LIBERTY

A Magazine of
Religious Freedom
Vol. 97, No. 3
May/June
2002

"Can Liberty be Redefined?"

Taking Liberty With Freedom

By Richard P. Moore

Though September 11, 2001, will be remembered as the day that changed America, we shouldn't forget October 31 of the same year. That was the day that President George Bush signed the USA PATRIOT Act of 2001, which gives the government the kind of sweeping powers of arrest, detention, surveillance, investigation, deportation, and search and seizure that, just a few months earlier, would certainly have been deemed by many as a constitutional and moral assault on our most basic freedoms. ◆ "This law is based on the faulty assumption that safety must come at the expense of civil liberties," says Laura W. Murphy, director of the American Civil Liberties Union's (ACLU) Washington office. "The USA PATRIOT Act gives law enforcement agencies nationwide extraordinary new powers unchecked by meaningful judicial review." ◆ Just how fair and just these new governmental powers are, how effective they will be, or what abuses (if any) might arise from their implementation will ultimately be judged by the tribunals of history. Until then, whether one agrees with the ACLU warning or not, there's no question that in post-October 31 America freedom and liberty aren't exactly what they used to be. ◆ All of which raises some interesting questions: What is freedom? Are there actually different conceptions of freedom? What is freedom grounded in? And why should we be given freedom at all? ◆ While most in North America take freedom for granted, as we do the motion of the earth, we might be surprised to find just how slippery the whole notion really is. It brings a realization that we could easily lose it, too.

Richard P. Moore is a freelance writer who has specialized in religious liberty and constitutional issues. He writes from Maryland.

Contrary to popular conceptions, the idea of freedom didn't begin on July 4, 1776, along the eastern seaboard in the American colonies among a group of White European (slave-owning) males. However hard for some red-blooded Americans to accept, freedom, or the notion of freedom, has a long and colorful history that predates Jefferson, Madison, and Washington by thousands of years.

About a millennium before Christ, in India and Nepal, the notion of freedom appears in the Upanishads and Bhagavad Gita, sacred Hindu texts. There freedom is depicted as a personal spiritual matter more than as a political one. This concept of freedom is illustrated by a story of a man who walks into a dark room. Suddenly he freezes; coiled in the corner is a snake. Barely able to control himself because of fear—his breath tight in his lungs, his muscles tense like rocks, his heart racing—he slowly retreats out of the room that he had wanted to enter. Later, when there's more light, he cautiously peers into the room and sees that the "snake" that caused him so much fear was really just a coiled rope. He now enters.

For these ancient Hindus, then, freedom comes when one is liberated from fear, from illusion, from ignorance; and this liberation can happen only through self-knowledge, through personal discipline. Freedom is release from cravings, from obsession with wealth or goods, from the carnal desires. Freedom comes from within; it's not something that's granted by the government.

Yet it's not out of government purview entirely. Though it's hard to think of anything more potentially dangerous than a government trying to enforce that kind of freedom, another threat, and the more common one, comes when laws are written that could stand in the way of those seeking that kind of freedom: laws that prohibit the spiritual exercises, reading, or worship that one deems necessary to achieving this freedom. History is, sadly, replete with such examples.

Democracy Not Freedom

Ancient Greece, classical Greece, is often seen as the time when the concept of freedom first arose in the West. Much of this is related to the application of democratic principles to their government. And though much freer than, for instance, the repressive rival state of Sparta, down the road, Athens and its democracy need to be kept in context. Of about 360,000 people only about 40,000 could take part in the civic debate. The rest were slaves, women, and children.

What many people don't realize, especially in free and democratic America, is that democracy can hardly be equated with freedom. If 20 people vote to oppress three people, is that a free society? If a majority votes repressive legislation, is that freedom? Thomas Jefferson warned that threats to freedom come, not when the government acts against its constituents, but when "government is a mere instrument of the major number of its constituents." Mobocracy is the pejorative term for it, and history is replete with examples, one of the most famous taking place in democratic Athens itself, with the trial and death of Socrates. Plato, as he watched the Athenians vote to put his beloved teacher Socrates to death (charged with, among other things, teaching against the state gods), wrote some of the most eloquent attacks on democracy, arguing that the masses of people, who know nothing about the intricacies of statecraft, shouldn't be the ones in charge of making it. The point is simply that however much democracy can be linked to freedom (after all, aren't the people themselves, as opposed to a tyrant, more likely to make laws that give themselves freedom?), the two are not synonymous. Majority rule can be just as oppressive as a tyranny, a truth that America's founders understood only too well. This explains why they were careful to build into the U.S. Constitution specific mechanisms designed to blunt the power of the majority (the electoral college being one major example).

Majority rule can be ust as oppressive as a tyranny, a truth that America's founders understood only too well.

Jesus and Freedom

We have a transcendent expression of freedom in the words of Jesus Christ, "And ye shall know the truth, and the truth shall make you free" (John 8:32). Jesus was talking distinctly about spiritual freedom, the kind that no government can grant. Jesus was making no political statement; He was not advocating any specific type of government or political system. Instead, His concept of freedom is something that really transcends politics; it was meant for people living in any political system, including imperial Rome, hardly a bastion of liberal progressivism, to be sure.

At the same time, too, spiritual freedom cannot be separated from political, not when a government acts with overt hostility against the "truth," a common paradigm in the past and one that exists even now (just ask those who, in some Muslim lands, seek that kind of freedom, the kind that Jesus said came from following Him).

Another paradigm, and just as dangerous, is one in which the government seeks to make sure that all people follow the "truth." However egregious such a notion seems to postmodern Western sentiment, where the whole concept of "truth" itself has become suspect, this logic isn't as outrageous or as

ludicrous as one might think. After all, if the "truth" will make you free, and if the "truth" is found in Jesus, and if the government's job is to protect our freedom, then it's the government's job to make us live in harmony with Christ, is it not? What could be simpler?

Modern Notions of Freedom

Ask most people today, at least in the West, what freedom is, and their answer would be found best in the words of the Russian anarchist Mikhail Bakunin: "Freedom is the absolute right of all adult men and women to seek permission for their actions only from their own conscience and reason, and to be determined in their actions by their own will, and consequently to be responsible only to themselves, and then to the society to which they belong, but only insofar as they have made a free choice to belong to it." Based on the influence of people such as John Locke, John Stuart Mill, and Jean-Jacques Rousseau, freedom in the modern context is often understood as personal freedom, the right to act, speak, believe, and worship as you desire; being restricted only if your actions are detrimental to others or to society as a whole. John Stuart Mill wrote in *On Liberty:* "The only purpose for which power can be rightly exercised over any member of a civilized community, against his will, is to prevent harm to others."

"Spiritual freedom cannot be separated from political; not when a government acts with overt hostility against the truth."

However simple, sensible, and logical this principle sounds, it's fraught with numerous weaknesses, one of the greatest being in the limits of language itself: how does one define "harm" to others? Yet an even bigger problem is one that cannot be worked out by hammering away at the subtle and not-so-subtle semantic distinctions that arise from language itself. Instead, the question of "harm" and what constitutes it depends upon numerous factors, perhaps the biggest being one's worldview, one's understanding of what good and evil are.

For instance, if America had accepted Jerry Falwell and Pat Robertson's assertion that the attacks on the Pentagon and the Twin Towers were because of "the pagans, and the abortionists, and the feminists, and the gays and lesbians," then—using even Mill's liberal standards—pagans, abortionists, feminists, gays and lesbians would have to be proscribed in their liberty, because their actions have brought great harm to the nation.

This idea can be taken in so many directions that it can lead anywhere. For instance, while it's easy enough to see why public drunkenness should be illegal, what about private drunkenness? Should consenting adults be forbidden to get drunk every day in the privacy of their own homes? Most people would say no, and understandably so; that's simply not something that is stopped in a free society such as the United States, as opposed to such places as Saudi Arabia and Iran.

What happens, however, if enough adults do that so often that society itself stops functioning? Suppose a huge member of people are too drunk to get out and work, or to pay taxes, or to drive buses, or to police the streets? Even without going that far in our supposition, how much money is spent in taxes each year; how much revenue is lost because of sickness, absenteeism, and other evils directly linked to alcohol? Certainly, to some degree, drinking has caused the nation, as a whole, harm. How far does it have to go before it's harmful enough to demand legislation to stop it? That's, of course, the million-dollar question.

Pornography, drugs, homosexuality—are these harmless manifestations of the human spirit, or evils that present great harm to society? Where does one draw the line? Is the spread of HIV, often associated with homosexual behavior, enough harm to outlaw homosexuality? On the other hand, which has caused more harm to society, homosexuality or adultery? One could arguably claim the latter. Why then isn't it outlawed? At what point does a person's right to marry and divorce as many times as he or she wants produce harm to a society?

This question really comes down to one that the courts, to some degree or another, have been wrestling with ever since there were courts to wrestle with these kinds of questions. At what point does one person's rights infringe upon another person's (because inevitably they do, to one degree or another) so much that the law needs to step in?

The Foundation of Freedom

The question of what is freedom, or how much freedom should be given, begs another question, which is really the deeper one, and how it is answered answers these more practical ones. That is: What is the foundation of our freedom?

We view freedom as a good thing. Yet Hezbollah "freedom fighters" and French people chopping off heads in Paris during the French Revolution—all acted in the name of freedom. Yes, horrible things are done in the name of freedom. But even if we don't agree with others' concepts of freedom, most people agree that freedom, at least to a certain level, is something that we should covet.

Why? Is there something in nature itself, some sort of

natural law, that tells us we should be free? When we say that a person has the right to pray or that a person has the right to vote, where do these rights come from? Are they transcendent absolutes existing in some sort of Platonic realm of ideas, or are they simply human constructs of a certain society in a certain time that creates for itself its own notions of rights and freedom? We often assiduously assert "our rights," which is fine. But on what basis do we claim these rights, these freedoms, as if we have some natural or God-given claim to them? The concept of "rights" itself comes heavy-laden with the presupposition that it's something we deserve, something owed to us by virtue of being human. What is the distinction between a right and a privilege, and how do we draw that distinction? Is it a right, or a privilege, for a foreigner to be allowed into America? Is it a right or a privilege not to have to face surveillance by the government? Is it a right—that is, some sort of preexisting eternal principle—not to be tried by a military tribunal?

In short, is there some natural law, something existing in nature itself, from which we derive freedom? Even if so, it's open to various interpretations. Aristotle, looking around at the world, believed that nature clearly showed that some people were to be slaves, others masters. Thomas Jefferson, in contrast, looking around at the same world, believed that freedom and liberty were "self-evident" truths that any reasonable person could discern.

If one takes a Darwinian worldview, presupposing a single-tiered, naturalistic reality as the total of the world itself, then it's really hard to argue for freedom on anything other than purely selfish, survivalist grounds: is freedom good for the species or bad?

Indeed, if rights are derived from humanity, from human needs, from human nature, from human desires alone—because these needs, natures, and desires are malleable, fluctuating, and transient—all concepts of rights and freedom based on them must be as well. Maybe that's good; maybe rights and freedom should change along with desires and needs; maybe our concepts of freedom should fluctuate with the weather or the moon; maybe there should be no rights, only privileges. Maybe truth is more poetic than geometric, more hormonal than metaphysical, more like wind than rocks; if so, then using the word "rights" is, itself, somewhat fallacious.

On the other hand, many believe that the only way to truly have rights and freedom is for them to be grounded in the God who created us; otherwise, rights and freedom are purely subjective human-made constructs with no foundation other than who happens to be wielding political might at the time.

Of course, claiming that these rights are grounded in God—while certainly helping establish them as concrete, eternal entities not subject to cultural or political whims—opens up a whole host of other problems. Whose God? What's His will for us? Who interprets God's will? It's one thing to say that our rights and freedom are found in God; that's fair enough. The hard part comes in trying to discern just what they are. Jerry Falwell and Jesse Jackson both profess to serve the same God. Both even read the same Bible. Both would probably agree that freedom and rights have their foundation in God. But the two men often oppose each other on what they understand freedom and rights to be, each one taking his position from what he understands God's will to be. At base we must recognize freedom as a matter of conscience and a personal moral response. We dare not proscribe it for another.

