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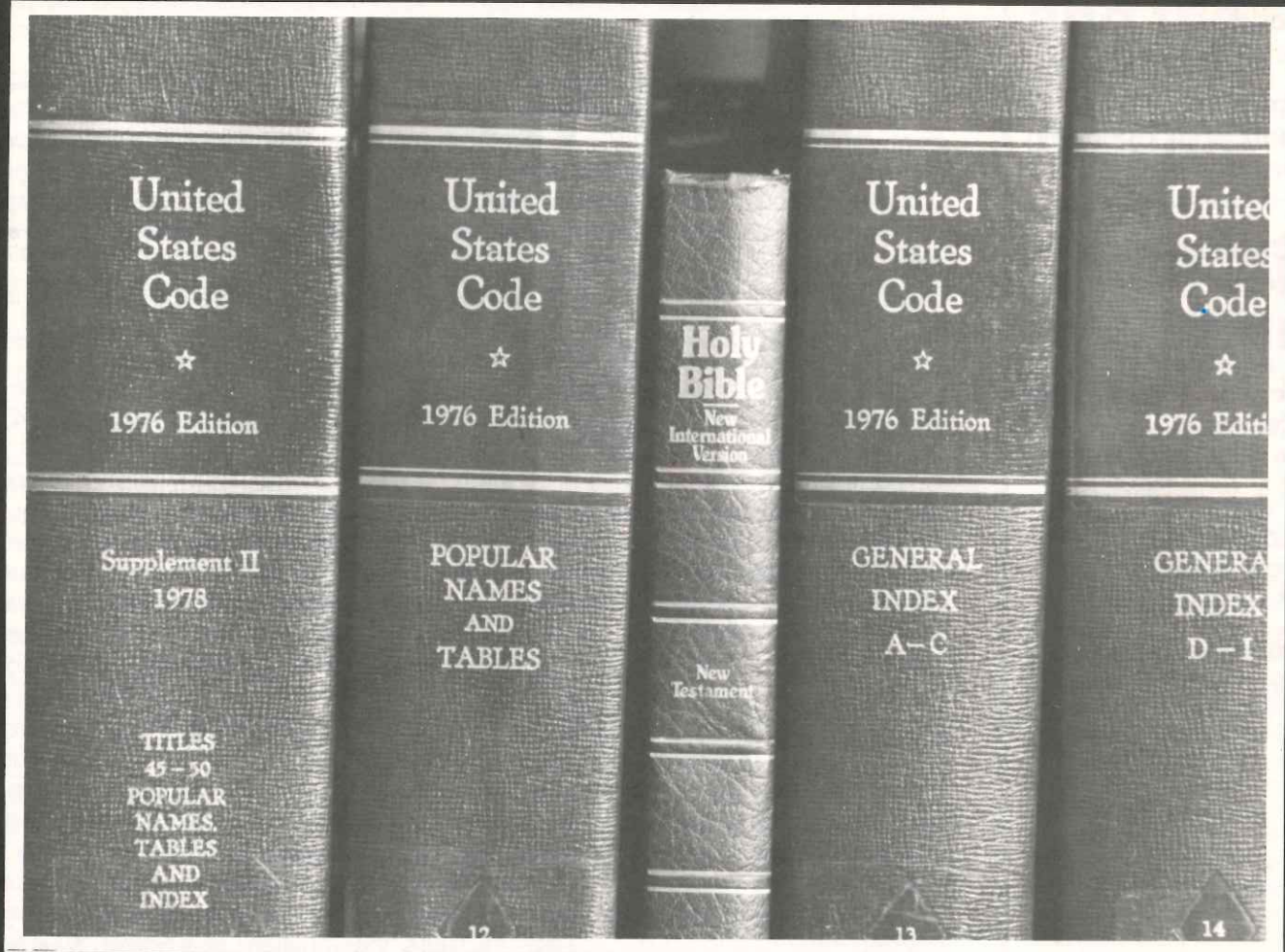
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LAW AND THEOLOGY



Theology, News & Notes

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Editorial

Robert L. Toms

"Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof." These words constituting the religion clauses of the First Amendment of the Constitution of the United States always have been a source of great pride and comfort to evangelical Christians with our general belief that the United States is, if not a Christian nation, underwritten philosophically by Christian principles. We have always felt that a government which operated under such a constitution would not establish some alien religion, nor would it prohibit us from freely practicing our own.

We need to be aware of a similar provision in the Constitution of the Soviet Union:

"Freedom of conscience, that is, the right to profess any religion and perform religious rites, or not to profess any religion and to conduct atheistic propaganda, shall be recognized through all citizens of the U.S.S.R. Incitement of hostility and hatred on religious grounds shall be prohibited. The church in the U.S.S.R. shall be separated from the State, and the school from the church."

The two most powerful nations on earth have written into their founding documents words guaranteeing freedom of religion. Everyone knows that the outworking of such "freedom" in the U.S.S.R. is a completely different pattern to that experienced in the U.S.A. It is evident that the mere presence of freedom of religion clauses in a nation's constitution does not guarantee practical religious freedom to a people. The practical outworking of the application of such words in the human milieu of a society means different things to different people, and you can end up with contrary results working from the same words in the practical applications. Thus, in the Soviet Union religious freedom is given lip service and some sanction, but the State is permitted to then go forward and define the limits of religious exercise; and those who confine their exercise to the official designations are protected, and those whose spiritual life transcends bureaucratic recognition become enemies of the State and are unprotected religionists as opposed to protected religionists, classifications determined by the State itself.

Before we throw stones at the Soviet system, we should direct our attention to a list of issues pending this year before the United States courts, administrative bodies, executive departments and legislatures from the files of the Christian Legal Society's —to page 18



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The evangelical Christian community, in its rather recent encounters with the religion clauses of the First Amendment to the United States Constitution, has discovered that there is a choice to be made. In a homogeneous community or region, where a single expression of religious faith enjoys a broad consensus, the tendency has been to see the issue only in terms of religious freedom, without regard to the competing principle of non-establishment. But there are two sides to the church-state coin. A bit of history and recent experience should help put the matter in perspective.

The meaning of the First Amendment language on religion has long been clouded, and distorted, by the unfortunate metaphor contributed by Thomas Jefferson in 1802 in a letter to the Danbury Baptist Association of Connecticut. There he described the First Amendment as "building a wall of separation between church and State." Jefferson was not writing as a jurist, and surely he was not suggesting that religious life in America would best be served by walling it off. But his language took hold. The phrase "separation of church and State" came to be accepted as what the Constitution not only required, but said. This misconception gave Madalyn Murray O'Hair tremendous leverage when she launched her campaign to squeeze the religious lardings out of each and every public institution in America. She found the courts and the scholars and the popular press preconditioned to the idea of wall building.

The conditioning process had gone on for a long time. Our Constitution will celebrate its 200th birthday in 1987. The First Amendment will be 200 years old in 1989. But it was not until *Everson v. Board of Education*, decided in 1947, that the United States Supreme Court had before it a case which called for interpretation and application of what the First Amendment really does say about the relationship of church and State in America. We discover that the Founding Fathers expressed two fundamental, but competing, concerns: first, that government should not sponsor religion, and second, that government should not impede its expression. The precise constitutional language reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

How does this language have any bearing upon whether grade school children in Sioux Falls, South Dakota, can sing

Christmas carols in the classroom? The answer is that through a series of Supreme Court decisions beginning in 1940, the language now reaches all governmental action, federal, state and local whether expressed through statute, ordinance and regulation or through any public official acting in the course of his employment.

Recent experience has taught that the shield of the establishment clause serves not only the non-religious and the religious minorities, but also the communities of faith which long have enjoyed majority status. A dramatic illustration is provided by the intrusion of Transcendental Meditation into the public high schools of the state of New Jersey. (In the fall of 1975, five public high schools in northern New Jersey offered as an elective a course entitled "Science of Creative Intelligence — Transcendental Meditation." The text book featured Maharishi Mahesh Yogi, an Indian monk credited with introducing Transcendental Meditation ("TM") to the United States. The teachers were not regular faculty members. Instead each had been commissioned by the Maharishi himself and was in fact employed by the TM movement. Early in the course the students faced an initiation ceremony as the prerequisite for receiving their individual "mantras," the sounds used for the purpose of meditation. The ceremony took place at a local TM center. It followed a ritual prescribed by the Maharishi, including bringing of an "offering" consisting of fruit, flowers and a handkerchief. These items were surrendered to the instructor at the TM center, who then introduced the students one by one to a room furnished with a table on which were three dishes, an incense holder, a candlestick holder and a color picture of Guru Dev, identified as the



POPPINGA

Religion and the First Amendment: Choosing Sword or Shield

JULIUS POPPINGA

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Poppinga has been chairman of the church-state committee of the American Bar Association's Section on Individual Rights and represented the parents who successfully challenged on First Amendment grounds the teaching of Transcendental Meditation in public high schools. He is an elder at Grace Presbyterian Church, Montclair, New Jersey.

If we are not prepared to accept governmental sponsorship of other faiths ... then we must be prepared to accept limitations which the establishment clause imposes upon official endorsement of the Bible, prayer and traditional Christian beliefs and practices.

most recent teacher, now deceased, responsible for passing on the teaching of Transcendental Meditation to the Maharishi. The fruit, flowers and handkerchief brought to the initiation by each student reappeared on the table. During the ceremony itself, a candle and incense were burned in front of the image of Guru Dev. The ritual climaxed with the chanting, in Sanskrit, of the "Puja," an invocation of Hindu deities. After receiving their mantras, the students were to practice meditation at least once a day for 20-minute periods. Classroom time was also devoted to meditation. The textbook itself set out the objectives of the TM movement, including "to achieve the spiritual goals of mankind in this generation." It taught that "the field of pure creative intelligence" constitutes the "basis of life;" that it is "the very source of life-energy, the reservoir of wisdom" and that through the practice of the technique of meditation as taught by the Maharishi, one could establish regular contact with this field of pure creative intelligence. Attributes of love, justice, gentleness, kindness and purity were ascribed to creative intelligence as were the attributes of eternity, omnipotence, omniscience and omnipresence.

