to gain control of the Republican Party apparatus at the state and local levels, with the eventual goal of claiming control of the Republican National Committee itself. Its second objective is to win for its candidates election to hundreds, even thousands, of lower-level public offices. Once elected, they can begin to implement Robertson's Christian Coalition extremist views, and from there, they can seek higher offices. They have put out a detailed manual, spelling out how to get in and manipulate the democratic political process. They seem to think that any means justify their ends. They campaign quietly within the safety of their own church communities. They are referred to as "stealth" candidates. They have been concentrating on school boards throughout the country. No one hears of them, except their own church sponsors, and with the low turnout of voters for school board elections, they are suddenly seen for the first time *after* being elected.

To be sure, any person should be free to run for an office, whatever his or her political party or religious affiliation. But stealth candidates, who conceal their ultimate purpose until elected, are dangerous for local communities and the nation.

Once in office, these New Right folks "come out of their closets." They begin pushing their agenda on our schools, ranging from censorship of selected novels and textbooks to the teaching of creationism, gutting sex education programs, and putting an end to school breakfast programs for the needy and day care for children of working parent families—on the grounds that such programs undercut the family. Children should eat at home with their parents even when there may be no parents there—or no food. The Religious Right's general agenda includes, among other things, antipornography. What sane person does not detest child pornography? Yet people buy into the general agenda on the

basis that any antipornography program is worthy of support. They are against any woman having a say about what goes on in her own body and insist that abortions, performed for any reason, should be judged as "murder in the first degree." In turn, single-issue antiabortion folks may jump on their bandwagon. However, many pro-lifers will not have anything to do with Robertson's Christian Coalition. And a majority of conservative citizens do not want to be equated with the Religious Right. The Religious Right also opposes the Equal Rights Amendment and would deprive those who are not their kind of people of certain inalienable rights guaranteed by our Constitution.

Those of the Religious Right are determined to get *their* prayers and *their* Bible reading back into the public schools, by hook or by crook. They are big on censorship of books, including any fantasy yarns involving witches—even those in the long tradition of children's literature, such as *Snow White*, and *Hansel and Gretel*. They claim that these lead to devil worship and witchcraft.

The newest code words of the New Right, used to hook those who might not hear them otherwise, are the *environment*, the *deficit*, and the *economy*. Because there is hardly one among us who is not interested in these issues, some of the finest of persons are hooked into the New Right's agenda based on a single concern.

The Religious Right extremists always refer to the United States as a "Christian nation." This always appeals to the white Anglo-Saxon Protestant! But look at history honestly. The idea that the United States should be officially Christian was explicitly rejected by James Madison, one of the primary designers of our Constitution, and the other framers, who insisted on a system of separation of church and state that guarantees religious freedom for all individuals and groups—Christian and non-Christian alike. The "Christian nation" concept has never been endorsed by the Supreme Court as officially binding judicial policy. "Christian nation," like "family values," have been code words for an evangelical socioreligious perspective and have been used to marginalize, if not blackball, non-conformists.

America has always been a pluralistic country of all nationalities and religions. We used to pride ourselves in being "the melting pot of the world," and considered our diversity our strength and uniqueness. The genius of our American system is that in religious matters the government remains neutral. This allows all

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citizens to practice their religious faiths freely and not impose them on government.

The Religious Right employs the expression "Christian nation," referring to their desire to see the national laws reflect the narrow sectarian principles that they themselves hold—not just saying that a majority of Americans identify with Christian denominations. These misguided religionists and patriots are trying to say that only persons with the *correct* religious views are real Americans and should hold public offices. The historic position of this nation is that the government as a legal organization is independent of all religions. Our Constitution specifically provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In the words of Thomas Jefferson, the First Amendment was intended to "erect a wall of separation between church and state." A person's right to freedom of belief is to be beyond the reach of government and majoritarian rule.

The Religious Right extremists have been conniving in every political way to get state-mandated prayer and Bible reading back into the public school, ever since the 1963 Supreme Court decision declared it to be unconstitutional. That old tradition clearly promoted a generic form of Protestantism, without any concern for our Roman Catholic, Mormon, Jewish, Unitarian, or Muslim neighbors. The Pennsylvania law that was challenged by the Supreme Court was explicit: "At least 10 verses from the Holy Bible *shall* be read, without comment, at the opening of each school day."

Actually, voluntary prayer in public schools has always been legal. Children are perfectly free to say grace over lunch and read the Bible in their free time. We need to resist government-prescribed prayer programs in our public schools. That 1963 Supreme Court put the responsibility back upon parents, where it belongs, giving fathers and mothers the right to determine what religious exercises are taught. A religion, even Christianity, that must depend upon the state to do what it cannot do is not worthy of existence.

If we continue to let the historic wall between church and state erode, religion will suffer more than the state. The new Religious Right extremists want nothing less than to force American society to enact into law their exclusive religious views, and thereby impose them on everyone. But ours is a constitutional republic made up of many different religions—in which every individual's rights are guaranteed and all voices are

heard. The Religious Right seeks a theocracy that legislates and enforces their particular vision of God's law.

This New Right confronts us with a threat far greater than the old threat of Communism. When the state and the church would become entwined, it is religion that will be the loser.

