

## CONCLUSION

There is a complex knot of forces underlying any nation once Christian; a smoldering of the old fires. --Hilaire Belloc

It is difficult to escape the conclusion that many, if not most, conflicts between church and state are consequences of the fragmentation of Christianity. The divisions within American politics and religion strongly resemble those that split the Roman Catholic Church at the time of the Reformation. They may represent in part the unfinished business of the Reformation, which had been diverted from much of its original purpose by the political and military considerations that intervened from the beginning.

If the issues raised by the Reformers were never fully resolved, neither were they always fairly aired. As in the ancient hydraulic civilizations, religion was valued--perhaps primarily--as a means of social regulation. Doctrinal and liturgical changes became highly charged political issues, often deliberately encouraged or suppressed by political rulers, military leaders, and nationalist movements. Consequently, the legacy of the religious wars of Europe has been one of fragmentation and skepticism.

The cultural byproducts are evident everywhere, but especially in America, which was settled during this period. Since the colonies lacked well-established institutional channels--especially after the Restoration in England--to contain the crosscurrents of religious innovation, experimentalism in religion spilled out into all areas of

cultural life. Sidney Mead has concluded that circumstances favored those denominations of the separatist tradition that treat politics with disdain.<sup>2</sup>

It is misleading to describe the product of these changes as political atheism, secularism, or even desacralization. Like western science, modern "secularization" derives much of its specific character from the dominant Christian culture of its origin.<sup>3</sup> Indeed, the transformation of western culture has proceeded, as it were, symphonically: the major themes may be distinguished from particular national variations. James Jordan attributes the cultural and religious individualism of recent centuries, which reached an extreme in what he designated "the American Baptist culture," to a hypertrophy of nominalism that began in the late Middle Ages.<sup>4</sup> Thomas Cuming Hall found the mainspring of American culture in "the English dissenting tradition."<sup>5</sup> Richard Mouw, in turn, claims that American Protestantism is splintered into four patterns of thought--doctrinalism, pietism, moralism, and culturalism--that variously emphasize doctrinal purity, personal piety or enthusiasm, practical wisdom, and cultural transformation.<sup>6</sup> In a case study, Stanley Elkins contended that the issue of slavery in America was addressed moralistically rather than institutionally because, by the 1830s,

the power of so many American institutions had one by one melted away. The church had fallen into a thousand parts. . . . The very ease with which the great evangelical sects could divide, by a sort of cellular fission, into myriads of tiny independent units, showed that the institutional balance between official coercion and individual self-expression had completely broken down.

Church discipline, like family discipline, is often in a deplorable

state today, leaving the field open increasingly to civil intervention. Just as nature abhors a vacuum, so does political power. As a rule, Americans are ambivalent toward authority. Michael Kammen has gone so far as to portray Americans as ambivalent by nature: "people of paradox."<sup>8</sup> But the tension between liberty and authority may be a creative one. It is also demanding, as Robert Winthrop, a nineteenth century political leader, recognized:

All societies of men must be governed in some way or other. The less they may have of stringent State Government, the more they must have of individual self-government. The less they rely on public law or physical force, the more they must rely on private moral restraint. Men, in a word, must necessarily be controlled, either by a power within them, or by a power without them; either by the Word of God, or by the strong arm of man; either by the Bible, or by the bayonet. It may do for other countries and other governments to talk about the State supporting religion. Here, under our own free institutions, it is Religion which must support the State.

Unfortunately for the sake of these free institutions, it is easy to forget the price paid for them. The observation of Fyodor Dostoevsky's Grand Inquisitor is continually being borne out: "There is nothing more alluring to man than freedom of conscience, but neither is there anything more agonizing."<sup>10</sup> Although the centralization of power has been attributed to the externalities urbanization and industrialization, these challenges only further exacerbated Elkins's internal "cellular fission" which had begun by the 1830s and which have inspired various escapes from freedom. The transition from inner-directed to other-directed personality types is symptomatic of a more general cultural change. The challenge, as always, is to reconcile the best of both worlds. What this may require is a periodic rededication to first principles and a reconstitution of the goals and

purposes articulated by countless generations of founders and builders.

In terms of American constitutional thought, much has changed. If there is a tension between the religion clauses in the Constitution, this may be due to more deep-seated divisions and contradictions in our country's historical experience. If Americans are a people of paradox, as Michael Kammen claims, then one need not go further for evidence than a consideration of the peculiar social, political, and religious interaction between church and state in America. This history may be read as part of a continuing drama. The dilemmas that fill its pages suggest the operation of something like Bergson's law of dichotomy and twofold frenzy.

First, there is the tension underlies our definition of religion. Consensus and pluralism--unity and diversity--are dialectically placed in opposition to each other. Yet both are required within a society. A diversity of expression requires a unity of principles. The two poles of this dynamic are represented by two cases nearly a century apart. The definition of religion in Davis v. Beason, 133 U.S. 333, 342 (1890), was fairly specific:

The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confused with the cultus or form of worship of a particular sect, but is distinguishable from the latter.

The primary emphasis here is on religion as the foundation of society. Obligations and obedience are not simply matters of individual concern. If there is an irreconcilable conflict between the religious and political obligations by which a people is governed, there can be no basis for unity.

The importance of unity amidst diversity should not be minimized. Throughout history, nations and civilizations have responded to ideological discord in a variety of harsh ways: the persecuting syncretism of the Roman Empire, the medieval rivalry between Guelphs and Ghibellines, the massacre of the Huguenots in France, the exile of non-Lutherans by Sweden, the anticlerical neopaganism of the French revolutionaries, and the countless final solutions waged on a national scale against the people of twentieth century Turkey, Germany, Russia, China, Cambodia, and Uganda to mention only a few. Paul Valery's European Hamlet now has millions more ghosts to watch. The American solution has been to institutionalize factional differences by permitting their peaceful competition. But this may continue to work only as long as the trivialization of these differences can be resisted. Sooner or later, fundamental disagreements have to be confronted directly.

