



# VOICE OF REASON

The Newsletter of Americans for Religious Liberty

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## Florida Court Strikes Down Vouchers

Only six weeks after the U.S. Supreme Court's *Zelman* decision, a Florida court ruled the Florida voucher statute unconstitutional under Florida law. The Circuit Court of the Second Judicial Circuit in Leon County held the "Florida Opportunity Scholarship" (OSP) provision (Florida Statute 229.0537) violated Article I, Section 3, of the Florida Constitution, which bans any revenue from the public treasury being given "directly or indirectly" to any "church, sect, or religious denomination or in aid of any sectarian institution."

The August 5 ruling was clear and decisive. Judge P. Kevin Davey held that Florida's constitutional "language utilized in this provision is clear and unambiguous." In a direct slap at judicial activism (which is constantly being derided by conservative critics), Judge Davey added, "There is scant room for interpretation and parsing. When reviewing a provision of the Constitution or a statute, courts are duty-bound to give plain meaning to the words and phrases being reviewed; and conversely are not permitted to fashion or employ a strained construction to reach a result not intended by the promulgator of the words. To construe the statutory scheme of the OSP as not running afoul of Article I, Section 3, would require a strained construction of the Florida Constitution that is not countenanced under the law."

This is true strict constructionism and judicial restraint, values supposedly upheld by political conservatives and jurists but often ignored in practice.

The court denied that the funds, which "without question are revenue 'taken from the public treasury'," go to the parents, not the private religious schools. "These contentions, while appealing, do not have constitutional merit." The law requires that parents or guardians, the court held, "restrictively endorse the warrant to the private school."

The Florida court in *Holmes v. Bush* denied that the Florida voucher law was neutral in application, as the *Allen* textbook case was held to be by the U.S. Supreme Court in 1968. "This case is distinguishable [from *Allen*] because it appears to turn on a finding that there was 'no intention to assist parochial schools' by the legislature [New York]. Under OSP the entire tuition is being paid to parochial schools and is certainly 'in aid of' the institution."

The court also looked at the evidence of the operation of the Florida program. "Additional discovery has developed further evidence that the vast majority of students participating in the OSP (47 of 51) have enrolled in 'sectarian institutions' of learning in Escambia County."

The court also found that "the Florida legislature took action to retain and to strengthen the restriction [on aid to sectarian institutions] and its applicability to 'indirect' aid." The original ban had been placed in the 1885 constitution but was removed by a 1967 Constitutional Revision Commission. But legislators clearly wanted the ban retained in Florida's sweeping constitutional revision of 1968. The court decision held that "the intent of the framers and promulgators of this constitutional restriction on legislative and executive power" had "relevance and legal import" that could not be denied.

Judge Davey argued that the receipt of these public funds clearly "advanced and enhanced the entire educational mission of these schools, including the religious education component."

Finally, the Florida court emphasized that even worthwhile programs may not be constitutionally permissible if they violated fundamental principles. "While this Court recognizes and empathizes with the salutary purpose of this legislation — to enhance the educational opportunity of children caught in the snare of substandard schools — such a purpose does not grant this Court authority to abandon the clear mandate of the people as enunciated in the Constitution. Since Florida Statute 229.0537 provides for revenue to be taken from the public treasury and disbursed indirectly in aid of sectarian institutions, it impermissibly violates Article I, Section 3, of the Florida Constitution. Accordingly, it is unconstitutional."

Judge Davey granted summary judgment to block implementation of the voucher program for the 2002-2003 school year.

While the decision will undoubtedly be appealed, the decision shows clearly how much an obstacle state constitutions will continue to be for voucher advocates in the years to come.

## Obstacles to Vouchers Remain

Supporters of vouchers and their private school clients still face formidable obstacles, despite the Supreme Court's June 27 undoing of the First Amendment. One is the question of accountability. Should not voucher schools financed by taxpayer dollars — which is what many private schools would become — be held to the same standards as public schools? This requirement should apply to acceptance of students from all racial, religious, ethnic, and economic backgrounds. It should apply to handicapped students and to those with special needs. These standards should also apply to the faculty and governing boards of nonpublic schools that accept voucher-financed students.

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## Reactions to Voucher Decision

Some of the U.S.'s leading newspapers were critical of the U.S. Supreme Court's June 27 school voucher decision. The nation's most important daily, *The New York Times*, was the most critical, calling the ruling "a bad decision on constitutional grounds and a bad one for American education." The *Times* pointed out that the Cleveland program made it practically impossible for students to choose a secular alternative to public schools, being forced to enroll in a parochial school, where tuition was low enough to accommodate disadvantaged students. *The Times* concluded that using tax money in this manner could not help but advance the religious objectives of the sponsoring school. "Once students enroll in these schools, they are subjected to just the sort of religious training the First Amendment forbids the state to underwrite. In many cases, students are required to attend Mass or other religious services. Tax dollars go to buy Bibles, prayer books, crucifixes and other religious iconography. It is hard to think of a starker assault on the doctrine of separation of church and state than taking taxpayer dollars and using them to inculcate specific religious beliefs in young people."

Furthermore, the *Times'* editors saw this pivotal decision as a blow to public education. "This ruling does as much damage to education as it does to the First Amendment. A common argument for vouchers is that they improve public schools by forcing them to compete for students. What is holding the public school back, however, is not lack of competitive drive but the resources to succeed. Voucher programs like Cleveland's siphon off public dollars, leaving struggling urban systems with less money for skilled teachers, textbooks and computers. They also skim off some of the best-performing students and the most informed and involved parents from public schools that badly need their expertise and energy."

Finally, "the Court undermines one of the public school system's most important functions: Teaching democracy and pluralism." The *Times* concluded, "Now, taxpayers will be compelled to support school systems that emphasize only their faith traditions and their alleged superiority to other faiths. In the long run, this could be the worst byproduct of the decision."<sup>1</sup>

Several other papers lamented the decision. The *Los Angeles Times* opined, "A widespread voucher program would siphon off the involved parents and striving students who keep up the pressure for progress. No private schools need accept or keep a student with a troubled discipline history, increasing the concentration of violent or disruptive students in public school classes."<sup>2</sup> The *St. Louis Post-Dispatch* said, "The focus should be on fixing failing schools rather than abandoning them. . . . Vouchers are embraced in part as a way of fixing

the problem on the cheap. It's harder to stay focused on the costly and effective solution of investing more time and money to equalize resources between failing and good school districts. It's the work that too few people are willing to do, be they parents, teachers, administrators and politicians. But it is essential work that must be done if society is genuinely interested in uplifting children who will be left behind by those who embrace the voucher system."<sup>3</sup>

Predictably, the conservative ideologues who control *The Wall Street Journal* thought the Cleveland voucher ruling was "the greatest blow for equal public education since *Brown v. Board of Education* in 1954. In the process it also stripped away the last constitutional and moral fig leaf from those who want to keep minority kids trapped in failing public schools."<sup>4</sup>

Lukewarm endorsements came from *The Cleveland Plain Dealer*, *The Baltimore Sun*, and *Newsday*, the Long Island-based daily. But even *Newsday* warned, "Throughout our ever-more-diverse nation, legislatures must take special care to make sure that voucher programs don't lead to racial resegregation or to the Balkanization of school children by ethnicity or religion."<sup>5</sup> A surprising endorsement, even if cautious in tone, came from *The Washington Post*, which had a three-decades-long record of opposition to public aid for sectarian and private schools. It criticized those who take a "rigid view of church-state separation" and claimed that "the dangers of vouchers are hypothetical ones at this stage." The *Post* said, "The failure of many public school systems around the country to offer any semblance of an education to poor and disadvantaged children justified the use of vouchers. Vouchers may offer answers for some children. The Constitution should not be read to forbid policymakers from finding out."<sup>6</sup> The *Post's* reversal of position was even accompanied by a complaint that the Cleveland voucher program was "too small." It urged lawmakers to give an \$8,000 voucher to each child in private schools.<sup>7</sup>

The decision occasioned a number of thoughtful analyses about the state of American education and the relationship of religion to education. A Roxbury, Massachusetts, first-grade teacher wrote a plaintive essay that concluded, "This is a decision that will widen the gap between the lucky and unlucky children of America. The lucky ones will flourish in private schools made richer with public dollars, while the unlucky will be abandoned in our doomed public schools."<sup>8</sup>

Wendy D. Puriefoy, president of the Public Education Network, mentioned a rarely-cited aspect of the issue, "The issue is not, as some have stated, opposition to religious or other private schools; the issue is accountability to the public for quality education for all children. And

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### Special Notice to Our Readers and Members

The *Voice of Reason* has been coming to you as part of a package. This limits the size and content of your newsletter. To serve you better and to bring you more and more timely information on the threats to church-state separation we are, with this issue, separating the mailing of membership renewal notices from delivery of this newsletter.

*Voice of Reason* is the quarterly newsletter of Americans for Religious Liberty, 1777 T Street, NW, Washington, DC 20009 (telephone 301/260-2988; fax 301-260-2989; e-mail: arlinc@erols.com; website: www.arlinc.org). The newsletter is sent to all contributors to ARL.

Senior Editor: Edd Doerr  
Editor: Albert J. Menendez  
Canadian Correspondent: John Clubine

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Writes Sandra Feldman, president of the American Federation of Teachers, "Voucher schools must be held to the same standards as public schools when it comes to accountability for student achievement. Voucher schools must be open to the same scrutiny as public schools and subject to the same sanctions. Voucher schools that refuse to be held accountable to the public must not get public dollars."<sup>1</sup>

K. Hollyn Hollman, general counsel of the Baptist Joint Committee on Public Affairs, echoes this view. "Government regulation of religious schools will increase, changing the way in which they provide education. Political demands for accountability in performance will reach those schools previously unencumbered by such standards."<sup>2</sup>

Serious political hurdles remain. As many as 38 state legislatures considered some form of vouchers during the 1990s and rejected them. There was no groundswell of support from the general public, which preferred instead that legislators improve public schools through more generous funding, teacher salary increases, and efforts to reduce class sizes. Despite problems in many areas, most Americans have confidence in public education, especially in their local public schools, and do not support any schemes likely to weaken them. The annual Phi Delta Kappa/Gallup polls have consistently shown this to be the case.