A small group of concerned parents, with the encouragement and research support of Spiritual Counterfeits Project, of Berkeley, California, challenged the multi-million dollar Transcendental Meditation Movement. The challenge was successful. The United States District Court for the District of New Jersey, in an exhaustive opinion, found the study of the Science of Creative Intelligence and the practice of Transcendental Meditation to be religious in nature and enjoined its teaching in the public schools. The District Court decision was unanimously affirmed by the United States Court of Appeals for the Third Circuit in Philadelphia. The Maharishi's organization chose not to carry the matter to the United States Supreme Court.

For purposes of this article, the significance of the TM case is to illustrate that the establishment clause is not the sole preserve of Madalyn Murray O'Hair. Suddenly, many who saw the establishment clause only as a means whereby a minority could block out what the majority re-

garded as legitimate expressions of Christian elements of our culture, found that the majority also needed this shield against the efforts of aggressive and well-financed minorities to gain governmental sponsorship. This discovery should enlighten any discussion of the proposed prayer amendment to the Constitution and related legislative efforts. In communities where the evangelical Protestant element constitutes a strong majority, the dangers of government-endorsed religious practices have not always been perceived and the impact of the establishment clause has often been resented. If we are not prepared to accept governmental sponsorship of other faiths and of the many exotic religions which have gained currency across the land, then we must be prepared to accept limitations which the establishment clause imposes upon official endorsement of the Bible, prayer and traditional Christian beliefs and practices.

This is not to say that every decision reached by our courts under the establishment clause has been "correct" or necessary. Mr. Justice Potter Stewart, concurring in the 1963 case of *Sherbert v. Verner*, said: "I think that the Court's approach to the Establishment Clause has on occasion... been not only insensitive, but positively wooden. . . ." It is easy to agree with this statement. When a United States Circuit Court finds that the prayer, "We thank you for the birds that sing, we thank you for everything" recited by kindergarten children constitutes an establishment of religion, one senses that the concern of the Founding Fathers that there should not be established in the United States of America something akin to the Church of England, has reached too far. Similarly, when public school administrators, often on the basis of ill-informed advice from school board attorneys unskilled in constitutional law, interdict the use of traditional Christmas carols in a holiday-season concert, the legitimate shield has been enlarged into the lamentable wall, and our whole culture suffers. On this note we turn our attention in this article from the shield of establishment to the sword of free exercise.

We shall leave to another discussion the relevance of the Sermon on the Mount to our wielding of the constitutional sword in vindication of our "right" freely to exercise our religious faith. Suffice it for the moment to appeal to Paul's invocation of his Roman citizenship as a theological

basis for the assertion of legal rights in civil courts to preserve and advance our faith.

The Christian community is discovering with alarming frequency occasions for invoking the constitutional guarantee of free exercise of religion. Examples abound. Scores of Christian schools found it necessary to journey to Washington, D.C., in late 1978 to protest a proposed ruling issued by the Internal Revenue Service whereby, through administrative procedures, the tax-exempt status of such schools, which in fact were open to all races, was jeopardized unless a mechanical formula was satisfied to demonstrate the absence of racial discrimination. The constitutional issue was whether tax-exemption, having been broadly granted, might be conditioned so as to deny its benefit unless the schools surrendered a measure of their freedom of religious expression to satisfy the formula.

In Buffalo, New York, high school students were denied the use of empty class rooms for Bible study club meetings. At Western Washington University, college students could not use university buildings for regular on-campus religious meetings. Should not such facilities be made available to religious and non-religious activities alike? Should not churches continue to have the services of policemen to direct traffic and assist parishioners across busy thoroughfares? Should not an employee be entitled to refuse to work on his Sabbath, or to refuse to perform services that are repugnant on religious grounds, without jeopardizing his career? Should not servicemen and women have available, even at government expense, facilities for worship and the ministrations of clergy? Should not public bodies be permitted to open their sessions with prayer?

These activities, some of which have already been proscribed, some of which have not yet been challenged and some of which are being challenged, all point up the conflict between the establishment clause and the free exercise clause. Implicit in the position taken on each question is a choice between the shield and the sword.

Meanwhile, the courts continue to wrestle with the meaning of "establishment of religion," and the boundaries of "free exercise." In 1947, in *Everson v. Board of Education*, Justice Black wrote:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Gov-

ernment can set up a church. Neither can they pass laws which aid one religion, aid all religions, or prefer one religion over another.

When those words were written, they had the ring of profundity and seemed to furnish a workable test. However, the free exercise clause requires the government to aid religion at least in the extreme case presented by the soldier at a remote post with no place to worship unless the government provides it. More recently, the Supreme Court has laid down a so-called three-pronged test that asks, does what the government seeks to do (or what individuals seek of it) have other than a secular purpose? Does it have as a primary effect the advancement or inhibition of religion? And does it foster excessive government entanglement with religion? If any of these three questions is answered "yes," the court has said that the governmental action is invalid under the establishment clause. These tests too will prove to be not absolute and the principle of free exercise will force upon the courts an accommodation to religious needs even where that accommodation may entail a degree of purpose which is not purely secular, a degree of advancement (or even in some cases of inhibition) of religion and a degree of entanglement.

What then should be the stance of the evangelical Christian? The decisions of the courts, even in the rarefied atmosphere of constitutional interpretation, reflect an ebb and flow. While not abandoning the shield, or denying its utility, the evangelical Christian community should consider the tremendous legacy of the constitutional guarantee of free exercise of religion which has been preserved for us through the First Amendment to the Constitution of the United States and in similar language of state constitutions. This too should be considered a gift of God, a portion of his common grace. This gift should be cherished, it should be defended and it may properly be invoked. However, even while using the God-ordained institution of civil law and government to preserve and protect our religious heritage, let us always remember that it is "Not by might, nor by power, but by my spirit," saith the Lord of Hosts." Religious liberty is not advanced by building walls, but neither is the Kingdom of God dependent upon the beneficence of Caesar. ■

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On Cleaning Up America

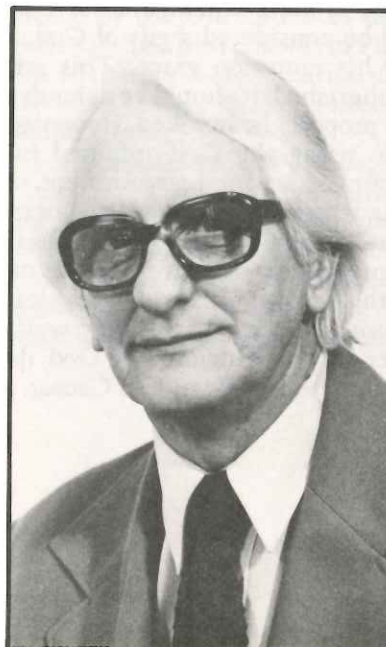
LEWIS B. SMEDES

Professor of Theology and Ethics Lewis B. Smedes is the author of several books, the most recent, *Love Within Limits*. He earned the B.D. from Calvin Theological Seminary, the Th.D. from Free University of Amsterdam and pursued further study at Oxford University and the University of Basel. Smedes, a minister of the Christian Reformed Church, sits on the editorial board of *The Reformed Journal* and has previously contributed to *Theology, News and Notes*.

Conservative evangelicals, alarmed at morality's bad showing in our society, are busy organizing to clean up America. Several new Christian lobbies have risen like a Phoenix from the ashes of evangelical apathy, poised for a swoop on Washington in defense of biblical morality. As Richard Zone, leader of *Christian Voice*, just one of the new groups, said, "As Christians, we are not going to take it any more." And one way to reverse the "new gospel of permissiveness" is through the election of right thinking leaders who will legislate on the side of morality.

Aside from what we may think of the style and methods of the new crusaders, they raise an old and thorny question that we may need to look at again. I refer to the question of whether and how Christian people might expect help from the coercive hands of government in keeping alive the morality of the Bible. When the traditional morals of a community seem to be washed out in a rip-tide of permissiveness, good Christian people are tempted to agonize: "There ought to be a law against it." When Christians are galvanized to elect congressmen (and, maybe, a president) who think right about personal morality, they probably are saying just that, "we want government to do something." And what does government do more naturally than make and enforce laws? So whatever we think of the moral priorities of these groups, the rest of us evangelicals ought to be willing to examine their premise, namely that laws are legitimate means of supporting biblically taught morals.

What I plan to do here is to set out some theses that seem to say something to the issue. Each thesis is very debatable. All together they do not solve the problem. But they are theses that help me get the



SMEDES

problem down to a size I can handle. I will just throw them out, explain what I mean by them, and leave you to decide whether they help. First, we should define three terms in the discussion.

Morality

Out there, in human life, there is something that answers to the word morality. Most of us agree that life truly does have a moral side. Most of us also agree that morality is a life dimension of first-order importance. When it comes down to saying what it is, though, we are usually hard put. But we can say something. Morality is that part of our lives which is open to blame or praise by God and our conscience. It has to do with the way persons *ought* to live with other people, as determined by God's will for human life.

Morality filters into both our private and our social lives. Some morality rises mainly from what we do as private persons. Other morality emerges from things institutions do. Our problem here is with private morals and whether and/or when we may properly appeal to government to put its coercive hands into the private morals of its citizens. More narrowly, we want to ask whether Bible believers should ever want the personal morality taught in the *Bible* to be the business of government.

Sin

Sin is human action God condemns. We use this word when we want to say that something is not only bad in our eyes, but in God's eyes as well. All moral wrongs are sin. But not all sinful acts are moral wrongs. For instance, blasphemy is a sin, but we would not commonly call it immoral. Moral sins are just one species of sin. So we are not concerned here, with whether government should wipe out all sin. We are concerned only with whether government should make laws to limit personal immorality.

Crime

Crime is what any society decrees to be intolerable, and subject to punishment. Some moral wrongs are crimes, rape for instance. But not all moral wrongs are crimes, adultery for instance. Not all crimes are moral wrongs either; to criticize a dictator is a crime in some places, but it is surely not a moral wrong. The question is: which moral wrongs should be turned into crimes. Which moral wrongs

should society decree to be intolerable in its midst?

1. Some evangelical beliefs support the legislation of morals

Some things evangelicals believe are at least consistent with a political move to legislate against immorality. Some evangelical beliefs even incline us to expect government to enforce some morality. Some of those beliefs seem to me to include the following:

A. *Biblical moral standards apply to everyone.* The moral teachings of the Bible are not a parochial discipline for Hebrews and Christians only. Therefore, when evangelicals seek government help in matters moral, they are not trying to impose a sectarian religious morality on people.

