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FORBIDDING PASSION



What is likely the most controversial movie of this year doesn't come with the usual suspects. It doesn't feature some searing inside look at crime or crackheads; it's not about kinky sex or twisted relationships. It's about a 2,000-year-old itinerant rabbi named Jesus.  And yet Mel Gibson, the

FORBIDDING PASSION

By STEVEN MOSLEY

man behind *Passion*, and a man with extraordinary Hollywood pull, has had a very difficult time getting his film distributed. No one wanted to touch it for some time—too hot to handle for major studios.  *The Passion of the Christ* is violent, to be sure. It takes viewers so close to the sufferings of Jesus during His last 12 hours that they almost feel the blood splatter on them. In early screenings many people sobbed unashamedly through much of the movie.  But that's not what almost squelched the project before it could reach theaters. The problem was this: the bad guys were identified. The bad guys were intolerant, oppressive religious leaders. And in this instance they happened to be Jewish.  That unleashed a firestorm of indignation—immediately after select audiences previewed a rough cut of the film last summer. It stirred up passions around the world.

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Rabbi James Ruden, in the *Los Angeles Times*, called the movie “radioactive material.” The *New York Times* attacked Gibson’s octogenarian father, a man unfortunately given to revisions of history and Holocaust denial. This was offered evidently to prove the apple didn’t fall far from the tree.

Writing in *Esquire*, Kim Masters told readers Gibson would not be able to find a studio to distribute the movie.

responsible for the suffering and crucifixion of Jesus”; the “exploitation” of “New Testament passages . . . to weave a narrative that does injustice to the Gospels, that oversimplifies history, and that is hostile to Jews and Judaism.”

Well, to be sure, anti-Semitism remains a big problem in our world—just as many other brands of bigotry do. And even the Catholic Church has admitted that medieval Passion plays often fueled hatred against Jews by making the Temple priests especially loathsome. So it’s certainly legitimate to ask if *The Passion* follows in that tradition. Does Mel Gibson’s movie treat the Jewish characters in this story unfairly? Does it turn them into caricatures?

A few details from the film suggest otherwise.

The film does show Jewish authorities plotting against Jesus and pushing the Roman governor Pilate for a crucifixion. But it also pictures an interesting argument among members of a Jewish governing body called the Sanhedrin. At midnight Jesus is dragged before the high priest, who argues for His execution. Several other priests, however, object, saying that this is not a legitimate trial and that they have no authority or right to do such a thing. Eventually they walk out of the meeting in protest.

It’s certainly reasonable to assume that there were Jewish higher-ups at the time who spoke out passionately against the irregularities of Jesus’ trial. There were figures like Nicodemus who were sympathetic to Jesus. There

were voices of moderation like that of Gamaliel who would later, as Acts tells it, counsel his peers to stop harassing the apostles for proclaiming their faith. But the fact is that none of the four Gospels specifically portray anyone in the Sanhedrin walking out in protest at the time of Jesus’ trial. That is a dramatic element *The Passion* adds. And its addition shows Jewish leaders at the time in a more favorable light—not as caricatures.

The ADL has charged: “The film relies on sinister medieval stereotypes, portraying Jews as bloodthirsty, sadistic, and money-hungry enemies of God who lack compassion and humanity.”

Yes, *The Passion* does show Jewish leaders working to get rid of the Man they perceived as their rival and enemy. It shows them offering money to Judas to betray his Master with a kiss. And it shows a Jewish mob before



The U.S. Conference of Catholic Bishops weighed in against it, then apologized for attacking a film that is still unreleased.

I asked Paul Lauer, marketing director for *The Passion*, whether the people behind the film were surprised by the reaction. “Mel expected some degree of controversy,” he said, “but the anti-Semitic accusation—that was not at all expected.” Mr. Lauer referred to the strong belief in Hollywood that a filmmaker has a right to express his artistic vision. “This is a right that has been battled for fiercely by some of the same people who are trying to keep this film from coming out. It’s a very strange twist.”

The Anti-Defamation League issued a press release stating that Gibson’s film was “replete with objectionable elements that would promote anti-Semitism.” What elements? “The unambiguous depiction of Jews as the ones

Pilate demanding that Jesus be crucified. None of this is an invention of the movie, of course. All of the Gospels lay out these events in their straightforward narrative.

But the movie shows a very different Jewish population once it moves out into the streets of Jerusalem. As Jesus stumbles along under the burden of His cross, people express sympathy; many are weeping. And in one of the more imaginative scenes in the movie, Jesus' painful journey is followed by a group of women moving down a street parallel to His, hurrying from one connecting street to another, catching glimpses of their beloved Master. These were Jewish people who felt this Man's sorrow very deeply.

The movie also has an interesting take on the man Roman soldiers forced to carry Jesus' cross after He collapsed. He is identified in the Gospels as Simon of Cyrene. Cyrene was a city in North Africa, and scholars have debated this individual's ethnic background, some picturing him as a Black man. But in *The Passion* he is portrayed as a Jew, a man mistreated by the Roman soldiers as a Jew—just as they were abusing the hero of the story as a Jew.

It is the Roman soldiers who are the bloodthirsty sadists of the movie. Their flogging of Jesus is perhaps the most physically wrenching scene ever put on film. When these soldiers drive Him through the streets and Jesus drops under the weight of the cross, the viewer almost feels crushed beneath Him. It is the Romans who coldly pound spikes through His limbs at the place of crucifixion. Gibson heightens the violence of that event by having the soldiers flip the cross over—with Jesus attached to it. They then flatten the ends of the spikes against the wood.

The ADL has protested that *The Passion* inaccurately portrays "Jews physically abusing Jesus before the crucifixion." Yes, the Temple guards do arrest Jesus in the Garden of Gethsemane; there's a scuffle; He's tied up and dragged away. At one point Jesus stumbles

off a bridge and must be pulled up by the ropes attached to Him.

This may well be a more violent arrest than anything specifically depicted in the Gospels. But it pales before the gory abuse of the Romans. If any group has cause to worry about being caricatured, it's their descendants. But of course people understand that crucifixion was indeed a gruesome, violent ordeal in the

Why the Fuss?

Why all the fuss about a film that depicts visually what is printed in billions of Bibles, has been theatrically staged millions of times, and is part of the essential narrative of Christianity? The answer is simple; slanted retellings of the story of the crucifixion of Christ have been associated with violent outbreaks of anti-Semitism and at least in some part may have created a culture ripe for the Holocaust. And, of course, Mel Gibson's movie is not just another depiction of the crucifixion of Christ; it is an emotionally powerful experience that will likely reach people from Beijing to Bangalore, from Kiev to Kuala Lumpur, from Santiago to Sydney, and people everywhere in-between. With the bitter experience of history, prevalent anti-Semitism around the world, and the power of global media, it is not surprising that the Anti-Defamation League (ADL) is on guard.

Rewriting or censoring the Biblical record, however, cannot be the solution to these concerns. The death of the Son of God, predicted by the prophets, shadowed by Abraham's test and symbolized in the sacrificial system, is the seminal act of Divine grace for humanity. That it is remembered in word, print, music and film 2,000 years later is not only appropriate but essential. That said, in light of the almost unimaginable evil perpetrated against the Jews, it is not too much to proceed with significant sensitivity. In so doing, Christians must tell the story of Christ as recorded in the Bible; not only that some Jewish priests sought Christ's death, but that Jews were Christ's family, followers and fellows. And that at the heart of Christ's teaching was love of God and love of people, irrespective of their caste or conviction. —James Standish, executive director of the North American Religious Liberty Association, writes from Washington, D. C.

first century. And fortunately most of us have sense enough not to hate the Italians because their imperial ancestors practiced that form of execution.

It seems quite a stretch to paint this movie as anti-Semitic, as something that will ignite hatred and bigotry. The good guys are Jewish. The bad guys are Jewish. The hero is Jewish. What exactly is the problem?

Critics have tried to back up their objections to the movie with claims that it distorts the Gospels. Paula Friedrichson, one of a group of Catholic and Jewish first-century scholars who examined a draft of the screenplay, wrote this: "That script . . . represents neither a true rendition of the Gospel stories nor a historically accurate account of what could have happened in Jerusalem, on Passover, when Pilate was prefect and Caiaphas was high priest."

Quite a claim. Where exactly does the movie go astray? Critics have been pretty sketchy. What the average viewer sees is a rendition of events clearly laid out by Matthew, Mark, Luke, and John. They've never been portrayed so graphically before, but they're there. Matthew is well acquainted with the tense standoff when Temple officials came to arrest Jesus. Mark knows all about His interrogation before the high priest. Luke can talk about the mockery Jesus endured while hanging on the cross. John remembers the Roman soldiers breaking His legs.

The movie does take some cinematic liberties. It imagines details here and there to color the story. It even pictures a shadowy, sinister, androgynous figure who pops into this and that scene as an embodiment of evil. But none of these elements do violence to the Gospel narrative.

What the critics come back to, over and over, is the claim that *The Passion* is historically inaccurate and anti-Semitic because it makes the Jews responsible for Jesus' death.

Well, the fact is that a group of intolerant, oppressive religious leaders of that time did indeed plot against Jesus. Historians seem to agree on that. And those leaders happened to be Jewish. Jewish people sometimes do bad things, just like Brazilians and Mongolians and Swedes sometimes do bad things. But what those who came down hard on *The Passion* seem to believe is that in order to fight against bigotry, we must never portray Jewish people doing really bad things.

ADL national director Abraham Foxman referred to a Catholic Church pamphlet on combating anti-Semitism and interpreted it to suggest: "Correct Catholic teaching of the passion is one that portrays the Jews accurately, sensitively, and positively." In a letter to Mel Gibson, Foxman maintained: "The church understands that only teachings which promote understanding and reconciliation toward the Jewish people can represent religious truth and the word of God."

Reconciliation and understanding are the best of goals. After all, that was the whole point of Jesus' Passion, according to the New Testament. He died to bring reconciliation and forgiveness to all humanity. But does that mean we should never picture people doing bad things? Is reconciliation dependent on us pretending that particular people or particular groups are sinless? Isn't the opposite true?