Still, anywhere from six to twelve states, including Virginia, Pennsylvania, Colorado, and Indiana, may soon be facing potential voucher legislation. And House Majority Leader Dick Armey (R-Texas) introduced a bill hours after the Supreme Court decision to provide vouchers (called "scholarships") for low-income students in "failing" public schools in the District of Columbia. Congress approved an identical bill in 1997 but then-President Bill Clinton vetoed it. District officials remain opposed to it, especially since 89% of voters rejected a voucher analog in a 1981 referendum.

Clint Bolick, vice president of the pro-voucher Institute for Justice, announced plans to challenge the church-state separation provisions in 36 state constitutions, labeling them relics of an anti-Catholic past. This is a slow and cumbersome process, however, and there is little indication that state legislators want to remove longstanding bans on public funding of religious institutions, including schools. Another conservative group, the Becket Fund, is challenging a Massachusetts anti-aid constitutional provision and is preparing challenges in two Western states.<sup>3</sup>

This opposition can be seen in New York State. Assemblyman Steven Sanders, chairman of the Assembly Education Committee, told *Newsday*, "Our constitution clearly prohibits public dollars from being spent on religious or parochial schools except in some very narrow circumstances."<sup>4</sup>

In New York City, Manhattan Borough President C. Virginia Fields said, "Everyone will not be able to take advantage of vouchers and students left behind in public schools will be forgotten."<sup>5</sup> City Council Deputy Majority Leader Bill Perkins promised to fight vouchers and to direct all available financial resources to urban public schools.

Another hurdle is the clear lack of proof that vouchers will improve education in general or that they have significantly affected the performance of students receiving them and attending nonpublic schools. Writes Brigid Schulte, "In truth, the merit of vouchers is unclear, the results of mixed research. In one case, three researchers used the same information on vouchers and reached three different conclusions."<sup>6</sup>

A Rand Corporation study found that vouchers had not positively affected student performance results. A General Accounting Office report issued in 2001 reviewed the findings of several studies and concluded that there was little or no difference in academic achievement between students in public schools and voucher recipients in private schools.

One of the concerns of the dissenting justices in *Zelman* has already begun to emerge. That is, religious groups are taking sharply divergent positions on the possibility of legislative enactments of vouchers. That is inevitable, of course. Religious groups differ on abortion law, charitable choice, population and family planning, capital punishment, and a host of other issues. But education is often seen as a more unifying issue, one that should engage churches on common ground.

Not surprisingly, many Roman Catholic state conferences, the political and lobbying arms of local bishops, endorsed the *Zelman* ruling. Official praise came from the Catholic conferences of New York, Maryland, Wisconsin, and Michigan and from denominational spokespersons in the archdioceses of Chicago, Washington, and Philadelphia and the dioceses of Pittsburgh and Arlington, Virginia.

The New York State Catholic Conference issued a statement saying, "New York's governor and legislature now have the green light to allow parents to send their children to schools that work. Will they take advantage of this opportunity or continue to defend the interests of the government school bureaucracy?"<sup>7</sup>

The Catholic League for Religious and Civil Rights issued a graceless and triumphalist screed on June 27 which said, in reference to the parochial school domination of the Cleveland voucher program, "The fact that most parents opt for sending their kids to Catholic schools is a tribute to parochial schools and a damning indictment of public schools."<sup>8</sup>

Two conservative groups, the Christian Coalition and American Renewal, the lobbying arm of the Family Research Council, announced campaigns to encourage legislative enactments of voucher programs. But the Interfaith Alliance, representing many moderate and liberal church groups, urged legislators to ignore the ruling, which, after all, did not say that states must enact vouchers. The Alliance's president, Southern Baptist pastor C. Welton Gaddy, said, "School systems in the United States don't have to do everything the Supreme Court says they can do." He added, "We feel it is in the best interest of the constitutional principle of religious liberty for education leaders to not adopt a voucher system."<sup>9</sup>

<sup>1</sup> "Where We Stand: A Commentary on Public Education and Other Critical Issues," *The New York Times*, July 14, 2002.

<sup>2</sup> *Report from the Capital*, Vol. 57, No. 7, July 2002, p. 3.

<sup>3</sup> Laurie Goodstein, "In States Hurdles Loom," *The New York Times*, June 30, 2002.

<sup>4</sup> Curtis L. Taylor and Dan Janison, "Easier Said Than Done," *Newsday*, June 28, 2002.

<sup>5</sup> *Ibid.*, *Newsday*.

<sup>6</sup> Brigid Schulte, "Voters Protective of Public Schools, Wary of Vouchers," *Washington Post*, June 28, 2002.

<sup>7</sup> Claudia McDonnell, "Supreme Court's Voucher Ruling Praised; Obstacles Cited in New York," *Catholic New York*, July, 2002.

<sup>8</sup> *Catalyst*, July 2002.

<sup>9</sup> Larry Witham, "Religious Groups Gird for Battle Over Voucher Decision," *Washington Times*, July 22, 2002.

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## Reactions, *continued from page 2*

private schools, whatever their virtues or shortcomings, are simply not accountable to the public.”<sup>9</sup>

Catherine Capellano, managing editor of *Rethinking Schools*, a Milwaukee-based educational journal, wrote, “Our tax dollars shouldn’t be used to support private schools, many of which exist to promote a particular faith.” She added, “What’s more, voucher schools don’t have to provide services for special education students or students who don’t speak English. Because constitutional rights such as free speech and due process are not applicable in private schools, voucher schools can suspend or expel students at will. The Milwaukee voucher schools don’t have to abide by state laws prohibiting discrimination on the basis of pregnancy, marital status or sexual orientation.

“The court’s decision is likely to open a floodgate of battles for voucher programs at the state level, diverting critical resources and energy from the public schools just when they need our attention the most.

“Instead of vouchers, we should focus on much-needed — and proven — reforms, such as smaller class sizes, improved teacher training and support, increased early childhood education and adequate funding of all schools. Those committed to public education will continue the fight for these reforms.

“Public education is a cornerstone of our vision of a democratic America. The Supreme Court’s decision cracks that cornerstone.”<sup>10</sup>

A number of religious organizations expressed misgivings about the decision. Norman Redlich, chair of the American Jewish Congress, said, “The ruling signals a constitutional counterrevolution. Until June 27 Americans could not be taxed to support faiths with which they disagreed.”<sup>11</sup>

Baptist Joint Committee general counsel K. Hollyn Hollman said, “The decision is a blow to the constitutional principle that government should not advance religion. . . . Whatever the consequences for public education, the decision delivers a blow to the separation of church and state.”<sup>12</sup>

Hollman warned against overreaction, however. She also noted, “Although alarming, the *Zelman* decision is not an unmitigated disaster. The majority opinion does not make it constitutional for the government to fund religious schools with direct grants. Nor does it allow funding in the absence of other nonreligious choices, and the government must not steer vouchers toward religious schools.”<sup>13</sup>

<sup>1</sup> “The Wrong Ruling on Vouchers,” *The New York Times*, June 28, 2002.

<sup>2</sup> “A Blow to U.S. Education,” *Los Angeles Times*, June 28, 2002.

<sup>3</sup> “Leaving Kids Behind,” *St. Louis Post-Dispatch*, July 3, 2002.

<sup>4</sup> “Vouchers Have Overcome,” *Wall Street Journal*, June 28, 2002.

<sup>5</sup> “Vouchsafed,” *Newsday*, June 28, 2002.

<sup>6</sup> “Letting Parents Decide,” *The Washington Post*, June 28, 2002.

<sup>7</sup> *Ibid.*

<sup>8</sup> Jane Ehrenfeld, “The Ugly Lie About Vouchers,” *The Washington Post*, July 8, 2002.

<sup>9</sup> Quoted in “For Voucher Parents, a Moment to Cheer,” *Education Week*, July 10, 2002, p. 21.

<sup>10</sup> “Choice is Bad Public Policy That Requires No Accountability,” *Milwaukee Journal Sentinel*, July 7, 2002.

<sup>11</sup> “Religious School Vouchers Upheld,” *Christian Century*, July 3-10, 2002, p. 18.

<sup>12</sup> *Report from the Capital*, Vol. 57, No. 7, July 2002, pp. 1, 3.

<sup>13</sup> *Ibid.*, p. 3.



## Dredging Up Ugliness in the Name of Vouchers

By K. Hollyn Hollman

Energized by their Supreme Court victory in June, advocates of school vouchers have set their sights on a new target. They are now trying to discredit, and eventually dismantle, state constitutional provisions that present a larger obstacle to government funding of religious institutions than the First Amendment.

In “Retrograde on School Choice” [*Wash. Post*, op-ed, Aug. 22], Nathan J. Diament depicts these provisions as nothing more than “remnants of religious bigotry,” tainted by the times in which they were passed.

Undoubtedly some supporters of the “Blaine amendments,” named for the Republican senator who lobbied unsuccessfully for an amendment at the federal level in 1875, were motivated by anti-Catholic bias. But the relevance of this ugly episode in our country’s history to the current school voucher debate is highly suspect for several reasons.

First, the concept of church-state separation, including the notion that religious institutions should be self-supported and self-governing, predates and is in no way diminished by the anti-Catholic sentiments of some who supported the concept during the 1870s. It was Roger Williams, the 17<sup>th</sup>-century founder of Rhode Island, who first advocated a “wall of separation between the garden of the church and the wilderness of the world.” The legal provisions that promote church-state separation, which were championed by Founders such as James Madison and Thomas Jefferson, have been good for both government and religion.

Many Baptists and other people of faith cling to these laws as the best way to protect the religious liberty that has allowed so many diverse communities of believers to flourish in America. They share a sincere conviction that tax dollars should not be used to finance the teaching of any religion — including their own — because they believe that autonomy from the state is good for all religions. This principled stance is the enemy of discrimination, not the product of it.