The task for any free society is how to balance basic concerns for safety, commerce, and general welfare with the freedom it loves and cherishes.

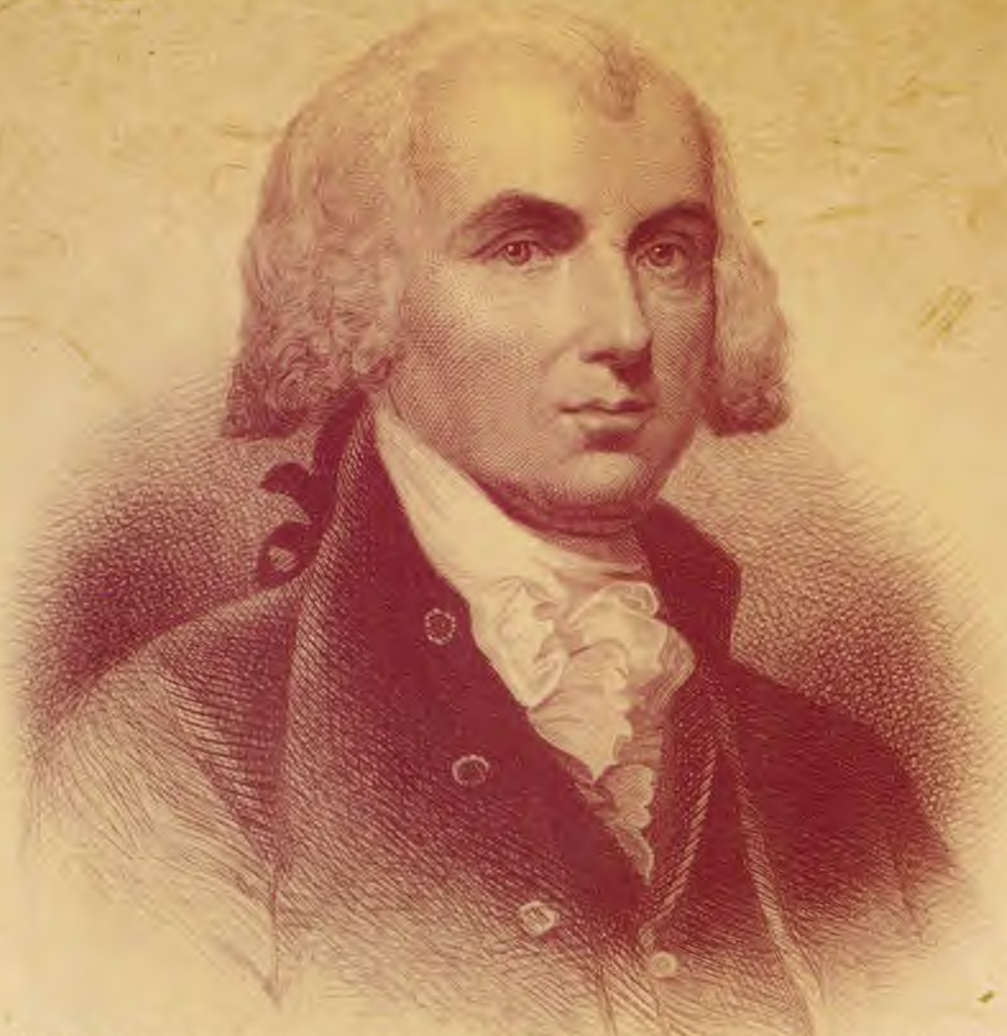
The USA PATRIOT Act

Freedom is like happiness; we know it when we see it, though we're often hard-pressed to define it adequately. But who says we have to? We can be happy without knowing exactly what happiness is, can't we? And we can be free, too, without knowing all the fine points and nuances of what it means. Yet we must also beware: freedom, like happiness, because it is so nebulous and abstract a concept, can easily slip away.

Most Americans right now aren't too concerned about the USA PATRIOT Act. Maybe once all the rubble is cleared from ground zero, they will be. And that's good, at least to a point. The task for a free society is how to balance basic concerns for safety, commerce, and general welfare with the freedom it loves and cherishes. Most societies, even the freest ones, are willing to constrain behaviour to preserve the public order, particularly in times of crisis. The concept of society itself, by its very nature, implies a certain restriction of freedom. Law, the foundation of any society, by its very nature as law, automatically places restrictions on freedom. Yet any free society that stops examining itself, that stops questioning its leaders, that stops holding those in power accountable, will soon cease to be free.

The USA PATRIOT Act, for now, has hardly undone the U.S. Constitution. But if there are a few more terrorist attacks, if thousands more Americans are killed ... then who knows? October 31, more than September 11, might prove to be the day that truly changed America.

By Nature Unalienable



The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. . . . We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.—From James Madison, "MEMORIAL AND REMONSTRANCE," 1785.

IT DIDN'T BEGIN WITH WACO

By Carl H. Yaeger

The assault by federal agents on the Branch Davidians on February 28, 1993, wasn't the first time that Washington decided to rid the country of an irritating religious sect. In fact, there have been quite a few times in our history when various levels of government—local, state, and federal—attempted to yank the not-so-orthodox religions back into the mainstream of American society by force.

No other religious group has endured more persecution and violations of its constitutional rights than the Church of Jesus Christ of Latter-day Saints (LDS), or the Mormons. It started as early as the 1830s, when the founder/prophet of the church, Joseph Smith, claimed to have received a direct revelation from God that all existing Christian religions were wrong and that he had been chosen to restore the truth. He later wrote a piece of religious scripture, the *Book of Mormon,* which challenged traditional Christian theology.

That was too much for the professional clergy of the day. Smith and his small but growing band of converts were hounded out of town by mobs led by local ministers. Other Mormon settlements in New York and Pennsylvania were set upon also. The Mormon refugees fled to Kirkland, Ohio, where they built a temple.

Several peculiarities emerged about this strange new sect. They were utopian community builders and saw their society as Zion, a reflection of God's political, economic, and social order on earth. The rugged individualists of the frontier saw this way of life as "socialistic" and un-American, so the Mormons had to flee to the new state of Missouri. There they soon became embroiled in a conflict with the proslavery population and state government. Armed mob action soon escalated to all-out war. Then another peculiarity about this new religion became apparent—the Mormons did not turn the other cheek, roll over, and play dead. They formed a militia and fought back. Enraged that these upstarts would fight against the Missouri State Army, Governor Lilburn Boggs issued an infamous decree ordering the "extermination" of all Mormons within the state. This was the first and only time in American history that any government agency called for the total liquidation of a religious group. Joseph Smith and other leaders of the church surrendered and cut a deal; the Mormons would be spared and allowed to flee to Illinois, provided that they left behind their farms, houses, and possessions—everything that could not be stuffed in a wagon.

More than 5,000 exiles, organized and led by Brigham Young, left in the dead of winter, 1838-1839. It amounted to a death march, as hundreds died from cold, starvation, and disease.

Carl Yaeger writes from St. George, Utah. He is the author of more than 70 articles on terrorism and extremist groups. He has taught courses on antiterrorism to U.S. Special Forces and the National Guard. He retired from military service after 33 years, with the rank of lieutenant colonel, and taught political science at Utah Valley State College until retiring in 1998. At present he is a contributing editor to The Journal of Counterterrorism and Security International, *a publication of the International Association for Counterterrorism and Security Professionals.*

The Mormon refugee columns intersected another group of outcast Americans heading west on their government-sponsored death march. They were the Cherokee Indians, on their Trail of Tears to the territory of Oklahoma.

By 1842 the Mormons had created a beautiful new city called Nauvoo on the Mississippi River. It soon became the largest city in Illinois and boasted a new temple, a university, and a well-disciplined militia, the Nauvoo Legion of 5,000 men, the largest armed force in the country after the regular United States Army.

Troubles followed the Mormons to Nauvoo. Their neighbors were threatened by the economic prosperity, the political clout, and the military might of the LDS Church.

In June 1833 Joseph Smith and his brother Hyrum were lured to Carthage, Illinois, to answer trumped-up charges. After receiving promises from Governor Thomas Ford, an armed mob of Carthage militia broke into the jail. After a brief but vicious gunfight Joseph and Hyrum were killed on the night of June 27, 1844. There has been speculation that these charges and the subsequent murders of the Smith brothers were part of a larger conspiracy, perhaps even involving national political figures.

In February 1844 Joseph Smith had become a presidential candidate for that year's election. He did not expect to win, but he did hope to draw attention to the plight of the Mormons and of the Catholics, who were often the target of mob attacks. The far-flung Mormon missionary system was reorganized into a well-oiled political machine, and to the surprise of many—especially Joseph Smith—he became a popular candidate throughout the country and was a sought-after speaker because he was so controversial.

When the crowds came to hear the "Mormon prophet," they expected to see a weirdo dressed up in long robes, having long matted hair, and babbling religious nonsense. Instead, they saw a tall, attractive man of 39, talking solutions to festering problems that the other candidates did not want to deal with; especially the problems of ending slavery, reducing the size of Congress, annexing Texas and Oregon, and treating the American Indians fairly.

Did Smith even have a glimmer of a chance of winning the presidency? All of the other candidates were relatively unknown; the winner of the 1844 presidential race was James K. Polk, the first dark-horse presidential candidate in American history. In a way, the answers to many of America's gnawing problems were silenced by the rifle balls at Carthage.

Mob action continued against the Mormons at Nauvoo, encouraged and abetted by the state government and "volunteers" from Missouri. After several sieges of the city, the Mormons, again led by Brigham Young, fled from the city in February 1846 to what they thought would be Mexico.

When the exiles arrived in the Great Salt Lake Valley on July 24, 1847, fate played a cruel trick on them. The United States had defeated Mexico in war, and the Mormons' planned place of refuge had become the newly conquered territory of the country they had fled.

Regardless, the Latter Day Saints decided to build their "Zion" in the wilderness, and Brigham Young stated, "Give us 10 years in this valley, and we won't ask odds of anybody."

"MARTYRDOM OF JOSEPH AND HYRUM" BY GARY SMITH© INTELLECTUAL RESERVE INC. COURTESY OF MUSEUM OF CHURCH HISTORY AND ART. USED BY PERMISSION.

From 1847 to 1857 the Mormon "State of Deseret" (soon changed to the territory of Utah) flourished. New converts poured in from America, Canada, Europe, and even the South Sea Islands, Australia, and New Zealand. Settlements were established as far away as San Bernardino, California, and Carson City, Nevada. Las Vegas had its beginning as a Mormon settlement. New farms and industries made the desert productive. An enlightened American Indian policy made them allies of the government of Brigham Young, who was appointed as the territorial governor by President Millard Fillmore in 1850.

And then there was polygamy. This strange practice of having more than one wife became an established doctrine of the church in Utah. The Mormon people wanted to hunker down and become low-profile in their western isolation, but this was not to be. Now they became the focus of intense scrutiny by the Eastern press, which created a sense of outrage among "decent folks." Lurid stories of lustful men keeping harems of innocent young women in virtual sexual slavery inundated the nation. A nationwide movement cried out for the "Christianization" and "Americanization" of those

deviant Mormons, in order to yank them back into the mainstream of American life. The anti-Mormon outrage was accompanied by the abolitionist movement to destroy slavery in the South.

In 1856 a new political party declared political war on both the slaveholders in the South and the Mormons in Utah. The warcry of this new party—the current Republican Party—was "Let's rid the country of the twin relics of barbarism, slavery and polygamy."

Other forces were building that would lead to the Civil War five years later. From 1856 to 1860 Kansas was in a virtual civil war between proslave and antislave guerrilla bands. Every federal entity except the House of Representatives was dominated by proslave Southerners.

