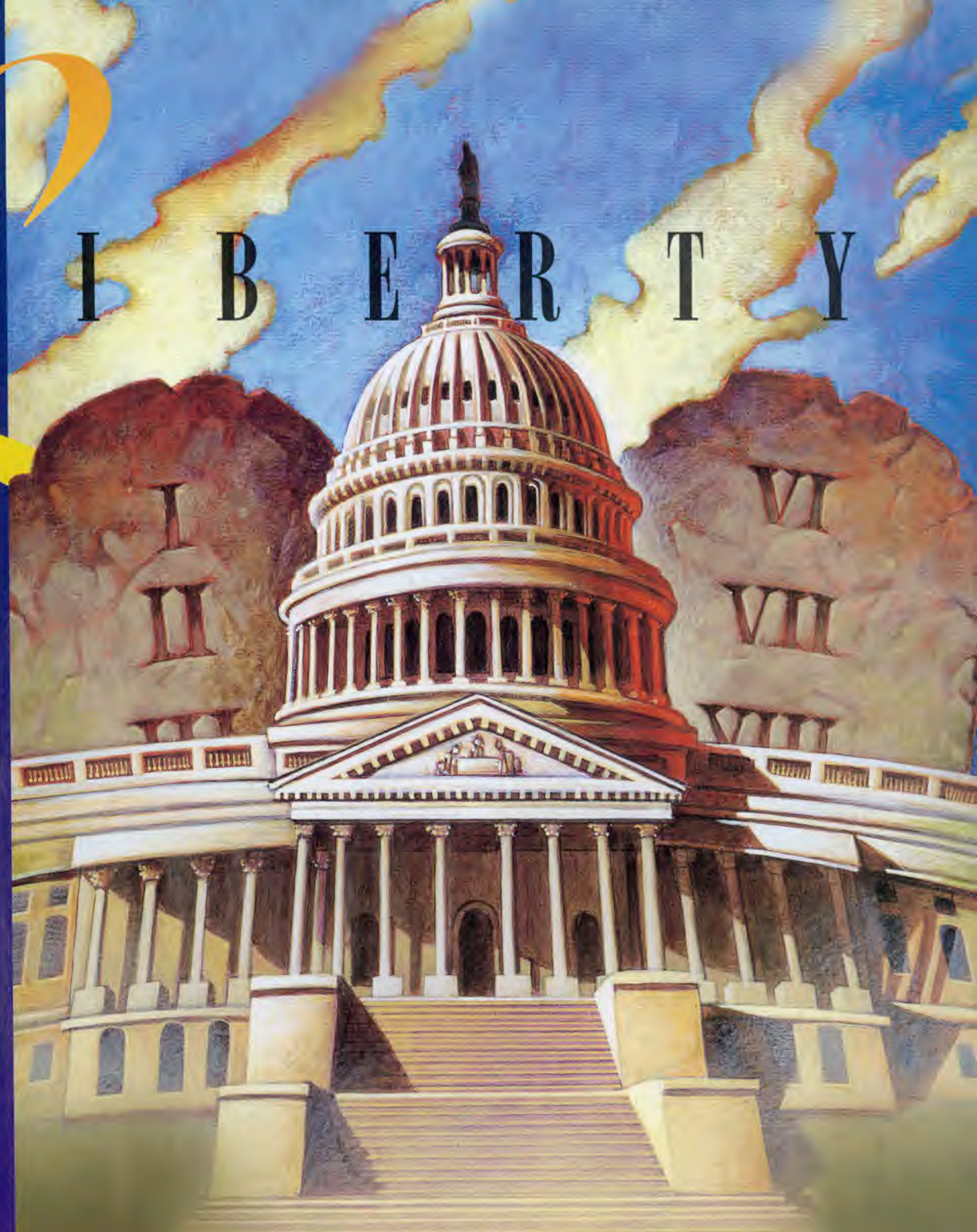
# LIBERTY



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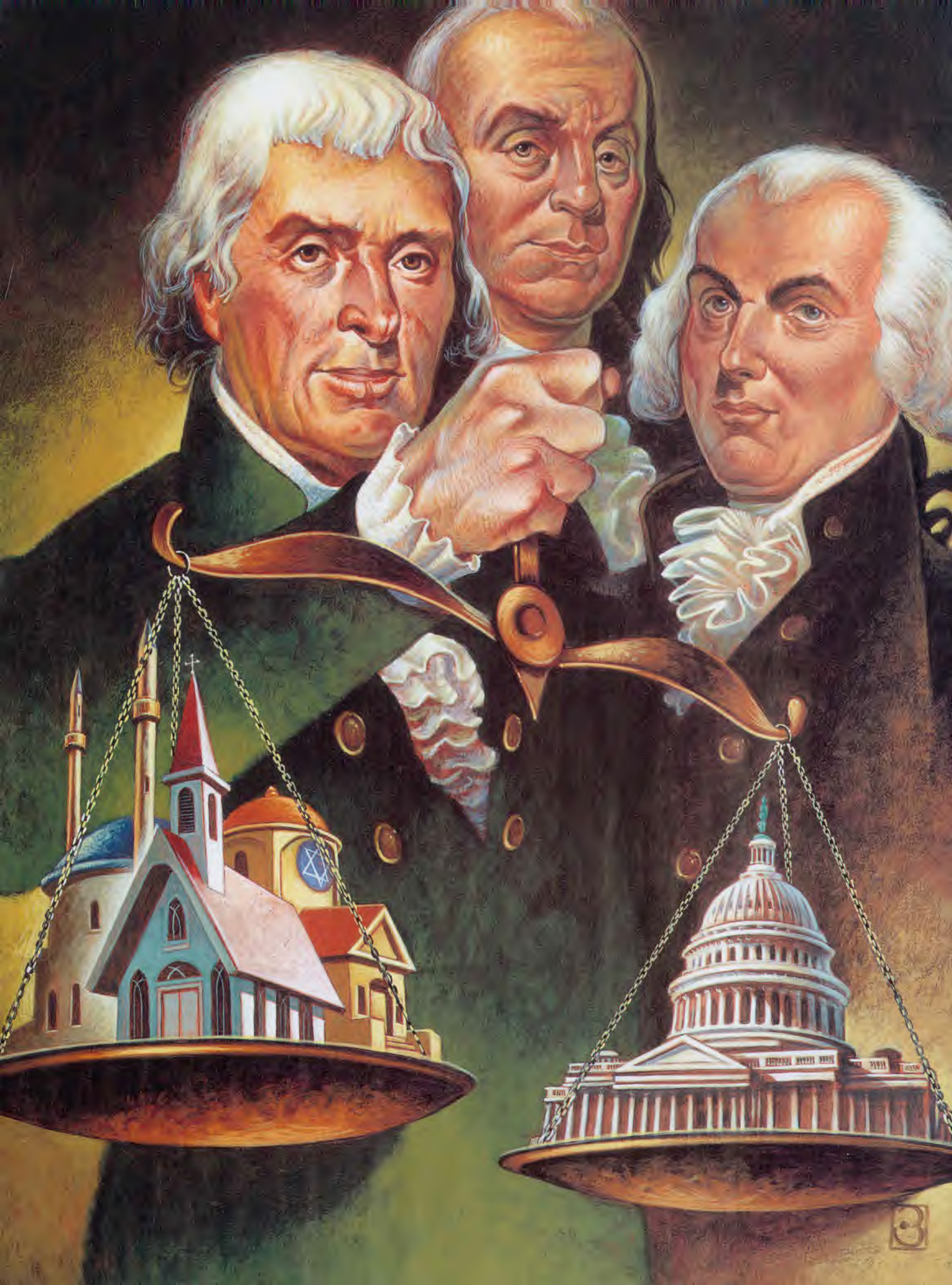
## SHOWING PROPER RESPECT

A Special Look at the 10 Commandments



*By* CARL H. ESBECK

# CHURCH-STATE RELATIONS IN AMERICA

## WHAT'S AT STAKE AND WHAT'S NOT

It seems religious freedom has become an object of perpetual litigation. As a consequence, the struggle over church-state relations is vulnerable to a high level of crisis-mongering—especially in those ubiquitous fund-raising appeals. It is difficult to sort out real threats from mere shadows, and even harder to know where best to invest one's time and other resources for the long term. Although few people have been as free to practice their religion as present-day Americans, there are still crucial jurisprudential matters at stake. These matters get elbowed into the background when the spotlight is thrown on hot-button issues such as eliminating "under God" from the Pledge of Allegiance or removing the Ten Commandments from a courthouse lawn.

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ILLUSTRATIONS BY RALPH BUTLER

Free exercise clause litigation is about the conscience-driven actions of individual believers. The lawsuits often involve small sects that have religious practices out of step with the dominant culture. Because America has a large and stable civil society, the nation can accommodate a goodly amount of this countercultural behavior.

Establishment clause litigation is different, more fractious. Establishment clause lawsuits, unlike free exercise cases, are at bottom a struggle over the question "Who's in charge?"—that is, which worldview (religious or secular) will hold the mantle of cultural authority? Such culture war is high stakes for those in power, as well as those who want power, and thus it is divisive.

In this article I identify those truly important issues that, in my judgment, will prove crucial to securing religious freedom well into mid century. I will close with two highly emotional issues of mere superficial importance—except that they rile the masses and cause them to reach for their checkbooks to finance the wrong battles in the culture war.

1. *There are those attempting to make of the establishment clause a constitutional right to be free from the religion of others.* This is illustrated by the continued resistance to grant equal access to student religious clubs at public school facilities during non-curricular and after-school hours, as well as by restrictions placed on these clubs' use of school bulletin boards and other channels of communication enjoyed by similar secular clubs.

*There are those attempting to make of the establishment clause a constitutional right to be free from the religion of others.*

When equal treatment within a government-created forum is denied, the students sue, claiming a denial of their rights under the free exercise clause (religious discrimination) and the free speech clause (viewpoint discrimination). While the discriminatory nature of these school policies is not denied by authorities, these educators insist that the unequal treatment is required by the establishment clause in order to preserve the school's secular character for other students.

School officials thus argue that there is a constitutional "right" to not experience unwanted exposure to the religion of others, and that this supposed right must be balanced against the free exercise and free speech rights of students desiring to attend the religious club. The resulting "conflict in the clauses" tips (in the opinion of school officials) in favor of secularity.

With the issue so framed, the situation is inevitably one of analytical confusion. Fortunately, the U.S. Supreme Court has sided with the religious students in the four cases it has taken up, but the High Court has made a muddle of its rationale. Moreover, many lower courts, federal and state, have been downright insubordinate—looking for loopholes to evade Supreme Court precedent.