I tremble for my country when I hear zealous religionists plaguing good neighbors and women's health clinics in the name of Jesus, who said, "A new commandment I give unto you, that ye love one another; as I have loved you" (John 13:34). I tremble for our nation when I hear extremists discredit our public school system, the only truly ecumenical program left in our community. The public schools take the poor and the handicapped, the abused and foster children, the Christian and the Muslim, the Roman Catholic and the Jew. They do more of the Lord's work every day than most other institutions.

Americans need to be reminded that no group, religious or secular, can insist upon majority rule. One does not keep the Ten Commandments by any majority rule! The Bill of Rights aims precisely to protect the religious freedom, rights, and sensibilities of the minority against the whims of the majority. The protection afforded individuals under the First Amendment is not subject to majority rule. Government agencies do not have liberty to promote the religious perspective of any group—majority or minority.

It may sound judgmental for one religionist to warn people about the threat of differing religionists. I pray that what I do is discernment in love, not judgment in any hate. We must not ignore the Pat Robertsons, James Dobsons, and Tim LaHayes. It is our Christian commission to put in a good word for Jesus Christ, our Saviour and Lord. We are to share our faith in Jerusalem, Judea, and to the ends of the earth—but not at the expense of another faith. To love our neighbors as ourselves requires tolerance, but it also requires looking out for the best ultimate welfare of both state and church. It means being humble, not self-righteous.

Evangelical writer Charles Colson said that the role of the church is not to win political battles or even make people happy; it is to make people holy.

Rather than playing at politics, Christians should obey Christ's command to "love thy neighbour as thyself" (Matthew 19:19). When we abide by these words, we will do best by our religion and our country. 

CHRISTIAN BEWARE

Do not put the economy ahead
of the Ten Commandments.

Did you know that Governor Bill Clinton...

- **Supports abortion on demand?** (Violates Exo. 20:13, Lev. 20:1-5)
- **Supports the homosexual lifestyle, and wants homosexuals to have special rights?** (Violates Exo. 20:14, Lev. 20:13. See also Rom. 1:26,27)
- **Promotes giving condoms to teenagers in public schools?**
(Violates Exo. 20:12, Col. 3:5 See also Rom. 1:28-32)

**Bill Clinton is openly promoting rebellion against God's laws.
In our desire for change, do we really want as a president
and a role model for our children a man of this character
who supports this type of behavior?**

But what about the economy?

Yes, we are in tough economic times, but God forbid that we sell out our most sacred beliefs in a vain hope of financial gain. How can we expect God to bless our economy if we plunge down a path of immorality? (Deut. 28)

**The Bible warns us to not follow another man in his sin,
nor help him promote sin--lest God chasten us.**

(See Deut. 13, Jer. 23, Prov. 4:14; 11:21; 16:5, 1 Tim. 5:22)

How then can we vote for Bill Clinton?

This advertisement was co-sponsored by The Church at Pierce Creek, Daniel J. Little, Senior Pastor, and by churches and concerned Christians nationwide. Tax-deductible donations for this advertisement gladly accepted. Make donation to:

"Cry Aloud

and Spare

Not!" (But

Only When

the Tax Man

Approves)

Thus Saith The IRS

Is tax exemption a means to control the church?

Evidently the government thinks so.

BY DANIEL J. LITTLE

Before the 1992 presidential election, our church took out a full page ad in *USA TODAY* and the *Washington Times*. The ad—which reiterated candidate Bill Clinton’s intentions to support homosexuality, federally funded abortion, and tax dollars to purchase condoms for public school students—was reproduced in more than 160 local newspapers across the nation. “God forbid that we sell out our most sacred beliefs in a vain hope of financial gain,” we warned. “How can we expect God to bless our economy if we plunge down a path of immorality?” We asked, “How then can we vote for Bill Clinton?”

We wanted to awaken Christians to the dangers of voting for a man willing to abandon the immutable laws of God. Expressing appreciation, hundreds of Christians across the country helped offset the nearly \$50,000 cost. Others, however, said they were ashamed that we had dragged the name of Christ into the filth of politics. Apparently, once a moral issue—such as homosexuality or abortion—becomes enmeshed in political policy, it mystically becomes “off-limits” to the church.

The IRS seems to feel the same way. After we placed the ad, our church immediately received a request from the IRS for a mountain of information about The Church at Pierce Creek. A civil liberties watchdog group, Americans United for Separation of Church and State, had complained to the IRS of our “egregious offense.” In response, the IRS notified us that they needed the information to see if we had transgressed a legal prohibition. In simple terms, our tax exempt status was in jeopardy.

Is tax exemption a means to control the church? Evidently the government thinks so. Lately it appears that legislation and the courts are being used to remove the church and her thorny morals from the public forum. And nowhere is this effort more evident than in the laws regulating tax exempt corporations and their 501(c)(3) status.

When the IRS wrote to Pierce Creek, it said: “The Establishment Clause prohibits government sponsorship of religion. Central to this prohibition are the concepts of government neutrality and the separation between church and state. The Supreme Court has held that the Free Exercise Clause of the First Amendment is an absolute prohibition against the regulation of religious beliefs. The First Amendment provides substantial protection for lawful conduct grounded on religious beliefs. However, the government may limit religiously motivated conduct when the limitation is essential to accomplish an overriding governmental interest.”