Sometimes human beings scream bloody murder. And you just can't portray that in a sensitive, positive light. Sometimes we're cruel. Sometimes we're intolerant. And that's not just a problem for people with certain well-defined prejudices. That's a problem for every individual born on this planet. No one is immune. No one can claim to be without fault because they belong to a victim class. Blacks can be racist. Women can be oppressors. Jews can be intolerant. But what Foxman seems to suggest is that only facts that picture Jewish people doing good things can possibly be "religious truth" or "the word of God."

There is a lot more going on behind the passion against *The Passion* than a protest against anti-Semitism or historical inaccuracy. The real issue is that Mel Gibson, a practicing Catholic, has expressed religious beliefs that others simply don't agree with. He wanted to convey "the full horror of what Jesus suffered for our redemption."

He even told *Charisma News*: "I hope the film has the power to evangelize. Everyone who worked on this movie was changed."

As a director, Gibson has made the sufferings of Christ more visceral and compelling than any filmmaker in history. Few people will walk away from this movie without being deeply affected. And some will disagree with its content. Many individuals do not believe that Jesus' Passion, played out in Palestine 2,000 years ago, has anything to do with their spiritual well-being or eternal destiny. And an honest and fair response

might be to say, "I don't buy the whole atonement thing," or "I just don't see Jesus as the Messiah," or "I think the Gospel writers made a lot of it up."

People have a right to their opinions. In America they have an inalienable right. But what many of *The Passion* critics have done instead is to claim that Mel Gibson's opinions are out of bounds, that they're so dangerous that they don't belong in the marketplace of ideas. Instead of simply disagreeing, they want to forbid.

As just one example, take this message sent in to the Urban Legends Web site: "I believe in free speech, but not when it fosters hatred and gives our enemies ammunition to perpetuate the greatest crime of the century and the continued persecution of Jews . . . We will not tolerate this additional insult."

By this individual's reasoning, you can never vividly

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Some images
from the film.
Lower right:
Mel Gibson
directs



The Religionists

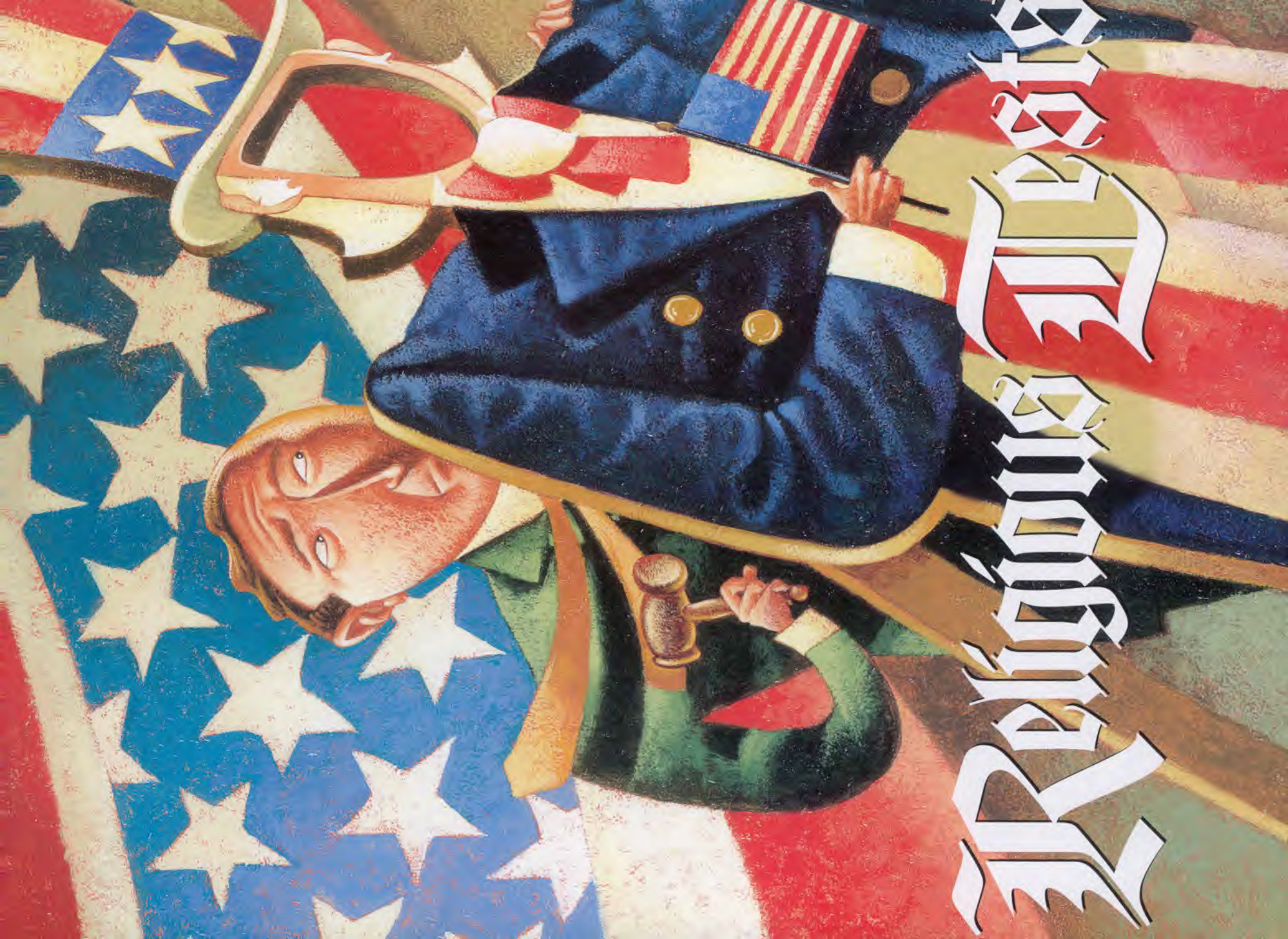




ILLUSTRATION BY RALPH BUTLER

In July of last year advertisements appeared in the newspapers of Rhode Island and Maine showing a courtroom door with a sign reading "Catholics Need Not Apply." The ads had been placed by an organization called the Committee for Justice (CFJ), which is led by C. Boyden Gray, former White House counsel to President George H. W. Bush. The ads claimed, "Some in the U.S. Senate are attacking Bill Pryor for having

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By
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CIVIL SOCIETY



'deeply held' Catholic beliefs to prevent him from becoming a federal judge. Don't they know the Constitution expressly prohibits religious tests for public office?" William Pryor is Alabama's attorney general and had been nominated by President George W. Bush for a seat on the Eleventh Circuit Court of Appeals. Subsequent to the CFJ ads, the *Washington Post* published an editorial entitled "Beyond the Pale" (July 26, 2002), which called the CFJ's claims "wildly inappropriate." Just where is the line between appropriate probing of public figures' political or judicial views and an inappropriate and possibly unconstitutional religious test for office?

The prohibition against religious tests for office could not be clearer. It appears in Article VI of the United States Constitution and reads, "no religious test shall ever be required as a qualification to any office or public trust under the United States." This is the only mention of religion in the main body of the Constitution. The prohibition of religious tests was quite a step for the founders. Test oaths were common during the Colonial and early national periods of American history. In 1778 a Puritan minister summed up what seemed to be the prevailing consensus when he said that oaths induce "the fear and reverence of God and the terrors of eternity." He went on to say they impose "the most powerful restraints upon the minds of men."¹ Indeed, a prohibition against religious tests for officeholders was unprecedented in Western civilization.² All but two of the original 13 states had religious tests for office. Some of the oaths were quite broad, requiring only a belief in God or in Christianity, while Delaware's, for example, was more specific, requiring belief in the Trinity. Dissenters from the Quakers, Baptists, Moravians, Jews, and some other groups condemned the oaths as a violation of liberty of conscience.³

Article VI of the U.S. Constitution does not apply to states, however, so the oaths remained in place in many states for a long time. Even today some state constitutions retain test oaths. The Massachusetts state constitution, for example, has an oath that reads, "I _____ do declare that I believe the Christian religion, and have a firm persuasion of its truth." A later amendment replaces that oath with a general oath swearing allegiance to the commonwealth of Massachusetts "so help me God." The amendment then provides that Quakers, because of their prohibition against swearing oaths, can replace the word "swear" with "affirm"

and omit the words "so help me God." The Texas constitution contains this puzzling oath: "No religious test shall ever be required as a qualification to any office . . . ; nor shall any one be excluded from holding office on account of his religious sentiments provided he acknowledge the existence of a Supreme Being." As one can see, the same sentence proscribes religious oaths, then requires officeholders to hold a belief in a Supreme Being. In the 1980s the notorious atheist Madalyn Murray O'Hair attempted to challenge the Texas test oath, only to be rebuffed by the courts because she lacked standing to sue. The oath had never been applied to her, and she was not even running for office. These and other state religious tests for office are unenforced and unenforceable because of two U.S. Supreme Court cases, one in 1961 and another in 1978.

