

The Cultural Hostility to Religion

Patrick M. Garry

WITH FIRST AMENDMENT FREEDOMS, the courts act as guardians, protectors from whatever social and cultural attitudes might threaten those freedoms. In the area of religion, however, the courts have not been so steadfast. According to a recent study completed by legal scholars from the University of Virginia, political attitudes and conflicts have shaped the Supreme Court's Establishment Clause opinions more than have original intent or constitutional precedent.¹ Indeed, liberal justices find Establishment violations more often and readily than do any other justices.²

Overall, the Court has been far more hospitable to free speech cases than to cases involving religious expression or exercise. In the speech area, the courts have taken a somewhat monolithic approach: protecting the speech no matter what the argument for censorship is. Everything from sexually explicit speech to hateful insults to flag-burning to offensive art to profanity is protected, all under the theory that the marketplace of ideas requires the most speech possible. Almost never do the courts look into what discomfort or antagonism the speech might cause, nor into how valu-

able the speech is for a democratic society. And yet, in Establishment Clause cases, judges justify their restricting of religious expression on any number of grounds, many of which relate to perceptions of the social divisiveness or alienation that religion might cause. But if fear of social strife were sufficient to counteract expressional or associational freedoms, then clearly racial speech and affirmative action programs could be censored or prohibited. As Alan Schwarz has written, "if avoidance of strife were an independent constitutional value, no legislation could be adopted on any subject which aroused strong and divided feelings."³

Religion's Critics

Since the 1960s, critics in the media and academia have argued that religion should not be allowed to have any public presence. In stark contrast with the views of the constitutional period, these critics have pushed for complete separation of church and state, on the grounds that religion should be an entirely private matter. But such privatization can end up eliminating religion totally from the public sphere. The case of *Sechler v. State College Area School District*, for instance, shows how far school administrators have gone in trying to rid holiday celebrations or displays of any Christian identity. In

PATRICK M. GARRY teaches law at the University of South Dakota School of Law in Vermillion, South Dakota.

Sechler, the school's winter holiday program was filled with symbols for Kwanzaa, Chanukah, and the Swedish festival of St. Lucia, but no Christian symbols were allowed. And reflecting how a once religious holiday has been consumerized, the song sung during the program was called "Bruno's Christmas at the Mall."

An anti-religious secularism was even revealed in the wake of the 9/11 terrorist attacks. To many secularists, it was religion that had prompted the attacks. As philosopher Richard Rorty sees it, religion fosters intolerance and extremism.⁴ Critics claim that religion is undemocratic and encourages a blindly obedient, herd-like mentality. According to Professor Ira C. Lupu, religion undermines the ability of citizens to exercise independent and critical judgment.⁵ In a similar vein, Professor Steven Gey states that religion is "fundamentally incompatible" with the requirement that in a modern democratic state "there can be no sacrosanct principles or unquestioned truths."⁶ Political theorist Amy Gutman, now the president of the University of Pennsylvania, argues that education must serve as a mechanism to "convert children away from the intensely held [religious] beliefs of their parents."⁷ Educator John Goodlad agrees that schools "should liberate students from the ways of thinking imposed by religions and other traditions of thought."⁸ These views, according to Frederick Mark Gedicks, reflect a secular individualism that sees religion as "a cynical, disintegrating force bent on subverting"⁹ the civil rule of law through "the irrational, passionate, and violent overthrow of rationality, reason and peace." To secularists, religious adherents are often seen as violent revolutionaries.

Many Americans are suspicious of "high intensity faiths" and of churches that are considered "conservative" or "evangelical."¹⁰ Nearly half of all Americans have admitted to "mostly unfavorable" or "very unfavorable" opinions of "religious funda-

mentalists."¹¹ Despite the fact that the religiously devout are expected to tolerate society's views on sex, birth control, abortion, and evolution, there is little attempt to tolerate a religiously devout view on such subjects. Yale University has refused to allow any on-campus recruiting by the Christian Legal Society, on the grounds that the Society favors Christians and disapproves of homosexual conduct.¹² When the New York City board of education decided as part of its sex education program that every student in public school be taught how to use a condom, even though the practice violated the religious beliefs of Catholics, Orthodox Jews and Muslims, families who were offended by the practice were not initially even given a chance to opt out of the program.¹³

