

A MAGAZINE OF RELIGIOUS FREEDOM

TORTURE AND RELIGIOUS LIBERTY

WHEN SPEECH BECOMES DANGEROUS

LIBERTY[®]

MAY/JUNE 2008



TELLING IT
LIKE IT IS

PAGE 4

A NEW LOOK FOR LIBERTY

*Let's remember
where we came
from, what we
left behind, and
what we are
protecting.*



It is shocking to discover that one of the longest running offices of the Inquisition was in Lima, Peru. The New World was early tainted by the horrors of religious intolerance. The Inquisition in Peru lasted from 1570 till 1820.

Today you can visit the state run-Inquisition Museum in modern Lima; off to one side of the busy Plaza Bolívar. Outside is life and sunny Latin optimism; inside it is dank and ominously dark and quiet. No more so than in the lower area, where you can look down onto rows of cylindrical holes sunk into the damp stone floor. Standing in these the incorrigibles languished till they confessed. One gets the feeling that while many doubtless confessed, few of them recovered enough or survived to experience an *auto de fé*, or act of faith, whereby they were publicly expunged. Of course, the official records reflect this in relatively low figures for those fully processed by the Inquisition. The Inquisition functioned both as an effective way to remove any trace of the heretic and, perhaps more important, as an ever-present inhibition for independent religious activity.

Since then we have thought to dig ourselves out of the moral pit exemplified by such methods.

That Peruvian Inquisition was still processing detainees on a certain July 4, 1776, when a unanimous declaration by the thirteen colonies in North America stated: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men." They all were fine Protestant gentlemen who composed this document, and they

surely must have had an inkling of the darkness to their south, even as they remained blind to the mote of slavery in their own eyes. To be sure, no humanistic declaration would dare frame itself otherwise. And no society honest to the words of the Bible held by most of them to be Holy Writ would think to say otherwise. Well, maybe not on that account—down in Peru they chanted the same texts and claimed to be defenders of the faith!

Sixty years ago the General Assembly of the United Nations adopted and advocated the Universal Declaration of Human Rights. The United Nations was founded in the aftershock of World War II. Millions of Jews had been incinerated for a complex mix of reasons that devolved down to them being a religious other—German Christendom being complicit in that Inquisition. Whole cities in Europe and Asia had been firebombed into oblivion. The spores of conflict had ended in a mushroom cloud, which hinted at evil yet to come. Time for sanity and respect for fellow creatures, if humankind were to survive above ground.

Looking over the full text of that 1948 declaration I am struck by the similarity to the U.S. declaration of 1776, and the implicit recognition of a higher moral authority. The first sentence in the Preamble states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Cherry-picking among equally strong Articles, I especially note Article 3: "Everyone has the right to life, liberty and security of person"; Article 6: "Everyone has the right to recognition everywhere as a person before the law"; Article 9: "No one shall be subjected to arbitrary arrest, detention or exile;" and most particularly Article 18, which states that "everyone has

the right of freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public and in private, to manifest his religion or belief in teaching, practice, worship and observance."

If that last Article were universally honored, the majority of international conflicts would cease; for all too many have religious elements. The other articles show a continuing search for the application of those "inalienable" rights that must logically come from being creatures of a Creator. I see the influence of the United States' founding documents in these articles.

How sadly ironic that in the latest round of conflict the United States has not been so careful to honor the inherent rights of the individual. To be sure, there were provocations by radical "religious" extremists. Beheadings and suicide attacks on civilians signaled that they were not bound by any conventions. But surely the principles of the Declaration of Independence and the Declaration of Human Rights do not stand or fall on reciprocity!

In the post-9/11 world we have been led down a well-worn path to regard the enemy as subhuman and not deserving of any regard. "Harsh" treatment and "softening-up" are concepts the media share all the time to little objection. No, we don't torture, we tell ourselves, even as we debate water boarding. After first rejecting the Geneva Conventions for this new model of warfare, those in authority have now led us into a labyrinth of legalisms that ignore the role of morality and issues of human dignity. In short, we are rapidly going back to the world that once was—back to the world when, thinking they were doing the will of God, men mistreated their fellows even in the name of God.

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This magazine rejects the self-serving historical revisionism of those who would reinvent the United States as some sort of structurally Christian republic. But for those who think that way—who think that ours is a manifest destiny from heaven to spread democracy and enlightenment across the face of the earth—I would ask especial care that we honor the principles of the Creator.

For those who see the United States as a purely secular civil society, I say look to our founding documents. Look to the international agreements we are party to. We must respect the dignity of man always.

If, like me, you see the United States as part of the great ongoing story of mankind searching for the higher values of civil and religious freedom, then you must have concern for the moment. If, like me, you are jealous for our continued religious liberties in the United

States, then you must find concern at how easily we have put away some of the assumptions that undergird religious freedom. The end does not justify the means! An enemy is not an animal or a thing to treat in any manner we are moved to. We do not treat people a certain way just because it might come back to us in kind someday—but because human decency and the Word of God call us to charity.

A new look for liberty? I hope religious liberty continues and flourishes. I fear that in the doublespeak of the present civil debate we may move on to a different model. You know what I mean: we may have harsh methods involving the pain of organ failure or death, but we do not torture!

Let's remember where we came from, what we left behind, and what we are protecting.

And, yes, there is a different look to this issue of *Liberty* magazine. You are bound to notice some differences and I hope they are all positive. For some decades now *Liberty* has been designed

by Jeffrey Dever and his capable team. I wish to thank Jeff for a job well done. Just looking at the cavalcade of covers on display at our editorial office reminds me of how vibrantly they succeeded. Now with this issue we move into the era of designer Bryan Gray, and you should expect to see similar reminders of design excellence as he translates our articles into a visual whole. Welcome aboard, Bryan.

Liberty is about a serious topic: freedom of religion in a rapidly changing and increasingly dangerous world. Look to us to stay the course.

Lincoln E. Steed, Editor
Liberty magazine

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DECLARATION of Principles

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

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

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

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

WITNESSING
FOR ONE'S
FAITH MEANS

TELLING IT LIKE IT IS



There's a whole lotta shakin' goin' on in Blount County, Tennessee, where folks seem hardly able to open their mouths or tap their keyboards without retracting their statements shortly thereafter. At the center of this tempest is Judge W. Dale Young, who presided

in three related cases—related in that they all involved women and in that some people say his courtroom behavior went out of bounds.

Wright Was Wrong?

The case that kicked off the controversy appears to have dealt with Judge Young's dismissal of an order of protection for Kathy Wright, but

the original article detailing it pulled a vanishing act when *The Daily Times*, which published it, printed a retraction and yanked the original article from its Web site. Suffice it to say that the Wright case has been reduced to "he said, she said," the most inflammatory point being whether or not, as one blogger accused, Judge Young actually dismissed an order of protection for



"ALWAYS BE PREPARED
TO GIVE AN ANSWER
TO EVERYONE WHO
ASKS YOU TO GIVE THE
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BUT DO THIS WITH
GENTLENESS AND
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CLEAR CONSCIENCE,
SO THAT THOSE WHO
SPEAK MALICIOUSLY
AGAINST YOUR GOOD
BEHAVIOR IN CHRIST
MAY BE ASHAMED OF
THEIR SLANDER. IT IS
BETTER, IF IT IS GOD'S
WILL, TO SUFFER FOR
DOING GOOD THAN
FOR DOING EVIL"
(1 PETER 3:15-17, NIV).

Kathy Wright for domestic assault.

The Daily Times, in its retraction, says, "Any implication that the Blount County Circuit judge [Young] did not issue an order of protection despite charges of domestic assault, an indictment or criminal trial is retracted."¹ The retraction further says that "regarding accusations of domestic assault against Mr. Wright, the ex-wife signed a pleading indicating there was no abuse, accord-

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ing to court records. The issue of physical abuse was not an issue raised by either party before Judge W. Dale Young."² It's interesting to note that Rick Laney, the reporter who wrote the story, is not associated with the retraction. Max Crotser, the publisher, posted it.

However, according to Thomas F. Mabry, Kathy Wright's lawyer, in a post to blountviews.com, the article was retracted not because of errors in Laney's story, but because of the threat of a lawsuit. He also states that the documents in question do exist and copies were delivered by Laney to the law firm which represents *The Daily Times*, including: "a true bill evidencing and documenting facts of abuse against Kathy Wright by James C. Wright, and court transcripts of the order of protection hearing; documents which were and are present in the Wright file and which order of protection (including the abuse allegations since [they] were present in the file) were heard before Judge W. Dale Young."³

Act II

Before the turmoil had even settled on the troubled waters surrounding the Wright case, Judge Young was again in the spotlight for allegedly telling a Nicaraguan woman to "go back to Nicaragua." Anna (or Ana, depending on which article you read) Calixto was in Judge Young's courtroom seeking an order of protection from her husband. Reporting on this new case, Rick Laney found, "[a]ccording to Young's office, there was no clerk or court reporter present during the Calixtos' hearing and there is no transcript, recording, or documentation of what was said."⁴ It's hardly surprising, then, that "later, secondhand accounts of the courtroom exchange indicate that Judge W. Dale Young's admonition to the woman may not have been accurately portrayed in initial reports. . . .