It appears that in its Ballard, Seeger, and Welsh decisions the Court chose to change the terms of debate. It thus broke with the theistic conception of religion and stretched it beyond the bounds of constitutional usefulness except as one consideration among many that must be balanced against the interest of the state. This lack of definition has become characteristic of recent cases, as exemplified by the indefinite use of the word religion in Thomas v. Review Board, 450 U.S. 707, 714 (1981): "The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task. . . ." On any other subject, the Court might have deferred to expert testimony to help it make such a determination. Since this might seem to be an

establishment of religion, the Court has chosen to proceed by indirection and negation: ". . . religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Such a statement is particularly ironic in light of recent decisions in the *Hardison*, *Lee*, and *Bob Jones University* cases in which religious expressions of varying degrees of acceptability, logic, consistency, and comprehensibility were denied First Amendment protection.

Despite this tension, both definitions have been clearly, if not explicitly, at work in a contrapuntal fashion. If Christianity in a general sense is not the primary civil standard of religion, then what explains the virtual absence of Supreme Court decisions respecting the free exercise rights of mainline denominations? What explains the Court's decisions on polygamy, Sunday laws, religious tax exemptions, chaplains, and creches? Critics may challenge the orthodoxy of this civil religion but the imprint of its Christian origins is still visible. This may be why Christians are often so comfortable with its celebrations and ideals even though they may complain about specific doctrines or applications. But many Christians have grown wary of its embrace. As a character in a book by Os Guinness astutely observes: "Christianity contributed to the rise of the modern world; the modern world, in turn, has undermined Christianity; Christianity has become its own gravedigger."<sup>11</sup>

This brings us to the legacy of state religion, the second element within this dynamic tension. The two poles here are represented by two other cases. In *Terrett v. Taylor*, 9 Cranch 43, 49 (1815), the Court

held:

. . . the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead.

Early disagreements over tax support of Christian teachers, compulsory church attendance, glebe lands, mortmain, incorporation of churches, the disposition of indefinite bequests, the use of the Bible in public schools, the observance of Sunday as a day of rest, the use of religious tests and oaths, the employment of chaplains, the exemption of churches from taxes, and the enforcement of blasphemy laws--to name a few--indicate an underlying agreement about the importance of religion in national and local life. Many of these disagreements date back to the Reformation and earlier. Many of the practices associated with state religion--such as the tax exemption of churches, the exemption of ministers from civil and military service, and the law of charity--are equally antique.

This history of striving factions makes it clear why the Court continually attempted to distinguish between religion as it was commonly professed and the sectarian forms through which it was practiced. The opposite pole in this dichotomy is the understandable desire to insulate politics from religious strife and religion from political meddling.

This view is well-expressed in Everson v. Board of Education, 330 U.S.

1, 16 (1947):

Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."

But this disestablishment of religion has failed to insulate religion and politics from each other. Indeed, it may have only tipped the scales in favor of those ideologies that flourish outside the institutional church.

A third element is secularization. Once again there is a basic opposition at work. In Hennington v. Georgia, 163 U.S. 299, 307 (1896), civil and religious duty were seen as basically compatible despite their overlapping spheres of authority, as illustrated by this reference to the Ten Commandments: "Those of them which are purely and exclusively religious in their nature cannot be made civil duties, but all the rest of them may be, in so far as they involve conduct, as distinguished from mere operations of the mind or states of the affections." The roots of this type of separation of church and state on the basis of a religious consensus may be found in the Bible, as E. C. Wines took pains to demonstrate by cataloging the fundamental principles of biblical government, which included: 1) the unity of God, 2) national unity, 3) civil liberty, 4) political equality of the people through property in the soil and sabbatical and jubilee years, 5) an elected magistracy, 6) popular ratification of laws, 7) responsibility of officers to the people signified by plebiscites and restrictions on royal prerogative, 8) a cheap, speedy, and impartial administration of justice, and 9) a repression of the military spirit under the Mosaic law through the use of a militia rather than a standing army, an emphasis on an agricultural economy, a ban on horse breeding and the development of a cavalry, the sending of heralds with peace proposals, and compulsory attendance at religious festivals which inhibited wars of conquest.<sup>12</sup> These



principles and practices were studied, discussed, and applied by the early American settlers as a part of a political culture that gave rise to the Constitution.

By the time of Stone v. Graham, 101 S.Ct. 192, 194 (1980), the magnification of the establishment clause had made this link between law and religion difficult to officially acknowledge: "The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments is undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact." But if it is an attribute of religion that its commands are often honored as much in the breach as in the observance, then a good case can be made that the Constitution is likewise a sacred text in the civil religious faith over which competing denominations wrangle. The one argument is no less a product of circular reasoning than the other. Although secularization obscures the link between law and religion, it does not sever it. The terms of political and theological debate are often astonishingly similar.

Evidences of this link between law and religion are not difficult to find. Eugen Rosenstock-Huessy and Harold Berman have helped unearth the common origins of modern law and religion in medieval Europe.<sup>13</sup> Resemblances are evident in the common scientific-scholastic language of law, theology, medicine, and other academic disciplines. The similarity of the traditional garb and installation ceremonies of priests, judges, and scholars is also noteworthy. Is this preservation of religious ceremonies a mere relic, as the Court maintained with regard to the

religious language in some of the Sunday closing laws? Or is the continuing use of the language of religion in a secular setting evidence of a common function and perhaps a displacement of the one by the other?