There are obvious flaws in the conflict-between-the clauses position. First, to regard the free exercise and free speech clauses as affording an individual right held by student A to practice her faith, and the establishment clause as a second and different individual right vested in student B to be free of unwanted exposure to A's religious exercise, makes no sense. It places constitutional rights on a collision course. Under such a treatment, attempts to reconcile the conflicting rights, or to subordinate one to the other, are tortuous and unpersuasive. This supposed tension between the clauses falls away, however, when the establishment clause is regarded not as an individual right, but as an aspect of the Constitution's overall structure of limited government, one policing the boundary between civil government and organized religion. A school's like treatment of student clubs, secular and religious, is religion-neutral and thus does not transgress this boundary.

Second, the framers who drafted these clauses laid them next to each other in the First Amendment. It makes no sense to suppose they wrote back-to-back provisions that conflict. Modesty requires that school lawyers concede the absence of any hermeneutical logic to their position. Third, the Bill of Rights was adopted because the founding generation feared an overly powerful government. Thus the establishment clause, like all other provisions of the Bill of Rights, operates only to limit the actions of government. The clause cannot work to limit the actions of private parties, such as students desiring to attend a religious club.

2. *There is a move to thin out the meaning of "religion" in*

*the First Amendment so that its definition sweeps far beyond any normative understanding of what counts as religion.* There are those who would water down the definition of "religion" so that it means little more than a deeply held conviction, religious or not. This is an argument for constitutionally protecting religious liberty without the necessity of subscribing to a religion. True, it is entirely proper that "religion" in the First Amendment is taken to include more than just theistic faiths. But the "religion" of the First Amendment entails rich communal traditions of ultimate belief and practice, not radically individualized belief.

It is wildly extravagant to insist that every person's religion is self-constructed. The Supreme Court came dangerously close to falling for this little trick in the military draft cases during the Vietnam War. In the 1960s and 1970s the Court construed the federal selective service statute—not the First Amendment—in a manner that tortured the text of the legislation so as to exempt all conscientious objectors, the nonreligious as well as those with beliefs rooted in religion. The free exercise clause, however, cannot be deemed to protect any and all beliefs that pass for someone's serious concern irrespective of its nonreligious foundation. Trying to protect too much (the consequence of a broad and indeterminate definition of "religion") will surely cause the courts to overcompensate by protecting minimally elsewhere (for example, less protection for the "exercise" of religion).

*There are those who would water down the definition of "religion" so that it means little more than a deeply held conviction, religious or not.*

Perhaps most important, this movement to thin out "religion" is at odds with the text of the free exercise clause, which states that "Congress shall make no law . . . prohibiting the free exercise [of religion], not the exercise of one's personal philosophy. To be sure, those who reject adherence to any identifiable religion are exercising freedom, but they are not exercising religion. The free exercise clause safeguards only the latter.

3. *Still others argue for ways of shrinking the meaning of "religion" in the First Amendment.* This argument attacks the all-important definition of "religion" from a different direction. It is illustrated by judges who read the free exercise clause as protecting religious practice only if its exercise is "mandated" as opposed to merely "motivated" by faith. This does violence to the text, of course, which speaks only of "free exercise." Such judicial hostility is especially detrimental to a religion such as Christianity, which emphasizes not outer conduct or legalism but a heart attitude from which a convert willingly responds in love because he or she has first received grace.

Similarly, some judges have insisted that only "central" tenets of a faith are constitutionally protected. However, judges are ill-equipped to dissect the religion in question (a complex undertaking and one outside judicial experience) with an eye to discerning a sliding scale of doctrine, and then to protect only the top-drawer tenets of that religion. Most anyone would rather trust such theological undertakings to a minister or rabbi instead of relying on results produced by the steady diet of pragmatic instrumentalism that constitutes most on-the-job judicial training.

Yet a third variant of this definitional finagling is to drive a wedge between the meaning of "church" (and other houses of worship) and nonchurch religious organizations, protecting only the former. This leaves faith-based charities, schools and colleges, and health-care institutions without full First Amendment protection. The strategy is for the government to first "tame" the nonchurch religious organizations, then later turn its regulatory sights on churches.

An illustration of this is the recent case involving Catholic Charities of Sacramento. California enacted a law that required all religious organizations (except for churches and the most insular of ministries) that offer their employees prescription drug plans to include coverage for artificial contraception. When challenged, the courts held that the state legislation bound Catholic Charities notwithstanding Catholic teaching against the use of contraceptive devices. In the state's estimation Catholic Charities was not "religious enough" to enjoy the right to religious freedom. This whole line of argumentation makes little sense, of course, for the text of the First Amendment protects "religion," and not merely "churches."

4. *There is an attempt to reduce religious freedom, as*

*protected by the First Amendment, to a matter solely between individuals and government.* This is perhaps the most threatening, because it ignores the ontological status of institutional religion. The claim reduces a religious organization to a mere aggregation of its individual members, an association connected only by consent and contract. Such argumentation is the logical implication of Enlightenment liberalism, which would vest all final authority either in the individual or in the state. Should contemporary liberalism have its way, the juridical status of a church would be no different than that of the Rotary Club or the Girl Scouts.

Since at least the Peace of Westphalia (1648), however, Western civilization has viewed the pattern between church and state as one of dual authority. Each of these institutions is understood as independent of the other, competent within its own sphere of authority. Expressing this in terms of the familiar biblical text, each renders unto Caesar the things that are Caesar's and unto God the things that are God's. To be sure, where to draw the line between Caesar and God still provokes dispute at the edges, but that there is a juridical line dividing these two jurisdictions is not doubted.

Eighteenth-century Anglo-Americans recoiled at the prospect of the Leviathan (an autocratic state proposed by Thomas Hobbes), which viewed the church as a mere tool of government. Should liberalism succeed in displacing the dual-authority pattern of church and civil government, the state will increasingly interfere in the ecclesiology and internal governance of churches.

For example, liberalism portends greater entanglement in the administration of religious organizations, with courts entertaining lawsuits by clergy suing their own churches for job discrimination in their ecclesiastical advancement or discharge. We are just beginning to see church members filing tort actions against their own church for defamation (must sermons first be cleared by legal counsel?) and intentional infliction of emotional distress (can excommunicated members recover jury verdicts for mental anguish and loss of good name?).

*There is an attempt to reduce religious freedom, as protected by the First Amendment, to a matter solely between individuals and government.*

In the not-so-distant past such lawsuits were summarily turned away by the civil courts because it was self-evident that the claim involved a matter over which Caesar has no jurisdiction. Such summary dismissals must continue, and for two reasons. The first has to do with freedom, the second with peace. Nonintervention by the courts with respect to matters within the province of a church is essential if the church is to be free to be the church. This is the most elemental meaning of the separation of church and state. Additionally, summary dismissals yield increased peace for the body politic. Peace follows when the machinery of state is powerless to take sides in disputes over religious doctrine, which means Caesar must be restrained from making religious questions the state's business. Denying court jurisdiction over church affairs will not stop the culture war. But it will contain it, thus keeping the culture war from blowing its lid.

5. *There is a push to characterize as a "preference"—and thus as unconstitutional—all religious exemptions from regulatory and tax legislation.* Until recently such exemptions were widely acknowledged as a means of not unduly entangling the operations of church with the operations of state. This new push radically recharacterizes religious exemptions as "preferences" that discriminate in favor of religion

*Liberty has always warned of the problems inherent in state aid for church institutions and has opposed the so-called Faith-Based Initiative on First Ammendment grounds. Professor Esbeck very accurately describes the present church-state situation and the risks to church autonomy these developments have presented. The almost total national rethink of the First Amendment and a passing of power over religion to the state, makes Professor Esbeck's statement that "because America has a large and stable civil society, the nation can accomodate a goodly amount of this countercultural behavior" (i.e. minority religious free exercise) so chilling. If free exercise by minorities has passed from consitutional dicate to indulgence by a non-threatened society, we must fear for it in times of economic downturn and post 911 threats.* Editor.

*Continued on page 27*

# GOVERNMENT DISPLAYS PROBLEMATIC

By James Standish

Workers prepare Ten Commandments for removal from the rotunda of the Alabama judicial building.

Whenever the government becomes involved in religion, it is problematic, and the posting of the Ten Commandments is no exception.

Which version? There are three widely recognized versions of the Ten Commandments: the Protestant, the Catholic, and the Jewish. If the government decides to display the commandments written out, it must choose whose version to endorse. In recent years edited versions of the Ten Commandments have been displayed. These edits exclude, for example, any reference to the Sabbath being the seventh day. This exclusion has profound theological ramifications.

What does the setting communicate? God directed that the tables of stone on which He wrote the Ten Commandments be placed in the ark of the covenant under the mercy seat, on which blood representing the atoning sacrifice of Christ was sprinkled. This setting communicated the grace of God, in providing mercy and forgiveness with judgment. The secular courthouse is a completely different context. Here, if a person is guilty, he or she must pay the price. There is no blood of Christ, sprinkled as an atonement for the wrongdoing, that sets him or her free. Placing the Ten Commandments in the courthouse setting takes the heart out of the gospel message.

Are the arguments accurate? At the heart of the arguments in favor of government Ten Commandments monuments is the claim that America's laws are based on the Ten Commandments. But is this true? If we look at the Ten Commandments, only four are commonly found in the legal code, and three of those are found in virtually all legal codes throughout history. These three are: prohibition on killing, prohibition on stealing, and prohibition on lying (American law forbids this last one in very specific circumstances). The only laws that are specifically referenced to the Ten Commandments are prohibitions on engaging in certain kinds of work on Sunday—but these are mistaken attempts to enforce the fourth commandment, which actually proscribes working on the seventh day of the week.

There is nothing in our laws about coveting, making graven images, having other gods before God, forcing children to honor their parents, and blaspheming (Western nations used to enforce blasphemy laws), and little if anything left regarding adultery.

In truth, the laws of the United States developed out of a long, complex legal tradition that reaches back to the dawn of history, and includes a broad array of influences, and covers a broad range of issues not even hinted at in the Ten Commandments (e.g., everything from parking regulations to federal communications law).

Is this the right emphasis? There can be no doubt that society has drifted away from God's law. Ironically, much of this drift has been encouraged by churches who have taught that the Ten Commandments were "nailed to the cross" and therefore are not binding on Christians today, and further, have actually taught that it is impossible for those living under God's grace to keep them. Before soliciting the state to erect monuments of the Ten Commandments, churches need to begin lifting up the law of God as fulfilled in the life of Christ and imparted to His followers by His grace.