It was in this atmosphere that several proslave politicians started a conspiracy in order to help prepare for the war they knew was coming. The secretary of war, John Floyd; the senator from Mississippi, Jefferson Davis, who would soon become the president of the Confederate States of America; Colonel Sidney Johnston; and other prominent Southern politicians, concocted a scheme to prepare the South for war and make the Mormons in Utah the scapegoats by taking advantage of the public hatred of the Mormons.

If the focus of public scrutiny could be shifted from slavery to the other of the "twin relics of barbarism," then the conspirators could covertly prepare for war. Southern pressure was put upon the bumbling and ineffectual president, James Buchanan, to send a military expedition and take care of those treasonous Mormons once and for all. As the conspirators manipulated the president and the Eastern press with horrifying stories of Mormon treason and sexual degradation, a groundswell of public opinion demanded that the government develop a "final solution" for the Mormon problem.

President Buchanan had his own agenda for the Mormon question. By sending an overwhelming military force to territory close to rebellion, he would show what would happen to any state attempting to secede.

The Government Response

The government strategy was to send a military expedition to Utah and create a military occupation and destroy the economic and political power of the Mormons.

The army that was sent to Utah was large by 1857 standards. It consisted of more than 4,000 officers and men, most of them Northerners. The feverish preparations for the "Mormon War" proved to be the ideal smokescreen for the conspirators to prepare the South.

Many arsenals in the North were emptied and sent South. The cannons, powder, shot, and other military supplies earmarked for Fort Leavenworth, Kansas, the assembly area for the expedition, were diverted to the Southern states. Huge amounts of money budgeted for the war wound up in Southern banks. Floyd and Davis wanted the "cream of the American Army" to be committed to a long grinding war of attrition—a "Mormon Vietnam"—to weaken the Army in vicious guerrilla mountain war.

There were warning voices in Congress as to what would happen if the Army was sent to Utah. The Mormons would not meekly submit after the depredations committed against them in Ohio, Missouri, and Illinois.

Senator Sam Houston of Texas, who knew a thing or two about guerrilla warfare himself, made an impassioned speech in the Senate. Excerpts from his speech cautioned: "If our troops ever reach Salt Lake City they will find it a heap of ashes. These people will fight desperately. They are fighting to prevent the execution of threats which have been made against their homes and families and they will fight until every man perishes before he surrenders. They will secure their women and children in the mountains. They will have provisions for two years and will carry on a guerrilla warfare which will be most terrible to the troops you send there. As for the troops to conquer the Mormons, fifty thousand would be not sufficient. I say that our army will never return, but their bones will whiten the valley of the Salt Lake" (*Congressional Globe,* 35th Congress, 1st Session, Vol. XXIV [1857-1858], p. 874,

> Mob action continued against the Mormons at Nauvoo, encouraged and abetted by the state government and "volunteers" from Missouri.

The Army Marches

The U.S. Army force assembled at Fort Leavenworth was officially designated as the "Army of the Utah Expedition" and was commanded by Colonel Albert Sidney Johnston. The force was filled with troops from places as diverse as Minnesota and Florida. The final composition of the hastily organized expedition was the Fourth Artillery Regiment, the Fifth Infantry Regiment, the Tenth Infantry Company, and the Second Dragoons.

Attached to the Army Force was a large group of civilian militia—wild, unruly men from Missouri who had "unfinished business" with the Mormons. And there were prostitutes and camp followers, hordes of teamsters with hundreds of wagons, beef cattle to feed the Army, and would-be carpetbaggers who

hoped to be civil administrators in an occupation government.

Brigham Young first heard of the approaching force on July 24, 1857, 10 years to the day after the Mormon pioneers had entered the Salt Lake Valley. It was reported that 14 supply trains of 400 wagons, 6,000 mules and oxen, more than 1,000 horses, and 500 bullwhackers snaked their way westward along the Oregon Trail. Two of the messengers who reported to Brigham Young had infiltrated the Army camps and heard the soldiers boast about how the Mormons would be plundered and how their farms, property, and women would be distributed. They fantasized that thousands of beautiful women would flee their "harems" and throw themselves into the arms of the liberating Army. The watchword among the soldiers and militiamen was "beauty and booty," other words for rape and pillage.

Young, as governor of Utah Territory, issued a proclamation prohibiting the entering of a "hostile force" into Utah and mobilized the entire population for warfare. The Nauvoo Legion, now a tough, lean force of frontiersmen, was organized into harassing cavalry units to wage hit-and-run guerrilla war on the plains and in the mountains.

A force was organized to prepare the narrow defiles of Echo Canyon, the 20-mile route to Salt Lake City, with boulders propositioned to create rockslides. Logs were piled at strategic sites to roll onto the Army, and mountain streams were dammed up to form sizable ponds. The rock and log dams were filled with barrels of gunpowder that, when blown, would send torrents of water onto the troops below. An observation corps of cavalry scouts and spies disguised as mule skinners would keep track of the Army and try to ferret out its plan of attack.

The proclamation of the Mormon order of warfare read: "Proceed at once to annoy the Army in every possible way. Stampede their animals and set fire to their wagon trains. Burn the whole country before them and on their flanks. Keep them from sleeping by night surprises. Blockade their roads by felling trees and by destroying river fords wherever you can. Keep scouts out at all times, but remember . . . TAKE NO LIFE."

General Daniel H. Wells, Commander, Nauvoo Legion sent Major Lot Smith, the real hero of the Utah war, with a swift cavalry guerrilla force against the Army. Day after day they destroyed bridges, set fire to the grass to starve Army animals, and flooded trails and roads, making them impassable.

Many large wagon trains were torched, and valuable supplies of weapons, gunpowder, and food for the troops were confiscated. Huge herds of mules, horses, and cattle were captured and brought to Salt Lake City. Men overpowered by Mormon guerrillas in a wagon train attack testified in later inquiries as to the effectiveness of the Mormon cavalry.

In Salt Lake City the economic system was organized to fight. A chemical factory was established to make gunpowder and lead balls. The church's women's organization manufactured Colt revolvers on Temple Square, and Jonathon Browning, a convert to the church, lent his genius in weaponmaking to the war effort. He made some of the country's earliest repeating rifles at this time and went on to establish Browning Arms.

The Army's strategy was to reach Fort Bridger in southwestern Wyoming for rest and resupply. Food rations for the soldiers were cut repeatedly, and they had to force their way through Echo Canyon and attack Salt Lake City before the winter trapped them in the mountains.

The strategy of the Nauvoo Legion succeeded. When the Army reached the fort, they found nothing but smoldering ashes and no supplies. In fact, all the grass around the fort had been burned, so they couldn't feed their starving animals. The Utah expedition was forced to winter in a temporary camp called Ham's Fork.

Brigham Young declared that his American Indian allies were the "Hammer of the Lord" and that he could count on the support of more than 40,000 warriors.

The winter of 1857-1858 was one of the worst on record. The troops were famished; they started to eat all of their animals. The teamsters, militiamen, and camp followers began deserting. Frustrated and enraged at the Army's predicament, Johnston wanted to force a passage through Echo Canyon, but the Mormon defenses were too strong, and there was another ominous development. The various American Indian tribes who were allies of the Mormons saw the "Mericats," as they called the Army, as their enemy. Brigham Young declared that his American Indian allies were the "Hammer of the Lord" and that he could count on the support of more than 40,000 warriors.

In the East the LDS Church launched a campaign of psychological and political warfare. Missionaries in Boston, New York, Philadelphia, and Washington, D.C., passed out pamphlets in public places, explaining the Mormons' plight and the government's error. The press became convinced that the Utah war was "Buchanan's Blunder" and that the people of Utah were innocent of treason or rebellion.

The enemies of the administration were cultivated by pro-Mormon agents and lobbyists to protest the invasion and investigate the corruption associated with fat contracts given to companies which supplied the Army. National figures such

as Sam Houston, Samuel Colt, and Horace Greeley made public statements supporting the people of Utah and condemning Buchanan.

Meanwhile, the Army was in sad shape. Almost all of the horses and mules had been killed for food. If the soldiers were not fed, then lives would be lost. The Mormons didn't want that, so Brigham Young offered to send food to the freezing, starving soldiers. This enraged Colonel Johnston and he refused, telling the Mormon emissaries that he fully intended to attack the city, defeat the Nauvoo Legion, and hang Young and the leadership of the church. This, too, reached the Eastern press, and tremendous pressure was put on the president to strike a deal with Brigham Young. Buchanan was now viewed by the public as a monster, and the Mormons as innocent victims—a heroic David fighting a vicious Goliath.

Buchanan was forced to issue a "Proclamation of Pardon" to the people of Utah. Johnston was ordered to march through Salt Lake City without stopping and set up camp some 40 miles from the city. The Army, however, would not be able to move until the spring thaw. The historian George Bancroft observed, "The Army was trapped in a distant and unacceptable region which included more than one third of the nation's war material and nearly all of its best troops."

Johnston, now furious at his defeat, thirsted for war when spring came and whipped his troops into a frenzy, lusting for Mormon blood, pardon or no pardon.

When Brigham Young learned of Johnston's intentions, he ordered a mass exodus from Salt Lake City and all of the settlements north of the city. More than 30,000 Mormons abandoned their homes, farms, and shops and took to the trails southward. This move had a tremendous impact on public opinion in the entire country. Buchanan threatened Johnston with a court-martial if he disobeyed orders and molested the Mormons.

Johnston bowed to the administration's order and told his troops that there would be no beauty or booty. In fact, the Army would have to march through Salt Lake City without stopping and camp far away.

On June 26, 1858, the most thoroughly frustrated Army in American military history trudged through the empty streets of this strange and silent city. The cannon barrels plugged and their rifles empty of powder and ball, the soldiers could see flickering torches in the houses and buildings on each side, held by members of the Nauvoo Legion, who were ready to fling them into the combustibles that filled the rooms if the Army stopped.

The Utah war had come to a close. The Mormons did not take one life, but their splendid isolation had ended. "Buchanan's Blunder" had cost more than $40 million, an astronomical sum in 1858. Southern arsenals were well stocked, and the soon-to-be Confederate States of America had a bulging war chest.

The Civil War broke out in 1861, and Jefferson Davis became the president of the Confederacy. John Floyd was commissioned a brigadier general in the Confederate Army and, while defending Fort Donelson, disgraced himself by surrendering his command and fleeing with his personal guard. Shunned by the Confederate government after being stripped of his commission, he died in 1863 a broken man. Johnston became a Confederate general and lost his life in the battle of Shiloh. The army camp in Utah—first named Camp Floyd and later Fort Crittenden—lost hundreds of men, who deserted to the rebel states.

But the Mormons had won only a temporary victory. In 1862 a Union Army force commanded by Colonel Patrick Connor occupied Salt Lake City and built Camp Douglas east of the city, sighting his cannons on the Beehive House—Brigham Young's residence in Salt Lake City.

In the 1870s and 1880s the federal government went after the Utah Mormons with a vengeance. Laws prohibiting polygamy broke up families and drove church members and their leaders underground. Many Mormons fled to Mexico and established colonies that still exist today. The wealth of the church, including all lands except Temple Square, was confiscated. Its leaders were imprisoned, and the men and women were disenfranchised. (Utah had been the first U.S. territory to give women the right to vote.)

The crusade against the Mormon Church and people officially ended when the leadership proclaimed an end to plural marriage. Utah remained under a carpetbag administration propped up by a large military force and hundreds of federal marshals, who prowled the territory looking for polygamists.

The occupation ended when the Mormons of Utah became "Americanized," and Utah achieved statehood in 1896.

LIBERTY BRIEFS

Equal and Fair?

Efforts by California teachers to help students understand Islam have created significant tensions. In some classrooms this included reading sections of the Koran, voluntary wearing of Islamic clothing, and acting out a pilgrimage to Mecca. Such activities created consternation among some parents and conservative groups who viewed the classes as efforts to indoctrinate children. Some have expressed concern that Islam is receiving more favorable treatment in California public schools than other faiths, particularly Christianity. In their defense, public school officials have pointed out that the curriculum includes sections on Christianity, Judaism, and other world religions.