Whether it is due to the desire for a common meeting ground or to the kind of transvaluation of which Friedrich Nietzsche wrote, secularization has tended to obscure rather than clarify the boundaries between church and state. But the fact that the church no longer occupies center stage does not mean that it is being left waiting in the wings. Religion has become, perhaps more than ever, a matter of personal reflection and application. Eugen Rosenstock-Huussy maintained that the gospel has been brought into the daily lives of men, women, and children through a series of revolutions that have taken place during the past millenium. He expected this process to continue until nothing of formal religion remained visible and believed this would be the victory of Christianity.<sup>14</sup>

Religion must has its practical, civil dimension. Its realm is not confined to "mere operations of the mind or states of the affections," as the Supreme Court increasingly implies. The coincidence of political and religious theory requires careful attention if the conflicts between church and state over issues of mutual practical concern are to be resolved. The American constitutional system is deeply impressed with the aspirations of a people who wished to practice their faith in security and liberty. According to Christian doctrine, political and religious leadership are both ministries. Each sphere is authoritative and sovereign in its domain. In a society of pluralistic institutions like ours, separation of church and state cannot mean a high and

impregnable wall between church and state no matter how serious the potential for interference. Each has an interest in the good health of the other and each tends to act as a restraint on the other. But the persistence of conflict may well signal problems of a fundamental nature that may otherwise be difficult to pinpoint. Thus the church itself has an obligation to speak.

It is for these reasons that the entanglements associated with an official state church should be avoided. The early commentators and judges distinguished between the encouragement of religion and the sponsorship of specific denominations or creeds. The direct subsidization of religion, like its direct taxation and regulation, creates entanglements that tend to lead to dependency and interference. A dependent or distracted church is likely to become a silent church. One of the historical roles of the church is to serve as the conscience of the state because one of the functions of the church is to proclaim God's wisdom and truth in all areas of life. This role was a customary part of a religious and political tradition that culminated in the American constitutional system. Early in the national period, however, the clergy began losing much of their earlier influence in New England due to a number of factors. Disestablishment usually took place in stages and denominational differences kept alive in the form of political controversies. The close identification of the New England clergy with the Federalists outraged many Republicans. Doctrinal disputes split many churches. If anything, the conditions of an increasingly pluralistic frontier society favored fragmentation, voluntary churches, and a greater emphasis in preaching on salvation and

revival.

One of the assumptions behind the American system is that the state will never be lacking in advisers if the people have a voice. The Northwest Ordinance of 1787 articulated the need to encourage education, morality, and religion in order to preserve the foundations of society. The church, the press, and the common school shared with the family and the community the responsibility for raising up an educated and informed citizenry. The role of the church in translating biblical principles into practical applications made it the indispensable conscience of the state.

What about today then? Many churches still provide a forum for political discussion and the formulation of positions on specific issues. But differences in basic doctrine have perhaps never been greater. If there is safety in a multitude of counselors, there is no counsel where a common standard is lacking. The influence of the church has always lain in its ministry of preaching good tidings and proclaiming liberty throughout the land. Seen as one more interest group to be appeased, however, it is difficult to justify the need for a distinct emphasis on religious liberty. This appears to be the position that necessarily follows from an overbroad definition of religion and interpretation of the establishment and free exercise clauses. The recent Marsh, Mueller, and Lynch decisions are difficult to reconcile with existing establishment clause doctrines. The recent Lee and Bob Jones University decisions similarly conflict with earlier free exercise precedents. A foolish consistency may be the hobgoblin of little minds, but inconsistency is a doubtful virtue.

What may be concluded then about these developments in relation to recent conflicts between church and state? First, such conflicts may be encouraged by the absence of a clear constitutional standard with regard to the scope and limits of religious liberty, both individual and corporate. Given the formlessness of the current conception of religion, it is difficult to imagine that the Court could today rule against the practice of polygamy on any other basis than its own ipse dixit. The dichotomy of belief and action is ultimately meaningless in relation to the free exercise clause unless there is a doctrinal basis for affirming or denying a particular practice. Some kind of standard is unavoidable. Unfortunately, it is unlikely to be articulated and run the risk of having to be publicly debated and defended.

Second, the notion that an exemption is a special privilege makes it difficult to uphold religious exemptions because of their establishment implications. This can be a positive development if it compels legislators to be more careful than ever to frame laws that do not infringe on constitutional liberties. It is not difficult to justify the *Torcaso*, *Seeger*, *Welsh*, and *Thomas* decisions as attempts to preserve constitutional liberties. But there was no need to convert the free exercise clause into a miscellaneous category in the process. The loss of exceptions and exemptions may consequently only further circumscribe those areas of liberty that were protected on religious grounds.

Third, the uses to which the establishment clause has been put lend considerable support to the comment by James Hitchcock that "in practice an orthodoxy which loses its authority has trouble even retaining the

right of toleration."<sup>15</sup> An establishment of religion can be understood in any of several ways. It can mean the exclusive favoring or subsidizing of a particular church, the indiscriminate encouragement of all churches, or the recognizing of a particular standard of religion. There is no doubt that, at the very least, the First Amendment forbade an official, exclusive establishment of religion, although it was another four decades before the last such establishment at the state level was abolished. But disestablishment meant only the dismantling of an official state religious apparatus. The church as a church had no legal existence. Yet there is no doubt that religion was encouraged and that religious societies were given the full protection of the law.

The thesis that the state may aid all churches equally is supported by the early Supreme Court decisions, such as the opinion by Justice Story in the Terrett case: "the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead" (9 Cranch 43, 49). This might be considered an establishment of the second degree but it is doubtful that such aid was regarded as a conduit for regulation. The Girard College and Davis cases make it evident that the term religion was fairly exclusive. The distinction between religion and its sectarian variants lends support to the thesis of Justice Douglas that "a 'religious' rite which violates standards of Christian ethics and morality is not in the true sense, in the constitutional sense, included within 'religion,' the 'free exercise' of which is

guaranteed by the Bill of Rights."<sup>16</sup> Thus religious liberty could be considered absolute within its proper sphere because a particular standard of religion was applied. This may be considered an establishment of the third degree.