In response, we gave the IRS a few biblical reasons for our actions and identified ourselves as a church under New Testament and biblical law. We did not supply them with information about our donors, turn over our checkbooks, bank statements, notes, memorandums, contracts, invoices, receipts, letters, or the files of our paid bills for the last several years, as they had requested.

Daniel J. Little is the pastor of The Church at Pierce Creek in Binghamton, New York.

Instead, I wrote back and asked, “If a church is recognized as being tax exempt, does this mean that the church can no longer use its funds to warn other Christians of per-



The Church at Pierce Creek: Its tax exemption is now in jeopardy.

Whose permission and authority do we seek before we give a prophetic warning to a rebellious house? Do we go to the IRS or the Word of God?

ceived dangers if those dangers are in some way connected to anything political?" Does tax exemption mean that a church may not issue warning from the pulpit, over the public airways, or by means of the printed word?

"Am I correct in my perception of what you are saying?" I continued. "Stated more specifically my question is this: Because the IRS recognizes us as being tax exempt, can the IRS now say to our church 'You cannot communicate warnings to the church at large about the dangers of abandoning the established moral law of the Holy Bible'? Are you saying that because the abandonment of these biblically established moral laws is now political policy that these moral issues have been lifted out of the church's domain?"

These vital considerations go to the heart of the matter of Christ's lordship over the church. Whose permission and authority do we seek before we give a prophetic warning to a rebellious house? Do we go to the IRS or the Word of God? Unfortunately, by their meticulous compliance with government restrictions, many pastors, church boards, and Christian leaders seem to lean more toward the IRS.

That so many Christian friends voiced fear that our ad violated the law uncovers the pre-

vailing opinion among believers that where the government says the church cannot speak, it must be silent. Not totally silent, to be sure, but only when government says that it has "an overriding governmental interest" to keep it silent. Of course, only the government (and the courts) can know when government interests actually do override the church's prophetic role, and as a power-hungry government finds more need to control the church, that line will be redrawn and enforced by the threat of losing tax exempt status.

The church has apparently forgotten that tax exemption (more correctly called tax immunity) did not come as a privilege from a benevolent government. At our nation's founding it was understood that government had no right to tax the church, because to do so was to put government squarely into the religion business. That the church was not

to be under the government's thumb was universally understood by our Founders, and for years that understanding has prevailed.

Jefferson held this belief when he wrote to the Danbury Baptist Church, in which he used the now ubiquitous phrase "a wall of separation between church and state." The Danbury church had heard a rumor that the federal government was going to endorse a certain Christian sect



Pastor Daniel Little: "If we will be faithful to our call, we cannot remain silent."

CROSSING THE LINE?

BY THOMAS WETMORE

The tax law that has confronted Pastor Daniel Little and The Church at Pierce Creek was enacted by Congress in 1954, with minor modification in 1987. The rule is straightforward and narrow, affecting all exempt organizations described in section 501(c)(3) of the Internal Revenue Code. In order to be accorded tax-exempt status, organizations described in section 501(c)(3) must "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Though the line has been blurred by somewhat inconsistent and confusing interpretation by the IRS and the courts, it's not surprising that a widely circulated advertisement attacking a political candidate—such as the one sponsored by the Church at Pierce Creek—would arouse the IRS.

The distinction between most tax exempt organizations and political organizations is reasonably clear. A political organization has the purpose of supporting the election of a political candidate and is subject to certain taxes under section 527 of the Internal Revenue Code. An organization exempt from income tax under section 501(c) yet engaging in political activity will also be subject to this tax and possibly to further penalties and even loss of tax exempt status. If an organization, including a church, acts like a political organization—it will be treated like one.

Tax-exempt organizations, including churches, are *not* prohibited from educating, informing, and persuading citizens on pertinent moral and social issues. If done against the backdrop of a political campaign, extra care must be taken to ensure that nothing could be taken as an endorsement of, or attack against, a candidate. Once that line is crossed, the constitutional question of tax exemptions can get sticky.

There is, arguably, no constitutional protection for tax exempt status, except perhaps for churches. Many believe that this status is a matter of legislative grace based on sound public policy and the American tradition of encouraging activities that serve broad public interests; others see it as a right. Whatever one's position, the terms and conditions of tax exemption are not inconsistent with the First Amendment. Even though the First Amendment may not mandate that religion be free from taxation, exemption avoids excessive entanglement more successfully than would taxation.

In the end, tax exemption for churches can be a powerful means of maintaining church-state separation. The exemption protects churches from excessive government intrusion, while it keeps churches out of blatant partisan politics. It's a two-way street, and it bears a similarity to the words of the Lord Himself: "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matthew 22:21).

Thomas Wetmore is a tax lawyer in Silver Spring, Maryland.

(not theirs) as the official church of America. Jefferson replied to the concerned congregation that there was a constitutional wall (the Establishment Clause) prohibiting any such endorsement.