Second, it is well known that politics makes strange bedfellows. If laws and institutions are to be evaluated in the present based on who supported them in the past, other targets could be next in line. Should we dismantle the public schools because some early proponents of universal public education were anti-Catholic? Should we repeal Title VII’s ban on sex discrimination because it was originally proposed by segregationists seeking to defeat civil rights legislation? While we’re at it, maybe we should close any private schools — whatever their racial composition today — that were initially established as “segregation academies” when public schools began to integrate.

The principal test of an institution’s viability should be its contribution to society, not its historical origins, and church-state separation has long served our nation well.

Finally, it is ironic that voucher proponents would attack the Blaine amendments as “remnants of bigotry” when the primary effect of church-state separation over time has been to reduce sectarian strife. After all, what is more likely to produce animus toward and among religious institutions than making the government a collection agency for religious schools?

The campaign to emphasize an anomalous period of religious conflict threatens to mislead Americans about the historical origins and contemporary importance of church-state separation — an ideal that promises religious liberty for all, not for some.

— K. Hollyn Hollman is general counsel of the Baptist Joint Committee on Public Affairs. This article is reprinted by permission.

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## School Vouchers and Public Opinion

How public opinion stands on school vouchers depends on how pollsters ask questions. This is borne out once again by the recently released study of the “Public’s Attitudes Toward the Public Schools” by the Gallup organization and the Phi Delta Kappa educators fraternity (of which, I should disclose, I have been a member for 39 years). Unfortunately, once again the media summaries of the Gallup/PDK report have been superficial and misleading.

On the question, “Do you favor or oppose allowing students and parents to choose a private school to attend at public expense?” The poll showed opposition at 52% to 46%, down from 65% to 33% in 1995 (with pronounced swings in the years between). On the question about “a proposal [to] allow parents to send their school-age children to any public, private, or church-related school they choose, the government [to] pay all or part of the tuition,” the proposal was favored 52% to 46%.

The trouble with both of these poll questions is that they do not inform the respondents that it is the nonpublic schools that choose, either directly through admissions policies or indirectly through the denominational or ideological nature of the schools, which students may be admitted. The second question is rather meaningless because it conflates or confuses public school choice with school vouchers.

Fortunately, the Gallup/PDK poll (the 34<sup>th</sup> annual one, I might add) asked two far more relevant questions. By 69% to 27% respondents preferred “reforming the existing public school system” to “finding an alternative.” And by 69% to 29% (for national totals) and by 72% to 27% (for public school parents) respondents preferred “improving and strengthening existing public schools to ‘providing vouchers’ for private and/or church-related schools.” It is highly significant that these latter responses are almost identical to the referendum votes

against voucher plans in California and Michigan in 2000, and to the average vote against vouchers or their analogs in 25 state referenda from coast to coast over the last 35 years.

On school funding questions, by 88% to 10% respondents agreed that funding should be equitably distributed among wealthy and poor school districts. With regard to revenue shortages in many states, only 26% of respondents favored “reducing state spending for education.”

Only about half of the poll’s respondents had “read or heard about so-called charter schools.” Support for and opposition to charter schools was dead even, and by 77% to 19% respondents think that “charter schools should be accountable to the state in the way public schools are.”

As in previous years the Gallup/PDK poll found a curious disconnect in respondents’ rating of public schools. On an A, B, C, D, F scale, only 24% of respondents gave public schools nationally an A or B rating, but 47% of the same respondents gave an A or B grade to the public schools in their own communities, and 71% of the very same respondents gave an A or B to the public schools their oldest child attends. What this has to mean is that a great many people buy into the rampant anti-public-education propaganda emanating from the Religious Right and ultraconservative media. In other words, “My kid’s public school is fine but the farther away the others are, the worse they are.”

The bottom line is that, when push really comes to shove, most Americans want their public schools protected and do not want to pay taxes for nonpublic schools.

— Edd Doerr

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## Should States Implement Vouchers Even If They Are Constitutional?

By Martin Carnoy

The recent United States Supreme Court decision upholding Cleveland’s voucher program removes the major federal constitutional obstacle to public funding of private religious schools. But states and localities still must decide whether shifting tax revenues to private schools is the best way to improve their educational systems.

A wide range of studies on the workings of different types of voucher plans suggest that vouchers are not the best way to improve education. These studies focus on the two major public voucher programs in the United States – one in Cleveland and a larger program in Milwaukee – and on smaller voucher experiments in several other U.S. cities and nationwide voucher plans in Chile and New Zealand.

The results from these studies are remarkably consistent. They show that the academic gains for voucher students are minimal at best, and often non-existent. In fact, when the studies in the United States, Chile and New Zealand are added up, it is impossible to conclude that vouchers will improve students’ academic performance, even if these students are from low-income families and attend the lowest-performing public schools. Indeed, if we take the U.S. results at face value, Latino students do not benefit significantly from vouchers, and only a small percentage of African-American students make any significant gains by transferring to private schools. Educational strategies that produce such insignificant results are not worth the risk, especially if they divert money and attention from the nation’s public schools – the schools attended by 90% of all U.S. school children. States and locali-

ties that want to improve the nation’s poorest-performing public schools should focus instead on policies with better track records, such as increasing teacher content knowledge, providing high quality pre-school education to low-income children, reducing class sizes, raising standards and increasing school accountability.

*This essay is an excerpt from School Vouchers: Settled Questions, Continuing Disputes, published by the Pew Forum on Religion and Public Life. Martin Carnoy is Professor of Education and Economics at Stanford University, where he teaches in the International and Comparative Education and Economics of Education programs. Currently, he heads Stanford’s efforts in a project studying accountability in U.S. schools. His recent works include Sustaining the New Economy, published by Harvard University Press, and All Else Equal: Are Public and Private Schools Different? (with Luis Benveniste and Richard Rothstein) to be published by Rutledge in December.*

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## Editorials

# The Middle East and American Freedoms

This summer's primaries have seen an ugly manifestation of inter-faith disharmony that threatens to weaken the coalition defending separation of church and state and religious liberty in the U.S. Congress.

This is most evident in the Democratic primary defeats of Reps. Earl Hilliard in rural Alabama and Cynthia McKinney in suburban Atlanta, Georgia. While other issues certainly contributed to their defeats after a decade in office, the enormous influx of out-of-state financial support from groups supporting the present government of Israel and its policies and United States complicity in these policies was the deciding factor, according to all analyses.

While people feel strongly about the tragic events in the Middle East, it is deeply troubling that members of Congress who have been most supportive of public schools, reproductive and abortion rights, religious neutrality in public education, and support for nondiscrimination in charitable choice initiatives have been singled out for defeat. These crucial First Amendment issues need all the support they can get and we can ill afford to lose vital votes.

It is long overdue for those who are committed to preserving First Amendment freedoms, religious equality in the United States, and a

sane foreign policy to reach some kind of compromise so that the U.S. does not become a one-party national security state, where religious, cultural and intellectual freedoms are only a memory.

## Vouchers and Funding Gaps

Advocates for school vouchers for nonpublic schools never cease crooning their mantra about helping kids escape "failing" public schools, but they seem oblivious to the fact that public schools serving the most poor and minority students are less well funded than the public schools serving children of more well-off families.

The Education Trust, a Washington-based research organization, has quantified the funding gap in the 15,000 district public school enterprise. Based on U.S. Census Bureau figures for the 1999-2000 school year, the quarter of school districts with the highest rates of child poverty had \$5,846 per student to operate, versus \$6,812 per student in the wealthiest quartile of districts, a gap of \$966. The worst spending gap was in New York State, where poor districts had \$2,153 per student less to spend. Illinois' gap was \$2,060; Montana's, \$1,535; Pennsylvania's, \$1,248; Michigan's, \$1,102.

Congress, the Bush administration, and state legislatures should forget all about vouchers and tuition tax credits, and concentrate instead on seeing that the public schools serving the less fortunate of our children are adequately and equitably funded. Vouchers can only make matters worse.

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## Update

### Bush Nominates Another Religious Right Zealot

President Bush has continued his attempt to stack the federal judiciary with religious and political conservatives, even after having seen two of them rejected by the Senate Judiciary Committee this summer. Now Bush has nominated Michael W. McConnell, a law professor at the University of Utah, for the Tenth U.S. Circuit Court of Appeals based in Denver.

The McConnell nomination is likely to provoke a heated examination before the Senate Judiciary Committee. Americans for Religious Liberty opposed the nomination. Its president, Edd Doerr, sent the following letter to the Judiciary Committee on September 17.

"As a nonpartisan organization dedicated to defending religious liberty and freedom of conscience, we respectfully urge the Senate Judiciary Committee to reject the nomination of Michael McConnell to the Tenth Circuit.

"Although Mr. McConnell is a capable attorney, his positions on vitally important religious liberty and freedom of conscience issues are so far from the mainstream in America and so at variance with Supreme Court precedents that his presence on the Tenth Circuit bench would negatively impact constitutional liberties.

"To be specific, we find particularly disturbing:

- Mr. McConnell's disagreement with Jefferson and Madison that public funds should not be used for religious purposes;
- His view that *Reynolds vs. US* was wrongly decided in 1878;
- His view that Jefferson's 'separation of church and state' metaphor is 'misleading';
- His lack of respect for the necessity of religious neutrality in public schools;
- His hostility to every woman's constitutional right to freedom of conscience in dealing with problem pregnancies;
- His opposition to the Freedom of Access to Clinic Entrances Act.

"In short, Mr. McConnell's views on so many vital issues likely to come before the Tenth Circuit are so extreme that the Senate, sworn to uphold and defend the Constitution and Bill of Rights, should reject his nomination and thus send a message to President Bush that extremist federal judicial appointments are not acceptable."

At the Judiciary Committee hearing on September 18, McConnell promised that he would "conscientiously enforce the law, including laws and precedents that I don't agree with." Critics remain skeptical.

### Federal Grants Flow to Faith-Based Groups

Though the U.S. Senate has refused to approve President Bush's plan to funnel tax money to religious charities unless those charities eschew evangelism and religious discrimination, the Bush administration is channeling money to them anyway. Two federal agencies have distributed \$50 million to religious organizations that assist the government in helping the disadvantaged.