The first of these was *Torcaso v. Watkins* (1961). Torcaso was appointed notary public but was denied his commission because he would not affirm belief in God as was required by the Maryland state constitution. He challenged Maryland's test oath on First and Fourteenth Amendment grounds. The Fourteenth Amendment forbids states from denying individuals liberty without due process of law. Through the doctrine known as incorporation the Supreme Court has used the liberty component of the due process clause to make most of the rights in the Bill of Rights applicable to the states. The reasoning is that to deny a person his or her right to free exercise of religion, free speech, or other fundamental rights is to deny that person's liberty. The First Amendment's free exercise clause was first applied to the states in *Cantwell v. Connecticut* (1940); then the establishment clause was incorporated in *Everson v. Board of Education* (1947). In *Torcaso*, rather than consider whether Article VI of the U.S. Constitution applied to state officers, a unanimous court used the First Amendment's free exercise clause, made applicable to the states via the Fourteenth Amendment, to strike down Maryland's religious test oath and by implication those in other states as well. Justice Hugo Black wrote for the majority, "This Maryland religious test for public office unconstitutionally invades the appellant's freedom of belief and religion and therefore cannot be enforced against him."⁴

The second case involving a religious test for office was *McDaniel v. Paty* (1978). By 1976 Tennessee was the only state that still banned ministers from serving in the state leg-



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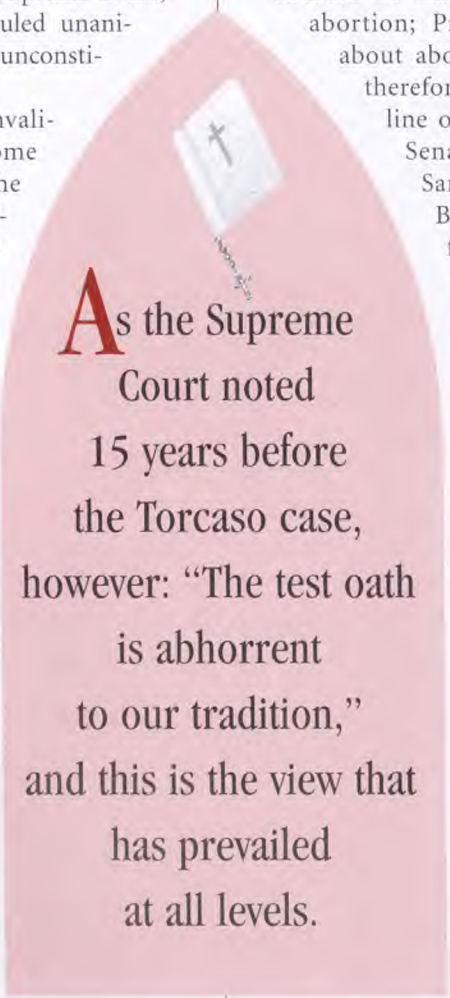
islature, a practice that had existed in various places since the days of Puritan Massachusetts in the seventeenth century. Tennessee's prohibition was extended to candidates for the state constitutional convention, which was scheduled to meet in 1977. When Baptist minister Paul McDaniel attempted to run for a position on the state constitutional convention, a challenger, Selma Cash Paty, sued to keep Pastor McDaniel off the ballot. The U.S. Supreme Court, with one member not participating, ruled unanimously that the Tennessee provision was unconstitutional.⁵

Although the Supreme Court has invalidated state religious tests for office, some scholars believe that Article VI of the U.S. Constitution was merely a federalist jurisdictional maneuver intended only to leave the issue of religious test oaths to the states. Evidence for this position is that many of the same individuals who supported Article VI also supported the continuation of religious tests at the state level. As the Supreme Court noted 15 years before the *Torcaso* case, however: "The test oath is abhorrent to our tradition," and this is the view that has prevailed at all levels.⁶ The consensus on the unconstitutionality of test oaths apparently led Committee for Justice leaders to believe they had a strong charge against Democrats. The CFJ believed that if it could show that Democrats were using a religious test against William Pryor, public opinion would turn, and Pryor's nomination might succeed. Moreover, if successful in convincing people that Democrats were anti-Catholic, the CFJ could drive a wedge between Catholics and the Democratic Party. This explains why the ads were placed in heavily Catholic states.

The issue at the center of all this is, of course, abortion. Routinely, candidates for federal judgeships are queried about *Roe v. Wade* (1973). The abortion issue often appears to be a litmus test liberal senators apply to conservative nominees, but in fact roughly 140 Bush nominees had been confirmed before Pryor's nomination, and many oppose abortion but were still able to garner some Democratic votes. The question often turns on how often and how strongly a nominee has spoken out on abortion and whether a candidate's opposition is firmly rooted in religious conviction. Pryor is on record as saying that *Roe v. Wade* is "the worst abomination of constitutional law in our history."⁷ At the same time, however, as attorney general he

advised his state to enforce its own abortion regulations only insofar as they were consistent with *Roe v. Wade*. Still, the fact that Pryor is Catholic and strongly opposed to abortion leads some Democrats to question whether he can set aside his religious views and fairly administer the law.

The CFJ ads seem to be based on the following reasoning or something like it: Democrats oppose Pryor because he has deeply held religious beliefs about abortion; Pryor's deeply held religious beliefs about abortion come from his Catholic faith; therefore, Democrats are anti-Catholic. This line of reasoning was not completely new. Senators Orrin Hatch (R-Utah), Rick Santorum (R-Ohio), and majority leader Bill Frist (R-Tennessee) have been floating the religious test argument for some time, while back in March 2002 more than three dozen members of the U.S. House of Representatives sent a letter to the Senate Judiciary Committee asking that members repudiate the liberal lobby People for the American Way and other groups that were making religion an issue in their attempt to derail the nomination of Charles Pickering. Pickering, a former president of the Mississippi Baptist Convention, was accused of promoting religion from the bench. The letter to the Senate Judiciary Committee reminded senators of Article VI of the Constitution and charged, "Many of those opposing Judge Pickering's nomination are in effect arguing that a religious person is unqualified to serve in the federal judiciary because he cannot be trusted to separate his personal religious beliefs from his official duties."⁸ In June 2003, roughly the



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time the Pryor hearing began, the Catholic League registered its concern that there was a "quasi-religious test" being applied to Catholics. Catholic League director William Donohue acknowledged that while those who oppose Pryor were not guilty of applying a *de jure* (in law) religious test, they are guilty of applying a *de facto* (in fact) religious test. Donohue said that a *de facto* test "is every bit as unconstitutional as a *de jure* application."⁹

The charge that Democrats are applying a *de facto* anti-Catholic religious test for office is particularly ironic considering that Patrick Leahy, the senior Democrat on the judiciary committee, is Catholic. In addition to being labeled as opposed to his own church, Leahy was also called an "anti-Christian bigot" by a rep-


representative of the Traditional Values Coalition. The charge aired on CNN while Leahy was at Sunday morning Mass.¹⁰ Also ironic is the fact that while Pryor adheres to Catholic teaching on abortion, he does not follow church teaching on capital punishment, while for Leahy the reverse is true. Finally, the Republicans, not the Democrats, first brought up the issue of religion in Pryor's hearing. Judiciary committee chairman Hatch in his opening remarks twice made reference to Pryor's religion. Leahy, the ranking Democrat on the committee, said nothing of religion, instead referencing Pryor's "record of ideological rigidity and extremism in a number of areas crucial to the fair administration of justice."¹¹

Do the actions of the Democrats amount to an unconstitutional religious test for office, as Republicans charge? This depends on whether one is a strict constructionist in constitutional interpretation who believes that we should adhere to the original intent of the founders, or one who believes in the organic view, whereby we attempt to apply the living spirit of the Constitution to issues unforeseen at the time the Constitution was written. The authors of Article VI were primarily concerned about actual laws that barred from office those who could not ascribe to some government-approved religious belief. In our present case there is no law saying that Catholics cannot be judges, and one can be reasonably sure that a pro-choice Catholic would have little trouble being confirmed, especially by the pro-choice Catholic Democrats in the Senate. By the standards of original intent, there is no religious test. If one adheres to the organic view, however, a case can be made that the spirit of Article VI is being violated when religion is injected into confirmation hearings. If it is true that Democrats will not confirm nominees who have deeply held religious beliefs that shape their judicial views, then there is a religious test occurring on at least an informal level.

The most significant irony of all this is that Republicans tout original intent, by which standard there is no religious test taking place, yet they say there is. Many Democrats, by contrast, espouse the organic view, or the living spirit of the Constitution, by which standard there is a religious test occurring, but they say there isn't. Both sides would do well to acknowledge that their opponents have something important to say. Republicans want Democrats to know that people cannot be required to compartmentalize them-

selves so that their religious values never instruct their political positions. It is unjust to insist that believers act as if their faith does not matter in public affairs, because to do so is to insist that people of all faiths adhere to the view that religion is merely a private matter, which is a view held by only some religious people. Democrats, on the other hand, believe Republicans should acknowledge that if candidates for various government positions form their political views on the basis of their religious values, others should feel free to oppose those political views without fear of being labeled anti-religious; otherwise people of faith would have a privileged position.

Unfortunately, the Pryor nomination process degenerated into one side implying that all public figures must accept the belief that religion is a private matter, while the other side insisted that it is acceptable to form one's political views on the basis of faith but an act of anti-religious prejudice for others to criticize or question those views. Faith and politics cannot always be separated into airtight compartments. To insist that a person is ineligible for office merely because they have deeply held religious views would be at least a de facto religious test, but when a candidate makes it known that their political views are shaped by religious values, others have the right to ask how religion and politics will play out should the candidate or nominee win office. □



When a candidate makes it known that their political views are shaped by religious values, others have the right to ask how religion and politics will play out should the candidate or nominee win office.

¹⁰Quoted in John Witte, Jr., *Religion and the American Constitutional Experiment: Essential Rights and Liberties* (Boulder, Colo.: Westview Press, 2000), p. 46.

¹¹Daniel L. Dreisbach, "The Constitution's Forgotten Religion Clause: Reflections on the Article VI Religious Test Ban," *Journal of Church and State* 38 (Spring 1996): 263.

¹²*Ibid.*

¹³*Torcaso v. Watkins*, 367 U.S. 488 (1961).

¹⁴*McDaniel v. Paty*, 435 U.S. 618 (1978). See Robert Miller and Ronald Flowers, *Toward Benevolent Neutrality: Church, State, and the Supreme Court*, fifth ed. (Waco, Tex: Baylor University Press, 1996), p. 736. The 1946 case was *Girouard v. United States*.

¹⁵Quoted in Miller and Flowers, p.736. The case was *Girouard v. United States* (1946).

¹⁶Quoted in *Washington Post*, Apr. 11, 2003, p. A26.

¹⁷"House Members Urge Senators to Repudiate Religious Tests for Judges," press release, Republican Study Committee, Mar. 13, 2002.

¹⁸"Religious Test Applied to Bill Pryor," news release, Catholic League for Religious and Civil Rights, June 9, 2003.

¹⁹Eleanor Clift, "Using Catholicism," *Newsweek* (Web exclusive), Aug. 8, 2003.

²⁰Statements of Senator Orrin Hatch and Senator Patrick Leahy, Senate Judiciary Committee, Nomination Hearing, June 11, 2003.

The question has an almost obvious answer: Yes, a book can, given enough circulation and acceptance, harm religious freedom. Adolf Hitler's *Mein Kampf*, the literary "work" of a frustrated artist and World War I veteran, remains a perverse inspiration to those who cherish hatred. Its publication prepared the way for the National Socialists in Germany, leading to 12 years of terror in Europe and the death of millions.