The wall he envisioned kept government out of church business. What is becoming increasingly obvious, however, is that not only the government but Christians themselves are acting on the assumption that the church's remaining freedom from control hangs by a thread. One word too many on the wrong topic, and the thread breaks—leaving the church without its tax exempt status and out of business. If tax exemption has degenerated to this precarious position, then we have already put the government where Jefferson said it could not go—into the church business.

Unfortunately, I believe that federal and state legislation has so invaded liberty on every front that we are now realizing Jefferson's fear of "the tyranny of legislatures."

The Scriptures say, "And have no fellowship with the unfruitful works of darkness, but rather reprove them" (Ephesians 5:11). Here is the only authority the confessing church needs to notify the whole world or a single man of the dangers of abandoning God's laws.

Those, however, who boldly proclaim God's laws become branded as a thorn, and sooner or later that thorn must be removed. But before a society can remove this thorn it must first isolate and poke fun at it. Label it "the Religious Right" or "radical Fundamentalists." Show how obsolete and silly—even dangerous—these people are. The media and entertainment industry does this regularly.

But if we will be faithful to our call, we can not remain silent. We must present the righteousness requirements of God's laws to a culture that is perishing without them. If by speaking to the issues of the day we break the thread that keeps us tax exempt—let it be broken! We must not hide God's truth from public view and then suddenly stand up when everything falls to say we had the answer all along but couldn't speak for fear of losing a few dollars. We dare not put cash above our calling, or money above our morals.

Far from being quiet, the church needs to speak more clearly than ever, for when everything that can be shaken has been shaken, it will be the confessing church that is left standing upon the foundation of God's law, and a ruined society will need the answers we have faithfully held out, even when no one listened. 

MY NEIGHBOR'S GOD

Ruminations on Religious Freedom in America

BY RAYMOND RECCHI



My neighbor's God is extremely angry because children don't pray in school. My God couldn't care less.

My neighbor's God tells him he has to choose between being a good citizen and being a good Christian. As a good Christian, it is not enough that he practice his religion at home and in church. He must force it into schools,

public meetings, athletic events, and the halls of government.

Another of my neighbors has no God. He wants religion swept from every nook and cranny of public life.

My God and I are stuck in the middle. He regards the actions of my two neighbors as flagrant manipulation of the free will He gave to all humanity. My God is satisfied if I live by the Golden Rule—practicing my religion and allowing others to practice theirs. He likes the idea that here in the United States everyone has not only freedom of religion but freedom *from* religion.

But my neighbors continue to argue—on radio talk shows, in letters to newspapers, in voting booths, on the floor of legislative bodies, and, worst of all, in courtrooms.

My God is not amused by the constant bickering between those who believe there should never be any mention of Him or any religion on government property and those who would make us begin and end every day and every function during that day with prayer.

Of course, those who carry the standard on both sides claim the moral high ground. Their actions, however, indicate that they are more interested in winning the argument than being truly moral. The motivations on both sides appear to be spite and pettiness, not principle.

With a bit of logic, common sense, and tolerance, we could settle the question easily and amicably. Each side could have half a loaf as they continue to haggle over crumbs.

In June the United States Supreme Court ruled in *Lamb's Chapel v. Center Moriches Union*

Free School District that religious groups can meet on public school property after school hours if other groups are allowed the same privilege.

That sounds reasonable. So why did it go to court? Spite. Pettiness. Not content to be left alone with their beliefs—or lack of them—one group sought to keep others from having a private meeting on public property.

I believe, and the Court agrees, that if some members of the community want to use those buildings for meetings after hours, they should be allowed to do so. No one is forced to join those groups or attend the meetings. The roof of the school will not collapse simply because the group has a religious purpose. As long as all groups have equal access to the property, allowing such meetings does not constitute government endorsement of a particular religion, or even of religion in general.

But some could not accept that common-sense approach because the battle has become too bitter for either side to give an inch.

In *Jones v. Clear Creek Independent School District* the Supreme Court let stand an appeals court ruling that allows prayers at public school graduation ceremonies in Louisiana, Mississippi, and Texas as long as a majority of students want prayers. By ignoring the case, the Court also disregarded the Constitution.

Although our government is based on majority rule, in some areas—religion in particular—individuals are free to seek their own paths as long as they do not infringe on the rights of others. Being aware of government-sanctioned religious persecution in other countries, our Founders purposely chose to deny the majority the right to decide what national, state, county, or city religion should be.

Because our religious rights include an individual's right to choose no religion at all, the answer to the graduation prayer controversy should be simple. Government should not allow religion of any kind to be a part of government-sponsored functions—from a city com-

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If we aren't allowed to establish an official national religion by majority vote, students should not be allowed to have an official graduation prayer—even by majority vote.

mission meeting to a public school football game. By allowing prayers, the government sanctions religion, which it is expressly forbidden to do.

If we aren't allowed to establish an official national religion by majority vote, students should not be allowed to have an official graduation prayer—even by majority vote. By allowing it, we disregard the rights of those who don't want the prayer, because their beliefs are not the most popular. This discrimination is exactly what our Founders sought to avoid: the persecution and/or alienation of those whose beliefs do not conform to the majority.

But what about those who want to pray? They can. No one is prevented from praying silently. Even they admit that their God can hear their silent thoughts as clearly as if they were

shouting. No law prohibits prayer at home, at church, when one is alone or with friends and family, or silently at a graduation ceremony. That is the beauty of separation of church and state.