Court-based Initiative

Wisconsin, home to current secretary of health and human services Tommy Thompson, recently experienced a setback in its charitable choice programs. On January 7 the western federal district court found that government funding of Faith Works Milwaukee, Inc., violated the establishment clause. The court found that Faith Works incorporated religious indoctrination in its programs designed to help men kick their addictions, find work, and build healthy family relationships, and that government funding of such religious indoctrination was unconstitutional.

WRFA Alive

It is hoped that the Workplace Religious Freedom Act will be introduced in the Senate early this year. The Workplace Religious Freedom Act, or WRFA, as it is commonly called, is designed to ensure that adequate protection is provided for people of faith in the American workplace. It does this by requiring accommodation of religious beliefs unless doing so would require an employer to incur significant difficulty or expense. While current law provides some protection, judicial interpretations have whittled it away. WRFA establishes for people similar standards of protection of faith that are already enjoyed by the disabled under the Americans With Disabilities Act.

Military Tribunals

The administration's decision to use military tribunals to try suspected terrorists remains controversial. Although the military order that empowered the Department of Defense to create the tribunals permits the tribunals to operate in secret and to condemn a suspect to death on a two-thirds vote of the tribunal, there is some indication that the Department of Defense will shy away from such extreme procedures. While the Department of Defense's regulations have yet to be issued, there is some optimism that they will likely include provisions for:

- public trials;
- the right of the accused to confront the evidence;
- effective assistance of counsel, including the right to counsel of one's choosing;
- a presumption of innocence;
- a requirement that guilt be established beyond reasonable doubt; and
- unanimous verdict in any capital case.

"Religious Speech Amendment" Resurfaces

Representative Ernest Istook has begun an effort to have his "religious speech amendment" to the U.S. Constitution adopted. While the amendment appears innocuous on its face, Representative Istook has made it clear in a recent letter that the intent of the amendment is to change the law governing religious speech in the public school classroom. Currently public school students are permitted to pray and to talk about their faith, and teachers are permitted to teach about religion. The Constitution has been interpreted, however, as providing protection from the use of public schools to promote a particular religious perspective. The "religious speech amendment" aims to change the parameters of these protections in order to permit more explicit religious speech from school authority figures and to allow for religious activities such as official prayers at public school functions.

Compromise on the Faith-based Initiative Proposed

A working group convened by Search for Common GroundUSA released a report in January that included 29 ways in which government and religious groups can work together. The group included representatives from diverse perspectives, many of whom were influential voices on both sides of the faith-based initiative debate last year. Agreement was reached that religious entities should organize separate 501(c)(3) organizations to handle government programs, that assistance should be provided to help small organizations create these 501(c)(3)s, and that a variety of measures should be adopted

to encourage charitable giving. No consensus was reached on the question of whether faith-based organizations should be permitted to retain their right to set hiring criteria in accordance with their faith when positions are paid for out of funds received by the government. The full text of the report is available at: http://www/working-group.org/

Victory for Lt. Col. McSally

Air Force Lt. Col. Martha McSally was incensed by military regulations that required servicewomen serving in Saudi Arabia to wear head-to-toe garments, traditionally worn by Muslim women, when they leave the base. In addition, the practice of positioning servicewomen in the back of vehicles also caused her deep concern. After unsuccessful efforts to have the policy changed she sued defense secretary Donald Rumsfeld for a violation of her free speech, equal protection, and free exercise rights. In a surprising turn, the military reversed its policy rather than go to court over it. Servicewomen may now wear military uniform off base, although they are strongly encouraged to continue to wear the Islamic garb.

The Numbers Game

Tom W. Smith, of the National Opinion Research Center at the University of Chicago, reported that there might be significantly fewer Muslims in the United States than has been publicly reported. While Islamic groups frequently cite a number of between 6 and 7 million Muslims in America, Smith estimates there are only 1.9 million. In addition, Smith estimates that there are 1.4 million Buddhists, in contrast to the frequently claimed 2.8 to 4 million. Suffice it to say, debate continues.

ILLUSTRATION BY RALPH BUTLER

Stop-Abortion Rally Held in Washington

The annual rally to stop abortion was held in Washington on January 23, on the 29th anniversary of the *Roe v. Wade* decision. President Bush addressed the rally via a telephone hookup from West Virginia. In his address he strongly stated his support for protection of the unborn. In addition, the president declared the Sunday before the rally National Sanctity of Human Life Day.

Atrocities Abound

While religious liberty issues faced in the United States remain of significant concern, the situation for people of faith in many other nations around the world is dire. Sectarian violence continues in Indonesia; the government of Turkmenistan continues its repression of believers; Saudi Arabia has imprisoned men and women accused of engaging in no greater crime than sharing their faith, the crackdown on the Falun Gong in China continues with breathtaking brutality. And these are just a few of the trouble areas for religious freedom around the world. While it has often been assumed that the march of freedom and democracy is inevitable, time is proving that the age of tyrants is slow in dying. Many people of faith have given up all they have, including their lives. We in North America should redouble our efforts to ensure that we remain free.

The school's policy seemed clear enough—student clubs receiving funds through Utah Valley State College's student activity fee program had to be open to all students. No exceptions.

For the Eagle Forum Collegians, a conservative student club formally opposed to "radical feminism" and the "homosexual agenda," this posed a serious problem. After all, club members thought, if anybody could join their club, homosexuals and feminists would soon fill the ranks and erode the club's message from the inside out.

On the other hand, why should homosexuals or feminists be required to fund a group that so actively opposed them on such a personal level?

When the college declined to fund the club unless it opened its doors to all college students, Eagle Forum Collegians leader Kendra Ruzicka and her lawyer, Matthew Hilton, requested in writing that the university make an exception to the rule. The club, they reasoned, should not be forced to accept those who might have threatened its existence or at least altered their message.

In addition, Ruzicka and her lawyer sent a letter to the Utah attorney general, Jan Graham, claiming that the policy denied Eagle Forum Collegians their First Amendment rights of association, religious exercise, and freedom of speech.

Graham responded that the policy was "based upon sound, compelling reasons" and would

STUDENT CLU

ILLUSTRATION BY RALPH BUTLER

therefore be enforced. Graham added that if the group refused to adopt a more inclusive policy, it would no longer be able to operate as an officially sanctioned club and would forfeit its access to funds from the yearly student activity fees, among other things.

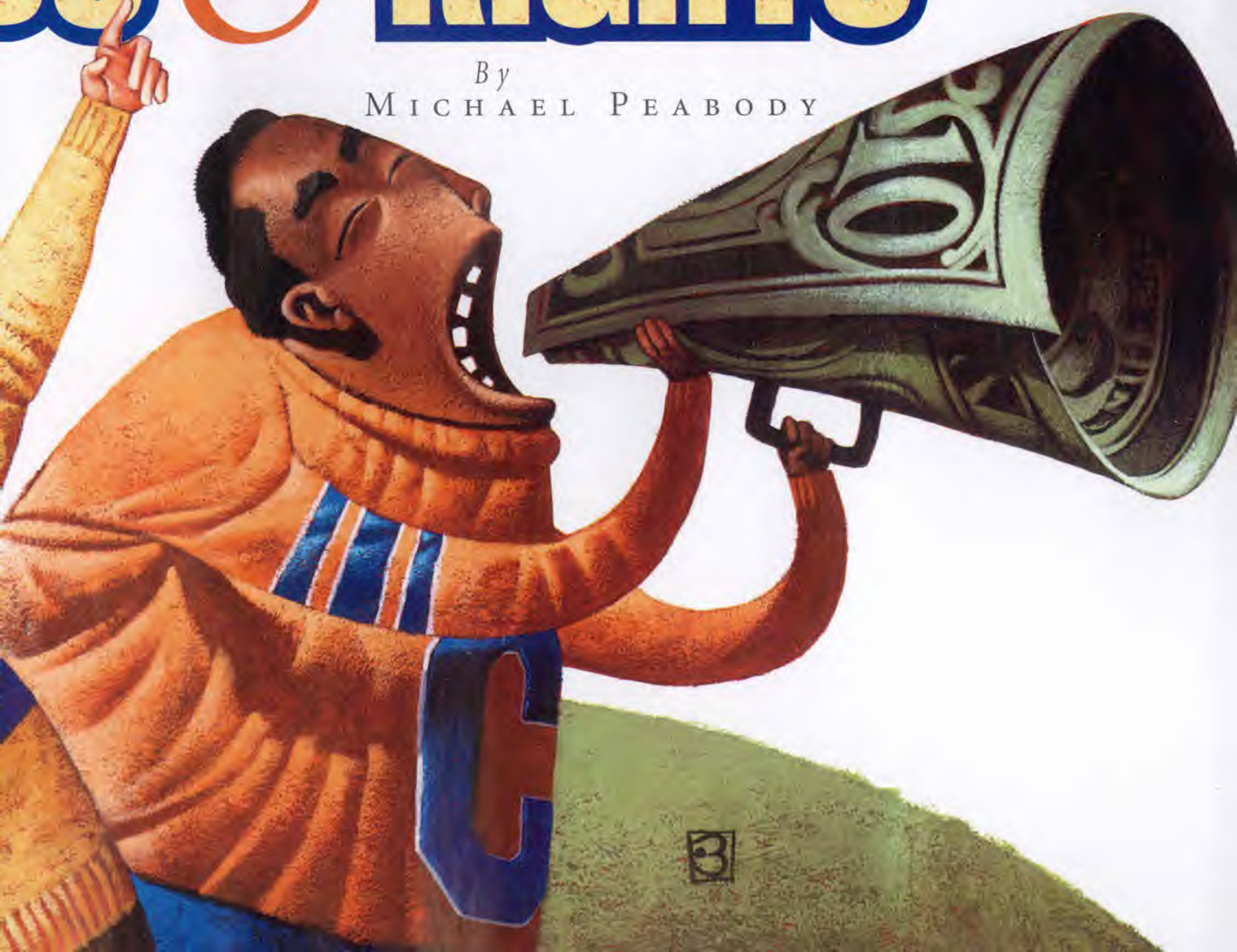
From the age when long-haired hippies roamed the earth to the days of their body-pierced progeny, America's college campuses have been host to a hodgepodge of debate, discussion, and protest about the issues of the day. From "Make love, not war" to "Meat is murder," college kids have raised their voices above the din of a seemingly apathetic society to point loudly to the issues that really matter.

This vast store of energy is not lost on college and university administrators who wish to encourage a "robust exchange of ideas."[1] While not everybody will agree with all the ideas that they promulgate, college kids have a message that comes from somewhere in the soul where the ideal is not

Michael Peabody, a repeat contributor to Liberty, *puts his legal training to effective use in analyzing the sometimes complicated religious liberty trends. He writes from Riverside, California. The ramifications of free speech and religious liberty on campus were highlighted by post-September 11 charges that the nation's universities had not adopted a correctly patriotic response. Generally this complaint was in response to the academic commitment to multiculturalism, historical analysis, and an openness to other viewpoints of faith and principle. It accents how high the stakes are.*

BS & RIGHTS

By
MICHAEL PEABODY



shrouded by the constraints of jaded practicality. As one judge has observed, "the nation's fundamental civic values are forged in the intellectual fires of its college campuses."[2] Although the message of students may sometimes appear muddled or run against the grain of the rest of society, one thing remains clear—in their eyes they can change the world.