On a far smaller scale, and with a decidedly different purpose, another book has, in recent years, gained an audience—and fueled controversy. Its authors, two Americans, advocate a rather limited view of religious freedom, with

Books written by Messrs. Ankerberg and Weldon get a wide airing—they are prominently featured in Christian bookstores, are discussed on various evangelical radio and television programs, and are the subject of "gift offers" from various Christian ministries. As one might expect, Mr. Ankerberg promotes these books in his own venues, such as his Web site.

Among the books authored by the duo, the *Encyclopedia of Cults and New Religions* has drawn particular attention. Unlike many of the estimated 80,000 new books published annually in the United States, *ECNR*, as it will be called here, has gone into at least four print-

CAN A BOOK HARM RELIGIOUS FREEDOM?

By
MARK A. KELLNER

sections of the book's introduction talking about "the value of intolerance" and "responsible religious freedom".

The book, first published in 1995 and reprinted three times since by evangelical Christian publishers Harvest House, of Eugene, Oregon, is called *Encyclopedia of Cults and New Religions*. The authors, John Ankerberg and John Weldon, claim a joint total of nearly 100 books in print, in English and Spanish, on a wide range of religious topics, but dealing principally with the subject of religions that they believe "oppose" Christianity in some basic fashion. Mr. Ankerberg¹ is a popular television host: at his Internet Web site, www.ankerberg.com, he claims his television "program can be seen each week by a potential viewing audience in excess of 99 million people" in North America.

Mr. Weldon is a former associate of the late Walter R. Martin, who was a noted religion researcher and founder of the Christian Research Institute. He has been closely associated with Mr. Ankerberg for many years, and has been featured several times on the Ankerberg television programs.

ings. And, unlike most of the books birthed from American presses each year, it has drawn a major libel lawsuit, one which seeks \$136 million in damages.²

Mr. Ankerberg in particular holds himself forth as a defender of evangelicalism. He claims ordination as a Baptist minister, and that he was once a church pastor. Many of his weekly television programs attempted a Phil Donahue-like discussion of so-called alternatives to Christianity, with Mr. Ankerberg often debating people who represented different new religions and philosophies, such as José Silva of *Silva Mind Control* and televangelist Garner Ted Armstrong, who died in September of 2003.

But in *ECNR* Mr. Ankerberg and Mr. Weldon posit a view of religious pluralism that to many Christians—and particularly evangelicals—could have some unintended consequences. The introductory chapter of *ECNR*

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suggests that so-called cults represent “a world-wide problem,” as well as a particular threat to the United States. Citing the American Family Foundation (whose 2002 conference on dealing with cults included guest observers from the People’s Republic of China), Ankerberg and Weldon reflect on the threat of cults in Europe as leading to problems in America.

“We pay for what we tolerate, whether it be crime, drug use, murderers or not disciplining our kids,” the authors write.³ “The worse the thing tolerated, the higher the price imposed.”⁴

Then, to justify their call to intolerance further, the authors generalize that these religions are characterized by everything from murder to rape, prostitution and child molestation.⁵

French “anti-sect” leaders as justification for their own efforts. (Ironically, the United States Supreme Court is now citing foreign judicial decisions in its rulings, despite the assertion by Associate Justice Antonin Scalia that such overseas opinions have little or no bearing on American law.¹¹)

The authors, it seem, particularly hold to a notion that since America is a nation with philosophical and political roots in a Judeo-Christian tradition, that tradition must be appealed to as the basis of American religious freedom.

“In other words,” they state, “the First Amendment only works as long as the nation accepts Christian principles. If it does not, then it gets what it gets—all kinds of religious evils protected by the very amendment by which God intended to bless the nation.”¹²

Suggesting that leaders of any one faith should promote the legal exclusion of so-called minority religions could well lead to a slippery slope in which no one’s expression is safe

The authors declare, “Tolerance is not always a virtue,”⁶ citing a syndicated column by George F. Will on the death penalty to buttress their claim.

Declaring that “cults themselves have become tolerated, even praised by many,”⁷ the two writers ascribe a “virtue” to *their* stance: “The reasons for our ‘intolerance’ of cults and new religions—why we are critical of them—are more soundly based than our critics are willing to concede.”⁸

The scenario then proposed by Ankerberg and Weldon is fraught, I believe, with serious consequences for believers of all faiths. The authors state they support “freedom of religion” but only when it is “responsible.”⁹

“Christian leaders should call for and institute a national discussion over how we protect legitimate religious freedoms and simultaneously protect ourselves from ‘freedom of religion,’” is their breathtaking proposal.¹⁰

In other words, because so-called cults and new religions have lured people away from what Ankerberg and Weldon consider to be a better way, the authority of the church—and perhaps even the state—must be brought to bear. Remember that these authors begin their argument citing the work of European and

The constitutional exegesis employed by Mr. Ankerberg and Mr. Weldon in this statement may well dwarf that of the numerous religious crackpots who’ve hung obscure theories on even-more obscure passages in Scripture over the years. While many Americans believe that God had a hand in the birth and growth of the United States, few would, I believe, suggest that the First Amendment was designed solely to protect Christians!


This hypothesis is fraught with consequences and calamities. Which flavor of Christianity was God seeking to protect with the First Amendment? Where is the declaration that non-Christian religions were to be unprotected? Was, for example, George Washington’s famous letter to the Touro Synagogue just a hoax, or a bid for votes?

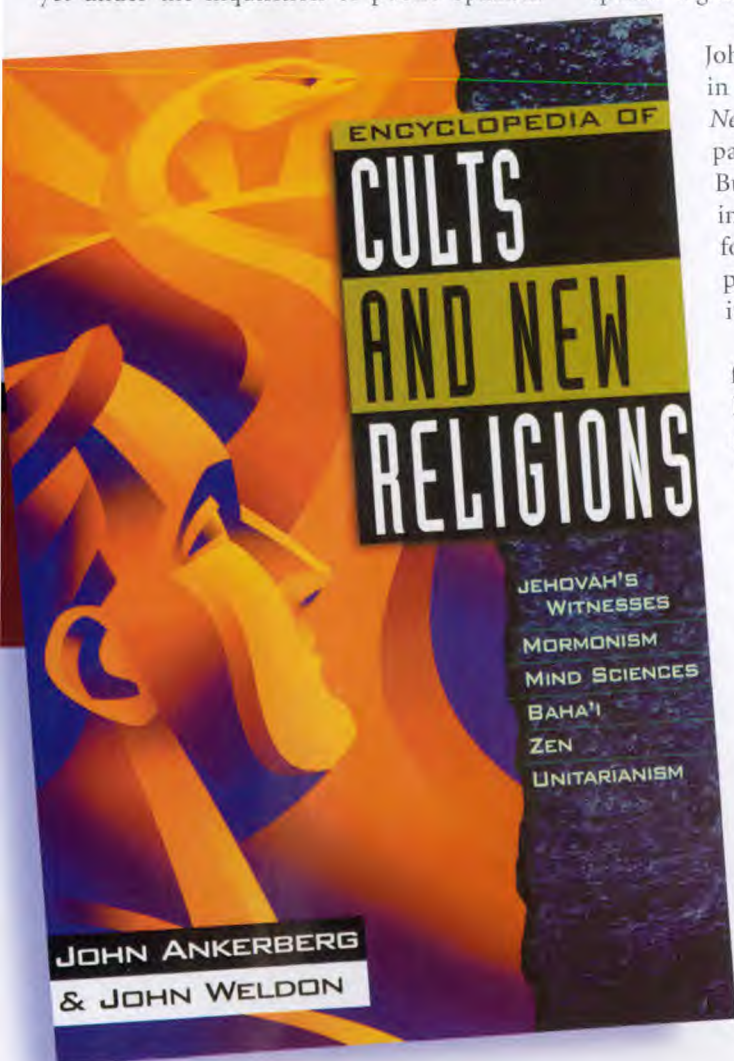
Those who have made even a cursory study of the history of religious freedom in the United States would likely conclude that freedom of religion being guaranteed to all is why this country has, by and large, been a bastion of both free expression and the rights of the minority. Suggesting that leaders of any one faith should promote the legal exclusion of so-called minority religions could well lead to a slippery slope in which no one’s expression is safe.

Indeed, as Edwin S. Gaustad, an emeritus professor of history at the University of California at Riverside, wrote in a 1995 article: "As Thomas Jefferson observed in 1816, even if we have laws that provide for religious liberty, they lose much of their effectiveness if 'we are yet under the inquisition of public opinion.'"

some would argue that "cult crime" legislation is the way to go, the prosecution, in Japan, of the Aum Shinrikyo sect's leader and his followers over the 1994 sarin gas attack, shows otherwise. People were tried for—and convicted of—a variety of crimes, including murder, without "special" legislation needed.

The concerns expressed by both John Ankerberg and John Weldon in their *Encyclopedia of Cults and New Religions* may be troubling to parents, pastors, and educators. But the antidote would seem to lie in better education and guidance for children and adults, not the provision of liberty for some and its denial to others.

Mr. Ankerberg's spiritual forefather, the Baptist Roger Williams, knew what it was like to face—and flee—persecution for his beliefs. Would we really want to return to that kind of society? 



¹ Both Mr. Ankerberg and Mr. Weldon claim to hold doctorate degrees, although many of their book-cover biographies omit the names of the schools where such degrees were earned.

² Living Stream Ministry, the local churches, and 96 local church congregations filed that lawsuit after attempts to negotiate and mediate differences with Harvest House and the two authors failed. (See Mark A. Kellner, "Local Church Fights for Evangelical ID Card," *Christianity Today*, February 2003.) The points of contention in that action are not the concern of this article. For information about their lawsuit, the Local Church has set up an Internet Web site, www.localchurch-vs-harvest-house.com.

³ John Ankerberg and John Weldon, *Encyclopedia of Cults and New Religions* (Eugene, Ore: Harvest House Publishers, 1999), p. xix.

⁴ *Ibid.*

⁵ *Ibid.*, p. xxv.

⁶ *Ibid.*; p. xix.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*, p. xxvii.

¹⁰ *Ibid.*

¹¹ See Joan Biskupic, "Supreme Court Citing More Foreign Cases," *USA Today*, July 8, 2003, 9A; online at <http://www.usatoday.com/usatoday/20030708/530392928s.htm>.