Judicial Reflections of the Hostility Toward Religion

The cultural criticisms of religion have been echoed by judges. Justices John Paul Stevens and Stephen G. Breyer have argued that public aid to religion will foster political discord and tear the social fabric underlying American democracy. Drawing on experiences from the Balkans, Northern Ireland, and the Middle East, Justice Stevens wrote: "Whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy."¹⁴ Justice Breyer likewise noted that "the Establishment Clause concern for protecting the Nation's social fabric from religious conflict" justifies the exclusion of religious groups from public support.¹⁵

These views see religion as a divisive force, and that it is the Court's role to quell any conflicts that might arise from the religious practices of a diverse people, even though such a position seems to run counter to the idea of free exercise. Con-

sequently, judges holding these views employ a broad reading of the Establishment Clause in an effort to confine religion to a tightly-boundaried private realm within society. They see the Establishment Clause as a kind of social regulator, minimizing any discomfort or conflict caused by a vibrant religious presence.

The problem with using the Establishment Clause to prevent any citizen from feeling alienated is that, due to the reality of human social life, someone will always feel alienated from the larger group. It makes a difference whether it is the government that is forcing people into alienation, or whether individuals are just feeling alienation because of their chosen differences with society. The question should be whether government is affirmatively excluding people from full membership in society, or whether certain individuals just feel alienated because of private religious differences. Moreover, some degree of alienation is inevitable in a society that is as diverse and individualistic as America. People are free to burn the American flag in front of a gathering of war veterans; artists are free to display religion-denigrating art in galleries next door to religiously conservative churches; Nazis can march in Jewish neighborhoods. In any culture where free speech reigns and individualism rules, social strife is practically guaranteed. As journalist Michael Barone notes: the nation is split between an observant, tradition-minded, moralistic America, and an unobservant, liberation-minded, relativistic America. But when the courts use the Establishment Clause to try to ease these divisions, they end up favoring one side, the secular, forcing the religious to mute their beliefs.

Even though the United States is one of the most religious countries in the world, there is little of the sectarian strife that plagues much of the rest of the world. Furthermore, the claim that religion is divisive ignores the fact that religion is often a source of individual and social

healing. The way victims and the nation turned to prayer after such tragedies as the Columbine shootings and the 9/11 terrorist attacks reflects this healing role. Rather than serving to undermine civic values, the weight of evidence indicates that religious institutions have historically provided a foundation for civic life in America.¹⁶ Although Americans are more likely than citizens in other democratic countries to express a belief in God and attend church regularly, they are reluctant to impose their religious views on their neighbors.¹⁷

On the issue of social divisiveness, the courts treat religion far more restrictively than they treat speech. In *Searcey v. Harris*, for instance, the court held that a public high school could not preclude from participating in Career Day an organization with a controversial ideological mission. The organization at issue was the Atlanta Peace Alliance, which wanted to participate in Career Day so as to dissuade students from entering the military. Because of the Alliance's controversial viewpoint toward the military, the School Board denied its request. Yet if the court had approached this case in the same way that it sometimes approaches religion cases, it would have upheld the exclusion of the Peace Alliance, reasoning that its presence could cause strife and outrage from students who were ardent military supporters.

Judicial hostility toward religion has shown itself in cases where religious beliefs run counter to modern medical practices. In those cases, courts often impose criminal liability on parents whose religious practices prevent them from seeking medical treatment for their children's sickness. For instance, in *Commonwealth v. Barnhart*, the court upheld the involuntary manslaughter convictions of parents who because of their religious beliefs did not obtain medical treatment of their two-year-old son's cancerous tumor. Similarly, in *Hall v. State*, the court upheld the

reckless homicide conviction of parents who relied solely on spiritual healing to cure their son's pneumonia. And in *Walker v. Superior Court*, a manslaughter conviction was imposed on a mother who sought spiritual treatment for her daughter's acute meningitis.