Perhaps the major source of difficulty today lies in the Court's failure to articulate the standard of religion it recognizes. If diplomacy is war conducted by other means, the same may be said about politics in relation to religion. Laws are not politically or religiously neutral. They reveal much about the basic assumptions, values, social mores, and priorities of a society. In that sense at the very least, all law represents an establishment of religion because it implies standards by which actions are weighed in the balance. If ignorance of the law is not an excuse, then the moral and religious foundations of law must be manifest, even if they are not fully articulated by the courts. This fact of law corresponds to a fact of religion observed by the Apostle Paul:

For the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men, who hold the truth in unrighteousness; Because that which may be known of God is manifest in them; for God hath shewed it unto them. For the invisible things of him from the creation of the world are clearly seen, being understood by the things that are made, even his eternal power and Godhead; so that they are without excuse. . . (Rom. 1:18-20).

The one proposition is no less religious than the other. In fact, their correlation is strikingly evident.

What then is the nature of this standard of law and religion that must be so evident that ignorance cannot be claimed as an excuse? In the nineteenth century, the law of the land was thought to include Christianity in one way or another. The courts qualified this assertion

in various ways in order to avoid favoring a particular creed or form of worship. But the Bible itself was regarded as a nonsectarian book. Today, by contrast, any citation of even the Ten Commandments would be regarded as an unconstitutional establishment of religion.

If the principles of biblical religion are not established by the Constitution, then it is reasonable to ask what principles are established. Those who are concerned that a civil religion of secular humanism or some other variety of belief has been substituted for Christianity work from the view that a religiously neutral common ground is an impossibility. The contrary assumption that secular institutions may provide such a sanctuary or refuge is a common one but it is based on a particular conception of the scope of religion that may not be generally shared. The refuge analogy may be reversed and the exclusive areas for the practice of particular religions may be made the the object of special constitutional protection. But it is valid to ask what religious assumptions govern the lives of the guardians who are commissioned to defend the refuge walls. A safe haven may be easily converted into a free-fire zone once the walls are breached. Although religious liberty needs constitutional protection, political isolation of religious expression is not the proper means.

This is the dilemma that underlies so many current conflicts. Churches are resisting what they perceive as political interference by civil officials through various fiscal, educational, and social regulations. If exemptions are to be made contingent on a restriction of their ministries and their ability to proclaim the gospel in all areas of life, many churches will refuse to submit. At some point they



will draw the line against further encroachments. Many will attempt to roll back existing regulations in the absence of assurances that they will not be interpreted as assertions of sovereign power by the state over the church. This is the frontier that the churches themselves must patrol. Secular regulation by the state is one thing when the lines of authority are clearly drawn and accepted, when interference with its ministries is impossible. It is quite another thing when the boundary markers have been removed and the sphere of church authority is constricted.

Sidney Mead delineated these issues with particular clarity in regard to compulsory free public education. He began by noting the initial efforts to include "nonsectarian" religious education in public schools and the controversies that resulted, which led eventually to the exclusion of the Bible from the classroom:

Here are the roots of the dilemma posed by the acceptance of the practice of separation of church and state on the one hand, and the general acceptance of compulsory public education sponsored by the state on the other. Here is the nub of the matter that is all too often completely overlooked. It was very clearly stated by J. L. Diman in the North American Review for January, 1876. If it is true, he said, "that the temporal and spiritual authorities occupy two wholly distinct provinces, and that to one of these civil government should be exclusively shut up . . . it would be difficult to make out a logical defense of our present system of public education. If, on the contrary, it be the right and duty of the state to enforce support of public education . . . [upon all citizens], then our current theory respecting the nature and functions of the state stands in need of considerable revision."

Diman's point is based upon the recognition that of necessity the state in its public-education system is and always has been teaching religion. It does so because the well-being of the nation and the state demands this foundation of shared beliefs. In other words, the public schools in the United States took over one of the basic responsibilities that traditionally was always assumed by the established church. In this sense the public-school system of the United States is its established church. But the situation in America is such that none of the many religious sects can admit

without jeopardizing its existence that the religion taught in the schools (or taught by any other sect for that matter) is "true" in the sense that it can legitimately claim supreme allegiance. This serves to accentuate the dichotomy between the religion of the nation inculcated by the state through the public schools,<sup>17</sup> and the religion of the denominations taught in the free churches.

Mead contended that "the religion of many Americans is democracy" and gave particular attention to the views of J. Paul Williams, who recommended that the public school system be used to "teach democracy and to bring 'the majority of our people to a religious devotion to the democratic way of life.'" Williams asserted that the traditional religions largely cancelled each other out and were irrelevant to the public welfare. He sought to enlist the aid of public agencies in awakening people to a devotion to democratic ideals. Referring to churches, he maintained that "at those points where religion is a public matter, those areas which contain the ethical propositions essential to corporate welfare, society will only at its peril allow individuals and sects to indulge their dogmatic whims."<sup>18</sup>

If anything, the greater comprehensiveness of the political order today makes the protection of religious liberty more than ever a matter of public concern. In the absence of clearly defined limits on the power of the state to regulate religion, intermediate safeguards may be needed until the effects of existing regulations on civil and religious liberty can be thoroughly reviewed.

