

A MAGAZINE OF RELIGIOUS FREEDOM

SAME FAITH OR NOT!

DEFAMING RELIGIOUS FREEDOM

REFORMATION ACHIEVED

LIBERTY

JULY/AUGUST 2009

V. Changing Views

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NOT A PRETTY PICTURE

*We are simultaneously
in the "best of times"
and "the worst of times."*



What image do you put on the cover of a magazine like *Liberty*? We do put a lot of thought into what article to feature and what artist to assign the illustration to. Sometimes we aim to startle you a bit. Other times we want the image to resonate with some current issue. And sometimes we want the cover to look "classic."

And sometimes we just change our mind. The royal "we" might be misleading—sometimes I change my mind. Like this issue: the rather somber cover picture of a somewhat Catholic Paul Revere is attention-getting and well executed. But I had originally wanted the toppling statue of religion, now only on page 17, to be our cover. It too is effective! Perhaps too effective! In its final form I thought the image too stark and perhaps with overtones of fascist art to carry a cover without explanation. And, yes, I did expect our readers to get the analogy to the Saddam pull-down during the Iraq war.

How to put an image to our current religious liberty scene is of course more than a cover challenge for *Liberty*. It goes to the heart of where we are in the whole church-state/civil liberty construct.

Times change, and that change can be startling. Yesterday as I lay helpless in a dentist's chair, and just before he lowered the drill with a grinder bit onto the tooth that had fallen apart, the monitor above my head flashed a picture of the president and I heard him announce that June is to be LGBT Pride Month—actually it was said in full as "Lesbian, Gay, Bisexual, and Transgender Pride Month." "It's a different world from when I was young," said the dentist as he switched on the grinder. Little joy in the moment.

I'll save a full discussion of the religious liberty ramifications of the

new gay entitlement for a later issue. Enough to say that it should not come down to the stark choice between gay rights and religious rights, so long as both gay rights activists and religious alarmists don't set it out that way. But we are headed into a very socially adventurous time, and the stakes for civil liberty itself are very high.

Perhaps it was inevitable that my mind wandered to a short story that we had to read back in high school. *The Picture of Dorian Gray* is the most understated of horror stories, but its ending is the most horrible moral meltdown.

Written by literary legend Oscar Wilde, the story tells of a handsome and popular young man who attacks life with a gusto that seems to escape consequences. It is not till the end of the narrative that we discover his dark side: a hidden portrait that changes into the misshapen immoral monster he has become, even as he seems immune to the ravages of time and debauchery.

Writing and speaking on the state of religious liberty, particularly in the West, particularly in the United States, I am often struck with the dichotomy between where we are in everyday assumptions and where we have traveled behind the obvious. Call it the Dorian Gray effect. Or, to borrow another literary analogy, and to quote from Charles Dickens and his *Tale of Two Cities*, we are simultaneously in the "best of times" and "the worst of times."

One would be hard-pressed to suggest that there is open religious persecution in the United States. Televangelists still roam the fruited plains of TV-land unopposed and well funded. Megachurches are being built faster than shopping centers. No secret police snatch religious faithful or dissenters from their homes at midnight. We have no show trials—of Christians

or other faiths—yet. There is very nearly the same freedom given religion as the practices of irreligion! Oh, well, in general the same freedom!

But things are not quite as they seem.

For at least a decade or more we have seen in the United States an unseemly hunger for direct political power for certain religious factions. So far their efforts have mostly been directed toward plunder of the public treasury—that is, state funding for religious activity—the Office of Faith-Based and Community Initiatives being the most constitutionally egregious of this type. But the nature of such things means that eventually financial support for church institutions will tend to give way to a clamor for decrees on religious behavior.

For some time the establishment clause of the U.S. Constitution has been under attack, even as the free exercise clause has been administered in ever generous ways. I have often pointed this out to lecture audiences as an explanation of why there is not more obvious restriction of liberties. After all, when certain religious factions are anxious to become synonymous with the state and gain preferential funding they are hardly likely to try to restrict other religious activity—not till the establishment issue is settled, at least.

I am now rethinking part of that model.

It appears that we will not have to wait till funded and favored religious entities seek to restrict the free exercise of religion for others. It is now obvious that the other party of the "culture war" is quite ready to do that now!

We can look to Canada as a cautionary model of how easily the new social model of gay entitlement can actually criminalize Christian statements on morality—even direct quotes from the



President Obama has a fresh opportunity to implement reforms that create and maintain meaningful boundaries that protect church and state while enlisting all Americans to address the most pressing social problems we face. | p8

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Bible. Of course, Christians and those of other faiths such as Muslims must recognize that they have no right to compel to any view, moral or doctrinal. But a healthy civil rights model must grant them the right to project their religious opinion. I see signs that this right is being challenged.

Zoning models have long been used to restrict religious meetings. In fact, the Chinese government continues to battle the home-church movement there on an argument that these are improper gatherings apart from the publically authorized Three-Self religious model. Unless you factor in the animus to religious expression it can easily pass for a public order question. Now we seem to be seeing a resurgence of challenges to home-held religious gatherings in the United States. As longtime *Liberty* readers know, we have often featured this throughout the years. Many local ordinances restrict the ability of, say, a Tuesday night Bible study group to

meet in a private residence—but they are seldom enforced in such a case because the original intent was not to restrict religious worship. But feed in community or country prejudice and you will get the recent case of a San Diego pastor and his 15-member Bible study group faced with escalating fines and a threat of things getting ugly if they did not desist. Eventually the situation defused; but it is a vanishingly short line between this and overt religious persecution.

In a time of economic meltdown, auto company bankruptcies, and labor layoffs, one might easily overlook the bold moves to strengthen the ability of unions to co-opt workers who might have religious compunctions against joining. Card check sign-ups might be passed off as a convenient new model—but with public antipathy to marginal religious beliefs and a sense of a need to cooperate economically for the public good, it is likely it will lead

to religious harassment. It has long been a position of my own Seventh-day Adventist Church that past difficulties with religious accommodation and union agitation will be repeated.

In fact, the political shifts of late, the morphing of religious power centers into more populist religious action groups, the economic collapse, the ongoing war on terror, the unfinished experiment with what used to be called torture, the economic realignment of power, the unmuzzled calls for a religious solution to the world's ills: all augur a true paradigm shift. The fair face of freedom may be something else beyond the shadows.

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.

Same Faith or **Not!**

BY K. HOLLYN HOLLMAN

ILLUSTRATION BY JONATHAN TWINGLEY

*A look at the Office
of Faith-Based
and Neighborhood
Partnerships.*



A few weeks into his presidency, President Barack Obama took the initial steps toward setting his administration's course on cooperation between government and religious entities that provide social services. Having inherited an extensive bureaucracy of "faith-based" offices and regulations, President

Obama now has the opportunity to provide needed reforms and to put his own mark on a signature policy of the Bush administration. So far, President Obama appears to be taking an incremental approach toward reform. He has indicated a strong interest in enhancing partnerships between government and neighborhood organizations, including religious ones, and is maintaining the agency offices established by his predecessor. Many are waiting to see how his plans for the renamed "Office of Faith-Based and Neighborhood Partnerships" will unfold.

Beginnings

Criticism of the "faith-based initiative" has come from many quarters, beginning with the legislative proposal known as "charitable choice." Charitable choice was first inserted into welfare reform legislation and subsequently into a few other programs in the late 1990s. Primary among concerns for religious liberty advocates like *Liberty Magazine* and the Baptist Joint Committee for Religious Liberty, was how the policy threatened important establishment clause protections

that keep government from interfering with the work of churches and other religious entities. After all, religious organizations have a long-standing and proud tradition of providing social services, including in some cases, with the use of government funds that long predated charitable choice.

Religious organizations known as "religious affiliates" traditionally had accepted government funds to provide social services, playing by the same rules as secular providers. Under charitable choice, however, the federal government reduced restrictions that typically follow government aid to religious organizations, offering the prospect of direct government funding given to houses of worship without establishing a separate, non-profit 501(c)(3) organization. Such direct government funding of houses of worship represented a radical erosion of First Amendment principles, risking government funding of religious activity in violation of the Constitution and endangering the autonomy of religious bodies by allowing government intrusion.

While charitable choice excluded direct aid for "sectarian worship, instruction, or proselytization,"

TWINGLEY
2007



it offered much less regulatory protection for religious freedom than the religious affiliate model. It was inserted into legislation with little debate or scrutiny, including in ways that conflicted with nondiscrimination provisions within the same statute. Proponents of charitable choice claimed that their more lenient approach to church-state relations was warranted by the decline of the U.S. Supreme Court's "pervasively sectarian doctrine," which prohibited government funding of many religious institutions, and greater acceptance of government aid distributed on a neutral basis among secular and religious entities. Such arguments glossed over the differences between indirect and direct funding and the fact that a majority of the Court had continued to emphasize special establishment clause concerns about direct government funding to houses of worship.

During the Clinton administration, concerns about charitable choice were mitigated by signing statements to the legislation that reduced the risk of government funding for religious activity or discrimination. These statements required an interpretation consistent with constitutional constraints, expressly prohibiting federal funds from flowing directly to pervasively sectarian institutions (religious organizations that do not or cannot separate religious activities from the government-funded programs).

President George W. Bush and His Faith-Based Legacy

President George W. Bush made charitable choice expansion a top domestic priority and announced it early in his administration. Though legislation to implement that goal stalled in Congress, the Bush administration aggressively pursued its policy through executive orders that systematically altered federal regulations affecting nearly all federal social service programs, making it easier for faith-based organizations to participate in federal grant programs without the traditional safeguards that protect religious liberty.

The Bush administration's White House Office of Faith-Based and Community Initiatives had a stated focus on removing safeguards (called "barriers" by the administration) that protect the constitutional boundaries between church and state to expand funding opportunities for religious organizations. Taking advantage of what it saw as changes in the Supreme Court's views on the issue, the administration undermined longstanding and widely accepted constitutional values, such as preventing direct funding of religious activities, protecting religious freedom rights of beneficiaries, avoiding government-funded discrimination in employment, and maintaining the autonomy and integrity of religious entities.

Key Modern Establishment Clause Cases

A Backdrop to Faith-Based Programs

Zelman v. Simmons-Harris

536 U.S. 639 (2002): The U.S. Supreme Court approved a state program providing vouchers for children in a distressed public school district to attend private schools, including religious schools, as well as neighboring public schools. The Court held that "where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice," the program does not violate the establishment clause.

Mitchell v. Helms

530 U.S. 793 (2000): The Court upheld a state and locally administered program that loaned educational materials, including books, computers, software, and audio/visual equipment, to schools in economically disadvantaged areas, including religious schools. The program required schools receiving the aid to limit their use of the materials to "secular, neutral, and non-ideological" uses. A majority of the Court rejected the strict separationist theory that some organizations are too religious to participate in federal aid programs. The plurality described the pervasively sectarian distinction as "offensive," stating that "[i]t is well established, in numerous other contexts, that courts should refrain from trolling through a person's or institution's religious

beliefs," which "is just what [the pervasively sectarian distinction] requires." In her concurrence, Justice O'Connor, joined by Justice Breyer, held that for there to be a constitutional violation there must be actual diversion to religious use; providing public aid that merely "has the capacity for, or presents the possibility of, such diversion" is not automatically unconstitutional, thus essentially abandoning the pervasively sectarian standard.