Through systematic collection of student activity fees, universities fund programs that encourage students to express themselves. Student fee systems first began to appear at a time when public universities were prohibited from charging for tuition but could collect fees for "incidental" expenses.[3] The scope of student fee usage gradually expanded until student governments, publications, sports, honor societies, and other programs were funded in the 1970s.[4]

Although the right of universities to collect these fees has been upheld,[5] the scope of what the fees may be used for is the subject of intense controversy. Within the surrounding litigation there are two general categories in which student fees have been the subject of scrutiny. First, there are students who feel that their groups are being unconstitutionally excluded from receiving funding.[6] Second, there are students who feel that universities violate their First Amendment rights when they are compelled to fund speech that they disagree with or even find strongly offensive.[7]

Constitutionally, the litigators in both of these scenarios have a point. The First Amendment guarantees every individual the freedom to express his or her beliefs. But also implicit in the First Amendment is the "negative right" to be free from compelled association with or expression of ideas or beliefs with which one disagrees.[8]

The First Amendment—and the entire Constitution, for that matter—was developed in the "soil of *laissez-faire* individualism" when the people sought freedom from the constraints of an overreaching government.[9] A couple of centuries later, however, society has come to expect government not only to support the individual rights protected by the Bill of Rights, but also, under certain circumstances, to financially support a portion of the expression of those rights. To reconcile the pure enjoyment of those rights with the modern tendency to seek a more active government is a daunting task. How can the government avoid infringing on the rights of citizens when there is an increasing demand for government involvement and funding implicating those very rights? Where is the line?

Within the Supreme Court there are two major views that compete on this issue. Chief Justice William Rehnquist and Justice Antonin Scalia argue that when the government funds expression, it has the "broad authority" to decide what to support. In other words, if the government is going to fund a program, it should have discretion in a variety of areas, including viewpoint considerations, when deciding what to fund. On the other hand, Justices Blackmun and Souter champion the approach that the First Amendment should apply to funding decisions just as it applies to traditional speech regulations.[10] When the government creates an open forum for expression, they reason, the government should allow freedom of expression without regard to the viewpoint message being sent out. It should not impose censorship.

When the government provides an open forum f the exercise of free speech, it does not mean that t

As a whole, the Court has generally tended to lean toward the idea that "government may not grant a benefit on the condition that a beneficiary surrender a constitutional right, even if the government may withhold that benefit altogether."[11] The Court has reasoned that "if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited." This would allow the government to "produce a result which [it] could not command directly."[12]

The extent to which the government must be viewpoint-neutral when it funds speech by third parties is still unclear. However, when the government operates a program that by its terms appears to be open to all comers or a large number of speakers, the courts have generally held that the allocation of funding must be viewpoint-neutral.

Although people do not have the right to go onto any governmental property that they

choose and begin making speeches, the Court has recognized that when the government does expressly make its property available for public use, it may not exclude speakers based on the content or viewpoint of the message they wish to communicate.[13] Once it has created a "public forum," the government can exclude speech based on content or viewpoint only when it can demonstrate that the exclusion is "narrowly tailored" to meet a compelling governmental interest, such as protection from obscenity.

The Court has also recognized that the government may create a "limited public forum" when it has opened up its property for a specific use, such as student organization meetings or school board meetings.[14] Under current constitutional interpretation the Court is very reluctant to bend the First Amendment to allow political or ideological speech to be singled out for less than equal treatment when a public forum has been created. As long as the speech is relevant to the purpose of the limited public forum, the right to speak cannot be denied

vernment has endorsed
iat is communicated.

unless a compelling governmental interest is threatened.

In a limited public forum there may be content-based discrimination to maintain the boundaries of the forum; however, viewpoint discrimination is impermissible. For example, a public university can bar an individual from making a presentation on quantum physics at a symposium on the Civil War, but it may not discriminate based on one's view of the Civil War.

In *Healy v. James* the Court applied its public forum doctrine to college campuses when it noted that "state colleges and universities are not enclaves immune from the sweep of the First Amendment."[15] In *Healy* the Court held that a public university had violated a group's First Amendment rights of association when it denied recognition to a student group based on the group's views.

The Court applied this rationale a dozen years later when it found that a regulation that prohibited the use of school facilities "by any group for religious purposes" had been unconstitutionally applied when it was used to prohibit a church from using a public school's facilities to show a film dealing with family values from a Christian perspective. The Court struck down the regulation as it was applied, reasoning that the exclusion had been viewpoint-based, because there was no indication that the school would have excluded similar films if they had been presented from a different perspective.[16]

When the government provides an open forum for the exercise of free speech, it does not mean that the government has endorsed what is communicated. The U.S. Supreme Court summarized this legal principle when it explored the issue of religious speech in such a forum in *Widmar v. Vincent*. "An open forum in a public university does not confer any imprimatur of State approval on religious sects or practices" any more than it is "now committed to the goals of the Students for a Democratic Society, the Young Socialist Alliance, or any other group eligible to use its facilities."[17]

The Court's method of open forum analysis has protected controversial and unpopular expression by university students. In *Rosenberger v. Rector* the Court extended that protection to cases involving mandatory student activities fees.[18]

In *Rosenberger* the Court ruled that the University of Virginia could not refuse to fund a Christian student publication while funding similar nonreligious publications. The university had originally made the decision not to fund the Christian student paper because it felt that it would violate the establishment clause by doing so.

By making such a distinction based on the content of the newspapers, the University of Virginia triggered the application of the Court's strict scrutiny analysis by creating a limited public forum. In order to administer the program in a viewpoint-neutral manner, the university would have had to evaluate the Christian publication, using the same criteria that it used to evaluate other participating publications. The university's stated purpose of the student activity fee was "to open a forum for speech and to support various student enterprises." Therefore, the Court reasoned, the university would not have been advancing or otherwise endorsing the message of the religious publication had it evaluated the publication using the same viewpoint-neutral criteria it had used to evaluate the publications that it had accepted.

In addition to the right to speak when the government provides the opportunity to do so, there is also the "negative right" not to be compelled to be associated with an idea against one's own interest.

The First Amendment does not explicitly protect rights of association, but the Supreme Court has reasoned that both the right to free association and the right not to associate are implicit within the text of the First Amendment.[19] In most of these cases an individual is asserting the right to not be associated with a message with which he or she disagrees. In *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* the Court recently found that a state's public accommodations law conflicted with the freedom of association when the state forced a group to include a gay, lesbian, and bisexual contingent in its parade. The Court found that the state had changed the message the group was trying to communicate through the parade and improperly associated the group with a pro-homosexual message through the forced inclusion.[20]

Applying the reasoning in *Hurley* to the situation involving the Eagle Forum Collegians at the Utah Valley State College, the rule that they must accept all students strikes directly at their First Amendment rights of association and free speech.

While an argument could be made that this student group has no entitlement to funding, because the government is not required to subsidize speech,[21] legal precedent would prevent this argument from applying in this situation, in which the college has decided to enhance its educational objectives by creating a public forum for public speech. It must equally protect the students' right of association, because to do otherwise would necessarily impact and change the composition and, by extension, the message that the club is seeking to promote.

Because the college has created a limited public forum that funds this type of organization, the Court would likely find that it must do so without regard to the viewpoint of the message, even if it does not agree with how the students within the organization are choosing to exercise their First Amendment rights.

The Supreme Court recently addressed the issue again in *Wisconsin v. Southworth,* when it upheld a mandatory student fee structure that paid for various groups within and had created a limited public forum. Under the University of Wisconsin program, a portion of the student activity fees pays for postage, office supplies, and other expenses of a variety of campus clubs. According to the university, the main purpose of the program is to promote extracurricular activities "stimulating advocacy and debate on diverse points of view," as well as to enable students to engage in political activity.

In 1996 several students filed suit against the university arguing that their First Amendment rights to free speech, free exercise of religion, and freedom of association were compromised when the student fees were used to fund what they felt were offensive student organizations.[22] They argued that it was compelled speech against their interest.

Justice Anthony Kennedy, writing for the Court's majority, recognized that the funding policy did burden the offended students' right to free speech to a degree. "It is inevitable that government will adopt and pursue programs within its constitutional powers but which nevertheless are contrary to the profound beliefs and sincere convictions of some of its citizens." However, Kennedy concluded that "the government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties."

> The marketplace ideas is "not confined to

In short, the Court reasoned that because the funding process was viewpoint neutral, the interests of the objecting students were sufficiently protected. After all, the Court explained, offended students could create their own clubs to promote their own views under the program.

Beyond the legal issues and the Court's decisions the question of public policy remains. Public funding rarely comes without significant strings attached, and those organizations that do accept this funding have historically had to make concessions. However, when a public university creates a limited public forum, the Court has consistently ruled that it must fund these organizations in a viewpoint-neutral manner. Thus, the public university has only one prerogative when it comes to deciding which organizations to fund—it must not discriminate.

While it is unlikely that a chess club and a physics club will be at odds, when it comes to religious student organizations requesting such funding, there will often be a conflict. Religious groups have "God-given" exclusionary mandates that conflict with the public policy, which is decidedly against discrimination. Although courts usually recognize the right of religious organizations to discriminate against those whose lifestyles are "morally offensive" to them,

the waters between antidiscrimination public policy and the legal requirements of a limited public forum are rife with sandbars.

As most public universities and public institutions continue to support a public policy that discourages discrimination against traditionally marginalized groups, those with a conservative ideology are finding themselves gradually circulated to the fringe. At many relatively liberal campuses conservatives are finding that liberal students are accepted at the table of ideas as they are pushed away.

Recently the Tufts University student government "derecognized" the student Christian Fellowship after it denied an openly gay member a leadership position. As a result, the Christian Fellowship lost a $6,000 annual stipend, could no longer use classroom facilities, lost access to listing services, and could no longer affiliate itself with Tufts.

process of attending school; it is also an important part of the educational process."[23] As long as all students are welcome at the table of ideas each public university and college will continue to be "a neutral ground where the clash of ideas is unfettered."[24]

[1] *See Keyishian v. Board of Regents,* 385 U.S. 589, 603 (1967). ("The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues'.")

[2] *Smith v. Regents of the University of California,* 844 P.2d 500, 527 (Cal. 1993) (J. Arabian dissenting).

[3] See generally David L. Meabon, et al., *Student Activity Fees: A Legal and National Perspective* 1 (1979): pp. 6-7.

[4] See Meabon, p. 24.

[5] See *Smith,* p. 505.

[6] See *Rosenberger v. Rector & Visitors of the University of Virginia,* 515 U.S. 819 (1995).

[7] See *Board of Regents of the University of Wisconsin v. Southworth,* 2000 U.S. LEXIS 4154 (decided June 19, 2000).

[8] See *Lehnert v. Ferris Faculty Association,* 500 U.S. 507, 516 (1991).

ɔervised and ordained discussion which takes place the classroom."

After a large response from the public, expressing outrage, Tufts University officially reinstated the Christian Fellowship's official status. While Tufts is a private university and is not under the same strictures as a public university, the situation is emblematic of what is occurring in colleges and universities nationwide, both public and private.

The First Amendment right of association is especially valuable to those few dissenters who find themselves in disagreement with the majority of students. In the past, traditionally marginalized groups, such as women, ethnic minorities, and homosexuals, have claimed this right to band together to assert their demands for equality. To achieve recognition, these groups had to battle institutions that were openly hostile to their concerns. Now that the tables have turned, these formerly marginalized groups are taking steps to deny their opponents the right to speak or associate freely.

When a university provides a public forum for its students, the First Amendment rights of speech and association are not limited to those ideas that are considered politically correct by the majority. The marketplace of ideas is "not confined to the supervised and ordained discussion which takes place in the classroom." Such discussion "is not only an inevitable part of the

[9] See *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943).

[10] Steven J. Heyman, "State Supported Speech," 1999 Wis. L. Rev. 1119 (1999).

[11] *Rust v. Sullivan,* 500 U.S. 173 (1991).

[12] *Perry v. Sindermann,* 408 U.S 593, 597 (1972) [quoting *Speiser v. Randall,* 357 U.S. 513, 526 (1958)].

[13] See *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 45 (1983) (holding that content nor viewpoint based restrictions on access to a public forum must be evaluated under the strict scrutiny standard).

[14] See *City of Madison Joint School District No 8 v. Wisconsin Employment Religious Community,* 429 U.S. 167, 197 (1976).

[15] *Healy v. James,* 408 U.S. 169 (1972).