Courts have also displayed an anti-religious bias in their willingness to trivialize religion by expanding its definition to include virtually any kind of philosophical or pop-culture orientation with which people wish to identify themselves. Under such an "anything goes" approach, religion becomes any mode of thinking by which people wish to characterize their life choices. Self-perceived duties to one's emotional needs rise to the level of religious duties. For the framers of the First Amendment, however, religious obligations were obligations to God, paramount to any needs of the self. But courts have increasingly factored God out of religion. In *Abington Township v. Schempp*, the Court referred to a "religion of secularism," essentially equating those who believe in a religion with those who do not.

In *United States v. Seeger*, involving military service exemptions granted to religious objectors, the Court concluded that religion did not require a belief in God, only a belief that was taken "seriously without reservation." But this definition blurs the distinction between religion and nonreligion, allowing courts to define religion in such a way that guts it of any essential meaning, in a way that sees religious beliefs as simply one form of "internally derived" beliefs. Under such a definition, just about any world view or personal belief or lifestyle could qualify as a religion, thereby depriving religion of any real special status. In *Welsh v. United States*, the Court even ruled that a person could be religious and not know it; because, unknown to the person, his or her life philosophy might actually qualify as a religion.

Not only have judges stated that "Ethi-

cal Culture" and "Secular Humanism" qualify as religions, but Alcoholics Anonymous, a therapeutic mutual assistance program, was declared a religion in at least six cases in 2001.¹⁸ In *Alliance for Bio-Integrity v. Shalala*, a group of scientists' objections to the Food and Drug Administration's policy on genetically modified foods were treated as religious beliefs akin to Roman Catholicism. And in *Yusov v. Martinez*, where a prisoner refused to comply with prison regulations, the court accepted his statement that obtaining a sample of DNA would violate his religious beliefs, even though the prisoner never presented any specific religion as the basis for his objection.

The Cultural Rebellion Against Religion

The Establishment Clause, given the guidance provided by history, is a relatively simple and straightforward command. But what has complicated it has been the way courts have incorporated into it various cultural suspicions that emerged in the latter part of the twentieth century. What has complicated the Court's Establishment Clause doctrines is the way the clause has been used to try to reduce religion's presence in the public arena.

During the 1960s arose a cultural revolution that attempted a comprehensive transformation of American cultural values. This revolution had many objects, one of which was religion, which was seen as the bastion of traditional moral values. Religion stood for everything that the revolution opposed: self-restraint, the subservience of the individual to a higher authority, the notion of sin, the individual's subjection to moral judgment, self discipline, and the elevation of virtue over self-actualization. Religious institutions, as a reflection of the larger social establishment, came to be seen as perpetrators of repression and injustice.

The crusade for sexual freedom has focused its sights on religion, since it is

religion that most actively opposes such a lifestyle. Much of the liberal opposition to the Catholic Church, in fact, revolves around the church's condemnation of artificial birth control and abortion. And to a significant degree, the crusade for abortion rights has evolved out of and now cloaks a larger crusade against religion—a crusade for the complete liberation of the individual from any subservience to a higher authority. In 1987, Abortion Rights Mobilization filed a lawsuit challenging the tax exempt status of the Catholic Church, claiming that the Church had violated that status by taking a public stand against abortion.¹⁹ Indeed, the movement for sexual freedom has become a movement aimed at the dismantling of a much broader array of traditional values. This was particularly evident during the impeachment of President William Jefferson Clinton, where his defenders quickly moved away from a defense of the specific charges to an attack on the legitimacy of traditional notions of virtue and morality.

The degree to which religion has become caught up in the cultural conflicts over sexual mores can be seen through the findings of political pollsters. Early in the 1996 presidential election campaign, Clinton's advisors discovered a polling technique that proved surprisingly determinative of whether a person was going to vote for Clinton or Bob Dole. Respondents were asked five questions, four of which focused on attitudes toward sex and one of which dealt with religion. The four sex questions were: Do you believe homosexuality is morally wrong? Do you ever personally look at pornography? Would you look down on someone who had an affair while married? Do you believe sex before marriage is morally wrong? The fifth question asked whether religion was very important in the voter's life.²⁰ According to the pollsters, these questions were better voting indicators than anything else, except party affilia-

tion or race of the voter. Four years later, following the 2000 election, a correlation was shown between people's propensity to view adult videos, their frequency of attendance at religious services, and their choice of presidential candidate.

