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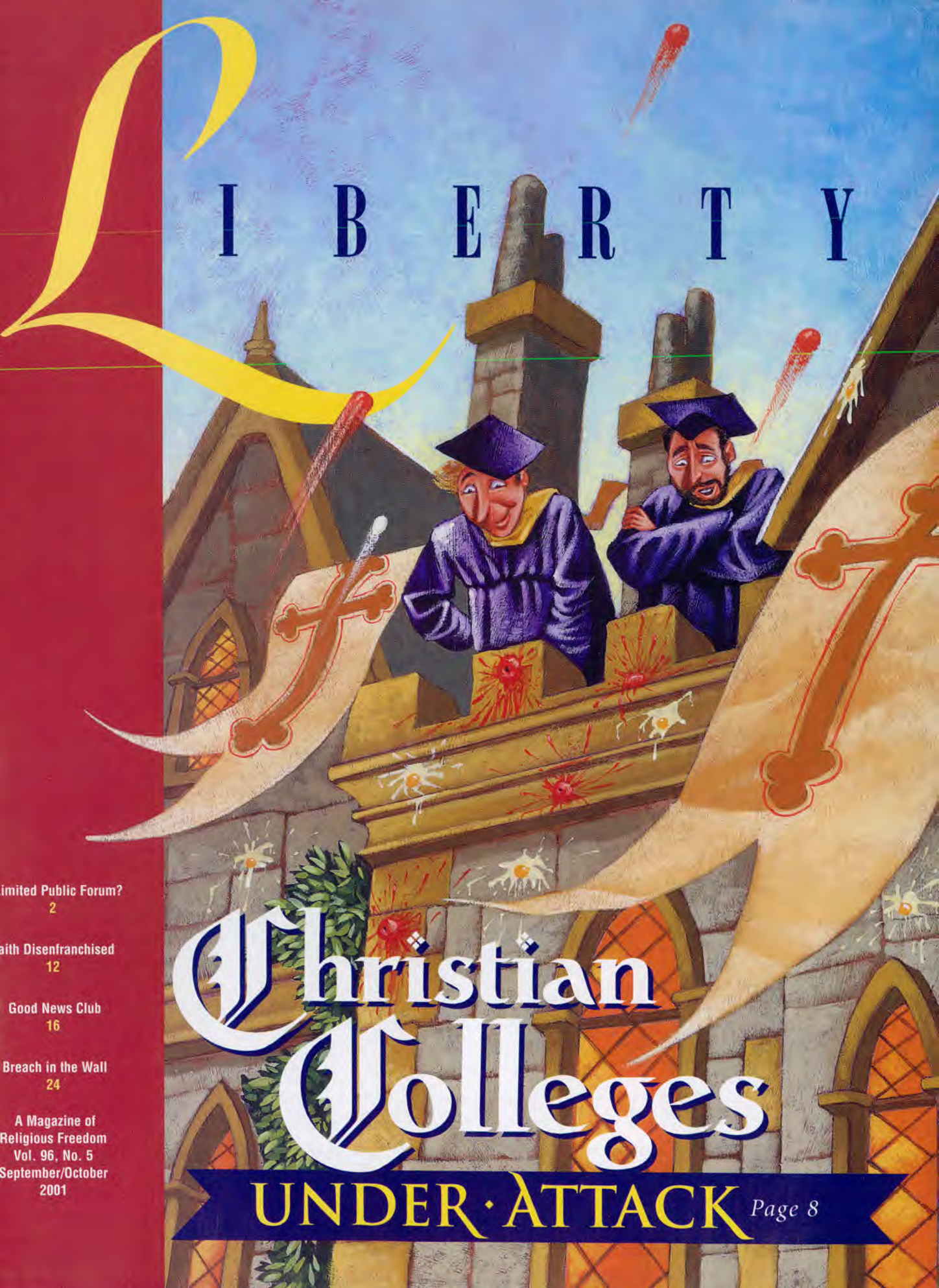

Christian Colleges UNDER·ATTACK

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In church-state activism today the battle lines usually form between separationists and accommodationists. While there are other positions, these two have emerged dominant. While by the reckoning of most observers the accommodationists have been winning more often than not in Supreme Court decisions, no one wins all the time. In fact, one of the great ironies of Supreme Court jurisprudence, especially in church-state cases, is that the principles which favor a particular group of activists in one case can be used in ways that frustrate that group later. This is exactly what has happened with the religious liberty principles that were used in the *Rosenberger* case of 1995, the *Southworth* case of 2000, and an Alabama appeals court case also in 2000.

A ★ LIMITED PVBLIC FORVM?

By BARRY HANKINS

The strange odyssey of religious liberty, free speech, and student fees at three universities.

Rosenberger v. University of Virginia was heralded by many evangelical accommodationists as a sign that religion might get a fair shake in the public square after all. Accommodationists generally believe that from the *Everson* bus case of 1947 until at least the 1980s the Supreme Court put too much emphasis on the separation of church and state and the "no aid" to religion policy that accompanied separation. Many accommodationists argue that such a strict view of separation favors secularization and often results

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in discrimination against religious viewpoints. Separationists, by contrast, argue that without the "no aid" rule and a more thoroughgoing separation, the state tends to privilege the majority religion, thereby jeopardizing religious liberty and equality before the law for minority faiths.

The *Rosenberger* case concerned a student publication at the University of Virginia. The university had a policy of funding student publications, but *Wide Awake*, as the publication in question was called, had been denied funding because of its explicitly religious content. The university reasoned that since the primary goal of the publication was to proselytize, funding the periodical amounted to a violation of the establishment clause of the First Amendment, and would be an unconstitutional aid to religion. But since the university funded all sorts of other student publications, including some religious ones that did not engage in proselytizing, Ronald Rosenberger, the editor of *Wide Awake*, sued, claiming discrimination against religion.

This was a tricky case. Was it an establishment clause issue regarding the potential state funding of religion, or was it a free exercise case dealing with discrimination against religion? It nicely framed the differences between accommodationists and separationists. If the Supreme Court decided in favor of the university, accommodationists could claim the case as proof that separationist principles often resulted in discrimination against religion, Rosenberger and *Wide Awake* would be denied funding solely because the publication was religious. If the Supreme Court decided in favor of Rosenberger and his magazine, separationists could claim that the accommodationist position resulted in the funding of explicitly religious institutions, which had been unconstitutional expressly since 1947 and in actuality much longer than that.

THE MAJORITY OPINION STATED THAT ONCE THE UNIVERSITY HAD OPENED A LIMITED PUBLIC FORUM FOR SPEECH, IT COULD NOT THEN DISCRIMINATE ON THE BASIS OF THE VIEWPOINT OF ONE OF THOSE WISHING TO ENTER THE FORUM.

The Supreme Court ruled in Rosenberger's favor, but it did so by evading both the establishment and free exercise clauses of the First Amendment. Rather, the court accepted Rosenberger's free speech argument. The majority opinion stated that once the university had opened a limited public forum for speech, it could not then discriminate on the basis of the viewpoint of one of those wishing to enter the forum. The funding of student publications had created the forum, so a denial of funds was a denial of access to the forum. Content discrimination geared toward preserving the purpose for which the limited public forum had been created was acceptable, the Court reasoned. If, for example, the university wanted to open a public forum for the discussion of Shakespeare, it could limit the content of speech to Shakespearean topics. Once having created a public forum limited only by the stipulation that those entering it be students, however, the university, as an arm of the state, could not then discriminate on the basis of the viewpoint of one group's speech. To do so was viewpoint discrimination, which was an unconstitutional restraint on free speech rights.

Many evangelicals applauded the Court's *Rosenberger* decision for being less concerned with establishment clause issues and more concerned about hostility to religion. Editors at *Christianity Today* supported the decision but argued that the narrow 5 - 4 decision was evidence of the need for a religious equality amendment to the U.S. Constitution, in order to more firmly establish that religious groups cannot be singled out for discrimination on the basis of the establishment clause of the First Amendment.[1] This was an example of the oft-argued accommodationist position that separation of church and state of the "no aid" to religion type either emanates from or contributes to a secular hostility to religion. From the accommodationist perspective, *Rosenberger* put the Court into the business of protecting religious speech even at the risk of government funding of religion. Many evangelicals, therefore, viewed this as a wholesome example of government accommodation of religion and not as an egregious establishment thereof.

Little noted at the time of the *Rosenberger* ruling, Justice Sandra Day O'Connor suggested in a concurring opinion that at some point there might be students who would protest the use of their student fees to advance religious or political views with which they disagreed. She wrote, "Although the question is not presented here, I note the possibility that the student fee is susceptible to a free speech clause challenge by an objecting student that she should not be compelled to pay for speech with which she disagrees."[2] In other words, if Rosenberger could make a claim to funding, perhaps other students would object to their student fees being used to fund speech they didn't like.

O'Connor's passage was practically an invitation for students to challenge a university's mandatory fee system. It wasn't long before a few evangelical students at the University of Wisconsin did so. The case was called *University of Wisconsin v. Southworth* (2000).

The facts of the case are as follows: Scott Southworth and some other evangelical students at the University of Wisconsin challenged their school's mandatory fee system, arguing that their student fees were being used to fund all

sorts of student groups with which they strongly disagreed. They listed in particular several liberal and/or secular organizations, such as Amnesty International, the Campus Women's Center, the Internationalist Socialist Organization, the Lesbian/Gay/Bisexual Campus Center, the National Organization for Women, and the Wisconsin Public Interest Research Group. Southworth and the other students argued that the right of free speech includes the right not to speak, and that by using their fees to fund left-wing groups, the university was forcing them to speak in ways they did not believe.[3]

Many evangelicals lauded Southworth's effort. In an article entitled "de-Funding the Left," found on the Cedarville (Ohio) College Website, the author compared *Southworth v. University of Wisconsin* to another famous battle, David versus Goliath. Southworth, of course, was David up against the left-leaning Goliath of the Wisconsin Student Association, and by implication the fee systems of most major universities.[4]

In the first round of hearings, a federal judge bought Southworth's argument and ruled that the mandatory fees were a violation of the evangelical students' free speech rights. The court even issued an order that laid out a mechanism for allowing the students to opt out of paying fees to groups with which they disagreed. The appeals court affirmed the lower court ruling. Attorneys for the University of Wisconsin argued in both instances that an important part of the mission of the university was to encourage the dissemination of a wide variety of viewpoints. In keeping with this mission, mandatory student fees were used to create a limited public forum fostering free speech and divergent ideas. The lower court, the university's lawyers argued, confused the funding of a forum for all speech with the funding of one particular viewpoint. In other words, Southworth's fees were paying for the forum, not the content thereof.