*James Standish, an attorney, is executive director of the North American Religious Liberty Association. He writes from Washington, D.C.*


ILLUSTRATIONS BY RALPH BUTLER

Efforts by government officials to display the Ten Commandments on public property is one of the most divisive church-state issues experienced in the United States for the past 25 years. Perhaps second only to state-sponsored prayer in the public schools, the posting of the Ten Commandments has spawned widespread debate throughout the nation and its courts. How ironic that a sacred text that millions regard as the word of God should be the source for so much discord.

The United States Supreme Court will consider two cases challenging Ten Commandments displays under the First Amendment's establishment clause this term. One case, *Van Orden v. Perry* (03-1500), involves a Ten Commandments monolith donated in 1961 by the Fraternal Order of Eagles, and displayed with the authorization of the Texas legislature on the grounds of the Texas capitol. The constitutionality of this display was upheld by the Fifth U.S. Circuit Court of Appeals. The court ruled that the monument has a secular purpose of teaching about our legal system, and denied that any reasonable observer would view it as an endorsement of religion. The second case, *McCreary County v. ACLU* (03-1693), involves displays in courthouses in two Kentucky counties. There the Sixth Circuit ruled that these displays do not have a sufficiently secular purpose and have the primary effect of endorsing religion. These cases are expected to be decided before the end of the Court term in June 2005.

Media tend to present the dispute as a clash between forces of secularism trying to ban religion from the public square and people of faith bent on promoting morality through the offices of government. This dichotomy is unfortunate and misleading. Many people of faith and religious organizations oppose government endorsements of the Ten Commandments for reasons having everything to do with religion and religious liberty.* Everyone's religious liberty is denied when government officials select the preferred religion, pick out a particular passage of sacred text, and display it in a way that carries with it the full endorsement of the state.

Opposition to government-sponsored displays of the Ten Commandments is buttressed by several rationales. Such displays are often unconstitutional, based on bad theology, predicated on a misreading of history, and contrary to notions of fundamental fairness.

Government is presumed to endorse the message that it communicates in its official displays. It is possible to affirmatively negate the appearance of an endorsement, but none of the governmental bodies in these cases did so.

# SHOWING PROPER RESPECT

*By* BRENT WALKER

Although the capitol grounds in Austin contain 17 different monuments, they are spread out over nearly 20 acres. Thus the Ten Commandments monument is essentially freestanding, and none of the other monuments have anything to do with religion, or bear a religious text. The content of this Ten Commandments display is undeniably religious.

The Ten Commandments displays in Kentucky, though less dramatic in size and presented on the walls of courthouses, amount no less to an endorsement of religion. After the litigation began, Kentucky officials added some secular documents, but the message endorsing the Decalogue remained clear.

The unconstitutionality of these endorsements of sacred texts is supported by Supreme Court precedent. In *Stone v. Graham*, 449 U.S. 39 (1980), the Court ruled that the posting of the Ten Commandments by the state of Kentucky in public school classrooms violated the establishment clause. The Court reasoned:

"The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative

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recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters. . . . Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day... If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause."

There are also important theological reasons that many people of faith object to government posting and endorsing of holy writ. It puts government officials in the role of priests, making fundamentally theological determinations that they are ill-suited to make. How can they speak to questions such as: The commandments of Deuteronomy 5 or Exodus 20? Is it an English Old Testament version, or the Hebrew Bible, or maybe the Septuagint in Greek? If in English, is it a Catholic or Protestant one? If Protestant, which version—King James, New International, Revised Standard? All of these vary in language and theological import. For example, the Hebrew Bible is translated "murder," while the various English versions render the word "kill." The Catholic version says nothing about "graven images," but has two commandments on "coveting." There are many "Ten Commandments," not just one, and government officials are not competent to pick and choose from among them. These decisions are best left to families, churches, and synagogues.

Moreover, one cannot properly interpret a sacred text without considering the context. The Ten Commandments, including the first one—"I am the Lord your God... You shall have no other gods before me" (Exodus 20:2, 3)[†]—are part of a covenant between God and the Hebrew people. The text is betrayed when Moses and the Israelites are replaced with politicians and American citizens. One has to wonder why some Christians are so intent on posting the Ten Commandments. The commandments emphasize law and rules, leaving out crucial Christian concepts such as God's grace, faith in Christ, personal conversion, and New Testament ethics. The commandments, while foundational in their teachings, fail to capture the full hope of Christianity.

Finally, the Ten Commandments are often posted with the idea of making them a talisman—something of a good luck charm—to help protect our culture from the influences of secularism. This risks violating the first commandment against having other gods and the second commandment against making graven images. How strange it is to violate two of the commandments by endorsing all ten!

*The Ten Commandments are often posted with the idea of making them a talisman—something of a good luck charm—to help protect our culture from the influences of secularism.*

Governmental attempts to post the Ten Commandments are also based on bad history. Proponents often argue that such postings are justified because the American system of law is predicated on the Ten Commandments. Indeed, the United States Department of Justice has filed a brief in the Supreme Court claiming as much.

Although there is a vague sense in which a Judeo-Christian ethic underpins our legal system, the connection is too attenuated to justify government officially endorsing that religion's sacred text. Only some of the commandments—such as killing, stealing, and bearing false witness—are the proper subjects of secular law. The others are demonstrably religious. American law is based on the common law of England. But these prohibitions were already a part of Anglo-Saxon jurisprudence before England was Christianized. The fundamental notion that it is wrong to murder, steal another's property, or bear false witness was already well ensconced among the Saxons before they ever heard of the Ten Commandments.

Moreover, documents that have directly influenced our legal system—the Magna Carta, English Bill of Rights, Mayflower Compact, Declaration of Independence, Federalist Papers—say very little about religion and nothing about the Ten Commandments. Most important, our Constitution—the civil compact that governs our public life together—mentions religion only once, in Article VI, and then only to disallow a religious test for public office. And the First Amendment makes clear that the federal government is not permitted to advance or inhibit religion. In

sum, although the Ten Commandments—along with many other ancient secular and sacred legal codes—stand in the backdrop to American law, that alone does not justify government officials endorsing this one distant precursor.

Last, posting of the Ten Commandments by governmental officials violates common notions of fair play. It is simply unfair for government to endorse this one expression of faith. Nothing is more basic to our sense of fairness than the golden rule. People of faith and no faith embrace it. How does the golden rule play out in church-state relations? In this way. I cannot ask government to promote my religion if I don't want government to promote someone else's religion. I cannot permit government to ignore someone else's religion in order to promote my religion.

In our pluralistic nation one of the worst things government can do is to take sides in matters of religion. One of the reasons we have had precious little religious strife—despite our dizzying diversity—is that government has generally remained neutral in such matters. Those who follow religious traditions other than Judaism and Christianity can rightly question why their sacred text is ignored and that of the dominant religious tradition is acknowledged and approved.

Finally, although governmental endorsement of the Ten Commandments is unconstitutional, theologically suspect, predicated on faulty history, and fundamentally unfair, there are ways in which government may deal with the Ten Commandments.

*Nothing prohibits private citizens from displaying the Ten Commandments in public places.*

First, the Decalogue sometimes can be included as part of a cultural and historical display. For example, the frieze encircling the ceiling of the courtroom at the Supreme Court shows a Moses figure holding tablets with several Hebrew letters. However, along with Moses, the frieze depicts 17 other "great lawgivers of history," including the likes of Hammurabi, Confucius, Justinian, Muhammad, Charlemagne, William Blackstone, and John Marshall. The overall effect of the entire frieze is not to endorse Judaism, Christianity, or even religion in general. Rather, it is simply an architectural depiction of law in history.

Moreover, the Ten Commandments can be taken up in our public schools in an effort to teach *about* religion in a course on comparative religion or on the Bible as literature, as long as it serves an educational rather than a devotional purpose. The contents of the "second table" of the Ten Commandments, dealing with our relationship to one another rather than with God, can be advanced by government, even in the public schools. School officials, of course, can teach students that it is wrong to kill, steal, or lie.

And finally, nothing prohibits *private* citizens from displaying the Ten Commandments in *public* places. Justice Sandra Day O'Connor has repeatedly emphasized the crucial difference between government speech endorsing religion, which the establishment clause prohibits, and private religious speech, which the Constitution protects. The Ten Commandments can be posted in front of every church and synagogue in the land in full public view. They can be displayed by private citizens, even on public property, if the site is open to all forms of expression. And best of all, we can take a lesson from the prophet Jeremiah and write the commandments on our hearts instead of on stone or on paper, thereby providing a living witness to the principles embodied in those teachings.

In conclusion, the debate is not about whether the commandments teach sound theology or wholesome ethics—particularly for Jews and Christians. The question is Who is the right *teacher*—politicians or parents, public officials or pastors, government committees or families? As a Baptist minister I can think of little better than for everyone to obey the Ten Commandments, but as a constitutional lawyer I can think of little worse than for public officials to tell us to do it.

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* The Baptist Joint Committee (BJC) along with the Interfaith Alliance Foundation, has filed friend-of-the-court briefs in both of these cases. I express gratitude to Professor Douglas Laycock, of the University of Texas School of Law, and K. Hollyn Hollman, general counsel of the BJC, for writing and editing these briefs. The briefs are available on the BJC Web site: www.bjcpa.org.

† Scripture quotations in this article are from the *Holy Bible, New International Version*. 


# *The* TEN COMMANDMENTS COURT

*By* Marc D. Stern

PHOTOGRAPHED BY FRANZ JANTZEN, COLLECTION OF TH

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Twenty-five years ago the Supreme Court held that public schools could not post the Ten Commandments in classrooms for the asserted purpose of demonstrating the origins of American law. The Court said:

"The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. . . . Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day" (*Stone v. Graham,* 1980).

Justice Rehnquist, as he then was, dissented: "The Establishment Clause does not require that the public sector be insulated from all things which may have a religious significance or origin. This Court has recognized that 'religion has been closely identified with our history and government,' . . . and that '[t]he history of man is inseparable from the history of religion'" (*ibid.*, citations omitted).

Anyone (including this writer) who predicted that this rather commonsensical ruling would be conclusive was a false prophet. Ten Commandments litigation has become a growth industry for lawyers specializing in the First Amendment. Dozens of lawsuits have been filed over the past five years challenging Ten Commandments displays by government or by private parties given special access to government land. Purely private displays are, of course, not affected by this litigation. Two of these cases—*Van Orden v. Perry* (Texas) and *McCreary County v. ACLU* (Kentucky)—have come before the United States Supreme Court. Decisions will come by June 2005.