B. *Biblical moral standards protect the community.* At the heart of all biblical morality is respect for persons, their lives, their property, their families and their trust of one another. A society is kept together by the respect that is the core of biblical morality. And, therefore, it is to any society's interest to guard the Bible's moral standards.

C. *Biblical moral standards are good for human beings.* God's commands fit his creation. Morality is the matching of human life with divine design. Therefore, biblical morality fosters human welfare.

D. *Government is God's minister for society's good.* This evangelical belief about the positive calling of government, lodged in Romans 13, makes calling on government to legislate on behalf of biblical morality an intrinsically consistent thing for evangelicals to do. If God has a design for human community, if his moral standards are pointers to his design, and if government is his agent to foster the development of life in that design, it follows that government may legitimately have a hand in enforcing God's moral standards.

My point is only that evangelicals are consistent with some important beliefs when they call on government to act on behalf of biblical morality. Not all Christians share my list of beliefs. But all, I expect, will agree that these beliefs represent a major strain in evangelical tradition. So, if you want to get the government involved in support of biblical morality, and if you accept these evangelical beliefs, your political aims are congruent with your beliefs.

2. A venerable view of government supports the legislation of morals

A persistent tradition holds that rulers are patterned after parents. What a father is to his family, the government is to its people. A father has the calling to protect his children from moral as well as physical harm; the government has the same duty to its people.

Some pagan philosophers and Christian theologians agree on this analogy. Aristotle, for instance, believed that citizens should be forced to live morally, just as children are. The result will be that, like children, citizens will get in the habit of living rightly, and thus learn to enjoy living rightly. Calvin also believed that government was like a father. Human society was the family writ large and government was God's "father" to society. The noblest calling among men was to be God's political agent in the creation of a moral community pleasing to a moral Lord. So Calvin believed, not that much different from Aristotle, only with more evangelical confidence.

Neither Aristotle nor Calvin expected to bring in a moral utopia by making immorality illegal. But they did suppose that government could help the weak control their flaming passions. And they both figured that government ought to help protect the innocent from the immoral — a needful help since immorality, once on the loose in society, tends to devour morality. Further, they supposed that government's intervention into private morality was a necessary move to keep decent order, for the most private offenses against the moral order eventually become assaults against the social order.

3. Government involvement in morality has a modern model

When government gets involved in personal morality its motive is to protect weaker members of society from more powerful predators. When it does get involved, government is always suspected by libertarians of infringing upon personal liberties. But government does practice constant incursions into the morals of business, usually without a hue and cry from liberty-minded people. Government protects us weaker members of society from the powerful in business who might prey on us to our harm. Suits are filed; corporate managers are monitored; companies are convicted of malfeasance — all to protect the vulnerable consumer from the fiscal lechery of unscrupulous merchants.

Government does not leave it all up to

Further, they supposed that government's intervention into private morality was a necessary move to keep decent order, for the most private offenses against the moral order eventually become assaults against the social order.

There are, then, twins in the evangelical womb: liberty and morality. I suspect most of us feel the same pair kicking inside our conscience. It is probably an evangelical brand of the same tension everyone feels who is concerned about both morality and liberty.

us; *caveat emptor* has limits. Why then should it seem odd to expect the government to protect weaker members of society from the predators and lechers of the world of morality, particularly sexual morality? When government is asked to lend a hand in morality, it is not asked to prevent John Neighbor from reading what he really wants to read. It is asked to limit the freedom of the barons of pornography who prey on the latent prurience of a public whose vulnerability in sexual morality is no less than its vulnerability in other consumer commodities. Why is it obviously right to protect a citizen from being "ripped-off" by false claims for Sugar Pops and not obviously right to protect a community from being "ripped-off" by a Mafia-controlled porno industry? Why is it obviously right for the government to monitor NBC to make sure that it does not violate the equal time for candidates rules and not obviously right that it prevent NBC from blasphemy against the name of Jesus Christ on its late Saturday night programs?

My point is that government does play a paternalistic role on behalf of its children. Government has a hand in the morality of business. To ask it to use its powers on behalf of personal morality, and sexual morality in particular, is not to ask for a new and untested course of action.

4. Legislating morality conflicts with personal liberties

Modern social consciousness is split between two moral values: the value of personal liberty and the value of social order. We could say that modern moral consciousness is split between two social fears: 1) the fear of tyranny and 2) the fear of chaos. Modern democracies pay more respect to personal liberty than to moral order. Western democratic governments tend to be less the enforcer of values as a protector from physical abuse. In moral matters, government is not like a parent; it is more like a referee who stops a fight only when someone's life is threatened.

John Stuart Mill's words still offer the classic statement of the modern democratic notion of government's role in morality: "The sole end for which mankind is warranted individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."¹ Mill's view is

not a magic answer to every concrete question about government's role in personal morals, but it does set a course.

Many of the evangelicals who want government to call a halt to moral permissiveness have a record of support for libertarianism. They generally want as little government as possible in social morality. Conservative evangelicals were usually slow in accepting civil rights legislation which limited the liberty of people to hire whom they pleased and sell to whom they pleased.

Now, however, responding to the moral disorder of our permissive times, some evangelicals are willing to ask for civil laws to enforce moral laws even at the cost of some personal liberty. They seem willing to pay the price of some personal liberties to buy defenses against the assaults of aggressive immorality. They tend to agree with Lord Devlin's argument against England's liberalizing Wolfenden Report on homosexual behavior. Devlin's argument has been summarized in this way: a society is "held together not only by its political structure, but also by a shared morality; and just as every community has the right to protect its political integrity by the law of treason, so it must also have the right in suitable circumstances, to safeguard its ideological integrity by means of criminal sanction."² The evangelicals lobbying in Washington in the name of biblical morality believe that America does, in its heart, subscribe to a kind of "ideological integrity" and they believe that "suitable circumstances" for political action have arrived.

There are, then, twins in the evangelical womb: liberty and morality. I suspect most of us feel the same pair kicking inside our conscience. It is probably an evangelical brand of the same tension everyone feels who is concerned about both morality and liberty.

5. Legislation of morals conflict with our covenant to live in a pluralistic society

Every person who accepts the privileges of living in this secular community also makes an implicit covenant to respect the community's historical definition of itself. The American community defines itself as a community of many beliefs and many moral convictions. This definition has never settled restfully in the deeply

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There is a vast difference between saying that "education is a function of the State" and saying that "education belongs to the State." To say that the State has a legitimate interest in educating some of the people is far from saying that it may control the education of all of the people. While it would seem that nothing could be more dangerous than the latter proposition, it is possible to think of one thing even worse: the idea that the State may control *religious* education (and, en route to that control, define it).

Having been counsel in many cases in which religion and the State are in conflict in matters pertaining to the education of children, I think there should be a better understanding of what ought to be involved in these confrontations. I say that, because in some of these conflicts I have seen two different points of view advanced — ardently and in good faith — both of which are entirely wrong. One view regards the State as a sort of landlord who owns the household of education. This landlord allows a religious group to lease a room on his premises. The lease is a very typical lease, in the sense that it contains no end of conditions governing all that may take place in the leasehold. The lease is short-term and is renewable solely at the option of the landlord. If the tenant feels that the terms are too exacting, he may find the landlord to be a pretty good fellow who assures him that he won't be too fussy about enforcing them. But that he has the right to, there can be no doubt. After all, it's the landlord's property.

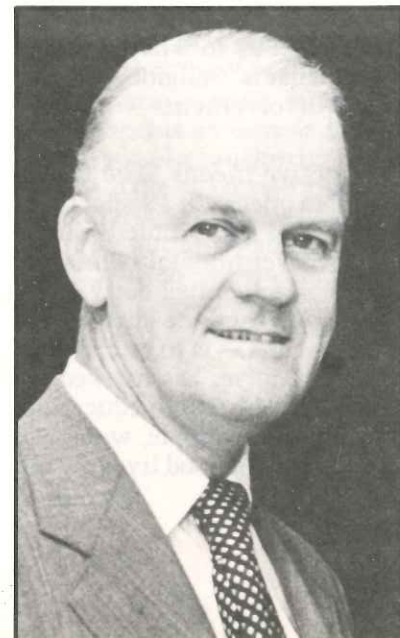
In the above, the landlord is the State and the tenant is the religious school — and you can take it from there. Now let me

come to the other view to which I have referred:

It is that religious bodies may act without reference to the common good. A religious body has the absolute right to do whatever it will unimpeded by considerations of a general good. Of course we see those bizarre, highly publicized — but actually rare — examples of Jonestown conduct where people maltreat or endanger others and then stand on the ground that "God told me to." But even among some very good people, engaged in very worthwhile religious endeavors, the anarchic principle is expressed that, for example, the common good demands nothing of a church, and church may be subject to no law but its own.

Both these views, then, are wrong, but it would be equally wrong to try to find a "mean" between them. The answer lies not somewhere between them, but quite apart from them. In respect to private religious education, it is plainly this: Christ said "Render unto Caesar the things that are Caesar's and unto God the things that are God's." In American constitutional terminology this would read "Render unto the common good (*i.e.*, render unto one another) the things that belong to the common good (to one another, or the commonality), and unto God the things that are God's." I have used the term "common good" rather than "society" or "community." These later come too close in emphasis to the "State." The modern State has become so increasingly impersonal and arrogant, even in the democracies, that "Render unto the State (or society, or community)" is too easily read to mean: "Subject yourself to anything which the State, in its wisdom, decrees." But freedom by governmental permission is not liberty. Rights do not come from legislators, administrators, or judges. They do not come from society or majorities. (Society and majorities can change, and rights, if they are rights, do not change.) Rights do not even come from the constitutions — if they are rights. Constitutions can be amended. The Declaration of Independence, which is the preamble to the preamble to the Constitution, said that rights come from God. The Founding Fathers could have stated the corollary, which they plainly believed: *without the idea of God there can be no idea of rights.*

"Render unto one another" conveys something personal and tangible and con-



BALL

Law and the Educational Mission of Christianity

WILLIAM BENTLEY BALL

A partner in the law firm of Ball & Skelly of Harrisburg, PA, William Bentley Ball is an expert on constitutional law issues. He has been lead counsel in litigations in 20 states of the U.S. and has appeared before the Supreme Court when leading decisions on parental rights have been handed down. From 1970-1974 Ball was national chairman for the Federal Bar Association Committee on Constitutional Law. He presently serves as director and counsel for the National Committee For Amish Religious Freedom.