The most damaging aspects of the Bush legacy were the creation of funding opportunities without sufficient guidance to recipient organizations to prevent the risk of unconstitutional funding (what they failed to say about separating religious activity and government funding) and the aggressive assertion of a right to hire according to religion even for positions funded by tax dollars (applying an exemption from nondiscrimination law in ways that lacked authority). The administration's outreach efforts included hosting conferences and making claims about faith-based groups that left many to question whether the faith-based initiative was a partisan tool with little effect on funding. In fact, some of the major complaints came from those close to the initiative, as explicitly recounted in the book *Tempting Faith: An Inside Story of Political Seduction*, by David Kuo, who served as deputy director of the Office of Faith-Based and Community Initiatives under President Bush. Though the faith-based initiative was less prominent during President Bush's second term in office, his administration continued to claim success for lowering barriers for religious organizations that sought government funding, as well as increasing the number of religious entities that received funding (though social service spending on the whole declined).

President Obama's Incremental Approach

During his presidential campaign, then Senator Obama affirmed the vital role faith-based and neighborhood groups play in serving those in need. He talked about his own experience as a grassroots organizer and expressed his interest in government cooperation with faith-based groups, including the continuation of the offices established by President Bush. He also promised reform, citing a firm commitment to the separation of church and state and explicitly stating that the initiative should not be used to proselytize, discriminate, or promote religious service providers over secular ones. These comments gave new life to the debate over the proper ways in which religious organizations and government could partner to address social ills and promised a new approach that would draw upon common commitments to religious freedom and was less likely to cast criticism solely as a concern for secularists.

In his first official act in this arena, President Obama amended Executive Order No.13199, which originally established the White House Office of Faith-Based and Community Initiatives in January 2001. As revised, the order recognizes the vital role of faith-based and neighborhood organizations in meeting needs of low-income and other underserved communities. It states the purpose of the office as strengthening the ability

Agostini v. Felton

521 U.S. 203 (1997): In *Agostini* the Court took the rare step of explicitly overturning two of its strict separationist decisions. The Court upheld a program providing remedial education to students of private schools (including religious schools) in which instruction is given on the premises of those schools by public employees. The Court acknowledged that its establishment clause jurisprudence had significantly changed since the 1970s and 1980s, especially with regard to its understanding of what constitutes an impermissible effect of state indoctrination of religion or constitutes a "symbolic union between government and religion." The Court did not examine the character of the organizations aided by the program, and instead focused on whether any advancement of religion was reasonably attributable to the government.

Bowen v. Kendrick

487 U.S. 589 (1988): In *Bowen*, the Court upheld the constitutionality of the Adolescent Family Life Act (AFLA), which authorizes federal grants to public and nonprofit organizations, including faith-based organizations, for services and research in the area of premarital adolescent sexual relations and pregnancy. The Court rejected the notion that a program that is facially neutral between secular and religious applicants would necessarily advance religion in violation of the establishment clause, noting that the act contained no requirement that grantees be affiliated with any religious denomination and that there was "nothing inherently religious" about the education and counseling activities funded by the program.

Witters v. Washington Department of Service for the Blind

474 U.S. 481 (1986): In *Witters*, the Court approved a state program designed to provide vocational training to the blind under which beneficiaries could use state tuition grants at religiously affiliated colleges and to pursue ministerial degrees. The Court held that because the grants were "made available generally, without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited," and flowed to religious organizations "only as a result of the genuinely independent and private choices of" individuals, the program did not have the effect of advancing religion.

Summary provided by Christian Legal Society.

Whatever the court positions it is clear to most proponents of church-state separation that the FBI initiative represented a clear effort to reverse long-term attitudes to the First Amendment. *Liberty Magazine* has always cautioned against churches taking state aid. To do so tends to blur church-state distinctions, corrupts the spiritual role of churches and makes them vulnerable to government control. Editor.

of such organizations to deliver services effectively “while preserving our fundamental constitutional commitments.” That constitutional commitment and ensuring accountability for taxpayers’ dollars are noted as principal functions of the office, but no operative policy language yet describes how these goals will be performed.

President Obama renamed the office the “Office of Faith-Based and Neighborhood Partnerships” and appointed Joshua DuBois as the executive director. DuBois is an ordained minister with a degree in public administration who had previously served in the president’s Senate office and led religious voter outreach during the presidential campaign. DuBois has stated that the office is

rooted firmly in support for cooperation between religious and community organizations and government social service programs, including financial relationships, but would not be focused on funding religious organizations. Instead of promoting federal funding of religious entities, the Obama administration plans to use the offices to accomplish policy goals suitable to the agencies. In addition, the president identified four particular policy priorities to be carried out by working closely with the president’s Cabinet secretaries and each of the 11 agency offices for faith-based and neighborhood partnerships: economic recovery and poverty reduction, reducing the need for abortion, responsible fatherhood, and international faith dialogue.

It remains to be seen how the Obama administration will perform these and other major priorities, such as shoring up the legal foundations for the offices to ensure separation of religious and nonreligious content in government-funded programs. There was no specific guidance on constitutional or other legal issues in the executive order. Instead, those issues remain to be decided by the president in consultation with the Attorney General’s Office and the White House Counsel’s Office. As the office continues to seek advice and learn about different approaches, it will simply ensure that its programs and practices are “consistent with law.” To this end, the order states: “The Executive Director, acting through the Counsel to the President, may seek the opinion of the Attorney General on any constitutional and statutory questions involving existing or prospective programs and practices.” Shoring up the legal foundations for promoting partnerships between religious entities and the government that involve taxpayer dollars while protecting religious freedom and civil rights certainly will require better guidance than provided by the Bush administration, and religious

liberty advocates will continue to push for reform.

The executive order also created a new advisory council of experts in fields related to the work of faith-based and neighborhood organizations. The council is charged with identifying best practices, evaluating needs for improvement on implementation of policies, and making recommendations. Composed of individuals representing diverse religious and policy perspectives, the members will serve for a one-year term and report to the president. This effort is intended to enlist a broad range of outside help and feedback to ensure that a lot of good ideas are shared.

While the Obama administration continues to staff the agency offices, add advisory council members, and convene meetings, religious liberty advocates will continue to push for greater protections against funding religion, more transparency and accountability, and a reversal of policies that allow religious entities to deny jobs based on religion in government-funded positions. Reversal of the Bush administration’s aggressive interpretation of the Religious Freedom Restoration Act as an exemption for civil rights laws remains a high priority. While the employment issue has been in sharp focus in the media and policy discussions about possible reforms, it was notably absent from the new order, which, for now, leaves a major source of controversy to plague the office. As the administration seeks to strengthen partnerships while preserving fundamental constitutional commitments, receiving advice from its advisory council and legal counsel, we expect its policy will be more developed. We also hope to see more information on the formation of nonprofit organizations and other technical advice for entities seeking to cooperate with the federal government.

During his time in the White House, President Bush issued a half dozen orders related to the faith-based initiatives, opened faith-based offices throughout the executive branch, established review processes for grant applications for faith-based groups, supported legislative changes, printed reports to defend his policy and claim progress, conducted conferences to promote its work, issued creative legal interpretations of the Religious Freedom Restoration Act that would override civil rights laws, and promoted an aggressive publicity campaign that turned the term *discrimination* on its head. The legal, practical, and political issues that challenge faith-based initiatives did not develop in a day. President Obama has a fresh opportunity to implement reforms that create and maintain meaningful boundaries that protect church and state while enlisting all Americans to address the most pressing social problems we face.

K. Hollyn Hollman is the general counsel to the Baptist Joint Committee for Religious Liberty.



WHITE HOUSE PHOTO

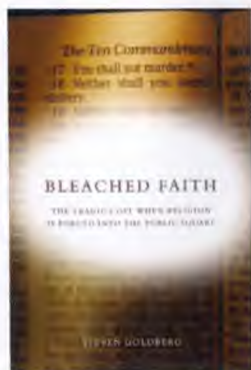
Joshua DuBois has been appointed by President Barack Obama as the executive director of the Office of Faith-Based and Neighborhood Partnerships



Bleached Faith: When Religion Is Forced Into the Public Square

REVIEWED BY DAVID A. PENDLETON

ILLUSTRATION BY LARS JUSTINEN



By Steven Goldberg,
Stanford University Press, 2008.
161 pages.

A forced faith is no faith at all: for the freedom to believe entails the freedom to doubt.

Such is one of the unspoken though no less important lessons implicit in Steven Goldberg's *Bleached Faith: The Tragic Cost When Religion Is Forced Into the Public Square*. His is a timely primer on the significance of faith and the need for sustaining a civic environment wherein citizens are free of religious coercion.

This Georgetown University law professor reminds us that personal faith has played a defining role in American history, culture, and politics. It has shaped the self-understanding of Americans, regardless of their individual religious/nonreligious predilections.

A memorable image from high school history class is that of General George Washington kneeling in prayer at Valley Forge. It functions as an iconic moment despite the likelihood it did not happen. Similarly, Thomas Jefferson's most famous correspondence concludes with his "prayers for the protection and blessing of the Common Father and Creator of man."

The speeches of President Abraham Lincoln, whether from Gettysburg or from his second inaugural address, ring with biblical cadences and are punctuated with allusions to the Deity. His was not an orthodox faith, but Lincoln was steeped in religious imagery. Every Thanksgiving the story is retold of pilgrims who endured hardships and trials in search, at least in part, for religious freedom. And every four years clergy stand before the nation's capitol and offer up prayers for the newly inaugurated president, most recently for the forty-fourth president of the United States, President Barack Obama.

However important faith has been, just as vital has been the right to determine for oneself the nature of belief or unbelief in one's own life. Faith and freedom have been conjoined in American democracy. The first clause of the First Amendment to the United States Constitution underscores the centrality of religious freedom, effectively making religious freedom our first freedom.¹

The constitutional separation of church and state mirrors the distinction between the public and private lives we lead individually and

collectively. Jefferson, in his January 1, 1802, correspondence to the Danbury Baptists, used the phrase “wall of separation between church and state.” The wall of separation is a metaphor that has exerted, and for the foreseeable future will continue to exert, considerable influence.

The truth of the metaphor of separation has never been *uniformly* accepted. Arguably, from its inception it has had its dissenters. But in recent decades the increasingly vocal and strident efforts by some to discredit and jettison the principle of separation of church and state have become a cause for concern.

The “bleached faith” Goldberg dreads is the threat to genuine faith inherent in a “watered-down” religion contrived to achieve the questionable goal of installing one’s religious worldview in

public (government) places—whether the public place is a monument, historic edifice, courtroom, classroom, government policy, or curriculum.

In a succinct 161 pages, Goldberg references a whole host of subjects in an overview of the religio-political landscape—the Scopes trial, Santeria religion, Sikhs, Social Darwinism—and those are just some of the S’s touched upon. He manages also to cover a lot of ground: discussing figures as influential and diverse as Justice Samuel Alito, philosopher Baruch Spinoza, and novelist Herman Wouk; explaining legal doctrines rooted in the establishment clause and grounded in the free exercise clause; sharing his own personal familiarity with both observant and secular Judaism; and expounding on such hot-button topics as intelligent design, the public



posting of the Ten Commandments, and Christmas and Chanukah displays on government property.

The book is not an autobiography, but it is in places profoundly personal. He writes not just as a detached and dispassionate legal scholar but as one well-versed in and appreciative of faith. "I am a Jew who is not very observant, yet I have a strong Jewish identity," he divulges. "I have concluded . . . that religion can provide me with a sense of humility, faith, and values that science and secularism cannot" (pp. 5, 6).