As it is, churches already pay a variety of taxes and fees, most of them indirect and most of them fairly small. But the social security tax has been bringing the issue of tax exemption into sharp focus. The Court's rationale for its decision in the Lee case is that judicially-mandated religious exemptions are unwarranted given the

comprehensive actuarial structure of the social security program. The recent narrowing of the religious exemptions by Congress itself leaves little reason to believe that any exemptions will remain for very long. But if the financial problems that have necessitated a broadening of the social security tax base are not solved in the meantime, what then? The same might be asked of income and property taxes. Are there any limits to the financial needs of the state? To what lengths might the state pursue its interest in anticipating revenues and regulating their sources considering the fact that it must devote a growing portion of its current revenues to meeting outstanding debts and statutory obligations? Apart from the peculiarities of individual and social psychology that tend to favor what E. G. West calls "bureaucratic imperialism,"<sup>19</sup> the fiscal crisis of the modern state may be a primary cause of the tightening of administrative controls, particularly in face of general disaffection with high taxes, high unemployment, high crime rates, declining affluence, unacceptable levels of illiteracy, and signs of cultural fragmentation.

Whether or not the issues over taxation and regulation are satisfactorily resolved, resistance by churches is indicative of the depth of distrust that seems to pervade the political system. Steps need to be taken to preserve confidence in the constitutional system. But even at a minimum, any effort to protect religious as well as civil liberty may require radical changes in the political agenda and in public attitudes. Perhaps what is needed is a reactivation of a public philosophy that reflects the institutional pluralism which a constitutional system of government is designed to enhance.

The weakness of the present system may lie in the inordinate attention it must give to adjusting essentially unrelated or incompatible goals through legislation, litigation, and administrative law. In the abstract, full employment, high literacy, economic stability, social equality, free trade, industrial productivity, and personal freedom are all admirable goals. The difficulty is in bringing people to agree on the best way or the least restrictive means to achieve these goals. Thus all of these goals are subjected to continual negotiation and redesign. So conceived, politics has become an affair of lawyers, accountants, statisticians, and other specialists. Comments about government are commonly addressed in the third person plural or impersonally like the weather. In order to engage the public imagination, something more is needed than an incremental restructuring and balancing of political goals on the basis of economic forecasts or head counts in legislative chambers. An active and informed electorate requires a basic consensus and a sense of involvement in an overriding purpose.

We have fortunately been spared the kind of political terrorism that is currently devastating other parts of the world. But this can change if disaffection continues to grow. On the surface, the causes of demoralization may be economic, racial, or educational but they leave deep spiritual wounds, such as the bitterness and malaise that followed the war in Indochina and the Watergate scandals.

The prevailing spirit of this or any other time has been characterized by R. J. Rushdoony as "an omnipresent demand for justification." The reason is not difficult to fathom:

The fact of guilt is one of the major realities of man's existence. Both personally and socially, it is a vast drain on human energies and a mainspring of human action. Any attempt at assessing either political action or religious faith apart from the fact of guilt is thus an exercise in futility.<sup>20</sup>

Corresponding to this sense of guilt is a demand for salvation and a need for atonement that colors the whole of personal and corporate life. "A common recourse is to self-atonement and self-justification. A modern term for such behavior is masochism, in the broader sense of that term."<sup>21</sup> Rushdoony attributes psychosomatic ailments, gambling, alcoholism, certain types of philanthropy, "injustice-collecting," the will to failure, and suicidal activity as exercises in masochistic self-punishment.

The passions that motivate individuals likewise move societies. Eugen Rosenstock-Huessy suggested that the fabled hospitality of the British gentry concealed a guilty conscience because they had derived their fortunes from the plundering of the monasteries by Henry VIII. Thus they assumed the character and attributes of the institution they displaced. Much the same may be true of the philanthropy of many of the early captains of industries and their scions. Guilt is as much a distortion of perspective as greed. Today the state, which is but a reflection of the character of its people, has become a surrogate father, mother, church, school, and best friend. Its treasury totters on the verge of bankruptcy because it embraces every concern as its own and overextends its resources. Even then, its embrace--however welcome in an emergency--is often as cold as the facades of its monuments.

The reach of public policy may exceed its grasp but it does illustrate an important fact. Material and spiritual concerns cannot be

neatly divided. For all practical purposes they must be considered together in regard to their causes and effects. From this viewpoint, politics and religion are simply two ways of regarding the human condition. Assuming this to be true, there is no area of life in which either politics or religion is irrelevant. There is also no area of life to which religious truth--as opposed to scientific truth--may be confined. The heart of the matter then is the relevancy or irrelevancy of particular religious doctrines to the relationship of man and God, the proper scope of civil government, or the concerns and obligations of daily life. In regard to politics, the issue is whether there is a foundation upon which a social, economic, cultural, and sectarian consensus may be built.

For the founders of the American republic, the Christian faith provided such a foundation in law, morality, and education. Biblical principles were consciously even if imperfectly applied to civil government and law. Ministers and laymen were very often equally conversant in sacred and secular affairs because they possessed a common standard of reference. While serving as President, George Washington carefully nurtured good relations among the various religious faiths. Rev. John Witherspoon wrote an essay on money and signed the Declaration of Independence. Samuel Adams was a committed Christian layman as well as a populist firebrand. Their distinct personalities and diverse interests were bonded by a common religious culture that was once powerful enough to integrate a diversity of sects and nations. There were failures in this respect. These are often attributed to an imperfect standard of religious value but they may have been due more to

an imperfect understanding of its requirements that gradually has led to a loss of perspective and commitment. Richard Hildreth, Lysander Spooner, George Ticknor Curtis, George Bancroft, and John Burgess were among those who recorded the changing perceptions that transformed theology, constitutional law, and political values.<sup>22</sup>

Even though the state of affairs in America today is more fluid by comparison, it is still far from anomic. But the disintegration of the cultural consensus must be directly confronted in all areas of political life. General tax and spending reform is a primary need if the economy is to be restored. The use of taxation as a means of economic and social regulation is intrinsically dangerous to personal liberty. Some types of taxation--for example, the income, general property, and social security taxes--tend to decapitalize families and businesses. Regulations that dictate specific curriculum standards, teacher qualifications, and forms of social intercourse may specifically violate the precepts of Christianity, as the court in the Whisner case made clear. These will never be acceptable to many committed believers.