Another source of attack on religion has been the self-actualization movement, which has cast religious beliefs as unhealthy and repressive causes of psychological dysfunction. Unquestionably, American culture has become more secular and more inhospitable to religion. But this shift in cultural values, by putting religion in a more precarious position, should give all the more reason for courts to protect religion and create constitutional doctrines that provide a bulwark against social hostility.

Institutional Hostilities to Religion

Various segments of society reflect an almost institutional opposition to religion. The field of journalism is one such area.

It is a common accusation that the "liberal media" are hostile to conservative religious values.²¹ So often, news reports single out religion with the prefatory phrase: "...her opponent, a born-again Christian." But aside from this general accusation, a more concrete example of journalistic hostility can be found in the 2002 press coverage of the sex abuse allegations that had been levied against certain priests in the Catholic Church. For months, that coverage dominated the front pages of the nation's newspapers, even though the allegations of abuse had largely occurred decades earlier. The degree to which it so dominated the news can be seen through an examination of the front page of *The New York Times*.

As perhaps the most prominent newspaper in the world, *The Times* covers both national and international news. Hence, as readers know, it is unusual for any one story to appear on the front page

frequently or consecutively over an extended time. But this was not the case with the problems of the Catholic Church. From March 3 to March 19, the story appeared on page one for eight consecutive days. (Meanwhile, during this most intense time of the war on terror, headlines concerning President George W. Bush appeared on only three of the eight days.) From March 22 to March 25, Catholic Church stories again appeared on four consecutive days, during which no President Bush headlines ran. From April 4 to April 10, seven consecutive days of front-page Catholic Church stories ran—and from April 13 to April 29, seventeen consecutive front-page stories appeared. During the days between these cited periods, front-page stories continued to appear, though not consecutively; and whenever a front-page story did not appear, an article on the Catholic Church's problems almost always ran on an inside page of the newspaper. And the stories persisted well into the ensuing weeks and months. From May 3 to May 26, a total of sixteen front-page stories on the Catholic Church appeared in *The New York Times*; and from May 31 to June 17, a total of eleven front-page stories ran.

Throughout all this media coverage, the impression given was that a significant number of priests had been abusing children for years and that the church hierarchy had not only covered up the crimes but had done nothing to stop the future commission of them. A *Wall Street Journal* - NBC News poll conducted in April of 2002 found that 64 percent of the public believed that Catholic priests frequently abused children. But in February of 2004, a study by the John Jay College of Criminal Justice reported that only 4 percent of Catholic priests had even been accused of such abuse, and more than half of the accusations had been made against just seven priests. In addition, the majority of abuse incidents had occurred prior to 1982, twenty years before the

scandal erupted on the front pages. What the study also found was that the Church had made steady progress over nearly three decades in eliminating this problem. The percentage of priests accused each year of abuse had been consistently declining ever since the mid-1970s, and the number of alleged abuses had fallen dramatically from the 1970s to the 1990s.²² For instance, the number of boys aged 8 to 10 alleged to have been abused dropped well over 90 percent during that time period.

Another study of the sexual abuse scandal revealed that less than one percent of all contemporary priests had charges pending against them.²³ In comparison, in the New York City public school system one child is sexually abused by a school employee every day, and more than 60 percent of employees accused of sexual abuse remained at jobs within the schools where the alleged abuse had occurred.²⁴ A study of 225 cases of teacher-student sexual abuse in the New York City school system found that all of the accused admitted to the abuse, but none of the abusers had ever been reported to the police and only one percent of them had lost their license to teach.²⁵

What seems so hypocritical is that the sex-drenched media that often criticized the Catholic Church for being one of the few social institutions to say no to unrestrained sexual freedom chastised it for allowing a few individual priests to give full expression to their own sexual desires. A media that condemned the Church for its moral opposition to homosexuality did a quick about-face, berating the Church for not rooting out homosexual conduct between priests and teenage boys.