In the published reports, the woman said she showed the judge a temporary worker permit, but there were some at the meeting Thursday who said they understood that the woman's immigrant papers were years out of date and that Young's admonition was to go back to Nicaragua and get new, valid papers."⁵ Nor would it raise eyebrows that Laney, in a continuation of his initial story, writes that Calixto's current employment authorization card from the U.S. Department of Homeland Security and the U.S. Citizenship and Immigration Services Department, of which *The Daily Times* obtained a copy, is, in fact, valid through January 5, 2009.

The Plot Thickens

Regardless, reading about Calixto's alleged treatment at the gavel of Judge Young is what prompted Jo Anne White to call Rick Laney and offer to tell her own story. "I watched her for weeks in the paper," says White. "She didn't have court reporters; people didn't believe her story. It was this person's word against that. I knew what had happened to me in the courtroom with Judge Young, so when I heard the ACLU and other unions were going to Nashville to try to get him off the bench, I had to do something. I just couldn't stand to let this girl go through that. So, I called the newspaper, *The Daily Times*, and talked to Rick Laney and told him I had a story.

"It was back and forth for three weeks. I was going to do it; I was not going to do it. I didn't want it to be in the paper because of my children; that was my biggest thing. But I decided at the last minute to go ahead and go for it."

Although most Christians know in the back of their mind that it's possible they'll be called on the stand and asked to defend their beliefs, few of them actually believe it will really happen and even fewer go through the actual experience. In Judge Young's courtroom, Jo Anne White became one of those few people in the latter category. In a final divorce hearing involving the custody of her two teenage children, 16 and 17 years of age, White was asked about her religious beliefs. Extensively.

"I knew that they were going to do this," White says, "but I didn't know how hard it was going to be. I was told not much [religion] goes in the courtroom."

Between them, Judge Young and Craig Garrett, her ex-husband's attorney, asked her questions about subjects including the mark of the beast, the fourth commandment, the reformers, the Sabbath changing from Saturday to Sunday, the papacy, worship, the seal of God, and recognizing the Sabbath and keeping it holy. Though he pro-

tested many times, her own attorney, Kevin Shepherd, was unable to deter the line of questioning.

The transcript records: "Mr. Shepherd: Your Honor, I'm going to object. I feel like the court is attacking my client's religious beliefs.

The Court: I'm not attacking anybody. I just want to understand what she's talking about."⁶

"They just kept on," says White. "He [Judge Young] didn't tell Craig Garrett to stop the line of questioning; he told Kevin Shepherd to basically sit down. I was up there helpless. Kevin couldn't help me and he [Judge Young] did not tell Craig Garrett to be quiet. He kept asking me questions."

The transcript reads: "The Court: Well, I would like to understand it, I really would, and I'm not trying to harp on you or put you in a box. But you've got to tell me—you've got to explain it to me."⁷

White says: "I didn't know if I was going to go to jail for not answering or what. I had no clue what would happen to me. It was about an hour. They absolutely beat me to death. They were mocking. They were having a fun time at my expense; that's what they were doing. And it lasted so long that my witnesses couldn't even get on the stand. It was the most humiliating thing I've ever been through in my life."

White believes a simple letter to the editor kicked off the whole courtroom circus. The previous summer she'd written two letters to the editor of a local newspaper after seeing several letters others had written about the Sabbath and the seal of God. In her first letter, she wrote a succinct and thorough explanation of the Sabbath. The second offered a reward to anyone who could show her where the Bible changed the Sabbath from Saturday to Sunday. It was this second letter, she says, that Garrett used to open the way for all the religious questioning to follow.

"That's where it all spun off in the courtroom," White said. "Craig Garrett brought it up." She said he asked her questions about where she went to church and then said, "Well what's up with this newspaper article?" According to White, "it just took off from there."

Did He or Didn't He?

So was she religiously persecuted? That depends on what you feel persecution involves. Her attorney, Kevin Shepherd, doesn't believe so. "I hesitate to use the word *persecuted*," says Shepherd. "My concern was that the issues that were really part of this case didn't require the judge to go as far as he did. It just seems he went further than was necessary, even to the point

of questioning beliefs and religious doctrine." The religious issues don't appear, however, to have had any bearing on Judge Young's ruling. Shepherd says the judge's custody decision was based on the ages of the children, who are both teenagers, and their preference to live with their father, not on White's religious beliefs.

Why, then, were her religious beliefs even an issue in the courtroom? "Well, that's what bothered me," says Shepherd. "It really wasn't an issue, and my concern was that Jo Anne really felt mocked. You could tell by watching her on the stand that she was feeling very uncomfortable. And I think she truly felt that she was being attacked."

The Bottom Line

While White's ordeal might not stand up under the legal definition of persecution, most people would probably agree that what she went through would classify as religious persecution to them any day of the week if they



"I DIDN'T KNOW IF I WAS GOING TO GO TO JAIL FOR NOT ANSWERING OR WHAT. I HAD NO CLUE WHAT WOULD HAPPEN TO ME."

were the ones on the stand going through it. The irony of it is that although the case wasn't even about religion, that was nevertheless the main topic of conversation.

"I gave an hour-long Bible study course to a judge in a courtroom where church and state are supposed to be separated," says White. "That's the bottom line."

This tempest, like others, will eventually blow over. Life will get back to what passes for normal. But don't be surprised if the tempest jumps from the teapot straight into your own cup. Life is like that, as Jo Anne White can testify. It pays to be prepared and to consider how *you* might defend *your* hope when the time comes.

Celeste Perrino-Walker is a much published author of books and articles, with a long-standing interest in legal "conundrums." She writes from Rutland, Vermont.

¹ "Retraction and Apology," *The Daily Times* (Maryville, TN), November 11, 2007.

² *Ibid.*

³ "Wright Article Retraction? Very Hot at the D7!!!!" www.blountviews.com/node/334#comment-1245.

⁴ Rick Laney, "Immigrant: Judge Told Me to Go Home," *The Daily Times* (Maryville, TN), September 12, 2007.

⁵ Robert Wilson, "Resolution of Support for Judge Tabled," *Knoxville News Sentinel*, September 21, 2007.

⁶ Court transcript

⁷ Court transcript



For our courts it's often

A Matter of

BY RICHARD A. EPSTEIN

A sharply divided Supreme Court in *Hein v. Freedom From Religion Foundation* held that President Bush's faith-based initiatives

could not be challenged in federal court as a prohibited state establishment of religion.

Hein said nothing about the merits of the underlying challenge, but relied instead on the constitutional rule that denies taxpayers "standing" to sue.

Many liberals criticized the decision because it erodes the line between church and state. Many conservatives have hailed the decision for the opposite reason. I think the liberals have a point on the merits—but quite apart from the merits, conservatives who cheer *Hein* make a critical mistake. Any defender of limited government who believes in an originalist interpretation of the Constitution should reject, root and branch, the Court's hostility to taxpayer standing.

"Standing" doctrine holds that only certain individuals are in position

to challenge the constitutionality of various government actions. Today's basic rule allows challenges only from parties with a distinct "pocketbook interest," such as personal injury or contract loss. That rule blocks taxpayers from suing to stop action that they claim lies outside congressional or executive power.

The doctrine arose from two companion suits brought in 1923 against Andrew Mellon, then secretary of the treasury, to block the collection and expenditure of funds under the 1921 Maternity Act, which offered to cooperating states federal grants intended to reduce infant and maternal mortality. Any state could opt out of the grant—but its citizens could not opt out from the taxes needed to fund it. Massachusetts and Mrs. Frothingham sought to stop a program they claimed was exclusively of local concern under the Tenth Amendment, which reserves powers not delegated to the federal government to the states. Justice Sutherland, writing for a unanimous court, ducked the substantive issue by denying

standing to both plaintiffs.

Since then, the one major exception to the standing doctrine surfaced in 1968 in *Flast v. Cohen*, which did allow taxpayers an establishment clause challenge to the payment of federal funds to religious schools. *Hein* asked whether the *Flast* exception allowed taxpayers to challenge discretionary executive branch expenditures in support of faith-based initiatives. The upshot was a three-way split. Justice Alito, writing for the chief justice and Justice Kennedy, held the *Flast* exception did not. Justices Scalia and Thomas wanted to deny taxpayer standing across the board, overruling *Flast*. That uneasy coalition tossed the foundation out of court. Justice Souter, speaking for Justices Stevens, Ginsburg, and Breyer, argued that *Flast* governed.

Taxpayers Have Every Right to Challenge Unconstitutional Government

They all addressed the wrong question: the proper rule should allow all taxpayers free rein to challenge either Congress or the



f Standing

executive branch for overstepping their constitutional authority.

At stake is whether judicial review itself remains as a check on the political branches. Blocking taxpayer standing often leaves no one to challenge congressional or presidential actions as inconsistent with our basic constitutional design—allowing both branches to act in areas where they have no constitutional authority.

Many conservatives might react in horror: high-flying legal theory should never be invoked to manufacture new powers for the federal courts. But limits on taxpayer standing do not derive from any textual command. They rest on a serious misreading of the constitutional text, which contains no standing requirement at all.

Article III states that “the judicial power [of the federal courts] shall extend to all cases, in law and equity.” Therefore follows a discrete list of various disputes over which that power shall be exercised: suits arising under the Constitution and federal laws, suits to which the U.S. is a party, and the like. Nothing

about this limits who counts as a proper plaintiff. It is therefore a supreme sleight of hand to assume that Article III justifies this self-imposed limit on judicial power.