¹² Ankerberg/Weldon, p. xxix.

¹³ Edwin S. Gaustad, "The Testimony of Edwin S. Gaustad, Ph.D.," published in *The Experts Speak* (Anaheim, Calif.: Living Stream Ministry, 1995); online at <http://www.contendingforthefaith.com/summary/experts/gaustad.html>.

When efforts are made to marshal public opinion against any religious group, but especially against one that is unfamiliar and politically powerless, then 'free exercise' becomes a mockery. If in that effort to arouse public passion, statements are made which are malicious, inflammatory and even libelous, then the chilling effect upon religious liberty is compounded.¹³

Clearly there are valid concerns about the actions and practices of some groups. But if someone commits a crime—whether it's fraud, theft by deception, or even causing physical harm to another person—there are plenty of current laws governing such actions. Where

Joshua fit the battle of Washington Tax-Tutored Theologian

By NICHOLAS MILLER

What is the cost of discipleship? It cost Joshua Davey \$2,500 when he decided to declare a major in pastoral studies.

Joshua won a Washington State scholarship based on academic achievement and financial need to pursue almost any field of study—including religion if he studied it from a dispassionate academic view at a place such as the University of Washington. But he would lose the scholarship if he chose to major in religion at a college that taught religion from a viewpoint of faith—such as the Assemblies-of-God-affiliated Northwest College, where Joshua was enrolled.

The question is: in taking Joshua's scholarship away, was Washington state merely avoiding state sponsorship of religion—or was it guilty of invidious religious discrimination?

In answering this, a federal appeals court ruled that the state was guilty of religious discrimination, and struck down the exclusion of theology students from the program. This decision was at odds with a decision of the Washington State Supreme Court. Thus, the United States Supreme Court has agreed to hear the case.

The High Court's ruling could create a sea change in the area of voucher law, making religious institutions not only eligible for vouchers, but *requiring* states to give vouchers to religious institutions if they provide them to secular organizations. For this reason, the case has attracted more than a dozen friend-of-the-court-briefs, representing scores of religious and civil rights groups across the country.

Nicholas Miller, a lawyer and religious liberty advocate, writes from California.



Will the walls come a' tumblin' down?





But despite the strong feelings on both sides of the dispute, Joshua's case seems a particularly difficult one for people to decide which side they are on. The right result seems to change depending on how the case is framed.

Thought of in terms of improper state support of religion, it seems to be a case at the center of the Constitution's prohibition against state funding of the church. What is more of a religious calling than that of the ministry? And how can one more directly support organized religion than to financially support those who preach and teach it, or are training to do so?

The founders strongly opposed tax funds going to ministers or teachers of religion. James Madison wrote his famed *Memorial and*

Any notion that sending ministerial students

Remonstrance Against Religious Assessments as a challenge to a bill to provide funds to all teachers of religion. Madison's arguments were so well received that not only was the bill defeated, but impetus was created to pass an opposing bill by Thomas Jefferson that explicitly prohibited tax funds from going to ministers.

Jefferson's bill, which became the Virginia Act for Establishing Religious Liberty, stated: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves . . . is sinful and tyrannical, and even forcing him to support this or that teacher of his own religious persuasion, is depriving him of . . . liberty."

VA. CODE ANN. § 57-1

The special role of clergy in relation to their churches and temples is embedded in our law today. Courts recognize that the close-knit relationship calls for special legal protections, and have described ministers, priests, rabbis, and similar church leaders as the "lifblood" of the church. They are thus exempt from certain legal oversights by the state.

Known as the "ministerial exemption," this constitutionally based protection exempts religious leaders from the coverage of employment discrimination statutes such as Title VII. The courts are loath to involve themselves in the close

and special relationship between religious leaders and their congregations or religious hierarchy.

So how can the state now fund the education of the very persons that it has termed to be so religious as to be exempt from discrimination laws? Groups such as the ACLU, People for the American Way, the American Jewish Congress, and the Baptist Joint Committee say that it cannot, and that the Supreme Court should reverse the decision below.

But other groups, even some traditionally supportive of church/state separation, believe there is another way to look at the case. And indeed, thought of in terms of discrimination, Joshua's case seems a straightforward case of improper religious discrimination by the state.

money to

*causes the state to endorse a religious view seems undercut
by the indirect nature of the* **aid**

To the onlooker, the Washington State program seems to target those of religious belief for second-class treatment. Anyone who is academically and financially qualified can get the scholarship to study any subject matter except religion, and then only when taught from a faith perspective. Thus the exclusion arguably penalizes persons of certain religious beliefs.

One may be a rabid Republican or Democrat or Marxist, and can major in government studies, and be taught by teachers who may promote the views of Republicans or Democrats or Marxists, and still receive the state aid. One could be an avid atheist, and major in philosophy or even religion, taught by teachers who believe and promote atheism, and still receive the state aid. It is only those who believe in and study about religion, taught by teachers who believe it as well, who cannot receive the state aid.

Any notion that sending money to ministerial students causes the state to endorse a religious view seems undercut by the indirect nature of the aid. The state does not choose which schools and programs the money is spent on. Rather, the aid money goes directly to the

student who, from a wide variety of largely non-religious choices and options, chooses to spend the money on the program, religious or otherwise, that he or she desires.

To argue that the state is *endorsing* the views of the program at which the money ends up seems specious. The state would be no more endorsing the views of either Joshua or the religion professors at Northwest College than it would be the views of the rabid Republican or Democratic or Marxist or atheist students and professors in the prior illustration.

Indeed, if any tax money that went to religious programs inherently involved government endorsement, then state employees could not pay tithes and offerings to their church or temple. Neither could ordinary citizens use tax-credit checks for religious purposes.

The Supreme Court has accepted this direct/indirect aid distinction. Thus one thing

that both sides in the dispute agree on is that Joshua's case will *not* be decided by the federal constitution's establishment clause. Almost 15 years ago the U.S. Supreme Court ruled in *Witters v. Comm'n for the Blind*, virtually an identical case to Joshua's, that the federal constitution provided no barrier to the use of the Washington State scholarship funds by ministerial students.

The *Witters* court noted the indirect nature of the aid and that it was a private choice that sent the aid to the religious school. It noted the large number of choices a student had in using the aid, the majority of which were secular. It concluded that there was no danger that the state could be viewed as endorsing the religious study to which the funds were put.

But when *Witters* was sent back to the Washington court for a final decision, the state court decided that even though the federal constitution was no barrier to the funds, the state constitution barred the religious use of the funds. It ruled that the Washington State Constitution called for a wider separation of church and state than that mandated by the federal constitution.

So the question at the heart of Joshua's case is: can a state have a greater separation of church and state than that required by the federal constitution?

Those who say no argue that any discrimination against religion not absolutely required by the establishment clause is prohibited as unlawful by the free exercise clause. This might be described as the Yin/Yang view of the religion clauses, if one can envision the intertwined, black-and-white Chinese symbol of cosmic unity. Where one ends in requiring separation and exclusion, the other begins by mandating equality of treatment.

But there is another view of the clauses, one that has been termed "play in the joints." This view holds that there is a gray area between the two clauses. That states can experiment with church/state relations, either protecting religion more strongly than mandated by the federal constitution, or separating church from state more widely than required by the same.

Once again, both sides agree on something: that there is some sort of "play in the joints." Both sides have worked on projects to provide religious freedom at the state level that is more protective of religion than that required by the federal constitution.

Such an effort is based on "play in the joints." Otherwise, protecting religion beyond that required by the free exercise clause would run smack into the law against the establishment clause's prohibition against giving religion special benefits.

So is there only a one-way "play in the joints"? A flexibility only to benefit religion, but not to hamper it? Well, that remains to be seen. The oral arguments before the Supreme Court revealed a deeply divided court, with what seem to be four votes for and four against overruling the lower court decision.

The deciding vote, as happens frequently, will likely be cast by Justice O'Connor, whose questioning revealed concerns on both sides of the issue. While sensitive to issues of religious discrimination, she was also very troubled about the decision impact on voucher programs across the country. At one point Justice O'Connor asked Joshua's attorney, "Suppose the state has a school voucher program that doesn't provide aid to religious schools, do you take the position that they must fund all private and religious schools?"

"Yes," answered Joshua's lawyer.

"What you're saying here," O'Connor

responded with concern, "would have a major impact on voucher programs." Clearly, O'Connor is very nervous about putting state and local governments in a position of being forced to fund religious groups whenever a voucher program is created.


One way out of the dilemma would be to keep open the possibility for states to have a broader separation of church and state than that compelled by the federal constitution, but to rule that the justification given by Washington State in Joshua's case is inadequate.

An earlier case, raised in oral argument, dealing with state laws against clergy serving in the legislature could serve as a good road map for such a result. In *McDaniel v. Paty*, the Court ruled that while such clergy-exclusion laws had a long historical pedigree, the state had not provided the factual basis to show how clergy serving in the legislature would presently threaten religious freedom.

Similarly, in Joshua's case, Washington State has shown a long historical practice of not funding ministers or ministerial students. But the record is quite silent as to modern-day facts that show how such indirect funding would threaten the peace and stability of church/state relations. Without such findings, the exclusion of ministerial students becomes justified on grounds of tradition and antiquity alone—hardly a reliable basis for laws targeting religion for unfavorable treatment.

Such a result would seem supported by the rest of Joshua's story. His experience with law inspired him to refocus his career. He is presently a law student at Harvard Law School. Joshua would not be the first to discover that a training in theology can serve as an excellent basis for fulfilling one's calling in a pathway outside the conventional ministerial path. The author of this article also studied theology as an undergraduate before attending law school, as have many others.

Denying scholarship aid to theology students penalizes not merely future ministers, but all that view the path of discipleship as broader than the traditional ministerial path. It also penalizes society by depriving it of professionals schooled in the ethics and morality offered by traditional religious studies.

That would be a shame in this day and age of Enron, Arthur Andersen, and celebrity inside trading. And it would hardly seem to be a necessary cost of discipleship. Or of the separation of church and state. 