Ball is a graduate of the University of Notre Dame College of Law and the author of several articles and law reviews.

The Vermont, Ohio and Kentucky courts have plainly been on the cutting edge of civil liberties in these decisions. They have indeed created precedents for religious and civil liberties. But they have not invented constitutional law in doing so.

veys the idea of charity. Let me illustrate. A statist's curriculum statute reads as follows: "There shall be taught in every school any and all subjects prescribed by the State Board of Education." Here a blank check is given to the State. It is total power. Whatever comes into the State board's head, that, a private religious school must comply with. Here the school is indeed the mere controlled tenant in the household of the State. Here indeed is a denial of religious (as well as intellectual) liberty.

The *religious* anarchist's recommended statute would read as follows: "The State shall have no power to impose any requirement whatsoever as to what shall be taught in any private religious school." This means that nothing—literally nothing—can be *required* to be taught in any religious school. Although all such schools may, it turns out, teach English to their children and teach it well, this statute is a denial of the principle that *we* have any common concern for one another in the area of education. Thus, under such an exemption, no school, or home teacher, could be required to assure that a child learn the language of his country, or that he be able to compute, or know something of his country's history, form of government, or geography.

What has the Supreme Court of the United States had to say on the respective current claims of the statist and of the anarchist? It is important to understand that the Court has not yet had before it a case in which these claims were fairly posed. The decisions of four state supreme courts' have dealt with the claims—although in one of them it must be said that the issue was *not* "fairly posed."² In each of these four cases the State educational bureaucracy had sought a more or less total regulation of private religious schools; in three of them, the schools counter-attacked, contending not only that the State sought to violate the free exercise of religion but also contending that the State's action excessively entangled church with State. In three cases (from Vermont, Ohio and Kentucky) the state supreme courts came down emphatically on the side of the religious schools. In the North Dakota case, the decision was on the side of the State. In that case, however, the record (that is to say, the facts

brought out upon trial) was not adequate for a fair test of the issues.

The Vermont, Ohio and Kentucky courts have plainly been on the cutting edge of civil liberties in these decisions. They have indeed created precedents for religious and civil liberties. But they have not invented constitutional law in doing so. Instead they have probed deeply into the meanings of our constitutions (federal and state) and, secondly, have built upon statements of doctrine which they have felt to be found in decisions of the Supreme Court of the United States. Those statements may be found under the following headings:

1. *Religious liberty as a preferred freedom.* Certainly, the decisions of the Supreme Court do not classify religious freedom indifferently, but place it almost in a class by itself—at the very apex of our human liberties.³ That being so, the Court has firmly held that religious liberty may not be infringed upon by government in the name of any ordinary public interest. Instead, government must take a higher hurdle; it must show a "*compelling* State interest"—something really supreme and urgent in terms of the public welfare.⁴

2. *Parental rights as basic rights.* The Supreme Court, in 1925, said that "the child is not the mere creature of the State."⁵ In 1972 it restated the concept with great emphasis in its decision protecting Amish parents from criminal prosecution for refusal to enroll their children in high school.

3. *Non-entanglement.* In 1971, in *Lemon v. Kurtzman*,⁶ the Supreme Court explicated, in much detail, the concept of church-State separation. It held that government may not become excessively "entangled" with religious schools, that it may not monitor the instruction therein, make determination as to what is "secular" therein and what is "religious," create administrative involvements with religious entities.

4. *Least restrictive means.* The Court, finally, has said, in effect: "If a social problem is presented, and this problem can be taken care of by governmental regulation which impinges on religious liberty, or by means which do not, then the latter—the least restrictive means—is to be chosen." This principle, of course, has marked application to religious liberty in education. If Amish children, for example, were well protected and headed for good lives within

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When Mr. Bumble in *Oliver Twist* referred to law as "an ass, an idiot," he caught the emotional tone of a whole tradition of suspicion and doubt about the efficacy and justice of law and lawyers as a social and political institution. The law, and even more the legal profession, have always had their vociferous critics. Jokes and epigrams have long thinly disguised a basic hostility.

Yet, however eternal the critique, it does seem that at no other time in modern American history has the law been subject to such intense criticism from within the legal profession as well as by social and political commentators. A contemporary jurist has suggested that law is an "obsolete faith," and has published her charges in a book entitled *The Death of the Law*.¹ John P. Frank, in a volume urging law reforms, prophesied that "we are approaching the total bankruptcy of our remedy system" and heading for a "legal doomsday." Frank likens the consequences to those in Solomon's temple who were "unaware of the impending surprise and headache."²

The charges against the system remind one of a prophetic indictment: encoding of wealth and privilege, unjust distribution of legal services, total failure of the criminal justice system, prejudice against the poor, fostering litigation and conflict, incompetence and lack of self-policing. These charges are leveled not only by bearded, dour critics of the radical left, but often by leaders at the highest levels of the profession. The result is what one author called a "crisis at the bar."³

Before the theologians or clergy rush in with healing balm however, they might note the counsel of noted Harvard Law Professor Harold Berman who suggested that "to appeal to religion to rescue law in America today is like asking one drowning man to save another."⁴ Indeed the crisis at the "bar" seems matched by an equally serious crisis at the "altar." The church seems as torn as law is about its identity, role, authority and mission. Studies have suggested that the clergy is particularly susceptible to crises of faith, meaning, authority and identity.⁵ And the larger church seems torn with dissent about such issues as the role of the church



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in politics, social issues such as abortion, the place of liberation theology, the role of the minister in the life of a religious community and the shape of radical obedience.

The Crisis of Authority

Both theology and law seem part of a major cultural crisis—one which has a special impact on those systems and structures which carry in their life the values and norms of a society. These "core" institutions have seemed especially vulnerable. And no institutions in American life have been more formative of, and wedded to, our cultural ethos than religion and law. This cultural crisis is nothing less than a crisis of authority. Hannah Arendt has suggested that "the defiance of established authority, religious and secular, social and political, may well be the outstanding event of the decade."⁶ Thus as rules, customs, tradition and history (those encoders of authority) have come under assault, religion and law have been selected for special and searing criticism. Law encodes much of our central cultural visions and is the power structure for their translation into political reality and their maintenance. Religion roots these values in eternal verities and may even cloak the law and state with an earthly version of righteousness. Thus law and religion are cultural co-conspirators.

Therefore these two ancient and in some sense revered disciplines are in deep trouble. They are fallen idols and the once faithful are now ready in their anger at being duped to deliver a final blow.⁷ The

Law and Theology: A Strained But Critical Dialogue

LYNN ROBERT BUZZARD

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And law and theology with their common roots ought to lead the way in fostering a resurgent sense of intellectual and moral community.

queen of the disciplines (theology) and what DeTocqueville called the American aristocracy (lawyers) are ill-prepared to defend themselves against the new forces of immediacy, feeling and relevance. Attempts by each to "get with it" have seemed sadly pathetic. Contemporaneity is not the best coin for minting the validity of either. Their necessary connection with conceptions of truth and history have put them woefully out of style.

Ancient Paramours Now Estranged

There is more, however, to bring these disciplines together than the common misery of rejection. There is in fact an historic close relationship between these classic disciplines. They were indeed ancient paramours if not outright kin. Theologians studied law even after they ceased to make and control it as an antiquity. Lawyers pursued theology as they struggled with the source and content of a law they perceived as seeking harmony with nature and nature's God. They not infrequently viewed their tasks as complementary, both exercising their offices as servants of God's order. It is not surprising in such context to discover that notable theologians were lawyers. It was a symbiotic, if not warm relationship, and one well summarized by writers as diverse as Berman and Lord Denning.⁸

More recently these lovers have become estranged. The secularization of American law,⁹ the current fascination with "separation of church and state," and the withdrawal of religion from history and politics¹⁰ have fed the hostilities. The theologians and socially alert clergy have disdained law as obscurantist, as a refuge of structured injustice and institutionalized violence. He preaches of its inhumanity and inordinate focus on words and technicalities. Lawyers are the Pharisees who know the minutiae and miss the kingdom. Lawyers raise a chorus of complaints which strangely echo those of the religious reformer, only now it is the religionist who is the leech, whose emphasis on the other-worldly inhibits human concern and effective action. The reform oriented lawyer finds parallels to the "technicalities" of law in the rituals and creeds of churches. Thus each is seen by the other as insensitive, irrelevant,

obscurantist and dominated by selfish and class interests.

This intellectual, conceptual and emotional isolation and divorce seems all the more tragic given the issues facing modern society — issues which defy classification as "legal" or "moral" or "political." They are issues which touch the very core of our understanding of human life, of society and the world community. The global issues of ecology, human rights, bioethics, world population, and the role of government and the State are so central and encompassing that it is a time not for professional compartmentalization, but for the maximum of interdisciplinary endeavor. And law and theology with their common roots ought to lead the way in fostering a resurgent sense of intellectual and moral community. There is certainly within the church and theological community a recognition that, as John C. Bennett observed, "law touches our lives so fatefully at so many points that we cannot leave it entirely to lawyers."¹¹ Law is within the jurisdiction of ministry. It seems particularly critical in a pluralistic society that every discipline, every element of that pluralism speaks vigorously to the issues of the day — speaks not with a neutral voice, but with passion and specific clarity to its understanding of the issues before us and the choices which lay fatefully before us. Theology must not be relegated to a narrowly drawn "religious" sphere solely by piety and eschatology. Law must not be relegated to technique and stripped of its own historic values.

The Gifts of Theology to Law

It is beyond the scope of this essay to explore the full dimensions of the dialogue which must exist between law and theology. It is certainly a conversation in which each has an important ministry, a mission, a gift for the other. Law must give to both theology and church her special insights. Among them would seem to be the gifts of incarnational, distinguishing and mediating perspectives — that is, the capacity to embody, implement and concretize the hopes and visions as well as the limits and constraints essential in human society. (One writer once observed that law was made by men in their best moments to protect themselves against themselves in their worst moments.)