Quite the opposite. The pocket-book or discrete injury requirement of standing is rightly implied for cases “in law”—that is, the old common-law courts—where only damages could be awarded. But from well before even the federal constitution unified state and federal courts, courts could use their powers of equity to issue injunctions to stop the illegal actions, or local governments at the instance of shareholders, members, or taxpayers.

Justice Scalia therefore takes a blatantly antioriginalist position by reading into the Constitution a limitation found neither in its text nor its basic structure, nor in the general judicial practice running deep in our history. *Hein* does not involve a question, as he says, of “mental displeasure” on the part of members of the Freedom From Religion Foundation. The question is about the structural integrity of

our government under the Constitution.

It is not *Flast* that needs to be overturned, but *Frothingham v. Mellon*.

There are high stakes here in the ongoing debate between majoritarians and limited government libertarians.

Majoritarians may think that our Constitution is simply a blueprint to organize democratic politics. But its elaborate system of separation of powers, checks and balances, and individual guarantees reveals a far more complex structure.

These issues have and will replay themselves in areas from national security to environmental protection, where federal legislation and executive initiatives could raise serious constitutional questions. When they do, our commitment to limited government calls for a full and substantive analysis, not an artful dodge by unprincipled procedural tricks.

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WHEN SPEECH BECOMES DANGEROUS

BY JONATHAN GALLAGHER

THE FUTILITY OF MAKING THE UNACCEPTABLE ILLEGAL

Seven years jail for gay hate preachers" announced Britain's *Telegraph* newspaper on October 9, 2007, reporting government plans to introduce new hate speech legislation to the U.K. Parliament.¹ This follows on from new "religious hatred" legislation, already passed, that became law a week previous.

One response to this new proposal came from an intriguing source—the English comedian Rowan Atkinson who plays the role of "Mr. Bean." (Having once stood in the middle of Hong Kong Airport watching this very visual humor [no sound necessary] I can personally testify that at least a dozen different nationalities present were finding him very funny.)

So it's a little strange that a comic should be writing to *The Times* (of London) to protest such heavyweight issues, perhaps. In his letter, Atkinson makes the telling point that even those in the presumed victimized minority do not see the need for such legislation, and that the proposals end up in a sadly futile exercise to legislate what is far more of a social than a legal problem. Even worse, says Atkinson, is the detrimental effects on freedom of speech. He ends his letter like this:

"This 'tick the box if you'd like a law to stop people being rude about you' is one way of filling the legislative program, but there are serious implications for freedom of speech, humor, and creative expression.

"The devil, as always, will be in the detail, but the casual ease with which some people move from finding something offensive to wishing to declare it criminal — and are then able to find factions within government to aid their ambitions — is truly depressing."²

This comes in the same week as U.K. news reports that:

Catholic adoption agencies are having to close down their operations rather than follow government demands that they agree to place children with homosexuals.

A very successful foster couple who have looked after 28 children are now being forced to resign because they refuse to sign that they will promote homosexuality as valid to children as young as 11, which is in complete conflict with their Christian beliefs.

ILLUSTRATION BY SCOTT BAKAL

A magistrate felt obliged to resign from his post because he was refused permission to opt out of decisions to place adopted children with same-sex parents.

Some may take such news reports as proof that compelling people to act against their religious beliefs is absolutely necessary. Others may see such actions as heavy-handed government interference in people's personal convictions. Whether any attitude is offensive is very dependent on the perspective of both parties—the offender and the offeree. Most disturbing is the desire to criminalize beliefs, offensive or otherwise, as Atkinson observed.

So will it really be “Seven years jail for gay hate preachers”? In a desire to be nondiscriminatory, equal, and nonoffensive, a number of countries have passed legislation to combat what they identify as “hate speech.” The results have hardly been inspiring.

The case of Ake Green, a Pentecostal pastor in Sweden, has received much coverage. He was convicted of hate speech against homosexuals. The prosecutor in the case is reported as saying: “One may have whatever religion one wishes, but this is an attack on all fronts against homosexuals. Collecting Bible citations on this topic as he does makes this hate speech.”³

While it may be that the sermon went beyond simply a recitation of Bible texts, and while there are other aspects to this case that deserve attention, it is true that Pastor Green did receive a prison sentence before the case was overturned on appeal by the Swedish Supreme Court.

A Canadian case parallels that of Green. In 1997 Hugh Owens of Regina, Saskatchewan, Canada, placed an ad in a local newspaper with four Bible verses condemning homosexuality, together with a sign indicating homosexuality was not allowed. He was tried and convicted, together with the newspaper, of breaching the Saskatchewan Human Rights Code, and ordered to pay damages. In the first appeal, which was denied, Justice J. Barclay in his judgment observed in connection with Leviticus 20:13 that “the biblical passage which suggests that if a man lies with a man they must be put to death exposes homosexuals to hatred.”⁴

Owens won on appeal to the Saskatchewan Court of Appeal, which said the ad did not contravene the code.

What both cases do reveal is that some, including those within the judiciary, do believe that quoting the Bible on homosexuality is indeed hate speech.

Commenting on the case, Janet Epp Buckingham, director of Law and Public Policy and general legal counsel for the Evangelical Fellowship of Canada in Ottawa, wrote:

“I, for one, do
NOT BELIEVE IT IS
PARTICULARLY
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RELIGIOUS
beliefs.”

“I, for one, do not believe it is particularly Christian to go around condemning people and then claim that it is part of one's religious beliefs. Nevertheless, once an issue like this gets to court, and the courts start dealing with religious freedom, Christians need to be there to ensure that Christians do not lose the ability to distribute Scriptures or the ability to speak publicly on sexual morality as a side casualty in the legal process. At the Saskatchewan Queen's Bench, the judge ruled that Leviticus 20:13 promotes hatred against gays.”⁵

Hate speech on the global scene

So what of the wider aspects of religious free speech that can be regarded as hate speech? Various countries are considering, or have already adopted, hate speech legislation that includes religious hate speech, with some exclusions based on religious conviction. The United Nations has been occupied (some might even say preoccupied) with such issues, especially since the Danish cartoon controversy. As a result, various proposals to deal with “defamation” (UN-speak for hate speech) have been floated, particularly at the UN Human Rights Council in Geneva. The latest round has seen defenders of religious liberty and freedom of expression in conflict with such organizations as the Organization of the Islamic Conference (OIC), and even the Human Rights Council (which as currently composed has a majority of Muslim countries).

Asked to prepare materials dealing with the issue of defamation, UN special rapporteurs Doudou Diene and Asma Jahangir have made clear the position that while not defending incitement to religious hatred, no religion or believer can expect to be free from criticism.

“... international human rights law protects primarily individuals in the exercise of their freedom of religion and not religions per se. ... The right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule. ... Defamation of religions may offend people and hurt their religious feelings, but it does not necessarily, or at least directly, result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”⁶

In fact, hate speech legislation relative to religion can be seriously counter-productive, they note.

“In a number of states, in all regions of the world and with different religious backgrounds, some

forms of defamation of religion constitute a criminal offense. While the different responses to such defamations depend on various factors, including historical and political factors, criminalizing defamation of religion can be counterproductive. The rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash. There are numerous examples of persecution of religious minorities as a result of excessive legislation on religious offenses or overzealous application of laws that are fairly neutral. As a limit to freedom of expression and information, it can also limit scholarship on religious issues and may asphyxiate honest debate or research.”⁷

Speaking in New York on October 25, 2007, shortly before her detention under house arrest in Pakistan, Jahangir observed that “objective criticism of religion is a human right,” and that “defamation is sometimes stretched to include criticism. If some definitions of defamation are adopted, social norms based on religion could not be debated. Defamation is an issue of civil law, not a violation of human rights.” She also critiqued blasphemy laws that are used to silence dissent. Religion and race are sometimes compared to each other, she said, and then the provisions against racial hatred are applied to religion. But, she observed, “religion is unlike race—you cannot proselytize to change one’s race. There are serious differences. “Additionally, there is not a consensus among states on fundamental issues, such as conversion. Some are not willing to accept the idea of leaving a faith community.”⁸

So, how best to deal with true religious hatred, rather than objective criticism (though, as already noted, much depends on the individual perspective)? Jahangir again:

“It is my firm belief that religious hatred can best be combated by sound policies and by building strong public opinion against it. However, taking disproportionately harsh action could be counterproductive and degenerate into witch-hunting.”⁹

Incitement to violence is already illegal in most countries, so the very real question is why extra legislation is needed to specifically ban hate speech. Added to this is the question of definition, especially in religious matters, because what may be offensive to some is not to others. This leads governments and judiciaries onto the dangerous ground of determining whose religion is “right.”

Added to this is the issue of the correct response to “offense.” Is it legitimate to riot and kill innocent people because one’s religious feelings have been outraged? The threat of violence in response to religious challenge is just as much a violation of human rights as is any presumed hate speech.

IS IT
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The implementation of hate speech legislation, particularly in the religious sphere, has resulted in serious issues of free speech restriction and violation of religious rights. Perversely, those targeted by such laws often use these same laws to silence dissent, while in other cases the very minorities who are being “protected” end up on the wrong side of the law.