The price for that freedom is that no one—even by majority vote—can force religion into anyone else's life, particularly at a government-sponsored function. This principle is the only way to protect the rights of everyone to worship—or not worship—as they please.

My God believes that principle is a marvelous idea. Of course, He was the one who thought of it.

My neighbor's God believes that fighting those who are different is more important than principle. But then, my neighbor's God isn't as smart as mine. 

Protestants

BY CHRIS WOEHR

Four hours north of Mexico City, a group of evangelical Christians are forced to meet secretly because town officials have made it clear: Protestants are not welcome.

Over the past 30 years, in the southern Mexican state of Chiapas, more than 23,000 Protestants from indigenous communities have been forced into internal exile because of clashes with local authorities. The reason: Protestants are not welcome.

(Continued on page 26)

Chris Woehr is executive editor of Network News International in Santa Ana, California. Other NNI correspondents also contributed to this article.

ALL PHOTOS BY CHRIS WOEHR/NNI



Are Not Welcome



Clockwise from top:

Sign at the entrance of Xochinanacatlan (Puebla State) reads: "Notice. Protestants are prohibited from entering as this is a Catholic village. Thank You."

A member of the evangelical community of San Miguel Mitontic, with child, who sought refuge in the neighboring Christian village of Betania (Bethany).

San Miguel Mitontic's Catholic church where ancient Chamula religious rites dating back to the days of the Mayan empire are still openly performed.

The charred home of a believer who was forced to leave town during the March 1987 uprising against evangelicals in the community. Other villagers have appropriated the surrounding farmland.

On June 27, 1993, 140 worshipers attending the San Nicolas Guadalupe Baptist Church in Mexico state were stoned by a mob of 400. Dozens of fleeing men, women, and children were wounded. Eleven vehicles belonging to church members were burned, and the church destroyed. According to Domingo Lopez, head of the Council of Indian Representatives of the High Country in Chiapas, 40 evangelicals have been persecuted since a new mayor took over the government of the Indian municipality of San Juan Chamula.

Attorney and Presbyterian pastor Abdias Tovilla says that leaders of the Chamula Tribe are now pressuring individual evangelical families

Although characterized as a largely Catholic-Protestant conflict, in reality, Catholicism in these isolated communities is really Christopaganism.

to leave their communities, rather than expelling large numbers of believers at one time. The Indian leaders adopted this tactic, hoping it would attract less attention than would mass expulsions.

On August 6, five Presbyterian families were expelled from the San Juan Chamula community of Ardenza Uno. Juan and Salvador Patishtan, two brothers, said the mayor warned that if they returned they would be beaten and killed. Two weeks later

the five families attempted to return to their homes but were discovered by sentries posted on the outskirts of their village. The families were beaten and taken to the San Juan Chamula jail, where they were held overnight and then released.

In June 1992, after months of pressure and harassment by local officials to rid the town of Protestants, hired killers gunned down Presbyterian lay preacher Melecio Gomez of the Chiapas community of Saltillo. Melecio's body was riddled with 38 bullets and hacked to pieces with machetes, as two of his five children watched. The alleged killers, all identified by eyewitnesses, have yet to be apprehended.

In response, a conference on persecution in Mexico, sponsored by Open Doors With Brother Andrew—a global organization that supports and encourages Christians under duress—was

held at the Korean Friendship Center in Oaxaca, August 1993. At this meeting Abdias Tovilla expressed grave concern that “a new page” has been turned in the persecution of Protestants in Chiapas. “The expulsions are real and controversial,” he said. “We are seeing a different and more ruthless approach to the presence of Protestants in Chiapas.”

The persecution continues even though the Mexican government, in 1992, made significant and positive revisions to the constitution, which allow for greater religious freedom. These revisions affirmed, among other things, that all religions are equal before the law.

Mexican president Carlos Salinas de Gortari is currently espousing free expression of faith through the theme “plurality, singularity, and liberty.”

Whatever the presidential utterances may be, how the law is interpreted at ground level is largely dependent on local authorities. Far from the centers of political power, municipal leaders often take the law into their own hands, and state officials speak of constitutional law and traditional law in one breath.

The harassment, intimidation, forced exile, illegal detention, and subtle discrimination are explained in terms of indigenous tradition. Community members who convert to Protestantism are reluctant to take part in community festivals, which often involve heavy financial outlays, the purchase of icons for the local Catholic church, and consumption of large quantities of alcohol.

Although characterized as a largely Catholic-Protestant conflict, in reality, Catholicism in these isolated communities is really Christopaganism. As such, one cannot say that the aggression is officially endorsed by Mexico's Roman Catholic hierarchy.

But at the parish level, Catholics appear to take their cues from the rhetoric of the Catholic hierarchy, beginning with the Vatican representative to Mexico, Girolamo Prigione, who, in one scathing attack, said, “Sects, like flies, should be chased out.”

The rapid growth of Protestantism in Mexico is causing a significant demographic shift. Within the next 20 years Catholicism might no longer be the dominant religious force it has been for centuries. Nor will officials look the other way when members of a large voting bloc are denied justice under the law. Thus, no matter how strongly the “Protestants are not welcome” sentiment remains, with each passing year it's going to be harder to enforce. 