Although the burst of litigation is relatively new, the displays may not be. Many of the Ten Commandments displays are almost 50 years old, but are now challenged for the first time. There is also a spurt of new Ten Commandments displays, including one involving an Alabama judge who has embroidered them on his judicial robes. The most notorious new display case involved a deliberately provocative 5,000-pound granite monument placed in the Alabama Supreme Court building by former Alabama Supreme Court chief justice Roy Moore. A federal court ordered it moved. The chief justice refused. It was removed anyway. The display and its removal may be serving as a springboard for Moore's political ambitions.

It would be hard to say that these challenges are a result of a sudden upsurge in violations of the Ten Commandments themselves, and that the displays are being

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challenged as unwelcome reminders that people are sinners. The murder rate keeps dropping. It is doubtful that adultery is more common now than it was 20 or 40 years ago. With the exception of small groups of Jewish and Christian believers, the Sabbath is no more scrupulously observed today than at any time during the past 50 years.

### Texas and the Commandments—*Van Orden v. Perry*

Just before the 1956 release of his remake of *The Ten Commandments*, fabled movie producer Cecil B. DeMille learned that a Minnesota juvenile judge and the Fraternal Order of Eagles had joined to erect Ten Commandments monuments in public places. The judge believed that the teenagers he saw in his courtroom lacked any idea of right and wrong. Exposure to the commandments, he believed, would set such teens straight.

The Eagles joined with the judge only after persuading themselves that despite having picked the Lutheran version of the commandments—which differs both in numbering and interpretation from the version of the commandments adopted by the Jewish, Catholic, and other Christian traditions—the display would be nonsectarian. (Jews, for example, count "I am the Lord" as the first commandment; the monument treats that verse as a prologue and omits the phrase "which have brought thee out of the land of Egypt.") DeMille saw an opportunity to help promote his movie. Over the next few years he helped pay for literally thousands of these displays.

One of these Ten Commandments monuments was erected on the grounds of the Texas' Capitol in 1961. When Texas redesigned its Capitol grounds in 1993, sharply reducing the number of monuments displayed, the commandments monument remained.

The monument's presence at the Capitol went unchallenged until a nonpracticing lawyer, Thomas Van Orden, alleged that by displaying the commandments in this fashion the state was improperly "promoting the Commandments as a personal code of conduct." He argued that the reasonable observer would see the display as favoring the Jewish and Christian faiths over others and over atheism.

*Van Orden, alleged that by displaying the commandments in this fashion the state was improperly "promoting the Commandments as a personal code of conduct.*

Texas denied that the monument's purpose or effect was religious. It asserted that the monument celebrated only "the large [secular] role of the Decalogue in the development of Texas law."

The United States District Court for the Western District of Texas and the United States Court of Appeals for the Fifth Circuit agreed with Texas. The appellate court accepted Texas' claim that the monument celebrated the commandments' influence on American law, but that "to say this is not to diminish the reality that it is a sacred text to many, for it is also a powerful teacher of ethics, of wise counsel urging a regiment of just governance among free people. The power of that counsel is evidenced by its expression in the civil and criminal laws of the free world. No judicial decree can erase that history and its continuing influence on our laws—there is no escape from its secular and religious character. There is no constitutional right to be free of government endorsement of its own laws."

The appellate court did not explain how, for example, the commandment against idolatry influences secular law.

### The Kentucky Case—*McCreary County v. ACLU*

The Kentucky Ten Commandments monument is more recent, and its history more complex, than its Texas counterpart. The case before the Supreme Court was one of three consolidated in the lower courts, each challenging a display of the commandments in a different Kentucky county. The one the Court is reviewing is one of two involving courthouse displays. The third case involved a school display. (Although the school board sought Supreme Court review of a part of the decision adverse to its display, the Court has so far pointedly refused to act on that request.)

The display in McCreary County began only with a framed copy of the Ten Commandments. (The Court does not explain which version was used.) When the ACLU filed suit challenging the display, the county quickly posted a potpourri of equally sized documents around it, which, like reindeer and Santa Claus around a municipal crèche, supposedly reinforced the secular character of the display.

When these odd documents (including, for example, Lincoln's 1863 call for a national day of prayer, and the

national motto "In God We Trust") predictably failed to impress the court—because if anything, they reinforced, not minimized, the religious character of the display—the county erected instead a display that included equally sized framed copies of the Ten Commandments, the entire "Star-Spangled Banner" (the never-sung and almost wholly unknown fourth stanza includes the phrase "And this be our motto: 'In God is our trust'"), the Magna Carta, the Declaration of Independence, the Mayflower Compact, the Bill of Rights, the preamble to the Kentucky constitution ("We the people of the Commonwealth of Kentucky, grateful to Almighty God for [our]... liberties and invoking the continuance of these blessings. ... ") and Lady Liberty.

The display also bore an explanatory note declaring that the Ten Commandments "have profoundly influenced the formation of Western legal thought and the formation of our country." It did not explain how the documents—other than the Declaration of Independence's reference to the "Creator" and "Nature's God" (almost certainly not the God responsible for the commandments) were relevant to the commandments. This ragtag collection also did not impress the district court and the court of appeals, which found that these additional documents did not relate to the Ten Commandments in any significant way. It therefore ordered the commandments removed.

A dissenting judge argued that the purpose of the display was to illustrate the role that religion played in the foundation of American government, and that the court was not entitled to question Kentucky's claim that this was in fact its purpose.

*Should generic Judeo-Christianity have a preferred place in American government such that its noncoercive endorsement by government is constitutionally acceptable?*

## In the Supreme Court

The decision of the Court to take two cases—one upholding a display, one prohibiting it—has called out a large number of friend-of-the-court briefs. Urging that the Court find the commandments displays constitutional are, among others, the American Center for Law and Justice, the Becket Fund for Religious Liberty, Thomas More Center, the American Legion, and several others; and in the case of Kentucky only, the Bush administration. (It apparently believes that there is a difference between a freestanding display and one surrounded by even unrelated historical documents.) On the other side are, among others, American Atheists, Baptist Joint Committee, Americans United for Separation of Church and State, and (in a brief I authored) the American Jewish Congress.

The legal issues before the Court are many.

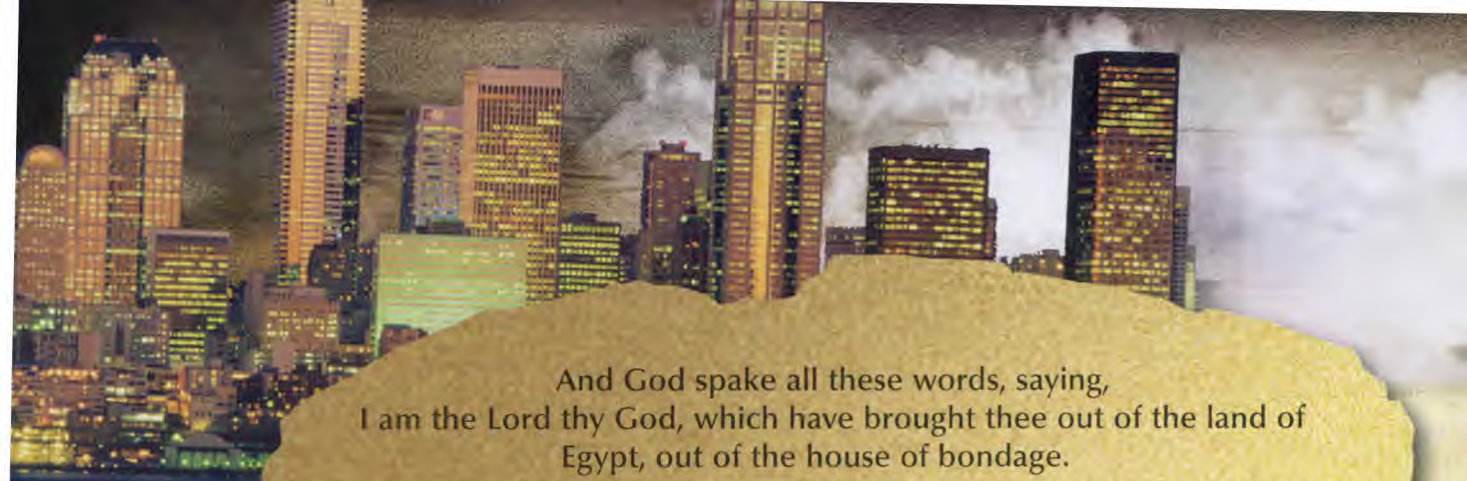
(1) Should the Court repudiate its earlier decision in *Stone v. Graham*, as Chief Justice Rehnquist and Justices Scalia and Thomas have suggested?

(2) Should courts presume that official sponsors of displays of key religious documents are religious, leaving it to officials to demonstrate clearly that a particular display (as in a museum or a school textbook) is secular in purpose and effect; or, to the contrary, should they take at face value official claims of secular purpose—protestations that are often hard to take seriously, as they are offered with a wink solely to defend the display?

(3) How should the Court deal with the fact that there is no single official version of the Ten Commandments? There are many versions with significant theological differences between them. (Is there a commandment requiring belief in God? Is there a ban on worshipping other gods or a ban on any physical depiction of God? Is there a ban on false swearing or using God's name in vain? A ban on murder or killings?) And what weight should be assigned to the growing strength of Islam, Hinduism, and Buddhism with regard to displays rooted in the Judeo-Christian tradition? The Bush administration notes the question, but takes no position on it.

(4) Is it historically accurate that the commandments play a unique role in shaping American law? The claim is often made, and there is no doubt about their role in American culture, but there is substantial doubt about their role in shaping American law.

All these questions simply mask the larger question—the one that in fact fuels the surge of litigation: Should generic Judeo-Christianity (often more the latter than the former) have a preferred place in American government such that its noncoercive endorsement by government is constitutionally acceptable? The answer to the question ought to be no, and it is a position worth defending, no matter how the High Court decides the current cases.



And God spake all these words, saying,
I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage.

I

Thou shalt have no other gods before me.

II

Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:
Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; And showing mercy unto thousands of them that love me, and keep my commandments.

III

Thou shalt not take the name of the Lord thy God in vain: for the Lord will not hold him guiltless that taketh his name in vain.

IV

Remember the sabbath day, to keep it holy.
Six days shalt thou labour, and do all thy work:
but the seventh day is the sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: for in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the sabbath day, and hallowed it.

V

Honour thy father and thy mother: that thy days may be long upon the land which the Lord thy God giveth thee.

VI

Thou shalt not kill.

VII

Thou shalt not commit adultery.

VIII

Thou shalt not steal.

IX

Thou shalt not bear false witness against thy neighbour.

X

Thou shalt not covet thy neighbour's house, thou shalt not covet thy neighbour's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbour's.
—Exodus 20, verses1-17 (King James Version of the Bible)

The author recording for *Freedom's Ring*.