In July the Labor Department awarded \$17 million to 12 state governments and 20 community-based organizations. Some of the funds are specifically designed to help churches set up job assistance programs. About 20 grants of \$25,000 each were given directly to faith-based organizations that offer employment assistance. In the District of Columbia, new government-funded positions, possibly including clergy, will be set up to seek out faith-based organizations. Virginia will use its \$1.28 million grant to "strengthen the network" between community and faith-based organizations and state employment agencies, according to Jane Brown, director of Community Programs at the Department of Social Services in Richmond. In West Virginia, Ferguson Memorial Baptist Church received \$24,750 to offer job training seminars for the unemployed.

On October 1, the Department of Health and Human Services will give \$25 million to a dozen intermediary organizations that will work with churches, synagogues and mosques.

President Bush has continued to invoke the faith-based mantra on campaign stops and public appearances in recent months. In a stop in July at a church in Milwaukee, Bush reiterated his charge that government has discriminated against religious charities.

On the local level, church-based organizations continue to provoke controversy. In Georgia on August 3, a gay legal action group, Lambda Legal, filed suit against the United Methodist Children's Home in Decatur, after the group fired a lesbian youth counselor, Aimee Bellmore, and refused to hire a Jewish counselor, Alan Yorkfa. The home, founded in 1871, requires workers to be "professing Christians." The Rev. Richard Puckett said, "We believe we are entitled to determine our hiring by legal exemption and hiring only Christians is a way to preserve our identity." Lambda lawyers charged in the Superior Court of Fulton County that such actions "use tax dollars to fund religious discrimination."

In Portland, Maine, the City Council voted in July to require the Salvation Army to comply with the city's domestic partners ordinance, which requires recipients of federal funding to provide health and employment benefits to workers' domestic partners. The Salvation Army has refused and will lose \$60,000 of the \$400,000 the city provides for a meals program for senior citizens.

In Tulsa, Oklahoma, religious organizations operate four municipal recreation centers. All are Baptist or fundamentalist Christian. Mayor Bill LaFortune, who promised to "bring God back to city government," said the church-run centers would "not be used as a vehicle to evangelize or convert others." Some critics believe that this program may violate a U.S. Supreme Court decision prohibiting "symbolic fusion" of religious and civil functions.

In September the *Washington Post* reported that Bush administration officials charged with implementing various faith-based programs are now offering both technical assistance and funding for the start-up and operational costs of faith-based organizations.

Much of the funding is coming from the "Compassion Capital Fund" in the Labor-HHS appropriations bill for fiscal year 2003. The fund currently has \$30 million. If the Senate approves S. 1924, the CARE Act, the authorization would increase to \$150 million.

Jim Towey, director of the White House Office of Community and Faith-Based Initiatives, has been crisscrossing the nation encouraging religious groups to apply for the funds. In August Towey joined Illinois Republican Rep. John Shimkus at a meeting with 60 religious leaders in Cottage Hills. Towey said that religious charities, including the Salvation Army and Catholic Charities, had been "stiff-armed by the government" because of their religious identity. One wonders how this can be, when, typically, 60% to 70% of religious charitable funds come from federal, state and local governments.

More troubling, the *Post* reported, "Top government officials overseeing the programs designed to funnel federal social service grants to religious groups have appeared at Republican-sponsored events and with GOP candidates in at least six states."

This partisanship provoked a number of religious and civil liberties groups, including ARL, to send a letter to every U.S. senator in September asking them to suspend the "Compassion Capital Fund."

## Darwin in Ohio

Having lost their fight in the courts to introduce biblical "creationism" into public school science classes, fundamentalist creationists have now targeted Ohio. They are urging the Ohio State Board of Education to allow something called "Intelligent Design" theory (ID) to be presented in science classes along with evolution. The science community, however, is virtually unanimous in saying that ID has not been accepted as having any merit. Details of the controversy before the

## ARL in Action

Americans for Religious Liberty has joined with the Religious Coalition for Reproductive Choice in an *amicus curiae* brief to the U.S. Supreme Court in the case of *National Organization for Women v. Scheidler*. The case is an appeal from a U.S. Seventh Circuit ruling that Operation Rescue, Joseph Scheidler, and others had violated the federal anti-racketeering act (RICO) by orchestrating a campaign of "fear, force, and violence" to shut down abortion clinics across the country. Defendants in the case maintain that upholding their conviction would endanger the right to social protests. The *amicus* brief that ARL is supporting, however, makes the point that nonviolent social protest is not threatened by lawsuits seeking redress only for the use of "fear, force, and violence" in the name of a cause. Also supporting NOW in this case are NARAL, the Feminist Majority Coalition, the National Abortion Federation, Voters for Choice, the Center for Reproductive Law and Policy, the American Medical Association, the American College of Obstetricians and Gynecologists, law enforcement officers, and several victims of clinic violence.

In other action, ARL president Edd Doerr was a guest in September on NPR's Interfaith Voices program discussing President Bush's Faith-Based Initiative. Doerr also spoke on "The Vatican and the UN" at River Road Unitarian Church in Bethesda, Maryland on September 15.

Doerr had letters on school vouchers published recently in the *Phi Delta Kappan*, *Education Week*, and the *Buffalo News*. Others of his letters on various church-state issues have appeared in recent months in *The New York Times*, the *Washington Post*, the *National Catholic Reporter*, *U.S. News and World Report*, the *New Republic*, and other publications.

State Board, which has yet to be settled, may be found in the web sites of the National Center for Science Education ([www.ncseweb.org](http://www.ncseweb.org)) or the Ohio Citizens for Science ([www.ohioscience.org](http://www.ohioscience.org)).

Amusingly, fundamentalist columnist and erstwhile Jerry Falwell colleague Cal Thomas wrote in defense of ID and cited two "scientists" who supported it – Johannes Kepler and Wernher von Braun. In a response to Thomas's column, ARL's Edd Doerr pointed out that Kepler was an astronomer, not a biologist, and flourished more than two centuries before Darwin, while von Braun was an engineer, not a scientist, and was in charge of the Nazi rocket program (well remembered by Londoners) and employed slave labor.

## Catholic Student Expelled from Baptist School

An independent Baptist parochial school in Lexington, North Carolina (Sheets Memorial Christian School) removed a 15-year-old student, Ben Holmes, because the boy is a Catholic. Holmes had attended the school for the past academic year because there is no Catholic high school in the vicinity. The school administrator, Dan Hightower, said, "Baptist doctrine and teachings do not complement the Catholic doctrine and teachings. Home, school and church have to complement one another."

The school's policy claims that it admits students "whose parents are in agreement with the Christian philosophy, purposes and standards of the school."

*continued on page 8*

## Bush Moves Against Abortion Rights

The Bush administration has taken steps on three fronts to weaken women's rights to reproductive choice.

- On July 22 President Bush cut off the \$34 million appropriated by Congress for the UN Population Fund (UNFPA), claiming that the agency coerced women into unwanted abortions and sterilizations, particularly in China. The problem with the Bush argument is that it is untrue. The Bush administration sent an investigative team to China in May and it reported back favorably on the UNFPA program. The reality is that family planning programs in 140 countries will suffer as a result of the U.S. action. (Of course, the U.S. is also in arrears on its general UN assessments.)

Cox newspaper columnist Tom Teepen commented, "To keep the Republican Party's large anti-abortion constituency happy, President Bush has acted forcefully to increase the number of abortions worldwide. Go figure."

Added the *Boston Globe's* Ellen Goodman, "This is the story. In an effort to punish China, the same China that we engage with every day, we are going to withhold money, which wouldn't go to China anyway, from the rest of the world's women. . . . And to appease the domestic 'right-to-life' lobby, we are going to withhold enough money to prevent two million unwanted pregnancies, 4,700 maternal deaths, and more than 77,000 infant and child deaths."

- President Bush signed the Born Alive Infants Protection Act, which declares that a fetus surviving an abortion procedure is a person under federal law.

- On July 24 the U.S. House of Representatives passed a ban on certain late-term abortions called "partial birth" abortions by a vote of 274 to 151. President Bush has called on the Senate to pass the plan so that he can sign it into law. Several previous attempts to enact the ban passed Congress, but then-President Bill Clinton vetoed them, and Congress failed to override his veto. Now, of course, a president in debt to the religious right is eagerly awaiting a chance to deliver on one of his campaign promises. Senate Majority Leader Tom Daschle is not likely to allow a Senate vote before the November election.

- In a related development, the U.S. Senate Judiciary Committee grilled Texas Supreme Court Justice Priscilla Owens on July 23. Her nomination to the Fifth U.S. Circuit Court of Appeals was defeated in committee in September. Owens opposes exceptions to the state's law requiring that pregnant minors tell their parents before getting an abortion. Two years ago Owens argued that minors must "consider philosophic, social, moral and religious arguments that can be brought to bear when considering abortion." Her view was considered extreme even by the conservative Texas Supreme Court.

## AFT Slams Charter Schools

A 108-page analysis of the charter school movement released by the American Federation of Teachers (AFT) at their July convention concluded that the charters have not brought the expected results in terms of educational innovation. Nor have they produced higher student achievement scores or empowered creative teachers.

Charter school test scores are comparable to those of regular public schools, said the report. The most significant finding is that charters fail to be as accountable financially as public schools and that they contribute to the isolation of students by race and social class. They also educate fewer special-needs children.

While conservative critics denounced the report and accused it of

using obsolete data, a North Carolina study found that charter schools in that state were underperforming in several crucial areas. The North Carolina Center for Public Policy Research concluded that charter schools lacked racial balance, showed serious problems with financial management, and had lower student test scores than public schools in reading, writing and mathematics.

## Jeb Appeals the Right

Florida governor Jeb Bush, in a tight race for re-election, tried to strengthen his ties to the religious right by naming Christian conservative Jerry Regier to head his troubled child welfare agency. Regier, a former health department official in Oklahoma, had been associated with an extremist group, the Coalition on Revival, during the 1980s. The Coalition advocated a theocracy in the U.S. and expressed intolerance toward other religions from its Sunnyvale, California, offices. (Coalition on Revival leaders Rousas John Rushdoony and Gary North were important influences on Pat Robertson and Jerry Falwell.)