[16] *Lambs Chapel v. Center Moriches Union Free School District,* 408 U.S. 384 (1993).

[17] *Widmar v. Vincent,* 454 U.S. 263 (1981).

[18] *Rosenberger,* p. 819.

[19] See *West Virginia Board of Education,* p. 642.

[20] *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557 (1995).

[21] See *Regan v. Taxation With Representation,* 461 U.S. 540, 545 (1983).

[22] These organizations included WISPIRG; the Lesbian, Gay, Bisexual Campus Center; the Campus Women's Center; the UW Greens; the Madison AIDS Support Network; the Internationalist Socialist Organization; the Ten Percent Society; the Progressive Student Network; Amnesty International; United States Student Association; and Community Action on Latin America, among others.

[23] *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503, 512, 513 (1969).

[24] Wilson, David A. "The Public Service Role of the State University in a Changing World," in Leslie W. Kiepplin, et al., eds., *The Future of State Universities* (1985).

Morality Imposed: The Rehnquist Court and Liberty in America,
by Stephen E. Gottlieb. New York University Press. 341 pp. $32.00.
Reviewed by Charles J. Eusey.*

Judicial Incons

Professor Gottlieb, of Albany Law School, argues that inconsistency shows a lack of principle and that "a dose of principle would very significantly improve the moral quality of the Rehnquist Court." The thrust of his argument is not to quibble with the decisions of this Court but to fault the justices for an inconsistent assumption in arriving at decisions.

Gottlieb seeks to discover the philosophical assumptions of the justices and to follow these assumptions to their conclusions. For it is not possible, he contends, for jurists to avoid importing their own philosophy into their decisions.

Chief Justice William Rehnquist is joined by Justices Antonin Scalia and Clarence Thomas in asserting that we should interpret text literally. In this view, judges should not look behind the text to discover the reasons for the use of particular language. Nor should they examine the impact of changing reality upon the achievement of constitutional purposes. The text must not be changed. Justice Scalia would, however, look at the practices of the generation that adopted specific constitutional provisions, but not at their principles. For him, to consider principles would open the door to judicial discretion.

But does the current Supreme Court confine itself to reading text literally? Consider the Eleventh Amendment cases. This amendment prohibits lawsuits by citizens of one state against another state. The Rehnquist Court interprets this amendment to prevent federal questions from being brought by citizens of the same state.

The conservatives on this Court treat the work of previous courts as "moral relativism." They have taken a more absolutist position.

Justices Scalia and Rehnquist believe government has every right to regulate behavior for any reason it chooses. Justices Thomas, Sandra Day O'Connor, and Anthony Kennedy generally agree with this power. According to Scalia, the Constitution does not allow us to do what we like so long as we do not injure anyone else.

Gottlieb points out a major inconsistency between the Court's rhetoric and the reality of what they have been doing in respect to the right to participate in a democratic society—the democracy gap. The five conservative justices have repeatedly said that justices should stick to a relatively narrow and unchanging version of history. Otherwise, the views of the judges would substitute for those of the people. It is an argument that seems to be based on democratic principles.

This Court has backed away from upholding equality among voters to the point that three-to-one differences in voting districts satisfy them. They refuse to deal with gerrymandering cases. White objections to Black minority districts are the only kind of democratic voting claims the conservative justices support.

Justice Thomas says there is no theory of democracy from which one could construct decisions about districting. Justice Scalia asserts that he is more concerned about the tyranny of the majority than the tyranny of the elite. Gottlieb wonders: "If democracy has no real meaning and there are no problems for which it is part of the solution, what does it mean to say that Scalia or Thomas believe in democracy?" He believes their claim to defer to democratic decision-making rings hollow, because they have no concept that coincides with what they claim to respect. How does a believer in democracy support the Black-White division of voting districts (so-called segregate districts) that this Court believes is acceptable, if done to protect incumbent office holders?

Gottlieb goes on to address judicial restraint. He claims that the Rehnquist Court is one of the most activist in the history of the United States. "Its treatment of judicial restraint is very closely tied to its rejection of democratic rights." It has been zealously active in overturning legislation adopted by a majority of the people in such areas as powers of Congress, local control of land use, and the 1964 and 1965 civil rights acts. "The

Court is moving to a model of judicial restraint based on what seems reasonable to it."

Gottlieb exposes the quality of the Court's definition of procedural justice—the right-to-life gap. This inconsistency is most apparent in the Court's treatment of those facing execution. Right to life for the unborn is contrasted with the rights of those on death row. Angel Herrera was convicted in a Texas court for the murder of two policemen, in a trial conducted under the most prejudicial of circumstances. For example, one member of the police force was on the jury.

Texas has a statute that bans courts from considering evidence acquired more than 30 days after sentencing. The Supreme Court did not have to rule on Herrera's guilt or innocence. It could simply have ruled that the 30-day rule risked the lives of innocent people. There was a conflict with the guarantees of due process.

Chief Justice Rehnquist wrote the majority opinion that denied all relief. The possibility that an innocent person would be executed seemed of less importance than finality. Herrera would be required to present a strongly persuasive demonstration of innocence. But no forum was available for him.

The third gap is the equality gap. The conservative majority on the Court has not ignored the equal protection clause. It has claimed the moral high ground of a color-blind Constitution. But the claims of real people are being denied. Segregation by race in districting is attacked, but not in employment. A prosecutor is allowed to exclude bilingual jurors based on his argument that bilingual jurors would not rely upon the translator. Employment discrimination does not exist in even the most apparent situations. The Court found no discrimination in an Alaskan fishing plant where the native Inuits filled all the canning-plant jobs and White Californians filled nearly all the white-collar jobs in a separate adjacent building. The Inuits were not informed of positions available in the white-collar building. The supervisor explained that the two racial groups would not mix well. The Court reasoned that this was not racial discrimination but a perfectly reasonable business practice.

Justice Scalia has denied that society has any responsibility for racial injustice or that it has the right to make amends. He asserts that protection against discrimination is equivalent to "favoritism." Justices Rehnquist and Thomas join him in saying that prohibiting discrimination is the same as "preferential treatment."

What would it take to satisfy Gottlieb? A good start would be the "consistent application of decent principles." He decries the lack of a coherent moral notion. I believe that most defenders of religious freedom would join in his concerns. They very well may share the author's bias that the Supreme Court has substituted its own conceptions of moral character for basic principles that had previously formed the basis for individual rights. These same defenders of religious freedom would likely agree that the Court should aim for a freer society. They may accept Gottlieb's position that the law should be guided by the objective that individual freedom and moral autonomy should prevail to the extent that no one is harmed. But there no doubt will be much debate over how we define "harm."

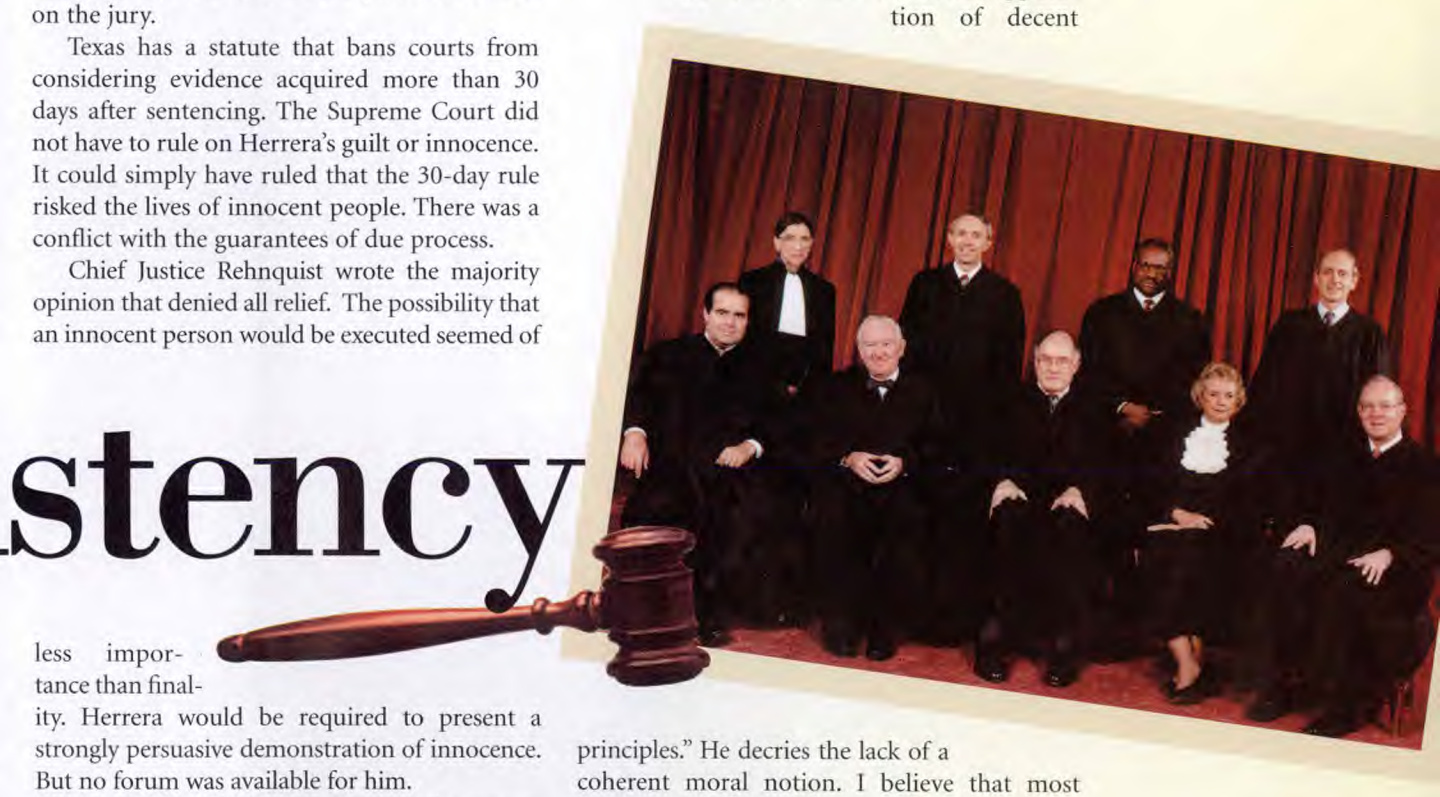


PHOTO BY RICHARD STRAUSS, SMITHSONIAN INSTITUTE. COLLECTION, THE SUPREME COURT HISTORICAL SOCIETY

The reviewer had the benefit of attending a lecture by Stephen E. Gottlieb on the topic of this book at the Social Law Library in Boston on November 7, 2001. The quotations in this article are from that lecture.

WORKING FOR F

Why Legislation Is Necessary to Protect Religious Freedom in the American Workplace.

The name Eric Liddell may have faded into obscurity, but at the 1924 Paris Olympic Games, Eric's name was on everyone's lips. Eric, a strapping Scotsman with an enormous athletic prowess, had done what few others have. After years of training, and with the Olympic expectations of his country riding on his shoulders, he chose to turn down the opportunity to run in his specialty event, the 100 meters. Even more remarkably, he turned down the opportunity because of his religious faith.

James Standish is director of Legislative Affairs for the Seventh-day Adventist Church. He has become a regular contributor to Liberty, *as much because of his effective communication of the religious liberty imperative to legislators as because of his writing skill, which is considerable. He writes from Silver Spring, Maryland.*

Liddell was, it turned out, not only a serious athlete but also a man of serious faith. And his faith taught that participating in athletics on Sunday was sinful. He therefore would have nothing of running in the 100 meters, which would have required him to run on Sunday in the qualifying heats. Liddell was vilified by some, who saw his choice as a betrayal of his nation and the actions of a fool. Nevertheless, he was firm in his commitment. In an accommodation of Liddell's religious faith he was permitted to enter in the 400 meters, an event he had little expectation of winning.