# THE *Bill of* FREEDO

By
ALAN J. REINACH

*A Christian looks at the meaning of God's ten rules...*



PHOTO: A.J. REINACH

The legal conflict over the public display of the Ten Commandments provides a wonderful opportunity to examine the content of the commandments. Although almost universally revered, the Ten Commandments are often thought of as rules that cannot be kept, or as an ideal that no one is really expected to attain. Or else, if the commandments really do define a normative standard of conduct, they are God's great guilt trip, since we are condemned for failing to achieve the impossible, no matter how hard we try.

This dilemma raises serious challenges to the character of a loving God. Since the law of God is the measure of human conduct in the final judgment spoken of in the Bible, how can a just and loving God condemn anyone for not living up to an impossible ideal? The answer is found in a proper understanding of the "new covenant." This covenant is first announced by the Old Testament prophet Jeremiah, who served at a time of spiritual decline, when Jerusalem was succumbing to a series of invasions from Babylon. It is repeated in the New Testament book of Hebrews.

"*But this is the covenant that I will make with the house of Israel after those days, says the Lord: I will put My law in their minds, and write it on their hearts; and I will be their God, and they shall be My people. No more shall every man teach his neighbor, and every man his brother, saying, 'Know the Lord,' for they all shall know Me, from the least of them to the greatest of them, says the Lord. For I will forgive their iniquity, and their sin I will remember no more*" (Jeremiah 31:33, 34).*

The new covenant is not based on human promises, but on God's promise of what He will do for us. God has promised a heart transformation. We shall "know" God, which in the biblical sense means to have an intimate relationship. We are not to be judged based on what we have achieved or failed to do, but based on our willingness to accept the power of God to change us from the inside out, motives and attitudes first, and then behavior will follow. In this light, the Ten Commandments are best understood as a bill of freedoms. Rather than a moral code that is against us, because we are incapable of rising to the standard, the Ten Commandments represent a promise of what God wants to do in our lives.

MS

It is quite obviously humanly impossible to obey the commandments completely. The commandments are God's pledge to provide the needed ability. Our perspective shifts dramatically when the Ten Commandments become promises of freedom, rather than unreachable or unfair obligations.

## *The* First Freedom

> *"I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage. You shall have no other gods before Me."*

Here is a summary of the whole law: The One who parted the seas and delivered a nation wants a personal relationship with you. He wants your supreme affection. God has revealed Himself in history, so that we will respond in love. In anticipation of His death, Jesus, the Incarnate Son of God, declared: "'And, if I am lifted up from the earth, will draw all peoples to Myself.' (John 12:32, 33). This He said, signifying by what death He would die" This commandment is a promise that God will establish the relationship based on love, if we will consent.

## *The* Second Freedom

> *"You shall not make for yourself a carved image."*

This is a prohibition against worshipping a representation of God. The Intelligence that created and sustains the universe cannot be represented by something that was made. Human beings are said to have been made in the image of God. A right concept of the self must begin with a right concept of a holy God. We degrade our concept of God by representing Him in earthly form, and so also degrade ourselves. A healthy sense of self cannot be sustained on a lie about God or humanity, but can only spring from a true appreciation of God's inherent holiness and our createdness. This commandment frees us from the confusion of seeing God in terms of what is created.

There is only one God, but other things can become gods in our affections and supplant God. God deserves our best affection not only because He made us, but because He

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demonstrated His amazing love in sending Jesus to die for our sins and to secure eternal life on our behalf. Modern idolatry may be more sophisticated than the ancient worship of statues of the Deity. Today we worship celebrity, wealth, beauty, or possessions. Sports, money, and sex are powerful American idols. The commandment does not teach that these idols are inherently evil; only as they supplant love for God do they become idolatrous. Jesus said: "If you love Me, keep My commandments" (John 14:15). This commandment is a promise that we can love God supremely and keep His commandments.

## *The* Third Freedom

*"You shall not take the name of the Lord your God in vain."*

The common conception of this command is to avoid using God's name as profanity. The commandment does encompass freedom from impure speech and the use of coarse and vulgar expressions, but it goes far beyond. To "take the name of the Lord" is to become God's representative. To take God's name but not His character is to profane God's name. This commandment implicates religious hypocrisy, which is a very serious matter, since it misrepresents God. The promise is that we need not be self-righteous hypocrites, but can actually practice what we preach. In short, God promises us a character befitting a child of the King.

## *The* Fourth Freedom

*"Remember the Sabbath day to keep it holy. Six days you shall labor and do all your work, but the seventh day is the Sabbath of the Lord your God."*

The seventh-day Sabbath has fallen out of favor in the Christian world, but properly understood, it is vital to physical, emotional, mental, and spiritual health. God has set aside a special time to spend with us. He requires that we leave aside the cares of life and business for a day, to worship, to commune, to rest, and to be renewed by His presence. If we truly value our relationship with God, we will cherish the opportunity the Sabbath brings. "The Sabbath was made for man," Jesus said (Mark 2:27), and so it was. It was made for us. We need it.

As a memorial of Creation, the Sabbath reminds us not only of God's power to create, but God's power to save, to restore and to re-create us in His image. To experience the Sabbath rest is to be set free not only from worldly cares for a day, but from all striving to make oneself acceptable to God. On the Sabbath we celebrate God's power to transform our lives now, and we look forward to the ultimate transformation of this sin-sick world and the ushering in of the kingdom.

## *The* Fifth Freedom

*"Honor your father and your mother."*

Aretha Franklin sang about respect. Rodney Dangerfield complained about not getting any. With this commandment, attention shifts from our relationship to the Creator to our human relations. Quite properly, the first such command addresses our attitude toward those who bring us into this world. Honor is more than respect; it encompasses appreciation, gratitude, faithfulness, and devotion. Honor does not mean blind, unreasoning obedience. When we accept the freedom to honor our parents, we secure the foundation for healthy relationships. This command does not let parents off the hook. By implication, it promises parents the freedom to live lives worthy of honor.

## *The* Sixth Freedom

*"You shall not murder."*

That's easy, you say, no big deal. I haven't stabbed anyone lately. But wait: "If you hate your brother in your heart," Jesus said, "you are guilty of murder" (see Matthew 5:22). Murder is the end result of broken relationships, of nourished anger and resentment. The command goes to the heart of the matter and expresses God's ideal of reconciliation. Heaven is a place where all live in peace. Even the animal kingdom will overcome animosities, as the lion and the lamb dwell together. This command teaches us that we are free to overcome alienation from one another and to be reconciled. We are free to love.

## *The* Seventh Freedom

*"You shall not commit adultery."*

The biblical standard of sexual morality as expressed within a monogamous heterosexual relationship has definitely come under fire today. Adultery is exciting. Sex sells. Sadly, the reason for the biblical standard is poorly understood. As specified by God in Genesis, marriage is the union of a man and a woman. Such a union is more than physical or emotional; it is spiritual. Such a complete union requires more than love; it requires trust and faithfulness. Adultery destroys the foundation for genuine intimacy. Serial monogamy, considered moral by many, also destroys the capacity to trust and to surrender oneself fully to love. When we expect a relationship to end, we hold back, and in so doing, we undermine the relationship. God promises us freedom to be trustworthy and faithful in all our relationships.

## *The* Eighth Freedom

*"You shall not steal."*

This requires perfect honesty in all of our business dealings, in our finances, in our taxes. This is hard. Compromising our integrity springs from a lack of trust in God, and a false sense of self. When we trust God to provide for our needs, we depend on Him and do not need to sacrifice our character. We have learned, as the apostle Paul did, how to be content in all circumstances, even when the price seems high. When we see ourselves as a child of God, we take pride in the family name and heritage and will not disgrace the family by our dishonesty. When we value others as brothers and sisters in the family of God, we will not think of stealing from them. We are free to value our own dignity and that of others, and so practice strict integrity.

## *The* Ninth Freedom

*"You shall not bear false witness against your neighbor."*

This is more than a command against perjured testimony in court. It is a general prohibition against all forms of lying and deceit. Deceit not only stains one's own character, but it destroys relationships. Gossip is one of the most pervasive forms of false witness. Many think nothing of tearing down others behind their backs. Cherishing a critical, negative spirit toward others inevitably results in bearing false witness. By contrast, love builds healthy relationships, encourages, heals, and sustains. In this command we are set free to love one another in word and deed, not to diminish one another through falsehood or gossip.

## *The* Tenth Freedom

*"You shall not covet."*

The essence of all that has been said about these "freedoms" is that God gives us the freedom to love. If we love someone, we want what is best for them. We are happy for what they are able to obtain, without feeling that we have to have it for ourselves. "One's life does not consist in the abundance of the things he possesses," said Jesus (Luke 12:15). We are free to find our joy and peace in God's love and in fulfilling human relationships. When we covet, we value *things* more than *people*. This is backwards. We are free to love.

### Precept and Promise

It should be clear by now that the Ten Commandments are far more than a list of do's and don'ts. Indeed, they are a primary source of wisdom about the nature of love and the character of God. They express the ideal of humanity living in intimate relation to the Creator, as well as in harmony with one another. The Ten Commandments are really promises of what God will do for those who dare to ask. "Ask, and it will be given to you; seek, and you will find" (Matthew 7:7). The psalmist writes: "I will walk at liberty, for I seek your precepts" (Psalm 119:45). To experience the reality of these commandments is to know true freedom.

Understanding the Ten Commandments is foundational to a proper perspective on the legal conflict. Whatever the Supreme Court decides about the limits of government's role in displaying or promoting the Ten Commandments, we can better appreciate that the state cannot do for us what God alone is capable of achieving: writing His law upon the human heart. The state cannot give us hearts to love God or to love one another. Our real need is not for more public monuments in honor of commandments that no one really tries to keep. We need the law written on our own hearts.

* Texts quoted in this article are from the New King James Version. 

# THOU SHALT NOT BE A HYPOCRITE

By Clifford Goldstein

One of the most famous scenes in American cinematic history unfurls near the end of Casablanca, when the police inspector declares to Rick Blaine (Humphrey Bogart) that he's "shocked shocked!" to learn that there's gambling in Rick's nightclub. A moment later another man walks in and hands the inspector money, saying, "Your winnings, sir."

Of course, one doesn't need Hollywood fantasy to find such hypocrisy. Jesus constantly struggled with religious leaders who, while outwardly proclaiming fealty to the law, lived in violation of it. The question of religious hypocrisy is so common that it's a cliché It's one kind of "hypocrisy"—to be a Christian struggling, and failing, to live up to the standard he or she professes. But there's another kind, more outrageous and blatant, the kind that Jesus railed against, the kind expressed now by those who—though pushing for the Ten Commandments on government property—live in blatant violation of its most fundamental precept.

## The Law in Court

Last year the U.S. Supreme Court agreed to hear a Ten Commandment case. Though for decades the reigning jurisprudence has been, basically, that because the Ten Commandments "was undeniably a sacred text in the Jewish and Christian faiths, and no legislative citation can blind us to that fact" (*Stone v. Graham,* 1980), the placing of it in public property (in this case a public school) violated the establishment clause. Now, however, the U.S. Supreme Court has agreed to look at the issue again—and who knows? Maybe America's moral malaise will finally be reversed once God's law is back on schoolroom walls and on public monuments?

Yet the hypocrisy of those pushing for this is blatant, because the vast majority of them live in violation of what is, in many ways, the most fundamental commandment of all—the Sabbath one: "Remember the sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: But the seventh day is the sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the sabbath day, and hallowed it" (Exodus 20:8-11).

It's the most fundamental because it gives the reason for keeping all the others: the Lord is our Creator, the one who made us, the one to whom we owe our existence. That's why we don't have any other gods (first commandment), or worship idols (second), or take His name in vain (third)—because He alone is the one who, by virtue of having made us, deserves our fealty. And because He's the Creator, and a moral God, He's given us a moral code to live by, as opposed to the amoral nihilism of a purely naturalistic worldview. Hence, we honor our parents (fifth), do not kill (sixth), do not commit adultery (seventh), do not steal (eighth), do not lie (ninth), and do not covet the possessions or spouses of others (tenth).

Even more so, the New Testament links His role as Creator to His role as Redeemer. Jesus not only created us (Hebrews 1:2; Colossians l 1:16); He redeemed us (Titus 2:14; Galatians 4:5; Revelation 5:9). "Put theologically, the authority and efficacy of Christ as Redeemer are intimately linked to his 'authorship' and agency as Creator" (Dennis Danielson, *The Book of the Cosmos* [Cambridge, Mass.: Perseus, 2000], p.10).

The apostle John expressed it very clearly: "In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. *All things were made by him; and without him was not any thing made that was made.* In him was life; and the life was

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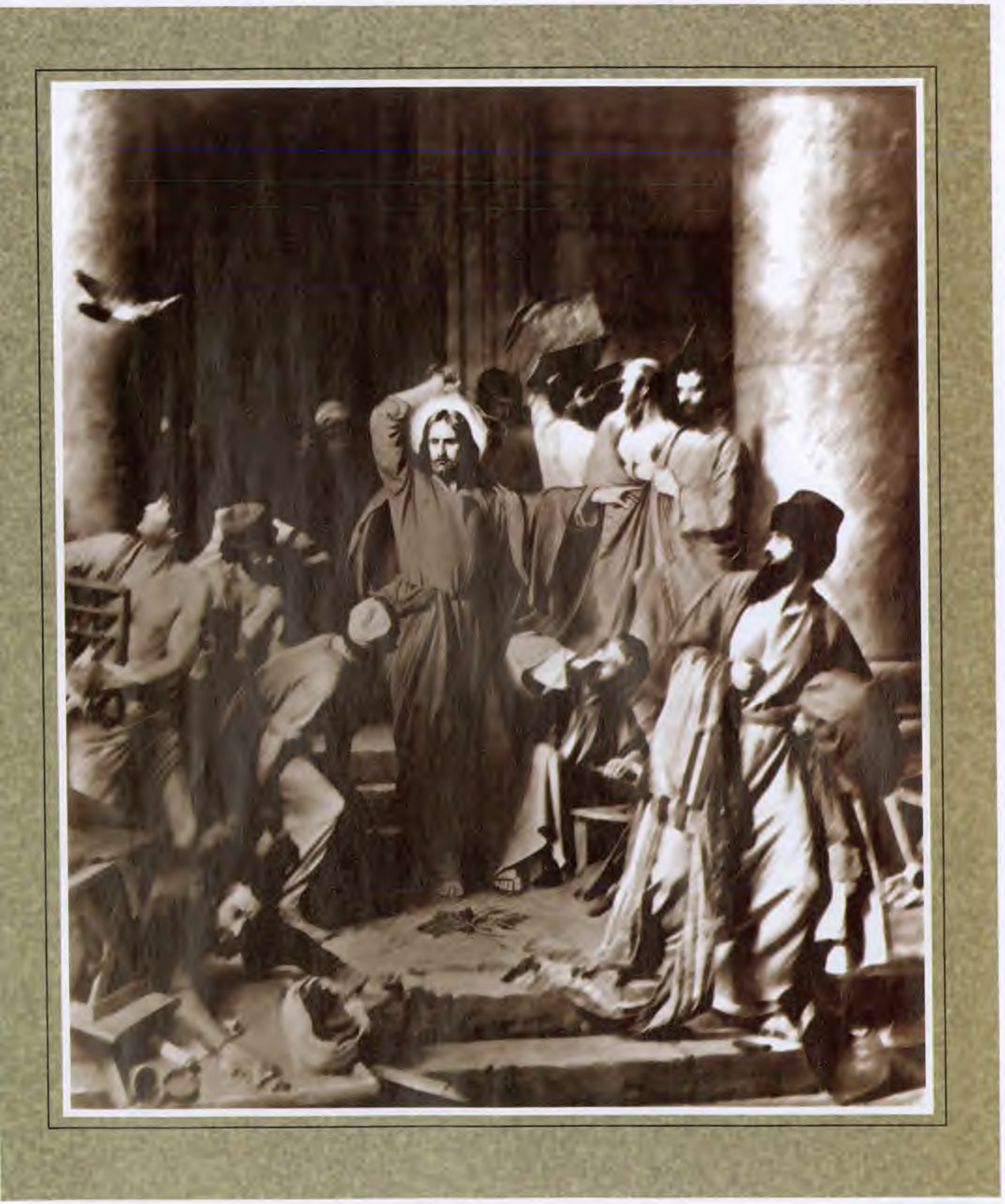

ILLUSTRATION BY CARL BLOCH/DIGITALLY MODIFIED

the light of men … He was in the world, *and the world was made by him,* and the world knew him not.… But as many as received him, to them gave *he power to become the sons of God, even to them that believe on his name*" (John 1:1-12).

Thus, the whole moral code of the Christian faith, along with the role of Jesus as Redeemer, is all tied to Him as Creator. So important is that role that the Lord gave the world a once-a-week, in-your-face reminder of who He is and why we must obey Him. It's called the fourth commandment—the one that those demanding the public display of the ten *don't* keep. To push on others what one one-self doesn't obey…? If that's not hypocrisy, what is?

*Sundaykeeping, no matter how strict, is not obedience to the fourth commandment.*

## The Change of the Sabbath!

Of course, a litany of responses exist to this charge of hypocrisy, each worthy of answer.

"The death of Jesus abolished the law," some say. "We no longer have to keep the Ten Commandments." Besides the obvious problems with that position from a moral point of view (Christians can now steal, lie, use the Lord's name in vain, etc.?)—it undercuts the whole Ten Commandment debate. Why push for the public display of a law that's been abolished?

Some assert that Jesus, when here, changed the Sabbath day to Sunday Numerous problems exist with that position—one of them being that the Gospels never record Jesus even mentioning the first day of the week. So how could He have advocated changing the Sabbath to it?

But don't His Sabbath healings prove the change of the Sabbath to Sunday? (To maintain that because Jesus healed on Sabbath, we now have to keep Sunday instead is an interesting train of thought, to say the least.) However, a look at each example of His Sabbath healing shows that Jesus, far from abolishing the Sabbath, was showing people how to properly keep it. For instance, after healing a man with a withered hand, Jesus—knowing the response that act would create among the leaders—said, "Is it lawful to do good on the sabbath days, or to do evil? to save life, or to kill?" (Mark 3:4). Does that sound as if He were abolishing it, or showing how it should be kept? After being accused another time of breaking the Sabbath, Jesus said: "The sabbath was made for man, and not man for the sabbath: Therefore the Son of man is Lord also of the sabbath" (Mark 2:27, 28). Strange words for someone seeking to abolish the seventh-day Sabbath and replace it with another one.

Even if Jesus did change the Sabbath to Sunday, then why are those who believe this promoting a law that advocates keeping a day that Jesus Himself had changed?

Finally, the most sophisticated argument isn't that Sunday somehow replaces the seventh day as a day of rest, but that Sunday "is a new day of worship that was chosen to commemorate the unique, salvation-historical event of the death and resurrection of Christ" (D. A. Carson, ed., *From Sabbath to Lord's Day* [Grand Rapids, Mich.: Zondervan,1982], back cover). The gist of the argument is that under the New Covenant, Christians have their rest fulfilled in Jesus, and thus are under no obligation to keep the fourth commandment—as they are, the other nine. Because of the "newness of the eschatological situation brought about by God's action in Christ" (Carson, p. 401), the weekly Sabbath rest on the seventh day, as depicted in the fourth commandment, is no longer binding, having been subsumed under the New Covenant concept of grace.

Though, again, one can argue cogently against this position, it still leads to the same question. If this were true, as many believe (including no doubt a good portion of those pushing for the public display of the Ten Commandments), why promote a law containing a fundamental precept that has long been nullified? Why, instead of pushing for the Ten Commandments, don't they advocate the public posting of the other nine, with the fourth replaced by a commandment advocating the "newness of the eschatological situation brought about by God's action in Christ"?

## From Sabbath to Lord's Day

Historical evidence shows that the church's gradual abolishing of the fourth commandment, i.e., the keeping of the seventh day (which in the biblical week begins with sunset on Friday night), began in the early decades of the second century as an increasingly Gentile church sought to distance itself from the Jews, whose revolts against Roman rule made them exceedingly unpopular in the empire. Thus, the change came, not from any biblical injunction, but from historical events. A book published by an orga-

nization promoting Sunday worship admitted that "we can point to no direct command that we cease observing the seventh day and begin using the first" (James P. Wesberry, *The Lord's Day* [Nashville, Tenn.,: Broadman Press, 1986], p. 100). It's a point that the Roman Catholic Church would agree upon, since it credits itself with implementing the change. Though in the present ecumenical environment Rome has shifted its rhetoric on the origins of Sunday worship, in earlier days Rome was tauntingly open about its role in replacing the seventh day of the fourth commandment with Sunday: "The Catholic Church for over a thousand years before the existence of a Protestant, by virtue of her Divine mission, changed the day from Saturday to Sunday. . . . The Christian Sabbath is therefore *to this day* the acknowledged offspring of the Catholic Church, as Spouse of the Holy Ghost, without a word of remonstrance from the Protestant world" (*The Catholic Mirror,* pp. 29-31, No. 125, quoted in *Seventh-Day Adventist Bible Student's Source Book* [Washington, D.C.: Review and Herald Pub. Assn., 1962], pp. 885, 886).

Whether believing that the law was abolished, or that Jesus changed the Sabbath to Sunday, or that Rome changed the day, or that the seventh-day Sabbath was replaced by "the new day of worship . . . chosen to commemorate the unique, salvation-historical event of the death and resurrection of Christ," those promoting the public display of the Ten Commandments are promoting a law that they themselves don't really believe needs to be kept, at least not all of it. Sundaykeeping, no matter how strict, *is not* obedience to the fourth commandment. Again, to be consistent, why not post commandments 1-3 and 5-10, and then something reflecting their understanding of Sunday worship (surely Rome would be glad to write it for them)?

If the High Court overturns precedent and allows the public display of the Ten Commandments, then every time the law is posted, the fourth commandment will stand as a government-sponsored condemnation of those who, while demanding it be displayed, are living in open violation of its most basic precept.

Obviously, little has changed since Jesus' day.

"Your winnings, sir."

## *The* SEVENTH DAY

One could be forgiven for wondering, "Isn't Sunday the seventh day?" Isn't that how the workweek goes? The week begins on Monday and ends on Sunday, right?

Not quite. Look at your calendar. Most calendars, at least in the United States, start with Sunday and end with Saturday, the seventh day. And, of course, in many languages Saturday has a name similar to the word "Sabbath."

However, the confusion comes in because of how the workweek has been established, with Monday as the first and Sunday the last, the "seventh." Add to that the fact that, regardless of whatever theology they use to justify Sunday, many Christians are taught to equate the seventh-day Sabbath—the day that God rested from His works (at least according to the Bible)—with Sunday. Some even call Sunday the "Sabbath" or the "Christian Sabbath."

Last year essayist Nancy Gibbs wrote an article in *Time* (August 2, 2004) called "And on the Seventh Day We Rested?" The subtitle read, "Maybe those old blue laws weren't so crazy after all." But those "old blue laws," we should remember, were *Sunday* closing laws. Here, again, we see the equating of Sunday with the seventh day. No wonder people are confused on this point.

In Europe one could really be excused for the confusion, because over the years the calendars have been actually *changed* to reflect the idea that Sunday is the seventh day. What motives people have in making the change, who knows? But the point is that, over time, more and more people have come to equate the seventh day with Sunday, even though—according to Bible reckoning—it's not.

But how do we know which day is really the seventh, anyway? Wasn't the calendar changed, numerous times even? It was, but it's well established that we've never lost the basic weekly cycle. If you doubt that, just ask any Orthodox Jew. They've been using the same calendar for millennia. They know which day is the seventh day.

In short, regardless of the common conceptions fostered by the weekly business cycle, or the change of the calendar in Europe, and the various theological moves of those trying to elevate Sunday as a day of rest, the Bible is as clear now as it has been for the past few thousand years: "Remember the sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: *But the seventh day is the sabbath of the Lord thy God*" (Exodus 20:8-10).

# THE TWO TABLES OF *The* LAW

By Alan Reinach

For centuries Protestants have found a convenient division between the first and second tables of the ten-commandment law. Roger Williams, the founder of Rhode Island, was the first American to associate two concepts: the separation of church and state and the two tables of the law. It was Williams, not Thomas Jefferson, who coined the phrase about a hedge, or wall, separating the garden of the church from the wilderness of the state.

Williams also conceived that the first four commandments, or the first table of the law, addressed one's obligations to worship God, while the last six commandments, the second table, addressed one's civil obligations. The American Protestant concept of separation of church and state was largely built on this distinction. Thus state law could properly address moral issues such as adultery, stealing, and murder because these were in the second table of the law. However, Puritan era "first table" laws against blasphemy, idolatry, and even Sunday laws fell into disfavor, not merely because of secular trends, but because in the Protestant conception, these obligations pertained not to the state but to God alone.

This division between the first and second tables of the law roughly corresponds to the distinction between legislating religion and morality. Under the First Amendment, the state has not jurisdiction to address essentially religious questions, such as when, where, how, or whom to worship. The first table of the law is out of bounds to the state. However, the second table of the law has always been the subject of civil law, despite the familiar adage that "you can't legislate morality." Actually, you can, and we do. The debate is never really about whether to legislate morality, but to what extent and from what source.

Under the American constitutional system, the state has no charge to order public morality according to the second table of the ten-commandment law, but neither is the state compelled to reject the second table. It is entirely legitimate for Americans to invoke the commandments in public policy debate, so long as the distinction between the first and second tables is observed. The Constitution does not permit the state to arbitrate religious belief and practice or to promote specific religious ideas. This means that the same Ten Commandments that many Americans look to for the content of public morality may be subject to constitutional restrictions when it comes to state efforts to publicly display and honor them. Although many view restricting the display of the commandments as official disrespect, it is far better for government to maintain a strict "hands-off" policy with respect to religion than to open a Pandora's box of public promotion of religion.


ILLUSTRATION BY RALPH BUTLER

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## CHURCH-STATE RELATIONS IN AMERICA

*Continued from page 6*

and thereby violate the establishment clause. Ignored in this revisionism is that the free exercise clause itself is a preference favoring religious exercise. Surely those adopting this line of argumentation are not so crazy as to claim that the free exercise clause violates the establishment clause!

Religious groups are unlike other voluntary associations. The very reason religious institutions are separated from government is to keep each within its proper sphere—thereby protecting church autonomy while preventing doctrinal questions from defining one's status in the civic community. The word "exemption," as applied to regulatory and tax legislation, is merely a rubric for accomplishing these twin purposes. Thus religious exemptions from regulatory and tax burdens do not violate the establishment clause—rather, they reinforce the dual-authority pattern that distinguishes church-state relations.

To date, the U.S. Supreme Court has rejected the claim that religious exemptions are unconstitutional. For example, the Court upheld property tax exemptions for religious organizations and allowed Congress to exempt religious groups from civil rights laws prohibiting employment discrimination on the basis of religion. A similar issue is before the Supreme Court this term in *Cutter v. Wilkinson*. An appeal to the High Court was granted in *Cutter* when a federal circuit court struck down congressional legislation requiring an exemption for religious practices from otherwise applicable rules that would be followed by those in prison. The circuit court ruled that the religious accommodation was a "preference" in violation of the establishment clause.

Surely the Supreme Court will reject the lower court's rationale in *Cutter*. Such exemptions are easily distinguishable from government funding or similar benefits. Government benefits increase a religious organization's overall resources (albeit, this alone doesn't make the aid unconstitutional), whereas regulatory exemptions leave religious organizations no better off than if government had not imposed the regulation in the first place. As law professor Douglas Laycock has written, a government does not establish a religion by leaving it alone. That organized religion is left undisturbed when similar secular organizations are burdened by new regulations or taxes is a mere consequence of the desired distinction between these dual centers of authority, church and state.

*There is a concerted attempt to break down the public/private distinction in society when it comes to religious organizations, such as colleges, charities, and health-care facilities, that apply for government grants.*

6. *There is a concerted attempt to break down the public/private distinction in society when it comes to religious organizations, such as colleges, charities, and health-care facilities, that apply for government grants.* One of the most long-standing public/private distinctions is that government alone is bound by the restraints in the Bill of Rights. Hence, for the establishment clause (one provision in the Bill of Rights) to be invoked, there must be "state action," which is to say that the offender must be a government agency or public official, not someone operating in the private sector.

Certain voices of an illiberal liberalism are seeking to void this public/private distinction. They aim to impose on religious organizations receiving government grants the duty to conform to the establishment clause. Hence these voices would require religious oraganizations to be neutral with respect to religion, in the same sense that government must be neutral as to religion.

To insist that a religious school or provider of social services should be compelled to secularize its operations as a condition of receiving a grant to educate children or help the poor is alien to the American tradition of church-state separation. To alter the public/private distinction in this way would compel religious organizations either to forfeit the right to compete on an equal basis for funding to provide services or to recant the beliefs that form their essential religious character. That is a cruel choice: either suffer discrimination or deny one's self. No other private sector group or organization, regardless of its ideology, is asked to self-destruct in this way.

Currently, the Supreme Court has rightly said that neither pervasive regulation nor the receipt of government funding causes an organization (secular or religious) to be regarded as a "state actor" with all the constitutional duties of the government. To bulldoze through the public/private

distinction and treat faith-based charities receiving government grants, as well as K-12 religious schools enrolling publicly subsidized students, as having the same constitutional duties as the government will crush religious autonomy. For example, no Christian school deserving of that name would accept vouchers if it meant not being able to consider religion when hiring its classroom teachers. President Bush's faith-based legislation is currently bogged down in Congress over just such an issue, namely, whether religious charities can participate in federal programs to help those who are poor and needy if they continue to insist on staffing with those of like-minded faith. Yielding to such a hiring restriction would turn government dollars into an engine of secularization.

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7. *There are those who would render the establishment clause a rule of "federalism," thus not binding on state governments.* The establishment clause reads, "Congress shall make no law respecting an establishment of religion." By the clause's terms Congress remains free to legislate on matters about religion generally, so long as the legislation does not advance a matter "respecting an establishment of religion." For example, consistent with the clause, Congress could excuse religious pacifists from military service. A few scholars (and increasingly, others) argue that the prohibition on making a "law respecting an establishment" means that Congress is affirmatively restrained from legislating in a manner that interferes with state establishments. And, by extension, the federal judiciary is affirmatively restrained from adjudicating in a manner that interferes with state establishments.

The First Amendment was adopted in the years 1789-1791. At that time (and for several years thereafter) the original states of Massachusetts, Connecticut, and New Hampshire had Congregational Church establishments, as did the soon-to-be-admitted state of Vermont. These scholars claim that the immediate reason for adopting the establishment clause was to prevent the federal Congress from bringing down these New England establishments. This position is termed the "federalism" interpretation of the establishment clause. If correct, it would mean that the establishment clause affirmatively protects states from interference by the national government.

There is no doubt that in 1789-1791 the establishment clause was intended to run against only the new national government—not the governments of the several states. (It is for this reason that the First Amendment had no bearing on disestablishment in America, which was entirely a state-by-state affair.) But all of the provisions of the Bill of Rights—not just the establishment clause—were intended to run against only the national government. There's nothing unique about that. However, the "federalism" interpretation goes much further. The scholars claim that the establishment clause was intended to affirmatively erect a shield around each state, a shield that protected the state's religious establishments from federal law—even from federal law otherwise proper under an enumerated power delegated to the national government. If true, the establishment clause had a wholly unique role among all the provisions in the Bill of Rights—it not only limited federal power to the incidental benefit of residual state sovereignty, but it conferred an expressed immunity on states with respect to their establishmentarian laws.

Such a wholly singular operation for the establishment clause, just one of several substantive clauses in the Bill of Rights, seems highly improbable. It makes far more sense to suppose that the establishment clause was meant to be applied like the other substantive clauses in the Bill of Rights. Certainly nothing in the congressional drafting or state-by-state ratification of the establishment clause in the years 1789-1791, nor in its final text, supports such a specialized role. By all rights, the clause's purpose was straightforward, that is: to ensure that federal laws that relate to an establishment of religion never got a foothold in the new national government. The "federalism" interpretation, attributing as it does a uniqueness to the operation of the establishment clause, is logically improbable and without historical support.

To be sure, years later the modern Supreme Court applied most of the provisions in the Bill of Rights to the

states via the Fourteenth Amendment. The Court did so in the middle third of the twentieth century, notwithstanding that the Fourteenth Amendment was adopted in the years 1866-1868. The modern Court's historical basis for doing so is quite a stretch, but this is no truer of the establishment clause than it is of any of the other substantive provisions in the Bill of Rights. It would take a separate article to examine whether the Fourteenth Amendment of 1866-1868 was intended by the post-Civil War Congress to apply the entire Bill of Rights to the states. For present purposes it is enough to observe that the "federalism" interpretation—a specious claim about the founders' intent in 1789-1791—should not overturn en masse the mid-twentieth-century work of the Supreme Court on which is laid the foundation of all modern church-state constitutional law.

The favorable resolution of the foregoing seven issues is crucial to the long-term health of religious freedom in America. There are other issues that ought not to be the focus of activity by those good folks who care about religious freedom. Such issues are more than simply a waste of energy and resources, although they are that as well. Rather, the efforts demonstrate a serious misunderstanding of the American church-state settlement. Two examples, both very much in the popular news, illustrate the concern:

A. *The effort to put prayer back into public school athletic events, as well as to prevent the removal of the Ten Commandments from government buildings, is seriously misguided.* Notwithstanding loud and persistent claims to the contrary, the free exercise clause does not give citizens a right to seize the levers of government and employ the machinery of state in praying one's prayers and expounding one's scriptures. Prayer and the veneration of scripture are inherently religious activities. Such practices are within the sole province of churches and individual believers. Government activity, including teacher-led school prayer and the official veneration of religious symbols such as the Ten Commandments, is an example of Caesar acting outside his proper jurisdiction.

That government has no authority to speak on inherently religious matters is a venerable First Amendment rule designed to protect organized religion—religion that should not want its prayers composed and symbols appropriated by Caesar. A religion that does not resist the state co-opting its sacred objects is flirting dangerously with becoming a civil religion, that is, a subordinate and uncritical booster of American nationalism.

*That government has no authority to speak on inherently religious matters is a venerable First Amendment rule designed to protect organized religion*

B. *Presently before Congress is legislation to lift restrictions in the Internal Revenue Code on churches supporting candidates for elective office, and on churches spending a substantial part of their resources lobbying.* Presently, these two restrictions apply equally to all nonprofit organizations, religious and nonreligious, that are tax-exempt under code section 501(c)(3). Section 501(c)(3) status with the IRS permits an organization's donors to claim a deduction on their individual income tax returns, which is a valuable subsidy for taxpayers.

The proposed legislation would do more harm than good. Part of the idea behind the current tax law is that Congress should not "pay" donors to nonprofits (via the tax deduction) only to have the charity turn around and lobby Congress with its newfound resources. Partly, the idea is that if donors to nonprofit groups want to take sides in a partisan election, then donors (like everyone else) should do so on their own nickel rather than via a tax-favored nonprofit. More fundamentally, the virtue of the restriction on taking sides in partisan elections is that houses of worship will experience harm should their pulpits be aflame with electioneering and party endorsements.

Currently, if churches and other nonprofits desire to use a substantial part of their resources to lobby, they may establish a separate section 501(c)(4) corporation to do so. The ACLU does this, as does a subsidiary of the evangelical group Focus on the Family. Of course, donors to a 501(c)(4) nonprofit may not claim a deduction on their individual returns. This is a prudent trade-off.

What is needed by liberals and religious traditionalists alike is fidelity to the text of the free exercise and establishment clauses, as well as to the historic American church-state settlement. It is in the long-term interest of both organized religion and the body politic—a win-win situation.

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# FINDING Sinai

According to the narrative in Exodus, Moses came down from Mount Sinai with two tablets of stone engraved by the finger of God Himself. The words on the stone were a visualization of the words that God had previously thundered out to the multitude gathered at the base of the mountain.

However, when Moses came down to that same once-awe-struck constituency, he found them dancing around the symbols of idolatry that they had so recently used in Egypt. In frustration—anger—Moses smashed the stones on the ground.

Later God called Moses up to the mountain again and retraced the ten "words" on the new tables of stone. From there they eventually went inside the ark of the covenant between God and humanity—to dwell in priest-guarded isolation behind the inner temple veil.

Given the many golden calves that have characterized human response since, even into the Christian Era, it is probably appropriate that those tables of stone seem to have vanished without trace. They are certainly not on display. At least not the originals!

This issue of *Liberty* comes back to those Ten Commandments, now before our modern mixed multitude. And in some ways the issues are the same. Are we to post them before the golden calf of a secular society, or take them into the temple and allow the mechanism of religious application to activate human behavior?

So much of the Ten Commandment debate in recent years has circled around the issue of constitutional permissibility. Much less of it has addressed whether this is an appropriate way to communicate a religious totem.

There is a rich irony that our nominally Christian society, which tolerates a constellation of immoral behavior, some of it tacitly supported by religious interests, should be so ready to post the Ten Commandments on the walls of the public bathroom. We now speak of the resurgence of moral values since the last election, but at best these are manifested through conflation of several hot button issues with the national interest. I fail to see any real corollary in national spiritual renewal. In fact, I fear that with the attendant polical demonization accompanying this new moral values model we are perilously close to fulfilling Thomas Jefferson's warning that "having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions" (First Inaugural Address).

Let me say right here that my prayer is fervently the one I have often heard from friends in conservative religious circles: "Lord, heal our nation." But is turning the sacred principles of obedience to Deity into public graffiti likely to do that? And how does that comport with the clearly private view of religious devotion enunciated by many of the Founders? In the words of Madison, "the religion then of every man must be left to the conviction and conscience of every man."

I do not believe that America's Founders expected a nation devoid of religion. On the contrary, they presumed it to be a righteous nation, because it was composed of God-fearing people. Jefferson's inaugural previously cited is replete with statements such as "enlightened by a benign religion," "acknowledging and adoring an overruling Providence," and "the happiness of man here and his greater happiness hereafter." Yet this followed a bitter election in which Jefferson stood for the principles of secularity, even to the detriment of his standing among religious interests.

Reading the history of my own church, the Seventh-day Adventist Church, I see how it has long shared the assumption

**The image of Moses from the facade of the Supreme Court.**

that the United States of America has a special role in protecting faith—in guarding religious liberty—not chosen but blessed. In fact, prophetic symbols have always inspired this movement, and Adventists identified one of the markers of the United States they saw explained in Revelation 13 as being Protestantism. The other essential characteristic they identified as republicanism—the principle, not necessarily the party, of course.

But as is true with much of prophecy, there is a warning presented to power. Revelation 13 speaks of the development of a coercive state—demanding obedience to certain "moral" markers.

One hundred years ago *Liberty* magazine was begun because of two developments that Adventists saw as threatening to religious freedom and harbingers of the prophesied intolerance. There were overt legislative efforts to put the force of law behind Sunday observance, and there was a strong push to formally and structurally declare the United States to be a Christian nation.

The Christian America call was essentially a move to establish a particular vision of Christianity under the protection of the state. The Sunday law issue also troubled Adventists, who were already suffering under often restrictive blue laws.

At the time, my church was to the fore in proclaiming the Ten Commandments—often at the risk of being seen as legalistic by Protestants forgetful of the dynamic that had produced the entire Protestant phenomenon. And that Ten Commandment proclamation was sharpened in that crisis by the fact that blue laws and other Sunday legislation were not only religion by coercion, but derived from a misreading/misapplication of the fourth commandment, which clearly identifies the Sabbath as the seventh day— as practiced by Jews and early Christians. Even recently deceased Pope John Paul II in his seminal document *Dies Domini* (1998) acknowledged the seventh-day Sabbath and the lack of any directive from the Lord Jesus Christ to change it—settling instead for an appeal to church authority and analogy of the holy Sabbath with the hope of Resurrection Sunday.

I would be false to the concerns of one 100 years ago if I did not see in the current agitation to post the commandments everywhere the same inclination to use law to impose a particular subset of religious view on all.

Yes, there is an equal and troubling dynamic in the secularists who wish to chase religion—most particularly Christianity—into some mountain hideout, away from public view. We must not allow such antipathy to faith to limit the freedom guaranteed by the Constitution. But in an era of militant moralism, I fear the first threat more.

There is an edge to the view that the United States might be the "lamblike beast" of Revelation 13. In that book, the apostle John allows that this benign power can morph into a fearsome creature that adopts coercive methods. As in life, so in apocalyptic literature there is a dynamic that our response can effect—and I thank God that what is suggested for the future does not have to happen now. I do not want the United States or any other power to fulfill that coercive role. I believe that our response can prevent such a thing from happening now. I am not fatalistic but must remain hopeful and work to create hope.

Under threat from a cruel attack on September 11, 2001, the United States continues to amaze the world at how quickly it "changed" and went on the offensive. Religion in the United States, similarly threatened by secularism, is already showing an ability to overreact constitutionally. We must not fall for any part of the extremist dynamic of other societies under threat that have looked to religious coercion as a means of survival.

Let's put up the Ten Commandments wherever we can. Post them prominently in our homes and repeat them to our children and live them for their emulation. Let's put their principles to work in our public discourse, in our business dealings, in our relationships with other peoples and nations, and share their dynamic in our various holy places. But let's not think that the arm of the law is close enough to Sinai even to dare to presume where God did not.

**Lincoln E. Steed**
Editor,
*Liberty* Magazine

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*If there is one lesson that history teaches with unerring accuracy, it is that no church or religion, no matter what its name, can afford to meddle with politics or receive state support, either legally or financially, without surrendering its spirituality, its freedom and independence, and finally suffering a bitterly humiliating experience as the reward for its own oppressive acts of intolerance and persecution for conscience' sake. The state should remain absolutely neutral in all religious concerns.*

—From "SHOULD THE STATE PROPOGATE RELIGION?"
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