Unlike David when he fought Goliath, Southworth's contest was a three-fall match, and Goliath had one round left—the Supreme Court. In a rare unanimous decision the court ruled in favor of the university. The decision shocked some obervers, including a few who had been present when the case was argued before the court. Jan LaRue, of the Family Research Council, was quoted as saying, "Everyone who witnessed the oral argument in this case clearly thought it would go the other way."[5] Apparently the questions the justices posed to the university attorney left the impression that the Court was leaning toward Southworth. In the opinion, however, all the justices agreed that at the University of Wisconsin student fees were not paying for any particular group's speech, but rather for the limited forum in which that speech took place. Southworth and his allies, therefore, had no leg to stand on. They were not, in the Court's view, being forced to fund the various liberal groups they found offensive but merely the forum where all groups were theoretically welcomed to make their claims. The Court did stipulate that a limited forum must be truly neutral, something that Southworth claimed was not the case. He and his allies were particularly disturbed that the funding process seemed to favor liberal groups. The Supreme Court, therefore, remanded the case to the District Court to ensure that the funding for groups participating in the limited public forum would be done in a neutral manner.

JUSTICES AGREED THAT AT THE UNIVERSITY OF WISCONSIN STUDENT FEES WERE NOT PAYING FOR ANY PARTICULAR GROUP'S SPEECH, BUT RATHER FOR THE LIMITED FORUM IN WHICH THAT SPEECH TOOK PLACE.

Does the phrase "limited public forum" sound familiar? It is the same expression that was used in *Rosenberger.* In that case even a religiously sectarian publication with proselytism as its chief aim could receive university funding because the limited public forum had already been established. So, it was no violation for student fees at the University of Virginia to fund a limited public forum where explicitly religious views were to be advocated. Conversely, at the University of Wisconsin evangelical students could not opt out of paying for a limited public forum where views they deemed at odds with their faith were to be disseminated. Virginia wasn't really funding religion, just a public forum, and Wisconsin wasn't really funding liberal groups, just a public forum.

Ironically, but not surprisingly, some evangelical groups that had applauded Rosenberger were shocked and dismayed by *Southworth. In Focus,* the Web site magazine of James Dobson's Focus on the Family, issued a headline "Court OKs Forced Student Fees." The *In Focus* staff writer opened with this italicized line, *"College students can be forced to financially support causes with which they disagree, the Supreme Court ruled in a shocking decision this week."* The author continued by pointing out that the aforementioned LaRue, of the Family Research Council, "is flabbergasted that the High Court unanimously upheld the University of Wisconsin's mandatory student fee system."[6]

The plot would thicken even more, however, when the principle used to decide *Rosenberger* took another unexpected turn in a case in Alabama. This case concerned an Alabama law that banned the use of public funds or facilities at universities for groups that advocate activities that

violate Alabama's sodomy and sexual misconduct laws. In short, no funds were to be dispersed to student groups that advocate gay and lesbian lifestyles. Recognizing the free-speech implications of such a law, legislators even included a section in the statute that read in part, "This section shall not be construed to be a prior restraint of the first amendment protected speech. It shall not apply to any organization or group whose activities are limited solely to the political advocacy of a change in the sodomy and sexual misconduct laws of this state."[7]

The law was challenged by the Gay Lesbian Bisexual Alliance (GLBA), a student organization at the University of South Alabama. GLBA is an officially recognized campus organization whose purpose is to educate people in the university community about gay, lesbian, and bisexual issues and to provide a support system for gay, lesbian, and bisexual students. On the basis of the Alabama law cited above, a university dean denied GLBA's request for funds to purchase World Aids Day posters and also for speakers that GLBA wanted to bring to campus. The university also effectively denied the student group on-campus banking privileges by informing them that their funds could be frozen in an on-campus account as a result of the Alabama law. The GLBA, therefore, filed suit in U.S. District Court claiming, in part, that the Alabama law amounted to "viewpoint discrimination." Sound familiar? The Supreme Court, recall, had ruled in *Rosenberger* that once a university opens a public forum for speech, it cannot discriminate on the basis of the particular viewpoint of the student groups applying for funds.

The irony here is striking. In *Rosenberger,* the University of Virginia had denied funding on the basis of *Wide Awake's* explicitly evangelical views. At the University of South Alabama, the university was denying funds on the basis of GLBA's explicitly gay agenda. Taken together, the cases pitted evangelicals and gays on the same side against their universities, both groups appealing to the Supreme Court's doctrine that viewpoint discrimination is unconstitutional. To bring the *Southworth* case into the mix makes for even more irony in that *Southworth* was an evangelical, like those involved in the *Rosenberger* case, who attempted to keep his student fees from being dispersed to groups such as the University of South Alabama's GLBA.

The district court found in favor of GLBA, as did the Eleventh Circuit Court of Appeals. The latter pointed out that the Supreme Court has recognized three types of public forums—nonpublic forums, traditional public forums, and limited public forums. The government's latitude in regulating speech is widest in nonpublic forums—prisons and military bases, for example—and most narrow in traditional forums—public parks and street corners. In the latter, nearly anything short of inciting a riot or revolution is permissible. Limited forums, as was emphasized in *Rosenberger,* present the middle scenario in which the government can limit the content of the forum ahead of time, but cannot discriminate on the basis of viewpoint once the forum is in place. As the appellate court wrote: "Although the government is not required to create such forums, once it does so the Constitution constrains its power to regulate speech within the forum."[8] The appeals court then cited *Rosenberger* explicitly, saying that case "makes clear that USA's system for funding student groups created a limited public forum."[9] The court then continued for a full paragraph outlining how the University of Virginia's discrimination against a Christian publication was nearly the same as USA's discrimination against a gay student organization. The appeals court then restated the distinction between content discrimination, aimed at preserving the purpose for which a limited public forum had been created, and viewpoint discrimination based on the particular ideas of the student groups. The court wrote, "The [Alabama] statute discriminates against one particular viewpoint because state funding of groups which foster or promote compliance with the sodomy or sexual misconduct laws remains permissible. This is blatant viewpoint discrimination."[10]

IN A LIMITED OR TRADITIONAL FORUM, ABOUT THE ONLY KIND OF SPEECH THAT A GOVERNMENT CAN SHUT DOWN IS THAT WHICH THREATENS TO LEAD TO IMMINENT LAWLESS ACTION.

In other words, in a limited public forum, speech that encourages violation of sodomy laws is protected just as much as speech advocating compliance with those laws. While this may seem odd to some, it is based on a history of cases in which the Supreme Court has given wide latitude for speech and, conversely, severely restricted the government's role in regulating speech. In a limited or traditional forum, about the only kind of speech that a government can shut down is that which threatens to lead to imminent lawless action; such as when a speaker is inciting a riot or revolution.[11] The appeals court, therefore, not only found in favor of the gay and lesbian students, but it also ruled the Alabama statute unconstitutional on its face.

What all this shows is that church-state jurisprudence, like all areas of constitutional law, is quite complex. No group is ever going to be satisfied with the court. Sometimes evangelical accommodationists like the court. Such was the situation with *Rosenberger.* When the *Rosenberger* principles

were applied in *Southworth,* however, the evangelicals lost. Seemingly, traditional morality, of the type espoused by evangelicals, lost again in the Alabama case. But in all three cases the winners were those who desire first and foremost a wide public forum for the dissemination of all types of ideas.

These cases, taken together, suggest that the way for evangelical Christians to combat the secular left is to get into the marketplace of ideas rather than attempting to limit what is said there. This is the difference between *Rosenberger* and *Southworth.* Before his case ever went to the Supreme Court, Rosenberger told how and why he started *Wide Awake.* "Every viewpoint was out there in the public square, being subsidized by the university, except the Christian viewpoint," he was quoted as saying.[12] His response, therefore, was to get his views into the forum. Southworth, by contrast, said, "As a conservative and a Christian, it was frustrating to see the money going to organizations I personally disagree with."[13] His approach, then, was to defund the speech he didn't like. To the extent that those viewpoints were unfairly advantaged by the University of Wisconsin's fee system, Southworth's effort was laudable, but to the extent that he and his allies were attempting to narrow the limited public forum, as the Supreme Court ruled that they were, their efforts would have had the effect of reducing the space available for fully free speech. Moreover, had Southworth won, it would have become potentially more difficult to advance religious messages in a limited public forum that was funded by a university because secular students could stipulate that their funds not be used for religious speech.

IF MORE AND MORE CULTURAL SPACE IS UNDER THE AUSPICES OF THE STATE, AND IF THE STATE MUST BE STRICTLY NEUTRAL WITH REGARD TO RELIGION, MORE AND MORE CULTURAL SPACE WILL BECOME SECULAR.

On the other hand, there is a troubling aspect to all three cases that make them similar. *Southworth* and the Alabama case pose the thorny issue of government funding, however indirect, for all kinds of left wing ideas. Whether appalling morally or just plan loony socially, they often run counter to the majority of those whose tax monies or student fees pay the bills. On the loony side, a Florida State student group allegedly promoted skinny dipping as part of a university-funded clearinghouse.[14] In a democracy, people are assumed to have some say over where their money is spent. In the *Rosenberger* case we were faced with state funding of religion, even sectarian proselytizing religion. This was not government funding for secular-subject textbooks for students at religious schools or money for bus fare for parochial school students. This was state money used to defray the cost of publishing a magazine whose expressed purpose was to win others to the Christian faith. Historically, this has been deemed unconstitutional, and the idea of state funding of religion is deeply troubling even to many evangelical Christians. There are two things that have mitigated this problem somewhat. First, the money in the *Rosenberger* case went to the printer and not directly to *Wide Awake,* so the funding was indirect. Second, as outlined above, universities, so the court held, use student funds to create limited forums, not to advance particular viewpoints therein.

As troubling as all three cases may be in this respect, however, it is probably better for religious liberty to have more, rather than fewer, open forums. Those who are seriously religious, even evangelical, and at the same time separationist, must grapple with the problem that has arisen as government has become ever more pervasive in the past half century. If more and more cultural space is under the auspices of the state, and if the state must be strictly neutral with regard to religion, more and more cultural space will become secular. Perhaps the *Rosenberger* case is a fair way of dealing with secularization and the apparent discrimination that can result. If religious viewpoints cannot hold their own in the marketplace of ideas, that is one thing. If there are fewer and fewer such forums where religious people can press their claims, however, that is even worse. But, if there is to be this openness toward religious speech in a limited public forum, evangelicals cannot then complain when all manner of other speech is also permitted. Better *Rosenberger* than *Southworth.*

FOOTNOTES

[1] Steven McFarland, "A Tenuous Victory for Religious Freedom," *Christianity Today,* Aug. 14, 1995, pp. 18, 19.

[2] *Ronald W. Rosenberger v. Rector and Vistors of the University of Virginia* (1995), 115 S. Ct. 2527.

[3] *Board of Regents of the University of Wisconsin v. Southworth et. al.* (2000), 98, 1189.

[4] Ben Taylor, "de-Funding the Left," Cedarville College, www.boundless.org/1999/features/a0000023. html.

[5] Martha Kleder, "Court OKs Forced Student Fees," *Family News in Focus,* May 5, 2000, p. 1.

[6] *Ibid.*

[7] *Gay Lesbian Bisexual Alliance v. Pryor,* United States Court of Appeals, Eleventh Circuit, No. 96-6143, p. 1.

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

[9] *Ibid.*, p. 4.

[10] *Ibid.*

[11] See *Brandenburg* v. *Ohio* (1969).

[12] "Time to Strip the Lemon Pledge?" *Christianity Today,* Jan. 9, 1995, p. 4.