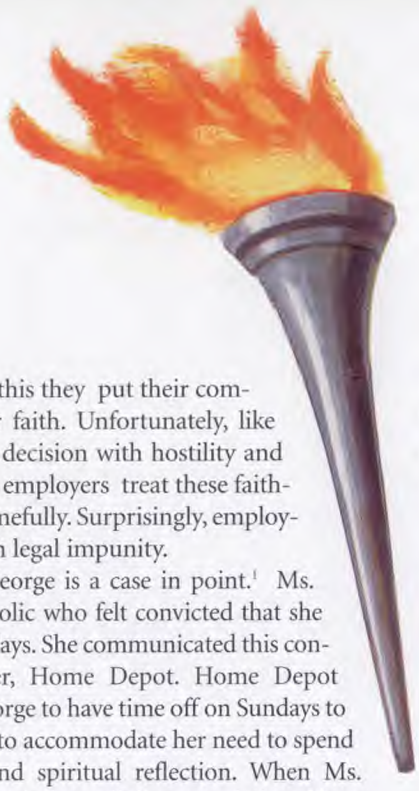
He ran well in the qualifying heats of the 400 meters, but hopes for his victory faded at the outset of the final. Liddell came out of the blocks at a

By
AMES D. STANDISH

reedom

100 meters pace, and it appeared clear to those watching that he could not sustain the pace over 400 meters. To everyone's surprise, however, Liddell stayed well ahead of his more experienced competitors and flew over the finish line, not only taking the gold but also setting a new world record. Liddell's inspiring story of adversity and achievement was eventually told in the film *Chariots of Fire*, and although his name may have faded, his example continues to burn bright.

There are Eric Liddells in the American workplace today. They are men and women who desire to work hard, to support their families, their communities, and their nation, and they aim for the very highest levels of perfor-



Requiring employers to ta

sincerely he

mance. But before all of this they put their commitment to follow their faith. Unfortunately, like those who met Liddell's decision with hostility and ridicule, many of today's employers treat these faithful men and women shamefully. Surprisingly, employers can often do this with legal impunity.

The case of Teresa George is a case in point.[1] Ms. George is a Roman Catholic who felt convicted that she should not work on Sundays. She communicated this conviction to her employer, Home Depot. Home Depot offered to permit Ms. George to have time off on Sundays to attend Mass, but refused to accommodate her need to spend all of Sunday in rest and spiritual reflection. When Ms. George remained steadfast in her religious conviction, Home Depot refused to explore other options. Rather, she was promptly fired.

Ms. George's case would seem to be an open-and-shut one. After all, civil rights law states employers have a duty to accommodate an employee's religious practices as long as they can "reasonably accommodate" the practice and the accommodation does not cause "undue hardship" on the employer's business.[2] In this case, Home Depot had not explored whether Ms. George could swap shifts with other employees, had not offered her an alternative position, had not explored ways in which her shifts could be arranged around her religious beliefs. Rather, they had given her a take-it-or-leave-it offer, an offer that clearly did not permit her the spiritual rest she believed God requires on Sundays. It is a matter of conscience of course, not doctrinal certainty, as others including Seventh-day Adentists, point to Saturday as the scriptural day of rest.

Ms. George's case was heard by the Eastern District of Louisiana and decided on December 6, 2001. Home Depot filed for summary judgment, claiming that they had acted well within their legal rights to fire Ms. George. The court agreed, finding that Home Depot had accommodated Ms. George's religious convictions to the point required by law and that her refusal to accept that "accommodation" eliminated any burden on Home Depot.

In coming to its conclusion, the court stated: "George refused to accept the accommodation offered, refused to consider any accommodation except on her terms and therefore did not make a good faith effort to cooperate in the search for a resolution. Home Depot was not obligated to search for other accommodations that were more favorable to plaintiff. By providing at least one reasonable accommodation [note: the accommodation offered was no accommodation at all, as George would still have had to violate her conscience by working on Sunday], the defendant discharged its obligation. . . . Because Home Depot offered George a reasonable accommodation, it need not prove that it could not offer such accommodation without undue hardship."[3]

It may come as a surprise to Americans, who are used to hearing about the wide range of civil rights enjoyed in the workplace, that religious beliefs remain so vulnerable. While civil rights law requires employers to attempt to accommodate their employees' faith,[4] the Supreme Court has interpreted this requirement to impose a very low level of responsibility on employers. The Court concluded that employers are merely required to accommodate believers if the cost of doing so is *de minimis*, or minimal.[5] In addition, as in the George case, courts frequently find that as long as an employer offers an accommodation, even if such an accommodation does not resolve the conflict, they have met their legal responsibility.

Some employers have taken advantage of these decisions, refusing to make any real effort to accommodate the sincerely held religious beliefs of their workers even when it is well within their ability. Because of the minimal legal protection rogue employers can engage in such arbitrary actions with impunity.

Indeed, lawyers who represent people of faith in the workplace indicate an increasing number of cases in which employers have refused to take even the most basic steps to accommodate the religious faith of their employees. In part this is a natural outgrowth of our drift toward a 24-hour, seven-day economy—an environment in which Americans are spending more of their lives in the workplace—and the increase in religious diversity in America. But this does not appear to explain the increasing caseload adequately. After all, many employers have expended significant resources on building a sensitive workplace in which ethnic, gender, and sexual-preference diversity is respected and accommodated. In addition, in 1990 Congress passed the Americans With Disabilities Act to ensure that those with disabilities are accommodated in the workforce. It therefore appears out of keeping with the times to find that the ability to practice one's faith seems to be increasingly disregarded by employers.

Yet freedom of faith is central to the American experiment. It is the essence of what it means to be free; it is at the heart of human dignity; and it is this freedom that defines America as a nation of liberty. That this freedom should be protected as much as is practicable in the workplace flows naturally from our core values. And yet it often is not.

In view of the compelling problems faced by people of faith in the workplace, a diverse coalition of 38 organizations

asonable steps to accommodate the

ligious beliefs of their employees is a small price for freedom.

has formed to push for legislative protection. The focus of this coalition is a piece of proposed legislation entitled the Workplace Religious Freedom Act (WRFA). WRFA is designed as an important step in rectifying the current legal imbalance. It has two central provisions. The first requires employers to accommodate employees' religious practices unless such accommodation would require significant difficulty or expense. Second, it states that an accommodation of religious beliefs is not a sufficient accommodation unless it removes the conflict between the religious practice and the work requirements.

It is recognized that there is a point at which the burden of accommodating religious beliefs in the workplace is excessive. There would be no point, for example, to require a company to accommodate the religious beliefs of its workforce if to do so would bankrupt the enterprise and therefore result in all employees losing their jobs. On the other hand, while there are some necessary limitations on religious freedom, these limitations should not be imposed lightly. Requiring employers to take reasonable steps to accommodate the sincerely held religious beliefs of their employees is a small price for freedom. For this reason, WRFA does not mandate religious beliefs always be accommodated by employers. Rather, it requires that employees' religious beliefs must be accommodated only if the employer can do so without incurring significant difficulty or expense. This is similar to the balance struck by the Americans With Disabilities Act.

The second central tenet of WRFA would appear obvious; employers have not accommodated their employees until the conflict between work and faith is resolved. The George case demonstrates, however, that such a clarification of the law is necessary.

When the issue of accommodation of people of faith in the workplace is raised, it is sometimes suggested that employees who experience problems in the workplace should simply find a new employer. While many employees no doubt do exactly that, sometimes the situations employees face are not that simple.

It is frequently low paid and poorly educated workers who find their employers unwilling to accommodate their religious beliefs. These workers often have skills suited only to industries in which virtually all employers maintain similar practices, and thus changing employers provides no relief. In addition, finding a new employer can be exceedingly difficult, particularly in times of recession. Some employees are tied to a specific location where there is a limited pool of employers, and thus changing employers is very difficult. In addition, sometimes employees cannot afford the disruption in healthcare benefits and similar benefits that frequently accompanies transition between employers.

But even if these exigent circumstances are not present, losing employment is not an insignificant event. Loss of a job can have the most dire impact on a person emotionally, financially, and in their relationships. In recognition of this, our laws have been crafted carefully to protect the disabled, for example, from dismissal without efforts being made to accommodate their needs. It is not too much to ask from a nation founded on the principles of religious freedom for people of faith to be accorded the same respect.

We began this piece by examining Eric Liddell's experience; it is fitting to end with a lesson from his experience. All of Great Britain rejoiced when Liddell won the gold in the 400 meters. And this rejoicing was compounded when a fellow Briton won the gold in the 100 meter. By accommodating Liddell Great Britain got two gold medals instead of only one. Similarly, accommodating employees' religious faith in the workplace is not a zero-sum gain. Rather, accommodating people who take their faith seriously can, and often does, result in keeping star performers in the workforce. Even more important it is a significant sign when a society values what is most important to its citizens, and appropriately protects them.

WRFA is set to be introduced this legislative session. With a number of influential senators behind it, including Senator John Kerry of Massachusetts, Senator Gordon Smith of Oregon, Senator Barbara Mikulski of Maryland, and Senator Rick Santorum of Pennsylvania, there are high hopes that it will pass. Should it do so, it will be a major step toward adequate legal respect for the balance between the obligations of employers to employees, employees to employers, and employees to their God. And the Eric Liddells of the American workforce will be a step closer to enjoying the respect their fidelity deserves.

[1] *George v. Home Depot*, Inc., 2001 WL 1558315 (E.D.La.). The facts presented in this article are based on the court's opinion.

[2] 42 US.C. § 2000e(j). (Employers have a duty to accommodate an employee's religious practices as long as they can "reasonably accommodate" the practices and the accommodation does not cause "undue hardship" on the employer's business.)

[3] *George v. Home Depot*, Inc., 2001 WL 1558315 (E.D.La.).

[4] See note 2 above.

[5] *Trans World Airlines, Inc v. Hardison*, 432 U.S. 63, 84 (1977). (Accommodation of religious beliefs requiring more than a *de minimis* cost to the employer normally results in "undue hardship" and therefore is not required by current law.)

No Forced Prayers

I am a Christian, but I oppose making a government law for prayer in the public schools, because I believe silent prayers are allowed, and we should not force prayer on any group or individual. If the ecumenical movement has its way, it will lead to adopting popular church practices that will not hold to the beliefs of everyone's religion, and freedom of conscience will be violated. The Lord's Prayer is my favorite prayer, however.

Also, I believe the family at home and the government are the cause of much of the trouble and unrest with children today. It is the parents' duty to wisely love and discipline each child—even giving them a spanking should they need it. The Bible says, "Withhold not correction from the child: for if thou beatest him with the rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell" (Proverbs 23:13,14). The government should uphold unharmful spankings and disciplining of children by parents and principals in schools.

To truly worship God, each individual must have the desire in their own heart to pray or read the Bible. I believe if a person desires to learn more of the Bible and to pray, he or she may do so according to the dictates of their own choice. God does not force us to worship Him, but gives us freedom to choose out of a heart of love (see Joshua 24:15). The United States Constitution upholds the right of freedom of religions, therefore I believe religious beliefs should not be enforced by law.

PATRICIA VEACH
Davenport, Iowa

A Memorial for Liberty

In the *Liberty* article "Faith Disenfranchised," Joe Woodard laments that during a "memorial service" for victims of an airline crash, a "federal official" told the ministers not to mention the name of Jesus Christ or quote from the Bible. In the light of more recent memorial services for airline crash victims this brings up a question that has not been addressed sufficiently: Why is the government officiating at memorial services?

The memorial service for the dead has traditionally been conducted by clergy! Government should not officiate or sponsor memorial services. If there is going to be a memorial service, and if there is going to be mention of Jesus Christ or quotations from the Bible, let the churches officiate and keep the government out of it. It is a sad day when we would not even ask why we are allowing federal officials to officiate at religious services!

The author lamented that "secular humanism" has become the state religion. How in the world is secular humanism a religion? How can something that excludes religion be a religion?