Short of a major restructuring of our political institutions, intermediate steps are within reach, but they require a reconstitution of the political agenda and the ideological assumptions and priorities that shape it. One of the simplest steps would be to rethink the notion that an exemption is a privilege or subsidy. Exemptions may simply be the price that the state must pay for overstepping its traditional authority, engaging in activities or claiming powers that infringe on civil and religious liberties, or attempting to rewrite the laws of human nature. In a system of delegated powers, it is unclear why the

people who originally delegated them must bow to the demands of servants who multiply laws, carve empires out of every jot and tittle, and eat out their masters' substance.

But if considerations of compelling state interest prevail over good judgment, alternative political arrangements might be attempted in an effort to reduce entanglements between church and state. Since the state provides various utilities on a fee basis, then perhaps a fee-for-service arrangement is possible even in regard to other public services, such as police and fire protection. Some communities have created police and fire departments on just such a basis. Churches could pool their resources to do the same and similarly do so with regard to other social welfare agencies.

Rockne McCarthy, James Skillen, and William Harper have commended various European experiments in "consociational democracy" as illustrations of ways in which pluralistic educational establishments may be reconciled.<sup>23</sup> To the extent that these experiments represent liaisons or condominiums between public and private agencies, they are likely to remain subject to the whims of shifting political winds and are best avoided. But the principle of sphere sovereignty might be extended to a variety of public concerns. For example, church schools could create their own secular accrediting agencies in order to assure that certain standards be met. The establishment of centralized repositories of textbooks and supplies might help some of the smaller church schools with limited resources. A reduction of federal and state financial involvement in local schools might help equalize the financial burdens on parents who must pay twice for the privilege of a formal



religious education. An abolition of compulsory school attendance laws in favor of less restrictive means of encouraging an educated citizenry might be attempted. Special common law courts or juries could mediate disputes or require improvements. These developments would require an initial effort on the part of churches and private organizations to offer functioning alternatives. But as a practical political matter, schools that fail to join such associations are likely to remain subject to regular administrative or judicial controls until alternative institutions have matured.

Prior to establishing a truly competitive marketplace and an equitable rather than a redistributive tax structure, the financial burdens of education might be more evenly divided by requiring at least partial tuition at public schools, particularly if this can help free school districts from the seven or eight percent controlling interest held by the United States Department of Education through federal grants. Similarly, all subsidies to all private schools might be terminated. The distinction between secular and religious purposes is an unnatural one. Subsidies are too often valued as regulatory devices.<sup>24</sup> But if an activity is to be made subject to direct public support, then it should be capable of being restricted to an expressly public purpose and kept under strict public control. A removal of private schools and churches from the welfare rolls might have the added advantage of bringing a new sense of reality into the debate over public and private education and bringing it down to some very basic issues of economic justice, technical quality, and ideological purpose.

Given the attitudes that now prevail, tuition tax credits and

vouchers can only lead to further administrative controls over a largely private area of responsibility. As an illustration, Donald Erickson has noted the appreciable negative impact of school aid on Catholic schools in Canada.<sup>25</sup> The continuing failure to divorce multilevel tax financing, compulsory attendance requirements, and secularization may become more divisive in coming years. Somewhere the Gordian knot must be cut. More options and fewer strings might help stimulate a rebirth of learning in both public and private schools.<sup>26</sup>

The sum and substance of this study may be summarized in three points that relate to the redefinition, conscription, and secularization of religion by the modern state. First, American law and custom still preserve elements of an earlier state church tradition despite the historical coincidence between the framing of the Constitution and the disestablishment of religion in the first degree. Second, the political and religious perspective of the founders is nevertheless so strongly impressed upon the constitutional system that discrepancies between the basic doctrines of Christianity and the expectations of diverse religious and secular subcultures are among the major sources of conflict within the political arena. At one time these conflicts were framed specifically in reference to a common biblical standard. Today the appeal is usually to a common moral idealism that remains recognizably Christian in form but only selectively Christian in practice. But, third, changing interpretations of the constitutional provisions respecting religion and a growing state presence in all areas of social and economic life tend to reduce the formal role of religion in public life, leading some religious leaders to express public concern

over losses of liberty and influence by the church. Current litigation indicates that churches are faced with unaccustomed restrictions on the corporate powers, tax immunities, internal operations, teaching ministries, and missionary activities of their organizations. Additionally, these concerns spill over into conflicts over taxes, subsidies, and regulations in general.

A constitutional, republican form of government was originally adopted so that the kind of principles described by E. C. Wines could be applied despite denominational and ideological differences. Such a system is still essential to the preservation of religious liberty. The duties of religion are not obscure or unknowable. Laws that violate the revealed standards of Scripture must be rejected. The abortion controversy has brought many formerly uninvolved Christians into active political participation. School issues represent a second great area of concern. But any generally applicable, allegedly secular law that seriously penalized Christians and Jews or required them to violate their conscience would arouse concerted opposition. Supreme Court rulings in regard to Sunday closing laws and social security taxes have already raised the possibility.