The Birth of Baby Doe

But something has to be left to God.—

*Robert Frost**

BY DANIEL J. DRAZEN

Tabita Bricci, alias Mother Doe, gave birth to a boy on December 29, 1993, at 6:45 p.m. The birth was remarkable because it raised serious questions about medicine and the First Amendment, and threatened to make allies of long-standing enemies.

It began at St. Joseph's Hospital in Chicago, where 22-year-old Tabita Bricci's pregnancy was being supervised. The doctors determined that the fetus—36 1/2 weeks old—was getting insufficient oxygen via the placenta, and feared the baby would be born severely retarded if it survived at all. Knowing the fetus would be viable outside the womb, the doctors wanted to perform a cesarean section.

Mrs. Bricci, however, opposed the surgery on religious grounds, insisting that her fundamentalist Christian faith demanded she not deliver the child ahead of its time. She would trust God with the outcome.

Bricci's doctors contacted the Cook County state's attorney's office, which then filed a petition with Cook County Juvenile Court, alleging child neglect of the fetus by Mrs. Bricci [simply named in the petition "Mother Doe."] The doctors asked the court to order Bricci to undergo a C section—even though it might violate her religious convictions—for the benefit (if not the survival) of "Baby Boy Doe." While the court acknowledged that "broad powers [for the state] to protect the fetus" existed, Cook County Juvenile Court judge Gary Brownfield declared that a fetus is not a juvenile and refused the request.

This case was not the first time hospitals in the United States had sought, through the

courts, to force a cesarean section. Since 1980 about a half-dozen court-ordered cesareans have been performed at Rush-Presbyterian-St. Luke's Medical Center in Chicago. But according to Max Douglas Brown, general counsel at Rush-Presbyterian, this case was different.

"Now, under this ruling, courts apparently no longer recognize that a viable fetus . . . has any rights as a person. . . . If the holding in this case prevails, how can the criminal, the drug-addicted mother, or the negligent doctor be held responsible for injuries to a thing which has no value, is not a person, and has no rights?"¹

"It's time this issue was resolved," Brown said, "so we have a clear idea of how to handle these situations. What are the relative rights of the mother and a viable fetus?"²

Under normal circumstances, the state's attorney's office might not have pushed so hard, but it believed it had to do something because 1993 had been a bad year for children in Chicago.

A 3-year-old boy had been returned to the custody of his natural mother, despite child welfare caseworkers' and relatives' protests that the mother was not a sound parent. A short time later the mother killed the boy by hanging him.

On Thanksgiving Day 5-year-old Clifford Triplett was brought to a hospital emergency room weighing only 18 pounds, dehydrated, and slipping in and out of consciousness. His body was covered with whip marks, burns, and bruises. On a day given to dietary excesses, the story made headlines. The police arrested the mother and her live-in boyfriend for felony

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child cruelty. Three caseworkers from the Illinois Department of Children and Family Services, who had let Clifford's case fall through the bureaucratic cracks, were disciplined.³

With this heightened awareness of child abuse, it wasn't surprising that Tabita Bricci's case caught the public's attention. Nor was it a surprise when Cook County public guardian Patrick Murphy took up the case after Judge Brownfield ruled against the Cook County state's attorney's office. Murphy became the fetus's court-appointed guardian. He stated that he wanted the courts to balance Tabita Bricci's freedom, religion, and privacy rights against the fetus's right to live. In appeal papers filed with the Illinois Supreme Court he struck a more urgent tone: "Because of the mother's decision, however well intentioned, Baby Boy Doe will either die or suffer severe mental retardation."⁴ It was too late for one 3-year-old boy, and it had almost been too late for Clifford Triplett, but Patrick Murphy was going to see to it that one life would be spared.

According to legal experts, well-established legal doctrines should have allowed Tabita Bricci to refuse the procedure without controversy.

First, a person deemed "competent"—capable of evaluating the risks and alternatives of a medical treatment or procedure—has the right to choose whether to accept or refuse such treatment. This issue of competence would take a nasty turn as the case progressed.

Second, the courts cannot force someone to undergo any medical procedure for the benefit of another person. This was the subject of a high-profile court case in Illinois in 1990. The Illinois Supreme Court ruled that the half-siblings of a boy dying from leukemia could not be forced to undergo blood screening to see if they would be possible marrow donors.

Finally, enforcement of a court-ordered operation as requested for Bricci would be difficult. Unless the patient were in confinement, there is the prospect (as one judge put it) of the state strapping women down to the operating table. The American Medical Association, for example, has found court intervention in such medical decisions inappropriate because, admittedly, women facing such decisions might simply refuse treatment.⁵

Tabita Bricci made that decision. She removed herself from the care of the doctors at St. Joseph's Hospital.

If this case were simply a story of medical decision-making, it might not have rated nationwide coverage. Once Tabita Bricci invoked

her First Amendment rights and refused the procedure on religious grounds, however, that unleashed a media feeding frenzy. One op-ed piece on the controversy carried the title "The Collision of Religion and Medicine." Yet the media coverage of the case served neither medicine nor religion very well.