No, calling secular humanism a religion is merely an excuse to justify the employment of government as a means of propagating one's own religion. This is an abuse of government and an abomination to true Christianity. Government is by nature a secular institution; when it ceases to be secular it becomes religious. The church is by nature a religious institution; when it becomes secular it ceases to be religious. When the church reaches out for secular government support the church becomes (or has already become) corrupted. When the government attempts to perform religious services, it usurps the role of the churches, and that is not good for religious liberty.

DEAN MILLER
Collegeville, Pennsylvania

Kudos to Liberty

"Religious Divide," in the May/June 2000 issue, was an excellent discussion on an often troubling issue in child custody cases. The two-part analysis suggested by the Supreme Court of Maine in *Osier v. Osier* certainly offers a reasonable standard for other states to follow.

JUDGE GERALD ZORE
Indianapolis, Indiana

My Oath, No!

In that *Liberty's* principal stand is for a clear separation of church and state, I must ask, along with president of the United States George Washington in his farewell address, "Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in Courts of Justice?" Would you indeed be in favor of promoting the removal of "so help me God" from the oaths in America's courts?

ELHANAN BEN-AVRAHAM
Evergreen, Colorado

The Supreme Court has already recognized in such ceremony the social norms of a Christian majority state. This cannot of itself threaten the integrity of the Constitution and its demand for a separation of church and state. Religious expression has never been forbidden. Religious obligation depends on religious commitment, and it might be asked what value such an oath might have in holding a nonbeliever to any obligation.— Editor.

Don't Be Extremist

I write concerning your recent article "Freedom Under Islam" (November/December 2001 issue). The author correctly asserts that America has a system of laws that bring about reasonable or good religious freedom. The author, James Standish, also correctly states that many countries where Islam is the dominant faith do not have these same laws and, as a result, have lesser religious freedom. In some cases there is religious oppression.

The article, however, unhelpfully concludes that "the more Islamic a country is, in general, the less tolerant it is of other religions" and "disrespect for other faiths and cultures will be the norm in the Islamic world."

The author appears unaware that Amnesty International and Human Rights Watch have recently and substantially documented religious persecution of Muslims by Christian majorities in Greece, Bosnia, Romania, Bulgaria, and the Czech Republic. The author neglects to note that the Muslim Women's League and American Muslims Intent on Learning and Activism (AMILA) are two of many worldwide Muslim groups fighting for tolerance and freedom of conscience in Islamic countries. The article does not hesitate to paint Islam with such worlds as "intolerant," "extremist," "bigotry," and "repression," yet makes no mention of dozens of recent hate crimes in America against Muslims. I submit that these

unfortunate qualities simmer or boil in every nation, regardless of its dominant religion.
GERALD HEINRICHS
Regina, Saskatchewan, Canada

Dear Mr. Heinrichs,

The three central points in my article bear repeating. The first is that while modern-day Islam is often expressed in terms of intolerance, Muslims in times past provided a worthy example of tolerance. We hope that the Islamic world can recapture that stance. Second, the article makes clear that even while predominantly Islamic states frequently suppress religious minorities, we must adamantly defend the right of Muslims to practice their faith freely. Finally, the article calls for fundamental human rights to be extended to everyone, including all of those living in predominantly Islamic nations.

The serious and widespread religious liberty abuses in predominantly Islamic nations have been amply documented by various organizations and in reports from the U.S. State Department and the U.S. Commission on International Religious Freedom.

You note that we make no mention of recent hate crimes in the U.S. aimed against Muslims. In fact, the accompanying article, "Freedom in Times of Fear," focuses significant attention on the tragic and senseless "revenge attacks" against innocent Muslims and Sikhs in the U.S.

You are concerned that religious liberty developments in Eastern and Central Europe are not discussed in the piece. Liberty, of course, has in the past commented on the problems of discrimination, persecution, and genocide experienced by Muslims in Central and Eastern Europe.
JAMES STANDISH

Let's Show Restraint

The Sikh woman quoted on page 20 of the November issue has forgotten that it was not safe to wear a turban in India in the aftermath of Indira Gandhi's assassination.

The day before I read the article, I saw two woman in the Houston Airport flaunting their Muslim garb. It was all I could do resist the temptation to ask one of them what would happen to me if I showed up in an airport in Saudi Arabia wearing my "What Would Jesus Do?" t-shirt, and have wondered until now if I just wasn't brave enough. I have finally concluded that it wasn't cowardice that held me back; it would have been unchristian to correct the behavior of a stranger on the street.

I may be a minority of one on this issue, but I think the Supreme Court was right to bless the internment of Japanese-Americans during the Second World War. I was born in Los Angeles on December 6, 1941, and have made jokes about why the Japanese attacked the next day, but all I remember about the war is going to a drive-in movie and noticing that all the actors wore helmets. My mother told me, however, that there was real fear in Southern California, so that if there had been any sabotage by Japanese, they might have been torn limb from limb. Japanese citizens in this country were better off in concentration camps.

I think Americans have shown remarkable restraint in the wake of the Trade Center disaster. Last time I saw a score card, five Muslims had been murdered in this country since September 11, one for every thousand Americans killed that day. If the Sears Tower had come in the interim, I wouldn't have given a plugged paisa for the chances of anyone with any kind of a cloth on his head.
GARY D. JENSEN
Lake Jackson, Texas

In spite of his rough logic, Gary Jensen does recognize both the Christian responsibility to act charitably, and the constitutional right of those living in this country. Whether internment was for Japanese protection or an expression of irrational fear can be debated. The most telling point raised in the letter is the obvious religious intolerance in many Muslim countries. We can only hope that events of September 11 raise the sensitivity in those countries for common humanity and the right to believe differently.—Editor.

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

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

Clarence E. Hodges
Chairman, Editorial Board

Lincoln E. Steed
Editor

Vikki Montgomery
Associate Editor

Snehlatha Bathini
Administrative Assistant

James A. Cavil
Copy Editor

Eugene Hsu
Jan Paulsen
Don C. Schneider
B. B. Beach
John Graz
Consulting Editors

Vernon Alger
Amireh Al-Haddad
Charles Eusey
Samuel Green
Greg Hamilton
Nathaniel Higgs
Darrel Huenergardt
Diana Justice
Brad Newton
Robert Patterson
Alan Reinach
Mitchell A. Tyner
Consultants

Jeffrey L. Dever
Art Director

Byron Holly
Designer/Production

Kenneth W. Osborn
Treasurer

www.libertymagazine.org

Liberty (ISSN 0024-2055) is published bimonthly by the North American Division of the Seventh-day Adventist Church, 12501 Old Columbia Pike, Silver Spring, MD 20904-6600. Periodicals postage paid at Hagerstown, MD. POSTMASTER send changes of address to Liberty, P.O. Box 1119, Hagerstown, MD 21741-1119.

Printed by the Review and Herald Publishing Association, 55 West Oak Ridge Drive, Hagerstown, MD 21741-1119. Subscription price: U.S. $6.95 per year. Single copy: U.S. $1.50. Price may vary where national currencies differ.
Vol. 97, No. 3, May/June, 2002.

By the PEOPLE

At first I thought the interview on BBC Shortwave radio was with an official of then imploding Zimbabwe regime in Africa. I'd tuned in midpoint, just in time to hear him extol the virtues of a one-party state. Yes, the official maintained, a one-party state could adequately represent the democratic interests of the population if they were agreed that they wanted just the one party. H'mm. It did sound a little self-serving. I listened more closely through the transatlantic static for what might come next.

Big surprise when the subject of the interview was identified as the foreign minister of the Maldives. We don't often hear from that part of the world. What else might he say? The interviewer was obviously not going to let pass that glib assurance of one-party utopia. "What about religious freedom? Does it exist in the Maldives?"

At once the minister was on the defensive. "Well, yes, of course we have religious freedom in the Maldives," he spluttered. "But actually it is not an issue there, since 100 percent of the population are Muslim." Heavy static still, but I imagine I can hear the collective breath sucking of listeners around the globe.

Persistently the interviewer pressed the point. "But what about visitors, foreign workers, do they have the legal right to practice their faith in your country?" I smiled, expecting a waffling, evasive answer. "No," was the reply. "You might as well expect us to allow Al Qaeda into our country."

What a leap of bigotry! What a manipulation of the fear of terrorism in the service of religious intolerance. And if I am to believe the good government minister, his comments accurately reflect the national democratic mood of his country.

Actually he demonstrates the dark, frustrating side of the West's efforts to encourage the development of democratic regimes around the world. There has been a simplistic assumption that the democratic process will create freedom. But this is not necessarily so. While we could have a rich discussion on the actual state of democracy in the Maldives, I have no doubt that on the issue of religious freedom the minister's remarks accurately represent the majority view. Sometimes the majority opinion is so ill-informed, bigoted, or emotionally driven that a group or a nation will act against basic rights—rights of others or even their own rights.

Which brings me back to these United States. It was quite amazing to listen to the public dialogue after the election 2000 fiasco. A large percentage of those who offered their two cents worth appear to have slept through history and government classes in school. Upset that a plurality of votes might have gone to the losing candidate, they tended to rail against the betrayal of democracy, believing that we are ruled by the majoritarian view. Not necessarily so in a representative system of government, based on democratic principles, but not on pure majority rule.

The Maldives and religious freedom is a clarifying example of where a majority view can lead. In the United States the majority have subscribed to a shared

Constitution that codifies the principles that will guide our democratic process. Hammered out from the experiences of history, the moral vision of the Founding Fathers and a round of political compromises, the Constitution, if adhered to, is proven to be a bulwark against oppression and intolerance. How frightening that so many see our response to the threat of terrorism hampered by the Constitution. How sad that so many are chafing against its limitations on our forming a sort of fundamentalist response to the religious fanaticism we face abroad.

Exhibit A to illustrate the point may seem a bit far-fetched, but I'll stand my ground and give it. The voucher issue has bumbled about the U.S. scene for several years now. Only three states have tried the plan, while voters in many more have rejected vouchers. Perhaps tellingly, in a California ballot referendum in the 2000 election voters defeated the idea 70 percent to 30 percent. And this was in the context of a significant conservative trend in the nation.

As I write this the issue of vouchers is before the Supreme Court, with a decision expected by midyear. And so much has changed that the buzz is that the SC will approve vouchers. Well, many times in the past we've learned not to prejudge the justices. But it does seem likely they will acknowledge a clear shift in national mood and find a constitutional rationale for the idea. A CSPAN poll in February showed a preference to vouchers almost the exact reverse of the California rejection. And all the print media are bannering vouchers as the next big thing.

What has changed? No new proof of vouchers' effectiveness, to be sure. No new and convincing argument. They exist, as always, in the politically charged speech of public school failure, which ignores the role of collapsing social structures. They gain favor in these self-help *laissez-faire* times as a way to bring money back to the private sector. And they exist, as always, on the constitutional fringe as an entering wedge issue for those who would use the government to fund a broad-based effort to establish state orthodoxy on the road to a Christian state.

Vouchers have always swum in a *milieu* that was ideologically suspect. In fact it was the *milieu* rather than the details of implementation that presented the greater danger. But now it appears that a campaign that dodged discussion of real goals and concentrated instead on the mythology of educational utopia, combined with a very real public swing toward security through state sponsorship of values, has won over the electorate and put pressure on the court. And make no mistake about it, the pressure is to move in a direction that will at the very least strain the First Amendment and at the worst turn it inside out by establishing state religion. But only with the majority concurrence, of course.

Of late the mere invocation of the term separation of church and state has marked a marginalized position. As though bypassing the constitutional text will enable us to reconstitute our public morality and establish a suitably strong state to wage crusade against infidels. It is time to remind ourselves of the role the Constitution was intended to play. Not something to skirt through technicality on the way to goals of expediency. Not something superceded by majoritarian vote—even by justices. No, a shared statement of the founding principles of republican freedom. A denial of those freedoms by even a majority will be just as aberrant to true freedom as the self-supposed religious liberty in the Maldives.

Take Alarm

It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?—James Madison, "Memorial and Remonstrance", 1785.