I wish however to give some brief suggestion of the gifts which both theology and church must give to law, gifts that I trust will fulfill the hopes of Gerhard

Mueller who urged that in a day of secularism, positivism and the reduction of law to rules, religion might give to law a gift — the gift of a soul.¹²

Specifically three contributions by theology to law are essential: first, the gift of an identity; second, the gift of an ethic and third, the gift of a vision, in fact the gifts of *jurisprudence, justice* and *hope*.

Identity ■ Few disciplines are as helpless as law or religion without roots, without history, without a referrant. Yet such issues as the source and nature of law seem abandoned in legal and theological education in favor of more "practical" or "relevant" curricula. "Jurisprudence is deserted" complained a theologically-oriented lawyer.¹³ Yet the issues of jurisprudence surely are at the heart of the task of the law and seem especially relevant in the context of the character of the issues confronting culture. It would seem to be a central task of theology to press these issues upon the legal scholar in the face of the rise of positivistic and sociological jurisprudence.

While not all theologians have mourned the loss of the dominance of "natural law" perspectives, most have grave concern about the seeming abdication of inquiry into first principles. There simply must be deeper sources for a conception of justice than the positivist suggests. The inquiry into the locus of power or the social inquiry are hardly sufficient to assure a concept of law which can adequately protect rights and duties.

Can we indeed live with the relativization of justice, with the pluralities of justice each bearing an ideological or political label: "social justice," "bourgeois justice," or "Islamic justice"? Must justice have a sociologically respectable sponsor to sell it in the marketplace in competition with other justices?

Justice can hardly be relinquished to the whims and vagaries of human will as when it is stripped of ultimate concerns. Radbruch noted the helplessness of legal positivism in the context of legalized immorality as in Nazi Germany. Emil Brunner put it more directly: "The totalitarian state is simply and solely legal positivism in political practice."¹⁴

While Christians do not necessarily offer a simple formula for ascertaining the "truth" and shaping the positive law, they will insist that there is in law itself a moral order which is excised at its peril. As Justice Holmes himself observed, "the

law is the witness and external deposit of our moral life."¹⁵ Even the great affirmations of American constitutional law have profound moral overtones: equal protection, due process and "fundamental freedoms."

Should the legal profession and culture fail to acknowledge and defend a moral foundation for law, it can only result in a diminished credibility for law and a disrespect for its provisions, not to mention the increased insertion of political and power interests in the legal arena each seeking law's blessings.

Law simply must seek its source and its moral authority in an order of truth which is beyond the State.

An Ethic ■ Theology in its encounter with law must move beyond these first-order jurisprudential questions, and offer a second gift — the gift of an operative ethic which can inform and shape the character of law and the contribution of the professional. This ethic which theology offers comes from the very center of its character — the quest for justice.

No conviction of the Christian theological community is clearer than its commitment to justice and its insistence that justice is the standard by which law must be constantly adjudged. Such conviction emerges from the very understanding of God as a God of justice. It is his character and name, his demand and plea. It is ontologically and etymologically related to his righteousness.

This biblical justice is no mere invitation to philosophic inquiry. It is a supremely mundane and worldly justice to be manifested at the "gate," the focus of daily adjudication and commerce. Justice is what one is to "do."

The theologian with a biblical tradition will insist such an ethic has a special relevance for the weak and the poor. It is in regard to such that the prophetic denunciations come sharpest when justice fails — not because the poor and powerless are an especially worthy class untouched by the selfishness and sin of the powerful, but because it is precisely in regard to such that one may indeed test the commitment of a society to justice.

The theologian may even suggest to the lawyer that in the pursuit of justice one shares in a divine activity which extends beyond issues of fairness to give each his due. Justice for the biblical theologian is

Can we indeed live with the relativization of justice, with the pluralities of justice each bearing an ideological or political label: 'Social justice,' 'bourgeois justice,' or 'Islamic justice'?

It insists that those who labor for the law, those who rightly yearn for justice, must also catch a vision of something more ultimate — a vision of a love and freedom so encompassing that law cannot touch it, regulate or define its expression.

related to redemption and restoration. Justice is part of God's renewing, recreating and covenanting. It is not a mood of God in contrast with his mercy, but of one piece. "Justice keeps company with *hesed*."¹⁶

Justice is a powerful gift to law, a moral and ethical weapon, a consuming passion, an endless task. It is a gift which ought to be given eagerly and insistently.

Vision ■ If the gifts of jurisprudence emphasize the grounding of law, and the gift of an ethic of justice, the content, then the gift of hope is that aspect of the theologian's gift to law which in fact presses law beyond itself. It is a gift which insists that law sees values greater than its own. It invites law to see an eschatological dimension to human existence and place its own tasks in that larger, hopeful context. It is a gift which law *qua* law perhaps cannot even perceive because it is beyond law. It insists that those who labor for the law, those who rightly yearn for justice, must also catch a vision of something more ultimate — a vision of a love and freedom so encompassing that law cannot touch it, regulate or define its expression.

Theology must come to those in law and offer the gift of vision, but not as an escape from the necessary task of temporal justice. Nor must theology lessen its passionate insistence on freedom and equity in the immediate moment. It does, however, invite such laborers to become neither trapped nor deluded by the nature and scope of their task. It offers the means for a persistent mission by creating the capacity to look beyond the momentary victory or defeat and see the kingdom. It inspires by visions of pruning hooks that once were swords.

In its best form, this gift of a hopeful vision is neither obscurantist nor escapist. It rather assists us in moving beyond the present, it sustains us in the experiences of failure and triumphs of evil, it plants tenacity in the soul to stay with that which is indeed coming but now hidden, and most importantly, it offers a potential for release and relaxation without which the pursuer of justice becomes a neurotic, a self-reliant and an insufferably earnest bore. The reformer who has seen the vision and lives in hope does not incarnate in his own person the full load of responsibility, but has a quality of nonchalance because the victory does not rest solely on

his labors but is rather assured by the Lord of history.

And with such a vision, each act of justice, each moment of truth and equity, becomes a sign, a token of a larger and ultimate reality. One is thus a participant in the drama of history and no mere meaningless strutter and fretter on the stage of life.

In the rush to immediacy and relevance which can so easily fill our agendas in contemporary society, we skip this gift of hope, of ultimacy, of an eschatological vision at a deepest peril. For it is this vision which provides a stance from which to exercise leverage. Only by stepping outside the system can leverage be achieved. It is thus freeing and empowering. And it does of course involve a theology — a world view, a basic perception and conviction about the cosmos, man, community, freedom and the law.

The gifts of theology offer therefore a rootage in history and truth in the shape of a commitment to jurisprudential inquiry, a gift which speaks to the immediate in a quest for justice which comes from the very heart of God, and a gift which requires an eye which sees not only history and the present, but the visions of a final kingdom when all that law hopes for, and more, are written in the hearts of humankind. ■

1. Lois Forer, *The Death of the Law* (New York: David McKay Co., 1975).

2. John P. Frank, *American Law: The Case for Radical Reform* (New York: Macmillan, 1969) p. xxi.

3. Jethro Lieberman, *Crisis of the Bar* (New York: W.W. Norton, 1978).

4. Harold Berman, *The Interaction of Law and Religion* (Nashville: Abingdon, 1974) p. 77.

5. Donald P. Smith, *The Clergy in the Crossfire* (Philadelphia: Westminster Press, 1973).

6. Hannah Arendt, *The Crisis of the Republic* (New York: Harcourt, Brace and Javonovich, 1972).

7. Ivan Illych, *The Disabling Professions* (London: Bayano, 1977).

8. See Berman's, *The Interaction of Law and Religion*, op. cit. and Lord Denning's, *The Influence of Religion on Law* (Chicago: University of Chicago Press).

9. A seminar was held at Mercer Law School on the secularization of American law and the papers published in *Mercer Law Review*, volume 31, 1979.

10. Perhaps in different ways, both liberal and revivalist forms of Christianity in America have tended to reject historical modes and roots in history. Both have tended to em-

phasize immediacy and personal perceptions of truth and validity.

11. John C. Bennett, "Scope of Morality-Scope of Law," *Engage/Social Action*, August 1973, p. 8.

12. Gerhard Mueller, "In Search of Answers," *Engage/Social Action*, August 1973.

13. John Brabner-Smith, "Who Will Study Justice," *The Christian Lawyer*, Special Edition, 1975, p. 6.

14. Quoted in Samuel Stumpf's, *Morality and the Law* (Nashville: Abingdon, 1966) pp. 186-187.

15. O. W. Holmes, "The Path of the Law" reprinted in Introduction to Law, *Harvard Law Review Association*, 1968, p. 2.

16. See Ps. 99:4; 82; 119; 120; Deut. 10:17; Amos 5:24; Ex. 23:6-7; Is. 56:1. A fuller treatment of a biblical view of justice may be found in L.R. Buzzard, "The Urgency and Legitimacy of the Biblical Community's Concern for Justice," *The Christian Legal Society Quarterly*, vo. 1, Bo. 2, 1980.

17. Eliezer Berkovits, "The Biblical Meaning of Justice," *Judaism*, Spring 1969. See pp. 188-209.

On Cleaning Up America

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biblical conscience. But we do not covenant to live in a moral theocracy where everyone agrees to seek and do only the will of God. We covenant with a community whose people follow many visions and serve many gods. And so, we solemnly covenant to "live and let live." We may believe that our neighbor sins when he plays the horses at the track on the Lord's Day, reads *Penthouse* on Wednesday and snorts cocaine on Saturday. But we may violate our covenant if we try to take away our neighbor's legal right to sin.

6. *The Bible's condemnation of an act is not grounds for legislating against it*

All believers will agree that God's will ought not be violated by anyone. And if we are sure that certain types of acts violate God's will, we have a strong motive for persuading people not to do them. But our certainty that they disobey God's will does not give us grounds for preventing people by force of law from doing them.

When evangelical believers present a case for legislating against immoral acts, they must use the same sort of argument anyone else uses within our society. If they want to outlaw pornography, homosexual

practices, or abortion, they must convince the community that, at this time, under these circumstances, such activities are a threat to the community in some demonstrably significant sense. We must follow the rules of the game we have agreed, by accepting our citizenship, to play.