"Nowhere has anyone given thorough, respectful, or balanced attention to identifying, clarifying, or explaining the context or content of the Does' [i.e., the Briccis'] religious beliefs," said Lawrence J. O'Connell and M. Therese Ly-saught, of the Park Ridge Center for the Study of Health, Faith, and Ethics. The center, which publishes *Second Opinion*, a journal dealing with medical ethics, found that while religious issues were at the heart of the case, questions of religion were not adequately addressed.

"The Does' religious beliefs have either been ignored, mentioned and dropped, distorted or misrepresented, belittled or ridiculed," they said. They took exception with Patrick Murphy's characterization of Mrs. Bricci's beliefs as "primitive" and one newspaper columnist's simple dismissal of her beliefs using "that helpful, reasonable adjective, 'nutty.'"⁶

Even more chilling was the position of the state's attorney's office, as stated in papers filed with the court, that Mrs. Bricci's beliefs should be considered "grounds for incompetence."⁷ In other words, the state was arguing that someone who holds religious beliefs that might lie outside the mainstream of religious thought and practice does not know how to act in their own best interests. It meant that the courts would "decide what is religiously acceptable and medically responsible."⁸

Tabita Bricci was represented by the Illinois public defender's office. Assisting was the local chapter of the American Civil Liberties Union. The ACLU had been called in by the public defender's office because of the First Amendment implications of the case. "We were somewhat taken aback by [the state's] characterization of the Briccis' religious beliefs," said Colleen Connell of the Chicago ACLU. Those beliefs were "characterized by the office of the public guardian as 'primitive' and akin to human sacrifice." The case, according to Connell, was being "prosecuted with a tremendous amount of zeal," as well as "misunderstanding and a lack of appreciation for religious diversity in this country." Connell also called the state's attorney's questioning of Mrs. Bricci's competence to make medical decisions because of her religious beliefs "chilling" and "the height of arrogance."⁹

For years the ACLU has been taking lumps from fundamentalists for allegedly working to undermine religious values in furtherance of "secular humanism." Yet it was the ACLU, the *bete noire* of the Religious Right, who was defending the religious beliefs of Mother Doe.

The ACLU's involvement may have been one reason Chicago's pro-life community was conspicuously absent. They may have wanted to defend Tabita Bricci's religious rights, but not if it meant sharing a podium with the ACLU. Another reason for their silence would have been sheer embarrassment. Opposition to abortion has long been driven by religious motives, and an irony of the case that caught the media's attention was the fact that religion was being invoked in making a decision that could, if the

doctors were right, result in the death of an infant. Paige Cunningham, of Americans United for Life, took the court to task and ended up sounding like a liberal children's-rights advocate: "This twisted rhetoric [Judge Brownfield's decision] promotes the concept that there are classes superior and inferior to one another and that a mother has 'property rights' to do as she pleases with her child."¹⁰

The Briccis' religious beliefs were not analyzed during the controversy. There is no biblical equivalent of "Thou shalt not perform a C section." Yet according to Nicolae Garneata, the Briccis' pastor, Ecclesiastes 11:5, "As thou knowest not what is the way of the spirit, nor how the bones do grow in the womb of her that is with child: even so thou knowest not the works of God who maketh all," with its implication that human understanding is eclipsed by the providence of God, played a part in Bricci's decision-making.

Garneata, pastor of Gethsemane Romanian Church, said the Briccis believed that God would oversee the pregnancy and deliver the child. Garneata also stressed that the Briccis' position was not denominational policy or a matter of church doctrine: the Briccis made the decision on their own.¹¹

Patrick Murphy zealously took the case to the court of appeals, the state supreme court, and the U.S. Supreme Court. All declined to hear

Murphy's appeal. A "disappointed" Murphy hoped that the fetus would be born "healthy and not retarded."¹² Paige Cunningham, speaking in more grandiose terms, said, "Baby Doe's only chance now of living a normal, healthy life is a miracle."¹³

That "miracle" occurred December 29, when Tabita Bricci gave birth to Kallian. Though suffering from low birth weight—4 pounds 12 ounces—doctors said the child appeared not to have suffered the massive retardation that Bricci's doctors at St. Joseph's Hospital had feared.

The child was born at Northwestern University Medical Center in Chicago, with surgical and anesthesia personnel on hand, in case an emergency C section was necessary. The Briccis' religious beliefs do not condemn cesarean sections outright, in all circumstances. They objected to what they believed to be premature human intervention in a God-directed process. This aspect of their story, certainly more rational than "nutty," did not surface until after the birth.

Tabita Bricci and Kallian will probably now fade into obscurity. Yet the case of Baby Boy Doe has raised serious questions about the legal status of a fetus, and a state's ability to judge a person's competence to make medical decisions. These questions were not directly addressed or definitively answered in this case. Perhaps all one can do now take Tabita Bricci's actions as an example that there will be times when the only thing to do is trust in divine providence.

After all, something has to be left to God. ☐

*From the poem "Good-Bye and Keep Cold."

FOOTNOTES

¹ Max Douglas Brown, "Unborn Baby Deserves Justice Too," *Chicago Tribune*, Dec. 23, 1993, p. 11.

² Jan Crawford, "Cesarean Case Pits Rights of Mother, Fetus," *Chicago Tribune*, Dec. 14, 1993, pp. 1, 9.

³ Rob Karwath, "DCFS to Punish Three in Emaciated Boy Case," *Chicago Tribune*, Dec. 9, 1993, p. 7.

⁴ Jan Crawford, "State High Court Gets Cesarean Case," *Chicago Tribune*, Dec. 16, 1993, p. 7.

⁵ Jan Crawford, "Cesarean Case Pits Rights of Mother, Fetus."

⁶ Laurence J. O'Connell and M. Therese Lysaught, "The Collision of Religion and Medicine," *Chicago Tribune*, Dec. 21, 1993, p. 12.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Colleen Connell, telephone interview.

¹⁰ Paige Cunningham, "Unborn Child Is Treated as Property," *Chicago Tribune*, Dec. 22, 1993, p. 10.

¹¹ Nicolae Garneata, telephone interview, via his son Nick, serving as interpreter.

¹² Jan Crawford, "Cesarean Case Appeal Is Rejected," *Chicago Tribune*, Dec. 17, 1993, p. 7.

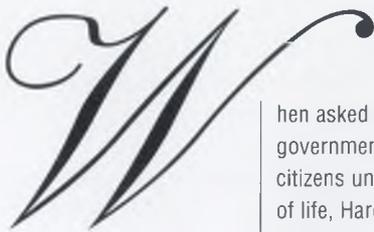
¹³ Cunningham.

The case of Baby Boy Doe has raised serious questions about the legal status of a fetus, and a state's ability to judge a person's competence to make medical decisions.

D E O N T O L O G I C A L E N C O R E

"No country can be free without religion."—Lord Acton

"Politics in the name of God is of the devil."—Reinhold Niebuhr



hen asked what the British government could do to help its citizens understand the meaning of life, Harold Macmillan responded, "I'm only the prime minister. Talk to the archbishop of Canterbury."

America has no archbishop of Canterbury, but it has everyone from Pat Robertson to Hillary Clinton bemoaning our moral and spiritual decrepitude. When even Norman Lear calls for a rediscovery of the "sacred," America's ethical desperation must be indisputably conspicuous.

In *Nichomachean Ethics*, Aristotle argued that morality depends upon law, a concept *horrendous* for those acclimated to the "You can't legislate morality" maxim. But morality is always legislated. Operation Rescue's Randall Terry would just take it further than would MTV's Beavis and Butt-head.

Morality, of course, implies religion, problematic enough in a pluralistic society, but sprinkle in the Establishment Clause as well, and we arrive at America's "culture war."

Only religion, mused George Washington, could supply "that virtue of morality." Yet one person's "virtue of morality" is for another neither virtuous nor moral. Liberation theologian Gustavo Gutierrez, for example,

finds in the Bible his divine manifesto for political reconstruction. So does Jerry Falwell.

To assert that no absolutes exist is, essentially, to assert an absolute. Nietzsche's bellowings aside, absolutes exist, even moral ones. People, though, are subjective, and so Pat Buchanan's moral absolutes differ from Jane Fonda's. "There is no conceivable way," wrote William Rehnquist, "in which I can logically demonstrate to you that the judgments of my conscience are superior to the judgments of your conscience, and vice versa." Of course, Rehnquist just happens to be *chief* justice of the United States Supreme Court, which means he can (with four other votes) enforce his logically undemonstratable moral judgments on the rest of us.

And that's the rub. It's one thing for an individual to live in a personal moral vacuum, lost in the empty spaces of a Mark Rothko painting. But society, to survive, must have a moral base. The essence of America's ethical dilemma is, Who determines that base?

The majority? That prospect

was scary enough for the Founders to etch out a Constitution designed to protect personal rights from "the evil genius of democracy."

The courts? Please. Trying to make sense of the logic and direction of religion clause jurisprudence is like simultaneously tracking the mass and velocity of subatomic particles: according to Heisenberg's uncertainty principle, it can't be done.

Ultimately, the issue is politics. It's easier to write laws in books than upon hearts. That's why the New Christian Right is more preoccupied with winning elections than souls. Might doesn't make right; it just makes public policy, good or bad.

If America's moral demise isn't stopped individually, it will be collectively; if we can't control ourselves, someone else will control us instead; if the clergy can't turn the nation around, the politicians will try; and if democracy can't halt our demise, tyranny will—which would be a moral disaster.

Of course, that's only an opinion.

Cleford R. Holdstock



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God offers to every mind its choice between truth and repose. Take which you please; you can never have both. Between these, as a pendulum, man oscillates. He in whom the love of repose predominates will accept the first creed, the first philosophy, the first political party he meets—most likely his father's. He gets rest, commodity, and reputation; but he shuts the door of truth. He in whom the love of truth predominates will keep himself aloof from all moorings, and afloat. He will abstain from dogmatism, and recognize all the opposite negations between which, as walls, his being is swung. He submits to the inconveniences of suspense and imperfect opinion, but he is a candidate for truth, as the other is not, and respects the highest law of his being.

—Ralph Waldo Emerson
American essayist, poet, Unitarian minister
(1803-1882).