One person’s gibe is another’s offense, and there’s the rub. Definitions and connotations are hard to pin down. What is said is different than what is heard. Communication is not exact. In a democratic society, issues of rights are always a question of balance. Criminalizing religious speech that some may find offensive (and who determines this?) will chill debate and prevent objective analysis. Antidefamation proposals are *intended* to remove religious debate from the public arena. Any comment that may seem in any way adverse could result in charges of hate speech. Is that what we really want to happen, however much we are persuaded of the importance of protecting others from hate speech?

The old proverb that “sticks and stones may break my bones, but words will never hurt me” may not say it all, but surely it is agreed that it is the *actions* of hate that maim and kill. Words play a role in the incitement to such violence, and any such incitement is already deemed illegal.

George Orwell in 1984 pointed out the dangers of thought-crime legislation. Policing ideas and speech is surely a highly dangerous practice. The result is a totalitarian society where even thinking wrong is a crime. In order to achieve harmonious thinking, freedom of thought and conscience is condemned. Is that our preferred future? “If liberty means anything at all, it means the right to tell people what they do not want to hear,” Orwell concluded.

Ultimately, hate speech laws do indeed express “the sad futility of making the unacceptable illegal.”

⁷ www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/09/ngay109.xml

⁸ Rowan Atkinson letter to the editor, *The Times*, November 7, 2007, available at www.timesonline.co.uk/tol/comment/letters/article2820029.ece

⁹ www.cwnews.com/news/viewstory.cfm?recnum=30655

⁴ The full text of the judgment can be found at www.canlii.org/en/sk/skqb/doc/2002/2002skqb506/2002skqb506.html

⁵ jmm.aaa.net.au/articles/15940.htm

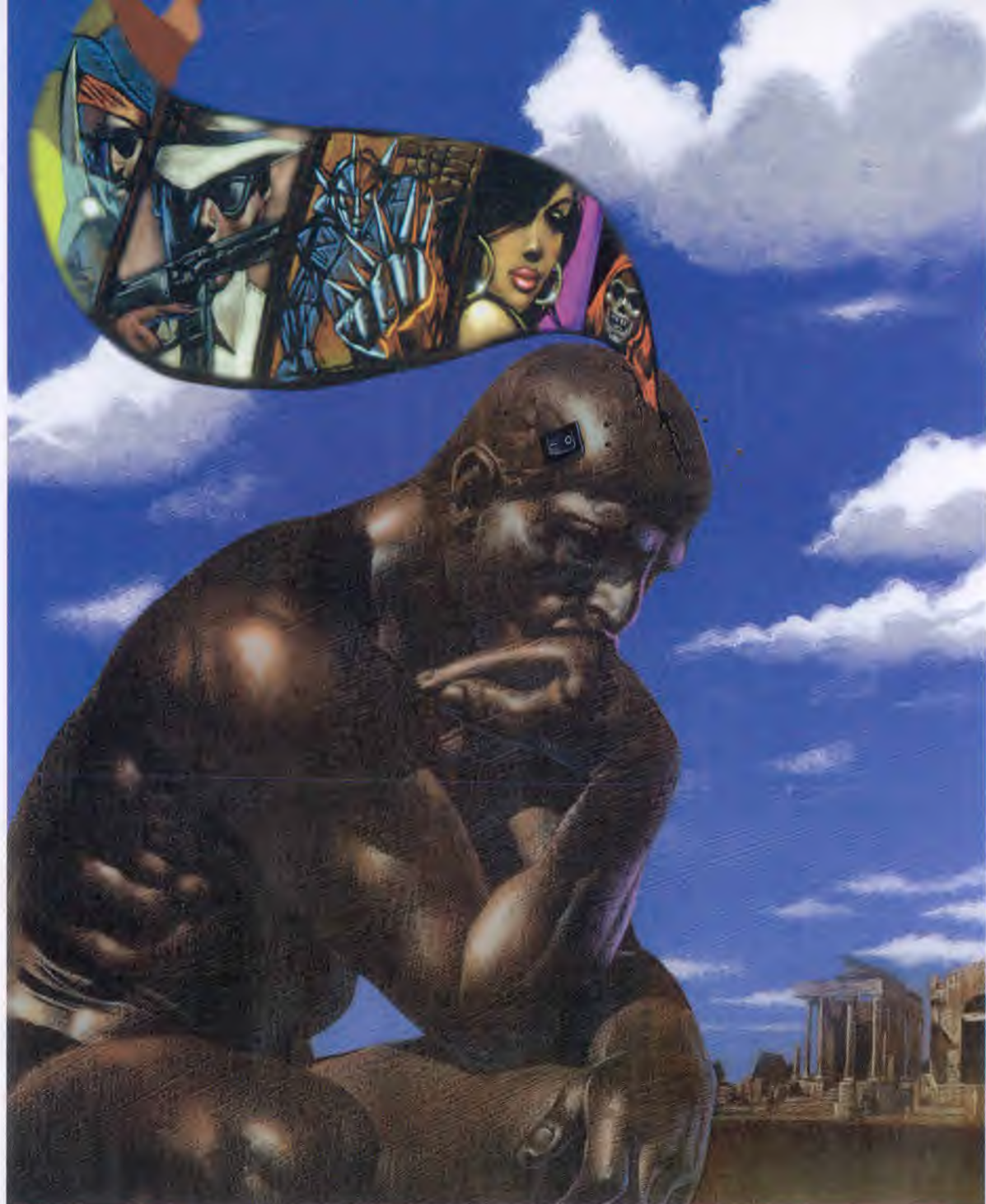
⁶ A/HRC/2/3, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/139/90/PDF/G0613990.pdf?OpenElement>

⁷ *Ibid.*

⁸ www.irla.org/news/2007/oct07.html

⁹ January 24, 2007, statement to the IRLA World Congress (Ref: G/SO 214 [56-20]), available at www.irla.org/congress/doc/IRLA-address.pdf

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FREE WILL

FACT OR FICTION

British scholar Roger Smith, in his book *Being Human* (Columbia University Press), maintains that "the notion of self-creation and the notion of freedom are intimately connected." This idea is evident when

he quotes modern author Iris Murdoch as saying: "Our freedom is not just a freedom to choose and act differently, it is also a freedom to think and believe differently, to see the world differently, to see different configurations and

BY HAVEN BRADFORD GOW

describe them in different words.”

Implicit in Professor Smith's philosophy of freedom is the view that human beings are qualitatively different from mere animals and the rest of physical nature. In his book *The Difference of Man and the Difference It Makes* (Fordham University Press), the eminent American scholar Dr. Mortimer Adler argues that humans differ from animals because they possess the inherent capacity to reason, conceptualize, utilize and comprehend symbols, and engage in prepositional speech. And, as Dr. Adler insists in his two-volume work *The Idea of Freedom*, humans possess the inherent capacity to make free choices and judgments.

By freedom of the will, Dr. Adler means the natural freedom of self-determination! A freedom that is possessed by all men, by virtue of a power inherent in human nature, whereby man is able to transform his own character creatively by deciding for himself what he will become or do. In this sense, man's choices are self-caused and are not determined by processes beyond his control.

One of the most important questions that moralists, psychologists, philosophers, and theologians must deal with is the issue of freedom of the will: that is, are our thoughts and actions freely chosen, or are they in fact determined by processes outside of our control? If our thoughts and deeds are freely selected, then we may be held morally and legally accountable for our actions.

This writer recently asked several outstanding scholars for their responses to the following question: Some scientists and psychologists insist there are drugs so powerful that they can change the way a person thinks and acts. If there are drugs so powerful that they can make a person act or think in a manner that is out of character or contrary to what he or she wants to think and act, then does that mean that freedom of the will is simply an illusion?

Dr. Cornelius Plantinga, Jr., a prominent theologian and author at Calvin College, Grand Rapids, Michigan, pro-

vided this response: “Human beings have been endowed by their Creator with moral responsibility that depends upon a further endowment, significant freedom of the will. . . . If nothing happens to interfere with these features a person will always have them: moral responsibility that is predicated upon significant freedom of the will. . . . But can something interfere with the freedom upon which moral responsibility depends? Absolutely. A person might become mentally ill and not be able to stop himself from flying into uncontrollable rages and slandering everybody he can think of. A person might be captured by an enemy terrorist group and successfully brainwashed in such a way that a person's thinking about love and hate, for example, gets all turned around.”

Yet, as Dr. Plantinga observed, “it doesn't follow that freedom of the will is an illusion, any more than it would follow that freedom of motion is an illusion in case we can show that, after taking a neural paralyzer, a person lacks it.”

The author of several fine works and a professor of philosophy at Boston College, Dr. Peter Kreeft provided this

“That drugs can alter character and remove free will does not disprove free will; it assumes it, as theft assumes wealth and dieting assumes fat.”

answer: “Already, without drugs, I can remove your free will by an ax applied to the center of the brain, or effective hypnosis. That drugs can alter character and remove free will does not disprove free will; it assumes it, as theft assumes wealth and dieting assumes fat.”