A second area of American society which has become almost institutionalized in its opposition to religion is Hollywood. Not that many decades ago, the Catholic Church received celebrated treatment in American movies. Caring and dedicated priests were played by Spen-

cer Tracy in *Boys Town*, Pat O'Brien in *Angels With Dirty Faces*, Bing Crosby in *Going My Way* and *Bells of St. Mary's*, and Frank Sinatra in *Miracle of the Bells*. Movies like *Ben-Hur*, *The Robe*, *The Ten Commandments*, and *The Greatest Story Ever Told* were all made from 1953 to 1965 and were both respectful and celebratory of religion. But then the tide changed. On the rare occasions when religion did appear as the subject of a movie, as it did in *The Last Temptation of Christ* in 1988, it was portrayed in a way that offended the sensibilities of Christians. Films like *Dogma* and *Stigmata*, both released in 1999, were vehemently anti-Catholic. More recently, though from an entirely different angle, *The Passion of the Christ* revealed just how anti-religious Hollywood has become.

The historical accuracy of *The Passion's* portrayal of the life and crucifixion of Jesus Christ was endorsed by the great majority of biblical scholars. The film was respectful of Christian religious beliefs, and was made by a man who practices a conservative brand of Catholicism. But even though it was directed and produced by Mel Gibson, one of the big stars in Hollywood, its release was met with immediate outrage and condemnation from that community. Heads of major studios said they would avoid ever again working with Mr. Gibson.²⁶ People who worked on the film were told that it would be a "career wrecker."²⁷ Critics charged the film with being too violent, at the same time that the violence-studded *Kill Bill: Vol. 2* was receiving rave reviews.

The Passion was called "a joyride for sadomasochists," and was described as being akin to "a porn movie."²⁸ Critics accused Gibson of harboring serious anti-Semitic views, arguing that *The Passion* would endanger Jews and subject them to violence and harassment. As one reviewer noted, the film "has made me feel less secure as a Jew in America than ever before."²⁹ Many warned of an outbreak of religious violence. But this predicted violence and

harassment of Jews never did occur.

Besides accusing Gibson of being a bigot, detractors of the film slandered him as a religious zealot and, contrary to the Hollywood code of privacy regarding personal issues, reminded audiences that Gibson had once been an "abuser of various substances."³⁰ Even Gibson's father was dragged into the mudslinging, charged with being an anti-Semite himself. This backlash against Mel Gibson had all the earmarks of a smear campaign, just because he made a movie that bucked the trend of the past thirty years and portrayed Christianity in a positive and even reverential light.

Perhaps the film raised the ire of Hollywood because it brought religious traditionalism back to the media spotlight and to the inescapable attention of secularists. Frequently, the churches and synagogues and mosques that dot the American landscape are not depicted in the media as symbols of freedom, but as incipient threats to the American way of life. Such an attitude was reflected in the characterization of President Bush's faith-based initiative as leading to an American version of the ayatollah, or in Ted Turner's crack that employees who had ashes on their forehead on Ash Wednesday were "Jesus freaks."³¹ Within the American media, devout religious belief is often associated with people who are obsessed with destroying secular freedoms, the chief of which is the right to an abortion.

Education is yet another area of American society in which a hostility to religion has become systemic. In higher education, diversity is the most celebrated of values: racial diversity, ethnic diversity, sexual preference diversity—every kind of diversity except for religious diversity. As David Brooks has noted, "it's appalling that evangelical Christians are practically absent from entire professions, such as academia, the media and filmmaking." But this absence is not entirely surpris-

ing, given the not infrequent view among university faculty that one of “the worst features of the American character” is its “toxic religion.”³²

With regard to racial discrimination, it is the numbers that often provide the strongest evidence. If the racial composition of a company’s workforce is dramatically out-of-line with the racial composition of the community, there is almost a presumption of discrimination. This same approach ought to be taken regarding the religious composition of university faculty. According to survey data, the devoutly religious are grossly underrepresented in those ranks.³³ One study reports that “the lack of religious diversity at many schools is at least as severe as the lack of racial diversity.”³⁴ Another study focusing on the religious make-up of law faculties found that law professors are more than three times as likely as the general population to have no religion.³⁵

The hostility toward traditional religious beliefs in the nation’s universities also shows itself in the way the expression of those beliefs can be ridiculed and derided as “hate speech.” After a professor at Indiana University wrote an essay on why conservative Christians oppose hiring gay people in positions of “moral exemplars,” such as schoolteachers, university officials called the comments “deplorable.”³⁶ They accused the professor of engaging in hate speech and creating a dangerous and discriminatory environment for gay students. As the incident demonstrates, religious viewpoints critical of gay rights are called hate speech, whereas harsh condemnations of devout Christians are often passed over as simply accurate.