7. *The political cure may be worse than the moral malady*

A government heaven-bent on protecting us from immoral influences can be an insufferable nuisance. The Old Testament tended to equate immorality with crime, it is true. But if all those statutes against private sins were actually enforced, government agents must have snooped into every nook and cranny of everyone's most private places. Imagine a police force trying to enforce this rule: "If a man lies with a woman having her sickness . . . both of them shall be cut off from the people" (Lev.20:18). John Calvin — rightly, it seems to me — deemed offenses against God's law as serious as offenses against man's law. With this premise, he persuaded the city council to pass laws against seduction, play-acting, adultery, wife-beating, and the watering down of good wine. His motives were evangelically sound. But even a Reformed CIA, poking around at private birthday parties and wedding receptions, was hard for Calvinists to take.

I am, of course, being extreme. I do not expect the present day crusaders to take us back to the Old Testament, to Geneva, or even to modern Connecticut where, to this day, people can be fined \$50 for using contraceptives. But I think it useful to point out the dilemma, that the more moral government gets, the snoopier it gets. And today's snoops tend to be even less classy than Genevan snoops.

8. *It is not fair to deny ordinary civil rights to people on grounds that their lifestyle violates biblical morality*

Society sometimes denies civil rights to people, not only because they have committed crimes, but because they, at any given moment, present a clear danger to others. A man carrying a bombing device is denied the ordinary right to buy a ticket and board an airliner. This is fair because of the obvious threat that it poses to the safety of the people flying. But what of a person who openly practices what evangelicals believe to be personal immorality?

Some evangelicals believe that openly homosexual people may fairly be denied

But I think it useful to point out the dilemma, that the more moral government gets, the snoopier it gets. And today's snoops tend to be even less classy than Genevan snoops.

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their normal right to compete equally with others for jobs as teachers. They may have a point. But the fact that the Bible speaks against homosexual behavior does not prove their point. The civil right to compete for jobs is so precious in any society that it may be taken away only on grounds that the person involved is a clear and present danger to others, like the man trying to carry a bomb on an airplane. It is of course conceivable that homosexual persons would, if they taught children, threaten them in some way. But that threat needs to be demonstrated convincingly, by empirical evidence that reasonable people can evaluate. That God is opposed to the behavior in question will not do as a reason for denying anything so important as the right to compete for a job.

9. *Personal morality and public morality sometimes merge*

The line between private and public morals is always fuzzy, and our society is always readjusting it. In my eyes, your private morality may be a public concern. Whether I may put my house up for sale only to white people was not too long ago considered a private matter; most of us now consider it a public matter, with legitimate laws against it. We learned that personal liberty to discriminate resulted in a conspiracy against the civil rights of a visible minority. Now we face a conflict with abortion. Is it a matter of private morality or is it a matter of public morality? People who want a constitutional amendment against abortion argue that personal liberty to discriminate against fetuses is in effect a conspiracy that denies a basic human right to an invisible minority. Evangelicals need not buy the liberal argument that abortion is a private moral matter that involves only the conscience of the person who wants an abortion. They need not accept the charge, in this case, that they want to legislate private morality.

10. *A moral consensus does not guarantee that laws to enforce it are good laws*

On the face of it, any community ought to have the right to protect its shared moral sensibilities. If people in my town share a moral consensus that porno theatres are a community offense, they probably have a right to keep the skin flicks out. But the presence of a moral consensus does not necessarily make a law

right. The consensus in South Africa that it is not morally proper for a black person to marry a white person does not make laws against interracial marriage right. Such laws are rooted in a mistaken, if consensual morality, and they are bad laws.

We are in a strait between two important concerns here. A community should be allowed to protect its common sense of what is morally intolerable, but its common sense of what is morally intolerable may be mistaken. For evangelicals to plead their cause for legislation of morality merely on the ground that such laws support the moral sense of the silent majority is to rest their case on shaky ground.

SUMMARY

I have been offering some propositions that help me get a handle on what is at stake in the proliferating evangelical efforts to clean up America through politics. If anything comes clear in these guidelines it is that to heed them all is to live in tension. We have to walk carefully through unclear paths with mixed guidelines on a journey that never ends. The choice between a moral society and a free society cannot be made once for all time; it requires a new choice with every new issue. Our guidelines are revised along the way.

The most conservative evangelical must believe that personal liberty, including the liberty to sin, is crucial to our society. To deny anyone the liberty to sin may be to act unjustly against him or her. People have liberty to speak and to publish things that the Christian considers false and offensive, and they have a civil right to do things that the Bible calls immoral. To respect these liberties, in general, seems to be an obligation we assume when we covenant to be citizens of this mixed (and mixed-up) society.

On the other hand, we may remember that not all liberties have the same price. Some personal liberties have more value than others. The liberty to publish our thoughts in a book is more valuable than the liberty to take our clothes off on a public beach. The liberty to criticize our rulers is more valuable than the liberty to smoke pot. There may be a thread of truth in the domino theory that if one liberty is sold, all are on the block. But I do not think so. I think our history shows that we can sometimes curtail certain liberties without endangering others.

It is, by the same token, important to remember that not all moral concerns are

equally important either. Rape is a more important immorality than is adultery. Racism is a more important sin than is pornography. To "grind the heads of the poor" is almost infinitely more important morally than to play the slots in Vegas. Evangelicals with a passion in their hearts for morality may be right to look to Washington, but they ought to make sure they are betting on the important issues.

In the trade-off between liberty and morality, then, we always need to be concrete. It is not a matter of liberty in general against morality in general. It is this liberty against that moral concern. We can never win the whole kit and kaboodle. We need to keep the game openended, making sure we do not trade off a dear liberty for a small morality. John Courtney Murray said once that Christians should probably be content to get a small amount of personal morality converted into civil law. Maybe he would have been satisfied with enforcing enough moral order on society to allow moral preaching to do its work.

What all these unharmonized points come down to is this: It is theologically consistent for evangelicals to want government to help re-moralize America. It is also jurisprudentially consistent for government to act to protect a vulnerable people from immoral predators. But the realities of American pluralism as well as the temptations of government intrusiveness counsel us against trying to get too much from government. If we do not jump on the bandwagon to Washington, it is not because our concern for morals has been washed away by "the new gospel of permissiveness." It is just that, in this arena, I think we need most the power of the pulpit, the word of the inspired prophet, and the statesman, too, who can influence by the power of his personal moral appeal; these, I think, are the best sources of moral renewal, aside from the family altar and parental guidance. If government tries too much, the cure will probably be worse than the bite. If it does too little, it will create open season for the predators. Somewhere in between too much and too little lies the course of moral and political wisdom. We will need a lot of discernment to keep on the track of that middle course. ■

1. J.S. Mill, *On Liberty*, (New York: Everyman's Library), 488:72.

2. B. Kaye and G. Wenham, *Law, Morality and the Bible*, (Inter-Varsity Press, 1978), p. 232.

Law and the Educational Mission of Christianity

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the framework of the Amish faith community, why force them into a form of schooling which violated their religious freedom?

So much for principles stated by the Supreme Court. The Court has also made statements, however, which give some ground to the State education bureaucracies in their efforts to monopolize education in the U.S.A. It has continued to repeat, as dictum, the dictum it uttered in the *Pierce* case, back in 1925 — namely, that states have broad rights to prescribe curricula, conduct, testing and make inspections of private schools. These dicta have all been stated in a context which did bring into scope the above four principles. It is clear, beyond peradventure that, when the proper test case — of the Vermont, Ohio or Kentucky type — comes before the U.S. Supreme Court, these broad dicta will be abandoned. Any plenary State power over religious schools, if may confidently be stated, will be rejected by that Court.

I thus close on the optimistic note that religious liberty in education is steadily advanced in our society. It had better be. Nothing is more essentially related to our national freedom. ■

1. *State of Vermont v. LaBarge*, 134 Vt. 276 (1976), *State of Ohio v. Whisner*, 47 Ohio St. 2d 181 351 N.E. 3d (1976), *Kentucky State Board for Secondary and Elementary Education v. Rudasill*, 589 S.W. 2d 877 (1979), *North Dakota v. Shaver*, Criminal No. 705 (Sup. Ct., N. Dak., June 20, 1980).

2. *North Dakota*, *supra*.

3. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972), *United States v. Ballard*, 322 U.S. 78 (1944).

4. *Sherbert v. Verner*, 374 U.S. 398 (1963).

5. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

6. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Certainly, the decisions of the Supreme Court do not classify religious freedom indifferently, but place it almost in a class by itself — at the very apex of our human liberties.

It seems likely that most people if asked would say they are in favor of religious freedom, but many would not be able to agree on the foregoing issues.

Editorial

—from page 2

Center for Law and Religious Freedom and which are up for final adjudication during the coming decade:

1. Is a minister of the gospel liable for malpractice to a counselee for using spiritual guidance rather than psychological or medical techniques?
2. Can a Christian residence house in a college have the same standing as a fraternity and sorority house for purposes of off-campus residency rules?
3. Can Christian high school students assemble on the public school campus for religious discussion?
4. Can Christian teachers in public schools meet before class for prayer?
5. Can Christian college students meet in groups on the state university campus?
6. Can HEW require a Bible college to admit drug addicts and alcoholics as "handicapped persons"?
7. Can a church build a religious school or a day-care center in an area zoned residential?
8. Can parents who send their children to religious schools not approved by a state board of education be prosecuted under the truancy laws?
9. Is an independent wholly-religious school entitled to an exemption from unemployment taxes as are church-owned schools?
10. Will the State enforce anti-employment discrimination laws against a church which in accordance with its stated religious beliefs fires a practicing homosexual staff member?
11. Can seminary trustees refuse to graduate a practicing homosexual?
12. Can a city continue its 40-year practice of having a nativity scene in front of the city hall?
13. Can zoning laws be used to prevent small group Bible studies from meeting in homes?
14. Can a court decide which doctrinal group in a church split gets the sanctuary?
15. Must a religious school accept as a

teacher an otherwise qualified practicing homosexual?