Regier was accused by the *Miami Herald* of writing a 1989 article, "The Christian World View of the Family," which advocated corporal punishment for children, mandated a patriarchal style of family life, and denounced married women who worked outside the home. Regier denied the accusations and said he broke with the Coalition a year after the article's publication. But Regier is a founder of the religious right group, the Family Research Council, which is particularly opposed to equal rights for gays, abortion, and sex education in public schools.

Regier tried to deflect criticism by noting that his wife of 34 years is a registered nurse and that he believes in "women holding an equal role in marriage."

The state's Democrats immediately denounced the appointment which, though it must still be approved by the Republican-dominated legislature, is regarded as a done deal. The Florida Department of Children and Families has come under attack for incompetence and corruption.

Bush also appointed a Christian evangelist, Richard Albertson, to head a new agency called the Florida Commission on Responsible Fatherhood.

## Catholic Clout Erodes in Northeast

A *Washington Post* survey in July found that the political influence of state Catholic Conferences throughout the Northeastern United States had declined considerably over the past year. Observers attributed this diminished influence to the clergy sex abuse scandals that have plagued the church.

Catholic legislators are in the forefront of moves aimed at institutional religion's traditional protection from state scrutiny. In New Jersey churches may lose charitable tax status if child abusers are hired or retained, according to one proposed law. In Connecticut legislators doubled the civil statute of limitations for lawsuits involving childhood sex abuse. A New York law now requires church officials to report child abuse allegations directly to the police.

In Massachusetts, church lobbyists are hardly given the time of day. Wrote the *Post's* Michael Powell, "More than anywhere in the nation, the church's legislative fortunes here have darkened." The Massachusetts speaker of the House, Thomas Finneran, allowed the extension of a statute of limitations for suing priests, after having killed previous bills in committees he controlled. Powell observed, "Legislators who in years past would be deferential to church power have led in the passage of legislation once opposed by the church. The scandal has muted the church's voice on a range of issues," he concluded.

Even the feisty William Donohue, president of the Catholic League for Religious and Civil Rights, admitted that “We’ve seen an erosion of the church’s moral authority in the statehouses.”

## An Opus Dei Convert?

Republican Senator Sam Brownback quietly shifted his religious affiliation from United Methodist to Roman Catholic in a June 27 ceremony at the Catholic Information Center in Washington, DC. The conversion ritual was performed by the Rev. John McCloskey, a former Wall Street executive who became a priest some years ago and is a member of the secretive Opus Dei organization that seeks to move Roman Catholicism back toward a medieval model of church governance and ethos. McCloskey is reportedly influential in Washington conservative circles and was instrumental in the conversion of journalist Robert Novak from secular Judaism to Catholicism.

## Sixth Circuit Okays Bonds to Sectarian Schools

On August 14 the Sixth Circuit Court of Appeals, by a 2-1 vote, overturned a district court ruling that the issuance of bonds by the government of Nashville, Tennessee, for a Church of Christ college, Lipscomb University, violated the First Amendment. The appeals court held that the “issuance of industrial revenue bonds to Lipscomb University is part of a neutral program to benefit education, including that provided by sectarian institutions, and confers at best only an indirect benefit to the school.” Therefore, it “does not violate the First Amendment.”

The court majority held that the aid “is analogous to an indirect financial benefit conferred by a religiously neutral tax or charitable deduction.” The majority said “the nature of the institution is not the relevant inquiry” because “the revenue bond program does not present the perception of government endorsement of religion.”

The dissenting judge said the bonds “amounted to a direct economic benefit in violation of the Establishment Clause of the First Amendment of the U.S. Constitution.” Furthermore, “Given its per-

vasively sectarian character, the direct economic benefit to Lipscomb results in excessive governmental entanglement with the religious mission of the university in violation of the Establishment Clause.”

The plaintiffs, Americans for Religious Liberty, and attorney Joseph Johnston plan to appeal the ruling to the U.S. Supreme Court, which has never addressed the issue of tax-exempt revenue bonds given to pervasively sectarian colleges.

## Ten Commandments Plaques Challenged in Two States

Three national religious organizations – the Baptist Joint Committee on Public Affairs, the Anti-Defamation League and the Interfaith Alliance – joined Alabama clergy in filing suit in federal court on August 21, challenging the erection of a Ten Commandments monument at the Alabama Judicial Building in Montgomery.

Alabama Supreme Court Justice Roy Moore, a long-time zealot on the issue, helped workers erect a granite sculpture of the Ten Commandments in the lobby of the building in the wee hours of July 31. Two civil liberties organizations promptly filed suit (*Glassroth v. Moore*) against the religious display.

The brief filed by the three religious groups says in part, “By displaying the Ten Commandments in the State Judicial Building, Justice Moore has usurped the role of private individuals and faith. . . . Rather than strengthening religion, . . . the display undermines religious interests: It shows disrespect for the freedom of conscience, tends to degrade and corrupt religion, and engenders social conflict and religious discord. Religion has thrived in the United States precisely because it has been left to the private sphere. Only by preserving this healthy separation between church and state will religion continue to prosper.”

Meanwhile, the American Civil Liberties Union of Maryland filed suit in federal district court in Baltimore on August 23 seeking the removal of a Ten Commandments monument from a public park in Frederick, Maryland. Suit was brought on behalf of Blake Trettien, a high school student who asked local authorities to remove the monument that was given to the city of Frederick in 1958 by the Fraternal Order of the Eagle.

The monument is jointly owned by the city and county of Frederick and originally sat in front of the County Courthouse until it was moved to Memorial Park (itself a former Evangelical and Reformed Church cemetery) in 1985. The mostly conservative and Republican local governments want the plaque to remain, even though the city’s newly-elected Democratic mayor, Jennifer Dougherty, said the religious monument does not belong on public property. The Frederick City Council compounded the constitutional problem by voting to “rededicate” the park as a burial ground. One city official said the change would allow the plaque to remain as “a Christian religious symbol for a Christian burial ground.”

ACLU’s Dwight Sullivan said “the placement of a religious monument on governmental property sends a message of endorsement of particular religious faiths and a message of exclusion to others. It is not an appropriate governmental function to promote what is undeniably a sacred religious text to certain faiths.”

## Koran May Be Read on Carolina Campus

A federal judge refused to block a summer reading assignment for incoming freshmen and transfers at the University of North Carolina that assigned a book on the Koran. Judge Carlton Tilley on August 15 refused to grant a temporary restraining order requested by a conservative Christian group, the Virginia-based Family Policy Network, on

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behalf of two taxpayers and three unidentified freshmen.

The lawsuit arose when University of North Carolina at Chapel Hill officials assigned students the book *Approaching the Qur'an: The Early Revelations*, by Haverford College religion professor Michael Sells. The book is a translation and study of some of the earliest texts of Islam and includes, according to the author, "the most direct account of core theological ideas and literary themes." Conservative Christians claimed the book was a whitewash of Islam because it omits the verses invoked by some Islamic terrorists to justify Jihad. Sells argued that the early writings attributed to Muhammed were more authentic and less subject to cultural bias.

The reading assignment was optional, and no students were tested on its contents. For several years university officials have assigned a particular book for all freshmen to read prior to their course work. Previous assignments have included books about the U.S. Civil War and Hmong immigrants to America.

Conservatives in the North Carolina legislature took up the cudgels and threatened to cut off state funds to the nationally acclaimed university. A house bill still includes a provision barring the use of state funds for a course on religion that does not study all religions simultaneously.

The issue soon came to be seen as academic freedom, not church-state separation. The *Washington Post* called the case "silly" and added, "Nowhere does the separation of church and state preclude a public university from including religious texts in its curriculum. Books such as the Koran and the Bible are foundational texts of civilization, and understanding them is a basic part of education. As long as the state isn't endorsing or promoting a religious worldview, there is no legal impediment to such study. The state is barred from establishing religion. But it is not required to foster ignorance on the subject."

*The New York Times* chastised the religious right for championing the legal challenge, calling their efforts "despicable." The *Times* commented, "What they really oppose is the effort to study Islam objectively, without presuming at the outset that it is inherently evil."

### Court Okays Aid to Theology Student

A three-judge panel of the usually liberal Ninth Circuit Court of Appeals ruled in July that the State of Washington could not withhold a state scholarship to a student who is studying for the ministry at a church-related college. The 2-1 decision overruled a lower court deci-

sion which had held that Washington's strict state constitutional ban on public support for religion prevented the provision of state funds to students preparing for the ministry.

The plaintiff in the case, Joshua Davey, is majoring in "pastoral ministry" at Northwest College, a school affiliated with the conservative Protestant Assemblies of God denomination. He was awarded a scholarship from the 1999-2000 academic year, but was dropped the following year when state officials found out that he was using the money to become a pastor.

The state of Washington cited an 1889 constitutional provision that forbids the use of public money "for any religious worship, exercise or instruction, or the support of any religious establishment." State officials may ask for a rehearing before the entire Ninth Circuit bench.

The majority decision, written by Judge Pamela Ryman, an appointee of President George H.W. Bush, said the Washington constitution "infringes on the free exercise of religion." The minority opinion, by Judge Margaret McKeown, a Clinton appointee, rejected that interpretation, saying, "Washington has neither prohibited or impaired Davey's free exercise or religion. He is free to believe and practice his religion without restrictions."

Davey was represented by Pat Robertson's American Center for Law and Justice.

### Hate Crimes Soar in Florida

Hate crimes motivated mostly by the September 11, 2001, terrorist attacks on the United States increased 25% in Florida over the past year, according to the state attorney general's report released on August 30. Crimes motivated by religion and ethnicity, mostly anti-Muslim and anti-Arab American, accounted for nearly half of the reported hate crimes. In the previous ten years, religion/ethnicity crimes had never accounted for more than 25% of the total. There were 335 hate crimes reported in Florida during the past twelve months.

### Charter Schools Disappoint

The much-ballyhooed charter schools are not fulfilling their expectations, according to researchers at the Brookings Institution. Charter school students scored significantly below public school pupils in reading and math skills. The study of 376 charter schools in 10 states found that 59% of students at traditional public schools scored better than charter school students. Charter schools in rural and suburban districts scored much lower than public schools, but those in urban areas were comparable to public schools. The Brookings researchers reviewed 1999 and 2000 achievement test scores.

Charter schools are public schools that are usually overseen or managed by a variety of nonprofit or private organizations, and are often promoted as innovative learning centers. But this new study, as well as legislative oversight committees in several states, has concluded that charter schools are not the alternatives they claim to be.

### Religion in the Workplace: Still Controversial

An Indiana health care company was fined \$270,000 by a local court after the Equal Employment Opportunity Commission (EEOC) filed suit against it for religious discrimination in 1998. A jury found Preferred Home Health Care guilty of "harassment" of Catholic and Unitarian employees by the company's evangelical Protestant owners.

EEOC investigator Joy Pentz said the policy "constituted religious harassment to those who did not conform to the company's prevailing

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religious beliefs and practices. This is an important verdict because it sends a message to employers that they cannot impose their religious beliefs and practices upon their employees.”

One Unitarian applicant, Theresa Ralorf, was denied a job and told, “You damned humanists are ruining the world.” The company founder, Jackie Steuerwald, who said she founded the company after receiving a message from God, told Ralorf, “I’ll pray for you when you burn in hell.”

In Minnesota, a federal court jury awarded \$78,000 in damages to three state prison officials who were punished for reading their Bibles during a diversity training session that dealt with homosexuality. The case, which had gone through federal district and appellate courts since 1999, was decided on free speech and equal protection arguments rather than on free exercise of religion. The plaintiffs were represented by the conservative American Center for Law and Justice.

## Judge Expands Suit by Evangelical Chaplains

In August U.S. District Judge Ricardo M. Urbina ruled that as many as a thousand current or former Navy chaplains may join a religious discrimination suit against the U.S. Navy. A suit filed by 25 Baptist, evangelical and Pentecostal chaplains, claims that the Navy favors Catholics, Episcopalians and Lutherans in job selection and promotion.

The suit, which has dragged on for years, may now include all Navy chaplains who served between 1988 and 2002. Plaintiffs’ attorneys claim that the Navy has employed a far higher percentage of “liturgical” chaplains and has promoted them to higher rank than the supposedly much more numerous “nonliturgical” Protestants, who may outnumber the members of other faiths by four to one. Attorney Arthur A. Schultz said the Navy selection and promotion system was “arbitrary and capricious and not acceptable under the First Amendment.”

The Navy has stoutly denied the accusations and opposed the extension of the suit to a class action one.

## Student Led School Prayer?

Kanawha County, West Virginia, public school officials will not appeal a federal court’s decision banning student-led prayers at high school graduations. In May U.S. District Court Judge John Copenhagen ruled that two county high schools, St. Alban’s and Sissonville, could not implement their policy of allowing students to deliver a non-denominational prayer that is reviewed by the principal. The practice had been common at St. Alban’s until a student, Tyler Deveny, filed suit against the school system just before graduation.

But in South Carolina, Governor Jim Hodges, a Democrat facing reelection in November, signed the Student-Led Message Act passed by the legislature. The act, now law, allows school boards to adopt a policy permitting student-led messages, including prayers or inspirational comments, at school-sponsored ceremonies, including graduation and sports events.

## Faith-Based Program Wins Reversal in Wisconsin

In an about face, a Wisconsin federal court ruled on July 29 that a faith-based drug treatment program can continue to receive tax money through a contract with the Wisconsin Department of Corrections. An earlier ruling prohibited direct funding of the Faith Works Program on the ground that the group’s religious emphasis violated the establishment of religion. But “indirect funding” has been upheld

because of the U.S. Supreme Court’s *Zelman* ruling, allowing funds for the Cleveland school voucher program.

Judge Barbara Craff said, “When the individual chooses the religious program, the circuit between government and religion is broken, and the establishment clause is not implicated.” Craff cited the existence of six secular drug treatment programs as alternatives to the faith-based program and said the operative principle is that individual inmates consent to participate in the religious-oriented program.

But plaintiffs had shown that Faith Works was not only pervasively sectarian but was the only long-term residential drug program available to prisoners. Craff said the Department of Corrections had revised its regulations, telling prison staff that they must inform prisoners that they were not required to use the Faith Works program but could choose a secular alternative.

## Vaccine Exemption Struck Down

The state of Arkansas cannot exempt only members of “recognized churches” from the vaccination requirements for students in public  
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schools, according to a federal court ruling in August. Judge Susan Webber Wright ruled that Arkansas' law "discriminated against individuals with sincerely held religious beliefs," even if they were not members of "recognized churches." Judge Wright wrote, "It is difficult to imagine how the state would have a compelling interest in limiting the religious exemption to some religious sects and individuals over others."

### No Tobacco Funds for Parochials

Louisiana judge Duke Welch granted an injunction on July 24 to stop the Louisiana legislature from giving a portion of the state's \$160 million tobacco settlement to parochial and private schools. Louisiana's nonpublic schools were slated to receive \$17.6 million. About 15% of Louisiana's students attend private, mostly religious, schools.

### International

**Belfast:** The Northern Ireland peace process, placed in concrete fashion in the 1998 Good Friday agreement, is struggling to preserve harmony and to advance change in education, jobs and policing in the province. A backlash by extreme Protestant "loyalists," particularly in North Belfast and in Portadown, has resulted in 353 attacks on Catholic civilians since May 1. Homes, businesses and innocent civilians have been targeted. Intimidation remains a problem despite genuine progress on many fronts during the past four years. The Royal Ulster Constabulary has been renamed the Police Service of Northern Ireland, but it remains 90% Protestant and has not been effective in combating the accelerated harassment.

**Brussels:** The possibility of a new European Constitution is being discussed at European Union (EU) headquarters. The Vatican has intervened, asking in July for a preamble acknowledging "the religious and spiritual heritage of Europe and its contribution to the formation of European values." Pope John Paul II sent a written message urging that the EU "must recognize . . . its Christian patrimony." He also argued that "the specific identity and social role of churches and religious confessions must be recognized and safeguarded." French and Swedish leaders have opposed any special recognition of Christianity.

At the same time the Vatican's daily newspaper, *L'Osservatore Romano*, harshly criticized the EU for a July 3 resolution calling for abortion to be "legal, safe and accessible to all in order to protect health and women's reproductive rights."

The EU has also offered funds to refurbish several Greek Orthodox monasteries on Holy Mount Athos. The financial deal may not go through, however, since Swedish and Finnish members are demanding that the monasteries abolish their ban on women. (Even female donkeys may not enter Athos!) One Macedonian monk told the *British Guardian*, "We will never change."

*The Economist* reported on August 24 that John Paul II "remains skeptical of the EU because of what he judges is its materialist foundations." The Catholic Church in Poland remains lukewarm on possible EU membership, fearing the imposition of more progressive policies on divorce and abortion.

**Jakarta:** On August 11 Indonesia's parliament, the 700-member People's Consultative Assembly, refused to impose Sharia, Islamic law, in the world's largest Muslim nation. The proposal did not even come up for a vote, after three of the political parties advocating Sharia withdrew the motion for an amendment to the constitution. Support for the implementation of the harsh Islamic code of law found in

Pakistan, Saudi Arabia, Iran and other nations has waned in recent years. The architects of the 1945 Indonesian Constitution rejected an Islamic state and opted for a secular one instead. One extremist group, the Crescent Star Party, vowed that it would continue the fight "for God and Muslim society." (ARL president Edd Doerr met with Indonesian officials in Washington, DC, several years ago at their request, to explain the benefits of church-state separation.)

**Montreal:** A Sikh boy at the center of a legal controversy involving his right to wear a kirpan, a ceremonial dagger required by his religion, in a public French-language school decided to transfer to an English-language private school in August. The student, Gurbaj Singh Multani, is seeking some privacy and space from the legal proceedings, which are continuing in a Quebec court of appeal. A lower court decision in May allowed him to wear the kirpan if it was concealed. Courts in other provinces, including Ontario, Alberta and British Columbia, have taken a more tolerant approach, invoking Canada's generally liberal human rights policies. But the Quebec government is less expansive in its interpretation of human rights, and critics say the province is not accommodating the growing cultural diversity of its schools.

**Toronto:** Ontario's new private school tax credit scheme remains controversial. Since January parents of children attending private or religious schools have received up to \$700 per child under the Education in Equity Tax Credit. The tax subsidy is scheduled to rise to \$1,400 in 2003 and will reach \$3,500 in 2006. The schools will not be required to teach the province's curriculum to qualify for the tax credit, provoking criticism. The new premier, Ernie Eves, told the *National Post*, "If you're accepting taxpayers' money to educate students, there are certain core subjects that the public have a right to expect will be taught." The president of the Ontario Secondary School Teachers' Federation, Earl Manners, agreed. "The government that talks about accountability for everyone else provides no accountability when they transfer millions of dollars to private schools."

The province's Human Rights Commissioner, Keith Norton, warned in July that the tax credits could foster discrimination and "lead to an apartheid system of education." Norton warned against "intolerance and ignorance among our children" fostered by "those who wish to propagate racial and ethnic hatred and divisions." Premier Eves promised tighter controls on the schools receiving the tax credits.

In a related development affecting the publicly-funded separate Catholic school system, the Ontario Superior Court ruled that a Catholic school board could not forbid a gay student from attending a prom with a same-sex date. The student, Marc Hall, received support from the Ontario Catholic Teachers Union and from prominent Catholic political leaders, who denounced the school board's action. Ironically, support for the school's decision came from several Anglican and Jewish leaders.

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## A Baker's Dozen of Books

*When Religion Becomes Evil*, by Charles Kimball, Harper San Francisco, 240 pp., \$21.95.

Kimball, a professor of religion at Wake Forest University and a Baptist clergyman, argues in this timely book that there are "five warning signs of corruption in religion" which threaten the peace and security of the world.

Religions which advance "absolute truth claims" and deny legitimacy to other faiths, and those which demand "blind obedience to religious leaders" are likely to become destructive forces in the world. Religions which believe that any ends justify the means to achieve their goals and which declare holy wars on others are evil. A fifth warning sign is an attempt to establish "ideal" times based on theological concepts, particularly those relating to the end of the world. Kimball

writes, “Those who narrowly define ideal temporal structures of the state and determine that they are God’s agents to establish a theocracy are dangerous. Religion is easily corrupted in this context. Beware of people and groups whose political blueprint is based on a mandate from heaven.”

Kimball believes that the world is rife with religious extremism. “Religious ideologies and commitments are indisputable, central factors in the escalation of violence and evil around the world . . . [U]nderstanding the factors that can and do lead people of faith and goodwill – wittingly or unwittingly – into destructive and evil patterns of behavior must be a high priority on the world’s agenda. Distinguishing between corrupt forms of religious expression and authentic, life-affirming forms is essential if we hope to reduce the global threat.”

Kendall believes that the world’s great religions still have the potential to embrace inclusivity, pluralism and tolerance and can interact positively with people in other traditions. Time will tell.

— *Al Menendez*

*The Education Gap: Vouchers and Urban Schools*, by William G. Howell and Paul E. Peterson, Brookings Institution Press, 275 pp., \$28.95.

Two voucher advocates, whose study was largely financed by conservative pro-voucher foundations, have produced a modest study which comes far short of proving that vouchers will aid the educational experience of the disadvantaged. Studying New York City, Dayton, Washington, DC and San Antonio, the authors admit that only modest improvements for African Americans in New York City can be found. For no other groups did test scores rise significantly.

Some of their findings will not be encouraging to voucher advocates or to those who believe vouchers will be religiously neutral. They discovered that “vouchers had a positive impact on students’ religious observance” and that “voucher programs may strengthen religious commitment.” Justice O’Connor will surely be interested in this discovery, since she convinced herself that the Cleveland voucher program was wholly neutral, in content and practice. Furthermore, the authors observe, “These positive impacts on students’ religious practice may have been fully intended by their parents. Even more, parents may have explicitly chosen private schools more for religious than educational reasons, thereby raising important constitutional questions.”

Howell and Peterson also found that a higher percentage of public school parents are members of PTAs than are private school parents. In fact, “vouchers had only minor effects on parents’ involvement in either their children’s education or the community at large.”

— *Al Menendez*

*New Religious Movements and Religious Liberty in America*, edited by Derek H. Davis and Barry Hankins, J.M. Dawson Institute of Church-State Studies and Baylor University Press, 207 pp., \$29.95 cloth, \$16.95 paper.

“Perhaps it should be said that the measure of the health of religious liberty in a society is the degree to which minority, nontraditional faiths are protected.” So write the editors of this useful book, composed of papers presented at a March 2001 conference at the Dawson Institute in Waco. The papers by a variety of experts deal with controversial Christian movements, the Cult Awareness Network, the Church of Scientology, Satanism and Witchcraft, the Branch Davidians, and Christian Reconstructionism (the movement that has influenced such Religious Right leaders as Jerry Falwell and Pat Robertson).

The weakest paper in the book is what might be called the “snow job” by the president of the Church of Scientology. Among the best are Adam English’s piece on Christian Reconstructionism and Derek Davis’s

on President Bush’s Faith-Based Initiative in relation to New Religious Movements (NRMs). Davis is quite critical of the Bush initiative, for church-state separation and other reasons. Davis notes, interestingly, that “the largest proponent” of Bush’s Faith-Based Initiative is Rev. Sun Myung Moon’s Unification Church and that one of the largest, most conservative churches, the Mormon Church, opposes the plan.

This book continues the Dawson Institute’s tradition of producing some of the best material in the church-state field, including its excellent *Journal of Church and State*.

— *Edd Doerr*

*Separation of Church and State*, by Philip Hamburger, Harvard University Press, 514 pp., \$49.95; *Thomas Jefferson and the Wall of Separation Between Church and State*, by Daniel L. Dreisbach, New York University Press, 282 pp., \$42.00.

Harvard University Press and New York University Press should withdraw these two books from circulation and avoid further embarrassment. As Ambrose Bierce would have said, their covers are much too far apart. Both authors, who cross reference each other, have raised pedantry and pretentiousness to new levels, intent as they are on trashing Jefferson’s noted 1802 statement that the First Amendment built a wall of separation between church and state as merely a misleading metaphor or worthless slogan.

Both books, though crammed with footnotes, are eccentric and oddly, certainly intentionally, selective. They studiously ignore the Virginia struggles of the 1780s that shaped the separation principle and the thought of Madison and Jefferson, the actual debates in Congress that produced the First Amendment, the Washington-Adams treaty with Tripoli, and the clear intent of the drafters of the Fourteenth Amendment.

Both books insist endlessly that disestablishment is not the same as separation of church and state, but they never get around to explaining what either term means. Both would scrap the separation metaphor but they offer nothing in its place. Both books are highly abstract and seldom bother to discuss real church-state problems in the real world.

Hamburger in particular tries to convey the impression that separation represents only nativist, anti-Catholic, and ultrasecularist bigotry. Neither author mentions that Catholic voters in Massachusetts, New York, California, and Michigan, for example, have in recent years voted to reject attempts to remove state constitutional provisions aimed at preserving church-state separation. Neither discusses the long history of federal and state court rulings upholding separation. Neither mentions that in the predominantly Catholic Commonwealth of Puerto Rico the 1952 constitution states that “There shall be complete separation of church and state.”

It is significant that separation-unfriendly lawyer-columnist Bruce Fein sharply criticized the Hamburger work in a review in the anti-separation, ultraconservative *Washington Times*. Fein writes, in commenting on Hamburger’s long rant about anti-Catholic bigotry, which no one denies existed, that “Not all Protestant worries over the infiltration of a despotic and reactionary papal culture into the American demos were figments [of the imagination].” Fein cites papal opposition to democracy in Europe, papal insistence that Catholicism be established and preferred by governments, the Index of Forbidden Books, the 1870 declaration of “papal infallibility,” and the 1858 Edgardo Mortara case involving the controversial papal kidnapping of a six-year-old Jewish child.

Hamburger and Dreisbach are fellow travelers in the concerted campaign to wreck church-state separation and plunge this country into the chaos that separation was designed to prevent. Major university presses should be ashamed to assist such subversion.

— *Edd Doerr*  
*continued on page 14*

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## Books, continued from page 13

*The Emerging Democratic Majority*, by John B. Judis and Ruy Teixeira, Scribner's, 213 pp., \$24.00.

*New Republic* editor Judis and Century Foundation fellow Teixeira argue forcefully and convincingly that women, minorities, and professionals are coalescing to create a potential Democratic majority in national politics. These trends will produce a Democratic Congress and White House by the end of the decade. "The emerging Democratic majority is closely linked to the spread of the post-industrial economy. Democrats are strongest in areas where the production of ideas and services has either redefined or replaced assembly line manufacturing," they write.

Looking at 263 counties which they call "ideopolises," or areas with high concentrations of high-tech economic activity and front-rank research universities, shows that these voters favored Gore over Bush by 54.6% to 41.4%, with 3.3% for Nader. These ideapolises cast 43.7% of the national vote in 2000, and their population grew at twice the rate of the United States during the 1990s.

The authors challenge the idea that growing religious observance will help the Republicans. They cite various national data bases showing that 27% to 30% of voters do not attend religious services at all, or rarely attend. "In other words, trends among the religious do not favor Republicans over Democrats. If anything, they favor Democrats."

There is another major religious problem. The authors write, "Republican strategists don't like to say so aloud, but Republicans have paid a heavy price for their avid support from the religious right. The Republicans, goaded by the religious right, have become the defenders of the mores of Middletown against those of the postindustrial metropolis. . . . In search of votes, the conservative Republicans of the 1980s made a devil's pact with religious fundamentalists that entailed their indulgence of crackpot religious notions. While Democrats have opposed the imposition of sectarian standards on science and public education, the Republicans have tried to make science and science education conform to Protestant fundamentalism."

— Al Menendez

*The Rise of Southern Republicans* by Earl Black and Merle Black, The Belknap Press of Harvard University Press, 442 pp., \$29.95.

The Black brothers are back. Both political scientists at different Southern universities, they have made a mark in the academic world as experts on modern Southern politics. In their new volume, which concentrates on the growth of the GOP in the South since the 1950s, they affirm, with mounds of data, that Southern support for GOP congressional candidates has made Congress Republican.

While economic reasons, migration of Northerners, and racial animosity by whites contributed to successive Republican gains, the rise of the religious right is paramount. The authors write, "By becoming an integral part of the Southern Republican electoral coalition, the religious right helped the party solve its problem of attracting landslide majorities of white voters." These "white religious conservatives believe that secular forces are undermining their way of life" and therefore they "seek to advance their beliefs, values and interests through partisan politics." About 30% of all Southern voters support the religious right (43% of whites), and while they overwhelmingly favor GOP presidential candidates, they now support Republican candidates for Congress, thereby fuelling the Republican takeover of Congress in 1994 and since.

The dominance of the religious right in the southern GOP is not an unmixed blessing, however. The Blacks remind readers, "These Republicans have different priorities and have sometimes exhibited a dogmatic and uncompromising style of debate about matters of right

and wrong behavior that can bitterly divide local and state Republican parties. . . . Conspicuous reliance upon the white religious right by Republican politicians frequently carries the risk of being viewed as extremists among those who reject and resent many aspects of the religious right's political agenda as unwanted intrusions into their personal lives."

The GOP alliance with religious conservatives led to "the southern surge as their share of Southern House seats jumped from 38% in 1992 to 57% in 2000 and from 32% to 59% of Southern Senate seats." And the Blacks warn, "If the Republicans manage to consolidate or even expand their Southern gains in the House and Senate, the national implications of this development would be profound."

The authors found that white Protestant males who were born in the South were clearly the most receptive voters to the GOP's social and cultural message. "More than half of the native men took conservative positions on abortion, compared to 30% of migrant men. And 50% of the native white men believed that the Bible was the literal word of God, a view shared by only 10% of the migrant males."

Still, the Blacks argue that moderate swing voters who oppose the religious right are still key to the South's overall political future, and they suggest that most Congressional elections in the region are competitive, though at the presidential level the GOP seems to have a stranglehold.

— Al Menendez

*Sacred Choices: The Right to Contraception and Abortion in Ten World Religions*, by Daniel C. Maguire, Fortress Press, 160pp., \$13.00.

Dan Maguire is Professor of Ethics in the Theology Department of Marquette University and president of the Religious Consultation on Population, Reproductive Health and Ethics. In this important short book, he clearly summarizes the problems we have with increasing population and consumption in a world of finite resources stretching thinner and thinner. His purpose here is to show that while religion is often thought to be generally opposed to reproductive choice, the reality is different, more complex and more nuanced. He summarizes those realities in Catholic and Protestant Christianity, Judaism, Islam, and the religions of India and China, concluding that all of these traditions provide support for both pro-choice and anti-choice positions. Particularly useful is his examination of the many strains within Catholicism (Maguire is a former priest, trained in a seminary in Rome), which, he shows, provides ample support for the pro-choice side.

The bottom line, Maguire concludes, is that "the right to choose an abortion has deep religious roots. Laws that deny women this right are unjust and violate religious freedoms. Such restrictive laws unduly privilege religious persons who espouse the most conservative views while disenfranchising those who hold equally religiously-grounded pro-choice views. Governments that criminalize all abortions have taken sides in a religious debate. Since there are good religious authorities on both sides of the debate, government has no right to intrude."

— Edd Doerr

*Out of the Flames*, by Lawrence and Nancy Goldstone, Broadway Books, 353 pp., \$24.95.

The Goldstones, authors of three previous books about rare book collecting, tell the story of 16<sup>th</sup> century Spanish religious dissenter Michael Servetus and his extraordinary book, *Christianismi Restitutio*, refuting the orthodox Christianity of his day. Servetus, considered one of the founders of the Unitarian movement, was one of the leading lights of Humanism, which encouraged free inquiry. The authors write, "The humanists' emphasis on the personal worth of the individual and the central importance of human values was eventually going to set

itself in opposition to religious dogma.”

Servetus suffered the fate of many advanced thinkers, dying at the stake in the rigid Protestant kingdom of John Calvin. Calvin and his minions sought to stamp out dissent by destroying all copies of Servetus’ masterful book, and only three copies of it survived the flames, becoming one of the rarest titles ever published.

The tragic story of Servetus and his book – which also included some remarkable scientific findings – should remind readers of how fortunate we are to live in a secular state that, as a U.S. Supreme Court decision once affirmed, “knows no heresy.”

— *Al Menendez*

*In Search of an American Catholicism*, by Jay P. Dolan, Oxford University Press, 312 pp., \$28.00.

Jay Dolan is the dean of American Catholic historians. His new book is an examination of where and how “American culture has influenced, indeed changed,” the way Catholics thought about vital public issues. “American culture has shaped Catholicism” and “Catholicism changed over time as it interacted with American culture during the course of 200 years.”

Of all the many changes Dolan cites, it is the tension between hierarchy and democracy within the U.S. church that is most basic. Particularly intriguing is his assessment of Catholic public life from about 1770 to 1820, when “republican Catholicism, with its democratic tendencies and its Enlightenment impulses” prevailed. Dolan writes, “The spirit of democracy stamped Catholicism in this era with a distinctive mark by radically altering the manner in which authority operated in the church. Both clergy and laity had sought to reshape the traditional monarchical model of Catholicism by having the government of the local church mirror the democratic culture of the new nation. . . . This was an important development in the search for an American Catholicism, a Catholicism in harmony with the culture of the new nation.”

Unfortunately, a more conservative movement stressing hierarchy and separation from the culture prevailed and shaped much of U.S. Catholicism’s future development, especially during “the immigrant period in American Catholic history (1820-1920).”

Hostility to Catholics led to the establishment of a separate school system. As Dolan writes, “The public school movement encouraged an American Protestant imperialism. For Catholics the culture of the public school was alien and its benefits questionable. It was this basic conflict between the ideology of the common school and Roman Catholicism that led to the development of the Catholic school system.”

Dolan argues that U.S. Catholics became firm supporters of and believers in religious freedom for themselves and others, primarily because they experienced the benefits of government non-intervention in religious affairs.

The democratization of the U.S. Catholic church is the great unfinished business. Dolan says, “The people’s church, rooted in the parish community, has little or nothing to do with the hierarchical church.” He concludes, “The Catholic Church must continue its dialogue with American culture. As change reshapes American society, the church must adapt. It has no choice. Otherwise, it will become a lifeless relic of a mythic past. The future challenge for Catholicism in the United States will be to remain faithful to the Catholic tradition as it adopts to a modern American culture. The result will be a genuine American Catholicism, fully American and authentically Catholic. To achieve this goal will be the challenge of the twenty-first century.”

Of the recent scandals in the church, Dolan adds in an epilogue, “The church needs better leaders who are accountable to the people they serve. The monarchical model has lost its efficacy in the modern

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world by fostering a clerical culture of arrogance and secrecy. American Catholics want a church open to the spirit of democracy where their views can make a difference.”

— *Al Menendez*

*Pope John Paul II, Prophetic Politician*, by Jo Renee Formicola, Georgetown University Press, 264 pp., \$19.95.

The author is a political science professor at Seton Hall University and a specialist in U.S.-Vatican relations, upon which subject she published an outstanding monograph in the *Journal of Church and State*. In her new book, she has, despite a great deal of research and a fluent writing style, produced a hagiographic study of the present pope that will only please his most uncritical admirers.

Her thesis is that John Paul II is a “geopolitical” pope who has “challenged” the world “to seek sacred justice and political virtue,” factors which, she says, have “inspired” her as “an academic, a political scientist and a believer.”

Formicola argues that John Paul is “a catalyst for global transformation” who has “a vision for a new world order based on Christian-inspired political ideals.” She also believes that he has “been moving behind the scenes to implement his vision of a united, Christian Europe.”

Well . . . the author has apparently not been to Europe recently or she would find that the continent is almost wholly secular and has little use for old-fashioned clerical power politics. The European nations are more secular and individualistic than is the United States today.

The author overreaches when she claims that “the pope has changed the power position of the Vatican in a prophetic sense” by “seeking breakthroughs in the political and economic arenas to better human rights, social justice and economic development.” She says he has “strengthened the papacy” with his “consistent preaching, charisma and transcendent message of bold, moral initiatives.” By making such claims, she totally ignores the reactionary policies of the papacy toward women, sexual freedom, public nonsectarian education, reproductive and population issues, and the role of the church in the public realm. It is difficult to argue that such policies have been widely accepted. One is hard pressed to find a single country where Catholicism is stronger or more influential today than it was when John Paul II be-

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## **Books**, *continued from page 15*

came pope in 1978. (A possible exception might be Mexico.) The church is far weaker in Ireland than it was when John Paul made his triumphant visit in 1979, and his homeland of Poland has seen a significant decline of church power and influence.

The pope's so-called "prophetic" policies have led to considerable interfaith disharmony and to a new wariness by governments that the papacy is seeking to restore its lost power rather than advancing human rights.

We could all agree with Formicola that "The real test of John Paul's prophetic legacy will be the success or failure of his moral initiatives for political and economic change in the future." Many well-meaning and fair-minded individuals would question whether some recent papal initiatives are truly moral or conducive to a better life.

— *Al Menendez*

*Pius XII and the Holocaust*, by José M. Sanchez, Catholic University of America Press, 197 pp., \$19.95.

Professor Sanchez of Saint Louis University is a historian with a rather remarkable ability to see many sides of a controversial issue, as he did in his previous work, *The Spanish Civil War as a Religious Tragedy*. He does the same in his analysis of Pope Pius XII and his role during World War II.

Sanchez reviews dozens of other historians' works, rather than doing original research, which makes this a highly useful overview of the subject. He concludes that there is not enough evidence to convict or exonerate Pius on many points, because of insufficient historical record and frankly conflicting interpretations of available documents. Both critics and defenders, he writes, "have tended to make their judgments less on the basis of an impartial reading of the documents than on their preconceived sentiments." He adds, "Pius remains an alluring target for those opposed to clericalism or the papacy or simply to authoritarian systems. Add to this Pius' personality and the impression he gave of omniscience, and it is easy to see why he has become a target of critics."

Sanchez says many people have exaggerated the moral authority of the Vatican and have given it more credit than it deserves as a player in

international politics while forgetting that "the Germans were the instigators of the Holocaust." Sanchez faults Pius in one instance, where the historical record seems clear. "Of all the criticisms of Pius during World War II, his behavior toward the events in Croatia are the most damning. There were no extenuating circumstances that could have led him to keep silent, for he was dealing with a government that proclaimed itself Catholic, and there was no fear of retribution that might result from a papal protest."

— *Al Menendez*

*Popes and Politics*, by Justus George Lawler, Continuum, 252 pp., \$24.95.

Anyone who writes about the papacy, or is even mildly interested in the venerable institution, should read Lawler's brilliant and often maddening reflection on the role of the Vatican in the modern world. Lawler, an editor, author and professor, skirts the line between conservative Catholic and liberal Catholic. In this volume he focuses on historians and critics of the Vatican, deploring what he calls "the new papaphobia."

Lawler suggests that "an attitude of high expectations" (a phrase first used by historian John Lukacs) has surrounded the modern papacy, leading inevitably to disappointment when Vatican policies fail (as they often have) to live up to high hopes.

While critical of "the ideological denigrators of the papacy," he is quite dismissive of the conservatives, whom he calls "ideological consecrators" known for their "uncritical stance, piety, fidelity and loyalty." He admires John Paul II for his "definitive repudiation of anti-Semitism, anti-war stance and consistent condemnation of capital punishment" but faults the pontiff for "an almost ruthless preoccupation with conformity even on open and unresolved issues."

Lawler is way off base, though, with his criticism of Catholic historian Garry Wills: "Wills' ideological intent is to make Christianity, the church and the papacy part of a grand conspiracy that is responsible for virtually every ill in society." Wills' support for a reformed Catholicism has met with great and justifiable praise from many quarters, and his scholarship seems impeccable.

— *Al Menendez*