[13] "Supreme Court Upholds Mandatory Student Fees," *Freedom Forum Online,* Mar. 22, 2000, p. 1.

[14] Taylor, p. 2.

Christian Colleges Under Attack

By L. James Harvey

Most of our founders said in one way or another that morality is essential to democracy, and that religion is essential to morality. America is fast becoming a test of that proposition. Just look at some of the nations around the world today that are trying to establish democracy on moral quicksand, to see how right our founding fathers were. Without a moral foundation even a democracy inevitably succumbs to corruption, greed, and evil.

A poll in the November 22, 1999, issue of *U.S. News & World Report* revealed that 84 percent of current college students believe they need to cheat to get ahead in the world today. Another article in the same issue reported on a serious outbreak of insider trading among young brokers on Wall Street. Can America flourish if its leaders are uniformly dishonest? Can democracy succeed without a strong moral foundation?

When the Ivan Boesky and Michael Milliken scandals erupted some years ago, Harvard was aghast to find many of the people involved were its graduates. It sent the administration scurrying to create some new courses in ethics in an effort to stem the tide of corruption. But can a secular college actually develop character in its students? It is doubtful that courses in ethics will make much difference, because the problem isn't that people don't "*know*" what's right. The problem is that they prefer not to "*do*" what's right. The problem isn't an information problem; it's a character problem.

Where then can America get a supply of honest leaders with character? Our best hope seems to be from Christian colleges. If they are faithful to their

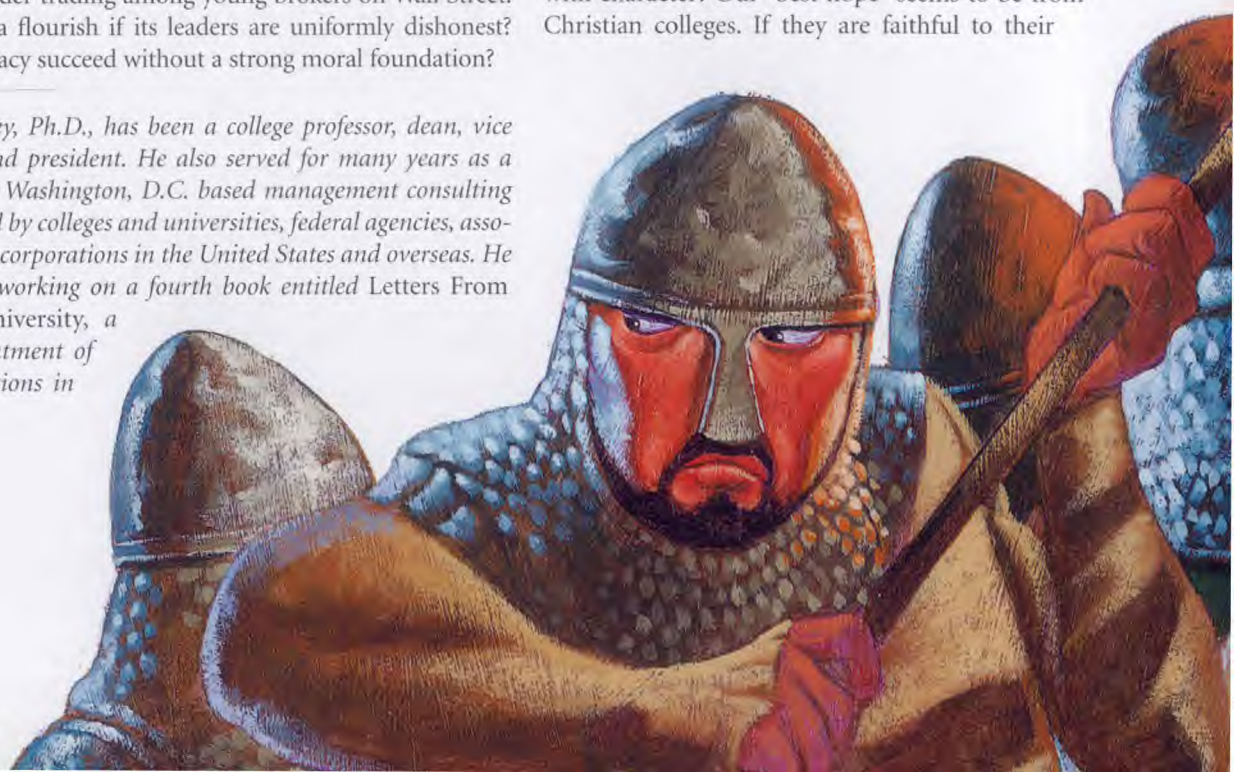

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ILLUSTRATION BY RALPH BUTLER

mission, these colleges can help young leaders internalize their faith and develop the inner values that will cause them to "do" the right things when they are faced with choices.

Yet there are pressures from all sides for Christian colleges to forfeit their religious values and become little more than secular institutions.

Note the following items regarding some Christian colleges and universities:

- The Baptists of Virginia recently cut all ties with the University of Richmond, a university they founded in 1830. They said that the increased secularization of the university, which recently gave domestic partner benefits to gays and has coed residence halls, caused them to break the final ties.
- A continuing controversy over crucifixes in the classrooms at Georgetown University, the nation's oldest Catholic university in America, flared up again and led a faculty member to muse that the latest flap was "just another bump on the road to Georgetown becoming as secular as Stanford or Yale."
- A young woman sued Thomas Aquinas College, a Catholic college in California, after she was expelled for adultery. She claimed her "rights" had been violated. Fortunately her suit failed, but the use of the courts to force Christian colleges to grant secular rights is just beginning.
- Trinity Western University, a Christian university in Canada, was refused educational program accreditation because it teaches that homosexuality is a sin. (See the article "Heading Toward Thought Control" on page 20 of the May/June 2001 issue of *Liberty*.) The secular accreditation agency said the university was thereby violating the rights of gays. The case is going to the Canadian Supreme Court.
- The Catholic Bishops of America voted 223-31 to tighten control over the 230 Catholic colleges in America. The reason for their action was deep concern over the secularization of these colleges and their drift away from religious beliefs.
- Grove City College, a Christian college in Pennsylvania, had its federal funds withdrawn because it refused to accept the government's feminist position that men and women be treated the same in all respects, and refused to equalize schools intercollegiate athletic programs as required by Title IX of the Federal Higher Education Act.

Churches and colleges must decide whether they are willing to pay the price for standing up for their beliefs.

The pressure on Christian colleges to compromise their principles, just when those principles are most needed in society, is coming from several directions. Above all is the constant need for more money. Federal government funding is often tied to the acceptance of secular values. An increasing divergence between Christian values and those in our secular society is creating extreme pressure to bear on religious education. Increasingly students and faculty are coming to Christian colleges with secular values and are pressuring the college to adopt things such as drinking on campus and coed residence halls—both contrary to the creation of a Christian college environment. Liberal faculty members often push for an "academic freedom," which allows for attacks on basic Christian beliefs under the guise that such beliefs are dogmatic. There is a push to adopt secular sexual mores, which increasingly accept adultery, premarital sex, homosexuality, and bisexuality as social norms.

The Trinity Western case in Canada is probably a foretaste of what is coming here. California has already added sexual orientation to its state civil rights law, making any discrimination against gays illegal. What are California Christian colleges to do in response? If they stand by their values, they may lose all public funds, as did the Salvation Army in San Francisco when it failed to cave in to city pressure to accept pro-gay laws.

What is the answer? Churches and colleges must decide whether they are willing to pay the price for standing up for their beliefs, even if it means giving up federal funding and facing lawsuits. Government agencies, through their funding power, should not force values on colleges that are contrary to their religious beliefs. The freedom of religion guaranteed to all in the First Amendment must be claimed by Christian colleges and, if necessary, defended in court against our own government. We could hope for a judiciary that believes in interpreting the Constitution, rather than legislating through court actions.

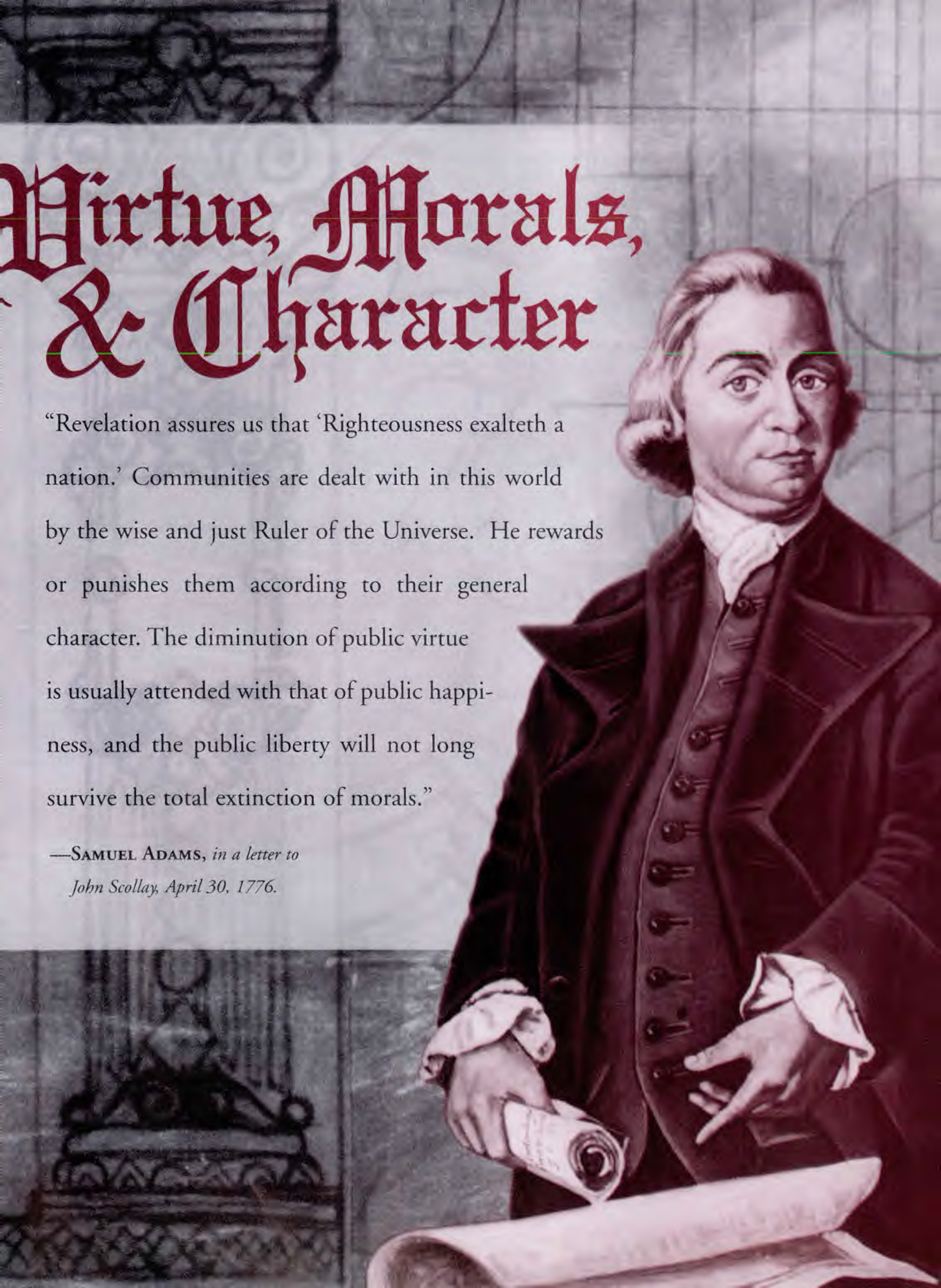
In some ways Christian colleges must work to save our government from itself. If government "moral" regulations kill off Christian colleges or, even worse, turn them into lukewarm secular copies of public institutions, it will be eliminating one of the best sources of honest leaders for the future. And without such leaders no country can thrive and survive. Corruption in government, on Wall Street, and in American life in general, will grow until we find ourselves in serious collapse, as did many great societies before us.