Scholarship & History

By
K. HOLLYN HOLLMAN



"To preserve freedom of conscience for all its citizens in matters of religious faith and belief, Washington's constitution limits the involvement of government. It limits both the ability to regulate religious activities and to fund religious activities." With that statement, Narda Pierce, attorney for the State of Washington, began oral arguments in one of the most significant church-state cases of recent years. During the next half-hour, Ms. Pierce worked continuously to return to her main themes—the state's longstanding interest in religious freedom, the narrow way that interest was protected in the context of the state's Promise Scholarship program, and the lack of any religious animus associated with the state's constitution. Most of the advocate's time, however, was spent simply trying to respond to the justices, whose rapid-fire questioning suggested complexities not easily resolved. Attorneys for the opposing counsel and the U.S. government faced equally demanding questions.

In *Locke vs. Davey*, the Supreme Court is asked to decide whether a state's college scholarship program that excludes theology majors violates the federal constitution, specifically the free exercise clause of the First Amendment. The case was brought by Josh Davey, a student studying for the ministry at an Assemblies of God-sponsored college near Seattle. He is represented by Jay Sekulow of Pat Robertson's American Center for Law and Justice. The import of the case may extend well beyond the parties. If Davey has his way, the case will also have a major impact on the law regarding government funding of religion in general.

Promise scholarships are awarded to in-state students graduating from high school who meet certain requirements. A student must meet academic criteria (certain class rank or score on college admissions test), income criteria (a set percentage below state's median income), and enrollment criteria (enrolled at least half-time in an accredited postsecondary institution in Washington, not using the scholarship to pursue a theology degree).

K. Hollyn Hollman is General Counsel for the Baptist Joint Committee, Washington, D.C.

The state relies on the school to designate whether the student is pursuing a degree in theology. Scholarship students are not restricted from taking religion courses or even using their scholarship to major in religion where that major does not amount to a course of training for the ministry.

Recipients of Washington Promise scholarships may attend any accredited post-secondary institution in the state. Based upon past court rulings, we know that the program, even without the exclusion of theology majors, would be upheld as permissible under the federal establishment clause. But here the Court is being asked to hold that the federal free exercise clause requires the state to fund religious instruction

The questions in this area demonstrate a basic lesson in federalism. While the federal Constitution defines minimum substantive rights, state law generally may provide greater protections. As stated at the outset, Washington's constitution provides more stringent anti-establishment and free exercise protections than the First Amendment. Specifically, it prohibits use of public money "for or applied to any religious worship, exercise or instruction, or the support of any religious establishment." This section is based on the statement that "absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual . . ."

According to an 1891 opinion of the state

As Justice Stevens noted, the state's program only **burdens** *Davey's religious practice to the* *practices it without a*

when it pays for secular instruction, despite the state's own constitutional provisions that prohibit it.

Oral arguments demonstrated that the case is about much more than the alleged discriminatory denial of a subsidy, which had been the focus of most press accounts. The danger of a broad ruling in favor of Davey and the importance of the state's interests became more evident.

Justice O'Connor, who provided the swing vote in support of the Court's 2002 decision to uphold a voucher program in Cleveland, Ohio, voiced concern about making such funding mandatory on the states. Counsel for Davey admitted that the rule he was proposing would have a "major impact" on voucher programs and would affect the law in a number of states that have similar religious freedom provisions in their state constitutions.

The lack of flexibility in the rule proposed by Davey's attorney was also problematic to Justice Ginsburg. She kept asking him if he could identify some space between what the federal establishment clause law permitted and what the free exercise clause required in which states can make policy. Sekulow admitted that the rule he proposed would require treating private religious institutions the same as private secular ones.

attorney general, these provisions were not "the work of the enemies, but of the friends of religion." The drafters "were unwilling that any man should be required, directly or indirectly, to contribute toward the promulgation of any religious creed, doctrine or sentiment to which his conscience did not lend full assent."

At the time of the state's adoption of its constitution, noted attorney Pierce, the provisions at issue were the only ones that applied to the state. The federal free exercise clause was not made applicable to the states until 1947. She argued that the scholarship program respects that concern for freedom of conscience by disallowing scholarship funds for religious training. While the particular line-drawing chosen by the state may leave it open for some inconsistent results, the program seems designed to balance principles of free exercise and no establishment. Those principles are often in tension with one another. Government should not interfere with the religious choices of individuals. Likewise, government must avoid sponsorship of religion.

Washington's attorney also addressed other points that deserve particular attention. First, it would be easy, but wrong, to equate any govern-

ment-funding program with a government-created speech forum in which religious speech must be treated like other types of speech not sponsored by the government. By doing just that, the court below failed to acknowledge the state's interest in avoiding sponsorship and financial support of religion. As Justice O'Connor has noted, tax support for religion raises special establishment clause concerns. The purpose of the Promise Scholarship program was much narrower than a program designed to create a public forum.

Second, the free exercise infringement is not obvious in this case. As Justice Stevens noted, the state's program only burdens Davey's religious practice to the extent that "he practices it without a subsidy." It is important to recognize the distinction between a government regulation that truly burdens religion and one that merely avoids sponsoring a religious practice.

extent that "he **subsidy**

As Justice William O. Douglas once observed, "The fact that government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the free exercise clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government."

Third, in addition to ignoring important establishment clause values (avoiding state-sponsorship of religion) and misinterpreting free exercise rights (equating paying for religious education with removing a burden on religious practice), the lower court's decision improperly equates Washington's law with hostility toward religion. It is a popular tactic in the courts, as well as in legislatures these days. Unfortunately, it misses the mark and threatens to trivialize our well-grounded constitutional tradition.

As with many church-state issues, the importance of this case is too readily overlooked by superficial treatment. Defenders of religious liberty beware. □





JORHENA THOMAS *in dialog with* UNIVERSITY FRIEND

I THINK

As a citizen of the United States, the September 11, 2001, terrorist attacks made me feel violated, insecure, and helpless. Ironically, some of the American government's response is also making me feel violated, insecure, and helpless.

We have seen the passage of the U.S.A. Patriot Act and establishment of the new Department of Homeland Security. I understand that anti-terrorism measures are meant to protect the safety and freedom of the American people; however, I am worried that the government might use these same measures to discriminate against its citizens, resulting in an effective stifling of religious liberty as we know it in the United States.

As a student of international affairs, I am taught to analyze and to think critically about events that take place in this country and in the world around me. This article is an outgrowth of that critical thought. Much can be learned by soliciting the opinions of others. I decided to ask some of my contemporaries a few questions relating to issues that concern me:

QUESTION 1: *Not long after launching the "War on Terrorism" Congress passed the U.S.A. Patriot Act, which took away or suspended some of our civil rights. In response, Anthony Romero, executive director of the American Civil Liberties Union, stated, "Are we any safer as a nation? I don't know. Are we less free? You bet." What are your thoughts?*

"I am torn on that issue. People have fought so hard to ensure civil rights for all Americans; I feel that it is really counterproductive to give some of them up now. On the other hand, I can sacrifice a few of my rights to save some lives. I just need to feel confident that the government is working to the highest capacity of efficiency when I sacrifice my right for the 'common good.'"

—JAZMINE P., 21, *not religious*

"As a noncitizen I can't say too much, but a general thought to share is: this new law is making the U.S. just like the country I fled as a refugee a few years ago."—SALAH H., 27, *Muslim*

"Are we any safer? No, I would agree that we are not. The strength of a democracy lies in meeting challenges and protecting rights, not in sacrificing rights for security. I believe that unless the United States learns from the lessons of the past, we might soon be living in what Gore Vidal calls the 'national security state,' in which a government squashes civil liberties, reduces social programs, and focuses solely on



Jorhena Thomas

creating a paranoid society that will acquiesce to the government's wishes, good or bad."

—KURT W., 23, *Catholic Christian*

"The laws passed by Congress have not affected me as of yet; therefore, my life has not changed that much since September 11. However, I believe that Congress has to do whatever it can to ensure the safety of the people."

—ERIN B., 21, *Christian*

"The Patriot Act is a logical response to a terrorist act with the magnitude of September 11. History has shown that civil rights will often be suspended in times of national emergency, or in the name of national security. I do not feel that the Patriot Act is especially dangerous. Are we any more or less safe as a nation? I would ask the question. Have we ever been safe? The ease with which the terrorists executed the September 11 plot shows an apparent lack of readiness on the part of U.S. authorities. Are we less free as a nation? I'm not sure if America has the exact freedom that the world thinks it has. Just because we are guaranteed freedoms does not mean that they are always given in every case."—NATHANIEL H., 26, *not religious*

"I don't feel any safer with the enactment of the U.S.A. Patriot Act. Instead, I feel violated and vulnerable. In order for our country to succeed in the war on terror, the various intelligence and law enforcement agencies must learn to work together efficiently and responsibly. If that happens, there won't exist a need to subject our population to the invasive inquisitorial measures of the government. When we allow our state to run amok in its efforts to 'protect' the people, our government becomes the leviathan that we all fear."

—ANTHONY M., 21, *Christian*

"I think the line has definitely been crossed between protection and inva-

sion. Our state of independence has been questionable for a while, but now it is plain that our independence is pretty much subject to change with the political climate."

—JONISE C., 24, *Christian*

"I agree with Mr. Romero; we are less free for two reasons. First, some people's constitutionally protected rights are being abused for political reasons. Second, we are less free because we are letting fear become our primary motivation, and I believe this fear is being used as a political tool."

—BRAD Q., 28, *"spiritual"*

"We are definitely not safer with the new regulations, because they seem to target law-abiding residents of the U.S. instead of the terrorists."

—CIKU G., 25, *religious*

"I agree that we are a little bit less free, though I don't believe it's a big change from before. Safer? Maybe a little. Is it worth it? I don't think so."

—RYAN W., 24, *atheist*

QUESTION II: *Under what circumstances would it be OK for the government to limit religious expression? to support it?*

"The only situation in which I see it allowable for the government to limit religious expression would be to limit speech, which directly incites violence or lawlessness."—KURT W.

"People should be able to believe in whatever they want, but when their actions of their beliefs (human or animal sacrifices and such) endanger or harm others, then they should be limited."—JAZMINE P.

"It is OK for government to verbally encourage citizens to worship in whatever way they choose, so long as they do not limit anyone else's constitutionally protected rights, and to pass laws that protect the general freedom to worship.