James Likoudis, a historian and president emeritus of Catholics United for the Faith, furnished this reaction: “All who have acknowledged the existence of free will as a constituent aspect of the spirituality of the human person have acknowledged that the moral freedom

of the person may be so lessened by other factors (conscious or unconscious) that there may be no or little culpability of moral guilt for the committance of an immoral or criminal act or bizarre behavior. . . . However, the normal person, aware of his own mental life and striving to know himself amidst the complexity of motive-factors impinging on his human psyche, remains only too aware of the direct testimony of his consciousness; that with respect to many actions he does possess a real freedom of choice, or free will.”

Dr. K. Hamdan, a psychiatrist with Delta Community Mental Health Services, Greenville, Mississippi, also provided an illuminating answer. According to Dr. Hamdan, after many years of counseling in the psychiatric profession, he has found no evidence to support the view that a person's freedom of will has been destroyed or impinged upon by genetic or biological factors. If a person engages in violent behavior, said Dr. Hamdan, it is not because of his genetic makeup or because he was “born that way.” Instead, said Dr. Hamdan, people at a young age develop



certain negative patterns of thought and behavior that reveal themselves in violent actions. He observed that if a child is constantly exposed to domestic violence, or continuously watches violent television programs and movies, he or she may be conditioned to respond violently to something or someone he encounters. People, insists Dr. Hamdan, have free will and are responsible for their behavior.

Haven Bradford Gow is a TV and radio commentator and writer who teaches religion to children at Sacred Heart Catholic Church in Greenville, Mississippi.

TORTURE AND RELIGIOUS LIBERTY

THE
QUESTIONS
WE
SHOULD
BE
ASKING

BY LAWRENCE SWAIM

ILLUSTRATION BY BRAD HOLLAND

Torture is a demonic outbreak of radical evil at the heart of the social contract between the individual and the state. In our time it is usually the product of religious hatred, and is typically supported by people who believe in religious war. It shouldn't surprise us, then, that those who torture would use attacks on religion to achieve their goals. But it should disturb all Americans that interrogators at the US Naval base at Guantanamo Bay are alleged to practice just such obscene forms of so-called "enhanced interrogation."

Four former detainees at Guantanamo—Shafiq Rasul, Asif Iqbal, Rhuheh Ahmed and Jamal al-Harith—are litigating in *Rasul vs. Rumsfeld* to hold government officials accountable for torture they endured while being held there. (All were found innocent of terrorist activity and released in 2004.) Represented





Restraints used for transporting detainees to Camp X-Ray, one of the holding facilities for Taliban and Al-Qaeda detainees.

(U.S. Navy photo)



by the Center for Constitutional Rights, the four British citizens first cited violations of the United States Constitution and international law (including beatings, painful shackling, interrogation at gunpoint, use of dogs, extreme temperatures, and sleep deprivation), but the court refused to consider them because they occurred in the “course of war.” Allegations of deliberate attacks on religion were not so easily ignored, however, and are currently being considered by an appeals court in Washington, D.C.

The former detainees allege that they were forced to shave their beards, were systematically interrupted while praying, denied the Koran and prayer mats, made to pray with exposed genitals, and forced to watch as the Koran was thrown into a toilet bucket. Obviously, the only reason for such abuse would be to crush inmates psychologically by insulting their religion. Therefore it could, if proven, violate the Religious Freedom Restoration Act of 1993, which seeks to protect religious expression.

The RFRA was originally passed by a broad interfaith coalition including the Conference of Catholic Bishops, National Council of Churches, American Jewish Committee, National Association of Evangelicals, the Seventh-day Adventist Church, and the Baptist Joint Committee for Religious Liberty. They came together again recently to submit friend-of-the-court briefs on behalf of the four plaintiffs.

The Baptist Joint Committee general counsel K. Hollyn Hollman was in the district court of appeals on September 14th when arguments were made using the RFRA.

The appeals court dwelt especially on definitions of the words *person* and *religion* as used in the Religious Freedom Restoration Act. The Justice Department argued that Guantanamo detainees might not be “persons” as defined by RFRA.

There is a bizarre quality to the alleged misconduct at Guantanamo, as though military personnel were making it up as they went along. Were U.S. personnel experimenting with religion-specific forms of torture, aiming to manipulate religious symbols and sensibilities as a form of psychological abuse? If so, Guantanamo

detainees had little information that would help America catch terrorists—interrogators found only a small number of “high-value” detainees who were actually guilty of anything. Jamal al-Harith, one of the four plaintiffs, reports that he falsely confessed under torture to being an associate of Al-Qaeda, but was later cleared.

Many detainees at Guantanamo ended up there because they were soldiers or low-level functionaries sold to the Americans by Afghan warlords; at least one—still held at Guantanamo—is a journalist. Yet Donald Rumsfeld denounced detainees as the “worst of the worst.” How could an American secretary of defense make such a public statement, when to do so would surely prejudice any future trial? So defined, as irredeemably dangerous, they were convenient guinea pigs for various kinds of interrogation based on religious hatred, insult, and humiliation.

Any act that causes “severe pain or suffering, whether physical or mental” is considered torture under the UN Convention Against Torture. Today’s state-sponsored torture tends, if it is not halted in its early stages, to become more violent, more invasive, more religion-specific, and more sexualized. It is also much more likely to cause death.

At Abu Ghraib, torture continued to be calibrated specifically to offend Muslim sensibilities. In the process it became markedly more sexualized, since military and intelligence personnel believed sexual acts were especially humiliating to Muslims. Besides being forced to engage in sexual acts that were photographed, allegations include rape of men and women (some of them filmed), sodomy with objects, beating arms and legs that were already broken, pouring acid into wounds, and forcing female inmates to strip in order to film them. At least one Iraqi died while being tortured. Yet according to the International Committee of the Red Cross, the vast majority of detainees in Abu Ghraib were innocent of any terrorism. (Most of them were apparently petty criminals, the developmentally delayed, and the mentally ill.)

Nor was there apparently any plan to get any particular kind of information. In the most publicized cases, there wasn’t even anything that

could be called interrogation. All that these detainees really had to offer was the religion they apparently had in common, Islam—and the opportunity for the military and the CIA to refine methods of abuse tailored to a perceived religious affiliation.

Religious hatred is a theme that comes up often in torture narratives. It was testified by defendants under oath that in 2004 a young taxi driver was taken into custody in Afghanistan at a military detention center near Bagram Air Base. He was tortured over a period of 24 hours, even though the people torturing him knew that he was innocent of any crime. Every time he was struck, he would cry out “Allah!” This reportedly amused some military personnel. He was beaten as he hung from the ceiling of his cell until he died some 24 hours later. (He was one of two prisoners beaten to death at Bagram just down the hall from the commander of the detention center.)

Some Americans were ultimately prosecuted for the Bagram torture, although the majority of the estimated 27 people involved were never charged, including the commander. While low-level perpetrators of torture are often prosecuted when the abuse is discovered, most aren’t, nor are higher officers usually prosecuted. Prosecution of civilian intelligence officers is practically unknown. Nor are torturers in the CIA’s secret prisons held accountable; nor are those government officials who arrange for “extraordinary rendition,” a process by which Muslims are sent to third-party countries to be tortured. (Those who assume that such detainees are invariably terrorists should consider the case of Maher Arar, a Canadian who was completely innocent, yet sent to Syria and tortured for ten months.) The real problem is Why are Americans torturing at all, and what gives perpetrators the idea



Detainees pray, Jan. 24, 2008, at Guantanamo’s Camp Four. (JTF Guantanamo photo by MC3 Joshua Bruns)

Were U.S. personnel experimenting with religion-specific forms of torture, aiming to manipulate religious symbols and sensibilities as a form of psychological abuse?

Surgical masks provided to detainees keep the Koran off the floor.

(U.S. Dept. of Defence)



that they can do so with impunity? The Center for Constitutional Rights coordinates the work of more than 500 pro bono lawyers representing Guantanamo detainees. In a statement to the press, Eric Lewis explained his organization's goals and legal strategy in this way: "The detainees at Guantanamo have been subject to deliberate humiliation because of the Defense Department's misguided and illegal effort to exploit their faith to break them down psychologically. . . . We hope to persuade the court of appeals that the district court was correct in finding such conduct illegal under the Religious Freedom Restoration Act, a statute meant to ensure that the government respects the religious faith[s] of all people."

This is a profound moral challenge for many American Christians. Torture is *never* justified and is an offense against God as well as international law. If putting the state above God is a particularly degraded form of idolatry, torture is its evil sacrament. When Nero devised increasingly cruel ways to publicly torment Christians to death in the first century after Christ, he was engaging in state terrorism based on a perceived religious enemy. Nero's intent was to demonstrate the power of a cruel imperial state—and his own status as a "divine" being—in the eyes of the traumatized Roman populace, while punishing Christians for their upstart faith.

It is the sacred responsibility of every true Christian—and every American patriot—to witness to freedom of conscience in religious matters. When American military and intelligence agencies use religious humiliation as a form of torture, they are engaging in a brutal and unconscionable form of religious persecution by the state. And it is based on religious hatreds so volatile that it can quickly get out of hand, resulting in homicide, aggravated sexual

assaults, and other unspeakable crimes.

So why don't we speak out more passionately against torture?

One reason is denial—we don't want to know about unpleasant things, especially when our own government does them. A second reason is a major infusion of religious nationalism into American Christianity. One manifestation of this is the rise of the Religious Right, which mistakenly assumes that the spiritual values of Christianity can be enforced by the state.

Some in the Religious Right even subscribe to a novel and demonic theology that advocates all-out religious war in the Middle East. They would also use American government and institutions to establish a new form of imperialism to promote their religious point of view. This horrific misreading of Jesus' message has thoroughly corrupted religion in past times. The moral and imperial rot that was to corrupt Christianity set in precisely after it became the state religion of the Roman Empire. No longer a friend to the poor and despised, the church became a compliant handmaiden to Rome's legions rather than the voice of conscience in a decadent time.

Another thing that stops Christians from speaking out against torture more forcefully is a subtle but idolatrous addiction to middle-class respectability. This was a conceit that entered Christianity around the time of the Reformation, often accompanied by a belief that God would reward His saints on earth with material goods. Christianity gradually became associated in the minds of many believers with economic success—if only one didn't rock the boat, if only one went along with the prevailing beliefs of the day, one could have a comfortable and affluent life.

This heresy has crept into Christian thinking to an alarming degree. Christians who should be unhesitatingly offering an alternative to systemic evils by the state are terrified of saying anything that would cause them to appear subversive, radical or nonconforming, even if it means turning a blind eye to the sinful practices of the larger society. This self-congratulatory lust for respectability is truly a lethal form of idolatry (not to mention an extreme example of spiritual laziness) that can

If putting the state above God is a particularly degraded form of idolatry, torture is its evil sacrament.

lead us into a counterfeit Christianity without risk, character, or moral imagination.

To worship respectability means never to criticize the government, the military, or even the American definition of success as power and money. But an authentic Christianity must be a robust counter-cultural force and must sometimes take unpopular positions. It must be able to stand up to the scorn of elitist political and cultural fashions, and sometimes even oppose the complacent majority.

If we are not willing to witness against systemic evil in government—or against the dominant cultural paradigms in society at large, when they are wrong—we can offer no alternative to the demonic forces of nationalism, racism, materialism, and power worship. In the twentieth century this self-serving reticence resulted in the moral collapse of Christianity in Germany under Hitler and even gave aid and comfort to the *genocidaires* of the killing fields of Rwanda.

Christians have become fearful, in other words, of the idea of true social justice. Too risky, too radical! Of course, as patriots and as Christians who believe in conscience before expediency, we give lip service to religious liberty. But religious liberty has in our day become more of a civil rights issue—just ask any Muslim who can't use civil aviation without being detained, or any Sikh who's been physically attacked for wearing a turban. And civil rights, as we all know from the 1960s movement led by Martin Luther King, means social justice.

But isn't that politics?

No, because politics is about getting power, whereas Jesus' message is about changing the *nature* of power—from hate to love, from death to life.

We must be intimately familiar with the political discourse of our time, in order to best discern if and when the state is breaking God's laws or inappropriately intruding in matters of faith. Those who are afraid to witness for religious pluralism and social justice for unpopular religious minorities would probably not recognize Jesus if He returned.



Falun Gong practitioners display torture methods they claim Chinese authorities use against the members of the spiritual group in China, during a protest in central Seoul May 30, 2005. China's leaders outlawed the group after 10,000 of its members surrounded the Communist Party's leadership compound in Beijing in 1999 in a peaceful protest.

(REUTERS/Lee Jae-Won)

"The church must never try to be the government," Martin Luther King once said, "but it must strive to be the *conscience* of the government." That ability to be the conscience of the state, to speak truth to power, is part of our duty as Christians. Too often we've been willing to look away from the atrocities of the state—in fact, that's been a systemic problem ever since organized Christianity took up the sword of Constantine back in the fourth century.

There seems little doubt today that powerful forces are once again pushing us toward religious war, and those same forces sometimes attempt to justify torture as necessary to fight that war. To be sure, terrorists who murder civilians in the name of religion are despicable—but that goes for Christians who justify state terrorism, as well. Our advocacy for religious liberty must demand *accountability where the treatment of religious minorities by the state is concerned*. If we cannot witness for the rule of law in that critical area, all the fine words we write and utter on behalf of religious liberty will mean exactly nothing.

This article is a longer version of a column that appeared in *Southern California InFocus*, California's largest Muslim newspaper, and appears here with their permission. Lawrence Swaim is the executive director of the Interfaith Freedom Foundation. He taught for eight years at Pacific Union College, and his academic specialties are American studies and American literature.

Mourners console each other outside a memorial service for murder victim Aqsa Parvez at the Islamic Centre of Canada December 15, 2007. Aqsa's father, Muhammad Parvez, is facing a murder charge in the death of his daughter.

REUTERS/ Mike Cassese



RELIGIOUS KILLING THREATENS RELIGION

Aqsa Parvez was just 16 when her father, Muhammad Parvez, murdered her.¹ Allegedly it was for her audacity to refuse his injunction that she wear the *hijab*, a Muslim head scarf. According to Aqsa's friends, Aqsa had been at odds

with her father and other members of the family over the issue for some time.² So much so that she had moved out of the house. On December 10, 2007, she went back home to retrieve some clothing when she was confronted by her raging father. Others have called it an "honor killing"—a killing of a family member because they have brought shame on the family. Whatever it may be called, it is clearly an obscene tragedy.

It must be recognized that all of the evidence will not be made public until the trial of Aqsa's father. Those who worked with Mr. Parvez saw him as a religious man. "He was always stopping to take breaks and pray: three, four times a day," said a fellow taxi cab driver.³ If the allegations prove to be true, this case will be the most blatant form of religiously inspired domestic violence in modern Canada.

Religious adherents from other parts of the world trying to make a new life in Western countries, such as Canada, struggle with the pressures of maintaining their traditional religious practices in a very secular culture. If the reports of the circumstances surrounding Aqsa's death are true, it is but one extreme example of a religious family's struggle. Her death has inflamed a growing popular opinion that the state must intervene in the private affairs of religious adherents to



Aqsa Parvez's photo from her Facebook page

protect vulnerable women and children.

The number of Muslims in Canada more than doubled from 1991 to 2001 to 580,000.⁴ This rapid increase in the numbers of the Muslim community has meant a greater recognition of the challenges with women wearing the hijab. Women's groups and others are expressing concern. Tarek Fatah and Farzana Hassan of the Muslim Canadian Congress decried the movement to make the hijab "a sort of 'sixth pillar of Islam.'"⁵ They gave an example of a Montreal mosque that posted a warning on its Web site that warned young girls that if they took off their hijab they could be raped, have illegitimate children, and instigate young people to a path of lust. "Muslims," they argue, "need to stand up to this sort of emotional and religious

By BARRY W. BUSSEY

blackmail by imams who spread the competing agendas of Saudi Arabia and Iran into Canada.⁷⁶

Martin Collacott, a former diplomat, is of the view that Canada has gone too far with its lax immigration policies. He argues that immigrants should sign a formal agreement to live by Canadian "principles and values." Defining exactly what those principles and values are is not an easy task. However, he thinks they ought to be delineated and put before the newcomers before they arrive. "We've now let the thing advance to where people do expect to be able to do a lot of things that I don't think are wise in terms of having an integrated society. And now we've got to start backtracking."⁷⁷

The province of Quebec has become the country's lightning rod on the issue of accommodating religious practices. Premier Charest has recently announced that the Quebec Charter (human rights code)⁸ will be amended to ensure that equality rights trump other rights that come into conflict—including religious freedom. If the proposed legislation passes, the preamble of the Quebec Charter will now include the following paragraph:

"Whereas respect for the dignity of human beings, equality of women and men, and recognition of their rights and freedoms constitute the foundation of justice, liberty and peace."

And there will be added a new section to the Charter: "The rights and freedoms set forth in this charter are guaranteed equally to women and men."⁹

This legislative initiative was in response to the Quebec Council on the Status of Women call to protect women from discrimination based on claims of religious freedom. The council argued: "The right to equality between women and men ought to be observed under all circumstances and no infringement thereof should take place in the name of freedom of religion."¹⁰

The proposed changes to the Quebec Charter appear, at first glance, to do little more than restate what the Canadian Charter of Rights and Freedoms already provides.¹¹ It will, of course, be up to the courts to decide whether in fact there will be a hierarchy of rights where gender equality will trump religious freedom claims.

Without doubt the politicians are keeping up with public opinion. A poll published in the newspaper *La Presse* found that 70 percent of Quebecers opposed society allowing Muslim girls to wear their headscarves while playing soccer; and 65 percent said a hijab should not be permitted to be worn in school.¹²

Annie Lessard expressed the following in an editorial in Quebec's largest English weekly, *The Suburban*:

"The reality is that a state which promotes gender

equality must be consistent in its practices and representations. The veiled teacher promoting the values of equality between women and men poses, both at a symbolic and educational level, a conflict of representations. The underlying message, hidden under the Islamic headscarf, is that of women seen as vile and polluted beings taking moral responsibility for keeping men's purity in check. We cannot, under the guise of respect for cultural differences and religious beliefs, legitimize inequality and endorse, at the symbolic level, archaic representations of women. For our institutions to accommodate, in the name of multiculturalism, the paradigm of subordination of girls and women or archetypal representations of women as seductive temptresses is tantamount to state-endorsed racism."¹³

According to Beverley Baines, religion is "equality's nemesis,"¹⁴ and in discussing the threefold strategy that feminist scholars have advanced to combat religion, she states, "I don't think we fully grasped the threat that the major religions—Christianity, Islam, and Judaism—would pose for women's equality rights."¹⁵ The three-part strategy: first, argue in the Supreme Court for the **hierarchy of rights**—with equality trumping religion when they conflict; second, **joint governance of religious practice between the state and religious authorities**; and finally, **privatizing religion**—thereby eliminating religion as an enumerated protected right in the constitution.

Hierarchy of Rights

Current jurisprudence of the Canadian Supreme Court does not allow for one right to trump another. Instead, there is a balancing of all factors in each case—sometimes one interest would take precedence over another in one case but may not in another. Under the proposed hierarchical approach, whenever equality and religion conflict religion must give way to equality. This could be achieved, Baines notes by a re-characterization of the Canadian Charter. The list of enumerated rights such as freedom of religion, conscience, speech, and so on is followed by a later section that states:

"Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."¹⁶

Thus, "both religious and cultural claims should be read as subject to the requirements of the guarantee of equality to women. This recognition of women's equality rights is a civic or personhood guarantee, not one defined by the particular religious sect."¹⁷

It is not too hard to think of situations in which such interpretation, were it to be adopted by the Canadian Supreme Court, would be problematic. For example, the state could impose "equality" on women though their own personal religious scruples would be against it. We may then be faced with a

situation in which the state is unilaterally forcing women to be “free” as defined by the state.

Joint Governance

It is being suggested that religious communities operate jointly with the state in certain agreed upon areas of religious practice. This model would first divide the areas of contention between the religious group and the state (e.g., status and property). Neither the religious group nor the state would have exclusive control over a contested arena that affects individuals as members of the religious group or citizens. Finally, the individual would have the right to turn “to the competing jurisdiction when the original powerholder has failed to provide an adequate remedy.”¹⁸

Again, this is problematic. If a member of the religious community does not have her equality right accepted by the religious community, then she can appeal to the state for redress, forcing the religious community to permit her equality right?! One wonders about such things as religious communities that do not open certain offices (ordination of women?) to women. Even Baines admits that such women “... face the real possibility of being shunned by family, friends, and community.”¹⁹ It will necessarily require not only governmental support for such women to be protected, but also that the religious groups themselves would carry out state dictate to change their ways in compliance with whatever remedy is given to the aggrieved woman.

Privatizing Religion

This proposal suggests that since religious communities are private by nature they should not be given any special protections such as found in the Canadian Charter of Rights. The only freedoms would be those granted to other groups, such as expression and association. “In Canada,” Baines argues, “entrenching freedom of religion may have led religious societies to expect more protection for their patriarchal beliefs than is justified in a world that is still striving to recognize and implement women’s equality rights.” Religious communities “have much to answer for” since women cannot be religious leaders such as “priests, cardinals, popes—in Roman Catholicism” nor take on major leadership roles in “most other major religions.”²⁰

The Challenge

The greatest challenge of our modern age is the integration of the practice of religion with secular society. Private practice of religion becomes particularly acute when it interferes with the right of family members to adopt secularism or change religious belief. The religious must come to terms with the fact that family members may choose to live differently from the way they were brought up.

The Western tradition has long held the inalienable right of an individual to choose for themselves what faith or non-faith they will adhere to. Our body polity can never acquiesce to any assertion that seeks to force or compel another to accept a particular religious belief or adopt a religious practice. Especially is this so with the dramatic increase in cultural diversification as a result of the rising tide of immigration from societies that are not amenable to the liberal rights granted individuals in such countries as Canada.

Such an extreme case as the Aqsa one undoubtedly raises the call to limit all religious practice that is deemed to be an affront to women’s equality—even those traditions in the West that have been practiced for centuries (think refusal of women’s ordination). Much further thought must be given about where the boundary lines are to be drawn—it is a delicate balance of competing rights.

Yet there is no mistake that what happened to Aqsa was nothing short of a monstrous crime. Shahina Siddiqui, the president of the Islamic Social Services Association, stated, “There should be zero tolerance for violence of any kind against women or girls.”²¹ True, indeed! “Young Aqsa Parvez’s death cannot be reversed. But in her memory, we can at least challenge those whose message leads to rage and madness.”²²

Barry W. Bussey, a lawyer, writes from Toronto, Canada.

¹⁸ www.nationalpost.com/news/story.html?id=162252.

¹⁹ Chris Wattle, “Were Clothes Behind Attack on Teenager?” *National Post*, December 11, 2007, p. A12.

²⁰ *Ibid.*

²¹ Terry O’Neill, “Their Women Apart,” *Western Standard*, December 4, 2006, p. 28.

²² Tarek Fatah and Farzana Hassan, “The Deadly Face of Muslim Extremism,” *National Post*, December 12, 2007, p. A26.

²³ *Ibid.*

²⁴ *Ibid.*, p. 29.

²⁵ Charter of Human Rights and Freedoms (R.S.Q., chapter C-12).

²⁶ www.assnat.qc.ca/eng/38legislature/Projets-loi/Publics/07-a063.htm—Known as Bill 63: An Act to Amend the Charter of Human Rights and Freedoms.

²⁷ Conseil du statut de la femme, *Droit à l’égalité entre les femmes et les hommes et la liberté religieuse* (“Opinion on the Right to Equality Between Women and Men and Freedom of Religion”), 2007, p. 9.

²⁸ Canadian Charter of Rights and Freedoms, Schedule B, Constitution Act, 1982 (79). Enacted as Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11, which came into force on April 17, 1982. Section 28 states, “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.”

²⁹ Graeme Hamilton, “Giving Gender Equality Priority Called Dangerous,” *National Post*, October 11, 2007, p. A18.

³⁰ Annie Lessard, “Gender equality: Hierarchy of rights or separating state and faith?” *The Suburban*, October 17, 2007, found at: <http://thesuburban.com/content.jsp?id=1461266352675444191779744878&ctid=1000002&cnid=1013195>

³¹ Beverly Baines, “Equality’s Nemesis?” *Journal of Law and Equality*, 5, No. 1 (2006), 57.

³² *Ibid.*

³³ Canadian Charter of Rights and Freedoms, Section 28.

³⁴ Baines, p. 76.

³⁵ Ayelet Shachar, “Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies,” *McGill Law Journal*, 50 (2005) 49 at 72, as quoted by Baines, p. 77.

³⁶ Baines, p. 78.

³⁷ Baines, p. 79.

³⁸ Chris Wattle, “Dead Girl Was ‘Scared of Her Father’ Friend,” *National Post*, December 12, 2007, p. A8.

³⁹ Fatah and Hassan, p. A26.

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Liberty for All “Despotic forces are stirring the world today. They are sometimes spoken of as anti-Jewish, but they are in reality anti-Christian, and are opposed to all civil and religious liberty. Liberty is not a special favor for special classes. It is our right by birth, given us of God when He created the soul of man to be free and answerable to no one but the Creator. When the blessings of liberty are granted to a favored class alone, there is no guaranty of liberty at all, for the favored class of today may be persecuted tomorrow. Only when we recognize that ‘all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness,’ can we enjoy the blessings of true civil and **religious freedom.**”

—J. I. Robinson, “Democracy and Liberty Assailed,” from *Liberty* magazine, third quarter 1939.



Deportation of the Jews to Kosseg.



PHOTO: SNARK / ART RESOURCE, NY



SET FREE BY TRUTH

BY WILLIAM MCCALL

Ayaan Hirsi Ali is the controversial author of *Infidel*, her improbable but true autobiography. A Somali-born Muslim woman, she became a member of the Dutch Parliament. As the title of her book implies, after growing up in a world that condones the physical abuse of women, practices honor killing, female genital mutilation, and often marries women against their will, she ends up rejecting Islam as inherently oppressive to women. As a



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result, she is living under the constant threat of death. An associate, Theo van Gogh, who helped her do an art film to protest against the victimization of women in Islam, was brutally murdered and a note threatening Hirsi Ali was pinned to his dying chest with a knife.

Infidel contends for the idea that took so long for the Christian West to learn: even heretics and skeptics must be given political freedom of speech. A religious community may not be able to tolerate

their dissension, but with the freedom to function and speak freely in society their challenge can even benefit the religious community they oppose by stimulating dialogue. If all disagreement is squashed, spiritual growth is impossible. Ayaan Hirsi Ali is against the politically correct manners that forbid the criticism of religious ideas. Sociologists in the West have often advocated a benign (and condescending) view of religion that equates all religious ideas as equally valid. The postmodern idea that all religions are the same not only belies what can be seen and observed but also implicitly reduces all religious ideas to nonsense. Religious ideas are only equally valid if they are meaningless. To the extent that religious ideas provide the impetus for all kinds of public behavior, they are fair game for public challenge.

Infidel not only contains a challenge for Muslims, but for Christians as well. There is a need for dialogue between church and state and a compelling interest in the state to see that the weak are not made the innocent victims of religion. Pedophilia and the abuse of women should not be tolerated in a civilized society and are legitimate causes for state interference no matter what the religious justification. Policies that demand reasonable behavior of all, regardless of religious affiliation, will benefit all societies, even those that might initially resist on religious grounds.

One of Hirsi Ali's positions when working with a Dutch think tank has implications for faith-based programs in the U.S. She states:

"The Dutch government urgently needed to stop funding Quran-based schools, I thought. All humans are not equal in a Muslim school. Moreover, there can be no freedom of expression or conscience. . . . They teach by rote, not question, and they instill subservience in girls. They also fail to socialize children to the wider community.

"That raised a dilemma. Holland's Constitution itself permits faith-based schools, in Article 23. If authorities were to close down only Muslim schools, permitting other forms of private schooling to continue, that would be discrimination. I thought it was time to start a debate on the funding of all faith-based schools."¹

Resistance to changing the status quo on the state financing of religious schools in Holland is fierce because Christian schools have become addicted to state funding. This creates a dilemma in the minds of many, however. What if the schools are hostile to the values of the public financing the schools? This illustrates a dilemma that all funding of religious institutions by secular gov-

ernment creates. How can we fund only certain schools or religions and maintain an evenhanded government? Could we get caught funding religious thought that undermines our democracy?

Hirsi Ali feels that the lack of freedom and the political oppression in Muslim countries are a direct result of their view of the Koran. With the primary virtue being "submission" (the translation of *Islam*) and instilled with fears of hellish torment, believers are ripe for manipulation. She points out that many of the terrorists are not the marginalized poor, but Islamic professionals and members of privileged classes, such as Bin-Laden himself. Whatever the truth is in this matter, it opens up the strong possibility that the promotion of democracy in Muslim countries will not succeed unless they are willing to open up religious dialogue. The hyperdefensive attitude that dissenters must be killed or silenced speaks poorly to the strength of the core idea, whether that idea is political or religious. Coercion in the realm of religion leads to either hypocrisy or fanaticism. The very nature of human spirituality demands the freedom of choice. Conscience cannot be coerced. It is not an accident that the First Amendment protects both freedom of religion and freedom of speech. One is impossible without the other.

Like political speech, religious speech must include the right to criticize and debate. Otherwise, there is no protection against manipulative demagogues and false ideas leading to intellectual and spiritual bondage. Jesus gives us an example of true dialogue in the New Testament by frequently entering into religious debates. He knows that religious ideas have importance. He accuses some of the religious leaders of His day of binding up "heavy loads and [placing] them on men's shoulders" while "they themselves are not willing to lift a finger to move them" (Matthew 23:4).^{*} He proclaimed: "The truth will set you free" (John 8:32).

Religious disputes are dangerous only when taken out of the context of civil tolerance. "Love your enemies," and "pray for those who persecute you" (Matthew 5:44) provide a wonderful foundation for civil discourse on religious ideas that can allow for debate. These principles provide a moral foundation for seeing that disagreement does not become a license for hatred and violence. This is why all religious debate has to take place in the context of peace. "Blessed are the peacemakers" (Matthew 5:9) provides a necessary preparation for the uncoerced conscience that is necessary for all true conversion. Jesus' statement that "[His] kingdom is not of this world" (John 8:36) provides the foundation for the culture within and apart



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from the state that is the essence of the kingdom of god on earth. The secular state, with guarantees of religious freedom, is the ideal environment to provide for the free exchange of religious ideas and to guarantee that intimidation will not be a part of conversion.

In the religious world there are so many ideas that can have a huge impact on society, and our answers to these questions not only affect our personal lives but help shape society at large. Secular thinkers, as well as theologians, have a right to challenge beliefs that have an impact on public policy. For example, in a speech before the United Nations, Desmond Tutu questioned the rationality of another church's stance on birth control and its influence on public policy. With the AIDS epidemic threatening the life of a continent, is it reasonable to enforce sectarian religious beliefs with the agencies of the state?² In the light of the high cost in human misery, shouldn't those beliefs that inhibit open discussion about sex, birth control, and the use and dissemination of condoms be challenged?

At its core, Christianity is a challenge to dialogue and change. Jesus gave a commission to His followers: "Go and make disciples of all nations . . ." (Matthew 28:19). Immediately, this represented a challenge to the Jewish establishment, but later would mean a challenge to Gentile cultures. The Great Commission to "make disciples of all nations" is not cultural imperialism if the call to discipleship is freely given and freely received—apart from government and military coercion. The last book of the Bible revives a call from the book of Isaiah to "come out of [Babylon]" (Revelation 18:4; cf., Isaiah 48:20). Regardless of our interpretation of these verses, they represent a challenge to the established religious order.

If this challenge is not taken out of the context of love and respect for our neighbors, or enforced by the arm of coercion and state authority, we can have healthy and challenging dialogues that will reform our own faith communities and at the very least open up dialogue with others. When the elements of coercion are removed, change and spiritual growth can and will occur. Not only will the lives of individuals improve, but society will be the better for it.

William McCall writes from Chatsworth, California.

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^{*} Ayaan Hirsi Ali, *Infidel* (Free Press 2007), pp. 279, 280.

² According to the United Nations, in seven African countries more than one in five adults is HIV positive.



Teaching About Bible

The so-called "debate" set forth in "The New Bible Wars" (November/December 2006) regarding the Bible Literacy Project is really no debate at all; it is no more than a disagreement among believers on how best to teach their view of the Bible under Supreme Court decisions without undermining faith.

"The New Bible Wars" completely ignores the fact that it is easy to teach the Bible in secondary schools. All you have to do is adopt the approach used in most public universities, which is to teach what is actually known about how the Bible was constructed. That construct has been basically understood by priests who were German scholars within the Roman Catholic Church since the nineteenth century.

My proposal is for secondary school districts to sanction the most popular public university-level text, Stephen L. Harris, *Understanding the Bible*, 3rd ed. (Mayfield Publishing), as the basic text, and to fill their libraries with secondary treatises by such authors as Crossan. And don't forget the recently published *What Paul Meant* (Viking Press), by Garry Wills, who wrote such nonreligious books as the Pulitzer Prize-winning *Lincoln at Gettysburg* and *Nixon Agonistes*. But don't hold your breath. No one from the Religious Right wants the breath of truth in the public high schools.

TOM LEVAK

E-mail

Much of what Tom recommends as an objective study of the Bible comes from a higher critical view of its origins that actually assumes it is not what it purports to be. He is correct in that a study about the Bible or religion would pass constitutional muster. Editor.

The Two Kingdoms

I have been praying for God to give me guidance and direction in a question that has been weighing heavily on my heart. My question is: What is the Bible's stand on a citizen voting for elected officials, especially if we are in "the time of the end"?

I cannot, in good conscience, vote for those who obviously are not following God. Yet the Bible says we should "give to Caesar what is Caesar's." As a Christian, it is my responsibility to be an advocate for "those who can't speak or defend themselves." In order to do that effectively, don't we have to comply with the political agenda? I have received negative comments from people who say that if I don't vote, I don't have a right to complain about anything. I can understand their view, but I feel as though I'm compromising my beliefs when I vote for either party. If I sign a ballot agreeing to a certain party, that is obviously NOT following God's law, and then aren't I basically agreeing with "the leaders and rulers of the world" and NOT following God myself? I would SO MUCH appreciate your help on this subject. I have been in prayer on this topic for a long time.

GRACE PACKARD

PERU, MAINE

The Bible does advise us to "seek ye first the kingdom of God." Far too many Christians have put their priority toward the here and now, forgetting their higher calling. However, we are to "occupy" and to be as "salt" to improve the lot of society. It is no contradiction of faith to use the right of a citizen and vote; it may even be an act of practical concern for the welfare of our fellow men. It would be wrong, though, to look for political messiahs to accomplish what is given only through faith. Liberty speaks of power and to power in discussing religious liberty in these highly politicized times. But

we are not politically motivated, we have no partisan agenda or favorites, and we hold that it is improper for the church or a religious entity to try to orchestrate the political activities of members. Editor.

Another Take on Cromwell

I disagree with Edward Patrick O'Brien's view in his letter to the editor (March/April 2007) in which he wrote, "I do not think you could find anyone who has really studied Cromwell objectively who would say he was anything less than a butcher."

It would behoove Mr. O'Brien to read *Cromwell: Our Chief of Men*, by Lady Antonia Fraser (a Roman Catholic). When the book came out, it received voluminous rave reviews. An example: from A. L. Rowse, of the *Sunday Telegraph*, who wrote, "*Cromwell: Our Chief of Men* is a fine achievement of scholarship and writing . . ." Oliver [had] greatness of soul and was made on an epic scale . . . irresistibly readable."

Another book worth perusing is *To Honour God: The Spirituality of Oliver Cromwell*, by Michael Haykin, church historian and principal of Toronto Baptist Seminary.

And as far as objectivity is concerned, what of the movie *Cromwell*, which starred Irish Catholic Richard Harris as the lord protector, and another Catholic, Sir Alec Guinness, as King Charles I? It seems they were able to put their Catholicism aside and give such marvelous performances in portraying Cromwell as a great man and devoted father and Christian, and, of course, as a great military leader.

JOHN CLUBINE

Etobicoke, Ontario, Canada

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Liberty Essential

I am convinced that no liberty is more essential to the continued vitality of the free society which our Constitution guarantees than is the religious liberty protected by the free exercise clause explicit in the First Amendment and imbedded in the Fourteenth.

—Justice Potter Stewart, concurring opinion,
Sherbert v. Verner, 374 U.S. 398, 413 (1963).