To a large degree, the churches of America and the colleges they founded hold the future of our society. And that future is in the balance. If we don't support Christian colleges as we should, we will lose an important force for stabilizing and "saving" America. The past several years have been a time of unparalleled prosperity. Surely now we can summon the discipline and funds to respond adequately. After all, we may not have any other option.

Virtue, Morals, & Character

"Revelation assures us that 'Righteousness exalteth a nation.' Communities are dealt with in this world by the wise and just Ruler of the Universe. He rewards or punishes them according to their general character. The diminution of public virtue is usually attended with that of public happiness, and the public liberty will not long survive the total extinction of morals."

—SAMUEL ADAMS, *in a letter to John Scollay, April 30, 1776.*



Faith

By Joe Woodard

Anti-Christian prejudice is the last respectable bigotry, and it's worse in Canada than anywhere else in the Western world," says Jewish American scholar Michael Horowitz, a religious persecution expert at Washington, D.C.'s, Hudson Institute. "Your recent election campaign proves it," he concludes.

The problem of anti-Christian bigotry has been growing in Canada for the past 20 years. However, it took last November's vitriolic federal election campaign to wake up most Canadian Christians to the depth of the problem. They were shocked to discover that the leading contender to the long-ruling Liberal Party, Stockwell Day with his Western-based Alliance Party, suffered a political and media scourging because he reads the Bible and doesn't work on Sunday. (See "A New Day in Canada" on page 24 of the March/April 2001 issue of *Liberty*.)

During the election race, a Liberal cabinet minister branded the Christian-friendly Alliance Party as "Holocaust deniers, prominent bigots, and racists." The Socialist Party leader called Alliance Party leader Stockwell Day a "cockroach" for his religious beliefs, and another contender said that "Day is unfit to govern, because he can't separate his religion from his politics."

The rhetoric became so extreme, that representatives of different faith groups issued a statement calling for religious tolerance and respect. The declaration, signed by prominent Jewish, Muslim, and Christian leaders usually sympathetic to the ruling Liberals, argued that every faith contains some fundamental truths—even, they might have added, the fundamentalist-extremist secular-humanist faith in the limitless reach of the modern administrative state.

In fact, God hasn't simply been banished from the campaign trail. The deity has been disenfranchised from Canadian public life for some time.

In September 1998, a memorial service was held in Peggy's Cove, Nova Scotia, for 229 people who died in the Swissair Flight 111 airplane crash. Before the start of the service, a federal official—reportedly from the Liberal prime minister's office—told the Protestant minister and the Catholic priest that they would not be allowed to utter the name of Jesus Christ nor quote from the Bible.

A rabbi read from the Torah, a Muslim recited from the Koran, and a native Canadian spoke of the Great Spirit. But both Christians accepted the political decree that they not mention their Lord.

The Peggy's Cove incident might be seen as just another civil servant's gaffe. But not long after, at a United Nations meeting on the International Criminal Court, the official Canadian delegation spearheaded an initiative to revoke the centuries-old immunity that a priest or minister not be compelled to reveal what is said by a penitent in confession.

Under the Canadian government proposal, the right to confidentiality would continue to be granted to Red Cross officials. But a pastor or priest who refused to divulge confidences would be punished by the secular court. In some denominations, a confessor who reveals a confession is subject to excommunication.

Such church-state conflicts used to be rare in Western civilization, because the civil and criminal law was largely based on a Christian world view—including the fundamental notion of freedom of conscience. Now, however, as secular humanism becomes the de facto state religion in Canada, conflicts of conscience are becoming more common, and the state holds all the power.

The Abdication of the Church

Vancouver lawyer Iain Benson, director of the Ottawa-based Center for Cultural Renewal, says,

"The problem in Canada is bigger than simply the velvet oppression of the political and cultural elites, antagonistic to faith. What we're dealing with is the corruption of Christianity itself."

Church leaders cling to the nominal Christianity of four-fifths of Canadians, Benson said. They lack any real engagement with their faith, buy into the consumer culture, and unconsciously acquiesce to the limitless administrative ambition of the Canadian elite.

Roughly 78 percent of Canadians call themselves Christian, yet fewer than 20 percent worship in any given week. And attendance is dropping by about 1 percent per year. As a result of this broad apathy, the political elite are free to squeeze faithful and resistant Christians. That squeeze is taking place largely in the realm of sexual and family law.

SENFRANCHISED

And a squeeze it is:

- The Canadian tax agency strips charitable status from a youth group called the Challenge Team that tours the country promoting chastity in schools and youth clubs, because the agency insists that the group must also teach about condoms and other birth control devices.
- Trinity Western, an independent Christian university in British Columbia (one of the few in Canada) is embroiled in a long, expensive, still-continuing legal battle with the provincial teacher licensing agency. The agency refuses to accredit the university's teacher education program, because the school's code of student conduct forbids premarital and homosexual sex. (See "Heading Toward Thought Control" on page 20 of the May/June 2001 issue of *Liberty*.)
- A Christian print shop owner, Scott Brockie, is in court for refusing to print custom stationery for the Toronto Lesbian and Gay Archives; he normally accepts commercial jobs from homosexuals, but he felt this job would constitute an endorsement of the practice, contrary to his faith. Having already lost twice before the human rights tribunals, he may now lose his business. (See "Canadian Velvet" on page 12 of the May/June issue of *Liberty*.)
- A Christian grandmother, Linda Gibbons, has spent most of the past four years in jail for speaking to women entering abortion clinics—politely, the sheriff admits—and offering to help them keep their babies or adopt them. She is never charged, but simply jailed for a couple of weeks or months at a time. "Bubble zones" prohibit free speech near abortion clinics in many Canadian cities.
- A Christian missionary family, the Raths, had their four-year-old daughter seized by social service workers, on the word of a drug addict accusing them of sexual abuse. Even after a medical examination proves no abuse, the social workers refuse to release the child for more than a month.
- At the University of British Columbia, some pro-abortion students were videotaped trashing a large Christian pro-life display, but the provincial attorney general refuses to prosecute the vandals, because it "wouldn't be in the public interest."
- A Christian pharmacist in Alberta was suspended from her job for refusing to dispense the "morning-after" pill.
- A Christian psychiatric nurse in Ontario was fired from her job, without recourse, for praying with a patient.

The list goes on and on.

Needless to say, given Canada's at least nominal Christian majority, the suppression of the public presence of religion could take place only with their acquiescence.

In fact, the Christian-friendly Alliance Party did make gains in the election, increasing their popular vote (to almost 25 percent) and seats (from 58 to 66 in the 301-seat Parliament).

One of the few unexpected Alliance losses, however, was Calgary Centre Member of Parliament Eric Lowther, losing to the leader of the fifth-ranked Progressive Conservatives, Joe Clark. Clark beat Lowther with a widely advertised local coalition between his own party, local members of the ruling Liberal Party, and the inner city's gay and lesbian block. And again, religion became the issue.

"Christians in politics believe they have real administrative solutions for governance that can work for a broad base of the electorate, Christian and non-Christian alike," Lowther said after the election.

"But there's one worldview that holds that individuals have a spark of something divine in them, a value and a worth that goes beyond the

pragmatic definitions of the state . . . .

"And there's another worldview that believes the state to be the final, all-powerful, and all-legitimate authority in human affairs. And people holding that worldview will ignore your public policies and attack your religion for being oppressive."

Not surprisingly, Lowther believes his Christian faith to have been attacked by a militant coalition of the devotees of secular administration.

The Secular-Humanist Culture

Part of what proved surprising to Canadian Christians, during the last federal election campaign, was the complicity of the media in the political elite's gang-up on what they saw as the Bible-thumper from the sticks.

The CBC documentary, aired by the federal broadcaster just days before the election, reinforced Christian suspicions that the media is not neutral on religion, but is actively hostile.

In the middle of November's race state-sponsored CBC-TV aired a documentary on Alliance leader Stockwell Day, featuring an eyewitness account of a speech Day had delivered at a Christian school—three years earlier. Day had declared his belief that human beings are descended from Adam and Eve, that the earth is 6,000 years old, and that human beings once lived alongside dinosaurs—in short, that he's a young-earth creationist. Day himself was not interviewed for that broadcast. So the next morning he was left trying to argue in the now-primed media that his beliefs are no more relevant to his political platform than a Hindu's belief in the descent of the lord Krishna from heaven.

"I don't see why this should be aired in any kind of detrimental way in any political campaign," Day said.

But it was.

A day later, Liberal Party strategist Warren Kinsella appeared on a national television talk show, with a Barney—a purple dinosaur that stars in a public broadcasting show for school-age children—chortling that the Flintstones were not a documentary. For the last few days before the election, despite a simmering corruption scandal among the ruling Liberals, the media focused almost exclusive attention on Day's creationism. The CBC documentary, aired by the federal broadcaster just days before the election, reinforced Christian suspicions that the media is not neutral on religion, but is actively hostile.

Political scientist Lydia Miljan, director of the Fraser Institute's National Media Archives, believes that the media chose to obscure Day's policies with his faith. "I thought the way the media handled the whole creationism issue was bizarre," Miljan said. "I've got nothing against attack journalism, but journalists should try to be fair."

Miljan has documented why those journalists weren't fair. Duplicating sociologist Robert Lichter's pioneering work in the U.S., she has polled the Canadian media and discovered that only 42 percent of them believe in any sort of God—half the national average. Only 15 percent of media personnel make any effort to attend church, and their median church attendance is less than once a year. They are also overwhelmingly pro-abortion, pro-gay rights, and pro-government.

"What's strangest of all," Miljan said, "they don't seem to realize that having no religion is a value in itself, that it colors the way they look at the world."

The result is a steady stream of low-level bigotry:

- Shortly after his appointment as host of CBC Radio's national morning show, announcer Michael Enright calls the Catholic Church "the greatest criminal organization since the Mafia," and he is not disciplined for it.
- Covering a protest at a Toronto abortion clinic, three journalists from religious publications are summarily arrested, and their film is seized. Despite the obvious threat to free speech, none of the secular media will report the incident.
- The Canadian Radio-Television and Telecommunications Commission, the country's broadcast watchdog, receives applications for cable distribution from the Playboy Network and the Eternal Word Television Network; Playboy is

approved and the Christian EWTN is denied, because of its "foreign influence."