In my opinion it is not right for the government to support religion through the use of public funds. I personally am wary of Bush's encouragement of 'faith-based initiatives' to support community development, as public funds are shifted directly to faith-based programs and institutions. If his encouragement was in word only, and did not involve the use of public funds, I would find no problem with it."—BRAD Q.

"It would be OK for the government to limit religious freedom if that religion interferes with the lives of other people. I think that the government should support a particular religion when it benefits the community. For example, if a Baptist church provided programs for alcoholics, then the government should support actions like this."—ERIN B.

"All religions are calling for peace and human good. The government can intervene when followers of specific religion are using their religion to achieve some goals politically or socially."—SALAH H.

"I think it would be permissible for the government to limit religious expres-

Jorhena Thomas is a law student living in Silver Spring, Maryland. She was a legal intern for religious liberty work when she put together this survey of some of her friends and fellow university students.

sion where public affairs are involved. Stringent efforts should be made to keep religion in either the church or the home. Although there are established references to God in areas such as the Pledge of Allegiance, the Declaration of Independence, and on our currency, new references should be avoided."

—NATHANIEL H.

"None. Church and state should be separate, at all times."—ANTHONY M.

"If it harms people (harm meaning beyond feeling offended), then it should not be allowed. The government should not support it [religion] either, although President Bush is doing just that with his 'faith initiative.'"—RYAN W.

QUESTION III: *A Muslim woman from Florida, who had no problem getting a driver's license before September 11, had her license revoked after the terrorist attacks because she refused to be rephotographed without her veil. What alternatives does the government have to restricting the liberties of those religions associated with terrorism?*

"In some cases religion has been used by a few people to justify terrorist acts, designed to achieve political goals. The U.S. Constitution called for respect of all religions, and this should be enforced. Some terrorist acts are results of poor and unbalanced foreign U.S. policy, and this is what should be addressed."—SALAH H.

"Post-September 11, I think the government does need to take some steps to coordinate its investigation techniques, but not at the expense of taking away peoples' constitutionally protected rights."—BRAD Q.

"They should closely note behavior trends of terrorists and become very knowledgeable about their religious/political beliefs, especially as they relate to terrorism. Based on these and

other objective observations about terrorists, restriction of certain liberties should be considered."—JO NISE C.

"Questions of rights are suspended when national security is threatened. The Muslim woman was asserting her right to religious freedom, yet the government ruled this particular right to be unavailable in the circumstances following September 11. I don't feel that the government has any alternative to restricting the liberties of those religions associated with terrorism. The actions of the few call into question the nature of the many. Although profiling in this instance violates more than one statute of the Bill of Rights, is it not common sense to focus on the group that is perpetrating these crimes against humanity? When the stakes are this high, we can afford to leave no stone unturned. While there should be no desire to institute a witch hunt against Muslims, I feel that in this particular instance the government was justified in its request for a veilless picture."—NATHANIEL H.

"The government has no right to place restrictions on people of Islamic or other faiths. There should be no alternatives to these restrictions because they should not exist at all. Just because someone practices a certain faith does not mean that they will necessarily blow up a building or be a threat to American society."—ERIN B.

"On one hand, it can easily be argued that driving is a privilege. One must follow the rules and regulations of obtaining a license in order to have that license to drive. If the rules change, then one must either accept the new changes in rules or forfeit one's right to drive. Driving is not a right; it is a privilege. If, for example, she were denied the right



Erin Blount

to vote, then it would be a serious and different issue. As far as alternatives go to restricting the liberties of Islam, the sole religion thus associated with terrorism, it seems to me to be a moot question. The government has no more right to restrict religious practices that are not clearly dangerous or harmful (i.e., snake handling) than it does to endorse religious behavior."—KURT W.

"They should not restrict their liberties because of their religion. When Christians commit crimes, they do not restrict all Christians, so why should all Muslims be restricted?"—CIKU G.

"I really can't think of other fair alternatives, because they all are discriminatory; it's racial/ethnic profiling. Every person of Muslim descent or religion is not a potential terrorist. Some are, just as some Americans are snipers, serial killers, etc. There needs to be a standard. Again, the problem isn't with the practices of unpopular or misunderstood religions; it is with immigration policies. Islam didn't run planes into the twin towers. People did, and the U.S. should have had stricter and more efficient policies for allowing them into the country."—JAZMINE P.

"The alternative is to let people be a little bit more free and a little bit less safe—it depends where one's values lie. I can't understand why the woman who lost her license keeps such a hard line—in this case, I think the government was right to take away her license. There are certain things that people have to do if they want certain privileges, such as

driving, and the lady refused—her choice. In the case of the lady who lost her license, she did not have her religious freedoms taken away—she chose to wear the veil and keep her religious freedoms, and not to drive.”—RYAN W.

QUESTION IV: *Suppose that President Bush proposed a law that would establish a nationwide religion. How would you feel? What if he planned to establish your particular religion? Would your opinion change? Why or why not?*

“Since I am not religious, President Bush could not establish my particular religion as the state religion. However, even if I were religious, I would not want this to happen. I feel that any idea of God should remain in people’s private lives and be kept out of public affairs.”—NATHANIEL H.

“I think that the greatest thing about the United States is that all religions can come here and practice as they choose. I think that if the president tried to establish only a Christian way of life, then most people would rebel. Society would have ill feelings toward the presidency because he is taking away an inalienable right—the right to practice the religion of your choice.”—ERIN B.

“Even though I was raised as a child to be ‘Christian,’ and even though I have a great respect for the religion, I would join with Muslims, Hindus, Buddhists, atheists, and any concerned citizens to fight such an action.”—BRAD Q.

“I would not be pleased at all. I would feel as if the God-given and constitutionally supported right to choose/freedom of worship were being taken away. How could such a law be enforced, especially since there are thousands of religions represented in this country today? I would not even encourage that anyone be mandated by law to practice my religious beliefs, primarily because they all depend on the power to choose.”—JoNISE C.

“We would be forcing people to accept a religion that may be wholly different from their own. And that is not what

this country is about. To deprive people of their religious freedoms is to negate the virtues of our democracy.”

—ANTHONY M.

“The whole point of the separation between church and state is to allow religious freedom. It would not matter if my religion were to be established as the national religion. I am not trying to, nor should the government, favor one religion over another.”—CIKU G.

“There should always be a separation of church and state. Even if it were my own religion I would disagree, because I do not see the advantages of having a national religion.”—LINNISA W.

“It would be contrary to what the country stands for, no matter which religion or nonreligion it was.”—RYAN W.

QUESTION V: *In light of September 11, are you more willing to give up some of your religious liberties in the interest of the public good?*

“Because I am not religious, I consider this question irrelevant to me; the only liberty I claim is to not be forced to adhere to any religion.”—NATHANIEL H.

“I am absolutely not willing to compromise my religious beliefs for the interest of the public good. I believe that if most people abided by the Ten Commandments, then the world would be a safer place. The commandments are just a set of religious rules, but they ensure the good of all people.”—ERIN B.

“Although I’m not religious, no, I’m not willing to nor should others give up religious liberties. This country was founded on the mantra of religious freedom and tolerance. Just because Islam or other religious practices may be unpopular, the government shouldn’t restrict them, any more than they restrict Catholics or Jews.”—JAZMINE P.

“No, I believe there can be no trade-off between rights and security. I, like any other American, am willing to pay for security and to be inconvenienced: security is a service that the government provides. However, I am not willing to

pay for it with my rights.”—KURT W.

“The liberties that have been affected by the September 11 attacks had, in my opinion, very little to do with the attacks. I feel that these restrictions are being made only for a temporary sense of security so that we will feel that at least something is being done. So that our government can say, ‘Look! We are doing things for your safety!’”—JoNISE C.

“Again, religions have nothing to do with September 11. The U.S. administration must give up on their current foreign policy and try to develop a more successful one.”—SALAH H.

“Having no religion, I really don’t care about my religious freedoms.”—RYAN W.

It is always dangerous to overgeneralize based on surveys or feedback from individuals. However, an article like this surely gives a little window into the thinking of the age group and various religious and ethnic backgrounds these respondents represent. Like many who have voiced opinions on radio and other media following September 11, these young people generally accept the need for some restrictions in the wake of such an event. But there is a growing sense that liberties may have been traded too easily, and this group reflects that. There is a little tension between their theoretical defense of religious rights and a readiness to restrict religion in an emergency. There is also somewhat a revelation of self-interest here too. Religious liberty has to mean defending the at-times seemingly indefensible and alien belief. We have much to be thankful for in a country that remains committed to religious freedom and pluralism. However, the hypothetical question that implies that America might under stress follow the lead of some other countries and establish a form of state religion got an interesting response. It is comforting to think that a new generation might protect against that. —Editor.

FORBIDDING PASSION

Continued from page 6

portray a wrong done by any specific group of people because that might lead to their persecution. Would anyone take seriously the claim that we should never discuss what the Nazis did to the Jews because that might foster hatred of Germans?

Gibson's movie does identify some bad guys in the story. But the truth is that according to Gibson's own faith, we're all the bad guys. We're all complicit in the death of Christ as



human beings desperately in need of God's pardon. That matters infinitely more than who happened to be among the heavies as the drama of the atonement played out.

What Gibson hopes to accomplish is to "inspire, not offend... to create a lasting work of art and engender serious thought among audiences of diverse faith backgrounds."

According to Paul Lauer, that has already started to happen. He told me about an early screening in Houston attended by a very eclectic mix of rabbis, priests, and ministers. "In follow-up meetings," Lauer said, "there was a tremendous amount of discussion and debate. Even though there are different ways people receive the film, the dialogue it has generated has been extremely positive for that community, for these different bodies of believers."

In many other places, however, the passions aroused by *The Passion* have shown how easily it is to fracture the ideal of religious liberty and freedom of expression. If this movie can be branded as something evil that fosters hatred and persecution, imagine what else may be forbidden; imagine how narrowly the politically correct may choose to define what is "sensitive and positive" communication.

We've come a long way from the wisdom of Gamaliel, who, in advising his less-tolerant colleagues to leave the apostles alone, said in effect: "If this is of human origin, it will fail. If it's from God, you won't be able to stop it" (Acts 5:38, 39, paraphrased).