Even at the nation’s elementary schools, religion is treated with suspicion or disparagement. One study of widely used textbooks found that religion’s historical role was often slighted, that Protestantism was almost entirely excluded, and that the religious

motives of America’s founders were extirpated.³⁷ In the teaching of ethics, public schools not only ignore religion but often preach a moral relativism that denigrates religious beliefs: Condom use is taught; marriage is ignored; divorce is pronounced acceptable. The mere presence of religious symbols are sniffed out like illegal drugs hidden in backpacks. In a Texas school district, for instance, parents complained that school authorities, prior to a holiday party, searched student “goody bags for items with religious expressions,” which were then confiscated until after the school day had ended.³⁸ One student who brought candy canes with a religious message attached was prohibited from passing them out as gifts to his fellow students.

On social and cultural issues, which to the religiously devout can also be moral issues, educators can display a blatant intolerance toward religious viewpoints. Such was the case at a Michigan high school that, as part of its Diversity Week activities, scheduled a panel discussion on homosexuality and religion.³⁹ A Catholic student who held contrary religious views on the subject, believing homosexuality to be a sin, was refused a position on the panel. She was also prevented from giving a speech on the subject. A faculty advisor explained that allowing religious objectors on the panel “would be like inviting white supremacists on a race panel.”

The Politicization of Religion

The United States is the most religiously active society of the Western democracies. In a 2003 Harris poll, 79 percent of Americans said they believed in God, and more than a third reported that they attended a religious service once a month or more.⁴⁰ Another poll found that 14 percent of Americans belong to a Bible-study group.⁴¹ But despite this widespread religious affiliation, religion has become

politically polarized. According to the Pew Research Center for the People and the Press, those who attend church more than once a week vote Republican 63 percent of the time; and people who seldom or never attend church vote Democratic by a margin of 62 to 38 percent.⁴² Howard Dean, a 2004 Democratic presidential candidate, proudly proclaimed that he had left his church over a dispute about a bike path.

The degree to which this indifference or suspicion toward religion has seeped into the policy agendas of one end of the political spectrum is reflected in the litigation strategy of the American Civil Liberties Union. The ACLU claims to defend all First Amendment rights; yet as the chart above illustrates, over the last four decades it has become increasingly obsessed with a one-sided view of just one of the clauses in the First Amendment (the Establishment Clause). This obsession has in turn caused the ACLU to devote its energies to preventing or stopping any public display or expression of religion.

From 1950 to 1999, the number of cases per decade in which the ACLU involved itself concerning free speech rights grew by a factor of 7, whereas the number of cases in which the ACLU tried to quash some kind of religious expression grew by a factor of nearly 16. Although the ACLU has fought for the speech rights of pornographers, convicted criminals, child molesters, occultists, Nazis, and illegal aliens, it has consistently tried to deny those same rights to religious believers. As William Donohue observes, “removing religion from the womb of culture has become the practiced virtue of the ACLU over the past several decades.”

Not only does the ACLU rarely rise up to the defense of religious liberty, but it

has tried to restrict religious speech in a way it would never allow other forms of speech to be restricted. Whenever local governmental bodies acquiesce in the display of any religious symbol or message, the ACLU rushes to file suit. According to Lawrence Freedman, a former ACLU legal counsel, the ACLU has grown increasingly hostile to religious expression of any kind. But even such a staunch supporter of separation of church and state as historian Leonard Levy recognizes that attempts by the ACLU to eliminate every cooperative relationship between

government and religion can appear “ridiculous.”⁴³ Writing nearly a decade before just such a lawsuit was heard by the United States Supreme

Court, Levy argued that “silly suits, such as those seeking to have declared unconstitutional the words ‘under God’ in the pledge of allegiance” have the deleterious effects of causing social divisiveness and conflict. Despite this advice, however, the ACLU continues the kind of blind retaliation against religion that was evident in a lawsuit in which the ACLU sued a Catholic Youth Center for refusing to open its doors to rock singer Ozzy Osbourne.