Without being America-centric or anti-European, Goldberg submits that the uniquely American approach to faith in the public square avoids the perilous shoals upon which other ships of state have run aground: "We are neither

France, where secularism reigns supreme, nor Iran, where one faith rules the roost. In France, students in public school cannot wear the Muslim head scarf; in Iran, they must. In America, the American Civil Liberties Union and the religious right agree that every public school student has a right to wear religious garb if and only if he or she so desires" (p. 5). American legal doctrine plots a course to steer clear of both a wholly secular society and a theocratic state.

That is not to say, however, that America is perfect. Alas, on too many occasions rancor, riot, and raucous clashes have erupted where peaceful religious coexistence should have prevailed. Is Goldberg's account just a politically correct one? Or is he actually seeking the proverbial Aristotelian golden mean? I would contend,



rather, that he is describing the constitutional balance gifted to us by the Founders.

One can imagine Goldberg taking criticism from both far right and far left—fundamentalists of the theistic and atheistic ilk. It should be apparent, however, that his “opposition to pushing religion into the courthouse and the biology classroom does not stem from hostility to religion,” for Goldberg is “opposed to bleached faith—the empty symbolism that diminishes the power of real belief” (p. 6).

A bleached or watered-down faith can occur, for example, when one seeks to situate in government buildings symbols of one’s religious beliefs—whether a cross, crèche, crescent moon, or Ten Commandments. While the government is not required to be silent with respect to its history, it is not the role of government to bestow its imprimatur on a given faith tradition. The USDA grades beef as “Prime,” “Choice,” or “Select,” but no government agency can so grade a religion.

Goldberg points out how the Ten Commandments and their posting in government buildings is more about seeking the tacit approval of government than in educating citizens about the history of law. In seeking to make legal such postings, parties have watered down the very meaning of a singularly religious icon. This theme—of benevolent intentions being an insufficient safeguard against genuine harm—recurs throughout *Bleached Faith*.

On the topic of intelligent design and concerted efforts by some to inject creationism into the public school science curriculum, Goldberg warns against the serious untoward consequences for such pedagogical meddling. Science is limited, and framing an essentially religious idea as though it were science will tend to circumscribe and diminish faith. “Science can neither prove nor disprove the existence of God, the divinity of Christ, the nature of the soul, or any of the other teachings of actual religions,” he writes. “Science cannot provide the sense of humility or the guidance on how to live our lives that these religions provide” (p. 51). Creationism, if it is to be taught at all, is properly the responsibility of churches, mosques, and synagogues—not public schools.

He cites with approval the Dover, Pennsylvania, legal case, a recent intelligent design case, in which a federal judge held that the local school board violated the establishment clause when it made obligatory the teaching of intelligent design by its high school science teachers.

That is not to say that the local school board intended to disregard the Constitution’s establishment clause. Constitutional law as a whole is complex, if not convoluted. Multi-pronged tests,

exceptions, nuances, and caveats abound, and the legal doctrine itself has unpredictably evolved over time. Witness the doctrinal progeny of *Lemon v. Kurtzman*² and the on-again-off-again applicability of the *Sherbert v. Verner* compelling interest test.³

While a bright-line rule may not be easily discernible, it is nevertheless the responsibility of government actors not to cross that line. “Finding your way between the establishment and free exercise clauses is like walking a tight-rope,” confesses Goldberg. “But it is a walk worth taking to preserve the unique brand of religious freedom we have in the United States” (p. 108).

In important respects *Bleached Faith* is a clarion call for all Americans to acknowledge that the “unique . . . blend of free exercise and non-establishment—our insistence on avoiding both intolerant secularism and suffocating theocracy” (p. 128)—is worth the effort.

It is a not too subtle suggestion that when we visit the altars of our first freedoms we must return with the fire, not the ashes. Religious liberty depends as much on the voices of individual citizens as it does on the opinions of courts or the statutes of Congress, for the freedom to believe (or disbelieve) is too important to leave to government officials alone.

Goldberg ultimately describes himself as “someone who stands outside the camps of the resolutely secular and the resolutely religious,” for his camp can be seen as that of the resolutely constitutional. He invites all Americans to dedicate and consecrate themselves to the preservation of our first freedoms, for we are all heirs and therefore stewards of the liberty bequeathed to us.

David A. Pendleton, an administrative law judge, was a policy advisor to the governor of Hawaii and an elected member of the Hawaii House of Representatives, where he sponsored a state Religious Freedom Restoration Act.

¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

² The *Lemon* test for doctrinal analysis of establishment clause violations consists of three prongs:

(1) The government’s action must have a secular legislative purpose;
(2) The government’s action must not have the primary effect of either advancing or inhibiting religion; and
(3) The government’s action must not result in an “excessive government entanglement” with religion.

If the law fails any of the three prongs, the government’s action is unconstitutional. Subsequent cases, however, have called into question the application of the *Lemon* three-pronged test. Most famously, former Supreme Court justice Sandra Day O’Connor advanced the endorsement test as a refinement of *Lemon*.

³ *Sherbert v. Verner*, 374 U.S. 398 (1963), signaled the high-water mark for free exercise clause protection of religious freedom. This case involved Ms. Adell Sherbert, a Seventh-day Adventist, and her fight for appropriate religious accommodation in the workplace. It mandated the compelling interest test in free exercise clause litigation. Subsequently, *Employment Division v. Smith*, 494 U.S. 872 (1990), limited the compelling interest test to free exercise cases wherein unemployment compensation was involved and permitted religious infringement by laws of general applicability. Then the compelling interest test was reinstated in 1993 by Congress’ passage of the Religious Freedom Restoration Act (RFRA), only to be curtailed thereafter by the Supreme Court in *City of Boerne v. Flores*, 521 U.S. 507 (1997), and *Gonzales v. UDV*, 546 U.S. 418 (2006).

BY JOHN GRAZ

ILLUSTRATION BY STEVE CREITZ



ON THURSDAY, MARCH 26, THE HUMAN RIGHTS COUNCIL (HRC) OF THE UNITED NATIONS PASSED EARLY IN THE AFTERNOON THE RESOLUTION ON DEFAMATION OF RELIGION. THERE WERE 23 YES VOTES, 11 NO VOTES, AND 13 ABSTENTIONS.¹

Americans who attend the council are surprised to see the marginal role their country plays in the council. The United States is not a member, and in the past has been one of the main targets of the critics. Since the United States is not a member, it was not easily able to lead an opposition to the resolution. That role was taken by Europe. African country members of the Human Rights Council either voted in favor or abstained: Latin American countries generally abstained: Cuba voted in favor and Chile voted against.²

You might ask, Why would the International Religious Liberty Association, an organization that

defends religious liberty, be opposed to a resolution whose ostensible purpose is to defend religion against attacks? It is worth recognizing that the original resolution, introduced in 1999 to the Commission on Human Rights by Pakistan on behalf of the Organization of the Islamic Conference (OIC),³ was about defamation of Islam, and Saudi Arabia was one of the main sponsors. Then the resolution was expanded to include all religions. But, in fact, in the current resolution only Islam is explicitly mentioned and only Muslims are painted as victims.⁴ The resolution passed in 2001, 2002, 2003, and 2005. It also passed at the General Assembly in 2005,⁵

DEFAMING RELIGIOUS FREEDOM







"WE BELIEVE EVERYONE HAS THE RIGHT TO CRITIQUE A RELIGION AND ITS LEADERS AS LONG AS HE OR SHE DOES NOT CALL PEOPLE TO DISCRIMINA- TION, HATRED, AND VIOLENCE."

after being introduced by Yemen on behalf of the OIC.⁶

Yes, there are positive aspects to the resolution: things such as encouragement toward education about various religions in schools, a call for interreligious dialogues, and respect for all religions in general. There has been legitimate concern about Islamophobia in Western countries since September 11, 2001. But it would have been far better if the resolution had also mentioned all the problems and discrimination Christians and other religious groups face—particularly in the countries represented by members of the HRC and the OIC.⁷

However, it is useful to remember that the purpose of human rights is to defend and protect individuals, groups, and properties—not religions or ideas. So a call to violence or murder against the members of a religion should be punished. This is covered in Article 20 of the International Covenant on Civil and Political Rights (ICCPR). The covenant has been signed by many countries and it is a binding document for them. It will be interesting to see how the country members of the HRC observe this covenant. Another problem with the resolution is that it puts on the same level Defamation of Religions and Incitement to Hatred and Violence.⁸

We believe everyone has the right to critique a religion and its leaders as long as he or she does not call people to discrimination, hatred, and violence. This right is part of our precious freedom of expression (Article 19 of ICCPR). The resolution "urges States to provide, within their respective legal and constitutional systems, adequate protection."⁹ A new law will create more problems than it solves. What is the legal definition of defamation? Where does defamation begin and where does it end? When does a critique become defamation?

It is true that an aggressive attack on a religion may feed hatred and encourage violence and discrimination. In some parts of the world religious minorities have experienced this. It was the case of Christians in Pakistan, Indonesia, and Somalia after some unfortunate statements

by Christian leaders about Islam. The margin between attacks on religion and attacks on symbols, property, and members of that religion may be narrow. This is why we should give attention to the concern behind the resolution. The International Religious Liberty Association has done this for several years. Its Sixth World Congress and its Tenth Meeting of Experts focused specifically on defamation of religion.¹⁰

We think the best way to oppose defamation of religion is to be proactive in multiplying interreligious meetings and relations. We also think, as we have already expressed in the first two meetings of IRLA Experts (1999-2000), a Code of Good Conduct should be worked on by all actors.¹¹ After the cartoon on Muhammad was published in Denmark, we saw that countries that had strong traditions of interfaith relations were less affected by violence. This indicates that when a religion is defamed, leaders of other religious organizations should play the role of peacemakers and bridge builders. Where there is no freedom of expression, legislation against defamation of religion will be used by the government or by the religious majority to discriminate against minorities and to suppress what could be useful and healthful critiques.

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⁶ Resolution (A/HRC/10/L.2/Rev 1), Resolution 7/19, Combating Defamation of Religions. Azerbaijan, China, Cuba, Pakistan, Russian Federation, Saudi Arabia, and Sri Lanka are among the 23 votes in favor.

⁷ See United Nations press release, "Council Establishes New Expert in Field of Cultural Rights, Extends Mandate on Democratic People's Republic of Korea for One Year," HRC, afternoon, March 26, 2009, pp. 18-22.

⁸ It appeared on the agenda as an item on "racism." See the analysis of The Becket Fund at www.becketfund.org.

⁹ See Human Rights Council, Resolution 7/19, Combating Defamation of Religions.

¹⁰ A/HRC/10/L.2.

¹¹ GA Res 60/15, UN Doc A/Res/60/150 (January 20, 2006).

¹² Read the Annual Report on International Religious Freedom published by the United States Department of State and other reports on religious freedom in the world.


¹³ *Idem*.

¹⁴ The U.S.A. did not sign.

¹⁵ The Tenth IRLA Meeting of Experts opposed the resolution because of its risk to freedom of expression. A final statement will be issued after the Eleventh Meeting in September 2009.

¹⁶ See *Fides et Libertas*, 2000.

Changing



During his visit to America in April 2008, Pope Benedict XVI esteemed the model of American church-state relations as a potential schema to follow in Europe.¹ He noted that by disallowing state control over religion, religious groups have greater liberty to achieve their spiritual missions. Interestingly, the same train of thought regarding an American model of church-state relations entered discussions about the purpose of Benedict's September 2008 visit to France. Some commentators claimed that it might become one of the most notable visits of his pontificate. Benedict XVI's concern for France is its overtly secular stance in society, usually termed *laïcité*.² He proposed an alternate form of church-state relations patterned after the American model of separationism, and France's president, Nicolas Sarkozy, is open to discussing the possibilities with him.³ Perhaps the most startling aspect of these recent events, at least for church historians, is Pope Benedict XVI's recommendation given the historic condemnations by the Vatican of American concepts of church and state relations.