- CBC-TV airs a Christian comedy special, showing Christ uttering vulgarities from the cross, and the state-funded broadcaster then ignores the complaints.
- First prize at a publicly funded art show is given to a drawing of Christ being sodomized by a minister, and government officials defend the "free speech" of the artists.

The Secular-Humanist Faith in Public Administration

The oppressive trend in Canada is an object lesson of how a dogmatically secularist elite can dominate a majority with a merely nominal faith, and how that secularism becomes identical to a faith in the limitless expansion of public administration.

The battle against the minority of observant Christians is being fought largely in the realm of sexual politics, says Iain Benson of the Center for Cultural Renewal, because "sex is the mysticism of the materialists."

The secular elite "cannot make this a non-faith society," Benson said, "because even their atheism is a kind of faith." So the "chattering classes in the government, media, state-funded universities, and public schools continue to be antagonistic to the very existence of Christianity," simply because of its latent claim to an independent moral authority. "What we see today is a triumph of the secular vocabulary, so that even church leaders find themselves addressing social problems in terms of the universal power of the state," he said. "The churches have lost any independent moral presence in society."

And that exclusive secularization is having an immediate effect even on the 80 percent of the population that has no explicit religious commitment.

"The church invented things like public hospitals, schools, and charities," Benson continued.

And we're discovering that these institutions remained humane only so long as they preserved their original [religious] inspiration."

As the state has taken over these humanitarian functions, they are becoming increasingly agents of secular "liberation." The hospitals are increasingly flirting with budget-driven euthanasia, the public schools have become purveyors of sexual "diversity," the universities (almost all of them state-run) are propagandists for the malignant administration, and the social welfare programs have become actively antagonistic to the natural family.

"Our most cherished institutions are becoming inhumane," concludes Benson.

The Way Forward

The most explicit pretext for the public suppression of Christianity in Canada has been "multiculturalism," the need to avoid "oppressing" non-Christians with a dominant public faith. In fact, Canada, to make up for its aging (and soon to be shrinking) labor force, allows immigration, largely from the developing world, to the tune of about 1 percent of the population per year.

Yet many or most of those immigrants from Asia, Africa, or Latin America are already Christian, and those who aren't still largely agree with the public policy positions of the suppressed Christian minority.

Over the past three years we have witnessed the growth of an interfaith coalition made up of evangelical Christians, Catholics, Sikhs, and Muslims; all fighting the legal redefinition of marriage to include same-sex couples. The federal government has actually been funding the court challenge to the existing marriage law by gay activists, and is more than eager to subvert the traditional family with its own taxes. And with slowly increasing coherence, this interfaith coalition, now dubbed the Coalition for Family Autonomy, has been resisting.

This resistance has little chance of success, at least in the short run. But it does give the lie to the government's pretext that its own anti-family initiatives are for the sake of fostering a gentler, more "multicultural" society.

What's more, the coalition points the way forward in another, more substantive sense. Most Canadians still retain a residual identification with a Christian denomination, yet they do not themselves feel particularly threatened by either government policy or the cultural drift. So the threat to the church is simply disregarded.

Taxes, however, take just under half of an average middle class income. So the threat to the traditional family is palpable, if not to the completely secularized, at least to the residually Christian. If an interfaith coalition can effectually serve as the champion of the traditional family, it may begin to wean Canadians from their ever-expanding public administration.

Joe Woodard is religion correspondent for the Calgary Herald, *in Calgary, Alberta, Canada.*

The Supreme Court Gets... Good News

By Faith Avery

When a local New York branch of the Good News Club asked to meet at Milford Central School after hours, the group didn't consider its request unusual. After all, Milford Central's facilities were often used as a public forum for similar groups, such as the Girl Scouts, the Boy Scouts, and 4-H Clubs, as well as a variety of adult organizations. The Good News Club is different from these groups in only one way—it is a community-based youth Bible teaching club.

Milford Central School refused the club's request, citing a policy of restricting its public forum facilities to secular groups only. The club filed a lawsuit and lost. Attorneys appealed to the U.S. Supreme Court, and the Court agreed to hear *The Good News Club v. Milford Central School* in February. A decision was expected in May or June.* That decision will affect not only student Bible clubs, but also churches and religious assemblies that rent public facilities for weekly worship services, midweek prayer meetings, or Bible seminars.

If this case gives some people a sense of deja vu, it's not surprising. Many thought the issue was settled back in 1993 with *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.* The *Lamb's Chapel* case involved the showing of a Christian

Faith Avery writes from Los Angeles, California.


Club
STOP

film at a public high school. In Lamb's Chapel, the Supreme Court ruled 9-0 that the exclusion of religious groups from public facilities that otherwise welcomed similar but secular programs and events violated the free speech rights of religious groups, and that the establishment clause neither required nor justified such exclusions. So why has the issue resurfaced nearly eight years later? The answer lies in a recent lower court decision.

The Supreme **Court** *has traditionally granted religious speech the same* **protections** *as secular speech.*

In 1997, in *The Bronx Household of Faith v. Community School District No. 10*, the court ruled that religious programs are generally organized by churches, therefore such groups can indeed be excluded from public forums, because churches present "religious instruction or worship" at their meetings, not simply religious "viewpoint." In other words, according to *Bronx Household*, religious "viewpoint" is protected under *Lamb's Chapel*, but religious "content" consisting of instruction or worship is not.

"How you draw that line is very difficult and it involves state officials in very subjective kinds of review of religious material and content," says Nicholas P. Miller, attorney with Sidley & Austin, a law firm that filed a brief in favor of The Good News Club in the Supreme Court case. "It's problematic for a number of reasons. The bottom line is that it involves public officials in very close screening of religious materials to decide what is viewpoint and what is religious instruction. The government becomes the censor."

Bronx Household leaves a good deal of room for courts to effectively exclude religious groups from the use of public facilities by virtue of the "content" of their meetings. At least two circuit courts have already cited *Bronx Household* in recent decisions that barred religious groups from utilizing public forums.[1]

Not all circuit courts have adopted the distinctions set down in *Bronx Household*, but the ruling's existence is seen as a threat to the rights of religious groups, which are generally made up of individuals whose taxes support the facilities they are not allowed to use.

"The *Good News* case presents three questions of importance to religious groups in America: Whether a policy that generally permits members of the community to use public facilities after school hours for educational, social, civic and recreational purposes, but excludes any person or group that desires to use school facilities for religious purposes, violates the First Amendment's protection for free speech. Whether such a policy violates the First Amendment's protection for the free exercise of religion. And whether a government policy requiring public officials to distinguish between 'religious instruction' and 'discussion of moral issues from a religious viewpoint' violates the Establishment Clause of the First Amendment."[2]

The Supreme Court has traditionally granted religious speech the same protections as secular speech. In a particularly effective passage pertaining to this subject, the Court wrote in *Capitol Square Review & Advisory Board v. Pinette* (1995): "[The Supreme Court's] precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. . . . Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be *Hamlet* without the prince."

The issue has historically been so volatile that the First Amendment's free speech clause requires, through the Fourteenth Amendment, that states must justify restrictions of content or viewpoint of private speech in public forums. States must show that any restrictions are "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."[3]

Perry Education allows for modifications to this directive if the facility is used only as a limited public forum, as opposed to the traditional open public forum. However, the ruling still holds that "any attempt to regulate viewpoint in a limited public forum must be justified by a compelling state interest and must be the least restrictive means of achieving that interest." Milford Central has so far shown no "com-

pelling state interest" in refusing to allow religious groups to use its facilities after school hours, nor has it attempted "the least restrictive means," since its policy has effectively banned religious groups entirely.

There is disagreement over whether Milford Central's facilities constitute a limited public forum, as the school maintains, or a traditional, open public forum. Attorneys for The Good News Club say Milford Central has attempted to create a limited public forum by excluding only one group or form of expression—religious speech. Indeed, the school's policy does not include any references to content exclusion except with regard to religion. Milford Central has allowed a variety of events to be held at its facilities, including political debates, fund-raising events for police and firefighter groups, Christmas programs, movie screenings, and even "moral instruction" through literature, presumably so long as the literature in question is not the Bible. Since an open public forum can be legally established through either policy *or* practice, it can be argued that the school established an open public forum due to its practices.

Milford Central's policy is also quite broad. It states that its facilities may be used for "social, civic, and recreational, and entertainment events. . . . Instruction in any branch of education, learning or the arts . . . [and] meetings, entertainment events and occasions where admission fees are to be charged." Again, no content restrictions are mentioned except with regard to religion. Attorneys have stated that a designated public forum would lose all meaning if a state was permitted to change a public forum into a limited forum simply by excluding one type of speech.

Even if Milford Central was deemed to be a limited public forum—which is open to question—the state of New York would still legally need to present a "compelling interest" to use religion as a criterion to define suitable content. Otherwise it is, arguably, discriminating against the "viewpoint" of the Good News Club and not simply the content of its meetings. After all, the Boy/Girl Scouts and 4-H Clubs deal with the same types of issues as the Good News Club, such as morality and character building. The difference is that each club has its own "viewpoint" on how to best deal with these issues, be that viewpoint secular or religious.

This matter was addressed in *Church on the Rock v. City of Albuquerque* (1996), in which the City of Albuquerque would not allow sectarian teaching at its city-owned senior citizen centers. It used the "viewpoint versus content" argument to defend its position. But in *Church on the Rock* the court ruled that "any prohibition of sectarian instruction where other instruction is permitted is inherently non-neutral with respect to viewpoint. . . . Instruction becomes 'sectarian' when it manifests a preference for a set of religious beliefs. . . . Because there is no nonreligious sectarian instruction (and indeed the concept is a contradiction in terms), a restriction prohibiting sectarian instruction intrinsically favors secularism at the expense of religion."

Since Milford Central allows "instruction in any branch of education" to take place in its public forum, with the one exception of religious instruction, it can be argued that Milford Central's "viewpoint versus content" line of reasoning is as unconstitutional as such reasoning was in *Church on the Rock*.

Can the **government** *define lines of exclusion, even for types of speech or content, without* **violating** *the First Amendment?*

Even if there was a logical and clear way to define religion in terms of content as opposed to viewpoint, the school's policy would still be problematic because religion is a constitutionally protected class. Can the government define lines of exclusion, even for types of speech or content, without violating the First Amendment? It's true that in a limited public forum (providing Milford Central qualifies as such) officials can restrict speech content when regulations are "reasonable in light of the purpose served by the forum and are viewpoint neutral." *Bronx Household* held that the exclusion of religious instruction and worship from public forums is "viewpoint neutral" and "reasonable," even when the facilities are otherwise available to similar secular organizations.

But the question can be raised, could officials "reasonably" exclude African Americans from a public forum that was inclusive of all other groups? Or Irish Americans, or blind persons, or senior citizens, or any other constitutionally protected class?

In some cases, a limited public forum can open its facilities for specific groups or purposes only. For instance, it could limit its facilities to usage by youth groups only, or senior citizens, or political or civic organizations. In such cases, it would be "reasonable" to exclude groups that don't fit within the limitations stated in its policy, such as prohibiting a senior citizens' cooking club from using public forum facilities that are limited to youth groups only.