A glaring hypocrisy has arisen in the political left’s hostility to fundamentalist Christians. Liberals denounce stereotypes of Muslims but not of “Christian nuts.”⁴⁴ They avoid racially sensitive expressions like “ghetto blaster,” yet routinely call conservative Christians “fanatics.” T-shirts proclaim: “So Many Right-Wing Christians, So Few Lions.” Choice is exalted in connection with the right to abortion, but not with the right of poor children to use education vouchers to attend inner-city religious schools. School boards order the removal of books on Christianity from classrooms, while

ACLU CASES

| | 1950-59 | 1960-69 | 1970-79 | 1980-89 | 1990-99 |
|----------------------------|---------|---------|---------|---------|---------|
| Establishment Clause Cases | 43 | 112 | 331 | 502 | 664 |
| Free Speech Cases | 11 | 24 | 65 | 42 | 78 |

books on Native American religious traditions and the occult are allowed to remain.⁴⁵ And when presented with the conflict between the First Amendment rights of the Ancient Order of the Hibernians and the desire of a group of gays and lesbians to march in the New York City St. Patrick's Day parade, city officials instinctively chose the side of the latter.

*The Secularization of
America's Civil Religion*

Religious morality is being steadily replaced by what has become a political morality. It could even be called a materialistic morality. Guilt feelings now arise not because of some shortcoming of virtue, but because of missing three straight days of working out, or deviating from a low-fat diet, or buying a new suit before it goes on sale. It is a morality focused more on the body than the soul. The moral issues of the day become not those relating to the human soul, but to some politically correct agenda. The selling of tobacco products is cast in a moral light. Tax codes are discussed in moral terms. Environmental policies are called moral

imperatives. Yet traditional moral issues are no longer accepted as such. In their place, moral relativism has taken root. Thus, morality colors political issues, but not personal issues. Opposing the expansion of welfare is immoral, whereas drug use and gang violence and illegitimacy are not immoral.

An increasingly law-based culture has pushed aside the morality-based culture that once prevailed in America. A liberal crusade has evolved to create a kind of civil religion out of a particular political agenda. The quest for virtue has gone from the Scriptures to the legislative committee rooms. The word "values" no longer applies to morality, but is used to describe policy positions. Political correctness has come to epitomize this new brand of civil religion. It is a religion that preaches the evils of Western civilization. It is a religion that fosters a kind of national guilt, and transfers moral authority to the demands of certain sanctioned victims, as if victimization in itself confers moral superiority. And if there is a devil in this new civil religion, it is the moral dictates of a religious order rooted in the past.

1. John C. Jeffries, Jr., and James E. Ryan, "A Political History of the Establishment Clause," 100 *Michigan Law Review* 279, 280-82 (2001). 2. Alan E. Garfield, "A Positive Rights Interpretation of the Establishment Clause," 76 *Temple Law Review* 281, 285 (2003). 3. Alan Schwarz, "No Imposition of Religion: The Establishment Clause Value," 77 *Yale Law Journal* 692, 711 (1968). 4. Richard Rorty, *Philosophy and Social Hope* (New York, 1999), 168. Also, the mass suicide in Jonestown or the suicidal fanaticism of the Branch Dividians in Waco, Texas are used by secularists to paint a negative picture of all religions as prone to such extremist and violent tendencies. 5. Ira C. Lupu, "Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation of Religion," 140 *University of Pennsylvania Law Review* 555, 597-98 (1991). 6. Steven Gey, "Why Is Religion Special?: Reconsidering the Accommodation of Religion Under the Religion Clauses of the First Amendment," 52 *University of Pittsburgh Law Review* 75,