LETTERS

No State Religion

I just read the article in *Liberty* entitled "What Would a Christian America Look Like?" by Rodney Nelson (November/December 2003). The article does a good job in my opinion of articulating America's Christian heritage and defining the difference between being a "Christian nation" politically speaking and being one in a cultural sense. I agree with the author's conclusions on that point. However, he writes, "Does the First Amendment equate to America's being secular, as is the current trend of thought? No. It means that government is neutral toward favoring one religion over another, and affords all religions free expression of belief. The current legal maneuver of using the establishment clause to overrule the free exercise clause was not the intention of the Founders." I'm not sure what he means by this, but it seems that he's saying that the current efforts to ban religious expression in public places, as in Judge Roy Moore's case, are not in line with the Constitution and the original intent of the Founders.

My question is. If America isn't secular, governmentally, then what is it? If it's not secular, then it has to be religious, and if religious, which one? This was precisely the argument of Founders like Madison and Jefferson.

There appears to be a contradiction, albeit a rather ambiguous one, in what this author is saying. He takes the position of Roger Williams and the separation of church and state, and defending the imposition of state-sponsored religion of any kind, and then he questions the current efforts to keep government secular (see the italic type). I don't hear about any legislation banning religious

expression within the sphere of our personal, private lives, only legislation to ban the current "Christian" agenda of weaseling into a more influential position within government, all in the name of religious freedom. Such contend that they are denied their constitutional rights when they are not permitted to display religious symbols on government property, or to promote their ideas of religion through such tax-funded institutions as schools, etc. They cry persecution, when in reality anyone who is keeping abreast of these developments can see that they believe they have a "Christian mandate" to take over politically, so they can "transform" our culture through government. Something that has been so successful in the past.
DEWAYNE BONNETT
E-mail

Liberty stands for the separation of church and state. However, consistent with the author's comments in "What Would a Christian Nation Look Like?" we support the religious heritage of this nation; it is rich and very real. We do not support anti-religious acts in the name of constitutional purity. But neither can we support insertion of religious activism into the political structure. It is a complex situation, often illustrated when the bounds are crossed. —Editor.

Online Empathy

I was just reading your September/October 2003 editorial online, and wanted to let you know that I have had an almost identical experience in trying to place two of our children in school. It was a singularly frustrating experience. We eventually did find what we think are excellent choices for their education, but the prejudice that

we faced was very interesting to observe. I hope your search turned out successfully in the end.

EMANUEL PELOTE
Silver Spring, Maryland

Emanuel's company puts together our Web page. Good to know he follows Liberty closely. Thanks for the concern, Emanuel and, yes, it did work out. And that, as they say, is just the beginning of troubles. Saw a cartoon recently in which a dad is reviewing his son's grade report. The son is a little indifferent to it all, but the father says, "Son, to you they are just grades, but to me they are return on an investment." Actually not too far off the mark.
—Editor.

Canada Challenge

I was wondering what your viewpoint is on the proposed bill C-415 in the Canadian Parliament, which would add sexual orientation as a protected category in Canada's genocide and hate crimes legislation. Opponents of the bill are concerned because they say it is so vaguely worded that the parts of the Bible could be included in it. My information on this came from the Web site www.worldnetdaily.com, but I would like to hear the opinion of Liberty magazine.

JESSICA SANDQUIST,
E-mail

We have touched on this issue several times in articles from Canadian correspondents. This bill could turn out to be extremely inhibiting for Christian practice and public witness in Canada. The law might appear harmless on its face, but factor in the very real antagonism to Christian values that enters the debate in Canada, and you have

a very real religious liberty issue.
Editor.

Statement of Purpose

Does this magazine have a statement of purpose? I have found it difficult to establish the same in what I have read so far. Can I assume that "Freedom of Religion" also establishes freedom from religion as well?

KENT,
E-mail

We routinely include our statement of purpose in each issue, usually near the letters. It is a fairly succinct summary of the guiding principles that have informed Liberty for almost 100 years. The statement was left out of one issue by mistake and in another was squeezed out at the last minute. Both omissions clearly revealed that readers do notice the statement. Last issue in my editorial I recounted how the group that formed the religious liberty association that launched Liberty defined their mission as countering anything that might break down the separation between church and state. And yes, while such a view must allow for individual freedom from religion if one so desires, it should not be used to force religion out of public discourse. Editor.

To the Law and to the Testimony

While rereading Bruce Cameron's article "Your Other Right" (July/August 2002), I was again reminded why I remain so skeptical when I hear members of the Religious Right tout some historical fact to support their position that this country was founded as a Christian nation.

Cameron states that the top legal officer of our nation, Attorney General John Ashcroft, gave a

speech in which he quoted the preamble to the Constitution, which points to a "Creator." As an attorney I was puzzled by this statement and wondered if I missed something in law school. I pulled out my pocket copy of the Constitution that I keep close by and searched for any reference to a creator or any other religious reference in the preamble. I found none.

I only hope (unrealistically, I admit) that Mr. Ashcroft's legal reasoning on other matters is not so distorted by his religious beliefs. I also find it ironic that those on the Right insist on the appointment to the bench of justices who will strictly construe the Constitution and not read into it what is not there in black and white. Yet that is clearly what Mr. Ashcroft has done in this instance.

HOWARD F. STRAUSE
Great Falls, Montana

Good point. People of faith must beware of the very real danger in trying to redefine our nation and laws as Christian—that we

might end up subverting the clear intent of the Founders to keep the state out of the religion business.
—Editor.

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DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice, and promulgate religious beliefs, or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights, and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the golden rule—to treat others as one wishes to be treated.

LIBERTY

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A Divine IMPERATIVE

They brought Jesus before the Roman Governor in the great judgment hall early Friday morning. Before the end of that same day Jesus would be nailed to a cross and lifted up as a common criminal before a jeering mob and distraught followers.

But Governor Pilate did not yet see that conclusion to the day. He likely was more interested in discovering what it was about this Man that had provoked first the adulation of the crowds and then the betrayal by one of his own into the hands of the implacable.

The charge against Jesus was calculated to offend the Romans. Curiously, Pilate treated it as more of an intellectual question. "Are you a king?" he asked. Caesar, of course, could not allow self-proclaimed kings to assert authority in his domain.

The answer was quite plain, but in a context that disarmed the bureaucrat. "My kingdom is not of this world," answered the Christ. "If my kingdom were of this world, then would my servants fight.... To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth

heareth my voice." John 18:36,37.

No threat there! Rather the proclamation of an alternate universe...another value system altogether.

"What is truth?" shot back the governor, professing not to know. He clearly knew what Jesus was talking about. It was enough for him to go out to the accusers and say "I find in him no fault at all". And it resonated with the philosophical discourse of the time that sought to divine the centrality of existence; to prioritize values. It cut through the legal, imperial values of Rome and spoke to the inner definitions it had always grappled with.

Pilate was moved. And then the system bit back. "You are not Caesar's friend if you let this man go".

So did Pilate let go of principle and embrace expediency.

But what is truth? Jesus used the term, no doubt, as shorthand for a knowledge of the divine. After all, he claimed to be "the way, the truth, and the life". Jesus took the concept out of the realm of the philosophical and made it a divine imperative.

In an earlier address, Jesus said that his followers could know the truth, "and the truth will set you free." As vassals of an overbearing occupying power they wanted freedom so badly they could taste it. Jesus simultane-

ously offered freedom to his followers and assurance to the questioning Roman that it was not a political freedom.

It seems to me we are in the same relationship to the state when we talk about religious freedom.

Religious freedom cannot be something that a state gives, since it is not of "that" world. It belongs to the world of the inner man; the bridge to the transcendent.

So much of the discussion of religious liberty in this part of the world centers around the Constitutional guarantees of religious liberty. Perhaps because of that we seem sometimes to conflate the two. But surely we dare not argue that religious freedom exists only under a U.S. type constitution! It might be one of the more enabling human instruments for the practice, or not, of any religion, but it is human and not the source of the religious liberty itself. Not even with the accompanying Bill of Rights acknowledgment of inherent (see created/God-given) rights.

And it is fine to call for democratic renewal around the world, under the assumption that religious freedom will naturally flow from that change. However, such a simplistic assumption may be mis-

guided. Already the outlines of a new Afghan constitution show it seriously lacking in the religious freedom area; and it seems likely that the soon to be drafted Iraqi constitution will similarly play religious favorites and miss the point of the exercise. And there are many fine democracies still struggling to implement true religious freedom; it's a list that includes new democracies and some old ones like France (where "sects" are restricted and religious attire newly forbidden).

I see many approaches to religious liberty, even as some miss the point. There is the aforementioned Constitutional approach. And here the cast is curious. There are secularists, often opposed to religion, who use the Constitution as a tool to chase religion from public life. There are political religionists who seek to substitute legal mandate for an appeal to the heart. And there are people of faith who see security in maintaining the constitutional dynamic of a separation between church and state.

Some pursue religious liberty from a human rights point of view. Some promote religious liberty, hoping to gain particular advantage for their own faith. Others in an even more problematic approach, seek particularly to want to restrict faith activity that differs from their own. And there are others who accept the principle of religious liberty for all, but are prepared to give away that right to

the state under any number of special circumstances; be it security needs or conflict with public interest.

We mustn't allow religious liberty to become so esoteric that it can be clouded by a "What is truth," riposte. Religious liberty as we see it exercised has many aspects, even many mechanisms to enable it to function. What this magazine must proclaim is the transcendence of true religious liberty. It cannot be tied to any nation, system of governance, culture grouping or sectarian agenda. It comes from the one God, given with the gift of life: it is the gift that defines us as his creation and describes his way of interacting with his creatures. Who would dare define it otherwise? Anything less is just another human construct—subject to trial and error, vision and revision.



Lincoln E. Steed
Editor,
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It is now no more that toleration is spoken of as if it was by the indulgence of one class of the people that another enjoyed the exercise of their inherent natural rights. For happily the government of the United States, which gives to bigotry no sanction,

Protection of the State

to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it, on all occasions, their effectual support.

—PRESIDENT GEORGE WASHINGTON
*to the congregation of Touro Synagogue,
Newport, Rhode Island, August 1790.*