However, the state should not be allowed to do the opposite. That is, open a public forum with a broad policy that welcomes a variety of groups dealing with general topics, then decide to exclude only one category of speech. This is precisely what Milford Central seems to have done in its public forum policy. Since religion is a protected class, it is entitled to the highest degree of constitutional protection from laws targeting religion. Milford Central's policy singles out religion for inferior treatment without passing the "compelling interest" test required by law. Instead it relies on the artificial distinctions laid down in *Bronx Household* to justify its position. But to defend *Bronx Household*, one must rely on cases involving government officials who are directly engaged in religious speech or prayer, or conducting religious instruction on school grounds during the school day. These cases, however, do not apply to The Good News Club, which involves a group of private individuals—nongovernment officials—engaging in religious speech in a public forum after school hours.

Milford Central's policy singles out religion for **inferior** *treatment without passing the "compelling interest"* **test** *required by law.*

The Good News Club is a national organization. Its meetings are not sponsored or supported by the school and no teachers or school personnel are involved in the meetings. They are open to all children, regardless of ideology, so long as they have their parents' consent. The meetings at Milford Central were to be held at 3:00 p.m., following the school day, when student attendance was no longer required.

"[The state's] strongest argument is the timing of the club meetings, just after regular school activities finish at three o'clock in the afternoon," says Miller. "They probably will argue that having the meetings so close to regular school hours gives the appearance to very young children, between the ages of 6 and 12, that [the meetings are] somehow endorsed or run by the school, and thus by the government."

It is true that in the past the Supreme Court has treated high school students differently than college students, judging that high schoolers are more impressionable than college-age individuals. The extension of this reasoning is that the court will be even more careful when considering the impressionability of elementary school children.

"But we think that it cuts both ways," says Miller. "If you're allowing other community groups, which they are in this instance, the Boy Scouts, the Girl Scouts, and the 4-H Clubs, to meet and use the space, then to deny the same privileges to the Bible club, sends a message of hostility. The young age of the kids [implies an equally strong possibility] that they're going to misunderstand and [determine that] the government somehow disapproves of religion and religious activity. We should be equally concerned with this issue."

The establishment clause prohibits the state from endorsing or showing hostility toward religion, but between the two, the latter may be of greater concern since hostility toward religion is not only prohibited by the establishment clause, but also by the free exercise and free speech clauses.

According to the ruling in *Board of Education v. Mergens* (1990), which also quotes *McDaniel v. Paty* (1978): "If a state refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility

toward religion. 'The establishment clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities'."

In addition to its possible breach of the establishment clause, *Bronx Household* may also be in violation of the free exercise clause—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"—since *Bronx Household* specifically targets religion for inferior treatment. A neutral law that can be justified by a "reasonable" government purpose, even if that law burdens religious practice, is generally applicable. However, "A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against religiously motivated conduct will survive strict scrutiny only in the rarest cases."[4]

In the *Good News* case, Milford Central's policy directly targets religion, stating: "School premises shall not be used by any individual or organization for religious purposes." Since Milford Central has not attempted a compelling state interest justification, nor explored less restrictive means, it can feasibly be argued that its policy violates the free exercise rights of The Good News Club.

Finally, while the establishment clause was written to prevent the entanglement of church and state, attorneys for the Good News Club argue that *Bronx Household* does anything but—in fact, it creates entanglement by forcing the state, in this case the officials at Milford Central, to define the often nebulous distinction between religious viewpoint and religious instruction or worship. It also raises the frightening prospect of having a state official on hand at every qualifying meeting to enforce compliance with the law—just in case someone decides to sing an illegal gospel song or utter an illicit "Amen."

"Presently the government has to distinguish between religion and non-religion because it has an obligation not to advance religion," says Miller. "So it has to know what religion is and be able to define it. But *Bronx Household* goes beyond that and has the government making distinctions within religious activity and conduct and speech itself. I find that highly troubling."

Will the Supreme Court agree? "I think it will," says Miller. "The reason I'm quite confident is that this case is very similar to *Lamb's Chapel*. It's a bit different—[that case dealt with] a public high school and not an elementary school—but the court ruled 9-0 in *Lamb's Chapel* that you cannot exclude religious activities when you have similar kinds of secular activities taking place in the facilities."

It can feasibly be argued that the Milford Central policy **violates** *the free exercise* **rights** *of The Good News Club.*

The hope is that the Court will overturn the *Bronx Household* ruling of the lower court and reiterate the principles set down in *Lamb's Chapel*.

"We think for the court to resolve this case fairly they need to overturn the *Bronx Household* rule," Miller continues. "Frankly, if the rule isn't overturned, it could be very troubling for religious people and churches. Currently the *Bronx Household* rule is only in a couple of circuits in about seven or eight states, but if it's upheld I would foresee it spreading rapidly to other states because [officials] don't have to worry about establishment clause issues. They can just set down a hard and fast rule that says, basically, no church groups allowed."

**During production of this issue, word came through that the Supreme Court ruled 6-3 that public schools may not discriminate against student clubs simply because they are of a religious nature.*

FOOTNOTES

[1] *DeBoer v. Village of Oak Park* (1999) and *Campbell v. St. Tammany's School Board* (2000).

[2] From the Brief of the Baptist Joint Committee on Public Affairs as *Amici Curiae* in Support of Petitioners.)

[3] *Perry Education Association v. Perry Local Educator's Association*, 1983).

[4] *Church of the Lukumi Babulu Aye, Inc., v. City of Hiaheah* (1993).

LIBERTY BRIEFS

Adventist College May Receive State Funds

A Seventh-day Adventist college in Maryland is eligible to receive state government funding, a United States court ruled June 26. The decision comes after an 11-year quest by Columbia Union College to gain funding under the Sellinger Program, a state program that distributes grants to private colleges in Maryland.

Columbia Union College cannot be excluded from the Sellinger Program solely because of its religious nature, said a three-member panel of the 4th Circuit Court of Appeals. By denying a grant only on the basis of religion, "the government risks discriminating against a class of citizens solely because of faith," the court said.

Direct state funding of CUC would not violate the United States Constitution's Establishment Clause "[b]ecause state aid is allocated on a neutral basis to an institution of higher education which will not use the funds for any sectarian purpose . . . ," wrote Chief Judge J. Harvie Wilkinson.

CUC first applied for funds under the Sellinger Program in 1990. In 1992, state officials denied CUC's application on the basis that CUC was "pervasively sectarian"—that the religious and secular purposes of the school were so intertwined that they could not be separated. Thus, the religious purpose of CUC would inevitably be advanced by any government funding, the state argued.

However, a district court ruled in August 2000 that CUC is not fundamentally different from the religious schools that currently receive aid under the program and so to deny CUC funding would violate the principle of equal protection under the law.

After examining the evidence, the district court said that the Adventist Church "exerted dominance over college affairs" and that hiring and admissions preferences were given to Adventist Church members. But the court also said that the "primary goal and function of Columbia Union College is to provide a secular education even though it has a definite and strong secondary goal to teach with a 'Christian vision.' "

In CUC's June 28 statement, College President Wisbey reaffirmed the college's commitment to its Statement of Community Ethos, saying, "[W]e value faith in God, we celebrate the goodness of creation, the dignity of diverse peoples and the possibility of human transformation. Through worship and shared life, we uphold spiritual integrity and are committed to achieving it."

— *Adventist News Network;* July 3, 2001; www.adventist.org/news

Some of the implications of the CUC case are covered in the article "Lead Us Not into Temptation," coming up in the November/December issue of Liberty. Editor

Salvation Army Snafu

One day after *The Washington Post* revealed that the White House was considering a proposal from the Salvation Army, the country's largest charity, to issue a regulation protecting faith-based charities receiving government funding from local laws prohibiting workplace discrimination, the White House ended consideration of the plan.

Though they asserted that no actual deal was made with the Salvation Army, the Bush Administration said they "were actively considering the sort of regulatory change the Salvation Army sought."

"A key part of the president's faith-based initiative is to make certain that in order to acquire, or to participate in providing these social services with government funds, we not require fundamental changes in the underlying principles and organizing doctrines, if you will, of the organizations that participate," Vice President Cheney said, according to a second article in the *Post.*

The paper had reported a day earlier that the Bush administration is working with the Salvation Army to "make it easier for government-funded religious groups to practice hiring discrimination against gay people." This information was based on a Salvation Army internal document obtained by the *Post.*

However, according to one Salvation Army senior official quoted in the original article, the Army "never discriminates in delivering its services, but on the question of hiring gay employees, 'it really begins to chew away at the theological fabric of who we are.' "

Rather than encouraging discrimination against gays, as the article stated, the Salvation Army was simply proposing a revision of an old Office of Management and Budget regulation known as "Circular #A-102." It would have ensured the faith-based organizations would not have to comply with practices or benefits inconsistent with their beliefs.

"It's the preservation of our employment practices that motivates us to support this," the Salvation Army official is quoted as saying. He also spoke of these practices as being "central to the group's 'theological foundation.'"

Religious organizations have had a long-time exemption from federal anti-discrimination laws. The 1964 Civil Rights Act gives religious organizations an exemption that allows them to discriminate in hiring on the basis of religion.

A proposal recently passed by the House Judiciary Committee, says religious charities cannot discriminate on the basis of race, color, national origin, sex, age or disability — but as the first *Post* article noted "it says nothing about sexual orientation."

To quell the uproar over the Salvation Army document, Bush administration offi-

cials eventually released a statement that said: "These protections ensure that religious organizations have the right to hire individuals who share their religious faith."
—*The Washington Post,* July 10 & 11, 2001; www.washingtonpost.com

Appeals Court Rules Against Catholic Charities

A controversial church-state ruling was handed down in California this week. A state appeals court upheld a law requiring Catholic Charities of Sacramento to include birth control pills in its employee health plan. Last year, Catholic Charities filed a suit saying the law violated its religious freedom. The Roman Catholic Church opposes artificial birth control. After the court decision, an attorney for Catholic Charities said, "People of faith should be deeply disturbed."
—*Religion and Ethics Newsweekly,* July 6, 2001; www.pbs.org/wnet/religionandethics. Used by permission.

The Golden Arches Get Sued

Hindu vegetarians have filed two lawsuits against McDonald's Corp. accusing them of using beef flavoring in french fries although the company promised that it would use vegetable oil. The three plaintiffs in the first case in Houston requested that the lawsuit be certified as a class action "on behalf of any vegetarian who ate McDonald's fries after 1990 in the belief that they contained no meat." The second lawsuit, which seeks unspecified damages, was filed on behalf of three vegetarians in Seattle. Two of them are Hindu.

According to an Associated Press report, "the Texas lawsuit contends the plaintiffs were fraudulently induced to eat the fries under the belief that they were cooked only in vegetable oil. Under the Texas Deceptive Trade Practices Act, plaintiffs may be entitled to damages up to three times the amount of economic harm and mental anguish." Hindus in India, where the cow is considered a sacred animal, reportedly smashed windows at local franchises.