174 (1990). 7. Amy Gutman, *Democratic Education* (Princeton, N.J., 1987), 121. 8. John C. Goodlad, "Education and Community," in *Democracy, Education, and the Schools*, Roger Stone, ed. (San Francisco, 1996), 92. 9. Frederick Mark Gedicks, *The Rhetoric of Church and State: A Critical Analysis of Religion Clause Jurisprudence* (Durham, N. C., 1995), 34, 38. 10. Douglas Laycock, "State RFRAs and Land Use Regulation," 32 *University of California Davis Law Review* 755, 760 (1999). 11. *Ibid.* 12. Michael McConnell, "Why is Religious Liberty the 'First Freedom'?" 21 *Cardozo Law Review* 1243, 1260 (2000). 13. Joseph P. Viteritti, *Choosing Equality: School Choice, The Constitution, and Civil Society* (Washington, D.C., 1999), 120. 14. *Zelman v. Simmons-Harris*, 536 U.S. 639, 686 (Stevens, J., dissenting). 15. *Ibid.*, 717 (Breyer, J., dissenting). 16. Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York, 2000), 65-69. 17. Alan Wolfe, *One Nation, After All* (New York, 1998), 56, 39-87, 275-322. 18.

Rebecca French, "Shopping for Religion: The Change in Everyday Religious Practice and its Importance to the Law," 51 *Buffalo Law Review* 127, 140 (2003). **19.** *United States Catholic Conference and National Conference of Catholic Bishops v. Abortion Rights Mobilization*, 487 U.S. 72 (1988). **20.** Thomas Byrne Edsall, "Blue Movie: The Morality Gap is Becoming the Key Variable in American Politics," *The Atlantic Monthly*, Jan./Feb. 2003, 36. **21.** One recent book details the way in with *The New York Times* not only incorporates an anti-religion stance on its editorial pages, but in the way it reports news stories as well; and this bias then spills over into all the other media outlets that rely on the *Times* for those news stories. Bob Kohn, *Journalistic Fraud: How the New York Times Distorts the News and Why It Can No Longer Be Trusted* (Nashville, Tenn., 2003). **22.** "Scandals in the Church," *New York Times*, Feb. 28, 2004, A1. **23.** Bob von Sternberg, "Insurance Falls Short in Church Abuse Cases; Catholic Dioceses are Forced to Find Other Sources to Pay Settlements," *Star Tribune*, July 27, 2002, 1A. **24.** Douglas Montero, "Secret Shame of Our Schools: Sexual Abuse of Students Runs Rampant," *New York Post*, July 30, 2001, 1. **25.** Charol Shakeshaft and Audrey Cohan, "In Loco Parentis: Sexual Abuse of Students in Schools," *Report to the U.S. Department of Education, Field Initiated Grants*. **26.** Sharon Waxman, "New Film May Harm Gibson's Career," *New York Times*, February 26, 2004, B1. **27.** Julia Duin,

"Passion Critics Retract Reviews," *The Washington Times*, Feb. 27, 2004. **28.** Frank Rich, "Mel Gibson Forgives Us For His Sins," *New York Times*, March 7, 2004, AR1. **29.** *Ibid.* **30.** Waxman, B1. **31.** "Review & Outlook: What Would Jefferson Do?" *Wall Street Journal*, Mar. 9, 2001, W15. **32.** Paul Starobin, "The Angry American," *Atlantic Monthly*, Jan./Feb. 2004, 132, 134. **33.** Carter, *Culture of Disbelief*, 57. **34.** Eugene Volokh, "Diversity, Race as Proxy, and Religion as Proxy," 43 *University of California Los Angeles Law Review* 2059, 2072 (1996). **35.** *Ibid.*, 2073. **36.** Scott Smallwood, "A Weblog Starts a Fire," *The Chronicle of Higher Education*, Nov. 7, 2003, A10. **37.** Paul C. Vitz, *Censorship: Evidence of Bias in our Children's Textbooks* (Ann Arbor, Mich. 1986), 16-18. **38.** Kim Breen, "Plano ISD Again Threatened with Suit," *Dallas Morning News*, Dec. 18, 2003, 4B. **39.** *Hansen v. Ann Arbor Public Schools*, 293 F.Supp.2d 780 (E.D. Mich. 2003). **40.** Peter Schneider, "Across a Great Divide," *New York Times*, March 13, 2004, A13. **41.** Diane Cole, "Hooked on the Book," *U.S. News & World Report*, March 15, 2004, 78. **42.** Jim Wallis, "Putting God Back in Politics," *New York Times*, Dec. 28, 2003. **43.** Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York and London, 1986), 240. **44.** Nicholas Kristof, "Hug an Evangelist," *New York Times*, April 24, 2004, A25. **45.** Carter, *Culture of Disbelief*, 57.