Historically, the Roman Catholic Church has maintained that it is the obligation of the state to support the church in fulfilling its mission. As the church claims its mission is superior in nature to that of the state because of the spiritual objectives involved, so it also claims superior authority over the state in the temporal sphere. Prior to the Protestant Reformation the church achieved her aims much more easily because of the existing political structure of empires, such as the Holy Roman Empire, or dynasties, such as the Carolingian Dynasty—in each case, resulting in the concept of church-state union referred to as the *Corpus Cristianum* (Christian Commonwealth). Subsequent to the Reformation, the nascent existence of nation states, each with its singularity of purpose, posed more formidable challenges to achieving church-state union with the

By EDWIN C. COOK
ILLUSTRATION BY ROBERT HUNT



church as the dominant player. Lacking a cohesive body politic over which to exercise its authority, the church adapted its strategies to each nation state, courting favor with each in a variety of ways. Those that had a dominant Catholic populace, such as Spain, became known as “confessional states”; in the case of France, which eventually adopted the concept of *laïcité*, the church regarded it as an “estranged daughter”; and America, where Protestants were the dominant majority and which championed separation of church and state at its founding, was considered with perplexity and no small degree of consternation.

Since the beginnings of Roman Catholicism in America, the enduring issue of how to harmonize Roman Catholic principles with American ideals has resulted in much debate, lengthy discourse, and even division among hierarchical leaders that reached a tense climax in 1900.⁴ The term typically given to this development is *Americanism*, and includes such principles as “religious liberty, separation of church and state, cooperation with other religious bodies, and greater lay initiative,”⁵ not to mention concepts of governance found within modern democracy.⁶ Emphasizing the enduring nature of this dilemma, Dennis P. McCann comments: “No doubt, the American church will continue to struggle with this principle for as long as it faithfully lives its Catholic identity.”⁷

Even though no Roman Catholic hierarchical structure existed during the Colonial Era of American history, some of the underlying issues that later developed into the Americanism dilemma were already present. As early as 1626 Pope Urban VIII’s nuncio was shocked that “under the same roof in [Sir George Calvert’s settlement at Ferryland on Newfoundland’s Avalon peninsula] . . . Mass was had according to the Catholic rite, while in another the heretics [Protestants] carried out their own.”⁸ Calvert’s other entrepreneurial enterprise in Maryland allowed Roman Catholics to coexist with Protestant groups, but only in the context of “broad religious toleration for all.”⁹ In fact, all other Catholic settlements, such as those in “New Albion, in Virginia’s northern neck, and in Dongan’s New York,”¹⁰ recognized the crucial need for religious toleration if they were to survive in a potentially hostile environment. Such concessions of toleration to Protestants, born of expediency because of Catholicism’s minority status, rather than upon principle, largely ignored ideas of religious liberty based on Enlightenment ideals.

Such a difference demands the following distinction to

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be made: religious toleration is distinguished from religious liberty, the former being a concession of the state whereas the latter is an inalienable right. As George La Piana states, religious tolerance “is by definition connected with something which is evil and undesirable. We tolerate things of which we do not approve because we cannot avoid them without incurring a greater evil. Hence, Catholic theology admits that the practice of religious tolerance may at times be permitted by the moral law which allows the choice of a lesser evil.”¹¹ He further defines freedom of conscience as “the right of every person to choose one’s own religion according to the light of reason and the emotions of the heart,” and freedom of religion as meaning “all religions have an equal right to exist and to be respected and protected by the laws of the state.”¹²

Catholic Liberalism and Enlightenment Thought

In spite of such philosophical differences regarding religious toleration and religious freedom, some European Catholic thinkers sought to bridge the growing gap between Catholicism and intellectual forces of the Enlightenment. Among them were: in Italy, Ludovico Muratori (1672-1750), Giovanni Lami (1697-1770), and Giovanni Bottari (1689-1775); in Germany, Eusebius Amort (1692-1775); and in France, Jean-Baptiste Demangeot (1742-1830).¹³

They “combined the philosophical thought of Descartes, Newton, and Locke, with a Gallican conciliar ecclesiology.”¹⁴ With the Enlightenment view of man and his individual rights, they redefined traditional concepts of church and state relations. Enlightenment views of society included political, intellectual, and religious pluralism. Emphasis on the individual allowed support for each area: politically, for the individual who entered into society by contract with others; intellectually, for the person who rejected tradition and applied individual, critical reason to inherited positions; and religiously, for the multitude of religious groups making up society.¹⁵

The two major obstacles they faced were how to maintain political rights of religious pluralism without appearing to condone indifferentism (that all religious groups are valid means of salvation)¹⁶ and the opportune political structure to implement these ideas. The solution they proposed for the first was separation of church and state. Under this schema the political rights granted by the state to all groups were merely civil parlance for the peaceful working of society. Since the church was separate from the state, each religious group was free to maintain the certainty of its convictions and to administer discipline as it saw fit to its members—without the corresponding loss of civil privileges, which, of course, was contrary to what was practiced under the traditional form of church-state union in Europe.

Regarding the second problem, Catholic Enlightenment thinkers were prevented from practical application of these principles because of the political structures prevalent in the European societies in which they lived. Thus, experimentation with a working model of church-state separa-

tionism awaited the development of American republican ideals of political governance, birthed through the American Revolution.

John Carroll's Views of Church-State Separation

The Catholic Enlightenment thinkers who were most influential upon John Carroll were Arthur O'Leary (1729-1802), Joseph Berington (1743-1827), and John Fletcher (1766-1845),¹⁷ all of whom were from Britain. Because of their influence, John Carroll, first appointed as superior of the Catholic mission in 1784,¹⁸ and later elected as bishop of Baltimore in 1789,¹⁹ "thought that the American principle of religious liberty was such a significant step forward, that England could do well to imitate it."²⁰

In the American context, Carroll faced variegated and complex issues related to religious liberty and internal church governance. Officially, clergy appointments were made through the Vatican. However, from the time of Catholic Colonial establishments until the time Carroll was elected as bishop of Baltimore in 1789, there was great dearth of formal organizational structure to American Catholicism.²¹ Without an abundance of priests, and especially lacking organized parishes, the spirit of independence infused the mentality of American Catholics. Additionally, the prevailing sentiment just prior to and following the American Revolutionary War was one of suspicion toward foreign authority, whether civil or ecclesiastical.²² To compound matters even more, American Catholics were comprised of immigrants predominantly from Ireland and Germany who did not want French clergy of Vatican appointment.²³ For Carroll, the simplest solution was the appointment of clergy through local (American) election, an ideal he and his fellow clergy envisioned.²⁴

Carroll's pro-Americanist stance was greatly challenged in 1808, when the Vatican appointed "four suffragans to the new dioceses of Boston, New York, Philadelphia, and Bardstown, Kentucky," who were foreign-born and -trained.²⁵ By 1815, the time of Carroll's death, Americanism was still a vital element among American-born Catholic clergy, in spite of nascent tensions with the Vatican.²⁶ In fact, James Hennessey, speaking of the development of Catholicism in America, referred to it as "the strongest nineteenth-century conciliar tradition in the Western Church."²⁷

Factors weighing in favorably for the support of American church-state separation and religious liberty, at least in the mind of John Carroll, were the legal protections afforded to Catholics, along with all other religious groups, through the First Amendment.²⁸ Additionally, the concept of church-state separation was distinctly different from that in Europe, where Catholicism faced anti-clerical republican bent on restricting its influence.²⁹ Carroll also believed that adoption of such principles would allow for growth of Catholicism.

However, as much as Carroll lauded the concept of reli-

gious liberty, it was not of the type envisioned by Madison and Jefferson. Rather, a more specific analysis of Catholic concepts of church-state relations in America places them between the religious freedom guarantees of Virginia after 1790 and the religious toleration of Massachusetts.³⁰ Joseph Agonito, in his Ph.D. dissertation, comments:

"Separation of church and state did not imply for Carroll, as it did for Madison and Jefferson, a secular (or neutral) state, unconcerned and unconnected with religion. Carroll could no more accept this idea of the state than the majority of his fellow-Catholics, or, for that matter, Rome itself. By separation, he meant that the state should not establish or favor one particular church over others; he did not oppose the idea that the state should encourage and promote religion—even a particular religion (e.g., Christianity)."³¹

Such a view was consistently practiced by Carroll when he gave as his rationale for supporting the Revolution the opportunity to gain "the toleration of all sects, professing the Christian religion." Agonito comments on the use of the term "Christian" instead of "Protestant" as Carroll's desire to make allowance for Catholics, but to "exclude those not of this faith" (i.e., non-Christians).³²

This interpretation seems accurate because records indicate that Carroll aided in drafting *The Declaration of Rights* for the state of Maryland in 1776, which "specifically excluded non-Christians from office-holding."³³ At no time during the debates for ratifying this declaration did Carroll speak against it. Later, in 1785, Carroll indicated his reluctance for "the state to encourage, even indirectly, non-Christian religions" when Maryland proposed a bill for the religious assessment of all Christian groups, but that made exceptions for those who were Jewish, Muslim, or a non-believer in the Christian religion. Carroll bracketed this section in his copy and wrote underneath it: "A bill for the encouragement of infidelity, Judaism, and Mahometism."³⁴

Thus, from the historical record, it seems accurate to state that Carroll adopted a view of church-state relations that would allow government support of Christianity and that would tolerate, for the sake of civil peace, other religious groups, although even the latter position should not be encouraged if it could possibly be avoided. For Carroll, the church in a Protestant country such as America should adopt this modified concept of church-state relations in order to coexist in a plurality of religious groups. For this reason, among others already mentioned, he advocated Americanist ideals.

Even after Carroll's demise in 1815, the ideas of church-state separation continued to abound in Europe among liberal Catholic thinkers. Such individuals as Abbé Henri Grégoire (1750-1831) argued for "a free church in a free state"; Count Charles de Montalembert (1810-1870) and his friend Abbé Felicité Robert de Lamennais (1782-1854) urged this idea in the early 1830s as well.³⁵ Not only did this fuel the flames of church-state separation in American



John Carroll,
the first arch-
bishop in the
United States



Catholicism, but it also raised the ire of the Vatican. Pope Gregory XVI (as pope 1831-1846) rejected this teaching as heretical in his encyclical *Mirari vos* (1832), in which he denounced liberty of conscience as sheer madness, termed freedom of the press as execrable and detestable, and disapproved of the separation of church and state, declaring that princes hold their temporal government primarily for the defense of the church.³⁶

The Americanist Controversy

Concurrently, distinct changes were underway in America. As if to reinforce Pope Gregory's objections, large waves of Catholic immigrants who brought their Old World concepts of church governance contributed to establishing this mentality among American Catholicism.³⁷ Such sentiments strengthened the position of American Catholic leaders who desired to follow more traditional concepts of church-state relations, resulting in growing animosity and division with other Catholic leaders favoring Americanist ideals.