16. Can a church be fined by a court for exuberant noise in worship?
17. Can a state department of health close a church-run juvenile home for policies that include spanking?
18. Can religious solicitation in public places be confined to official booths?
19. Is an unborn fetus a "person" and entitled to Constitutional protection?
20. Can The Ten Commandments be posted in a public classroom?
21. Can students in public education have a period of silent meditation and prayer?
22. Can Christmas carols be sung in the public schools?
23. Must an employee who believes he should worship on Saturday be permitted a work holiday on that day in order to worship?
24. Can the graduation ceremony of a public high school be held in a church?
25. Can a State official seize a church on allegations of misconduct by dissident members and run the church through a court-appointed receiver?
26. Can the State set minimum standards for private religious school curricula?
27. Is religious tax exemption a right or privilege, and, if it is a privilege, are the exemptions an unwarranted support of religion by the State?
28. Should churches be taxed like any other part of society?
29. Can Federal labor laws be used to enforce collective bargaining rights and unionization in religious enterprises?
30. Can the State require a license before a religious ministry may solicit funds for its work?
31. Are hospitals, schools, counseling groups, halfway houses, famine-relief organizations, youth organizations, homes for unwed mothers, orphanages, etc., run with religious motivations or are they secular and subject to all controls secular organizations are subject to?

It seems likely that most people if asked would say they are in favor of religious

freedom, but many would not be able to agree on the foregoing issues. For one example, two U.S. trial courts have recently ruled that a group of college students who wish to discuss religion could not meet in the context of a public state university, that religious speech must go on elsewhere since it might "establish religion" on the campus. To reach that conclusion, one must have decided that education is secular and not religious, that this is not a denial of free speech and religious liberties, and that it is so important to separate religion and education that the State must screen out religious speech from the otherwise free speech practiced on a university campus. This is consistent with the statement in the Soviet Constitution which draws that conclusion up front and which makes education the sole province of the State. For those who believe that education is a wholly-religious exercise, the training and maturity of mind, body, and spirit in conformity with the laws of God, both an overtly repressive system and a democracy, may achieve the same result insofar as its practical impact on the religious child who must attend public school.

Throughout the history of our nation and its law, certain aggressive front-line groups have been the ones that have been testing the application of law to religion. Some of them are considered cults by Christians, and there has not been a great deal of identification with them and their causes on the part of the mainstream. It is very clear, however, that the opening of the decade of the '80s exposes a new landscape where the struggle has been or is being brought to every school, every child of a family of religious faith, and every church whether it be a home group Bible study, a major denomination, splinter groups, cults, nouveau religions, eastern mystical groups, the Roman Catholic Church, the large parachurch ministries, hospitals, orphanages, or a small group of Christian students in a public school who wish to meet during lunch on the school lawn to discuss their faith. Unfortunately,

evangelical Christians, in spite of the well-publicized cases, largely have not caught the importance of these developments and the imminent impact on them, where they are, in the exercise of their own specific faith in the form in which they are used to exercising it.

Most of the issues from our partial list will be adjudicated, not by the church but by the law courts, administrative agencies, and executive departments in the few years ahead of us. How they are decided and the philosophical criteria used will set the course of religious freedom, the structures, financing, and methodologies of religious enterprise for the remainder of this century and beyond. We have been generally both silent and unprepared on these issues. While the church of Jesus Christ will survive in some form in any regime, the church toward the denouement of the great American experiment will find itself wearing uncomfortable and unexpected shackles with the great detriment to our society and the church if we cannot escape our inertia and engender a sophisticated, educated, and spiritually sensitive response to these incursions.

We are indebted to the editors of *Theology, News & Notes* for their foresight in treating this subject in a theological journal. The crisis in church-state relations is paralleled by an equal crisis in law for a solid moral underpinning for our jurisprudence. The bridges need to be rebuilt. Four distinguished and perceptive Christian scholars, two theologians, and two lawyers each with cross disciplinary interests open this subject for us in this edition.

C. S. Lewis saw this crisis unfolding and chronicled it for us in *The Abolition of Man*:

"For the power of man to make himself what he pleases means that we have seen the power of some men to make other men what they please..."

"We may well thank the beneficent obstinacy of real mothers, real nurses, and (above all) real children for preserving the human race and such sanities it still possesses. But the man-molders of the new age will be armed with the powers of an omniscient state and an irresistible scientific technique: we shall get at last a race of conditioners who really can cut out all posterity in what shape they please."■

It is very clear, however, that the opening of the decade of the '80s exposes a new landscape where the struggle has been or is being brought to every school, every child of a family of religious faith, and every church

Where O Where Did They Go?

Some of our alums are missing. They know where they are, but for some reason we do not. If you happen to know where any of these alums are located, please let us know by sending their addresses to the Director of Alumni/ae and Church Relations. Thank you.

B.D. 1951

William Michel
Albert A. Stavness
Wayne Wessner

B.D. 1952

Paul D. Fairweather, Sr.
Harry J. Hovee
Orlando H. Wiebe

B.D. 1953

Clinton E. Browne, II
Julio B. Panattoni
Kenneth L. Wilkins
Ralph L. Willoughby

Births

Daniel Wesley Balda was born on January 1, 1980, to Janis (MA'80) and Wes (MA'78) Balda in Cambridge, England.

Ian Graham Calmes was born on January 21, 1980, to Edith and Joe Calmes (BD'65) in Santa Cruz, CA. Joe serves as assistant to the director at the Lick Observatory, part of the University of California at Santa Cruz.

Meghann Elizabeth Freehling was born on December 30, 1979, to David (MDiv'75) and Tonia Freehling. David serves as pastor at the First Presbyterian Church, Florence, CO.

Heidi Jeanrenaud was born on February 2, 1980, to Sharon and Sam Jeanrenaud (MDiv'72) in Martinsville, IN.

Laura Ann Miller was born on April 25, 1980, to Susan and Ralph Miller (MDiv'79) in Anacortes, WA. Ralph serves as assistant pastor of the First Baptist Church in Anacortes.

Katherine Gail Ritchie was born on December 29, 1979, and was adopted on February

7, 1980, by Megan and Jeff Ritchie (MDiv'76). Jeff serves as a Presbyterian missionary in South Korea.

Publications

Tom Carter (MDiv'75) is author of an article which appeared in the Summer 1980 issue of *Church Growth: America* magazine, "What About Spiritual Gifts?" He serves as associate pastor of the First Baptist Church, Visalia, CA.

Bruce Rowilson (BD'66) is author of the self-published book *Creative Hospitality as a Means of Evangelism*. He serves as pastor of Gilroy Presbyterian Church, Gilroy, CA.

The 50s

Jim Burroughs (MRE'55) serves as a missionary in France with the Torchbearers.

Vern Carvey (MDiv'54) serves as a missionary in the Philippines with the Conservative Baptist Foreign Mission Society.

Ellis Deibler (BD'54) serves as associate translation coordinator with Wycliffe Bible Translators, Dallas, TX.

Bob Gerry (BD'50) serves as the international secretary for the Christian Literature Crusade.

Dick Gieser (BD'52) serves as a missionary in the Philippines with the Wycliffe Bible Translators.

Eugene Glassman (X'54) serves as a missionary in Hong Kong with the United Bible Societies.

Charles Peck (BD'55) teaches at the Summer Institute of Linguistics, Norman, OK.

Richard Sturz (ThM'59) serves as a missionary in Brazil with the Conservative Baptist Foreign Mission Society.

Ronald E. Vallet (ThM'55) serves as associate executive minister for educational ministries of the American Baptist Churches of New York State.

Austin Warriner (BD'53,

ThM'70) serves as a missionary in Japan.

Ron Youngblood (BD'55) serves as dean at Wheaton College Graduate School, Wheaton, IL.

The 60s

John Ferwerda (BD'61) serves as a missionary in Lebanon.

Robert H. Hill (MDiv'69) serves as a missionary in Greece with the Greater Europe Mission.

Mike Kopesec (MDiv'69) serves as a New Testament commentary writer in Dallas, TX, with the Wycliffe Bible Translators.

Jerry Reed (MDiv'64, DMiss'74) serves as a missionary in Mexico with the Covenant Church.

The 70s

David Stern (MDiv'75) serves as a leader of a community of Messianic Jews in Israel.

Tot Van Truong (X'71) serves as director at the Tin-Lanh Center for Refugees in Hong Kong.

Thomas Waddell (MDiv'79) serves as assistant pastor at the Presbyterian Church, Westfield, NJ.

The 80s

Norman P. Anderson (DMin'80) serves as executive minister of the Southwest District of the Baptist General Conference.

Stephen Bearden (MDiv'80) serves as pastor to collegians and singles at Pasadena First Church of the Nazarene, Pasadena, CA.

Patrick Brady (MDiv'80) serves as assistant pastor at First Presbyterian Church, Sumner, WA.

Robert Allen Breckenridge (MDiv'80) serves as pastor at

Gateway Christian Church, Los Angeles, CA.

Ames Broen (MDiv'80) serves as assistant pastor at First Presbyterian Church, Glen Elyn, IL.

Delbert Burnett (MDiv'80) serves as assistant pastor at First Presbyterian Church, Ukiah, CA.

Douglas Clark (MDiv'80) serves as youth pastor at Rose Drive Friends Church, Yorba Linda, CA.

Curtis L. Clark (MDiv'80) serves as assistant pastor at East Whittier United Presbyterian Church, Whittier, CA.

Gregory Coulter (MDiv'80) serves as assistant pastor at Lake Burien Presbyterian Church, Seattle, WA.

Terry Daniels (MDiv'80) serves as associate pastor at Fremont Avenue Brethren Church, Pasadena, CA.

John (MDiv'80) and Sylvia (MDiv'80) Dilworth serve as co-assistant pastors at First Presbyterian Church, North Bend, OR.

Dolores Easty (MDiv'80) serves as pastor of church

growth at First Congregational Church, Tucson, AZ.

William Effler (MDiv'80) serves as assistant minister at Community Presbyterian Church, San Marino, CA.

Carley Friesen (MDiv'80) serves as instructor of religious and biblical studies at Tabor College, Hillsboro, KS.

Murray M. Gossett (MDiv'80) serves as youth minister at Highland Park Presbyterian Church, Dallas, TX.

Charmian Goudy (MDiv'80) serves as assistant pastor at First Presbyterian Church, San Pedro, CA.

Werner U. Haase (MDiv'80) serves as assistant pastor at Hollywood Lutheran Church, Hollywood, CA.

John D. Hambrick (MDiv'80) serves as assistant minister at Community Presbyterian Church, Ventura, CA.

James W. Hassmer (MDiv'80) serves as pastor at St. James United Methodist Church, Pleasant Valley, VA.

Patricia S. Haven (MDiv'80) serves as pastor at Otego United Methodist Church, Otego, NY.