On the other side, distrust is already high within some religious circles. Many fundamentalist churches are dissolving their corporations and are actively resisting school licensing and social security requirements. Their success will depend in large part on the attitude taken in mainline and evangelical church circles. But if the major churches ever conclude they have been subjected to discriminatory laws that directly challenge their doctrines and practices, they will be

compelled to take a similar stand or drop all pretense of independence from the state. Doctrines concerning the ordination of ministers, the admission and discipline of members, the teaching and correction of children, the employment of church workers, and the proclaiming of the gospel leave no room for compromise. The example of the early apostles is clear on this point. When warned against teaching in the name of Christ, Peter replied: "We ought to obey God rather than men" (Acts 5:29).

Over a century ago Charles Hodge wrote: "Whatever Protestant Christianity forbids, the law of the land (within its sphere, i.e., within the sphere in which civil authority may appropriately act) forbids."<sup>27</sup> A century earlier, Lord Mansfield wrote: "The essential principles of Revealed Religion are part of the Common-law. . . ."<sup>28</sup> The doctrinal history of modern law largely bears out these declarations. Even today, the resemblances between law and religion are striking. Indeed, these statements by Hodge and Mansfield would be endorsed without modification by many Christians today. But these sentiments might be even more forcefully stated by noting that believers will refuse to do what the Bible forbids. A society ignores "the essence of Revealed Religion" at its own peril, not because of injured feelings but because of offended realities that can result in great social harm. Religious liberty and social peace are unimaginable if the government can violate with seeming impunity the standards of the Bible. For committed Christians and Jews, the Bible is still the final word on God, man, and the world:

Shall the throne of iniquity have fellowship with thee, which frameth mischief by a law? They gather themselves together against

the soul of the righteous, and condemn the innocent blood. But the Lord is my defence; and my God is the rock of my refuge. And He shall bring upon them their own iniquity, and shall cut them off in their own wickedness; yea, the Lord our God shall cut them off" (Ps. 94:20-23).

Notes

<sup>1</sup>Hilaire Belloc, The Servile State (London: T. N. Foulis, 1913; Indianapolis: Liberty Classics, 1977), p. 198, quoted in David Chilton, Productive Christians in an Age of Guilt-Manipulators: A Biblical Response to Ronald J. Sider, 2nd ed. (Tyler, Tex.: Institute for Christian Economics, 1982), p. 254.

<sup>2</sup>See Sidney E. Mead, The Lively Experiment: The Shaping of Christianity in America (New York: Harper & Row, 1963), pp.102-33.

<sup>3</sup>See David Martin, A General Theory of Secularization (New York: Harper Colophon Books, 1978), pp. 1-11, 27-33, 278-85. Martin correlates the degree of secularization with the degree of success--or failure--of the Protestant Reformation in the countries he examines. See also Harvey Cox, The Secular City: Secularization and Urbanization in Theological Perspective (New York: The Macmillan Company, 1965), pp. 18-21

<sup>4</sup>James B. Jordan, "Editor's Introduction," Christianity and Civilization, 1 (Spring, 1982): v-ix.

<sup>5</sup>Thomas Cuming Hall, The Religious Background of American Culture (Boston: Little, Brown, and Company, 1930), pp. viii-ix.

<sup>6</sup>Richard J. Mouw, "The Bible in Twentieth-Century Protestantism: A Preliminary Taxonomy," in The Bible in America: Essays in Cultural History, ed. Nathan O. Hatch and Mark A. Noll (New York: Oxford University Press, 1982), pp. 142-50.

<sup>7</sup>Stanley M. Elkins, Slavery: A Problem in American Institutional and Intellectual Life, revised 3rd ed. (Chicago: The University of Chicago Press, 1976), pp. 28-29.

<sup>8</sup>Michael Kammen, People of Paradox: An Inquiry Concerning the Origins of American Civilization (New York: Vintage Books, 1973), pp. 79-96.

<sup>9</sup>Winthrop's address to the Massachusetts Bible Society on May 28, 1849 was published in Robert C. Winthrop, Addresses and Speeches on Various Occasions (Boston: Little, Brown, and Company, 1852), pp. 165-73, and excerpted in Verna M. Hall, The Christian History of the American Revolution: Consider and Ponder (San Francisco: Foundation for American Christian Education, 1976), p. 20. Simon Greenleaf, the author of the well known treatise on evidence, was the president of the Bible Society at that time.

<sup>10</sup>Fyodor Dostoevsky, The Brothers Karamazov, trans. Andrew R. MacAndrew (New York: Bantam Books, 1970), p. 307. Dostoevsky's Grand Inquisitor spoke of the human thirst to be organized into a universal state as a means of satisfying the longing for security: ". . . the need to find someone to worship, someone who can relieve him of the burden of his conscience, thus enabling him finally to unite into a harmonious ant-hill where there are no dissenting voices. . . ." Ibid., p. 310. Those who equate religion with the relief of burdened consciences should consider the Puritan ethic that embraced the challenges of applying biblical law to all areas of life. See Richard Hofstadter, Anti-Intellectualism in American Life (New York: Vintage Books, 1963), pp. 59-61. The Puritan commonwealth may be contrasted with the totalitarian utopian fantasies of such visionaries as H. B. Wells and some of the early sociologists. See, for example, the eugenics program outlined in H. G. Wells, Anticipations of the Reaction of Mechanical and Scientific Progress Upon Human Life and Thought (New York: Harper & Brothers, 1902), pp. 303-43. For an evaluation of some of the intellectual and anti-intellectual undercurrents in early twentieth-century discussions of the impact of science on technology, see Steven Alan Samson, "The Methodical Conquest: Perceptions of the Impact of Modern Technology on Society," M.A. Thesis, University of Colorado, 1974, pp. 44-104. See also Gary North, The Dominion Covenant: Genesis (Tyler, Tex.: Institute for Christian Economics, 1982), pp. 297-321, on Lester F. Ward's planned state; Paolo Lionni and Lance J. Klass, The Leipzig Connection: The Systematic Destruction of American Education (Portland, Ore.: Heron Books, 1980), on the application of Wundtian psychology toward the construction of a new social order.