Although declining to comment on the lawsuits, McDonald's did apologize for confusing its customers. The company admitted to adding "a small amount of beef extract while the potatoes are cooked," but added that "fries sold in India have never been flavored with beef extract."
— *The Associated Press;* www.ap.org

Good News for the Club

The U. S. Supreme Court on June 11 ruled 6-3 that the Milford Central school district in upstate New York violated the free-speech rights of the Good News Club, an after-school Bible study group for 6- to 12-year-olds when it denied them permission to meet in the school after hours.

The school district had argued that allowing the Good News Club and other religious groups to use the school was an unconstitutional establishment of religion. The court disagreed. Read the full text of the decision *Good News Club v. Milford Central School* (Case No. 99-2036) at www.findlaw.com.
— *Education Week,* June 11, 2001; www.edweek.org

High Court Upholds High Standards

In another ruling involving children and youth, the Supreme Court *(Boy Scouts of America v. Dale* (99-699) upheld the Boy Scouts of America's First Amendment right of expressive association. At issue was James Dale, a former Eagle Scout whose adult membership was revoked when the Scouts learned that he was "an avowed homosexual and gay rights activist." The New Jersey Supreme Court ruled that New Jersey's accommodations law required that Dale be allowed to remain a member. The Scouts asserted that homosexual conduct is inconsistent with the values the organization seeks to instill in its young members.

After the ruling, the Boy Scouts of America posted a document explaining its position, "In Support of Values," on its web site. Several key points-applicable in many similar situations— include:

- Respecting the rights of persons and groups to hold differing values and expecting that those who disagree with these values to exercise the same respect that has been extended to them.
- Membership requirements are not necessarily "newly devised provisions to exclude anyone."
- Though not asked to volunteer information about religious affiliation or sexual orientation, members are asked to agree to live by certain principles.
- Children should be allowed to live as children and to enjoy activities designed for them without immersing them in politics of the day.
- It disservices the majority of members of an organization to allow some to selectively obey or ignore one or more elements of the principles that collectively define it. Consistency in these principles is critical to achieving the organization's objectives.

— www.scouting.org; http://supct.law.cornell.edu/supct/ html/99-699.ZO.html

See "The War Against the Boy Scouts," coming up in our November/December issue. Editor

For more information about these and other articles published in this magazine, visit our Web site at www.libertymagazine.org.

School Voucher

A BREACH IN

President Bush's formal presentation of a detailed school voucher plan during his first week in office renewed the hopes of voucher advocates, who suffered major setbacks when California and Michigan voters overwhelmingly rejected voucher programs in November and a federal appeals court invalidated an Ohio voucher plan in December. Bush's initial proposal to provide $1,500 vouchers for parents of children who attend substandard schools is a watershed because it is the first federal voucher measure to carry any real political clout. Like other voucher plans, however, the Bush proposal faces major political and constitutional obstacles.

As indicated by the defeat of the recent California and Michigan referenda by margins of more than two to one, there is substantial public opposition to voucher plans. Voters in 22 other state referenda since 1967 have likewise defeated vouchers, usually by similarly decisive margins. Although Bush's proposal may generate more support because half of the $1,500 would come from the federal government rather than from the states, the intensity of opposition to vouchers indicates that objections to vouchers are based on far more than fiscal fears.

Court Misgivings

Courts likewise have expressed significant misgivings about vouchers. In particular, vouchers may breach the "wall of separation"

ILLUSTRATION BY SALLY WERN COMPORT

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THE WALL

By William G. Ross

between church and state by violating the First Amendment's prohibition against an establishment of religion.

In its decision last December, the United States District Court for the Sixth Circuit held that Ohio's voucher program violated the First Amendment's establishment clause.[1] The court found that the program unconstitutionally promoted religion because it encouraged direct government funding of parochial school tuition. Although the statute permitted the use of vouchers for public and nonsectarian private schools, most of the schools that received vouchers were sectarian because participation in the program was limited to schools in which tuition was no more than $2,500. As a result, 96 percent of the students who received vouchers attended parochial schools. While a handful of private nonsectarian schools participated in the program, no public schools participated.

"Practically speaking," the court explained, "the tuition restrictions mandated by the statute limit the ability of nonsectarian schools to participate in the program, as religious schools often have lower overhead costs, supplemental income from private donations, and

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consequently lower tuition needs."[2] The court found that approval of the program would result in "the actual diversion of government aid to religious institutions in endorsement of religious education," since "it is unquestioned that these institutions incorporate religious concepts, motives, and themes into all facets of their educational planning."[3]

The Ohio court's ruling is consistent with a recent decision of the Supreme Court of Maine that upheld Maine's exclusion of religious schools from a voucher program on the ground that their inclusion would violate the federal establishment clause.[4] Similarly, the Supreme Court of Vermont has held that a state voucher program violated the state's establishment clause.[5] The Supreme Court of Wisconsin, however, has held that Milwaukee's voucher program did not violate the First Amendment's establishment clause.[6]

Many proponents of **vouchers** argue that vouche

their constitutional **right** to direct the upbringing of the

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Although the U.S. Supreme Court declined to hear appeals of the Maine, Vermont, and Wisconsin decisions, the festering controversy over the constitutionality of school vouchers has led to widespread speculation that the Court will hear an appeal from the Ohio ruling. The Court's growing solicitude for government aid to parochial schools in recent decisions makes the outcome of such a decision uncertain. In particular, the Court has allowed state and federal governments to provide material and equipment to parochial schools,[7] has upheld a federal program under which public school teachers provided remedial education to parochial school students,[8] and has permitted a public school district to provide a sign-language interpreter to a deaf student in a parochial school.[9]

Each of these decisions was decided by margins of five-to-four, indicating that the Court's decision in a voucher case might be very narrow. The outcome hinges in part upon the particular manner in which the voucher plan is framed, since this could determine whether the Court would regard the vouchers as a form of direct aid to parochial schools or as indirect aid, insofar as parents had the discretion to decide whether to use the voucher for a sectarian or a nonsectarian school.

Constitutional Challenges

The election of President Bush has increased the possibility that a voucher program would survive a challenge in the U.S. Supreme Court—since Bush is more likely to nominate justices who favor vouchers. In particular, Bush may have an opportunity to appoint a successor to 81-year-old John Paul Stevens, who has been one of the Court's most ardent opponents of aid to parochial education. Vouchers are therefore likely to emerge for the first time as an issue in the Senate confirmation process when the next Justice is nominated.

Even if vouchers survived a federal constitutional challenge, however, vouchers in many states would face state constitutional obstacles. Other states might join Vermont in finding that vouchers violate state establishment clauses, particularly since many states enforce their establishment clauses more rigidly than do the federal courts. Moreover, many state constitutions contain significant prohibitions against public funding of sectarian schools. Other state constitutional provisions might create similar legal impediments. For example, a Florida court last year held that Florida's voucher plan violated a state constitutional provision that requires the state to provide "a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education."[10] A three-judge appellate court later reversed this ruling,[11] and the issue presently is on appeal before the Florida Supreme Court.

In addition to denying that vouchers violate the state or federal constitutions, many proponents of vouchers argue that vouchers help parents exercise their constitutional right to direct the upbringing of their children, and some argue that vouchers remove an impediment to

the free exercise of religion guaranteed by the First Amendment. Voucher advocates base these arguments upon the Supreme Court's 1925 decision in *Pierce v. Society of Sisters*, in which the Court nullified an Oregon statute that required all children to attend public elementary schools.[12]

In striking down the statute, the Court declared that "the child is not the mere creature

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ercise of religion **guaranteed** by the First Amendment.

of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional responsibilities." This right is meaningless, some voucher advocates argue, unless parents are provided with the economic means to send their children to private schools, including religious schools.

Such reliance upon *Pierce* is misplaced.

Although *Pierce* permits parents to send their children to a properly accredited non-public school, the Constitution does not compel the state to pay for any form of private education, and as we have seen, it actually might prohibit the state from paying for parochial education. While the Supreme Court in several instances has removed financial impediments to the exercise of fundamental rights, the Court has held that the government has no obligation to provide funding to facilitate the exercise of a fundamental right. Similarly, the Court has made clear that the government's failure to subsidize a fundamental right does not constitute a penalty to direct their children's education, because the Court has denied (unfortunately, in my opinion) that education is a fundamental right.[13]

Moreover, vouchers have only a remote connection to the parental rights and interests that *Pierce* protects.

Although the *Pierce* decision did not address the religious dimensions of Oregon's compulsory public education law, freedom of religion was at the heart of the *Pierce* case. Oregon's compulsory public education statute, which would have had the effect of destroying private education, was opposed by a broad range of religious groups that operated parochial schools, including Episcopalians, Lutherans, Roman Catholics, and Seventh-day Adventists.

Likewise, the Oregon statute threatened the cultural identity of ethnic Oregonians since religion and culture were closely linked in many parochial schools. The Court's ruling that parents had a fundamental right to choose the schools their children attended therefore constituted a critical landmark in judicial respect for religious freedom and cultural pluralism.

Parental Choice?

In contrast, the parental autonomy that proponents of vouchers claim that vouchers would promote bears no direct relation to the protection of religious beliefs or the preservation of cultural identity. Instead, the voucher movement seems motivated primarily by economics, insofar as its original goal is to enable parents whose children attend substandard schools to obtain a better education for their children by giving them money to transfer to a private school.

While some parents may wish to remove their children from the violence and lewdness that pervades some inner city schools, economics remains the driving force of the voucher movement. Although school vouchers may help to promote the type of parental autonomy that *Pierce* envisioned, there is a critical constitutional difference between forcing parents to send their children to public school and denying parents public assistance to send their children to private schools, particularly when such assistance would provide what several courts could have regarded as an unconstitutional benefit to religious institutions. It is sadly ironic that voucher proponents are trying to use *Pierce*, which did so much to promote the free exercise of religion, to facilitate a policy that could violate the establishment clause.

Indeed, vouchers could actually interfere with free exercise of religion, insofar as they could enable government to exercise greater control over parochial education.[14] The avail-

ability of public funds also might diminish the willingness of parents to support private and parochial schools. Parochial schools should not permit vouchers to interfere with the spiritual integrity of the institutions that parents and churches of the 1920s fought so valiantly to protect from destruction when they opposed compulsory public education.

Vouchers also seem to contravene *Pierce* insofar as they interfere with the delicate balance between public and private education that lies at the core of that decision. Although the Court in *Pierce* implicitly rejected the absurd contention of proponents of compulsory public education that private schools threatened the existence of public schools, the Court emphasized that the states could regulate private schools in order to ensure that they were pedagogically and politically sound.

Today, some proponents of vouchers seem as hostile to the very concept of public education as advocates of compulsory public education during the 1920s were toward private education. Rather than seeking to improve public education, the voucher movement seems premised on the theory that many public schools are hopelessly underfunded and debauched. Ironically, vouchers could exacerbate the deterioration of such schools insofar as vouchers could drain funds from already impoverished schools. Students for whom vouchers were unavailable or whose parents chose not to use vouchers would find themselves trapped in schools that truly would have become hopeless.

Vouchers could actually interfere with free exercise of religion, insofar as they could enable government to exercise greater control over parochial education

Another Alteration

Since there is little doubt that most proponents of vouchers are sincere in their desire to promote educational opportunity for disadvantaged children, voucher advocates could more constructively pursue this goal by attempting to improve the quality of public schools. Bush's educational reform proposal, of which vouchers are only a small part, would make major strides toward this end, insofar as it includes many constructive features, including increased use of standardized testing, greater latitude for states in spending federal funds, and increased funding for reading programs, and after-school care. There is some speculation that Bush's voucher program is merely a negotiating chip that Republicans might sacrifice in exchange for Democratic support for these other educational reforms. Indeed, within weeks the new administration was downplaying vouchers by using other terminology and even avoiding the issue. But the voucher concept remains so integral to the overall Bush plan that it is doubtful that it will vanish. In fact, after continuing criticism of the new White House Office of Faith-Based Initiatives there was even talk of voucherising aid to church social programs.

Although the demise of Bush's federal voucher proposal would not end the movement for state support of vouchers, opponents of vouchers have reason to remain hopeful that courts would maintain the integrity of the First Amendment's establishment clause by barring the use of vouchers for tuition at religiously sponsored schools.

FOOTNOTES

[1] *Simmons-Harris v. Zelman*, 234 F.3d 945 (6th Cir. 2000).

[2] *Ibid.*, p. 959.

[3] *Ibid.*, pp. 960, 961.

[4] *Bagley v. Raymond School Department*, 728 A.2d 127 (Me. 1999), *cert. denied*, 120 S. Ct. 364 (1999).

[5] *Chittenden Town School District v. Department of Education*, 738 A.2d 539 (Vt. 1999), *cert. denied sub nom. Andrews v. Vermont Department of Education*, 120 S.Ct. 626 (1999).

[6] *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998), *cert. denied*, 525 U.S. 997 (1998).

[7] *Mitchell v. Helms*, 120 S.Ct.2530 (2000).

[8] *Agostini v. Felton*, 521 U.S. 203(1997).

[9] *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993).

[10] *Holmes v. Bush*, 2000 WL 526364 (Fla. Cir. Ct.), *reversed*, 767 So. 2d 668 (Fla. App. 1 Dist. 2000).

[11] 767 So. 2d 668 (Fla. App. 1 Dist. 2000).

[12] 268 U.S. 510 (1925).

[13] See *Plyler v. Doe*, 457 U.S. 202 (1982); *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1 (1973).

[14] See Barry W. Lynn, "The Poisoned Chalice," *Liberty*, September/October 2000, pp. 16-22.

Liberty Clarified

In the May-June issue on page 29, there is an exchange between R. Morris and the Editor about the other "Liberty magazines." I think there was some minor confusion on both sides. R. Morris obviously is thinking of the Literary Digest, not Liberty magazine. It was the Literary Digest which "committed suicide" by publishing the famous poll predicting the election of Alf Landon. Actually, I don't think they were trying to dictate the outcome; they just used poor polling methods.

It is true that there is a libertarian Liberty magazine, but that is being published right now rather than in the past. The most well-known *Liberty* was a mass-circulation magazine that flourished during the golden age of general magazines such as the *Saturday Evening Post* and *Ladies Home Journal* before and just after World War II.

People of my generation (I am 75 years old) have always identified that publication as THE Liberty Magazine. With all due respect, when you started to send me your splendid publication devoted to religious freedom, I thought that you were some sort of interloper by using the title "Liberty." However, there is no copyright for titles, and you have every right to the name "Liberty," not only because you have been in publication since 1906, but also because of the thought-provoking content in your pages,
ELI KAMINSKY,
Phoenix, Arizona

Liberty Discovered

I discovered Liberty through the Ruth Enlow Library of Oakland, Maryland where my wife is a librarian. Having read the March/April and May/June issues of Liberty, I would like to obtain back copies of your magazine.

I teach an honors course at West Virginia University on "A History of Religion in American Politics," and I have found several of the articles in Liberty helpful.
GEORGE T. ROGERS
Terra Alta, West Virginia.

Waco Wake Up!

Mainstream Christians and all people of good will must be willing to stand together against the tide of evil in society. The ultimate mission of the church, and church/spiritual instruments such as newspapers and magazines, is above political parties and personalities. However, let us heed the warning in Richard Neuhaus' "The Naked Public Square": "Attention must be paid to the political, not because everything is political, but because if attention is not paid, the political threatens to encompass everything."

In retrospect, the 1993 holocaust at Waco should have been a wake up call for America and the free world. Because the beliefs of the Davidians were too overbearing and dogmatic for the tastes of almost all of us, we let the incident be whitewashed out of our minds. The famous words of John Donne apply equally as well for us today: ". . . never send to know for whom the bell tolls; It tolls for thee."
RANDALL MACK,
Middletown, Ohio.

Horror of Abortion

When I look at the pretty face of Diane Feinstein and hear her defend a mother's right to become a murderer, yes, a murderer of her unborn baby, with the same passion as a preacher calling sinners to repent, I cannot comprehend it at all.

Any church that decides to keep quiet while this promotion of murdering of unborn babies proceeds unabated, is not a Christian church, but pagan! Pagans sacrificed born babies. Churches who do not speak against the abortion evil are actually guilty of sacrificing the most innocent ones. I am convinced, God is not pleased!
H. D. SCHMIDT, e-mail.

The abortion issue has long divided communities in the United States and Canada. There is a moral element and there is a clear right if not obligation for Christians to be allowed to voice their moral concern. Editor.

The Liberty *editors reserve the right to edit, abbreviate, or excerpt any letter to the editor.*

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.

LIBERTY

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In Their Own WORDS

In our more secular age it is easy to overlook the religious views of the founders of the American republic. Even the so-called atheism of Thomas Jefferson quickly reveals itself as a deeply held private faith, albeit with a theology cut loose from most creeds and informed by history and philosophy.

Some politically inclined religionists have attempted to convert the founders' faith into a modern mandate for overt state support of the church, i.e., Christianity and, one suspects, once that jump is made, their particular branch of it. But it should be reasonable to suppose that the founders' faith could be at once deep and their suspicion of religion controlling public life equally deep. In fact, it is easy to show this to be so from a reading of their own words.

I've recently sampled yet again some of the luminous correspondence between Thomas Jefferson and John Adams. They had been political rivals for years, and both had served as president of the new republic. In the afterglow the two sages of the nation began a correspondence that continued till their deaths, within hours of each other, on July 4, 1826—the fiftieth anniversary of the Declaration of Independence. Their letters show an amazing concurrence of thought and a constant preoccupation with matters of faith and freedom.

Jefferson, in a letter of October 28, 1813, wrote that "the law for religious freedom, having put down the aristocracy of the clergy, and restored to the citizen the freedom of the mind, and those of entails and descents nurturing an equality of condition among them, this on education would have raised the mass of the people to the high ground of moral respectability necessary to their own safety, and to orderly government."

Then, in a letter of June 20, 1815, Adams wrote, "The question before the human race is, whether the God of nature shall govern the world by his own laws, or whether priests and kings shall rule it by fictitious miracles?"

In a letter penned January 24, 1814, Jefferson rails in some detail against the origin in English common law of the idea that "Christianity is part and parcel of the laws of the land," a quote he attributes to Matthew Hale in the case of the *King v. Taylor*. "Thus we find this string of authorities all handing [sic] by one another on a single hook . . . . And who can now question but that the whole Bible and Testament are a part of the common law?" This is an interesting comment in view of the nascent premise that the United States is based on Christianity.

But the real application to this objection immediately follows in his scathing analysis of "blue laws," which so troubled religious liberty proponents only a generation or two ago. "And that Connecticut, in her blue laws, laying it down as a principle that the laws of God should be the laws of their land, except where their own contradicted them, did anything more than express with a salvo, what the English judges had less cautiously declared without any restriction? And what, I dare say,

our chief justice would swear to, and find as many sophisms to twist it out of the general terms of our declaration of rights, and even the stricter text of the Virginia 'act for the freedom of religion,' as he did to twist Burr's neck out of the halter of treason. May we not say then with him who was all candor and benevolence, 'woe unto you, ye lawyers, for ye lade men with burthens grievous to bear.' "

In a reply to this continued discussion of civil and religious power, Adams, in a letter of July 16, 1814, said, "I am bold to say that neither you nor I will live to see the course which the 'wonders of the times' will take. Many years, and perhaps centuries, must pass before the current will acquire a settled direction. If the Christian religion, as I understand it, or as you understand it, should maintain its ground, as I believe it will, yet Platonic, Pythagoric, Hindoo, and cabalistical Christianity, which is catholic Christianity, and which has prevailed for 15 hundred years, has received a mortal wound, of which the monster must finally die. Yet so strong is his constitution, that he may endure for centuries before he expires . . . . Our hopes, however, of sudden tranquility ought not to be too sanguine. Fanaticism and superstition will still be selfish, subtle, intriguing, and, at times furious." And he concluded the letter and that paragraph with a warning that the resulting "fermentation" of these forces "will excite alarms and require vigilance."

The ruminations of old men? Yes, but surely indicative of the common hopes and views shared by the patriarchs of this secular republic with such a theological vision. Yes, Adams went further in his fulminations against "papists," and the danger to the republic. No doubt his and other similar views fed the often violent anti-Catholic outbursts that characterized this then largely protestant nation, right up to the Kennedy era. However, we must distinguish somewhat between these theories of the founders and their violent offspring in the hands of bigots. The views of such people as Adams, Jefferson, Washington, and others were shaped by the practical lessons of history and a keen sense of theology. The peasant rebellion in Germany derived from Luther's writings, but it horrified him as a perversion of his theology. Just so, in a very telling letter Washington wrote to Arnold, we see a great sensitivity to the adherents of a doctrine he personally disavowed *(see the excerpt on page 32)*.

What these letters and a vast hoard of other primary evidence reveal is the lie to glib assumptions that they intended the state to get into the religion business. They were suspicious of it historically, theologically, legally, and personally. They knew theirs was a real battle for the spiritual destiny of humanity. Their best hope was for a state that could create a secular "time-out," and, by disenabling religious favoritism and force, allow the populace to work out their personal salvation.

Correction to my editorial of May/June. Some readers noted a very curious error in the last sentence. Rather than calling for an obscure theological distinction, the sentence should have read "We must understand the difference between the kingdom of man and the kingdom of heaven."

LINCOLN E. STEED

Avoid all disrespect to or contempt of the religion of the country and its ceremonies. Prudence, policy, and a true Christian spirit, will lead us to look with compassion upon their errors without insulting them. While we are contending for our own liberty, we should be very cautious of violating the rights of conscience in others, ever considering that God alone is the judge of the hearts of men, and to him only in this case, they are answerable. ★

George Washington, in a letter of September 14, 1775, addressed to Colonel Benedict Arnold, then in charge of the military expedition in Canada. There were reports of anti-Catholic sentiment in the Continental forces. Supposedly, a "Pope's Night" was to be staged in which the Pope would be burned in effigy. This was hardly the way to persuade the Catholic French Canadians to join the American union. In any event, it was religious bigotry, and General Washington acted to stop it.