LIBERTY

Religious Divide

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Religious

By
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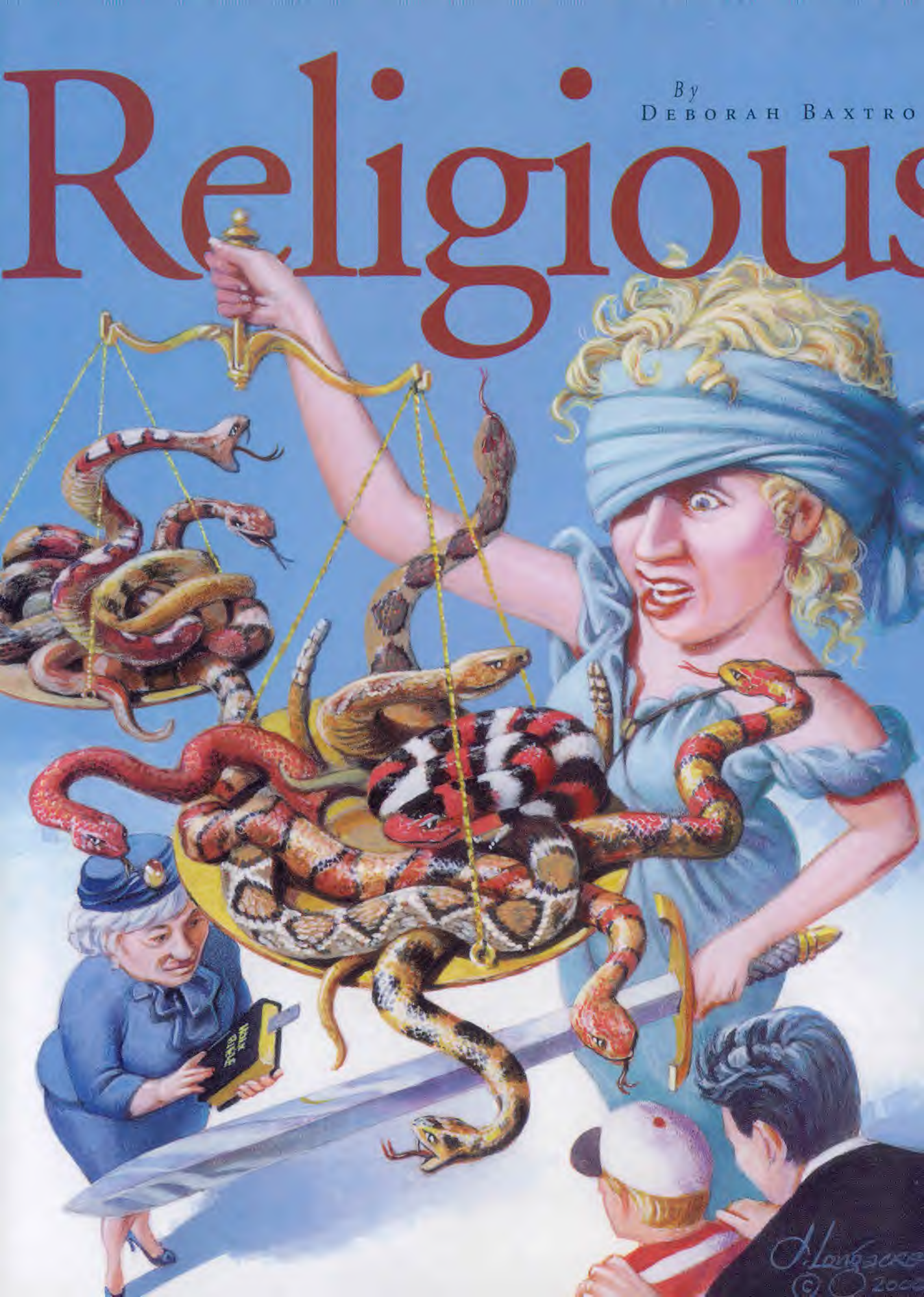

Divide

Could You Choose Between Your Child and Your Faith?

Evangelist John Wayne "Punkin" Brown picked up the three-foot yellow timber rattlesnake while delivering one of his raucous sermons in Alabama in 1998.

"They say it won't bite," Brown bellowed as the rattler twisted itself into the shape of a V. "If it won't bite, there ain't no sense in being scared." But he had been bitten 22 times during his 18-year career as a "snake-handling" pastor of Southern Pentecostal churches.

"The Lord told me it was all right," Brown continued. "The Lord said it would be all right." But he knew things didn't always turn out "all right." His wife, Melinda, had been fatally bitten by a rattlesnake at a revival three years earlier.

Then, as the preacher hopped across the stage, history repeated itself. The rattler struck, biting Brown on his left middle finger. The preacher paid little attention to the bite, and it took a while for the congregation to grasp the sad situation unfolding before them.

"God's still God, no matter what comes," said Brown, his voice fading. A woman in the congregation screamed, and other members anxiously mopped the dying preacher's forehead. "No matter what else, God's still God." Ten minutes later Brown was dead, and his five young children had become orphans.

Brown had been given custody of his children after his wife's death. But custody had been granted under two conditions—that he would agree not to keep poisonous snakes in his house, and that the children would not be allowed to attend snake-handling services. He defied those orders, sincerely believing he was doing God's will, even though the children had been known to wake up screaming from terrifying nightmares about snakes.

While their father's death was a devastating tragedy, it offered an opportunity for the children to be freed from exposure to dangerous vipers. Instead they became pawns in a custody battle between their grandparents. While their maternal grandmother wanted to keep them as far away from snakes as possible, their paternal grandparents ran a snake-handling church of their own.

This case presented unusual circumstances. Most people would probably agree that the Brown children would be best placed in the custody of a grandparent who would keep them away from poisonous serpents. Virtually every U.S. court makes the child's best interests, particularly personal safety, the top priority when deciding child custody cases. But what if a judge or jury had a bias against an unpopular or misunderstood religion? Might a court find that being raised in a particular faith was not in the child's "best interests," possibly even dangerous?

Personal and societal prejudices often come into play in custody battles. Court decisions in cases involving religion have varied widely, depending upon differing state laws and the personal opinions of judges and jurors.

A Florida case illustrates just how subjective these matters can be. Rita and Ignacio Mendez both considered themselves Catholics when they married. Neither actively participated in the Catholic religion, yet their marriage was severely disrupted when Rita later became a practicing Jehovah's Witness. When she refused to give up her religion, Ignacio sued for divorce and custody of the couple's daughter, Rebecca.

Ignacio argued that it was not in Rebecca's best interests to be raised as a Jehovah's Witness, because Witnesses were "totally different" and "against society." No one involved in the case disputed the fact that Rebecca was far more attached to Rita than to Ignacio, or that the child would be traumatized if she could not

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ILLUSTRATION BY JIMMY LONGACRE

continue living with her mother. Expert witnesses even testified that Ignacio would not be a desirable custodial parent because his job required him to travel frequently, and he was planning to move in with his mother and sisters so they could take care of Rebecca if he were awarded custody.

There was little doubt that under "normal" circumstances, Rita would probably have been awarded custody of Rebecca, but in the end, the court's decision was to grant custody to Ignacio.

> To be forced to choose between one's religion and one's child is repugnant to a society based on constitutional principles.

The testimony of two psychologists played a large role in determining this outcome. One witness, Dr. Richard Greenbaum, had this to say: "As a Jehovah's Witness, she [Rebecca] would have difficulty in dealing with the different values as they apply socially, in terms of school and religious holidays, which are not perceived as religious, exclusively by the children, such as Christmas and in terms of saluting the flag and things of that nature."

The second psychologist, Dr. Eli Levy, testified that he would not recommend Ignacio as a custodial parent. However, he also said that "living in this society, she [Rebecca] needs to adapt herself to the mainstream of culture. She is growing up, and it is not a country of Jehovah's Witnesses. If the majority of the country were Jehovah's Witnesses, we would not have any problem, except for physically, but, as far as—I am not making the statement because she is a Jehovah's Witness per se, but the philosophy of practicing the religion does not allow Rebecca to benefit and be safeguarded in living in this culture. I believe that being raised a Jehovah's Witness would not be in the best interest of the child, given the fact that the principles, the way I understand them, do not fit in the Western way of life in this society."

Rita later appealed the trial court's decision, but the appellate court stated that the trial court did indeed have the right to consider the conflicting religious beliefs of the parents in child custody cases. They considered the Mendez case "quite ordinary." Still, three of the nine judges involved in the case dissented. Judge Baskin's dissent stated that "what does emerge from the record is a demonstration of the experts' personal biases against the mother's religion. Their disdain for the mother's religion induced them to speculate as to the possibility of harm to the child in the future even though no evidence of harm existed.... To be forced to choose between one's religion and one's child is repugnant to a society based on constitutional principles. The soft voice of the minority should be audible to a responsible court sensitive to constitutional rights, which include the right to practice an unpopular religion."

In a similar case in Nebraska, it was the father, Edward LeDoux, who coincidentally also became a Jehovah's Witness (although it should be noted that any minority religion could face similar obstacles). In this case, the trial court awarded custody of the couple's children to Diane LeDoux, and Edward was ordered not to "expose or permit himself or any other person to expose the minor children of the parties to any religious practices or teachings that are inconsistent with the religious teachings espoused by the appellee [Diane], being the Catholic religion by which the children are being raised."

Upon appeal, the Nebraska Supreme Court agreed with this decision, stating that "the order of the trial court is narrowly tailored in that it imposes the least possible intrusion upon Edward LeDoux's right of free exercise of religion and the custodial mother's right to control the religious training of a child. . . . The appellant [Edward] is free to discuss beliefs of the Jehovah's Witnesses with his children so long as they are consistent with the Catholic religion."

A Pennsylvania case involving David and Pamela Zummo offered a somewhat different scenario. At the time of their marriage David was a Roman Catholic, although he seldom attended church. Pamela practiced the Jewish religion. Since Pamela was actively involved in her synagogue, both parents agreed that the children should be raised according to the Jewish faith. When they later divorced, Pamela was given custody of the couple's children, but two of the court's rulings regarding religion led to further proceedings.

The trial court ordered that David could not take his children to religious services outside the Jewish faith during his weekend visitations, but that he was required to bring them to synagogue each week that they were in his care. He appealed, claiming his First Amendment rights had been violated.

Most U.S. courts rule that the parent who has custody of the children has the right to determine the child's religion, but the *Zummo* case questioned whether this right was exclusive or had to be shared with the noncustodial parent.

The Superior Court of Pennsylvania agreed with David on the first point during the appellate proceedings, ruling that the restriction barring him from taking his children to non-Jewish services was unconstitutional. On the second point, however, the appellate court held that the requirement ordering David to take his children to synagogue was valid.

This case indicated that in Pennsylvania the right of the custodial parent to decide the religion of their children is not exclusive. This is seemingly good news for parents who practice minority religions, at least in the state of Pennsylvania.

Clearly, different states have different standards when dealing with the religious rights of parents fighting for custody of their children. In a case in California, the religious beliefs of the parents were not allowed to be heard at all unless the opposing side could prove "actual impairment of physical, emotional, and mental well-being contrary to the best interests of the child." Another California court required a "clear affirmative showing that religious activities will be harmful to the child." Rulings in other states have fallen somewhere between the California rulings and the opposite viewpoint expressed by the Florida court in the *Mendez* case.

Unfortunately, the United States Supreme Court has not agreed to hear any cases involving religious disputes in relation to child custody cases that could offer a fair standard (the High Court declined the *Mendez* case). But the Supreme Court of Maine in *Osier v. Osier* did offer what may be the fairest standard yet when dealing with such cases. In his article titled "Religious Freedom Issues in Domestic Relations Law," attorney Mitchell A. Tyner wrote:

"The *Osier* test requires the trial court to make a preliminary determination of the preferred custodial parent without considering either parent's religious practices. If the result is the selection of the parent whose religious practices are not in issue, the process ends. If the result is the selection of the other parent, the court may then take into account the effect on the child of the challenged religious practices, using a two-part analysis:

"First, in order to assure itself that there exists a factual situation necessitating such infringement, the court must make a threshold factual determination that the child's temporal well-being is immediately and substantially endangered by the religious practice in question and, if that threshold determination is made, second, the court must engage in a deliberate and articulated balancing of the conflicting interests involved, to the end that its custody order makes the least possible infringement upon the parent's liberty interests consistent with the child's well-being. In carrying out that two-stage analysis, the trial court should make, on the basis of record evidence, specific findings of fact concerning its evaluation of all relevant considerations bearing upon its ultimate custody order."

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If such a standard were universally applied, Punkin Brown's children might still have gone to live with their maternal grandmother if it had been shown that their physical and emotional well-being were threatened in the home of their snake-handling paternal grandparents. Appropriately, the child's best interests are still considered the highest importance under this standard.

However, if Rita Mendez had been residing in Maine and the case had been decided by the judge who decided the *Osier* case, and even allowing for additional "ifs," it's highly probable that Rita would have been granted custody of her daughter.

Unfortunately, until a standard is set that fairly considers the interests of all parties involved, it appears that a parent who practices a minority religion will have to rely on logistics and luck when facing a child custody battle.

By Diana Justice

DEFENDING THE

Is Posting the Ten Commandments the Answer to the Moral Crisis?

The Ten Commandments Defense Act Amendment was written in reaction to the Columbine High shootings last year. On June 17, 1999, the U.S. House of Representatives voted 248 to 180 to attach it to the Juvenile Justice Reform Act of 1999. While the Senate version of the bill does not contain this amendment, it is expected to be included in the harmonized version that is sent to the president. If signed into law, it will allow states to authorize the display of the Ten Commandments in U.S. public schools, courts, and public buildings.

Unfortunately, proponents for posting the Ten Commandments demonstrate their misunderstanding of the First Amendment. This is evident in Representative Robert Aderholt's argument that "something is wrong in America when our children can wear T-shirts that are emblazoned with profanity, that are emblazoned with violence, in the name of free speech, but simply the words, 'Thou shalt not kill' cannot be in our schools." Aderholt is suggesting that an individual student's freedom of expression is parallel to a religion-based posting on a wall in a public school. For a student to choose to wear an item of clothing carrying a religious or nonreligious message is one thing, but for the public school to post on its walls a portion of sacred text from one specific religious group is another thing altogether. The first is an example of constitutional free exercise of speech, the second of an unconstitutional mingling of church and state.

Current Case Law

The courts have established that it is acceptable for public schools to teach about the Ten Commandments and how they relate, for example, to the development of moral precepts of Western culture. (See *School District of Abington Township v. Schempp* [1963] or *Edwards v. Aguillard* [1987].

However, the courts have found that it is unconstitutional to hang the Decalogue on the wall of each classroom in a school. The Supreme Court case of *Stone v. Graham* (Kentucky; 1980) determined that displays of the Ten Commandments are to be barred in instances in which there is no secular purpose.

In the November 1999 issue of *Church and State*, editor and attorney Barry Lynn listed 10 good reasons that the Decalogue should not hang in public places:

- The Constitution mandates the separation of church and state.
- The Supreme Court and lower federal courts have settled the issue.
- America is religiously diverse.
- Religion doesn't need government's help to promote the Ten Commandments.
- There is no "standard version" of the Ten Commandments.
- The Ten Commandments are not a "secular" moral code that everyone can agree on.
- The Ten Commandments are not a magic charm to make all of society's problems vanish overnight.
- The Ten Commandments are interpreted quite differently by different faith groups.
- Politicians and interest groups are exploiting the Ten Commandments for political gain.
- The Religious Right's use of the Ten Commandments sometimes borders on blasphemy.

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ILLUSTRATION BY JOHN KACHIK

SINAI TEN

If Not the Ten Commandments, Then What?

Clearly, posting the Ten Commandments is not in step with the First Amendment of America's Constitution. But with an observable decline in moral values and the increasing tendency toward violence in some American public schools, this country is worried and restless. Too many of our American youth dishonor authority and show little respect for the precious gift of life itself. We are a country that has become afraid of our own children.

There is no simple solution to our societal angst. But can Christians and people of faith be indifferent as we see evil increase day by day? We see evidence that Satan is working on society in order to destroy righteousness and integrity. But we must be true to our faith in the power and promises of God. Evil will not, cannot, overtake us if we remain on His side and listen to His commands.

We must intercede for God's Spirit of mercy to fall on unbelieving and misled youth. We can befriend them in our neighborhoods and towns and provide activities and support for them. Church groups can work powerfully to affect society by reaching out to youth, inviting them to friendship camps, and supporting Christian schools. What American youth really need is the moral guidance that comes from having the Ten Commandments an activating principle in their thought processes (Proverbs 3:1-3).

The AWKWARD SILENCE

BY TRUDY J. MORGAN-COLE

Prayer in Canada's Public Schools

Assemblies were held every few weeks at Holliston School in Saskatoon. Once the students had gathered in the gym, they were told to stand for "O Canada" and the Lord's Prayer. Elementary school student Max Haiven's family was Jewish, and he chose not to bow his head or repeat the Lord's Prayer, although he did stand with the other students.

One day a substitute teacher reprimanded Max for not bowing his head, telling him it was impolite. Young Max complained to the principal, who told him he could be exempted from the prayer. Not until much later did Max learn that he had the option of leaving the gym. Even then, he chose not to leave, since he didn't know where to go or with whom.[1]

Then, on July 27, 1999, retired judge Ken Halvorson ordered the Saskatoon, Saskatchewan, Board of Education to end its century-old practice of allowing public school teachers to say the Lord's Prayer in classrooms and school assemblies. With Halvorson's ruling, Saskatchewan became the fourth of Canada's 10 provinces to oppose prayer in public schools.

The Saskatchewan case began in 1993, when a group of nine parents, including Muslims, Jews, Unitarians, and atheists filed a complaint against the board's practice. Max Haiven was only one of many students for whom the use of the Lord's Prayer had caused confusion, misunderstanding, and discrimination. Parents of these students finally decided to take direct action.

One of those parents was Carl von Baeyer, a professor at the University of Saskatchewan. Von Baeyer had been interested in the issue of prayer in public schools even before his own two children

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ILLUSTRATION BY RALPH BUTLER

entered school. As a member of the Unitarian Congregation of Saskatoon, he was concerned about issues of religious tolerance and felt that the use of the Lord's Prayer imposed the Christian religion on non-Christian children.

"In June 1986," Von Baeyer relates, "with another representative from the Unitarian congregation, I visited the director of education, Ray Fast, to discuss the issue and to present him with a copy of the Toronto school board's book of multifaith readings. He seemed to be interested and said he would consider distributing it to each school principal, but on follow-up we found that he did nothing further."[2]

Von Baeyer's daughter, Rebecca, attended Holliston School in Saskatoon. Holliston was one of the elementary schools in which the Lord's Prayer was used. Rebecca had shown sensitivity to issues of religious liberty from an early age: in grade 3 she was one of a group of students who met with the principal to request that the school stop using the Lord's Prayer at assemblies. The principal told the children that a majority of students in the school were Christian, and the prayer continued to be used.

"The law forbade discussion of the prayer," Carl von Baeyer points out, "so the words didn't mean much to our children, but they did understand that the school was making them say something that was contrary to their parents' religious views."[3] Rebecca understood that she had three choices if she did not want to participate in the Lord's Prayer: she could leave the room, remain silent, or recite a prayer of her choice. Once, in grade 8, she tried saying a prayer of her choice and was immediately reprimanded by a teacher. Leaving the room seemed both disrespectful and like a form of punishment. So Rebecca, like many other students of different faith backgrounds, stood silent during the Lord's Prayer, without bowing her head.[4]

Throughout the 1980s and early 1990s parents and students continued to raise the school prayer question with the board, but no change was made in the policy. Matters came to a head in 1993 when the official complaint was filed. But the case hovered in judicial limbo for six years on questions of jurisdiction.

The complaint was finally heard by the Saskatchewan Human Rights Commission in 1999, with Halvorson acting as a one-man board of inquiry. The school board defended its right to allow the Lord's Prayer on the grounds of a 1901 statute that permitted any Saskatchewan school board "to direct that the school be opened by the recitation of the Lord's Prayer."[5] In 1901 Saskatchewan was not yet part of Canada. But the constitutional legislation that brought Saskatchewan into confederation in 1905 protected the right of school boards to continue using the Lord's Prayer.

THE BOARD'S POLICY WAS NOT TO "DIRECT" THAT TEACHERS START THE SCHOOL DAY WITH PRAYER, BUT RATHER TO "ENCOURAGE" AND "SUPPORT" THE USE OF PRAYER.

It was the wording of the legislation that caused the Saskatoon board to lose its case. The board's policy was not to "direct" that teachers start the school day with prayer, but rather to "encourage" and "support" the use of prayer. Judge Halvorson wrote in his decision that the board had "delegated its responsibility to the discretion of teachers by a policy statement using these weasel words."[6] Halvorson's conclusion was that while the board's right to "direct" that prayer be used is, in fact, constitutionally guaranteed, Saskatoon teachers cannot decide on their own to use the prayer unless the board specifically "directs" them to do so. Rather than order teachers to recite the Lord's Prayer in class, the Saskatoon board should, Halvorson felt, do away with the practice altogether, rather than continuing to "encourage" and "support" it.

To the parents who launched the complaint, and to others who opposed the use of the Lord's Prayer, Halvorson's ruling was a victory of sorts. Though he could not overrule the board's constitutional right, Halvorson made it clear that the board's choice to exercise that right was outdated and discriminatory. "Judge Halvorson's point was that the tribunal had no jurisdiction to overturn the provisions of the constitution;

he did, however, have the jurisdiction to squash later discriminatory provincial and school board policies, which he did," says Carl von Baeyer. "I would be happier if he had the wider powers, but I think he did what he could given the way the law is set up."[7]

In the 1999-2000 school year, the Saskatoon school board suspended use of the Lord's Prayer, at least temporarily, while it searched for other options. Those options ranged from requiring the Lord's Prayer every day in all classrooms, to requiring nothing at all, to replacing the Lord's Prayer with some nondenominational creed that would be acceptable to people of all faiths. Neither side chose to appeal Judge Halvorson's decision. "There is great pressure on the school board from the religious right," Carl von Baeyer observes.[8]

The "religious right" to which Von Baeyer refers includes such groups as the Canada Family Action Coalition, a nondenominational grassroots political activist group. Though not directly involved in the Saskatoon case, the CFAC describes Halvorson's ruling as "completely outrageous."

"What it really shows," says Peter Stock, the coalition's national affairs director, "is that the Human Rights Commission is completely out of control. They'll step on any right, any freedom, in support of their politically correct worldview. The 1905 constitutional act that brought Saskatchewan into confederation explicitly preserved the right to use the Lord's Prayer—yet in this case an unelected bureaucrat ruled that that right can be taken away."[9]

Despite the statute protecting use of the Lord's Prayer, prayer in public schools is not a widespread practice in Saskatchewan. Of the province's 550 public school classrooms, only about 20 percent actually had prayers at the time of Judge Halvorson's decision.[10] Of those that did use the prayer, only schools in the Saskatoon area were directly affected by the Human Rights Commission's ruling, but it will probably have an impact on the rest of the province as well.

As for the rest of Canada, the provinces of Manitoba, British Columbia, and Ontario have already ruled against prayer in public schools. Other provinces have not addressed the issue in the courts, but many don't perceive it as a problem. Nova Scotia, for example, is one province that has never banned school prayer. The issue "has never been raised by our board of directors, our executive, or in the courts of this province," said Frank Barteaux, of the Nova Scotia School Boards Association, and Education Department spokesman Doug Hadley agreed.[11] But, as one Nova Scotia teacher pointed out, that may be because "I don't know of anyone who [recites the Lord's Prayer] in their classroom."[12]

SEVERAL ALBERTA SCHOOL BOARDS ARE CURRENTLY CONSIDERING REINSTATING THE LORD'S PRAYER AT THE SAME TIME AS THE NATIONAL ANTHEM IS SUNG.

But that silence on the subject of prayer may not last long. Several Alberta school boards are currently considering reinstating the Lord's Prayer at the same time as the national anthem is sung. And in Ontario, where the school prayer question was settled in the courts in 1988, the Lord's Prayer has once again become a topic of debate. In September 1999, 97 Ontario municipalities signed a petition asking the Ontario minister of education "to direct schools to bring back the [Lord's] Prayer."[13] Some school prayer advocates in Ontario are also calling for the reading of the Ten Commandments in schools.

Jane Weist, a public school trustee on the Durham, Ontario, school board, introduced a motion in the spring of 1999 to reinstate the Lord's Prayer into classroom exercises. When a minority of trustees fought it, a compromise was reached. The board formed a committee with leaders from 60 groups to prepare a book of inspirational prayers for use in the schools. The final book is due to be completed and reviewed by the board in spring 2000.[14]

Keith Knight, communications director of the Presbyterian Church in Canada, writes in a Toronto *Star* column that the Lord's Prayer would have a place in classrooms only "if all

those students and the teacher truly believed what they pray.... Those who advocate a return of the Lord's Prayer to the classroom," he writes, "live with the mistaken notion that our society in general and the public school system specifically are indeed Christian." In fact, Knight argues, "Canada is no longer considered a Christian nation."[15]

For the parents who filed the Saskatoon complaint, the rights of Jewish children, Muslim children, and children of many other non-Christian faiths were violated when a Christian prayer was used in the classroom. In his attempts to discourage Saskatoon school principals from using the Lord's Prayer, Carl von Baeyer was often told that surveys showed the majority of parents supported the use of the prayer. Von Baeyer questions the truth of this claim, but even if true, he says, it doesn't justify use of the Lord's Prayer.

"A constitutional democracy bases its policies on the will of the majority in some issues but not in all issues," he says. "Human rights legislation moves society ahead when the majority doesn't care. The fact that a majority of Germans in the early 1930s supported Hitler did not make his policies right. And the fact that a majority of people favor religious discrimination does not make it right."[16]

Those on the opposite side of the school prayer debate also claim that the central issue is one of freedom *of* religion. "The constitution guarantees freedom of religion," points out CFAC's Peter Stock. "There's no constitutional guarantee of freedom *from* religion, which is what these people are seeking." Stock argues that the right of all children to a moral, values-based education is at stake. "We're making a huge mistake if we abandon our Judeo-Christian heritage. When we remove religion from the classroom, it doesn't create a vacuum—another morality moves in to take its place. There is always a moral basis to whatever is taught in school—the question is, whose morality is it?"[17]

Lois Sweet would agree with Stock's final statement. Sweet is the author of a comprehensive 1997 study of religion in Canadian education called *God in the Classroom*. "Secularism, or

SAY YOUR PRAYERS

By PETER STOCKLAND

Parents and school officials fighting removal of the Lord's Prayer from Saskatchewan schools would do well to heed a higher authority than even the Canadian constitution. They should reflect on the words of Jesus Christ.

According to the Gospel of Matthew, when Jesus gives the crowd the Lord's Prayer at the end of the Sermon on the Mount, He prefaces it with a blunt caution about public worship.

"Do not," He tells those assembled, "be like hypocrites who stand praying in the temple or on the street corner just so others will notice them." Rather, He says, "go to a private place and pray quietly in the simple words He is giving them."

The communitarian bonds of the earliest Christians, and two subsequent millennia of social worship in venues ranging from tiny chapels to football stadiums, make it obvious Jesus was not limiting prayer to a silent, solitary act.

Yet He was, equally evidently, warning against what might be called the politicization of piety. If a prime purpose of prayer is to establish and enhance filial obedience to God, then its object must not be the way it makes us appear to those around us. Its intention cannot be to fulfill the requirements of some merely human, cultural circumstance.

Unfortunately, that is precisely the error into which supporters of keeping the Lord's Prayer in Saskatchewan public schools may have fallen with their arguments that the practice is justified constitutionally and vital for preserving Canadian traditions.

Those are appeals to "horizontal" faith. They reach only outward to the political and the social. Prayer, especially one as central to a belief system as the Lord's Prayer is to Christianity, must be "vertical" in nature. It must be directed upward to God.

Well-meaning as supporters of reciting the Lord's Prayer in public schools undoubtedly are, their stated motives unwittingly risk contravening the true purpose of the action. Indeed, in asserting their political rights and defending

secular humanism, is also a value system and is often embraced as a kind of religion," Sweet points out. "Yet secularists are usually blind to the religious nature of their beliefs, arguing that schools must necessarily be secular because secularism is 'neutral.' This is an illusion that should be challenged. . . . What seems difficult for opponents of education in the classroom to understand is that education is never valueless. Not only what is taught and not taught, but how it is taught, and by whom, conveys a set of values. The question is: Whose values?"[18]

When Saskatchewan joined Canada in 1905, the answer to that question seemed simple. The values to be taught were those of the dominant religious group in society: Christians. A century later, in a far more multicultural society, that assumption has to be challenged—and has been, again and again, in courts and legislatures. But the question of what should replace it has never been successfully answered.

Though Christian groups such as the CFAC often refer to Canada's "Judeo-Christian heritage," and "Judeo-Christian values," the fact is that Jewish faith communities were among the most active in trying to persuade the Saskatoon school board to stop using the Lord's Prayer. In fact, the Jewish Congregation Agudas Israel, in Saskatoon, has been working on this issue since 1953. Both the Congregation and the League for Human Rights of B'nai B'rith Canada had intervenor status in the Saskatoon hearing.

Grant Scharfstein, the lawyer for Congregation Agudas Israel, told the hearing that when he attended public school in a small town in Saskatchewan, a teacher told him he did not have to say the Lord's Prayer. Scharfstein said he would say the prayer; on his way home from school another student punched him and called him a "dirty Jew."[19] Rabbi Roger Pavey told the inquiry that the Lord's Prayer "was purely Christian and certainly not accepted by other religions." While Pavey favors promoting spirituality in the schools, his opinion was that "imposing the Lord's Prayer does not attain that goal."[20]

The problem remains unanswered: How do we attain that goal? Do Canadian parents wish themselves from the encroachments of multiculturalism, some supporters have gone so far as to deny that the Lord's Prayer is explicitly Christian. It's a wonder their claims have not been accompanied by a cock crowing three times, echoing Peter's denial of Christ during the Passion.

Of course it is a Christian prayer in origin and in liturgical form! To insist on its use in a nonreligious setting, among people of mixed faith or no faith at all, is not an example of worship. It is the employment of prayer as an instrument of political expression.

Among the worst consequences of politicking with the sacred is the support it gives those who would remove all types of spiritual formation from education. See, they say, religious development is inevitably divisive and so has no place in pedagogy.

This is an argument most often advanced by fifth columnists seeking to spread the superstition of atheism. Children, from the age of first understanding through adolescence, must be helped to understand that human beings are a fusion of the spiritual and the animal. Growing to maturity, they must be taught that there is a real dimension of existence beyond their specific ego needs, and even beyond the daily concerns of the visible world. It's a dimension that finds its expression in art, in music, in heroism, and in faith.

Within a public school system, this teaching could be conveyed by appropriate courses in comparative religion. More important, it could be reinforced by something as simple as beginning the school day with a moment or two of silent prayer.

For Christian, Jewish, and Muslim children, this would be a time to obey the injunction: "Be still, and know that I am God." Those of other faiths, and even nonbelievers, could use it to go to a private place inside themselves and ponder the marvel of their own hearts.

An editorial by Peter Stockland, of the Calgary Herald, *July 17, 1999. Used by permission.*

secularism to be the dominant religion in their children's schools? Many don't, yet the puzzling dilemma remains. Is it possible to promote spirituality and values without favoring a dominant religion and discriminating against those who don't practice that religion?

Lois Sweet believes it is possible—not easy, but possible. In *God in the Classroom*, she writes: "Who knows where a passionate, informed public debate on this issue could lead? I would hope it would spark a commitment to offering education about religion in the public schools.... Accommodating religious difference within a public system through teaching about it, acknowledging and honoring holy days, and respecting religious symbols are important steps toward mutual understanding, healthy equality, and integration. The new fabric we weave could well produce a Canada . . . that could truly be a living example of what's possible when a liberal democracy takes the pluralist ideal seriously."[21]

But so far, attempts to present a truly pluralist view of spirituality in Canadian schools have not been very successful. The book of multifaith readings that Carl von Baeyer showed to a Saskatoon board official in 1986 has since been withdrawn by the Toronto school board that introduced it. Parents protested the use of the readings: some did not want their children exposed to the prayers of other religions, while others did not want their own religion's prayers being used by nonbelievers.

While multicultural approaches draw protests from parents of many faiths, attempts to find a prayer or reading neutral enough to please everyone end up pleasing very few. According to Toronto evangelist Ken Campbell, "in 1995, national councils of Islamic, Jewish, Native, and Christian faiths approved a generic prayer to the 'God of Confederation.'" In Campbell's view, "it is most appropriate that a prayer to the God of Confederation be mandated in Canadian schools."[22] But to many Canadians such a "generic" prayer is watered-down spirituality at best. At worst, it's what Carl von Baeyer calls "an embarrassing recital." The "God of Confederation" prayer was proposed to the Saskatoon board, but, Von Baeyer comments, "fortunately they did not see this as the solution to their problems."[23]

In February 2000, the Saskatoon board drew up a proposal suggesting that teachers begin class with a song, story, reading, thought for the day, or short discussion period. "The selection may have as a root source a holy book, a spiritual legend or spiritual literature, but must not be a direct quote from any such source," the proposal said, technically keeping it within the guidelines recommended by Halvorson. After drafting the proposal, the board hoped to get feedback from parents and community members.[24]

While the Saskatchewan Human Rights Commission has, for now, dealt with the question of the Lord's Prayer in Saskatoon schools, the broader debate about religion in Canada's public schools continues. Minority rights, multiculturalism, freedom of religion, values and spirituality in education—all these concepts are part of this complex debate. But many parents, including some in Saskatoon, are simply glad that their children do not have to stand in awkward silence as "O Canada" is followed by "Our Father, who art in heaven . . ."

FOOTNOTES

[1] Ken Halvorson, *In the Matter of the Human Rights Code* and *In the Matter of Complaints on December 21 and 22, 1993, by Riaz Fancy, Irum Fancy, et. al, against the Board of Education of Sasakatoon, School Division No. 13 of Saskatchewan* (Saskatchewan Human Rights Commission, 1999), p. 5.

[2] Von Baeyer, Carl. Interview with author, Dec. 14, 1999.

[3] *Ibid.*

[4] Halvorson, pp. 6, 7.

[5] John Saunders, "Schools to Banish Lord's Prayer: Saskatoon Board Forfeits 1901 Right," *The Globe and Mail*, July 28, 1999, p. A3.

[6] Halvorson, p. 24.

[7] Von Baeyer interview.

[8] *Ibid.*

[9] Peter Stock, interview with author, Jan. 20, 2000.

[10] *Ibid.*

[11] Tom McCoag, "Prayer Ruling Likely Won't Affect N.S.: Saskatchewan Rights Commission Bans Lord's Prayer in Classroom," Halifax *Chronicle-Herald*, July 30, 1999, p. A7.

[12] *Ibid.*

[13] "Petition Pushes Lord's Prayer in Schools," Toronto *Star*, Sept. 2, 1999, p. A4.

[14] Canada Family Action Coalition, E-mail news release, January 2000.

[15] Keith Knight, "Our Father, Who Art in Classrooms," Toronto *Star*, Sept. 18, 1999, p. L14.

[16] Von Baeyer interview.

[17] Stock interview.

[18] Lois Sweet, *God in the Classroom: The Controversial Issue of Religion in Canada's Schools* (Toronto: McClelland and Stewart, Inc., 1997), pp. 7, 13.

[19] Halvorson, p. 10.

[20] *Ibid.*, p. 11.

[21] Sweet, pp. 252, 253.

[22] Carla Yu, "The Tyranny of the Minority," Alberta *Report*, Aug. 9, 1999, p. 42.

[23] Von Baeyer interview.

[24] "Board May Replace Lord's Prayer in Classrooms," *The Telegram*, February 2000.

"The prosperity of a country depends, not on the abundance of its revenues, nor on the strength of its fortifications, nor on the beauty of its public buildings; but it consists in the number of its cultivated citizens, in its men of education, enlightenment, and character."

— MARTIN LUTHER, Leader of German Reformation (1483-1546).

DisOrdered Liberty

By
DON EBERLY

The Place of Law and Politics in a Civil Society

Prior to my comments before the House Judiciary Committee (May 13, 1999) on the role of popular mass culture in producing youth alienation and school violence, a panel of students gave their observations. They were led by an articulate twelfth grader from a large suburban high school. What distinguished her high school, she said, was that "no one was in charge." Not the teachers, not the parents, not even the security guards. She added that in the midst of this chaos the school kept adding more and more rules, even though the rules that did exist were never enforced.

I dispensed with my planned remarks and merely urged the 35-plus representatives to reflect long and hard on the vivid portrayal they had just witnessed of institutions with their most basic authority hollowed out. Here, in this one public high school, was a microcosm of the entire society.

Radical Autonomy

Welcome to the "Republic of the Autonomous Self," where the individual is the only real sovereign, where "mediating" structures have been leveled, and where rules proliferate while lacking legitimacy. Those who point to legitimate social authority as an essential ingredient in a well-ordered society and who would prefer less individualism and more community often have the charge of nostalgia leveled against

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ILLUSTRATION BY HARRY ANDERSON

them. But the rise of what Robert Bellah called a "radically unencumbered and improvisional self"[1] and the resulting social collapse produce the ugly tensions, discord, and national disharmony we must now endure everywhere we turn. The results of this radically emancipated self are anything but progressive or pleasant.

One consequence is that we are transformed from "one nation, indivisible" to what historian Arthur Schlesinger aptly describes as "the fragmentation, resegregation, and tribalization of American life."[2] A related result is that people become more self-centered. Social analyst and pollster Daniel Yankelovich has spent his entire adult life studying the shifting sands of American moral attitudes, and has concluded that the vast changes in our society can be explained by one underlying seismic shift. We have moved, he says, from a sense of "duty to others" to a "duty to self."

We have moved, says social analyst and pollster Daniel Yankelovich, from a sense of "duty to others" to a "duty to self."

Collapsing under this weight of radical autonomy is any notion of the common good. Yankelovich's observation tracks with what I found in extensive research on citizen attitudes for a recent book on the state of American civil society. In surveying the description of society by citizens themselves, I repeatedly found them using words such as: fraying, fracturing, and fragmenting to describe the world around them. Citizens were saying essentially that too many people are out for themselves. "What chills me about the future," wrote one, "is a general sense of the transformation of our society from one that strengthens the bonds between people to one that is, at best, indifferent to them." There is "a sense of an inevitable fraying of the net of connections between people at many critical intersections, of which the marital knot is only one. Each fraying accelerates another. A break in one connection, such as attachment between parents and children, puts pressure on other connections such as marriage." With enough fraying, individuals lose "that sense of membership in the larger community which grows best when it is grounded in membership in the small one."

Fraying communities, fractured families, a fragmenting nation—journalists, scholars, and citizens alike seem to agree that American society is, in too many ways, pulling apart at the seams. Public surveys likewise reveal a precipitous decline in social trust. Where does the citizen come by the capacity to be helpful, respectful, and trustful toward others? Mostly through involvement in functioning social institutions, *especially the family*. The fact that only 35 percent of the American people indicate that they can trust most people most of the time is a function of more than flawed democratic institutions; it is a function of social breakdown. It is hard to imagine how children who have been betrayed by the persons in whom they thought they could put their intimate trust—namely, their own parents—are ever going to become public trust-builders.

Democracy on the Skids

The result is an increasingly self-centered, litigious, and arbitrary society. The social space where decisions are made on the basis of self-interest, competition, and the struggle for power expands, while the space that is truly voluntary and consensual, where people of good will and civilized values can join together in rational deliberation, shrinks. The handshake gives way to the omnipresence of the law. The law, in turn, becomes overworked and arbitrary. Society feels like an engine running low on oil—things heat up.

When cultural reformers are not being accused of nostalgia, they are being lectured on how culture is a private sphere in which we make thousands of individual choices, operating safely beyond the scope of public concern. After all, we are reminded, if we object to our 10-year-old being subjected to soft porn on prime time, we can just "change the channel." Any other approach would be a direct assault on the First Amendment. But culture affects democracy in hundreds of ways, large and small. As Mary Ann Glendon of Harvard put it: "If history teaches us anything, it is that democracy cannot be taken for granted. There are *social and cultural* conditions that are more or less favorable to its success."[3] Democracy requires a capacity for trust

and collaboration, at least on the small scale of face-to-face community. America's founders talked about the ingredients of civic virtue, such things as sentiments, affections, manners, and duty to the common good. These core qualities are the first link in a long series of steps whereby, as Edmond Burke put it, "we develop our love for mankind" generally. In other words, the outer order of society is directly linked to the inner order of our souls.

Most democratic reforms today, however, are directed toward fixing the procedural state (outer order) without addressing the underlying cultural and social crisis (inner order). The problems of money, declining participation, and the uneven distribution of power are indeed serious problems, but democracy is fragile in a way that no campaign finance reform and no amount of increased voter participation can cure. The more serious problems of American democracy have to do with the erosion of democratic character and habit. *A society in which men and women are morally adrift and intent chiefly on gratifying their appetites will be a disordered society no matter how many people vote.* We must recover the democratic citizen through restored communities, functioning social institutions, and a renewed culture.

To thrive, democracy needs the help of nongovernmental sectors, including strong social institutions and a healthy culture. Can anyone doubt that today's toxic culture of crass consumerism, cynicism, and utilitarian values is cheapening our respect for the human person and eroding the foundations of democracy? Cultural excess awakens an appetite for things that no viable democracy can offer—the simultaneous expansion of the law and a widening search for freedom from the abuses of the law. The law is forced to enter where gentler forms of governance such as manners and social norms retreat, ultimately eroding human dignity and freedom.

This restless search for human progress through legal reforms creates a politicized society and a state that expands radically even as its competence and legitimacy ebb. The law degenerates into an arbitrary tool of the politically organized. A right conferred upon one group becomes an obligation imposed on another. One person's gain is another's loss. The legal system is forced to find ever-finer balances and boundaries between conflicting parties and claims. People expect the law simultaneously to confer the light of sexual freedom as well as freedom from sexual assault; to guarantee gender and racial advantages for some and the protections against reverse discrimination for others; to protect the rights of criminal offenders and the rights of their victims; to guard the rights of free speech while initiating new rights against the insult of hateful speech; to defend the rights of both individuals and communities; and so on.

Never before has the law been called upon to split conflicting demands with such exasperating precision. . . . The pursuit of a just society is reduced to a perpetual fight over what the rules should be.

Never before has the law been called upon to split conflicting demands with such exasperating precision. The justice system begins to resemble a harried referee who has the impossible task of policing a sport that is both choked by rules and overwhelmed by infractions. The pursuit of a just society is reduced to a perpetual fight over what the rules should be.

The first cousin of rights-based individualism is the pernicious idea that "the personal is political," which was brought to the American debate first by the feminist movement and since by any number of "identity politics" factions. Recently a libertarian friend described how a homosexual associate of his decided to inform his office colleagues of his sexual orientation and to use a staff meeting to boldly announce his exit from the closet. Apparently expecting his colleagues' approval as a matter of right, the person instead got a range of mixed opinion, including some firmly stated disapproval. After a contentious struggle ensued inside the organization over the han-

dling of the matter, the disgruntled staffer left. My response to this story was to inform my friend that his homosexual colleague, by demanding that others suspend their deeply held moral and religious beliefs in order to guarantee an approving atmosphere for his lifestyle, demonstrated that he was not a libertarian but a totalitarian. At issue was not his constitutional protection, which few would argue against, but his explicit attempt to coerce a change in the moral beliefs of his office peers.

The story illustrates powerfully the extent of America's cultural transformation; the ramifications for our public order and constitutional system could not be more profound. Ironically, those who most ardently advocate the right to conduct themselves freely in private have no concept of the meaning of private as distinct from public space, even when the most intimate aspects of life are involved. What they want is simultaneous protection from intrusion into the bedroom while being assured broad public validation for what takes place there. The most private aspects of one's life become the grounds for one's public identification. When only the law and politics arbitrate human affairs, everything becomes politicized—even the most basic and private forms of human association and action, such as one's sexual practices. The private, sacred, and mystical aspects of life become the basis for social and political agitation.

What we see round about us is the steady replacement of an ordered liberty with the libertarianism of John Stuart Mill, in which freedom is absolute, the self is unbounded by even private morality and convention, and one's actions are protected even from social disapproval. Whereas liberty was once conceived of as having properties beyond the self, bound by morality and religion and tied to the interests of the commonwealth, today "the individual is the sole repository and arbiter of all values," as historian Gertrude Himmelfarb put it, and is thus in "an adversarial relationship to society and the state." This is a liberty, says Himmelfarb, which "is a grave peril to liberalism itself."[4]

Undermining Authority

What must be acknowledged is that many of the most corrupting viruses are now being borne along not by sinister politicians but by an entertainment and information media culture, and that this omnipresent culture is displacing the core social institutions that once shaped and molded the democratic citizen. Whereas parents, pastors, and pedagogues once presided over the socialization of the young, now television, film, music, cyberspace, and the celebrity culture of sports and entertainment dominate this process of shaping youthful attitudes and beliefs. It is popular mass culture that largely informs our most basic understanding of society, our public life, our obligations to each other, and even the nature of the American experiment.

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The culture naturally both reflects and influences what people think is right and proper. American culture has usually stressed moral rectitude but has always permitted latitude for abnormal beliefs and behavior to operate freely at the margins of society, as long as it stayed there. We had "red light districts," for example, in which one was free to frequent, albeit at the risk of exposure and public shame. But even these mild social constraints crumble when everybody is electronically hardwired and what is marginal becomes mainstream at the flip of a TV remote or the click of a computer mouse.

Much of what passes for culture today is, in fact, anticulture. Its chief aim is to emancipate, not restrain, to give free rein to human appetite, not to moderate it. The role of entertainment, we are frequently told by entertainers themselves, is to challenge and stretch standards. "Break the rules!" "Have no fear!" "Be yourself!" are the common themes within mainstream cultural programming, and they are designed to discredit traditional forms of authority.

ILLUSTRATION BY RALPH BUTLER

Which takes us back to the congressional hearings on school violence. Without a healthy culture maintaining the conditions for human flourishing, we evolve steadily into a custodial democracy, mildly authoritarian, in which more and more transactions are supervised by the state. The anarchy of the school is but a passing phase that creates the desire for more laws and restrictions. This is how social conflict erodes freedom. *People are ruled by either character and civility or cops and lawyers.* Anarchy produces injury, which produces lawsuits followed by a thickening layer of defensive measures. Not many years ago parents from small towns would have recoiled in horror to think that electronic surveillance would become commonplace in our schools, much less that uniformed police would one day roam the halls. "These are schools," they would probably have said, "not prisons." Today, by contrast, polls show that most parents now embrace these symbols of a police state.

Such is the course of freedom's erosion. Gone is freedom of the most precious kind: the freedom of parents to send their children to schools where safety and order are maintained through instruction in the gentle virtues of respect and civility, not the chilling presence of weapons detectors and armed police. Gone is the freedom of children to proceed through life unharassed and unhurried, enjoying the innocence of youth as long as it should be theirs to enjoy.

This is the delusion of the modern libertine. When social institutions and authority collapse and the capacity to govern human affairs through voluntary, consensual means erodes, all roads lead to the state—especially the courts and innumerable social agencies forced by default to become the caretakers of fragile families and poorly socialized individuals, the unruly children of the underclass, and the spoiled and dysfunctional suburban latchkey kids. *The fragmentation round about us, which libertarians of all stripes tend to view benignly, is leading inevitably and ironically to the very statism they claim to oppose*—a society in which atomized and poorly socialized individuals continually organize to use the state against each other is a society in which the individual and the state are advancing, but civil society, a place of consensual and voluntary action, is in rapid retreat.

The Christian Responsibility

As proponents of civil society, the responsibility of the Christian community is not to retreat from the political square altogether (spiritual isolation), nor is it

to accept the status quo (moral toleration). The debate should not focus on methods of retreat, but on new models for engagement and new strategies that focus more on culture than on politics in the decades to come. The issue is not that politics is unimportant. It is that even if one succeeds in building working majorities, the lawmaking process can at best suppress the symptoms of cultural disorder; it can do very little about the underlying causes. The most one can hope for in politics is to ensure that government "do no harm," an objective that will keep many good people busy in politics for a long time to come, to be sure.

But politics cannot begin to put the "connecting tissue" back in society. It is ill-equipped to reconstruct traditional moral beliefs. The best policies cannot recover courtship or marriage, make fathers responsible for their children, restore shock or shame where it once existed, or recover legitimate social authority to institutions that have been hollowed out by a pervasive ideology of individual autonomy. The vast majority of moral problems that trouble us cannot be eradicated by law.

Some imagine the nation in a state of political crisis and long for a Churchill figure to set things right. But our crisis is cultural. Even in the unlikely event that such a figure were to emerge, politics cannot confront a debauched culture in the same fashion that it can offer bold action in the midst of war or depression. In a disordered society, a heavy reliance on political authority to renew the nonauthoritative sector of culture can quickly become more disease than cure. The problem has not been expecting too little of politics, but far too much.

True conservatism brings a natural skepticism to the reforming possibilities of politics. It sees as its first job the long-term cultivation of character, culture, and community. It views politics as "downstream" from culture, *more reflecting it than shaping it*. Conservatism avoids excessively politicizing religion or religionizing politics because genuine religious faith stirs allegiances that transcend nation and ideology. The Scriptures would counsel even more skepticism about both the possibilities of politics and the form in which it should be practiced.

Until recently the mainstream of evangelical opinion looked askance at the now common practice of uniting or fusing biblical faith with American ideologies of the Left or Right. The greatest fallacy that has emerged in recent years is the expectation that national politicians and other civil authorities should take the lead in restoring biblical righteousness or, worse, using political power to create a "Christian America." This smacks of the idolatry of Constantinianism and is guaranteed to fail on the American scene, as even seventeenth-century Puritans discovered. Public statesmen today should imagine themselves as called to serve, *not in a predominantly Christian nation*, but one that more resembles the conditions Paul encountered in Athens, where he invoked the literature and philosophy of the times to make his point without imagining a large sympathetic majority standing behind him.

The greatest fallacy that has emerged in recent years is the expectation that national politicians and other civil authorities should take the lead in restoring biblical righteousness or, worse, using political power to create a "Christian America."

The appeal to create a "Christian America" represents a misreading of our times, American history, and, I would argue, the Scripture itself. The late English historian Christopher Dawson said that the idea "that the spiritual life of the society should be ruled by a political party would have appeared to our ancestors as a monstrous absurdity." This perspective is not only theologically sound, it is where the people are. The American people have registered stratospheric levels of concern about moral values, but they don't see moral renewal coming predominantly from politics. In fact, when moral renewal becomes completely synonymous with political takeovers and legislative agendas, it

awakens an intense fear of state intervention in people's private lives.

Religious conservatives, in other words, have put their stock in a model for moral renewal that awakens a deep, native resistance. If individual behavior is to be regulated, it should be regulated through the reestablishment of real social and moral norms in communities. There are many exceptions to this, of course, as opponents of this argument will quickly point out—for example, the current battle over legalized gambling.

Christians are understandably dismayed that the culture has become unhitched from its Judeo-Christian roots. What many refuse to acknowledge is that, in a thousand ways, *this unhitching was produced by a massive retreat by Christians from the intellectual, cultural, and philanthropic life of the nation.* While evangelicals count millions of members among their grassroots political groups and are now, if anything, overrepresented in the legislative arena, the number of evangelicals at the top of America's powerful culture-shaping institutions could be seated in a single school bus! The watching world is understandably chagrined by the interest evangelicals have shown in power while simultaneously showing so little interest in the noncoercive arenas of society where one's only weapon is persuasion.

More than anything, Christians need a model for engagement that combines the above principles. Perhaps the most helpful historical model is that of the British statesman William Wilberforce, a politician who ultimately succeeded in outlawing the slave trade, but who did so by first acknowledging the limits of the law absent the reform of manners and morals. Over the course of 40-plus years, Wilberforce created 67 councils and commissions to bring about social and moral reform, some religious, some secular. His model had all of the above ingredients in perspective, especially the subordinate relationship of politics to the culture. Wilberforce organized grassroots as well as "gatekeeper" reform movements operating in intellectual and influential professions and fields. He saw the need to transcend ideology—anyone who was useful on a particular issue was enlisted, whatever their religious or political creed.

This approach happens also to be deeply American. Any American movement that starts with the law, not culture, will fail. In the past, when citizens have reacted to the general disregard for social standards and obligations, they organized society-wide social movements that effectively moved people toward restraint and social obligation. At various times in history America witnessed an explosion of new voluntary aid and moral-reform movements aimed at improving cultural conditions.

The watching world is understandably chagrined by the interest evangelicals have shown in power while simultaneously showing so little interest in the noncoercive arenas of society where one's only weapon is persuasion.

Finally, what is needed within the Christian community right now is a debate, deep and wide, regarding cultural and policy matters. Too many have behaved as though politics is on a par with the church in the life of the Christian, placing matters that are filled with practical considerations on a par with biblical doctrine. The Christian community cannot avoid this debate, and it will have to be accompanied by a profound outpouring of understanding, wisdom, and grace in order to be effective.

FOOTNOTES

[1] Robert Bellah et. al., *Habits of the Heart: Individualism and Commitment in American Life* (New York: Harper and Row, 1985), p. 83.

[2] Arthur Schlesinger, Jr., *The Disuniting of American Reflections on the Multicultural Society* (New York: W. W. Norton and Company, 1992), p. 17.

[3] Mary Ann Glendon, in *Seedbeds of Virtue: Sources of Competence, Character, and Citizenship in American Society*, ed. Mary Ann Glendon and David Blankenhorn (Lanham, Md.: Madison Books, 1995), p. 2.

[4] Gertrude Himmelfarb, *On Looking Into the Abyss* (New York: Knopf, 1994), p. 106.

Soundoff... ACIVIL

By Oliver Thomas

To fit the meaning of the term, religious liberty must apply to all or it applies to none. It cannot be allowed just for Christians or any religious organization that the state may favor. It must be for everyone. Not just for Judeo-Christians. For everyone!

But ever since the Supreme Court's infamous 1990 decision in *Employment Division v. Smith*, the hallowed right to exercise one's faith—the nation's first freedom—has been moved to the back of the constitutional bus, as fabled attorney William Bently Ball once put it. In fact, some might say it's been moved off the bus altogether. What was once seen as a fundamental right, equal to freedom of speech and the press, is sometimes now largely a matter of legislative grace. The *Smith* deci-

RIGHT

Politics, the Supreme Court, and the Religious Liberty Protection Act

sion jettisoned the longstanding rule that government justify any restrictions on the exercise of religion by showing an overriding public interest such as health or safety.

Thankfully, other institutions of government have responded admirably to the Supreme Court's crimped understanding of the rights of conscience. The lower courts have found exceptions to the *Smith* rule by using so-called hybrid claims (i.e., linking religious rights with other rights, such as a parent's right to control the upbringing of a child) and other constitutional provisions such as the speech clause. State courts in Massachusetts, Michigan, Maine, and Wisconsin have used their own constitutions to protect religious exercise. State legislatures in Connecticut, Rhode Island, Florida, Illinois, and South Carolina have passed protective statutes, and one state—Alabama—even used a ballot initiative to amend its own constitution.

Yet, as encouraging as these efforts to reinforce religious rights might be, they leave our nation with a patchwork of protection. It is at best a constitutional safety net shot full of holes.

Then in 1993 Congress responded to this crisis of conscience by passing the Religious Freedom Restoration Act. When he signed the act, which restored the traditional protections for religious exercise, President Clinton described it as one of the "proudest" moments of his presidency.

But the Supreme Court struck it down. Requiring state and local governments to make a serious effort to accommodate religion, said the Court, exceeds Congress's authority under the Fourteenth Amendment. This seems a curiously inconsistent view. Congress was able to give citizens more rights than the Supreme Court found for them under the Equal Protection Clause (remember the civil rights acts of the 1960s?) or in the Fourth Amendment (see federal wiretap statutes). But somehow the Court denies Congress the right to strengthen the religion clauses.

Even worse was the Court's suggestion that *any* attempt by Congress to legislate a broad remedy to the problem would encroach on the Court's turf. *Separation of powers*, the justices call it. That is, of course, an important constitutional doctrine. But is it really violated when Congress provides

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ILLUSTRATION BY DARREN GYGI

broader civil rights protection than would the Court?

For two years the Coalition for the Free Exercise of Religion worked with Congress, consulted with leading scholars, and negotiated with the Justice Department, to work out a statute that could pass constitutional muster. The result was the Religious Liberty Protection Act.

Then the politics changed.

On the right, Mike Farris of the Home School Legal Defense Association and an energetic group of followers decided that the commerce clause should not be used to protect religious liberty. Never mind that it's been used to protect everything else. And so they are lobbying to strip out those provisions that would protect missionary agencies, church publishing houses, theological seminaries, and most likely the parent denominations of thousands of local congregations spread across America.

On the left, the American Civil Liberties Union has decided that the Religious Liberty Protection Act (RLPA) poses a threat to gay rights.

Let me make clear that I support civil rights for all persons, including gays and lesbians. There is nothing *Christian* about discrimination. While religious organizations must be free to hire only those persons who conform to their religious teachings, secular businesses have no business inquiring into a person's race, religion, national origin, or sexual orientation.

But RLPA does *not* threaten civil rights. The compelling interest test contained in RLPA is the same test the ACLU supported in the Religious Freedom Restoration Act. There is nothing new here. What's more, not a single reported case has held that landlords or employers can avoid a gay rights law by protesting on the grounds of religion!

The *only* time a religious objection has been used successfully to challenge a civil rights law pertains to marital status. That's because states have undermined their claim of a compelling interest by doing precisely what they tell religious people they can't do—discriminate against the unmarried. As long as states deny dormitory space, death benefits, and the like to the unmarried for "secular" reasons, they can expect to lose cases against those who wish to engage in the same type of discrimination for religious reasons. And well they should. Most Americans—this writer included—still cling to the antiquated notion that there is a difference between cohabiting young people and the rights of racial or ethnic minorities. When it comes to *behavior* rather than immutable characteristics such as race and gender, one person's discrimination is another person's morality.

The only time a RELIGIOUS *objection has been used successfully to* CHALLENGE *a civil* RIGHTS *law pertains to marital status.*

Religious liberty *is* a civil right. Shame on us if we refuse to protect it because some people—in this case, conservative Christians—exercise their religion in a way we don't happen to agree with. Still, political reality must be faced. In the United States Senate, where a single senator can block a bill until *60* of his colleagues vote him down, the opposition of

the civil rights community coupled with the home schoolers and others from the right may prove insurmountable.

The Supreme Court has complicated matters further with a series of decisions that curtail Congress's power to legislate under the commerce clause. Unless the activity to be regulated has a *substantial* impact on interstate commerce, it may lie beyond Congress's regulatory reach. The upshot of this is that the religious community is scrambling for a solution.

Only a narrow opportunity for constructive action remains between the Scylla of political opposition and the Charybdis of the Supreme Court's shrinking sense of congressional power. The answer may lie with a narrow statute, targeted at one of the most problematic areas for religious organizations. Such a statute would be similar to two recent congressional enactments—the first aimed at protecting the right of Native Americans to use peyote, the second shielding the assets of churches from the creditors of bankrupt parishioners. A targeted statute is likely to pass constitutional muster and may not provoke the kind of political opposition likely with a broader bill.

Zoning and other land-use problems make up an area most in need of legislative protection. Congressional hearings have established that neutral and generally applicable zoning regulations are often used to keep particular religious groups out of a community. Consider the Mormon Church's failed effort to construct a temple in a Nashville suburb overrun with churches of other denominations. Or the Metropolitan Community Church that could not get a variance to build outside Dallas. Finally, there are the problems encountered by churches such as the Western Presbyterian Church of Washington, D.C.; it was taken to court when it began to operate a soup kitchen for the homeless. Seems that serving the poor was not considered a religious use by some D.C. authorities.

A targeted federal statute could change all that. Unless local authorities can show that a church's plans create substantial problems for a community such as excessive traffic, noise and the like, the church should be free to locate where it chooses. Likewise, historic landmarking can create nightmarish problems for a church. An increasing number of urban congregations have been told by local authorities that they must spend their dwindling resources on maintaining an architectural facade rather than on ministry. A targeted federal statute could provide some relief for such cases.

Obviously, a land-use statute is no panacea to the variety of problems religious persons and organizations face when trying to be faithful in a world that if not hostile is oftentimes indifferent. But it is a start.

An **INCREASING** *number of urban congregations have been told by local authorities that they must spend their dwindling* **RESOURCES** *on maintaining an architectural* **FACADE** *rather than on ministry.*

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The Great Divorce

"The Power Choice" article states that many evangelicals are moving away from supporting separation of church and state. The primary reason for that shift is that the humanist-dominated courts, media, and politicians have, redefined that term. When Jefferson coined the phrase in a letter to Baptists he meant that church and state were separate entities which should be run by and supported by their respective members.

Today that term has been twisted to mean that religious and moral values should be divorced from government. How strange, in view of George Washington's statement that "it is impossible to rightly govern the universe without God and the Bible." Washington was president of the Constitutional Convention.

Christmas mangers and Christmas carols are banned in most public venues. Government schools teach evolution as a fact and bar any presentation of the Creation position.

I am a fundamental Baptist and believe strongly in separation of church and state. In fact, it is widely taught as a Baptist distinctive. I do NOT support the secularization of our government, the shunning of biblical values by most in government, or the use of tax-supported institutions to promote humanism, sexual perversion, abortion, and other social and moral evils.
EARL F. DODGE
Denver, Colorado

Caution on Home Schooling

As a juvenile court judge in the state of Georgia, I had to respond to your article on home schooling. I know people who take great pride in their home schooled children and those children are well above grade level. Unfortunately, because of the adamant refusal of parents who want to home school, to agree to much if any regulation, the concept is mostly used as an excuse for legalized truancy. All you have to do in this state is say you have at least a high school diploma or GED and turn in attendance for your child. There is absolutely no oversight, no testing, no assurance that the child is actually being schooled, or achieving any measurable level of competency in his/her education. I do not dispute that those who are willing and able should be allowed to home school. But every day I see parents who work 12-hour shifts in the mills claim to home school their children. These are the children I then see in court for all sorts of delinquent acts because they run unsupervised day in and day out. They typically use drugs and alcohol, and frequently engage in other dangerous behaviors, including early sexual intercourse. Frequently, they are required to work in violation of child labor laws. Those who truly are educating their children by home schooling should not fear some government oversight of the process so that we can be assured that children who want and deserve an adequate education are given it. We as a society pay dearly for the trouble many of these children encounter, and we will pay for their lack of employability as adults.
CONNIE BLAYLOCK
Dalton, Georgia

What We Tolerate

I recently watched a program on the History Channel titled "The History of Christmas," and was surprised to learn that for the first six years of our government's existence, Christmas Day was not a holiday for Congress. This seemed to offer a message to me that the government was not going to alter its business for religious reasons. I would be interested in research on this issue to determine why it was that our government refused to treat Christmas Day as a holiday in its first few years.

I enjoy your publication and argue its position on separation with my partner who believes that a public prayer or a moment of silence cannot interfere with anyone's religion, maintaining that if the prayer is not from one's own faith, one should be able to tolerate another's expression of belief. I maintain, on deaf ears, that his "toleration" concept would disappear if Muslim prayers happened to be the prayer of choice at the public gatherings he attends.
JERRY VENABLE
via E-mail

An Easy Read

Today I received the January/February issue of *Liberty*. As I paged through it I was immediately struck by the beauty of the type and layout. IT IS READABLE, CRISP, AND INVITING!

Too many of the publications that I receive nowadays have light type, dark backgrounds, over-screens, and unreadable material. Your magazine has struck gold with me. In addition, the articles I have read so far in this issue are very good and meaningful. I look forward to reading the rest of the issue.
GLENN & DONNA BEAGLES
Hagerstown, Maryland

Basic Rights

Your piece in the January/February 2000 issue "Freedom Under Fire: The First Amendment in Time of Crisis . . ." by Nicholas Miller was very interesting. However, I must point out one slight, but understandable, error.

The right of the president to suspend the writ of habeas corpus during war is incorrect. The president, under Art. I, Sec. 9 of the Constitution, may suspend it only during time of rebellion or invasion. For example, President Lincoln's suspension of the writ of habeas corpus during the Civil War, however unwarranted, would have been constitutional. Had President Franklin Roosevelt done the same, that would have been unconstitutional, since the United States had not been invaded.

As a side note, though President Clinton has not suspended the right, he has seriously damaged the writ of habeas corpus by restricting it to one year. This flies in the face of good sense when one examines how many (more than 70) people have been freed from death row after many years. They used habeas corpus after their innocence has been proven. Clinton has endangered innocent lives and curtailed a right that Thomas Jefferson urged be included in the Constitution.

Ultimately, even in times of insurrection, one must question central authority's desire to suspend a basic right such as habeas corpus.
THOMAS J. LUCENTE, JR.
Lima, Ohio

School Prayers for All

My governor, Mike Huckabee of Arkansas, in his article "Why I Am Against Instituting School Prayer," November/December 1999, made the point that big-brother tactics should not be used to push a certain religion on others. However, many in the Religious Right just want the freedom for students to initiate prayer in their home-rooms at their local public schools.

For instance, if a school is in Utah then maybe 75 percent of the students will be Mormon, and the homeroom prayers will reflect that. In the South I am sure the case will be different where most are confessing Christians.

Let's get the government off the back of these kids and let them pray. I grew up in Memphis as a Southern Baptist, and my pastor, Adrian Rogers, was fond of saying something like this: "Why not let everyone pray in the public schools, What harm will it do? The Muslim, Hindu, and Mormon prayers aren't getting above the ceiling anyway!"
EVERETTE HATCHER III
Little Rock, Arkansas

[Everette tends to underscore the hazards in state-sponsored prayer. Very quickly such activity could degenerate into a vehicle for the religious biases of the community as well as the state.—Ed.]

A Constitutional Republic, Right!

Roland Hegstad's article, "Tough Love," was excellent and insightful as is *Liberty* in general.

However, one statement caught my attention: "Under our system of government, the majority rules in the political process—but not in matters of conscience."

While I agree with the latter portion, the former is troubling, in that at first blush Mr. Hegstad's statement appears to inadvertently perpetrate a common misconception that this country is a democracy with majority rule.

In fact, we live under a Constitutional Republic, which is supposed to safeguard us all from the tyranny of the majority. I realize the former editor of *Liberty* knows this well; perhaps the question boils down to what he defines as the "political process," and perhaps I read too much into one sentence.

In any case, one almost never hears about a Constitutional Republic in the media as the favored but inaccurate term seems to be "democracy." This is a tragic and potentially harmful misconception, although appearing innocuous. As Joseph Goebbels was credited with saying: "Repeat a lie often enough and people will begin to believe it."

Keep up the outstanding work and excellent writing!
LIAM J. LANG
Louisville, Kentucky

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The Liberty *editors reserve the right to edit, abbreviate, or excerpt any letter to the editor as needed for clarity or brevity.*

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.

THE VERY ELECT

Perhaps the fog of time has managed to blur in my memory the sound and fury of past presidential elections. Perhaps! But surely they couldn't have started as early as this current one. I think it began in earnest when President Clinton won his reelection—last century. And this opening year of the next century has been pretty much nonstop political hype. Even ignoring the hype, it turns out all the candidates have been coaxed into volunteering views and policies that are of great interest to those who follow the church-state situation in the U.S.A.

Writing in *The New York Times Magazine* of January 30, Jeffrey Rosen maintains that "the presidential campaign of 2000 will be remembered as the time in American politics when the wall separating church and state began to collapse." Now, that's an apocalyptic view indeed, but one that I agree with, for the simple reason that the evidence is overwhelming and troubling.

It goes far deeper than George W. Bush speaking publicly of his conversion. And of course the rest of the field pretty much felt obligated to establish their spiritual bona fides as a result. No, it has more to do with the assumption most candidates share that now is the time to legislatively reinsert morality into public life. The baggage of that agenda includes promises to reformulate the Supreme Court by appointees who will steer us back to Christian values; voucher programs that will in essence fund a church school education for all who want it; charitable choice proposals to allow churches to administer welfare programs and money; and a whole array of other ad hoc stuff such as prayer in public schools and at ball games, the Ten Commandments on public buildings, and religion in the school curriculum.

Where this will end should become more apparent after November. However all the current candidates have ideas that identify them with this sea change in how we relate to the First Amendment to the Constitution.

With so much at stake it is remarkable how brief the First Amendment really is; with in fact only half of it really speaking directly to religious liberty: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In the past these words were said to have erected a "wall of separation" between the state and church, and such a view clearly created a uniquely neutral ground for the flourishing religious diversity in the United States. Now we have the personal pronouncement of Supreme Court Chief Justice Rehnquist that this is "an outmoded metaphor" to work with.

A few days ago I watched unbelieving as a nationally known televangelist and leading Protestant conservative held forth with the view that the Framers of the

Constitution never intended this separation. His was a very self-serving and revisionist view of history, and while he may be sincere, it is wrong nonetheless. He seems to think that government should act as the paymaster and bully pulpit for religion. And I have no doubt that his view of government-supported religion gets into "read my lips" rethink when it is extended to covering all faith systems—be they Buddhist, Muslim, Hindu, or something more "animistic."

Could it be coincidental that this fundamentalist call for what would amount to a church-state alliance comes just at the point that the movement has realized it will never win power in its own right at the ballot box, and has publicly despaired of an adequate response from a society too out of step with its moral agenda? And is it just coincidence that this call for state involvement in church matters comes just at the moment that mainline Protestantism has arrived at a happy accommodation with Roman Catholicism—after all, it was fear and intolerance of Catholics that drove much of their historic objection to such things as state aid to schools, and to Catholics in major public office (see the election of JFK).

It's worth remembering that the Framers of the Constitution did truly intend to keep the powers of church and state separate. The mere fact that some of them elsewhere and at other times seemed to contradict this proves nothing except that when together this diverse group of visionaries determined that the freedom of all was guaranteed only when the state was separated from all religions. We understate the temper of their times when we ignore their obvious fear of state religion—quite obviously informed by sad memories of Oliver Cromwell's protectorate, which followed the English civil war of only a century earlier; and in its collapse leading to the flight of many to the New World. Much has been made of the Enlightenment influence on the Framers' vision for the new republic. But the Enlightenment view, while rooted in the generics of deism, was hardly at odds with the New World Protestant rejection of state religion and its coercive nature.

ILLUSTRATION BY RALPH BUTLER

What was obviously present then and absent now was a relative uniformity of religious view and the expectation that Christian moral values would naturally permeate all public discourse and behavior. Today's secularity would indeed trouble any Rip Van Winkle from that era. Today's religious diversity would undoubtedly confuse them more than it does us. But as in their day, the only legitimate way to deal with this lies in respecting individual rights; and the churches in answering the crisis of moral renewal dare not risk an immoral dependence on the power of the state. We have, as did the Framers, the lessons of history in that regard. To forget them is to invite the Inquisition or some similar incubus into our free republic.

LINCOLN E. STEED

ducation makes people easy to lead, but difficult to drive; easy to govern, but impossible to enslave."

—Henry Peter Brougham
Scottish statesman, historian (1778-1868).