LIBERTY

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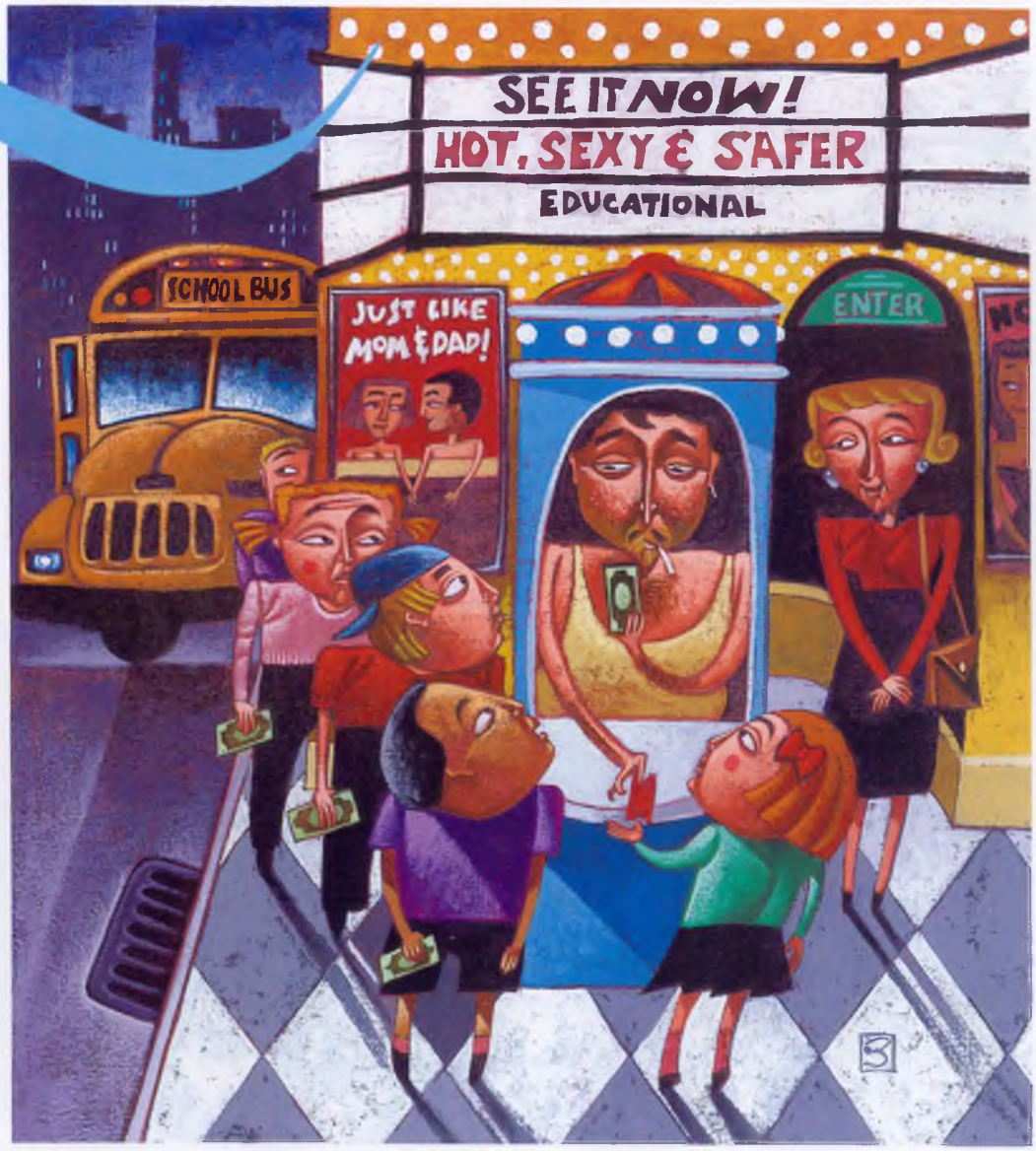

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Beam in Your Own Eye

I just received your March/April issue which, at times, I find quite enlightening and then again a little baffling. I recall you to the letter from R. B. Quellette headlined "Baptist Tongue Lashing." Referring to the "members of the Christian Coalition" Quellette wrote, "I am amazed that you would exclude people from heaven on the basis of their politics." Your response, "We weren't excluding them because of their political involvement but merely questioning whether or not their political involvement was really doing the work the Lord has asked them to do."

Do you apply that same question to the political involvement of Wintley A. Phipps, U.S. Congress liaison for the Seventh-day Adventist Church? In other words, do you question whether *his* political involvement is really doing the work that the Lord wants him to do?

ARNOLD V. BERGESON
LaMesa, California

[Shhh!—Ed.]

Another Satisfied Reader

How dare you mock the United States Constitution and the Founding Fathers by saying that it was designed to form a secular nation, you ***blasphemous fools***. Calling the *fact* (not view) that America's Founders created a Christian state nonsense is unbelievable. It is very dangerous changing history and making it false so people don't know their own country's real history. People wonder why we have so much crime and violence. What do you expect if people don't know their true history? Every time a group has tried to secularize a nation, it has always fallen. If you don't believe me, do some research. It's a fact. If you think that the Constitution was set up by people trying to form a secular nation, you have never read a speech by George Washington. I should say a speech that hasn't been changed by jerks like you who are deceiving America. Just in case you haven't noticed, you've really disgusted me. Also, you can't deceive American people with your lies. Contrary to what you think about Christians and other people, we're not stupid and we don't believe your lies. In one of George Washington's speeches he says that *we have no freedom without God* so don't print out any more lies about the people who started this wonderful nation of ours which only became great because of the Founding Fathers' faith and God's grace.

I'm going to burn *Liberty*—especially after this article—because the whole thing is sickening. I won't throw it in the garbage to go in a landfill and pollute the ground with your satanic/atheist views.

[Name and address withheld, postmark Worcester, MA—Ed.]

And Another One . . .

I am the newly appointed performing arts director for Savannah, Tennessee. The January/February issue of *Liberty* was put into my mailbox at city hall by mistake. I love it when God sends small miracles.

I sat in my office and read the magazine with glee. Upon seeing the cartoon on page four, I was inspired to relate a little incident which I experienced a few weeks ago. At my first meeting with the city commission a woman rose to address the city council over the issue of a Nativity scene on the lawn of city hall. It seems the city manager would not allow her to put one there during the Christmas season. For 20 minutes, she cried, preached, quoted Scripture, and basically accused all city department heads and directors of being fiends for not putting Baby Jesus in the parking lot. As it turns out, the lady, to whom I refer as (God forgive me) Disco Christian, does not even reside in our fair city.

She claimed that God was leading her to participate in the Christian Coalition's effort to win America back to God. Did I miss something? I was never aware that the United States was a covenant nation.

Your magazine is food for hungry minds. Keep feeding! And thank you for a very satisfying read.

JENNIFER L. WINTERS
Savannah, Tennessee

Religio-Phobics?

I marvel that a man named "Goldstein" would be so committed to Robertson bashing. I thought Pat was a friend to the freedom of Judeo-Christian expression in public life, not a proponent of freedom from the same.

In my opinion, your publication

COVER ILLUSTRATION BY RALPH BUTLER

leans heavily toward religio-phobia, although you bill yourselves as religious freedomists.

I'll keep reading. . . .

SCOTT D. HARTER
Wilkes Barre, Pennsylvania

"The Godless Constitution"

Mr. Kramnick and Mr. Moore are rewriting history. Article VI requires all government office holders, state and federal, to swear or affirm that he will support the Constitution. The oath or affirmation is to God, not to the ACLU—a point that they failed to cover in the article. Now if you swear or affirm to God that you will faithfully carry out the duties required of the government office you have been elected or appointed to, I would say that you recognize a Supreme Being; otherwise, you are a liar. Also, the actual oath is that you swear or affirm to God that you will support the Constitution. I hardly call that "The Godless Constitution."

I can't understand why secular humanists have to rewrite history. In 1816, in writing to Charles Thompson, Thomas Jefferson said about his Bible: "A more beautiful or precious morsel of ethics I have never seen; it is a document in proof that I am a real Christian . . ." Jefferson was not a delegate. Fifty-five men attended the Constitutional Convention. Everyone professed to be a Christian. It simply is not true that a major concern of the men in the states was that the Constitution was "Godless." The major concern was whether the Constitution set up a "national" government, or a "federal" government. God was in the Constitution from the beginning.

TERRY W. BRADLEY
Cleburne, Texas

Hell Hath No Fury

For some time now I have carefully looked through each issue of *Liberty* with a view toward understanding the beliefs of my friends in the Seventh-day Adventist Church.

The most recent issue of *Liberty* carried an editorial I found especially skewed toward your distinctive doctrines on hell ("Hell Hath No Fury") and the Sabbath day.

What you so blatantly dismiss is the fact that the place of eternal torment described in the Scriptures was prepared not for man, but for the devil and his demons. It was never intended for man. But when man, in his similarly blatant fashion, rejects the gospel, choosing to be a child of the devil Instead of a son of God, he chooses to spend eternity in that place called hell, subjecting himself/herself to the same punishment as Satan.

The love of God reaches out to all men, women, and children. He is not willing that any should perish. But that does not mean He forces men to believe. He leaves the choosing up to each individual. The choice is ours not His.

As to the Sabbath day, I don't know any Protestant denomination that upon reflection would attempt to force the Jewish law of Sabbath-keeping (sundown Friday to sundown Saturday) on its people. Christian people worship the first day of the week (Sunday) in remembrance of the resurrection. Christians who call their first-day worship "Sabbath," do so only in error. (As I suspect you knew all along.)

Perhaps when the editors of *Liberty* get Christian worship correct, maybe they will get hell correct next . . . ?

STEVEN McCLURE
Sevierville, Tennessee

[We've got them both correct, thank you.—Ed.]

Him Whose Name

Praise the Lord! Hallelujah! Someone has finally said what *needs* to be said to Ralph Reed—Pat Robertson's right-hand man—and it was you, in your Obiter "Him Whose Name Is Above All Names" in the May/June 1996 Issue of *Liberty*.

I hope and pray someone "back there" will see to it that Mr. Reed receives a copy!

I can't tell you how ashamed and embarrassed I was when I read a recent *Newsweek* article on Ralph Reed. Is he trying to keep Pat Robertson's wondering/wandering adherents in line? (I would guess they would need to be.)

I was Immediately put in mind of the ninth chapter of Daniel where Daniel prays so humbly for the sins of his entire nation—because "thy city and thy people are called by thy name." Whereas Mr. Reed is saying—because we are called by that same name we are *so RIGHT*—you'd better get in our train right now—all others are wrong.

I pray forgiveness for judging—but this is how I feel. Thank you for expressing it so well for me!

JUANITA JOHNSON
Colville, Washington

Readers can E-Mail the editor on CompuServe #74617,263.

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.

ILLUSTRATION BY RAY DRIVER

WHATEVER HAPPENED TO ELVIS?: An article by Don Wildmon's *AFA Journal* (one of the voices urging a Disney boycott) warns about a new rock group that should make any parent long for the days when Elvis scandalized the nation by—of all things!—*shaking his hips on TV.* The band, called Marilyn Manson—named after Marilyn Monroe and Charles Manson (which alone should tell you something), recently had an album called *Smells Like Children* (which should tell you a little more) that made it on to *Billboard* magazine's music charts (which should tell you even more). According to the *AFA Journal* report, "the lead singer and namesake of the band is a self-avowed follower of the Church of Satan," who calls himself "Reverend" and who is quoted as saying, "Each age has to have at least one brave individual that tried to bring an end to Christianity." Marilyn Manson, apparently, sees himself as that brave individual. While Christianity will no doubt hold its own against "Reverend" Manson's band, we're not so sure about the kids who listen to it.

NO MICKEY MOUSE RESOLUTION: Long besieged by conservative Christian groups, the Walt Disney Company is now threatened with a boycott by Southern Baptists. At their annual convention (this year in New Orleans) 13,000 members overwhelmingly approved an amended nonbinding resolution that condemned Disney's "promotion of homosexuality" and distribution of films with "questionable material." Though Disney inc. is the world's largest producer of wholesome family entertainment, it has in recent years ventured into areas quite different from the days when Uncle Walt delighted kids on Sunday evenings with Mickey Mouse and Goofy. Besides offending the Baptists when the company extended health-benefits to live-in partners of homosexual couples (Disney, supposedly, has thousands of openly gay employees), it recently hired a convicted child molester—who spent 15 months in jail for having sex with a 12-year-old boy—to direct a film. Disney's hosting of gay and lesbian theme nights at its parks, as well as its distribution (through its subsidiary Miramax) of *Priest*—a sympathetic look at gay Roman Catholic priests—and *Kids*, which has been described as everything from a "blunt look at teenage sex" to "kiddie porn," has not endeared Mickey Mouse to the Baptists, who in their resolution said that the boycott was necessary because "previous efforts to communicate these concerns to Disney Co. have been fruitless." A recent editorial in *Christianity Today*, while bemoaning some of Disney's trash, has asked whether boycotts reflect Christian principles. "Indeed, do we boycott every corporation with policies that are wrong-headed or sinful?" Nevertheless, the Baptists feel that the boycott will hit Disney where it hurts the most, in the pocketbook, though with Mickey and company raking in last year $1.4 billion profit on a revenue of $12.1 billion, another question should be asked, Will a boycott even work?

SEALED OUT: Columnist James Kilpatrick just doesn't get it, so let's explain (one more time) for him and for everyone else who doesn't get it either: *the banning of religious symbols from government property does not reflect a systematic attempt to erase religion from public life.* Instead, it simply represents a principle that has worked well in America for more than 200 years: our religious freedoms are best protected when religion is not promoted by government in any way, shape, or form. What irked Kilpatrick was the U.S. Supreme Court's refusal to review the Tenth U.S. Circuit Court of Appeals' ruling that the cross symbol in the city seal of Edmond, Oklahoma, violated the Establishment Clause. Despite the vociferous dissent of Messrs. Rehnquist, Scalia, and Thomas, who wanted to hear the case but couldn't get the fourth vote, the High Court's denial of review leaves the lower court's decision as final. "Does religion," fumed Kilpatrick, "have any place in our public life?" Yes, it has a big one—much bigger in fact than it does in countries like England, Britain, and Germany, where for centuries religion has had the kind of government sponsorship that Kilpatrick seems to think it so desperately needs now. The good folks in Edmond can still pray, worship, build sectarian schools, witness for their faith, read their Bibles, promote their services, and all the things that religious people do, both publicly and privately, even if the cross symbol is removed from the city seal. However trivial the particular itself might seem, it represents a grand principle (known as the nonestablishment of religion), one that the Supreme Court and the Tenth Circuit Court of Appeals are, despite opposition, determined to uphold.

THE JAFFA GATEWAY TO PRAYER: *Harry v. Jaffa*, from the Claremont Institute, recently published a pamphlet called "Emancipating School Prayer," (the subtitle reads, "How to Use the State Constitutions to Beat the ACLU and the Supreme Court") which represents another attempt to impose religious

ceremonies in public schools. Jaffa argues that, because 46 of the 50 states have constitutions that invoke the name of God, Congress should pass a resolution declaring that "children in public schools might lawfully recite voluntary prayers employing only such acknowledgment of divine power and goodness as is present in their own state constitutions or in the constitutions of other states." Nice try, except for a few minor difficulties. First, children in public schools "can recite voluntary prayers" now, on their own, without any state endorsement—and they can even invoke any divine power they want, instead of being limited by "only such acknowledgment as in their own state constitutions," as they would if Congress actually followed Jaffa's tomfoolery. Second, Jaffa seems to miss the point that there's a big difference between God's name being invoked in a public document, and children forced by law to attend a worship service, which is what happens with public school sponsored religious activity. Hey, Harry, how about this? Why don't those who advocate legislated school prayer spend as much time teaching their own children to pray as they do trying to get schools to do it for them? Or is just easier to sluff off that responsibility on the government?

DEVIL'S TOWER: It all depends upon your perspective: for rock climbers, the 1,270 feet of sheer vertical rock makes Devils Tower one of the premier crack climbing places in the nation; for Lakota Sioux, the mountain remains a sacred site, as it has been for centuries. The problem is this: mountaineers, yelling, cursing, and leaving behind climbing materials (such as ropes and pitons), hardly add to the religious atmosphere of "Mato Tipi" (Bear's Lodge). In an attempt to reach a compromise, the National Park Service issued a voluntary ban on all commercially guided groups during June, the summer solstice, when the Sioux travel to the mountain to perform sun dances, do sweat lodges, and embark on vision quests. However, U.S. District Court Judge William Downes ruled that the ban amounted to an unconstitutional support of religion. This case represents the tension between the religion clauses: leave the ban in place and the Establishment Clause is violated (though it hardly seems as if a *voluntary* [in other words, people can ignore it] ban on commercial-climbing groups only, and for just one month, amounts to a religious establishment); remove the ban and the Free Exercise Clause is violated. The judge's ruling shows how separationists (at least those who believe in both religion clauses) could be victims of their own success: are we building a wall so high that every attempt to protect free exercise becomes an Establishment Clause violation?

FIRST, THEY CAME AFTER THE PEDOPHILES, AND I WAS SILENT: New York Governor George Pataki recently signed a bill revoking the tax-exempt status of Zymurgy, an organization that—though identifying itself as seeking to "promote, foster, and advance greater knowledge and understanding of human sexuality"—was a front for the notorious Man/Boy Love Association (NAMBLA), which describes its mission as such: "We work to organize support for boys and men who have or desire consensual sexual and emotional relationships and to educate society on their positive nature." The not-for-profit status, issued under the Cuomo administration (which claimed it didn't know the true nature of the organization) allowed Zymurgy to obtain discounted postal rates, sales tax exemptions, and the right to solicit for tax-deductible donations. After efforts by executive action to revoke the group's not-for-profit status were rejected by State Supreme Court Judge Robert Lipmann on First Amendment grounds (his honor apparently assumes that revoking the tax-exempt status of child molesters is synonymous with abridging their free speech), the state assembly passed the bill, which Pataki signed. Amazingly enough, only 19 Democrats in the state assembly objected to the bill. Only 19?

CAN CANNED: The United States Bankruptcy Court ruled that CAN (the Cult Awareness Network) must be liquidated under the Chapter 7 bankruptcy statute. The controversial organization—which had been associated with the deprogramming of Baptists, Mormons, Episcopalians (Imagine—deprogramming an Episcopalian!), Sufi Moslems and other faiths deemed cult by the CAN crew—found itself in financial trouble from, among other things, a $4.8 million judgment brought against CAN and three others involved in the kidnaping of a Seattle man who belonged to a Pentecostal church. The settlement was the largest civil damages award against CAN or any deprogrammer in U.S. history. "CAN's sole purpose now," said Kendrick Moxon, one of the lawyers who brought the suit against the organization, "is to start paying off its victims and the people it has hurt." Cynthia Kisser, executive director of CAN, warned that the liquidation will "have a chilling effect on free speech." Somehow, we trust that if free speech can survive New York's removal of Zymurgy's tax-exempt status, it'll survive this as well.

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TRU
MAT

The ECT Document Was Bad Enough; Chuck Colson's Defense Is Worse

BY CLIFFORD GOLDSTEIN

A few years ago I attended my first Roman Catholic wedding. The bride, dressed in flowing white, placed a bouquet of roses at the foot of a statue of Mary and then knelt before it. Later the priest gave the couple a framed picture of Jesus that, he said, brought happiness to the homes in which it hung on a wall.

While I didn't doubt the piety or the sincerity of either the bride or the priest during what was in many ways a moving and beautiful ceremony—as I left these convictions seared into my mind: *Thank God for Martin Luther. Thank God for the Protestant Reformation. Thank God for those who died so that we could have biblical Christianity instead of, well, whatever one would call kneeling before a statue, and the belief that a picture on a wall would bring happiness to a home.*

I thought of that wedding after reading again the document *Evangelicals and Catholics Together: The Christian Mission in the Third Millennium* (*ECT*), signed last year by influential American Evangelicals and Catholics, in which they attempted to affirm the unity "in Christ" of the two communions so that the faithful could contend together "against all that oppose Christ and His cause."

After the initial brouhaha over the document, some signers backtracked (two Southern Baptists were pressured into deleting their names), and clarifying statements were made. The most comprehensive apologetic was *Evangelicals and Catholics Together: Toward a Common Mission* (Word Publishers, 1995), edited by

Clifford Goldstein is editor of* Liberty *magazine.

ECT

BUT ONLY SOME

ERS

Charles Colson and Richard John Neuhaus, two signers of *ECT*. Composed of six essays, three by Roman Catholic signers and three by Protestant ones, the 227 pages explained the rationale, motives, and intent of those behind one of the most remarkable statements in centuries of Protestant and Catholic relations.

Though much could be said about each essay, I'm going to comment on Chuck Colson's lead piece, "The Common Cultural Task: The Culture War From a Protestant Perspective." Chuck Colson is a best-selling Evangelical writer, the winner of the Templeton Prize for Progress in Religion, and the founder and chair of Prison Fellowship Ministries. I have read Colson for years, and, despite disagreement with some of his stands, I've always admired his courage, intelligence, and Christian commitment.

Nevertheless, Colson began by quoting the late Francis Schaffer: "Truth demands confrontation; loving confrontation, but confrontation nevertheless."

Truth does, indeed, demand confrontation—that's why I am confronting Colson's essay.

Truth demands it.

In his piece, Colson eloquently develops a theme he has addressed before: the damage of relativism upon modern society. He bemoans the loss of first principles, the loss of absolutes, even the loss of the concept of truth itself. "For the first consequence of postmodernism," he wrote, "is the loss of belief in the existence of truth itself. And without a belief in truth, any culture descends into decay and disorder."

With that Colson helps establish a premise of the entire piece: we in the West are in moral decline because we no longer believe in absolutes. Though not as clear-cut as he makes it (after all, Tomas de Torquemada believed in absolutes; so did John C. Salvi), the argument is crucial and correct. The loss of absolutes can lead only to moral anarchy. In fact, it already has.

Colson throws down the gauntlet. We're in a culture war on which hangs the fate of our civilization. Early on he divides the sheep from

In the same essay calling for Evangelicals to reclaim their "heritage in the Reformation" Colson calls for Catholics and Protestants to "join together in a defense of the truth of our shared faith"!

the goats in this battle: "No longer can Americans agree on foundational moral and intellectual assumptions or even a common methodology or a common language for discussing these issues. On one side of these and other significant issues are those who appeal to objective criteria, such as biblical teaching, principles of natural law, or traditional custom. On the other side are those who, having rejected every appeal beyond mere self-interest, rely solely upon subjective criteria: *How do you feel about it?* or *Everybody has to have a choice.*"

His argument has flaws. Since when, for instance, have "natural law" and "traditional custom" become "objective criteria" for truth? In his *Politics*, Aristotle argued from natural law for slavery, and the ancient Phoenicians had a "traditional custom" of human sacrifice. Nevertheless, Colson correctly depicts the ideological, cultural, and social confrontation between those who believe that truth exists and those who don't. It's the absolutists versus the relativists, and Colson puts conservative Protestants and conservative Roman Catholics on one side (the absolutists) and liberal Christians, postmodernists, deconstructionists, radical poststructuralists, and humanists on the other (the relativists). These are the battle lines.

Unfortunately, life's never that simple, and neither are Colson's arguments in defense of *Evangelicals and Catholics Together* based on this premise. In fact, despite repeated assertions—both in *ECT* and in his essay on how Catholics and Evangelicals weren't "willing to compromise their profession of faith"—the mere fact that he signed the document, and his spirited defense of it, are compromises themselves.

Quoting Michael Novak, Colson wrote, "Truth matters." However, from what he has written, and from the positions he has taken, what Colson really meant is, "Only some truth does."

The fatal flaw in his argument is that by focusing only on the contest between those who believe in truth and those who don't, his position downplays the contest among the truths themselves. Many basic crucial "truths" held by Roman Catholics and Evangelicals clash fundamentally. Colson admits that the differences are "many and significant," though they must not be (in his thinking) that many and that significant because he later phrases the differences as merely "the distinctives of their respective traditions," as if all that divided the two "traditions" were nothing but tradition (in another source he called it "petty quarreling"), or in the words of *ECT*, "needless and loveless conflicts."

Sorry, but basic Protestant belief isn't just tradition. It's truth based on the Word of God, and the issues that separate biblical Christianity from Roman Catholicism aren't "petty" or "needless," but instead are fundamental truths, truths that Colson contended for fervently in one part of his essay ("The message of the Church," he wrote, "is that there is truth, whether people like it or not—intellectual, moral, and spiritual truth"), then turned into nothing but "the distinctives of their respective traditions" in another.

One example in which his statement "Truth matters" should really be "Only some truth does" is Colson admonishing Evangelicals to confront culture with God's Word and the power of the gospel: "To do so, we must recenter ourselves on the key doctrines of historical Christianity. This means reappropriating our heritage *in the Reformation* as well as our heritage as Christians, which goes back even earlier, through the early Church to the time of the apostles" (italics supplied).

In the same essay calling for Evangelicals to reclaim their "heritage in the Reformation" Colsoncalls for Catholics and Protestants to "join together in a defense of the truth of our shared faith"! Maybe I'm missing something here, but a reclaiming of the Reformation heritage—considering that the Reformation was based on much outright rejection of Roman Catholic teaching, doctrine, and authority—would necessitate separation from Rome, not unity with it.

Apologists for this Catholic-Evangelical rapproachment like to stress that Luther, at least in the beginning, never meant to separate from Rome. But the Reformation was more than Luther, just as Christianity is more than Paul, and separation from Rome eventually became the focal point of the whole movement, especially when Protestants convinced themselves, from avid Bible study, that the Roman church was the antichrist itself.

"The prophecies concerning the antichrist," wrote historian LeRoy Edwin Froom, "soon became the center of controversy, as the

Reformers pointed the incriminating finger of prophecy, saying, Thou art the Man of Sin! Rome was declared to be the Babylon of the Apocalypse, and the papal pontiffs, in their succession, the predicted Man of Sin. Separation from the Church of Rome and its pontifical head therefore came to be regarded as a sacred, bounden duty. Christians were urged to obey the command, 'Come out of her, my people.' To them, this separation was separation not from Christ and His church but from antichrist. This was the basic principle upon which the Reformers prosecuted their work from the beginning."

In light of Colson's call for Evangelicals to reclaim their Reformation heritage, some quotes by leading Reformers should help them better understand what that heritage is.

"Yea, what fellowship hath Christ with antichrist? Therefore it is not lawful to bear the yoke with papists. 'Come forth from among them, and separate yourselves from them, saith the Lord'" (English Reformer and martyr Nicolas Ridley [1500-1555]).

"Not because they do any injustice to the Papacy, for I know that in it works the might and power of the Devil, that is of the antichrist" (Swiss Reformer Ulrich Zwingli [1484-1531]).

"The great antichrist of Europe is the king of faces, the prince of hypocrisy, the man of sin, the father of errors, and the master of lies, the Romish pope" (English Reformer John Bale [1495-1563]).

"Daniel and Paul had predicted that the antichrist would sit in the temple of God. The head of that cursed and abominable kingdom, in the Western church, we affirm to be the pope" (Swiss Reformer John Calvin [1509-1564]).

Two excerpts, meanwhile, from one of Luther's writings should help debunk the growing myth that Luther remained a loyal, if somewhat disgruntled, son of the Roman Catholic Church: "The pope is not and cannot be the head of the Christian church and cannot be God's or Christ's vicar. Instead he is the head of the accursed church of all the worst scoundrels on earth, a vicar of the devil, an enemy of God, an adversary of Christ, a destroyer of Christ's churches; an arch church-thief and church robber of the keys of all the good of both the church and the temporal lords; a murderer of kings and inciter of bloodshed; a brothel-keeper over all brothel-keepers and all vermin, even that which can't be named; an anti-Christ, a man of sin."

In the same work, this loyal, faithful Roman Catholic elaborated: "O Lord God, I am far, far too insignificant to deride the pope. For over six hundred years now he has undoubtedly derided the world, and has laughed up his sleeve at its corruption in body and soul, goods and honor. He does not stop and cannot stop, as St. Peter calls him in 2 Peter 2[:14], 'insatiable for sin.' No man can believe what an abomination the papacy is. A Christian does not have to be of low intelligence, either, to recognize it. God himself must deride him in the hellish fire, and our Lord Jesus Christ, St. Paul says in 2 Thessalonians 2[:8], 'will slay him with the breath of his mouth at his glorious coming.'"

Luther titled that work, *Against the Roman Papacy as an Institution of the Devil.*

For this reason, when Colson wrote "In short, Luther opposed only what he deemed to be corruption in the medieval church," he was engaging in politically correct historical revisionism so popular now among Evangelicals and Catholics eager to unite (notice, he wrote that Luther rebelled against "what *he deemed* to be corruption"; Colson is so politically correct that he can't even come out and directly name it for what it was). Whatever corruptions might have incited Luther's revolt, it quickly became a theological, *Bible-based* conviction that the Roman system wasn't merely God's bride (a biblical term for the church) in need of purification, but that it was, in fact, "the whore of Babylon," the antichrist power itself.

Thus Colson's call to reclaim our Reformation heritage in a document in which he calls for unity with a system the Reformation unanimously denounced as the antichrist, proves that his real position isn't "Truth matters," but "Only some truth does."

Another point where truth is sadly victimized, both in Colson's essay and *ECT*, is through the argument that Roman Catholics and Evangelicals share enough common truths to be "one in Christ."

Colson wrote: "What we emphasize is that Evangelicals and Catholics affirm many of the same truths. The deity of Christ, His death on the cross for our sins, His resurrection from the dead, His second coming, the infallibility of Scripture—these truths, affirmed in *Evangeli-*

Thus Colson's call to reclaim our Reformation heritage in a document in which he calls for unity with a system the Reformation unanimously denounced as the antichrist, proves that his real position isn't "Truth matters," but "Only some truth does."

cals and Catholics Together, provide a solid foundation for all Christians. Those who can affirm these truths have something in common of monumental significance."

Of course, those who hold these truths do, indeed, have something more in common with each other than they would, say, with Mormons in Utah, animists in Borneo, and Santerias in south Florida. But what suddenly, after almost 500 years, makes these broad truths the foundation for unity? Catholics and Protestants held to these same basic truths all during the bitter centuries since the Reformation. Their common belief in "the deity of Christ, His death on the cross for our sins, His resurrection from the dead, His second coming, the infallibility of Scripture"—wasn't deemed enough to stop them from murdering each other over their religious (and political) differences during the Thirty Years' War. The Roman councils that condemned thousands of Protestants to death could have, without any hesitation, affirmed these same positions. Meanwhile, Rome's adherence to these truths didn't stop the Reformers from unanimously naming it the antichrist. And yet now, suddenly, these beliefs are touted as the basis for "unity in Christ"!

Another professed point of unity between Catholics and Evangelicals is their common belief in "the infallibility of Scripture." Colson can't really believe those words unless Neuhaus has convinced him that Tobit, Judith, Maccabees, Ecclesiasticus, and Baruch are infallible, sacred writ, like Exodus and Romans.

What makes the claim even more absurd is that a fundamental disagreement over one of these truths, Christ's "death on the cross for our sins," started the Reformation. Despite the semantic gymnastics between Catholics and other Protestants over justification by faith, that fundamental problem has not been resolved. In fact, indulgences (just one example of how far apart the two "traditions" are)—blatantly contradictory to the gospel (and the issue that first incited Luther's rebellion)—are still practiced by the Roman Catholic Church. Here's a quote taken from a Roman Catholic newspaper regarding a Vatican decree on the issue: "The decree issued by the Apostolic Penitentiary Office in response to queries received from diocesan bishops says indulgences they grant via the airwaves are as valid as those the pope grants the same way.

"In order to be eligible for the indulgence, a Catholic must also go to Confession, repent, receive Communion, and pray for the intentions of the pope.

"Plenary indulgences, *which do away with all the punishments due for a sin,* are granted by the pope through apostolic blessings and three times a year can be granted on his behalf by local bishops" (italics supplied).

That's better (perhaps) than Tetzel hawking indulgences outside of Wittenberg in order to help pay for the building of St. Peter's in Rome, but it's not, in any biblical or Pauline sense, "justification by faith," and every Gospel-oriented Protestant knows it. The question is Would Chuck Colson look Fr. Richard John Neuhaus in the face and tell him so? That all depends on whether "Truth matters" or if "Only some truth does."

Another professed point of unity between Catholics and Evangelicals is their common belief in "the infallibility of Scripture." Colson can't really believe those words unless Neuhaus has convinced him that Tobit, Judith, Maccabees, Ecclesiasticus, and Baruch are infallible, sacred writ, like Exodus and Romans. Roman Catholics added these books to the Canon—books that Evangelicals regard as Apocryphal—in order to help prove doctrines like purgatory and auricular confession, which Evangelicals recognize to be unbiblical. And yet Colson states that Catholics and Evangelicals are unified in their belief in "the infallibility of Scripture" when they don't even agree on what constitutes Scripture, and when the Catholic version includes books that Protestants reject as uninspired.

Perhaps the most far-reaching compromise, the one with the most practical and tangible implications, is the idea that Catholics and Evangelicals should, Colson wrote, "work together in the common task of evangelizing the unbelieving world." That's an incredible statement, especially considering that Evangelicals have for years considered Roman Catholics a ripe field for evangelism. What Colson is saying, essentially (and what *ECT* says openly), is that Evangelicals don't need to preach the gospel to Roman Catholics; in fact, rather than "sheep stealing" (as *ECT* put it), they should cooperate in preaching the "gospel" to unbelievers.

The question is, "unbelievers" in what? If Colson is satisfied in evangelizing the world with a lowest-common-denominator Christianity, then his position's valid. If, on the other hand, he wants to spread the gospel according to Luther and Paul (as opposed to the canons of the Council of Trent), then—however politically incorrect I might sound—the "unbelieving

world" must include Roman Catholics as well.

Recently Protestant author and pastor John McArthur, before a live audience, discussed the issue of sheep stealing raised in *Evangelicals and Catholics Together*, which promoted the idea that because Catholics and Evangelicals are all Christians, they don't need to evangelize each other. McArthur called it a "frightening statement," saying that the church he pastored was filled with former Roman Catholics who, he said, often gave testimonies like this: "I was in the Catholic church, I went to the Catholic church, I grew up in that whole system, I never knew Christ. I never knew God.... The church was a surrogate Christ, the church has all the authority. I sucked my life from the church, from the system, but as far as the knowledge of Christ, or the reality of the forgiveness of sin, or the power of the Holy Spirit in my life, I absolutely didn't have any idea about that." McArthur stressed that many of these former Catholics, after reading *ECT,* came to him in tears, saying, "If someone hadn't given the gospel to me, I would never have come to know the Lord Jesus Christ."

I wonder what Colson's response to those people would be?

Colson's in this conundrum because he's trying—however sincerely—to defend a false premise, and that's the *ECT* document itself. If you start with false premises and inherent fallacies, you will usually add more fallacies while defending your initial ones.

ECT, despite its religious language (and despite its fervent denials) is essentially a political statement. Or if that seems too strong an assertion—*ECT* at least arose out of a political need. The document stresses that Catholics and Evangelicals have a shared faith, and that using that shared faith as a base, they should unite to pursue "the right ordering of civil society." *In other words, because we share a common faith ("All who accept Christ as Lord and Saviour are brothers and sisters in Christ"), because we are already united religiously ("There is but one church of Christ"), why not use this commonality to unite politically?*

That's a bogus position. The order is reversed. They already *have* political unity. ECT admitted that their common opposition to abortion was the catalyst for this newfound discovery of each other as brothers and sisters. The problem isn't politics (that's what's uniting them)—it's their radically different faiths. Religion has divided, and still does divide, Catholics and Evangelicals, and *ECT* attempts to get these religious differences out of the way—either by downplaying them or stressing all the points the two "traditions" have in common—so they can continue to pursue their common political agenda.

Unfortunately, their religious differences strike to the heart and soul not only of Scripture itself, but of its greatest truth: the gospel. Evangelicals and Roman Catholics are preaching different gospels, and despite superficial commonalities, at the core they are radically different religions. Colson's conundrum comes from not recognizing that fact.

Politics, it has been said, is the art of compromise. That might work well for those hammering out policy issues in smoke-filled rooms, but it's a disaster for religion. Yet that's exactly what the Evangelicals have done with *ECT. ECT* is about politics (it spends a lot more time on political and moral issues than on theological ones), and it's black-and-white proof of just how much politics corrupts religion. Is it a coincidence that one of the most politically active Evangelicals in America, Pat Robertson, signed his name to *ECT*? Of course not. It's par for the course.

Because of their desire for political unity, these Evangelicals have put their names on a statement that calls upon them to refrain from preaching justification by faith, as taught by Luther and Paul, to Roman Catholics—and then in the same breath denies that there is any compromise! How gullible those people must think we are!

How ironic, too, that Colson's essay—bemoaning the loss of truth and absolutes—epitomizes that very loss of truth and absolutes. Colson's stance exemplifies the thing he rails against. Postmodernist relativism has permeated even more than we realize: it has reached the Evangelical churches. Colson's essay proves it.

"We have to demonstrate," Colson wrote, "that there is *a* truth before we can proclaim *the* truth."

Fair enough. But before proclaiming *the* truth, Colson needs to distinguish it from *untruth.*

How can he do that? I have a suggestion, at least for starters.

Attend a Catholic wedding.

Evangelicals and Roman Catholics are preaching different gospels, and despite superficial commonalities, at the core they are radically different religions. Colson's conundrum comes from not recognizing that fact.

Sacramental Seal

Is Nothing Sacred?

BY FATHER MICHAEL MASLOWSKY, S.J.D.

In December 1995 three adolescents were shotgunned to death in the wooded outskirts of Eugene, Oregon. It appeared to be a gang execution. Two men were arrested and charged with aggravated murder, rape, and kidnapping. One of them was 20-year-old Conan Hale.

On April 18, 1996, Hale filed a written request to meet with a Catholic priest in order to celebrate the sacrament of reconciliation. Four days later Father Timothy Mockaitis, pastor of the St. Paul's parish in Eugene, came to the Lane County Jail to administer the sacrament, as he had done on previous occasions with other inmates at the same institution. Wearing the Roman collar, which signifies his vocation, Father Mockaitis signed the jail register and stated the purpose of his visit.

A sheriff's deputy directed Father Mockaitis to a limited access room, where he was separated from Conan Hale by a glass partition. This meant that they had to communicate through a telephone system. Within this environment Father Mockaitis, in keeping with jail policy, administered the sacrament.

Unknown to Father Mockaitis, the sacrament was taped by the sheriff's department. The taping had been authorized by Douglas Harcleroad, Lane County district attorney, without prior court order or authorization. The search warrant that Harcleroad later obtained, in order to listen to the tape, showed that he understood the nature of the encounter. In other words, even before the meeting between Hale and his priest, the Lane County sheriff knew that Father Mockaitis would be coming to celebrate the sacrament of reconciliation with an inmate, yet he let them tape it anyway. Knowing that a personal disclosure would occur within a privileged act of worship, the district attorney (without notice to the parties) chose to trespass on the most private of religious expressions.

On May 3, 1996, a reporter for the Eugene *Register-Guard,* after discovering the search warrant that the district attorney obtained to listen to the tape-recording, contacted Father Mockaitis—and the result was a conflict of constitutional proportions that has made national and international news.

At issue here is the delicate balance between religious freedom and governmental interest. In this specific case, the state—in its zeal to solve an atrocious crime—took advantage of a religious encounter between a penitent and his confessor, thus infringing upon a protected liberty and impeding a relationship long privileged in law and tradition. Not only was the exercise of religion endangered by the authori-

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ILLUSTRATION BY HARRY KNOX


FORGIVE ME FATHE
FOR I HAVE SINNE

ties' action, but recording the sacrament was an unlawful search and seizure prohibited by the Fourteenth Amendment. It also violated Article I, Sections 2 and 3, of the constitution of the state of Oregon, which guarantees freedom of worship and freedom of religious opinion. In short, Lane County engaged in an impermissible and repugnant intrusion into the sphere of religious expression.

Just how repugnant was that intrusion? The gravity of what was done can be understood only in the light of Catholic theology regarding the sacraments.

Roman Catholics believe that Christ was the Son of God and that His death and resurrection was singularly salvific for the world. Christ's redemptive action continues, Catholics contend, through the church. Christ lives and acts within the church, most particularly through the sacraments—which are perceptible signs, words, and actions, divinely instituted, whereby the Holy Spirit makes efficaciously present the salvific grace of Jesus Christ. Consequently, Roman Catholics believe the sacraments to be privileged encounters, mediated by the church, between an individual and God.

Over the centuries the Catholic Church has discerned seven sacraments as the principal means by which faith is strengthened, worship is rendered, and humanity is sanctified. These seven sacraments advance the church's establishment and expression; they are, therefore, intrinsic and essential to its life. Consequently, the church, to assure sacramental validity, requires priests and laity to employ all necessary diligence in their celebration. Ecclesial authority insists that sacraments must be properly administered by an ordained minister through essential words and actions.

Among the sacraments of the church, the sacrament of penance is a particularly privileged moment of grace and reconciliation. Called to new life in Christ through baptism, individuals are not automatically freed from the weakness of human nature and inclination to sin. Roman Catholics believe that Christ, knowing the frailty of human nature, instituted a sacramental means to raise those who fall. Through the sacramental mediation of the church, Jesus wills that His reconciliation continues in the world. According to Catholic theology, Christ offers the sacrament of reconciliation as the opportunity for sinners to recover grace and return to harmony with God.

Catholics understand sin to be above all an offense against God, a rupture of the right relationship established with Him through Christ. Sin also inflicts harm on ourselves and others. When an individual realizes his or her sin, experiences sorrow for it, and desires reconciliation, he or she rightfully enters into the sacrament of reconciliation. Deliberate failure to do so jeopardizes the soul of the penitent. Sacramental confession and absolution constitutes the ordinary way by which a Catholic is reconciled with God.

A priest-confessor who violates the sacramental seal incurs the most severe penalty the church can impose: that of automatic ex-communication.

Admission of specific sins to a priest is an integral element of the sacrament of reconciliation. In Catholic teaching, the priest-confessor hears the confession not as a private person, but as an instrument of Christ. In all sacraments the priest functions in the place of Christ. It is Christ who encounters the penitent in that intimate exchange, where sin is admitted and forgiveness is mediated. Consequently, Catholics see sacramental confession not as human conversation or consultation, but as a sacred encounter. In its celebration the priest acts for Christ, who continually seeks the lost and binds up the wounded. The priest is but a faceless sign and instrument of Christ's love and mercy.

As a representative of Christ, a priest has an absolute duty to protect confidentiality. For the priest to disclose the contents of the penitent's confession would be to usurp the power of Christ. A priest is absolutely forbidden to betray a penitent by word or by any other means—*for any reason whatsoever.* The sacrament's confidentiality is so sacrosanct that even the slightest knowledge derived from the sacrament is privileged. The absoluteness of this confidentiality creates an inviolable "sacramental seal." A priest-confessor who violates the sacramental seal incurs the most severe penalty the church can impose: that of automatic excommunication. Not only is the priest-confessor bound to confidentiality, but so too are all who attain knowledge of a penitent's confession.

In the Eugene incident only God, Father Mockaitis, and Conan Hale should have possessed knowledge of their sacramental encounter. Because of the surreptitious invasion by the Lane County authorities, however, a sheriff's deputy, two assistant district attorneys, and a secretary now have access to that privileged communication. The archdiocese itself does not, and cannot, know what transpired in the sacrament.

Given the religious and confidential nature of the encounter between Father Mockaitis and Conan Hale, to record it was a particularly heinous offense. The recording violated both

an essential act of worship and a legally privileged relationship. Within the beliefs of the Roman Catholic Church the sacrament of reconciliation is a sacred encounter. Within the law of Oregon the priest-penitent relationship is a privileged relationship. The government is constrained from violating either.

Historically American jurisprudence has viewed certain relationships as essential to the individual and common good. As a consequence of their beneficial nature, particular relationships are encouraged by granting them certain privileges in law. Every state has rules that protect privileged parties from divulging confidential information. Communication between attorneys and clients, doctors and patients, husband and wives, clergy and penitents, are considered privileged and thus protected. Though such protections may complicate the search for truth, those relationships are viewed as too valuable to impede. In the case of the clergy, the law presumes that the good of society is advanced by encouraging the transformation facilitated by the clergy-penitent relationship.

The privileged status of the clergy-penitent relationship is viewed as furthering rehabilitation in society in general and among prisoners in particular. Its protected status ensures that individuals will feel secure to seek reconciliation with God through the disclosure of their hearts. Shielding clergy-penitent communications from governmental intrusion not only facilitates reconciliation but also fosters the transformation of society. Both individual liberty and the common good are advanced by protecting the private revelations present in religious encounters.

Confidentiality, therefore, not only is intrinsic to the sacrament of reconciliation, but also facilitates rehabilitation across a spectrum of religious activity. The spiritual and psychological conversion, facilitated by any appropriate religious encounter, would be impeded if religious confidences were compromised. To breach the clergy-penitent privilege undermines more than a Catholic sacrament. The religious liberty and societal good of all Americans is subverted if the ministry of reconciliation is impeded.

The clergy-penitent privilege accords protection regardless of whether a denomination offers sacramental confession. Although the privilege originated in this country to protect Catholic sacramental confession, all states today protect confidential communications made to any member of the clergy. In most states statutory language extends protection beyond sacramental confessions, to confidential communications made to a member of the clergy. Oregon's clergy-penitent privilege protects an array of religious communications. ORS 40.260 (Rule 506 of its Evidence Code) prohibits disclosure of "any confidential communication made to the member of the clergy in the member's professional character."

The archdiocese wants the tape—presently sealed and in the custody of the Circuit Court of Lane County—to be destroyed, because as long as the tape exists, the invasion of the sacrament is not a past event but a continuing transgression.

As of this writing, the archdiocese of Portland has filed a complaint in the U.S. district court asking for a declaratory and injunctive relief based on the Civil Rights Act of 1983, the Religious Freedom Restoration Act, Title 3 of the Omnibus Crime Control Act, and Article 1, sections 2, 3, and 10 of the Oregon Constitution. It's also seeking relief under the First and Fourteenth Amendments of the U.S. Constitution. The archdiocese wants the tape—presently sealed and in the custody of the Circuit Court of Lane County—to be destroyed, because as long as the tape exists, the invasion of the sacrament is not a past event but a continuing transgression. The existence of the tape itself, regardless of its use, desecrates the sacrament and violates religious expression.

The sacrament never should have been recorded; the tape's creation was and remains an impermissible act. Though the district attorney's office says that the tape will not be used as evidence, no ruling as yet guarantees that. The only reason to preserve the tape is to ensure its use, which is neither morally nor legally permissible. The only appropriate remedy is for a court to order that the tape, transcript, and any copies thereof be destroyed, and that persons with knowledge of its contents be prohibited from disclosing it.

As Bishop Pilla, president of the National Conference of Catholic Bishops, said about this incident: "Even when the apparent public good would be served by gaining access to the contents of the confessions of murderers, or terrorists, or others who contemplate doing harm to their neighbors, the Catholic theological tradition has insisted that the higher spiritual good protected by the sacramental seal must override any temporal considerations. The temporal good is always best served in the long run, when the eternal destiny and spiritual nature of men and women are given unconditional regard."

It is on this "eternal destiny"—realized through the death and resurrection of Christ—that the inviolability of what passed between God and Conan Hale ultimately rests.

"HOT, SEXY, AND SAFER"—

ILLUSTRATION BY RALPH BUTLER

AND SICK

In Response to a "Safe Sex" Program, Some Legislators Have Proposed the Parental Rights and Responsibilities Act. Is the Cure Worse Than the Disease?

BY OLIVER S. THOMAS

Imagine asking your 14-year-old, "What did you learn in school today?" and getting this answer: "We had a mandatory AIDS awareness program called 'Hot, Sexy, and Safer.' About 90-minutes' worth."

"And?"

"And," she replies, "it was the most embarrassing thing I have ever been to."

By now, although you would like to pretend that this conversation wasn't happening, you are listening intently as your daughter—red-faced—describes what she learned in school today.

The presenter of the program, your daughter says, was a young woman who began by telling the students that they were going to have a "group sex experience with audience participation." Then, using explicit language, the presenter spoke approvingly of oral sex, homosexual activity, and premarital sex—assuming, of course, that it was performed with a condom. She simulated masturbation and characterized one student's loose pants as "erection wear." The presenter had one male student lick an oversized condom, then had a female student pull it over the male student's head. She encouraged one student to show his "orgasm face," told another he was not having enough orgasms, and closely inspected a third student's backside, commenting that he had a "nice butt." Altogether, there were 18 references to orgasms and 14 to genitalia.

Imagine if this were your daughter and this is what she was taught in school. And even if you were long-suffering enough to resist filing a lawsuit—you could understand why others did.

Unfortunately, the judges who heard the case of *Brown v. Hot, Sexy, and Safer Productions* were masters of understatement. They acknowledged that by failing to allow students to opt out of the program, the school displayed "a certain callousness toward the sensibilities of minors." But, said the court, the school's actions did not rise to the level of a constitutional violation.

One wonders what would.

Lawsuits are bad enough, but unfortunately the story doesn't end there. In response to this case (and a handful of other less-significant ones like it), a group of well-intentioned (and not so well-intentioned) religious and civil liberties organizations have joined with Senators Charles Grassley (R-Iowa) and Jesse Helms (R-N.C.) to introduce a bill in Congress called the Parental Rights and Responsibilities Act. The name—which makes you want to stand up and sing the national anthem—is, however, a bit misleading. A better name might be the Let's Wreck Public Education Act or perhaps the Full Employment for Lawyers Act of 1996, but either way, this new bill is a case of the cure being worse than the disease.

This American-as-apple-pie-sounding legislation—by allowing every parent (kooks and criminals included) to exercise veto power over every decision of a public school—would undercut the authority parents and communities have delegated to school officials. If Grassley and Helms have their way, the most belligerent, bigoted, and bellicose parent will have as much control over the neighborhood school as the president of the PTA.

Here's some of the sweeping language being introduced not only in Congress, but in state legislatures throughout the country: "The rights of parents to direct the upbringing and education of their children shall not be infringed." Period. The federal law, which substitutes "interfered with" for "infringed," is arguably worse.

Suppose, for example, that Mr. Intolerant (remember, not every dad is a Bill Cosby) has a son or daughter at Sunnyside Elementary. And suppose that the teachers at Sunnyside—as they should—teach that in America all races and religions are entitled to equal treatment under

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the law. If Mr. Intolerant disagrees, he can sue the school for interfering with his parental rights, and in many cases can force the school to pay his attorney's fees. Multiply this example a thousandfold, and you understand what life would be like under these new laws.

In one California town I recently met a "math atheist"—a parent who believed mathematics was "of the devil" and who objected to any such course his child might take. If the public school challenged such tomfoolery, no doubt it would be met with a lawsuit under this new bill. Remember, the rights of *all* parents to control the education and upbringing of all children "shall not be infringed."

The Supreme Court has ruled that parents have the primary right to control the education and upbringing of children (*Pierce v. Society of Sisters*). The state of Oregon, in *Pierce*, had outlawed private and parochial schools, thereby forcing all students into the public system. Parents challenged the restriction and prevailed.

In a recent statement of principles entitled "Religious Liberty, Public Education, and the Future of American Democracy" (released before these bills were introduced), leading educational groups in the United States publicly pledged their fealty to the principle of parental rights: "Parents [not schools] are recognized as having the primary responsibility for the upbringing of their children, including education."

Despite an occasional bad decision—like the *Hot, Sexy, and Safer Productions* case—the primacy of parental rights is well established in the law. Courts, by and large, defer to parents to make judgments on behalf of their children in most situations.

Parental rights were buttressed recently by passage of the Religious Freedom Restoration Act (RFRA). RFRA protects the rights of parents and students to practice their religion without government interference unless a "compelling interest," such as health or safety, is threatened by the religious practice. Similarly, state laws routinely give parents the right to excuse their children from such courses as sex education. In short, there is little evidence that a new parental rights law is necessary. To the contrary, most problems are one-time events in which normal procedures have broken down.

To say that parents have the primary right is not to say that theirs is the only right, however. We all have a stake. The statement of principles says: "Parents who send their children to public schools delegate to educators some of the responsibility for their children's education. In so doing, parents acknowledge the crucial role of educators.... All citizens must have a shared commitment to offer students the best possible education." These are not just the words of educational groups; they were also spoken by the Christian Coalition and the National Association of Evangelicals, signers of the statement.

Because everyone has a responsibility to protect children, there are limits to what parents can do. A parent's rights must be balanced against those of a civil society. For example, we don't allow parents to deny children basic medical treatment, though many would do so, even in the name of religion. Nor do we allow parents to deny their children a basic education. What sort of society would give an illiterate parent full control over a child's education? Johnny must be taught to read, and in most cases it's the public school's job to do it.

Parents are temporary caretakers of their children—"stewards" in biblical terms—who have been entrusted with God's most precious possessions. As stewards we have wide, but not unlimited, discretion. If we fail to exercise our duty to provide for the basic health, safety, and welfare of our children, society should intervene.

Public schools have a unique opportunity to help parents discharge their responsibilities. By hiring qualified professionals, schools can offer expertise even the best parents don't have. From calculus to chemistry to computers, schools equip students to be life-long learners capable of competing in a global economy.

By electing school board members, parents retain control over their neighborhood schools, thus ensuring maximum accountability to the community. In the words of the statement of principles: "Children and schools benefit greatly when parents and educators work closely together to shape school policies and practices and to ensure that public education supports the societal values of their community without undermining family values and convictions."

That principle is the key to making schools work for families. Not more laws and lawsuits. Not creating an adversarial relationship based on fear and misunderstanding. And not giving the crummiest parent in town veto power over everything that happens in the classroom. The key is people working together to put children first.

When that happens, parents won't have to cringe when they ask their children: "What did you learn in school today?"

"HELP YOURSELVES"

Rev. Eddie McDaniels: Trying to get Bibles distributed in public schools.

BY ROBERT J. BYERS

West Virginia School Board Tries to Find a Way to Distribute Bibles in Public Schools.

Led by 39-year-old Rev. Eddie McDaniels of the nondenominational Christian Fellowship Church, more than 20 pastors and hundreds of residents in rural Upshur County, West Virginia (population 23,000), asked in late 1994: "Is it against the law to place a display of religious materials—Christian or other—in the county's schools for children to pick up as they please?"

What prompted the query was a school board decision to stop members of Gideon International from distributing Bibles to students in fifth-grade classrooms. Though the practice continues in some West Virginia counties, the Upshur school board, responding to complaints, voted in 1989 that no religious or political materials would be distributed.

As a result, in 1994 McDaniels and company asked about setting up a box or a table where religious literature could be picked up. The five-member school board instructed Superintendent Lynn Westfall to inquire about the legality of such an action.

"We could find no United States Supreme Court decisions that apply the First Amendment in a situation identical to the one you pose," replied the firm of Bowles, Rice, McDavid, Graff, and Love. The lawyers also said they could find no identical case law in any of the lower courts. Nevertheless, after analyzing similar cases, they advised against any distribution of religious materials.

Yet in a letter to school board members, Superintendent Westfall said the board would fall from grace with county residents if concessions were not made.

"We will pay dearly," wrote Westfall, who suggested offering the materials one day each school year.

McDaniels, with support from two Democratic West Virginia state senators, Mike Ross and Walt Helmick, decided the board's 1989 policy prohibiting "distribution" of materials did not prohibit "making materials available." At a December 1994 meeting—with hundreds of vocal supporters packed in the hall—the board voted 5 to 0 to reinterpret their policy, allowing the county's 12 schools one day a year

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to make religious materials available.

February 27 was designated. Picture Bibles were to be displayed for the elementary schools, and King James Versions for the upper grades. All would be placed on tables or in boxes at a central location in each school, with a sign saying "Help Yourselves." No one would be stationed at the spots, but an announcement would be made to let students know that the materials were there.

Before the board vote, scant opposition had been heard, but on February 24, four county residents, backed by the state chapter of the West Virginia Civil Liberties Union, successfully petitioned for a federal injunction.

"I never thought they'd get it stopped," McDaniels said. "It just didn't seem as though there was time."

Jeannie O'Halloran: "If they were really interested in distributing Bibles they could do it at the Strawberry Festival."

Apparently there was. U.S. district court judge Irene Keeley granted the injunction pending a full trial, which took place in late May. Robert Bastress, a West Virginia University law professor with a constitutional rights speciality, and Allan Karlin, a civil rights specialist from Morgantown, West Virginia, represented the parents for the ACLU. The school board retained the law firm that had initially advised against the issue, and also invited lawyers from the Rutherford Institute, which deals with religious liberty disputes, to intervene. Keeley said she would decide the case before the school year started, but no decision has yet been released.

A day before the trial, evangelist William Murray, son of radical atheist Madalyn Murray O'Hair, drew 700 residents to a fire-and-brimstone rally at a local high school football field. Murray said that many of America's problems stemmed from the 1962 court case banning legislated prayer in school, which his mother initiated.

"This secularism, this godless repression," he said, "is being felt here in West Virginia today."

He warned, too, that "you, the people, were prohibited from distributing Bibles. Before Hitler burned books, he banned them."

Whatever the repercussions behind the principles of this case, the fight never reached a boiling point in the county, because nearly everyone was on the same side.

One exception is Jeannie O'Halloran, 44, director of community services at West Virginia Wesleyan, a small Methodist college in Buckhannon, the county seat. Divorced, she is raising an 8-year-old daughter and an 11-year-old son at her home in the country.

"The ACLU had said they'd represent anybody who wanted to stand up against this, but people were hesitant," O'Halloran said. "I think people are afraid of being perceived as anti-Christian in a very Christian area. I'd never been involved in anything like this before, but I said to myself, 'To live in a community, you have to first live with yourself,' so I came forward."

O'Halloran grew up in Washington, D.C., and moved to Upshur County 16 years ago. While pregnant with her first child, the former Catholic picked up a book on religion and went shopping for a faith she could live with. She is now a Quaker.

"I did that on my own, in my home," said O'Halloran. "Religion is not the business of the schools. Actually, it's probably one of the last things that's still the business of the family."

O'Halloran also has questions about the specific use of the school to promote religion.

"If they were really interested in distributing Bibles," she said, "they could do it at the Strawberry Festival. They could have done it at the local carnival—every kid in the county was there."

If Judge Keeley allows the school board to go through with the plan, O'Halloran said she would not keep her children home from school the day the materials were available.

"If they want a Bible, they can pick one up, but if they don't want a Bible, are they going to be looked down upon by their classmates?" she asked.

Bastress and Karlin, the lawyers for the ACLU, said during the trial that McDaniels' plan constitutes an endorsement of religion because it sends a message to those who don't pick up a Bible that they are outsiders, and to those who do that they are favored members of the school community.

"The plan will result in religious coercion because peer pressure . . . will cause non-Christian children to take the Bibles or picture Bibles in spite of their own beliefs and their parents' desires, and because the plan delivers to a religious group a captive audience created by the state's compulsory attendance law," the lawyers wrote.

Gary Frush, school board president, rejects talk of coercion and peer pressure. For him, the real issue is parental guidance.

"As a parent I believe it is my responsibility to teach my children about the things they may encounter in school and in life," said Frush.

A senior vice president at a regional bank, Frush, 53, is active in the United Methodist Church and has served on the school board since 1982. His two daughters have graduated from Upshur County schools. He said he tried to keep his personal beliefs out of the board vote, but added he would not have minded if his daughters had access to Bibles while in school.

Frush said that although the vote was not based on politics, the number of supporters of this issue far outweigh the opposition. "I know I wasn't elected for life," he said.

One question board members had to address was what religious materials would be left for pickup. According to the board's updated policy, any religious or political faction can leave materials on the tables. Questions of satanic literature being left quickly arose.

"One thing I told the supporters was that if we do this, we have to do it for everybody," Frush said. "I said, 'If we try to prohibit any group, the courts will really have a field day.'"

Supporters of the plan, such as the Reverend McDaniels, worked a clause into the policy that they believe will keep offensive materials away.

"The way I understand the rule to read, the only materials that may be left on the tables are materials sponsored by local businesses," said McDaniels, who has more than $7,000 worth of business-sponsored Bibles ready to go. "Now, what local merchant is going to buy a copy of satanic literature to put in the schools? In all probability, there won't be material from any other faiths."

McDaniels never dreamed that his plan to make God more accessible to schoolchildren would result in so much difficulty. He's simply concerned that some children may never have the opportunity to discover the benefits of religion. McDaniels grew up in an Upshur County household nearly devoid of faith. When the Gideons gave him a Bible in his fifth-grade classroom, he set it aside until later, in high school, when he joined a chapter of the Fellowship of Christian Athletes.

"Then I kept that little Gideon Bible in my shirt pocket next to my heart," he said. "And I found that there's nothing like owning your own Bible."

McDaniels, now a gym teacher at the Buckhannon-Upshur High School, is the father of two school-age children. He also has about 200 parishioners who attend his independent church. Some, such as Justin Bowers and Michael Shaw, are boys who attend his physical education classes. Bowers and Shaw say the issue of religion in schools is talked about in the halls of Upshur's schools, but they don't feel their classmates have all the information.

"They think it's just for Bibles, and I have to explain to them that it's for any religion with a business sponsor," said Bowers, 15. Bowers and Shaw have no problem with a table of religious materials and think it's a good idea.

"Religion is very much a part of our history, and I think it gives people a moral standard," Bowers said.

"This idea gives students who haven't been brought up in a church the opportunity to learn about religion," said Shaw, 16.

Asked about the possibility of satanic or other such literature finding its way to the tables, Bowers said, "God can compete."

Dean Whitford, a Rutherford Institute lawyer, is working with the school board lawyers on this case.

"The school board has in the past allowed groups like Little League, 4-H, and Boy Scouts to come to the school, speak to students, and hand out their literature," Whitford said. "For the board to single out one group based strictly on the religious nature of their materials is viewpoint discrimination. So this case is not an ordinary Establishment Clause case, but instead a case about how people try to use the clause to suppress private religious expression."

Hilary Chiz, director of the West Virginia Civil Liberties Union, says this isn't a case about freedom of expression, but about a group of Upshur County Christians trying to foist their beliefs on others.

"We would defend," she said, "the right to distribute on sidewalks in front of school property. But once they breach the threshold of school property or, in this case, use school facilities, they have crossed the line into constitutional impermissibility."

Had McDaniels known that his proposal to the school board would have resulted in such a legal battle, he probably would never have made it. "But," he said, "now that I'm in it, I'll see it finished, whatever the outcome. But had I known what we'd be facing, I would have said, 'Find someone else.'"

Gary Frush: Tried to keep his personal beliefs out of the board vote, but added he would not have minded if his daughters had access to Bibles while in school.

KIDZ' STUFF

Should Children Have Religious Rights?

BY ROBERT A. YINGST

Does the state have the right to force children to attend a religious school that teaches doctrines contrary to their own?

A Michigan court recently ruled no.

Eric Grashius was a 13-year-old who, despite his mother's objections, obtained a court order that allowed him to attend a Seventh-day Adventist school rather than a Baptist one.

"I'm not against Baptists," Eric said. "I just felt out of place. They taught things I don't believe."

Having been raised in a Seventh-day Adventist home, the tall, lanky 13-year-old (now 14) had been attending the Village Seventh-day Adventist School in Berrien Springs, Michigan. When his parents, Sally and Al, divorced, Eric and his two siblings moved with their mother to nearby Marcellus, where she enrolled him in the Howardsville Christian School, affiliated with the Baptist Church. Though Sally remains an Adventist, she placed him there because the 80-mile round trip to the Berrien Springs school was too long a drive to make so many times a week.

Eric, with the support of his father, argued that placing him in the school violated his "sincerely held religious beliefs." According to Eric, the school taught doctrines that he didn't believe.

"For example," Eric said, "I believe that the Bible teaches that the dead sleep until the second coming of Jesus, not that they go right to heaven or hell, which the Baptists teach. That's an important doctrine for me."

Another time, when asked on an exam what day Christians went to church, Eric wrote "Saturday," the day that he as a Seventh-day Adventist went to church. The answer was marked wrong. After his mother came to the school and explained the situation, the teacher changed the grade, but that exemplified the tension that Eric faced.

"I just didn't fit in," he said.

At a hearing last May a Berrien circuit court ruled that it would be in Eric's best interests to remain in the Baptist school. However, that fall, when Eric's mother came to pick him up from his father's house and bring him back to the school, he refused to go (and with Eric being more than six feet tall, his mother wasn't in a position to drag him bodily out to the car). The parents returned to court just a day before classes at the Adventist school were to begin, and this time a circuit court judge ruled in favor of allowing Eric to attend the Adventist school. The order is now permanent.

"I was very proud of Eric," his father said after the hearing. "Here was this 14-year-old sitting there before a judge, standing up for his religious beliefs."

Eric's case touches the complicated issue of the religious rights of children, particularly those caught in the middle of a divorce. Though current state law doesn't favor a child trying to assert constitutional rights in such a setting, shouldn't the state—through the courts or through various agencies—consider the sincerely held religious beliefs of minors? If the state allows the "reasonable preference" of the child to be considered in custody decisions, shouldn't it consider the sincerely held religious beliefs of the child when it comes to school placement or religious issues, particularly in the context of divorce?

In some instances, the state has viewed the decision concerning religious issues to be one of "custodial prerogative," which places the custodial parent at a distinct advantage when choices are made concerning what religious school the child will attend. However, when

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this custodial prerogative places a child in a religious school that conflicts his or her sincerely held religious beliefs, does the child have any rights?

In these situations the child is basically powerless, unless one of the parents intercedes. Even then it is the competing financial, mental, physical, and moral quotient of the parent that often dictates this choice. Though no one denies the parents' prerogative regarding the religious upbringing of their children, shouldn't a 12- or 13-year-old (as opposed to 7- or 8-year-olds) have some right under the United States Constitution to influence this decision-making process?

Eric Grashius: The 14-year-old fought in court for his religious rights.

After the court appointed an attorney for Eric, a two-year legal struggle continued over Eric's school. But the courts are reluctant to allow this type of intervention. In response to Eric's constitutional claims, the lower court relied on the now-famous Baby Jessica decision (*Clausen,* 442 Mich. 648 [1993]), claiming that the child has no independent rights, even under the Constitution, to advance his/her own "best interests" under the Uniform Child Custody Act.

Under the Religious Freedom Restoration Act, however, the state is prohibited from "substantially burdening" the free exercise of religion. Through state laws and the rules and regulations of the agencies, which often administer the "best interests" of children, actions can substantially burden the free exercise of a child's religious beliefs (assuming that children have, at least in a limited sense, a right to exercise their religious convictions freely).

By imposing a "custodial prerogative," which gives the state's imprimatur to a religious choice by one parent, the court directly interferes with the child's religious beliefs. In Eric's case, this mind-set produced a more subtle intrusion into his religious beliefs, because the parent with the power can make choices that the state is loath to change. The longer Eric was required to attend a religious school that conflicted with his own religious beliefs, the greater the likelihood that he would have been required to stay there. It can often take years to resolve these types of disputes, and usually the courts favor the status quo. Consequently, time works against children placed in a religious school that teaches doctrine at odds with their own.

When divorce occurs, strategies should be developed that will accommodate a child's religious needs just as much as other needs. Because the state is actively involved in this process and can compel parents to do certain acts that will impact on the child's religion, ways must be found to assure that these actions will—as much as possible—not deny a child's religious freedoms.

The Uniform Child Custody Act specifically gives the court the power to decide the capacity and disposition of the parties concerning the "continuation of the educating and raising of the child in its religion or creed, if any." This task can be accomplished without violating the Constitution, but only by taking the statements of the child's religious beliefs at face value and resisting the temptation to evaluate the relative merits of competing religious philosophies when it comes to the education of children.

It is clearly impossible for the "friend of the court" or any other state agency to make decisions (without comparing the competing faiths) in regard to which religious school a child should attend. A child whose religious rights are being affected in this way would be at risk just as much as if his/her health or physical needs were not being met. Even subtle or unobtrusive pressure can eliminate the right to believe altogether and place an unreasonable burden on a child's religious liberty. Where the state is involved in the process of administering laws, it is not permitted to take actions that will interfere with the free exercise of religion except under very limited circumstances. At

the very least, a child should be entitled to the same protections.

In a recent appellate court decision in Florida, the ruling stated that this area of conflict requires a hands-off policy by the courts: "When the matter involves the religious training and beliefs of the child, we do not agree that the court may make a decision in favor of a specific religion over the objection of the other parent. *Sotnick v. Sotnick*, 650 So. 2d 157 (Fla. 3d DCA 1995). As with married parents who share diverse religious beliefs, the question of a child's religion must be left to the parents, even if they clash. A child's religion is no proper business of judges" *(Gigi Abbo f/k/a Gigi Briskin, Appellant v. Alan D. Briskin, Appellee*, 4th District Court of Appeals, No. 94-1152. L.T. Case No. CD93-2892 FY [Sept. 1995]; appeal from the Circuit Court of Palm Beach County, Fla.).

Eric in front of the school he wanted to attend: "I'm not a Baptist. I'm not a Methodist. I'm a Seventh-day Adventist."

In this case, Gigi Briskin was a Roman Catholic and Alan Briskin a Jew. She had two young children by a previous marriage who had been raised as Catholics. She and Briskin discussed religion often, and she agreed to convert to Judaism after they married. Their daughter was born nearly a year later, and shortly after the birth Mrs. Briskin converted back to Catholicism. Consequently, when the Briskins divorced, the child's religion was a major issue. The lower court decided that it would require the mother to "do everything in her power" to raise the child in the Jewish faith. The court of appeals reversed, saying that it was not the business of the courts to tell a mother in what religion she should raise her child.

The Uniform Child Custody Act recognizes that religious freedom is an important right both for parent and child. Certainly, the presumption is in favor of allowing the child to be fully educated in his/her own religion, "if any." Consequently, when action by the state results in the denial of a legitimate exercise of religious freedom, the state should be required to show an overriding interest of the highest order. Even if a compelling secular interest is demonstrated, intrusion into one's individual religious freedom should be pursued only if nonintrusive measures are not available. Even then the state should not be allowed to proceed if this would involve an excessive entanglement with religion.

The issue for the state should be narrow. Should the court or some other state agency be permitted to compel a child to attend a religious school different from the child's own religion? The answer, all things being equal (which they rarely are), should be no. At least the burden on those who seek to move a child from one religious school to another against the child's wishes should be exceedingly high. Otherwise, unconstitutional entanglement in competing religious philosophies is unavoidable.

The issues in divorce are often acrimonious and complicated, but it is apparent that a child also has a limited right flowing from the First Amendment. Seeking the appointment of an attorney for the child is one way to assert these rights when the parents are unable to. While judges are sometimes resistant to the idea that anyone (particularly a child) should be able to resist the order of the court on religious grounds, seeking the appointment for the special purpose of advancing these interests will protect the child and will sensitize the court to the importance of these rights.

In an age when many states want to lower the age at which they will execute minors for criminal acts, how strange that some would argue that a child who expresses a sincerely held religious belief should be stifled from expressing that belief, as in Eric's case, when he was forced to attend a religious school that espoused doctrine different from his own.

During the battle Eric had summed up the issue with these words to his father.

"Look, Dad," he said. "I'm not a Baptist. I'm not a Methodist. I'm a Seventh-day Adventist."

Fortunately, in his case the court took him seriously.

The Canadian Conundrum

Who Controls Religious Education in Canada?

KEVIN FEEHAN AND LYNN NEUMANN McDOWELL

Though ties to his native Newfoundland are still strong (his grandfather Joey Smallwood was Newfoundland's first premier), Bruce Smallwood was glad to be in Alberta. What lured this son of the sea to this landlocked province? It was the prospect of a religion-infused education for his three children, subsidized with government money.

Unlike many U.S. citizens who view government funding of any religiously based activity as abhorrent, Canadians see religiously infused education as a birthright. In fact, unlike the U.S., where the appearance of church/state separation is jealously guarded, in Canada each province must provide money for certain schools where the offering of prayers and the public reading of religious texts are part of the educational program.

The right to a religiously infused education comes with privileges that vary from province to province, because each drove its own bargain with the federal government when it joined Canada. But a privilege common to all denominational schools that fall within the protection of the Canadian constitution, according to the Supreme Court of Canada, is access to financing for

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religious based education.[1]

Section 93 of the Constitution Act of 1867, which applies to the provinces, protects all "denominational" aspects of denominational schools, plus all the nondenominational aspects necessary to preserve them. Because teaching denominational aspects costs money, the current interpretation of S. 93 is that church schools financed by public funds when the province entered confederation are entitled to funding.

The mechanics of how the government pays for parochial schooling varies from province to province (in Alberta, for instance, taxpayers designate on their income tax returns whether they wish to support the "public" or "separate" system), but each province does pay for religious training.

Recently, however, this traditional Canadian value was challenged, not by a groundswell of Canadian parents, but by government itself. Though Newfoundland and Alberta lead the political and legal challenge to present constitutional interpretation, other provinces are watching.

Nothing's sure except one thing: the thorny issue of religious freedom and the public interest in education will not go away in Newfoundland.

The reasons for challenging the status quo range from money management to a struggle for more government control. Emotions run deep on both sides. In Newfoundland the struggle was bitter, intense, and anything but decisive: Newfoundlanders voted by a slim 52 percent to 48 percent to end the provincial system, where a myriad of churches each ran their own schools, funded entirely by a financially struggling government.

The Newfoundland government itself is divided on how to proceed. There's talk of government expropriation of the schools themselves, and of retaining part of the church-run system. Few if any church-run schools are expected to survive in the troubled fishery-based economy. Nothing's sure except one thing: the thorny issue of religious freedom and the public interest in education will not go away in Newfoundland.

Or in any other part of Canada for that matter, including Alberta, where colorful controversy has surrounded government funding of parochial education from the start.

The irony of the Smallwood story is that shortly before his kids skipped off to one of Alberta's church-linked schools, nearly 2,000 miles away from Newfoundland's referendum campaigning, the Alberta government introduced Bill 19, the School Amendment Act, 1994.

Bill 19 can be understood only in the context of Alberta's unique constitutional situation. Alberta's tandem public/separate, government-funded education system arose in an era when most Canadians had some religious affiliation, either Catholic or Protestant. While "public" is now usually synonymous with "secular," where the dominant proportion of the taxpayers designate themselves as supporters of the Catholic school system, the public schools are in fact Catholic, and the separate schools are secular.[2]

From 1905, when the Alberta Act created the province as part of Canada, no government had suggested a fundamental change to the province's educational arrangement. But in 1994, riding a wave of popular sentiment that governments must cut spending, the new Klein government levelled its sights on education.

In a province where school facilities, equipment, and staff can vary widely because of differences in tax base (more taxes collected means more is allotted to schools within a school district), everyone agreed that the inequities needed to be addressed. The solution, said Mr. Klein's government, was for the government to assume powers that had been given to the two boards at confederation: the power to set up or close school districts, and the power to collect taxes for their support. In effect, the government took direct control of spending and curriculum administration.

Previously the government paid boards a flat rate per pupil, and the rest of a district's money came from school tax collected from local ratepayers. The full amount was used in whatever way the board thought wise. Under Bill 19's "equitable" formula, the boards no longer assess school taxes. The government gives an increased, equal amount per pupil to each school, and the government, rather than board administrators, decides when, where, and how educational funds are spent. Thus the essential issues of Bill 19 were money and a change of control. Essentially Bill 19 gave the government both.

The first casualty was kindergarten. The massive cuts to this branch of education meant that very few children would be able to attend a full kindergarten program. Unpopular though the cut was, Mr. Klein planned to weather it. What he and his cabinet forgot was that money flowing to the separate/Catholic schools was also used for *religious* purposes, and many saw the cutting of the kindergarten as the edge of a wedge that would lead to greater government intrusion into religious education. The attitude

of many was, no government, by controlling the money, was going to tell them how to run their religiously infused program.

"It's a modest, cost-saving proposal," said the government spin doctors, "and one that the province can implement at will. After all, education is completely within the province's jurisdiction, isn't it now?"

In answer, the public and separate school boards slapped the government with a lawsuit that cost each side an estimated $1 million.

To prepare their case, the school boards' lawyers read historical biographies, hundreds of cases, delved into public archives, and even collated the tax records of preconfederation Alberta towns, creating a comprehensive social/political record of the circumstances surrounding the Alberta Act of 1905.

That picture, say the boards' lawyers, is one that can't be altered by the province at will, because S. 17(1) of the Alberta Act[3] guarantees that, short of constitutional amendment, the rights of taxpayers regarding education must continue as they were at the time of entry into confederation. In short, that constitutionally guaranteed picture looked as if Alberta taxpayers had the right to choose whether they will support the public or the separate school system, a right they would lose under Bill 19, where all the money goes into one pot to be controlled and distributed by the government.

Before Bill 19, if they choose the separate system, they had the right to the following: (1) establish a separate school district that can assess school taxes on separate system supporters in that district; (2) not be assessed for school taxes by anyone other than the separate school district; (3) through the separate school district, set the rate of the school taxes imposed; (4) exercise all the same rights, powers, privileges, and methods as the public school districts, and be subject to the same liabilities; (5) and where property of corporation is held jointly with people who don't support the separate system, to split taxes assessed on the basis of the percentage interest held by the separate system supporter. All this they would lose under Bill 19.

Historically, say the boards' lawyers, the Alberta government's only involvement with educational funding from this declared assessment base has been as collector of the boards' money.

Is the point worth the boards' expense? Many Canadians would say yes. Schools teach more than academics. They teach a way of life[4] and they don't want this government interference.

When Alberta joined confederation, education in Catholic schools worked on an "infusion" or "permeation" approach. Religion was the lens through which every subject from literature to mathematics was viewed. Catholic schools, testified experts, considered themselves bound by two sets of laws: the civil law, and the Catholic Code of Canon Law. The canon law required Catholic children to be educated in schools where religious training takes place and where a truly Catholic atmosphere pervades the whole program. Though the court battle was based on the right to funding, for Catholic Albertans, the right to exercise one's religion in everyday life—including the education of one's children—is a fundamental issue in the struggle over Bill 19.

In his written submission, Kevin Freehan, counsel for the separate boards, expressed the connection this way: "In summary, it is not possible to separate the 'religious' or 'denominational' aspects of separate schooling from the 'academic' aspects of that schooling so as to divide or parcel taxes from a declared ratepayer assessment base.

"As the 'religious' or 'denominational' aspects of schooling infused or permeated the entire separate school curriculum, so too the taxes collected from the declared ratepayer assessment were necessary to support that entire curriculum."

"Denominational status does not exist in a vacuum,"[5] wrote Supreme Court of Canada Justice Beetz, reiterating the words of an earlier Supreme Court of Canada judge. Without a doubt the Bill 19 case will absorb part of the vacuum that still surrounds the multifaceted question of denominational education rights in Canada.

But only part. What about the approximately 120 private schools in Alberta that provide a religiously infused education for children of non-Catholic faiths? The present interpretation of S. 93 of the Constitution Act, 1867, is that a right to such parochial education is not protected. The underlying principle of S. 93, however—the right to receive an education infused by one's own religion—is being pursued in another case under another part of the constitution, the Constitution Act, 1982.[6]

When judgment was rendered almost six months after the hearing, the judge did not find it necessary to discuss many of the issues, including whether the separate boards had the

Though the court battle was based on the right to funding, for Catholic Albertans, the right to exercise one's religion in everyday life—including the education of one's children—is a fundamental issue in the struggle over Bill 19.

right to tax. Because the new amendment allowed the separate boards, but not the public boards, to opt out of the new funding structure, Justice Smith found that to the extent that the new legislation allowed only for one to opt out, it was invalid because the Education Act required that both the separate and the public boards be treated the same.