John L. Hiigel (MDiv'80) serves as minister of music and youth at First Baptist Church of Ventura, CA.

Marc Johnson (MDiv'80) serves as a team minister in church growth with American Baptist Churches of Oregon, Beaverton, OR.

Rhonda Cooper Knight (MDiv'80) serves as pastor at the Oliver Springs United Methodist Church, Oliver Springs, TN.

Judy Kuester (MDiv'80) serves as associate pastor at Garden Grove Seventh Day Adventist Church, Garden Grove, CA.

Charles L. Laiblin (MDiv'80) serves as assistant pastor at Chapel Hill Presbyterian Church, Gig Harbor, WA.

Mark LoMonaco (MDiv'80) serves as associate minister at First United Methodist Church, Upland, CA.

Fulton Lytle (MDiv'80) serves as minister of outreach at Glenkirk Presbyterian Church, Glendora, CA.

David Maggilini (MDiv'80) serves as race track chaplain at Fairmont Park, Collinsville, IL.

Jack Martinusen (MDiv'80) serves as associate pastor at First United Methodist Church, Oroville, CA.

Doug (MDiv'80) and Patricia (MDiv'80) (Brown) Meye serve as associate ministers of discipleship and evangelism at First Baptist Church, Chino, CA.

John D. Miller (MDiv'80) serves as associate pastor at First Baptist Church of Covina, CA.

Peter Miller serves at Sunnyslope Union Church, Riverside, CA.

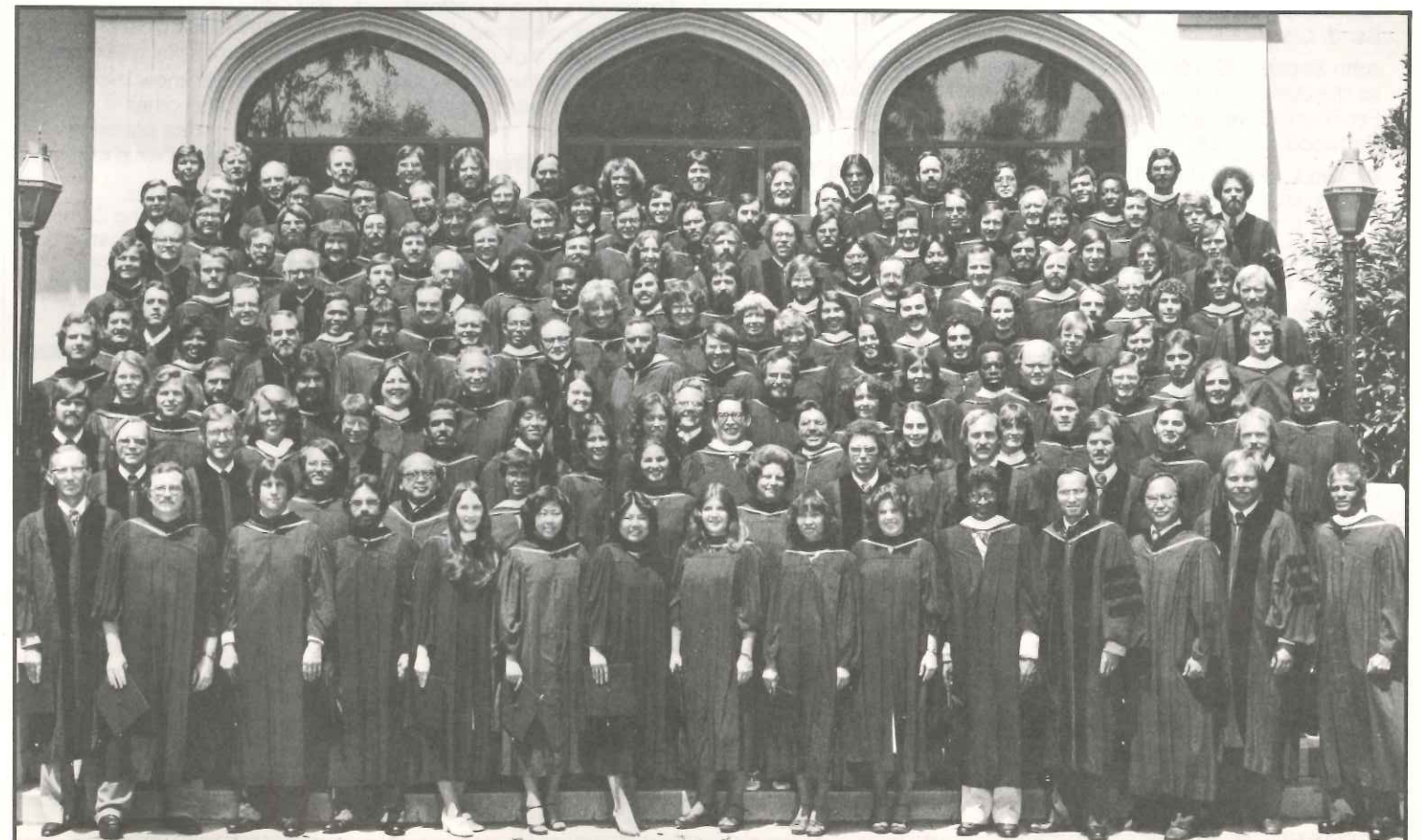
Stephen E. Miller (MDiv'80) serves as a pioneering associate pastor in Lomita, CA.

Gregory A. Milliron (MDiv'80) serves as associate pastor at Evergreen Christian Center, Hillsboro, OR.

Linus Morris (MDiv'80) serves as a missionary with the Christian Associates of Europe, Pacific Palisades, CA.

Harold Otterlei (MDiv'80) serves as a team minister in church growth with the American Baptist Churches of Oregon, Beaverton, OR.

Jacob Overduin (MDiv'80)



serves as assistant pastor at the Church of the Nazarene, Rotterdam, The Netherlands.

Jerry Poole (MDiv'80) serves as assistant pastor at the First Presbyterian Church, Great Falls, MT.

James Raines (MDiv'80) serves as minister of youth and Christian education at Silverlake Presbyterian Church, Los Angeles, CA.

Jon Read (MDiv'80) serves as minister of youth and Christian education at Palos Park Presbyterian Community Church, Palos Park, IL.

Alan Saylor (MDiv'80) serves as pastor of the Lowell Assembly of God, Lowell, OR.

Robert A. Schuller (MDiv'80) serves as minister of evangelism and outreach at Garden Grove Community Church (RCA), Irvine, CA.

Marcus Serven (MDiv'80) serves as an intern at the First Presbyterian Church, Milpitas, CA.

Robert Shepard (MDiv'80) serves as assistant minister at Hanford Presbyterian Church, Hanford, CA.

Betsy Straeter (MDiv'80) serves as youth minister at the First Presbyterian Church, Bend, OR.

John Strong (MDiv'80) serves as director of lay ministries at Peninsula Covenant Church, Redwood City, CA.

William L. Syrios (MDiv'80) serves as assistant pastor at Vernon United Presbyterian Church, Portland, OR.

Michael Weeks (MDiv'80) serves as assistant minister at Immanuel Presbyterian Church, Los Angeles, CA.

Matthew Wesley (MDiv'80) serves as a campus staff worker with Inter-Varsity Christian Fellowship, Spokane, WA.

Brian Wiele (MDiv'80) serves as associate pastor at the Val-

ley Hi Covenant Church, Sacramento, CA.

Robert Michael Wood (MDiv'80) serves as assistant pastor at the First Presbyterian Church, Carson City, NV.

Bruce Zisterer (MDiv'80) serves as pastoral care minister at the First Baptist Church of Van Nuys, CA.

Placement Opportunities

These churches or organizations have contacted Fuller Theological Seminary for assistance in filling vacancies. If you are interested in any of the possibilities please contact Dr. Gloryanna Hees, Placement Office, Fuller Theological Seminary.

Pastor. Calvary Presbyterian Church, Detroit, Michigan. Desire five years ministerial experience, focus on expounding Scripture through preaching and experience in urban settings and problems.

Director of Sunday School Ministries. Faith United Presbyterian Church, Aurora, Colorado.

Youth Director. First United Presbyterian Church, Olathe, Kansas.

Youth Minister and/or Director of Christian Education. Newark Presbyterian Church, Newark, California.

Assistant Minister to Youth. St. Andrew's Presbyterian Church, Redondo Beach, California.

Associate Pastor/Director of Christian Education. Second United Presbyterian Church, Steubenville, Ohio.

Pastor. Yoked Presbyterian churches in Cloverdale and Hebo, Oregon.

Director of Youth Ministries. Aloha Community Baptist Church, Aloha, Oregon.

Youth Minister and Christian Education Coordinator. Evangelical Covenant Church, Antioch, California.

Minister to Family and Youth. Olivet Baptist Church, New Westminster, British Columbia.

Pastor. Melonie Park Baptist Church, Lubbock, Texas. Person with gift of expository teaching of Word of God is sought to train and equip individuals for discipleship and evangelism.

Associate Pastor. First Baptist Church, Sanger, California. Focus on youth and young families, includes developing home Bible studies.

Minister of Christian Education. The First Baptist Church, Santa Barbara, California.

Pastor. First Christian Church, (Disciples of Christ) Chehalis, Washington. Some pastoral experience preferred. Responsibilities include preaching, calling on the elderly, sick and troubled, working with youth.

Minister to Children. Grace Chapel, Lexington, Massachusetts. Directly responsible for the Sunday school and churchtime for children from birth through grade six. Also supervises Vacation Bible School, Pioneer Girls, Christian Service Brigade. Average attendance: 500 children and 125 teachers.

Director of Christian Education. Grace United Methodist Church, Long Beach, California. Responsibilities include recruiting and training lay leadership for junior high, senior high, college, plus developing a working singles program.

Staff Associate. Lutheran

Church of the Cross, Arcadia, California. Responsible for junior and senior high young people in leading their program and ministry of Christian education, inspiration, outreach and recreation. Develop and lead a ministry among post high school young adults. Also have specific responsibilities in areas of evangelism, church committees, education and general congregational concerns.

Pastor. The Union Church of Guatemala, Guatemala City, Central America. Independent, interdenominational church serving English speaking community of Guatemala City seeks a mature Christian who understands that all teaching and activity shall be evangelical and strictly non-sectarian.

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