Attrition rates among Catholic membership also hammered deeper the wedge between Catholic leaders. Although the American Catholic population grew from approximately 318,000 in 1830 to 3,103,000 in 1860,³⁸ some American Catholic clergy were concerned with attrition rates, calculating that an estimated 3.75 million Catholics had left the fold between 1786 and 1836.³⁹ In spite of such unprecedented growth in previous decades, Peter Paul Cahensly, an immigrant who founded Saint Raphael's Society for German immigrants seeking aid in America, issued a memorial in 1891 to Pope Leo XIII claiming that millions of Catholics were leaving the church.⁴⁰ His memorial called attention to the division among conservative Catholic leaders and those

For Roman Catholics living in America the dilemma they faced was how to reconcile Catholic principles with the ideals of their country.

who maintained sentiments of Americanism, such as archbishops Patrick Feehan, William Gross, Peter Kenrick, James Cardinal Gibbons, and John Ireland.⁴¹

The most outspoken pro-Americanist archbishop, John Ireland, of St. Paul, Minnesota, sought ways to defend Americanism against its detractors. He pointed out that two of its core principles, religious liberty and the separation of church and state, had allowed the Catholic faith to flourish so rapidly since its inception there.⁴² Ireland was such a visionary that he predicted that the civil and religious conditions prevailing in America would soon become those established in the whole world.⁴³ For this reason, he argued, in order for the church to fulfill its mission to the world, it was imperative for American Catholics to demonstrate the compatibility of Catholic principles with concepts of democracy, religious liberty, and separation of church and state.⁴⁴

Such enthusiastic endorsement for American ideals by leaders of the American Catholic hierarchy caused concern at the Vatican. Given that America was predominantly a Protestant nation from its beginnings and that the Enlightenment so heavily influenced its political moorings during the Founding Era,⁴⁵ Pope Leo XIII issued *Longinqua Oceani* in 1895, in which he praised the growth of the church, but "warned against idealizing the American separation of church and state."⁴⁶ In particular, he admonished American Catholic leaders not to espouse American concepts of religious liberty and church-state separation as ideals to be followed for the church in other parts of the world.⁴⁷ In 1899 he followed this encyclical with a second one, *Testem benevolentiae*, in which he condemned Americanist ideals, especially pointing out grave concerns with Enlightenment influence and a certain type of liberty wholly free from external guidance of the church.⁴⁸ Such blatant counsel stifled further consideration of Americanism so extensively that it was not until nearly 60 years later that the church would re-evaluate its concept of religious liberty at Vatican II.⁴⁹

Conclusions

The Americanist controversy included many factors related to American social, political, and religious concepts. For Roman Catholics living in America, whether laity or clergy, the dilemma they faced was how to

reconcile Catholic principles with the ideals of their country. Consistently, the hierarchical leadership of the church in Europe believed that such a feat was impossible. Through various encyclicals, some of which have been referred to herein, various popes made official pronouncements against what they perceived as dangers to the church.

Some Roman Catholic leaders in America, however, felt otherwise. They conceived of compatibility between the principles of their faith and American ideals. They were influenced by Roman Catholic intellectuals in Europe and Britain who attempted to reconcile Enlightenment thought with Catholicism but lacked the practical means to test their conclusions.

Through their writings they influenced Catholic leaders in America such as John Carroll, Orestes Brown, and John Ireland. Additionally, the American church, not being limited by an already established state structure, offered an opportunity to experiment with Catholicism under the new Constitution, in which the principles of religious liberty and church-state separation were enacted through the First Amendment.

Upon close examination of John Carroll's views of religious liberty, it becomes evident that while he was much more advanced than many of his European contemporaries, his views still do not resonate fully with the concepts of religious liberty and church-state separation advanced by Founders such as James Madison and Thomas Jefferson. Additionally, while it is certainly true that Carroll's views reflect adaptation of the traditional Catholic understanding of church-state relations to fit an American context, it must be emphasized that his views speak on behalf of *American* Roman Catholicism. The Vatican maintained a consistent course throughout the Americanist controversy as evidenced by various encyclicals cited herein, at least through the beginning of the twentieth century (1900). In light of Pope Benedict XVI's recent recommendations of the current American church-state model for Europe, and given Rome's boast that she never changes, one is left to ponder whether Rome's official position on the Americanist "heresy" has changed, or whether American concepts of church-state relations have undergone a gradual transformation since Pope Leo XIII issued *Testem benevolentiae* to reflect a position more in harmony with Rome's traditional stance?



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Movements (New York: Charles Scribner's Sons, 1988), vol. 1, p. 370.

¹ Neil T. Storch, "John Ireland's Americanism After 1899: The Argument From History," *Church History* 51, No. 4 (December 1982): 444.

² Graham Maddox, *Religion and the Rise of Democracy* (New York: Routledge, 1996), p. 199.

³ Dennis P. McCann, *New Experiment in Democracy: The Challenge for American Catholicism* (Kansas City, Mo.: Sheed and Ward, 1987), p. 33; David O'Brien also remarks: "Americanism, in short, now appears as one episode in a long series of controversies surrounding the Church's role in the modern world" (David O'Brien, "Americanism," in Michael Glazier and Thomas J. Shelley, eds., *The Encyclopedia of American Catholic History* [Collegeville, Minn.: The Liturgical Press, 1997], p. 99).

⁴ James Hennessey, "Catholicism in the English Colonies," in Lippy and Williams, p. 346; James M. O'Neill, *Catholicism and American Freedom* (New York: Harper & Brothers, 1952), pp. 8, 9.

⁵ Hennessey, p. 345; O'Neill, pp. 9, 10.

⁶ Hennessey, p. 354.

⁷ George La Piana and John Swomley, *Catholic Power vs. American Freedom*, Herbert F. Vetter, ed. (New York: Prometheus Books, 2002), p. 45.

⁸ *Ibid.*, pp. 44, 45.

⁹ Joseph P. Chinnici, "American Catholics and Religious Pluralism, 1775-1820," in Timothy Walch, ed., *Early American Catholicism, 1634-1820* (New York: Garland Publishing, 1988), p. 277.

¹⁰ *Ibid.*, p. 277.

¹¹ *Ibid.*, p. 279.

¹² *Ibid.*, pp. 277, 280, 281.

¹³ Debra Campbell relates how the Jesuits of Pennsylvania and Maryland unanimously agreed in October 1784 that the appointment of an American bishop was still untimely and could threaten the safety of Catholics in general and Jesuit property in particular ("Catholicism From Independence to World War I," in Lippy and Williams, p. 358; O'Neill, p. 11).

¹⁴ Hennessey, p. 354; O'Neill, p. 11.

¹⁵ Joseph Agonito, *The Building of an American Catholic Church: The Episcopacy of John Carroll* (New York: Garland Publishing, 1988), p. 209; O'Neill notes as well Carroll's patriotic fervor (p. 11).

¹⁶ Hennessey, p. 354.

¹⁷ Agonito, pp. 218, 220.

¹⁸ Campbell, p. 359.

¹⁹ *Ibid.*, p. 358.

²⁰ *Ibid.*

²¹ *Ibid.*, p. 357.

²² Bernard Cooke, ed., *The Papacy and the Church in the United States* (New York: Paulist Press, 1989), p. 37. Conciliarism in the Roman Catholic Church dates to the fourteenth century and is characterized by restraints imposed upon the pope by means of councils consisting of hierarchical leaders, such as bishops, theologians, etc.; cf. "The Republican Church," in which chapter Dale B. Light details how St. Mary's church proposed to create a Catholic church of equal status to the national churches of Europe, but organized on a liberal, constitutional basis (Dale B. Light, *Rome and the New Republic: Conflict and Community in Philadelphia Catholicism Between the Revolution and the Civil War* [Notre Dame: Univ. of Notre Dame Press, 1996], pp. 127-131).

²³ Campbell, p. 357.

²⁴ McCann, p. 25.

²⁵ Agonito, p. 244.

²⁶ *Ibid.*, pp. 248, 249.

²⁷ *Ibid.*, p. 260.

²⁸ *Ibid.*, p. 260.

²⁹ *Ibid.*, pp. 262, 263.

³⁰ Leonard Swidler, *Toward a Catholic Constitution* (New York: Crossroad Publishing Co., 1996), p. 58.

³¹ *Ibid.*, pp. 58, 59.

³² David O'Brien states: "In the United States, the continuing arrival of millions of Catholic immigrants limited the appeal of an Americanizing strategy based on affirmation of American ideals and institutions" (O'Brien, p. 99).

³³ Campbell, p. 361.

³⁴ *Ibid.*, p. 364.

³⁵ Campbell, p. 370; Storch, p. 438.

³⁶ Campbell, p. 370; cf. Gerald P. Fogarty, *The Vatican and the American Hierarchy From 1870-1965* (Stuttgart: Anton Hiersemann, 1982), pp. 27-64.

³⁷ Storch, p. 436.

³⁸ *Ibid.*, p. 440.

³⁹ Storch, p. 440; Swidler, p. 59; cf. Peter Hertel, "International Christian Democracy (*Opus Dei*)," in Gregory Baum and John Coleman, eds., *The Church and Christian Democracy* (Edinburgh: T. & T. Clark, 1987), pp. 95-105.

⁴⁰ Maddox, p. 197.

⁴¹ Campbell, p. 371; for a highly detailed account containing copies of letters and correspondence among participants, see Thomas T. McAvoy, *The Americanist Heresy in Roman Catholicism, 1895-1900* (Notre Dame: Univ. of Notre Dame Press, 1963), pp. 217-258.

⁴² O'Brien, p. 98.

⁴³ Storch, pp. 435-436; Pope Leo XIII, *Testem benevolentiae*, in Glazier and Shelley, p. 101; Campbell, p. 371; cf. Fogarty, pp. 177-188.

⁴⁴ O'Brien, p. 98.

¹ Douglas W. Kmiec, "Why the Holy Father Likes America," retrieved on Apr. 13, 2008, from www.catholic.org/popeinamerica/story.php?id=27583.

² Peter Mayer, "PREVIEW: Pope Benedict to Visit France, the Church's Wayward Daughter," retrieved on Sept. 11, 2008 from www.monstersandcritics.com/news/europe/news/article_1430019.php/PREVIEW_Pope_Benedict_to_visit_France_the_Churchs_wayward_daughter.

³ Austen Ivereigh, "Not Just Another Papal Visit to France," retrieved on Sept. 9, 2008, from www.americamagazine.org/blog/entry.cfm?blog_id=28&id=47101D44-5056-8928-10794EF10834F928.

⁴ Debra Campbell, "Catholicism From Independence to World War I," in Charles H. Lippy and Peter W. Williams, eds., *Encyclopedia of the American Religious Experience: Studies of Traditions and*

REFORMATION ACHIEVED

BY DAVID J. B. TRIM

ILLUSTRATION BY DAN CRAIG

Religious diversity and thus the very concept of religious freedom in the modern United States both derive from the English Reformation, thanks to the English colonization of North America.

However, the Reformation in England is increasingly portrayed as something that was imposed on the English people by their rulers, who themselves did not have genuinely religious reasons for abandoning the traditional Roman Catholic faith of their forefathers. Some seem to feel that if it can be shown that the English Reformation's root causes lay in political maneuvering, economic advantage, or personal foibles, and only succeeded because it was imposed by force on an unwilling or indifferent population, then its consequences could more easily be undone. What would hold back reunification of Protestants and Catholics, at least in the English-speaking world, if they are merely prisoners of an unfortunate history? And if the English Reformation were imposed by force, does it mark a black period in the history of religious liberty?

Three previous articles in this series have taken us from the origins of Henry VIII's break with Rome in the late 1520s up to the death of Mary I in November 1558. This article looks at her successor, the third of Henry VIII's children, Elizabeth I. By the time she took the throne there was more interest in, and sympathy for, Protestant ideas than on Henry's death a dozen years before; however, England was not yet a Protestant nation. In the 30 years prior to Elizabeth's accession, England's official religion had changed radically, not once, but thrice; the "Elizabethan settlement of religion" (as it was to become known) was to be the fourth significant shift in 30 years—and the third in just over a decade! But it was also to be the last.

The reign of Elizabeth was to be a golden age for English literature, drama, culture, and exploration. On the stage, characters in the plays of Shakespeare, Marlowe, and Jonson grappled with issues that arose out of the wider contest





The Princess Elizabeth, aged about 13 (1546).

between confessions for Englishmen and—women’s loyalty—issues that were both personal and national. The Elizabethan era was to be the metaphorical stage on which the drama of national religious choice was to be played out—and resolved. For in the next four decades, the ecclesiastical direction of the nation was to be decided for the next four centuries.

THE ELIZABETHAN SETTLEMENT

Immediately on succeeding her sister, Elizabeth replaced almost all the Catholic royal counselors and ministers of state with men who were known to be committed evangelicals. In the next four years, the newly Protestantized central government ensured that, in elections to Elizabeth’s first Parliament, the House of Commons (at that time elected by fewer than 1 in

10 of the population, who could often be swayed by the influence of government ministers) returned a majority of Protestant or at least anti-papal MPs, albeit the House of Lords was more conservative. The queen’s counselors then shepherded through Parliament and through the Convocation (an assembly of the Church of England’s clergyman with limited legislative powers on ecclesiastical matters) the legal framework of “the Elizabethan Settlement.”

In 1559 Parliament enacted two key pieces of legislation: the Act of Supremacy and the Act of Uniformity, which restored both royal (rather than papal) authority over the church and the Protestant liturgy (the Book of Common Prayer) introduced in Edward’s reign. In 1563 Convocation adopted the Thirty-Nine Articles, which defined the faith of, and would regulate, the new Protestant Church, and also a new book of official homilies, which, used in conjunction with the Book of Common Prayer, were to be read aloud in every church during divine services.

However, the “Elizabethan settlement” was not a straightforward process. The queen and her ministers initially sought to put the clock back to Edward’s reign, but their first pieces of legislation, having passed the Commons, were rejected by the House of Lords—the upper house in Parliament. Opposition was led by the bishops, who of course were mostly staunch Catholics, appointed by Mary, and who were *ex officio* members of the House of Lords; but a number of the hereditary noblemen who made up the rest of the Lords were also ecclesiastically conservative. The government “had to make major concessions” to get the Lords to pass the two amended bills (passed once more by the Commons).¹ The Act of Uniformity, which reimposed the Book of Common Prayer, was significantly altered, to make the liturgy at some key points ambiguous and hence acceptable both to Protestants and Catholics. Even then, the bishops still steadfastly opposed the bills. In a dramatic move, the government imprisoned two of the bishops and forcibly excluded two others from sitting, all on trumped-up charges. The legislation passed by 21 votes to 18—had the four bishops been present, the government’s program would have failed.

The initial Elizabethan program of radical reform thus was tempered by political necessity. Convocation proved easier to deal with than Parliament, but the Thirty-Nine Articles perforce reflected the revisions to the 1559 legislative program.

The young queen and some (though by no means all) of her ministers took the moral of the story to heart. After the upheavals of the previous decade, it is unsurprising that few people in the early 1560s realized the program eventually enacted during 1559–63 would “constitute a permanent ‘settlement.’”² That it did was due not only to its nature, but also to the lessons learned and applied thereafter.

As we have seen, ambiguity was not originally the intent of the new regime. But Elizabeth had learned one lesson from the tumultuous reigns of her younger brother and elder sister—that pushing religious reform too far, too fast, only excited hostility that could politically undermine the sovereign. And the lesson she “learned from the clash of 1559” was caution.³ Thus, what she initially accepted perforce eventually became her preference. In contrast to the radicalism of the Edwardian reformation, which alienated as many as it appealed to, prudence and conciliation were to be hallmarks of the Elizabethan church.

What must, however, be emphasized is that, while Elizabeth’s ecclesiastical agenda after 1560 was, by the standards of the time, conciliatory, and was to be characterized by later generations as a *via media* (or middle way), it was not half-hearted. Some revisionist historians sneer at Elizabeth as “a Protestant (of sorts),” but it is widely recognized that the evidence we have for the queen’s opinions on doctrine (whether in public proclamations, from her own private devotions, or in her correspondence) reveals her theology as unequivocally Protestant.⁴ However, she emphatically was not a Calvinist—and it was the Calvinist, or Swiss, confession that commanded the allegiance of most leading English Protestant clergymen, and yet it was the most radical and divisive of the Protestant confessions. Elizabeth wanted her church, as much as possible, to unite her people rather than divide them—wanted it, in the language of the time, to “comprehend” as much of the population as possible.

The queen and some of her counselors seem to have decided that the moderation enforced on them by the opposition in the Lords in 1559 was a blessing in disguise, though it was not a view that all shared. Most of the new Protestant bishops, and some prominent Protestant nobles, were puzzled by the queen’s acceptance of what (to them) seemed a half-baked Protestantism. The celebrated theologian John Jewel, soon to be appointed bishop of Salisbury, wrote unhappily that some of his colleagues were “seeking

after . . . a mediocrity; and are crying out that the half is better than the whole.”⁵

Elizabeth and others of her ministers took a different view and apparently reached it quickly. The lord chancellor, Sir Nicholas Bacon, declared to the concluding session of the 1559 Parliament (in words that would have been approved by the queen): “I mean to comprehend as well those that be too swift as those that be too slow, those that go before the law or beyond the law as those that will not follow.”⁶ The set of injunctions which were issued that year by the government “for the suppression of superstition” and the promotion of “true religion,” and which provided for enforcement of the parliamentary legislation, “took more account of Catholic sensibilities” than the equivalents issued during Edward VI’s reign had done. They allowed for the preservation of much of the material culture of traditional churches, condemning the “superstitious abuse” of stained glass windows, crosses, altars, and so forth, rather than requiring their destruction (as particularly radical adherents of Calvinist Protestantism had hoped).⁷

THE ELIZABETHAN CHURCH OF ENGLAND

Elizabeth’s church, as it emerged from the Parliament of 1559 and Convocation of 1563, “blended traditional episcopal structure, an anglicised semi-Catholic liturgy, and a thoroughly Protestant theology,” as her brother’s had done.⁸ But Archbishop Cranmer and the other leading reformers of Edward’s day had seen the Edwardian church of the early 1550s as a staging post, a halfway house, to a more thoroughly reformed church in the future. In contrast, Elizabeth for the rest of her reign defended the church that, by accident as well as by design, had emerged in its first four years; it certainly was not Catholic, yet nor was it as unambiguously Protestant as many prominent Englishmen, clergy and laity alike, desired.

Under Elizabeth, the set liturgy of the Book of Common Prayer was identifiably Protestant; furthermore, many of the traditional rituals, around which communal worship and personal spirituality had centered, were abolished or altered significantly. This ensured the opposition of some traditionalists. Many other rituals, however, including some banned under Edward, were restored, or retained in somewhat modified form; and the same was true of much of the material culture of traditional worship: clerical vestments, the implements used in Communion,

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and the furnishings of the parish church.

All this angered the “hotter sort of Protestants” (as they called themselves), who, because of their passionate commitment to “purify” the Church of England of any residue of the Church of Rome, were to become known (by their enemies, more than by themselves) as “Puritans.” However, preserving traditional outward forms and the rites associated with them, even while preaching a distinctly new theology, provided much-needed continuity. It must have been reassuring to the many people who, while hostile to Rome, were bewildered by the multiple changes of confessional direction, had not heard much distinctly Protestant preaching, and were still uncommitted. It facilitated their conversion to what a subsequent generation of English Protestants would call “prayer book Protestantism.”

RELIGIOUS DIVERSITY

The compromises of the Elizabethan settlement thus did not negate all opposition—far from it. However, they did minimize opposition.

Many English people initially were unhappy with the Elizabethan settlement—yet crucially, very few hated it sufficiently to reject it entirely. There was enough in it that was familiar or desirable for it to be accepted—or at any rate not repudiated!—by a whole range of different opinion groups.

There were outright Roman Catholics (a small minority), and Henry VIII-style Anglo-Catholics, who hated the Papacy but disliked the doctrines and liturgical practices of Protestantism. There were middle-of-the-road evangelicals, essentially supporters of reform but still hoping for reconciliation in Christendom; and Lollards, the native English “heretical” movement, founded by John Wycliffe, almost 200 years earlier (whose absorption into Protestantism in the mid-sixteenth century remains one of the great mysteries of English reformation history). There were also, of course, out-and-out adherents of the reformed confessions: Lutherans; Calvinists; a few Anabaptists; but also followers of other Protestant reformers: Zwingli, Bucer, and Oecolampadius, whose followers in Europe had merged into the Lutheran and Calvinist confessions, but because of England’s separation from the continent, retained (for the moment) a quasi-separate identity.

This diversity among Protestants was well known. A common Roman Catholic charge was that they “cannot be the true Church, which is as

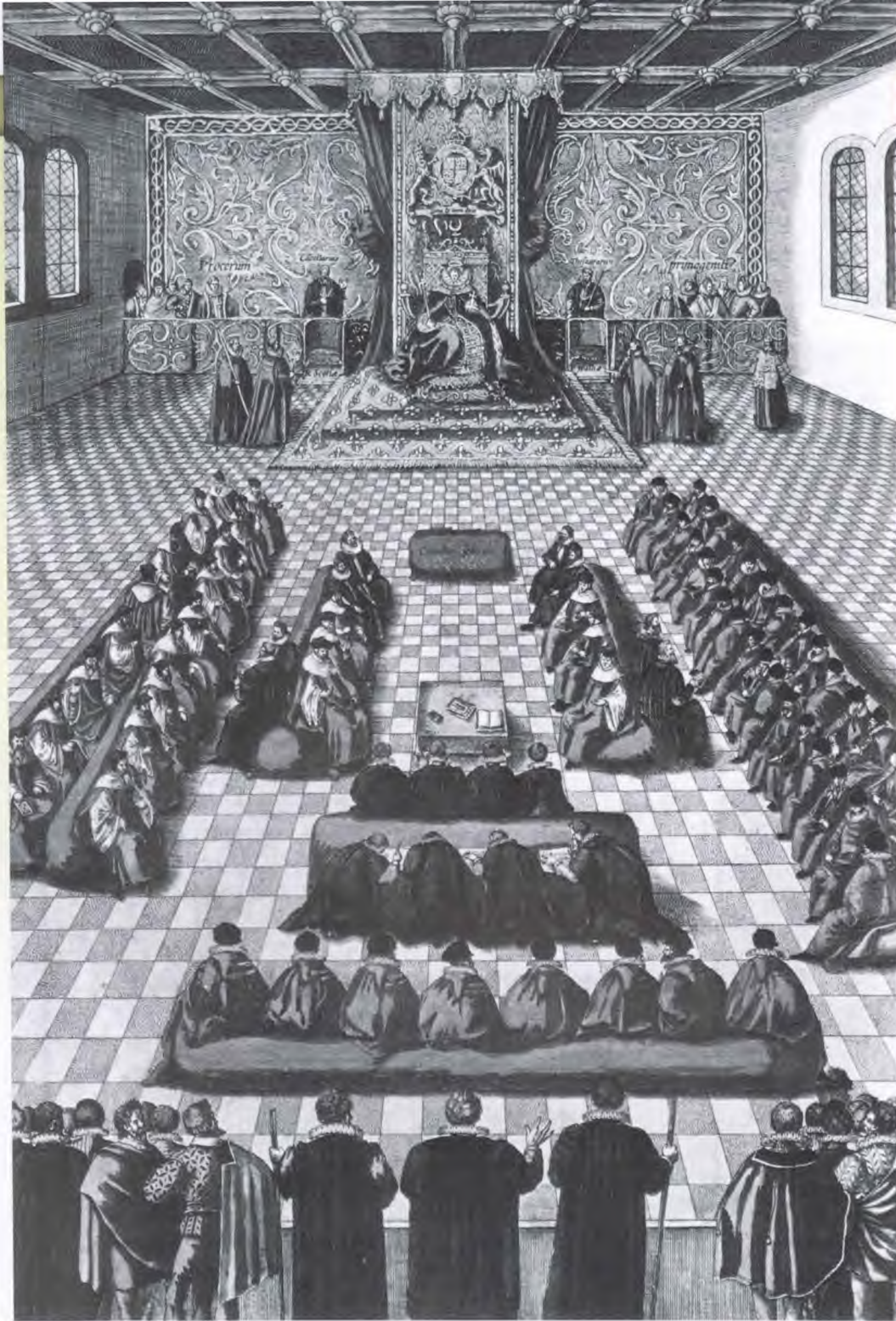
a City at unity in its self, because of [their] manifold dissensions and divisions . . . the Doctrine of Luther was no sooner bred, and borne, but it divided it self like a Hydra into many heads: Lutherans, Calvinists, Anabaptists, Libertines . . . etc.”⁹ In a sermon preached at Oxford in 1555, a Catholic priest emphasized the newfangled “diversity in opinions” among English Protestants, who were “Lutherans, Oecolampadians, [and] Zwinglians,” in contrast to the “old . . . Catholic faith.”¹⁰

Members of these different Protestant groups disagreed, sometimes violently, over both the theology of the Eucharist (or Communion, or Lord’s Supper), and, in consequence, how it should be celebrated liturgically; they also differed, sometimes heatedly, over soteriology and ecclesiology (the doctrines of salvation and of the church). The revisions made in 1559–63 to the Act of Uniformity, Book of Common Prayer and Thirty-Nine Articles, and maintained and enforced over the next 40 years, were intended to conciliate not only Catholics but also different types of Protestants—for, without unity among them, there was no way to overcome the inertia of tradition which in circa 1560 still affected the majority of the population.

For much of Elizabeth’s reign there was *doctrinally* (though never ecclesiologically or liturgically) a “Calvinist consensus” at the top of the church. However, by the end of her reign the diverse strands in English Protestantism made themselves felt and a “new mood in English Protestantism” emerged—one that drew on a range of other Protestant traditions and embraced sacramentalist views more typical of Luther than of the Swiss reformers.¹¹ It is a mistake, albeit one even distinguished historians are guilty of, to conflate English Protestantism with Puritanism; it was an error Elizabeth did not make.

“WINDOWS INTO MEN’S SOULS”

Why, then, did England become Protestant? The governments of Edward VI and Elizabeth I imposed what have been termed “political Reformations,” which certainly helped the process of Protestantization. However, in sixteenth-century France, the Netherlands, and parts of Germany, princes were unable to impose their religion on all of their subjects; early-modern society was far more hierarchical than ours, but early-modern people were just as willing as their ancestors and descendants to defy authority over a matter of conscience. The 36 years of the French



Elizabeth I presiding
over Parliament

Wars of Religion and the Eighty Years' War in the Low Countries stand as potent testimony to the fact that sovereigns could not simply dictate their subjects' religion. As one historian observes, the official Edwardian and Elizabethan reformations "could not make England Protestant" any more than the official Marian counter-reformation could make it Catholic. Nevertheless, "statute by statute," Elizabeth gave England "Protestant laws and made popular Protestantism possible."¹²

Furthermore, when English people had the chance to hear the gospel preached, on the whole, they responded enthusiastically. This took time, as recent revisionist histories make clear.¹³ One consequence of the Marian counter-reformation was that, in the early 1560s, there just were not enough committed Protestants in the clergy: in the circumstances, they simply could not "have made much progress."¹⁴ Gradually, though, the divinity schools of Oxford and Cambridge started

The order where Morning and Evening Prayer shall be used and said.

The morning and evening prayer, shall be used in the accustomed place of the church, or chappell, or chancell: except it shall be otherwise determined by the Ordinary of the place, and the chancel shall remaine, as they have done in time past.

And here is to be noted, that the Minister at the time of the Communion, & at all other times in his ministration, shall use such ornaments in the church, as were in use by authority of parliament in the second yeare of the reigne of King Edward the first, according to the act of Parliament set in the beginning of the booke of Common prayer.

An order for Morning prayer, daily throughout the whole yeere.

At the beginning both of morning prayer, and likewise of evening prayer, the Minister shall read with a lowde voice, some one of these sentences of the Scriptures, that follow. And then hee shall say that which is written after the said sentences.



Ever what time soever a sinner doth repent him of his sin, from the bottome of his hart, I will put all his wickednesse out of my remembrance, saith the Lord.

I do know mine own wickednesse, Psal. li. and my sinne is alway against mee.

Turne thy face away from our sinnes, O Lord, and blot out all our offences.

A sorrowfull spirit is a sacrifice to GOD; despise not, O Lord, humble and contrite harts.

Bent your hearts and not your garments, and turne to the Lord your God, because he is gentle and mercifull, hee is patient and of much mercie, and such a one that is loyde in your afflictions.

O the Lord God, belongeth mercie and forgiveness: Dan. ix. we have gone away from thee, and have not hearkened thy voice, whereby we might walke in thy lawes, which thou

English people were Protestants. Whereas in the 1540s and 1550s the great question was whether England would be Roman Catholic or Protestant, by the 1640s and 1650s, it was what sort of Protestants English people would be—and it was one they felt so strongly about that it resulted in civil war and revolution.

Generational change could never have taken place, however, if, as in contemporary France, ordinary people were passionately devoted to maintaining Roman Catholic belief and practice. The English people accepted the new church—and probably did so not least because of the approach of its “supreme governor”: their queen.

Although it is often attributed to her, Elizabeth probably never actually said that she “did not wish to make windows into men’s souls.” But it may well have been said by her chief minister, William Cecil, and it certainly reflected Elizabeth’s attitude. As long as her subjects worshipped in her church each Sunday, using her liturgy, she did not mind what they thought. By modern standards, this is hopelessly intolerant! By the standards of the sixteenth century, it was remarkably open-minded. Elsewhere in Europe, both Protestants and Catholics sought to repress “heretical” opinion, as well as practice, and evidence of divergent thinking was punished with death. Elizabeth wanted unity among her subjects, and as long as they cooperated with her, she would not try to look into their minds and their hearts, to see if they did so enthusiastically or only grudgingly.

Inevitably, people of conscience from both ends of the confessional spectrum, Roman Catholics and Puritans, refused to acknowledge the queen’s right to govern their theology or how they worshipped—and refused, therefore, to participate in the services of her church. They were then persecuted, sometimes brutally, though on nothing like the scale of Mary’s persecutions. In response, some called for political resistance to the government, which in turn evoked even greater repression.

But this was not an issue for the great mass of Elizabeth’s subjects; thanks to the accidentally contrived but purposefully maintained *via media* of the Elizabethan settlement, most English people were not confronted with practices that flagrantly outraged their consciences. Their church was Protestant, but it did not advance only one restricted theological Protestant perspective, and so it appealed to a broad spectrum—at least it did not appall people sufficiently to defy the government. And so most people chose to conform outwardly and “took their places in church . . .

A page from the Book of Common Prayer

to turn out numbers of well-educated and zealous Protestant priests, who started to preach the gospel—and, even more, to celebrate the sacraments with the Book of Common Prayer. By the early seventeenth century, this wonderful liturgy (whose language, even more than the better-known King James Version of the Bible has decisively shaped the liturgical practices of all denominations throughout the English-speaking world) had won a devoted following, as recent research has shown.¹⁵ In the new grammar schools, too, children were educated as Protestants. Generational change ensured that, probably by the time of the attempted Catholic invasion of the Spanish Armada in 1588 (whose defeat was acclaimed in England as evidence of divine favor to a Protestant nation), the great majority of

[though] What they made of the service and the sermon we cannot say."¹⁶ Many Puritans flocked to parishes of Puritan priests to hear their sermons; many Roman Catholics, as and when they could, sought out itinerant priests (missionaries from the Continent, who literally braved death) and took Mass. Yet many, from both ends of the confessional spectrum, still went to a prayer book service as well; this outward conformity was generally all that their queen wanted.

Thus, there was opposition from both ends, and there was some compulsion, but in the end it was not because of these that England became truly a Protestant nation, as well as having a Protestant church and state. It was because the majority of people, who, on Elizabeth's accession were Catholic-leaning or uncommitted, were given mental time and space to adjust to the new national Protestant church. Then, over the space of a generation, the English people embraced it.

CONCLUSION

Looking back over the whole of the English Reformation, we can see that, while Henry VIII's reign let the genie of religious diversity out of the bottle (though that was never his intention!), the reigns of his children were decisive in the transition of England from Catholic to Protestant. Yet although the personal religious preferences and policy choices of Edward VI, Mary I, and Elizabeth I were very influential, they did not, in and of themselves, determine England's eventual confessional allegiance.

It was the choice of the English people to embrace Protestantism—it was not a free choice, because early-modern European governments did not allow their subjects the freedom to choose their religion; but it was still a genuine choice. Across Europe in the century after the Reformation, where populations and rulers were adherents of different confessions, widespread rebellions and civil wars broke out. That this did not happen in England highlights that a choice was made—and it was made for the Reformation. There were significant differences between Roman Catholicism and the different forms of Protestantism, and it was these, rather than the will of four Tudor sovereigns, much less the marital infidelities of Henry VIII, that shaped the process of religious change in sixteenth-century England and determined its outcome.

All Christians worship the same God and believe they are saved by the same Lord. Nevertheless, fundamental differences underlie the division between Catholic and Protestant

and always have. Today, Protestants and Catholics coexist across the world, respecting each other's sincerely held but distinctive doctrines, styles of worship, and approaches to spirituality. Respect is inconsistent with disdain; we should respect the choices of believers in the past, as well as in the present.

Accusing people of the past of insincerity in their decisions to become Protestant or to remain Roman Catholic is nothing new. It was commonplace in the sixteenth century. Protestants and Catholics accused each other of the same faults—of using religious rhetoric but actually only caring about wealth or power—blind to the irony that people on each side thought *themselves* sincere and the *others* hypocrites. The reality is that people in sixteenth-century England took the choices between Roman Catholicism and Protestantism and between different types of Protestantism very seriously: there were Catholic martyrs under Henry VIII and Elizabeth I, as well as Protestant martyrs under Henry VIII and Mary I. We should take their choices no less seriously; it is the best way to honor their commitment and to preserve the respect between different religions that is the best protection for religious freedom.

David J. B. Trim is presently the Walter C. Utt Visiting Professor of History at Pacific Union College, Angwin, California.

¹ Christopher Haigh, *English Reformations: Religion, Politics, and Society Under the Tudors* (Oxford: Clarendon Press, 1993), pp. 239–241, at 240. For details of how the Elizabethan settlement was eventually approved by the first Elizabethan Parliament, see Norman L. Jones, *Faith by Statute: Parliament and the Settlement of Religion, 1559* (London: Royal Historical Society, 1982).

² Haigh, "The Church of England, the Catholics and the People," in Haigh, ed., *The Reign of Elizabeth I* (Athens: University of Georgia Press, 1985), p. 196.

³ Haigh, *English Reformations*, p. 241.

⁴ *Ibid.*, p. 242. —but contrast p. 237: "Elizabeth herself was a Protestant, though an undogmatic one"; cf. Haigh, *Elizabeth I* (London: Longman, 1988), pp. 27, 28: "There can be little doubt of Elizabeth's Protestantism." See also, e.g., Jones, *Faith by Statute*, p. 9; Susan Doran, "Elizabeth I's Religion: The Evidence of Her Letters," *Journal of Ecclesiastical History*, p. 51 (2000): 699–720.

⁵ Quoted in Jones, "Elizabeth's First Year: The Conception and Birth of the Elizabethan Political World," in Haigh, *The Reign of Elizabeth I*, p. 47.

⁶ Quoted in Patrick Collinson, "Sir Nicholas Bacon and the Elizabethan Via Media," *Historical Journal* 23 (1980): 255.

⁷ Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England 1400–1580* (New Haven, Conn.: Yale University Press, 1992), p. 568; Haigh, *English Reformations*, p. 242.

⁸ David Cressy and Lori Anne Ferrell, eds., "Introduction," *Religion and Society in Early Modern England: A Sourcebook*, 2nd ed. (New York: Routledge, 2005), p. 5.

⁹ John Rolfe, trans., *A faithful admonition of the Palgrave churches* (London: 1614), sig. A3^r (spelling modernized).

¹⁰ In Cressy and Ferrell, *Religion and Society*, doc. No. 8, p. 38.

¹¹ Diarmaid MacCulloch, *Tudor Church Militant* (London: Penguin, 1999), pp. 204–209, at 208; 217–219.

¹² Haigh, *English Reformations*, p. 14.

¹³ See esp. Duffy, and Haigh, *English Reformations*.

¹⁴ Haigh, *English Reformations*, p. 250.

¹⁵ E.g., Judith Maltby, *Prayer Book and People in Elizabethan and Early Stuart England* (New York: Cambridge University Press, 1998).

¹⁶ Collinson, "The Church and the New Religion," in Haigh, *The Reign of Elizabeth I*, p. 173.

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"With respect to total separation of church and state, you should be careful for what you ask and demand because you are in line to receive it in the form of the left-wing politicians."

Test the Waters

We have never requested or paid for this or any other subscription for *Liberty* magazine. Please remove us from your mailing list and stop this magazine.

Two of your articles in the September/October, 2008 edition are frightening for their implications; "America Comes to Rome" and "Keep Church and State Separate."

The "Rome" article seems to overlook the hideous indiscretions of over 2,000 Roman Catholic priests who found solace in pedophilia. Through the political action of separation of church and state, these priests have been shielded from prosecution. Their identity is further obscured by the Vatican policy of changing their names and transferring them to other locations, without disclosing their threat to families.

The Trinity Decision of 1892 by the U.S. Supreme Court confirms that the United States is truly a "Christian nation." That decision definitely does not include the Roman Catholic Church. The topic is grossly over the head of your young author of this article.

DR. MYRON HUBLER
JEFFERSON, OHIO

I wish Dr. Hubler had not cancelled. He caught the drift in our articles, but then connected them in ways that we never do. We are all offended by the revelations of abuse by Catholic priests. But we have not made much of it, as it is not central to the church-state discussion. Dr. Hubler reacted in the manner of America a century ago—a reflex assumption that Rome is evil. True religious liberty gives us a more charitable view of those faiths we differ from. And true religious liberty would also tell us the danger of proclaiming the United States a Christian nation. Editor.

Enjoying Liberty

Enjoyed the January/February 2009 issue, especially the article on "The Break From Rome" and the article on

"John Newton and Religious Liberty Amazing."

JUDGE GERALD S. ZORE
INDIANAPOLIS, INDIANA

An Intellectual Avenue

Just completed reading your March/April 2009 issue of *Liberty*. Thank you for the articles—they were both informative and provocative. It is ironic that I read them today. This afternoon I will go to a ribbon cutting at our local detention center—a facility holding over 400 inmates. The ribbon cutting is to celebrate the construction of an addition to the jail—a chapel. The official name for it is a multipurpose meeting room, but there is little doubt that the purpose of the facility is to hold religious services for the inmates. There are no public dollars expended in the construction—all are privately raised from Christian-based initiatives.

There is little doubt too that the addition of the facility will do much good in the work of trying to turn the hearts and minds of criminals into law-abiding citizens. When the proposal was put to me two years ago, I was skeptical about the ability of the proponents to raise the necessary funds. But through their diligence and hard work it was accomplished.

Despite the good intentions of the proponents, and despite the pressure from this Christian bastion of Middle America, when the vote came to the court to approve the initiative, I was the lone dissenter. The motion passed 3-1 and work was begun. Although I knew that good would be achieved and understood as well that there would be no infusion of public dollars (at least for now), I was troubled by the construction of a Christian-based facility on public grounds. Granted that the room is open for all faiths, it is highly unlikely there will be Jewish services or Muslim services, or Hindu services, or any other

of the myriad of potential services to address religious persuasion.

As a student of both government and religious studies, I have developed pretty definite feelings about the need for safeguards separating church and state issues. If I err, and I am certain I often do, it will be on the side of caution in this arena. Nevertheless I will go to the ribbon cutting and participate. I am cognizant too of the rule of the majority and realize that even though my opinion did not carry the day, the decision of the court was the final decision.

Thank you again for your articles. They provide me with an intellectual avenue that stimulates my thought process to analyze difficult points of view.

REID HAIRE
DAVIESS COUNTY JUDGE EXECUTIVE
OWENSBORO, KENTUCKY

Not Alone

I've long thought that I was alone in my passion toward the issue of religious liberty and separation of church and state; that it was "my" issue. Discovering *Liberty* magazine has changed all of that for me. The fact that there's a magazine dedicated to these things sends the message that it's OK to have in the top of your political/ideological priority list. I love this magazine. Keep up the terrific work!

TREY
E-MAIL

Role Play

The John Whitehead article in the current issue of *Liberty* ("Are We Shedding Rights?" September/October 2008) has some actual errors about the Borden case. Our attorneys are representing the school district, and they are quite upset with the grossly inaccurate description of the case that John has given.

John indicates that the football prayers have always been student-led and that the coach wanted to silently bow his head only out of respect.



The court record shows exactly the opposite. Over a 25-year period the coach organized the prayers, often led them himself, chose students to lead them, and sometimes brought in ministers to lead them. He moved to a more passive posture only when the situation was heading toward a legal showdown.

The coach's misuse of his school authority to advance his religious viewpoint was clearly unconstitutional. That's why we were so alarmed when the district court ruled in his favor.

The facts of the case need to speak to the larger issue at stake—should school personnel be allowed to direct the worship activities of their students?

JOE CONN

AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE,
WASHINGTON, D.C.

A case of two correct issues intersecting. It is wrong to use the authority of a government school to organize religious activity. It is also wrong for such a school—the government—to restrict individual expression. Both dynamics are presently on view in our society, and it seems both are present in this story. The following letter by director Lynn does show the possible provocation behind the case. Editor.

Counterpoint to Coach-Led Prayer

John W. Whitehead's article about Marcus Borden, the New Jersey high school football coach who was ordered to stop engaging in religious activity with players ("Are We Shedding Rights?" September/October 2008), fails to give an accurate portrayal of this case.

Whitehead's portrait of Borden is of a highly sympathetic figure, a man who simply wanted to silently bow his head out of respect as the team engaged in voluntary, student-led prayer. By contrast, Americans United, which

represented the school district in court, is portrayed as taking the position that a coach should not even have the right to bow his head.

In fact, the court record shows conclusively that Borden was doing a lot more than simply bowing his head or "taking a knee" while students prayed. Over a 23-year period, Borden organized the prayers, often led them himself, chose students to lead them, and sometimes brought in "chaplains" to offer premeal prayers. Borden always led the locker-room prayers, before every game for his whole tenure as coach. He adopted a more passive posture only to make his case look better when he took the school district to court.

Whether Borden had a right to bow his head was not the issue. The 3rd U.S. Circuit Court of Appeals realized that. The court said Borden's actions must be viewed in light of his long history of intervening in the religious lives of students. In a unanimous ruling, Judge D. Michael Fisher wrote: "[I]n Borden's case, the conclusion we reach today is clear because he organized, participated in, and led prayer activities with his team on numerous occasions for 23 years. Thus, a reasonable observer would conclude that he is continuing to endorse religion when he bows his head during the premeal grace and takes a knee with his team in the locker room while they pray."

Whitehead sees this case a violation of Borden's religious liberty rights. I must disagree. The federal courts have consistently ruled that teachers, coaches, and others who work in public schools have no right to engage in religious activity with students. The reason for this is obvious:

It's a usurpation of parental rights and subjects young people to undue coercion. Parents have an absolute right to direct the spiritual upbringing of their children. Public school officials

should not interfere in this relationship.

Whitehead also fails to mention that Borden's actions divided the community and resulted in some students being subjected to verbal attacks and slurs. Several were assailed on a student-run blog. One commenter wrote: "Damn Jews . . . then you wonder why Hitler did what he did back in the day."

The Supreme Court declared school-sponsored religious worship unconstitutional in 1962 and 1963. There is simply no excuse for any public school official to be violating those decisions 45 years later. Rather than hail Borden as a hero of religious liberty, it would be better to simply describe him as what he is: a man who ignored court rulings, violated the rights of players and parents and who was, thankfully, made to stop.

BARRY W. LYNN,
EXECUTIVE DIRECTOR, AMERICANS
UNITED FOR SEPARATION OF CHURCH
AND STATE, WASHINGTON, D.C.

Original Right

With respect to total separation of church and state, you should be careful for what you ask and demand because you are in line to receive it in the form of the left-wing politicians.

In my opinion: A balance of religion and government is necessary—tempered with good judgment. The pilgrims and founding politicians had it right.

JOHN L. PATTON
MARION, ILLINOIS

Church-state issues should not be seen as a "right-wing" or "left-wing" function. Some right-wing initiatives have empowered a troubling marriage of church and state, and some left-wing views are reflexively antireligious. But it would be both simplistic and misleading to characterize the issues that way. Editor.



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Liberty® (ISSN 0024-2055) is published bimonthly by the North American Division of the Seventh-day Adventist Church, 12501 Old Columbia Pike, Silver Spring, MD 20904-6600. Periodicals postage paid at Hagerstown, MD.

POSTMASTER send changes of address to Liberty, P.O. Box 1119, Hagerstown, MD 21741-1119. Copyright © 2009 by the North American Division.

Printed by the Review and Herald Publishing Association, 55 West Oak Ridge Drive, Hagerstown, MD 21741-1119. Subscription price: U.S. \$7.95 per year. Single copy: U.S. \$1.50. Price may vary where national currencies differ. For subscription information or changes, please call 1 (800) 456-3991.

Vol. 104, No. 4, July/August 2009

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A PRECIOUS JEWEL

AMERICA HAS GIVEN TO THE WORLD A PRECIOUS JEWEL. IT HAS SHOWN THAT A GOVERNMENT WHOSE CONCERNS ARE PURELY SECULAR AND WHICH LEAVES TO THE INDIVIDUAL CONSCIENCE OF ITS CITIZENRY ALL OBLIGATIONS THAT RELATE TO GOD IS THE ONE WHICH IS ACTUALLY THE MOST FRIENDLY TO RELIGION. IT IS A PRECIOUS JEWEL THAT WE HAVE. WE SHOULD GUARD IT WELL.

—LEO PFEFFER, IN EARL RAAB, ED., *RELIGIOUS CONFLICT*

IN AMERICA (NEW YORK: ANCHOR, 1964), P. 163.