Many voices and judges across Canada are expected to be heard on the issue of denominational education, including those who are appealing the latest decision. The separate boards of Alberta involved in the appeal only to the extent necessary to protect their public interests, but if the public boards are successful, the case law may take a new direction.

In short, the recent Alberta decision is not the final word on the place of religion in education. Not for the two Alberta school boards, and not for the private, religiously based schools in Alberta.

Maybe not even for Bruce Smallwood.

FOOTNOTES

[1] *Protestant School Board of Greater Montreal et al. v. Attorney General of Quebec et al.* (1989), 1 SCR 344 at 415.

[2] There are three such districts in Alberta. It is also possible for schools with other religious affiliations to be designated as "alternative schools" within one of the publicly funded systems (in Bill 19 terms, "charter" schools) if they can be said to be "cultural" schools. For example, the Jewish schools in Edmonton are part of the public board, while in Calgary one Jewish school is part of the separate board, and one is not because of its declared religious basis.

[3] S. 17(1): "S. 93 of the British North America Act, 1867 [now the Constitution Act, 1867], shall apply to the said province, with the substitution for paragraph (1) of the said S. 93, of the following paragraph: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to the separate schools which any class of persons had at the date of the passing of this Act, under the terms of the chapters 29 and 30 of the Ordinances of the North-West Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

"(2) In the appropriation by the government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any act passed in amendment thereof or in substitution therefore, there shall be no discrimination against schools of any class described in the said chapter 29."

[4] This fact is long recognized in Canada and is illustrated in the struggles that have always attended educational questions.

[5] See note 4.

[6] *Adler v. Ontario* (1994), 19 O.R. (3d) 1, has received leave to appeal to the Supreme Court of Canada and is expected to be heard this winter.

INVEST IN LIBERTY

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THE CATHOLIC FACTOR

BY WINTLEY A. PHIPPS

The burning question in Washington this fall is Which voters will decide who will be the next president of the United States? Will the decision rest with Reagan Democrats, Moderates, Independents, or Perotistas? No one knows for sure, but one consensus emerging from Democrat and Republican pollsters is that the key to 1600 Pennsylvania Avenue appears to be—the Catholics.

There was a time in America when this possibility struck terror in the hearts of Protestant clergy.

When John Fitzgerald Kennedy ran for president in 1960, he was forced to deal with this intractable, Protestant theological concern: the role of the Catholic Church in American politics. In a bold political move Kennedy publicly affirmed his belief in the separation of church and state, a belief many assumed to be an unshakable Protestant ethic.

Time magazine, in September 1960, reported: "Kennedy stands a good chance of winning if he can solidify the Democratic Catholic vote that swung to Eisenhower, a Republican president, in 1952 and 1956."

Time continued, almost fortuitously, "Nixon's hold on conservative Catholic Republicans is strong, but our correspondents last week detected some movement among Catholics away from Nixon into the undecided sector, under the force of the religion debate." That movement of Catholic swing voters probably cost Richard Nixon the presidency in 1960.

Throughout history, America, a nation largely made up of self-avowed Protestants, has had a past filled with persecution and discrimination against Catholics and other minorities.

For more than 20 decades, Catholic believers deemed guilty for the persecution of Protestants in Europe have been hounded and persecuted in America because of, among other things, their doctrinal belief in the theological and political supremacy of the papacy.

Like other minorities, Catholic voters sought protection in the polling booths, and found themselves consistently and conscientiously voting Democratic.

In the 1980 presidential election things changed significantly. Republicans won 49 percent of the Catholic vote, Democrats 42 percent. Ronald Reagan—with the emergence of a new swing-voting block made up of Catholic voters known as Reagan Democrats—became president of the United States.

In 1984 Reagan was reelected capturing 54 percent of the Catholic vote. In 1988 George Bush won the White House with 52 percent of the Catholic vote. In 1992, for the first time in 12 years, Bill Clinton, a Democrat, won the Catholic vote and the presidency.

In 1994 the Republicans, for the first time since 1980, won the Catholic vote and control of Congress. At first glance this may seem like an unusual coincidence, but it is a fact not unnoticed by the Republican or Democratic parties.

Since 1990 the political party that has won the Catholic vote has won the House of Representatives, the Senate, and the White House.

In presidential elections the Catholic vote is emerging as more crucial than ever. Catholic voters have their strongest leverage in California, New York, Texas, and Florida, where most of the electoral college votes are up for grabs.

In key states like Michigan, Ohio, Illinois, Wisconsin, Pennsylvania, New Jersey, and Connecticut, Catholic voters account for almost 41 percent of the overall vote. It is also noteworthy that each of these states has a Catholic governor.

Although traditionally Catholic Democrats have been political allies of those who believe in strict church-state separation (a fact which still baffles the minds of many eschatologists), lately there has been a shift in Catholic voter allegiance. One explanation may be that voters of all denominations are now voting for social and fiscal conservatism regardless of its impact on religious liberty issues. Voters want welfare reform, lower taxes, tough measures against crime, and a renewed emphasis on family values—all viewed as Republican issues. Support of church-state separation is no longer a priority.

William B. Prendergast, a political scientist and author of *Catholics and the Republican Party,* states that in the days of Democratic dominance, a Democratic presidential candidate could count on two thirds of the Catholic vote. Catholics today are much more volatile as their voting patterns often reflect differences between the teachings of their church and personal secular convictions.

The Christian Coalition and other politically conservative Protestant groups, realizing that Republican political success is not assured until the Catholic vote is secure, have been forging alliances with Catholic groups and other conservative voting blocks based on a shared sociopolitical agenda.

This coalition, which includes political conservatives from many denominations—including those traditionally aligned with church-state separation causes—will be a formidable one. How formidable? We'll know more after the election.

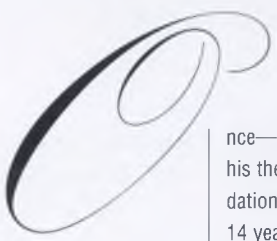
One thing does seem sure: Whoever wins the White House in November will need a majority of Catholic voters to do it.

Wintley A. Phipps is U.S. Congress liaison for the Seventh-day Adventist Church.

LIFERS

"But that judges of important causes should hold office for life is a disputable thing, for the mind grows old as well as the body. And when men have been educated in such a manner that even the legislators cannot trust them, there is a real danger." —Aristotle

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."—Article III. 1, U.S. Constitution



nce—between the publication of his theory of relativity and the validation of the theory by experiment 14 years later—Albert Einstein was asked, "What if the experiment didn't agree with the theory?"

"So much worse for the experiment," Einstein responded. "The theory is right!"

Einstein's hubris, of course, was matched by his genius; if only the same could be said for America's federal judiciary, whose genius at times seems (like Newton's law of gravity) inversely proportional to the square root of its arrogance. After all, these men and women—who answer to no constituency, who face no voters, who are outside democratic constraints—can by either excruciating legal analysis or mere emotional whim (or something in between) invalidate any city ordinance, state law, or federal statute, anything done through the electoral process, no matter how many overwhelming millions of citizens voted for it. And to boot, these unelected judges, apart from "high crimes and misdemeanors," are appointed for life—no matter how outrageous their rulings.

And guess what, folks—that's precisely the way it was meant to be.

America's Founders, whatever their other foibles, were somewhat of an aristocratic, snobbish brood who basically shared Aristotle's aversion to pure democratic principles. The Philosopher's thinking went like this: if your shoes fall apart, you get a shoemaker; if you rupture your spleen, you get a doctor; but you don't get a doctor to fix your shoes, or a shoemaker to fix your spleen. Why, then, should the common people, unqualified to govern, have a powerful political role? Neither the "election of magistrates nor the calling of them to account," wrote Aristotle, "should be trusted to the many."

Echoing similar principles, James Madison, in *Federalist No. 10*, warned that "the many" would not check "the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property."

The Founders' problem, however, was that the American Revolution was successful, not just as a political revolt, but as a social one as well. Taking seriously all these grandiose utterances and profound platitudes about equality and freedom, the common folks (at least the white male types) unleashed a wave of democratic forces unforseen—and unwanted—by the Founders, who then framed a document (the U.S. Constitution) to restrain what the Revolution let loose.

"The federal Constitution of 1787 was in part," wrote historian Gordon S. Wood, "a response to these popular social developments, an attempt to mitigate their effects by new institutional arrangements. The Constitution, the new federal government, and the development of independent judiciaries and judicial review were certainly meant to temper popular majoritarianism."

Of all the various devices—indirect election of senators [changed by a constitutional amendment in 1913], indirect elec-

tion of the president, staggered terms of office for senators, and a long senatorial incumbency of six years—contrived to thwart the passions of the mob, the most effective was the federal judiciary, which is not only immune to the democratic process, but (since John Marshall pulled a fast one on his nemesis Thomas Jefferson in *Marbury v. Madison*) can completely overrule that process as well.

If, for instance, duly-elected legislators, following the whims of majority—who can just as duly "unelect" them—ban a specific religious belief or practice, the federal judges, free (ideally) from these political concerns (because they're in office for life), can strike down the ban as unconstitutional, even if most citizens object.

Undemocratic? Countermajoritarian? Elitist? Of course. It's supposed to be.

That's why Pat Buchanan's suggestion during the campaign that America limit the terms of federal judges, thus making them more accountable to the political process, was of all his bad ideas the worst. Even the *New Republic* in 1991, responding to the prospect of U.S. Supreme Court associate justice Clarence Thomas, published an article advocating term limits for High Court justices (and considering Thomas's record so far, it sounds like a good idea).

Yet what makes it sound good is exactly what makes it bad. Democracy is no guarantor of freedom; ancient Greece, filled with slavery, repression, and censorship, proves that. Rights and freedoms, even in America, have often been trampled in the voting booth (ever hear of Jim Crow *laws*?). Just because something is legal or enacted by elected representatives doesn't make it right, or even constitutional.

Plato said that the best rulers would be philosophers; in America, we elect politicians instead. That's why we have a Constitution—a polite way of telling these politicians that their powers are limited—and federal judges, who tell them just how limited.

Of course, neither is perfect. After all, the same institution that gave America *Brown v. Board of Education* (which helped end racial segregation) and *Gitlow v. New York* (which expanded free speech protections to the states) also gave it *Dred Scott v. Sandford* (which upheld slavery) and *Oregon v. Smith* (which limited free-exercise protection). Clearly, it's a double-edged sword.

Nevertheless, the buck must stop somewhere, and in our republic—when it comes to constitutional rights—it stops, not at the democracy of the polling booth, but at the oligarchy of the judiciary, just where it ought to, however inversely proportional its genius-to-arrogance ratio.

Clifford R Goldstein

ILLUSTRATION BY BARBARA KNOX

here can be no better instructions in all transactions in temporal goods than that every man who is to deal with his neighbor present to himself these commandments: 'What ye would that others should do unto you, do ye also unto them,' and 'Love thy neighbor as thyself.'

If these were followed out, then everything would instruct and arrange itself; then no law books nor courts nor judicial actions would be required; all things would quietly and simply be set to rights, for everyone's heart and conscience would guide him.

—*Martin Luther (1483-1546), leader of the German Reformation*