<sup>11</sup>Os Guinness, The Gravedigger File: Papers of the Subversion of the Modern Church (Downers Grove, Ill.: Inter-Varsity Press, 1983), p. 15.

<sup>12</sup>E. C. Wines, The Hebrew Republic (Uxbridge, Mass.: American Presbyterian Press, n.d.), pp. 1-22 passim.

<sup>13</sup>See, generally, Eugen Rosenstock-Huussy, Out of Revolution: Autobiography of Western Man (New York: William Morrow and Company, 1938); Harold J. Berman, Law and Revolution (Cambridge: Harvard University Press, 1983).

<sup>14</sup>Rosenstock, Revolution, pp. 494-98.

<sup>15</sup>James Hitchcock, "Competing Ethical Systems," Imprimis, April 1981, p. 2.

<sup>16</sup>William O. Douglas, An Almanac of Liberty (Garden City, N.Y.: Doubleday and Company, 1954), p. 304.

<sup>17</sup>Mead, The Lively Experiment, pp. 67-68. The definition of religion--whether narrow or broad--also raises difficulties of this nature for interpreting the requirements of the religion clauses. David Little indicated that either alternative--broad or narrow--poses a

dilemma for religious liberty in public education: "The degree of pluralism and diversity encouraged by Pierce cannot be cultivated within the public schools, not simply because all views cannot feasibly be represented, but also because the public schools themselves instantiate an outlook and a set of underlying commitments and beliefs that have religious significance, whether our definition of religion be broad or narrow." David Little, "Pierce and the Religion Clauses: Some Reflections in Summary," in Freedom and Education: "Pierce v. Society of Sisters" Reconsidered, ed. Donald P. Kommers and Michael J. Wahoske (Notre Dame, Ind.: University of Notre Dame Law School, 1978), pp. 76-77.

<sup>18</sup>Ibid., p. 70.

<sup>19</sup>E. G. West, "The Prospects for Education Vouchers: An Economic Analysis," in The Public School Monopoly: A Critical Analysis of Education and the State in American Society, ed. Robert B. Everhart, Pacific Studies in Public Policy (Cambridge, Mass.: Ballinger Publishing Company, 1982), p. 373.

<sup>20</sup>Rousas John Rushdoony, Politics of Guilt and Pity (Fairfax, Va.: Thoburn Press, 1978), p. 1.

<sup>21</sup>Ibid., p. 2.

<sup>22</sup>See, for example, Richard Hildreth, The History of the United States, vol. 2 (New York: Harper & Brothers, 1856), pp. 309-11; Lysander Spooner, An Essay on the Trial By Jury (Boston: John P. Jewett and Company, 1852), pp. 5-11; George Ticknor Curtis, Constitutional History of the United States: From Their Declaration of Independence to the Close of Their Civil War, vol. 2, ed. Joseph Culbertson Clayton (New York: Harper & Brothers, 1896), pp. 377-84; Garet Garrett, The People's Pottage (Boston: Western Islands, 1953), p. 9; George Bancroft, A Plea for the Constitution of the United States, Wounded in the House of Its Guardians (New York: Harper & Row, 1886; Sewanee, Tenn.: Spencer Judd, 1982); John W. Burgess, The Reconciliation of Government with Liberty (New York: Charles Scribner's Sons, 1915), pp. 365-72; John W. Burgess, Recent Changes in American Constitutional Theory (New York: Columbia University Press, 1923), pp. 56-64. See also Herbert W. Titus, "God, Evolution, Legal Education, and Law," Journal of Christian Jurisprudence (1980): 11-48. Such changes have too often been consequences of a failure to respond to challenges and opportunities rather than simply necessities compelled by changing economic and technological circumstances. For example, the tragic issue of slavery that rent the nation was nearly averted by the action of the Continental Congress in 1784. For want of a quorum in the New Jersey delegation, the vote on Thomas Jefferson's proposal to abolish slavery in the states after the year 1800 ended in a tie. Rosenstock-Huessy, Revolution, p. 650.

<sup>23</sup>Rockne M. McCarthy, James W. Skillen, and William A. Harper, Disestablishment a Second Time: Genuine Pluralism for American Schools (Grand Rapids, Mich.: Christian University Press, 1982), pp. 112-23.



<sup>24</sup>Even libertarians are willing to use tax deductions and aid programs as regulatory devices. See Thomas W. Vitullo-Martin, "The Impact of Taxation Policy on Public and Private Schools," in Public School Monopoly, ed. Everhardt, pp. 423-69.

<sup>25</sup>Donald A. Erickson, "Disturbing Evidence About the 'One Best System,'" in Public School Monopoly, ed. Everhardt, pp. 393-422.

<sup>26</sup>See, for example, Milton Friedman, Capitalism and Freedom (Chicago: The University of Chicago Press, 1962), pp. 85-107.

<sup>27</sup>Hall, American Revolution, p. 156.

<sup>28</sup>The Palladium of Conscience; or, the Foundation of Religious Liberty, Displayed, Asserted, and Established, Agreeable to its true and genuine principles, above the reach of all petty Tyrants, who attempt to Lord it over the Human Mind. (Philadelphia: Robert Bell, 1773; New York: Da Capo Press, 1974), p. 151. This is not inconsistent with James Madison's description of religion as "the duty we owe to our Creator." See "Memorial and Remonstrance Against Religious Assessments, 1785" in Robert L. Cord, Separation of Church and State: Historical Fact and Current Fiction (New York: Lambeth Press, 1982), pp. 244-45: "We remonstrate against the said Bill, 1. Because we hold it for a fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the conviction, not by force or violence.' The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority."