

# The Importance of Church-State Separation

*Edd Doerr*

*During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the clergy; ignorance and servility in laity; in both, superstition, bigotry, and persecution.*

— James Madison, *Memorial and Remonstrance*

Separation of church and state, of religion and government, is probably the United States' most important single contribution to political theory and practice. That separation, though generally supported by most Americans over the past two centuries, is nonetheless in serious jeopardy today. In order to understand the current threats to separation and to promote strategies for defending that vitally important principle, it is necessary to take a deep and broad historical perspective, however condensed it must be for the purposes of a chapter of reasonable length. This chapter, then, will sketch the origins of the principle, trace its development from theory to practice, summarize the very real current threats (in no special order), and offer suggestions for action.

## **BACKGROUND**

Throughout history and throughout the world, religion and government have been closely intertwined. In some cultures there was/is no distinc-

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tion between these two powerful forces. Some Islamic and even some Christian fundamentalists insist today that there should be no separation. While in Western history, of which the United States is a product, religion and government came to be distinguished or distinguishable in theory, in actual fact they were/are linked in a variety of ways and to varying degrees.

For example, some Western countries provide tax support to religious schools; some still have established churches (in the United Kingdom the monarch is titular head of the Church of England, a fact that resulted in the curious anomaly of the governor of Maryland enjoying the same titular status, even when the governor was Jewish); some still have compulsory or semicompsulsory church taxes.

Established churches were the rule when the first Europeans – British, French, Dutch, German, Swedish, and even Jewish – settled the east coast of North America. Although many of these Europeans came to America for freedom of religion, they brought the European established church tradition with them. By the end of the seventeenth century, the Anglican (Episcopal) Church was established in all colonies from Maryland to Georgia, while Puritan Congregationalism was established in all the New England colonies except Rhode Island.

By the start of the American Revolution, the colonies had become fairly pluralistic and included Anglicans, Congregationalists, Roman Catholics, Baptists, Methodists, Presbyterians, Lutherans, Quakers, Unitarians, and Jews. This pluralism set the stage for the development of church-state separation. The idea was first articulated by Roger Williams, the Rhode Island maverick, who seems to have influenced John Locke, and finally flowered under Thomas Jefferson and James Madison in Virginia during and immediately after the Revolution. By 1786, thanks in part to Madison's brilliant 1785 pamphlet, *Memorial and Remonstrance against Religious Assessments*,<sup>1</sup> the church-state separation principle become law in Virginia, setting the pattern that the other states would sooner or later follow.

In 1787, the United States Constitution created the country's present form of government. Significantly, it implies the principle of church-state separation by granting to the national government no authority whatever to meddle with religion. Indeed, the only mentions of religion are in Article VI, prohibiting religious tests for public office and mandatory oaths of office.

The new Constitution would be ratified, but only after Madison and politicians in Virginia and elsewhere promised to add a Bill of Rights to

it. Indeed, Madison's good friend Jefferson, then ambassador to France, stressed the importance of such an action. The first Congress, meeting in 1789, drafted twelve amendments, ten of which were approved and ratified. After much discussion, the two houses of Congress settled on the following wording for what became the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

In recent years, there has been much debate over whether the First Amendment supports the "separationist" side, as most Supreme Court justices have held since the first major case on the issue in 1947, or the "accommodationist" or "nonpreferentialist" side, represented today by Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas and on Patrick Henry's losing side in Virginia in the 1780s. An examination of the debates over the text of the amendment shows that the separationists, following Jefferson and Madison, won.<sup>2</sup>

The "separation of church and state" metaphor was popularized by President Jefferson's January 1, 1802, letter to the Baptist Association of Danbury, Connecticut, a letter that Jefferson cleared with Attorney General Levi Lincoln. Jefferson wrote, "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and state."<sup>3</sup>

In 1878, the US Supreme Court noted that "Jefferson's use of the term 'wall of separation between church and state' may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured."<sup>4</sup>

Not until 1947, however, did the Supreme Court actually apply the separation principle. The decision in *Everson v. Board of Education* put it this way:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws, which aid one religion, aid all religions, or prefer one religion to another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activi-

ties or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to “erect a wall of separation between church and state.”<sup>5</sup>

Backtracking a bit, Jefferson acknowledged in his 1802 letter to the Danbury Baptists that the First Amendment applied only to the federal government, not to state and local governments. It was only in the aftermath of the Civil War that Congress approved and the states ratified the Fourteenth Amendment, which was intended to make the Bill of Rights applicable to state and local governments.<sup>6</sup>

Meanwhile, following the example of Virginia, the rest of the states adopted the separation principle.<sup>7</sup> It is significant that the last two states admitted to the Union in 1959, Alaska and Hawaii, included the separation principle in their constitutions.<sup>8</sup> Perhaps even more significant is the fact that in 1952 Congress considered and approved the Constitution of the Commonwealth of Puerto Rico, which not only reiterates the language of the First Amendment but also adds these words, “There shall be complete separation of church and state.”<sup>9</sup>

Church-state separation, then, is, as they say, as American as apple pie. Nonetheless, hurricane winds are blowing that would topple Jefferson’s wall.

## ***THE THREATS TODAY***

Storm warnings need to be posted for all to see. The threats to the wall are very real and very serious. Led by sectarian special interests and by televangelists such as Pat Robertson, Jerry Falwell, and numerous others, the Religious Right has virtually taken over one of our major political parties on the national and state level, a great many politicians feel that they are beholden to the Religious Right, the media have been shifting steadily to the right, and the Supreme Court itself has drifted away from the strong separationist position it held for so long after 1947.

A complete catalogue of all the threats to the “wall of separation,” great and small, would stretch this chapter to intolerable length, so it will concentrate on the most serious threats: tax aid to faith-based schools and charities, dealing with religion in public schools, and reproductive freedom of conscience.

## **SCHOOL VOUCHERS AND THEIR ANALOGUES**

Since around 1960, there has been a rising chorus of demands for tuition vouchers, tuition tax credits (sometimes referred to as “tax code vouchers”), and other forms of federal and/or state tax aid for nonpublic schools. About 90 percent of US kindergarten through twelfth-grade students attend public schools in some fifteen thousand local school districts. Of the remaining 10 percent, about 90 percent attend Catholic, fundamentalist, Quaker, Jewish, Adventist, Muslim, and other “faith-based” schools. The religious demands originally came mainly from the Catholic-school sector, which claimed about 90 percent of the enrollment in faith-based schools in 1965, about 5.5 million students. By 2004, for reasons to be discussed later, Catholic school enrollment had plunged to about 2.5 million. Since 1965, then, total nonpublic school enrollment has declined both proportionally and in absolute numbers. The rise in evangelical or fundamentalist schools, which began with the desegregation of public schools, has not equaled the decline in Catholic schools.<sup>10</sup>

Nonreligious support for vouchers and their analogues started with economist Milton Friedman, soon joined by others of like mind. The usual rationale given for vouchers, and similar programs, is that parents should be able to choose where to educate their children and that competition among schools will somehow improve all schools. The literature on this subject is too vast even for a short bibliography, so this discussion will be as comprehensive as possible in as little space as possible.<sup>11</sup>

Parental choice in schooling is largely a chimera. A 1998 US Department of Education study found that there are not all that many seats available in nonpublic schools, that almost invariably nonpublic schools practice forms of discrimination in admissions that would be intolerable in public schools and which would not be abandoned, and that very few faith-based schools would be willing to exempt tax-supported voucher students from denominational religious instruction.<sup>12</sup> The report, for reasons unknown, neglected to mention that faith-based schools frequently use faith criteria in hiring and firing teachers. Further, faith-based schools tend to be pervasively sectarian and often ideology-oriented.<sup>13</sup> Thus the pervasively sectarian nature of the vast majority of nonpublic schools and their admissions and hiring policies would tend to homogenize student bodies by religion and perhaps less often by social class, ethnicity, ability level, and other ways. A large-

scale voucher plan, then, would tend to fragment school populations and communities along religious and other lines to a far greater degree than at present. As for competition improving all schools, it should be obvious that Catholic, Jewish, Muslim, Lutheran, and Protestant fundamentalist schools do not really compete with one another.

Nor does the evidence support the claims that voucher plans, whether public or private, improve all schools, whether in the United States or in other countries with some form of “school choice.” In the two cities that already have voucher plans as of 2004, Milwaukee and Cleveland, state laws do not permit meaningful evaluation of the supposed benefits of tax support for nonpublic schools.

So much for the case for school vouchers or their analogues. The case against vouchers is so much stronger that in the twenty-five state-wide referendum elections on vouchers or their analogues from coast to coast between 1967 and 2000, vouchers were rejected by an average margin of two to one, most recently in California and Michigan in 2000.<sup>14</sup>

Tax aid to nonpublic schools through vouchers, at anything close to current per capita spending on public schools, would necessarily either increase taxes or decrease support for public education. In an era of severe strain on federal and state budgets, we are not likely to see the necessary tax hikes. Moreover, it is already well known that US public schools are seriously underfunded and that within virtually every state, funding for public education has long been inequitably distributed. And just to repair or replace broken-down public school buildings throughout the country, according to one federal study, would cost far more than the \$87 billion that President George W. Bush requested in mid-2003 for the reconstruction of Iraq.

And the preceding does not factor in the \$2 billion or so in federal and state funds going to faith-based schools annually, the huge cost of simply transporting students to a growing proliferation of nonpublic schools, or the fact that voucher costs would impact adversely on rural and smaller communities. In Pennsylvania, for example, the state’s 501 public school districts are required by state law to transport students up to ten miles beyond school district boundaries, which has already imposed a heavy burden on many districts.

We might remember, too, that the Fleishman Report to New York governor Nelson Rockefeller more than thirty years ago concluded that it would be cheaper for the state to take all nonpublic school students into public schools than for the state to support the nonpublic schools.<sup>15</sup>

Economics aside, vouchers would force taxpayers to support the forms of discrimination and religious indoctrination common in nonpublic schools, the sort of thing that Jefferson labeled “sinful and tyrannical.”

We come at last to the question of constitutionality. Unfortunately, during the last decade or so, the Supreme Court has moved away from the fairly strict separationism of 1947. In June 2002, the Court even held that the Cleveland school voucher plan does not violate the First Amendment, a ruling that defied logic, common sense, and the facts.<sup>16</sup> So, as civil libertarians learned in recent years, the Supreme Court is no longer a reliable defender of the fundamental liberties of citizens.

Fortunately, public opinion and most state constitutions continue to maintain a wall of separation although the Wisconsin and Ohio courts have not seen fit to do so. However, a new effort by voucher advocates is under way to remove state constitutional barriers to vouchers, tied to a grossly exaggerated claim that state constitutional barriers to vouchers are the product of nineteenth-century anti-Catholic bigotry.<sup>17</sup> It is to be hoped that this effort will not succeed, as in 1972 the Supreme Court turned back an effort to do the same thing in Missouri.<sup>18</sup> The charge of anti-Catholic bigotry is refuted by the fact that in 1986 voters in 50 percent Catholic Massachusetts voted 70 percent to 30 percent to defeat an attempt to change the state constitution to allow vouchers.<sup>19</sup> According to exit polls in California and Michigan in 2000, Catholic voters rejected vouchers by about the same two-to-one margin as non-Catholics.

It is worth mentioning that the decline in Catholic school enrollment from half of American Catholic children in 1965 to less than 20 percent in 2004 is due to several factors: the election of a Catholic, pro-separation president in 1960; the Supreme Court’s 1962-63 rulings against the essentially Protestant practice of school-sponsored prayer and Bible reading in public schools; the liberalization of the Catholic Church under Pope John XXIII and Vatican Council II, 1962-65; negative reaction to the 1968 papal encyclical condemning contraception; and Catholic achievement of proportionate representation in politics.

Another ace in the hole in the struggle over vouchers may well be a seldom-mentioned 1973 Supreme Court ruling that held that even textbook loans “are a form of tangible financial assistance benefiting the schools themselves” and that “a state’s constitutional obligation requires it to steer clear not only of operating the old dual system of racially segregated schools but also of giving significant aid to institutions that practice racial or *other invidious discrimination*” (empha-

sis mine).<sup>20</sup>

The last chapters in the battle over school vouchers have yet to be written.

## **CHARITABLE CHOICE**

There is no doubt that religion-related charities have done enormous good in this country and elsewhere. Sometimes this is done entirely with voluntarily donated funds but more recently with at least partial public funding. Until 2003, however, religion-related charities receiving tax aid were required by civil rights laws to avoid discrimination in hiring and providing services and to avoid proselytizing.

However, beginning with President George W. Bush, efforts are being made to eliminate the nondiscrimination requirements, either by law or executive order, and to allow these charities to promote religion itself if that is their wish, as in drug or alcohol counseling or prisoner rehabilitation. As I have pointed out elsewhere, this new movement, if not checked, will create a growing proliferation of “unregulated, unaccountable charities of uncertain efficiency competing for scraps of a shrinking public pie” as well as “violating Madison’s 1785 warning that using ‘religion as an engine of civil policy’ would be ‘an unhallowed perversion of the means of salvation’.”<sup>21</sup>

A colleague and I have summarized the objections to the new movement, evidently introduced to President Bush by Texas fundamentalist writer Marvin Olasky, as follows:

President Bush’s “charitable choice” expansion would clearly violate the church-state separation principle; it would have government pay religious groups for what they have always done on their own; religious minorities could suffer discrimination under the plan; it could radicalize the delivery of services and threaten the religious freedom of recipients; participating churches could lose their “prophetic edge” and become domesticated branches of the civil bureaucracy; government will be forced to choose among competing religious programs, with the most politically connected getting more than their “fair share”; nonsectarian and secular programs could become second-class and underfunded; religious programs are not necessarily superior to secular services; the promoters of “charitable choice” often use the idea for partisan political advantage; President Bush has used dishonest tactics and appeals to religious prejudice to win support for his program.<sup>22</sup>

These objections could be expanded upon, but that would require a great deal of space. Suffice it to note that a study of the deleterious effects of charitable choice in Texas under then-governor George W. Bush was released by the Texas Freedom Network late in 2002.<sup>23</sup>

## **RELIGION IN PUBLIC SCHOOLS**

Given the astonishing and growing pluralism of religion and other lifestyles in the United States and the constitutional requirement of separation of church and state, it should be obvious that the public schools serving American children must be religiously neutral. The courts have dealt with some of the issues involving public schools,<sup>24</sup> but not all, and with fifteen thousand locally responsible school districts in the country, there is no accurate way of surveying all the possible problems and their permutations. So we will have to make do with a hopefully not too superficial overview.

Contrary to popular opinion, government-sponsored prayer and Bible reading, essentially nineteenth-century Protestant affairs, were never universal. They were confined mainly to the East Coast and the South. The practice was halted by the Supreme Court in 1962 and 1963 rulings.<sup>25</sup> Despite tremendous exertions by the Religious Right, all subsequent attempts to amend the Constitution to authorize school-sponsored devotions failed to obtain the necessary two-thirds vote of either house of Congress, thanks in large measure to opposition to such amendments by leaders of mainstream religious denominations. Controversies continue, but even a weakened Supreme Court has not shown signs of caving in on this issue.

Controversies still erupt, however, over the teaching of evolution in public school science classes. Despite the fact that in 1987 the Supreme Court ruled that Fundamentalist biblical “creationism” is religion, not science, and therefore has no place in public school science classes,<sup>26</sup> creationists have not given up. They exert every effort, especially in the South, to water down the teaching of evolution or to get public schools to promote the notion of “intelligent design,” a modified form of creationism that has no significant scientific support.

On the whole, as most of the witnesses (including this writer) who testified before a mid-1998 hearing before the US Commission on Civil Rights agreed, “the relevant Supreme Court rulings and other developments have pretty much brought public education into line with the

religious neutrality required by the First Amendment. . . .”<sup>27</sup> In August 1995, the US Department of Education issued advisory guidelines to all school districts on religious expression in public schools. At the 1998 Civil Rights Commission hearing, Julie Underwood, general counsel for the National School Boards Association, told the hearings that inquiries to the NSBA about what is or is not permitted in public schools declined almost to the vanishing point once the guidelines were published.<sup>28</sup>

The guidelines grew out of a document titled “Religion in the Public Schools: A Joint Statement of Current Law,” issued in April 1995 by a broad coalition of thirty-six religious and civil liberties groups. Declaring that the Constitution “permits much private religious activity in and around the public schools and does not turn the schools into religion-free zones,” the statement went on to detail what is and is not permissible in the schools.<sup>29</sup>

On July 12, 1995, President Clinton discussed these issues in a major address at – appropriately – James Madison High School in northern Virginia and announced that he was directing the secretary of education, in consultation with the attorney general, to issue advisory guidelines to every public school district in the country. The guidelines were issued in August. In his weekly radio address of May 30, 1998, anticipating the June 4 House debate and vote on the Istook (R-OK) school prayer amendment, President Clinton again addressed the issue and announced that the guidelines, updated slightly, were being reissued and sent to every school district. This effort undoubtedly helped to sway the House to vote down the Istook amendment.

The guidelines, based on fifty years of court rulings (from the 1948 *McCullum* decision to the present), on common sense, and on a healthy respect for American religious diversity, have proved useful to school boards, administrators, teachers, students, parents, and religious leaders. Following is a brief summary:

*Permitted:* “Purely private religious speech by students”; nondisruptive individual or group prayer, grace before meals, religious literature reading; student speech about religion or anything else, including that intended to persuade, as long as it stops short of harassment; private baccalaureate services; teaching about religion; inclusion by students of religious matter in written or oral assignments where not inappropriate; student distribution of religious literature on the same terms as other material not related to

school curricula or activities; some degree of right to excusal from lessons objectionable on religious or conscientious grounds, subject to applicable state laws; off-campus released time or dismissed time for religious instruction; teaching civic values; student-initiated “Equal Access” religious groups of secondary students during noninstructional time.

*Prohibited:* School endorsement of any religious activity or doctrine; coerced participation in religious activity; engaging in or leading student religious activity by teachers, coaches, or officials acting as advisors to student groups; allowing harassment of or religious imposition on “captive audiences”; observing holidays as religious events or promoting such observance; imposing restrictions on religious expression more stringent than those on nonreligious expression; allowing religious instruction by outsiders on school premises during the school day.

*Required:* “Official neutrality regarding religious activity.”<sup>30</sup>

In reissuing the guidelines, Secretary of Education Richard Riley urged school districts to use them or to develop their own, preferably in cooperation with parents, teachers, and the “broader community.” He recommended that principals, administrators, teachers, schools of education, prospective teachers, parents, and students all become familiar with them.<sup>31</sup> As President Clinton declared in his May 30, 1998, address, “Since we’ve issued these guidelines, appropriate religious activity has flourished in our schools, and there has apparently been a substantial decline in the contentious argument and litigation that has accompanied this issue for too long.” The incoming Bush administration in 2001 reissued the guidelines in a somewhat weakened and confusing form.<sup>32</sup>

As good and useful as the guidelines are, especially the original versions, there remain three areas in which problems continue: proselytizing by adults in public schools, music programs that fall short of the desired neutrality, and teaching appropriately *about* religion.

In addition, conservative evangelists such as Jerry Johnston and Jerry Falwell have described public schools as “mission fields.” In communities from coast to coast, proselytizers from well-financed national organizations, such as Campus Crusade and Young Life, and volunteer “youth pastors” from local congregations have operated in public schools for years. They use a variety of techniques: presenting assembly programs featuring “role model” athletes, getting permission from school

officials to contact students one-on-one in cafeterias and hallways, volunteering as unpaid teaching aides, and using substance abuse lectures or assemblies to gain access to students. It is not uncommon for these activities to have the approval of local school authorities. Needless to say, these operations tend to take place more often in smaller, more religiously homogeneous communities than in larger, more pluralistic ones.

Religious music in the public school curriculum, in student concerts and theatrical productions, and at graduation ceremonies has long been a thorny issue. As Secretary Riley's 1995 and 1998 guidelines and court rulings have made clear, schools may offer instruction about religion, but they must remain religiously neutral and may not formally celebrate religious special days. What, then, about religious music, which looms large in the history of music?

There should be no objection to the inclusion of religious music in the academic study of music and in vocal and instrumental performances, as long as the pieces are selected primarily for their musical or historical value, as long as the program is not predominantly religious, and as long as the principal purpose and effect of the inclusion is secular. Thus there should be no objection to inclusion in a school production of religious music by Bach or Aaron Copland's arrangement of such nineteenth-century songs as "Simple Gifts" or "Let Us Gather by the River." What constitutes "musical or historical value" is, of course, a matter of judgment and controversy among musicians and scholars, so there can be no simple formula for resolving all conflicts.

Certain activities should clearly be prohibited. Public school choral or instrumental ensembles should not be used to provide music for church services or celebrations, though a school ensemble might perform a secular music program in a church or synagogue as part of that congregation's series of secular concerts open to the public and not held in conjunction with a worship service. Hymns should not be included in graduation ceremonies. Students enrolled in music programs for credit should not be compelled to participate in performances that are not primarily religiously neutral.

As for teaching *about* religion, while one can agree with the Supreme Court that public schools may, and perhaps should, alleviate ignorance in this area in a fair, balanced, objective, neutral, academic way, getting from theory to practice is far from easy. The difficulties should be obvious. Teachers are very seldom adequately trained to teach about religion. There are no really suitable textbooks on the mar-

ket. Educators and experts on religion are nowhere near agreement on precisely what ought to be taught, how much should be taught and at what grade levels, and whether such material should be integrated into social studies classes, when appropriate, or offered in separate courses, possibly electives. And those who complain most about the relative absence of religion from the curriculum seem to be less interested in neutral academic study than in narrower sectarian teaching. Textbooks and schools tend to slight religion not out of hostility but because of low demand, lack of time (if you add something to the curriculum, what do you take out to make room for it?), lack of suitable materials, and fear of giving offense or generating controversy.

The following questions hint at the complexity of the subject:

- Should teaching about religion deal only with the bright side of it and not with the dark side (religious wars, controversies, bigotry, persecutions, and so on)?
- Should instruction deal only with religions within the United States, or should it include religions throughout the world?
- Should it be critical or uncritical?
- Should all religious traditions be covered or only some?
- Should the teaching deal only with sacred books – and, if so, which ones and which translations?
- How should change and development in all religions be dealt with? To be more specific, should we teach only about the Pilgrims and the first Thanksgiving, or also about the Salem witch trails and the execution of Quakers?
- Should schools mention only the protestant settlers in British North America or also deal with French Catholic missionaries in Canada, Michigan, and Indiana and with the Spanish Catholics and secret Jews in our Southwest?
- Should we mention that Martin Luther King was a Baptist minister but ignore the large number of clergy who defended slavery and then segregation on biblical grounds?
- Should teaching about religion cover such topics as the evolution of Christianity and its divisions, the Crusades, the Inquisition, the religious wars after the Reformation, the long history of anti-Semitism and other forms of murderous bigotry, the role of religion in social and international tensions, the development in the United States of religious liberty and church-state separation, denominations and religions founded in the United States, controversies over women's rights and reproductive rights, or

newer religious movements?

The probability that attempts to teach about religion will go horribly wrong should caution public schools to “make haste very slowly” in this area. Perhaps other curricular inadequacies – less controversial ones, such as those in the fields of science, social studies, foreign languages, and world literature – should be remedied before we tackle the thorniest subject of all.

The American landscape has no shortage of houses of worship, which generally include religious education as one of their main functions. Nothing prevents these institutions from providing all the teaching about religion that they might desire.

The late Supreme Court Justice William Brennan summed up the constitutional ideal rather neatly in his concurring opinion in *Abington Township S.D. v. Schempp*, the 1963 school prayer case:

It is implicit in the history and character of American public education that the public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influence of any sort – an atmosphere in which children may assimilate a heritage common to all American groups and religions. This is a heritage neither theistic nor atheistic, but simply civic and patriotic.<sup>33</sup>

## **REPRODUCTIVE RIGHTS**

Freedom of conscience and freedom of choice in reproductive matters are often regarded as just “women’s issues.” They are that, but they are also religious liberty and church-state issues and, beyond that, have a direct bearing on the global problems of overpopulation and sustainable growth. That they are religious liberty and church-state issues is attested to by the existence of the Religious Coalition for Reproductive Choice, founded in 1973, a coming together of forty Catholic, Protestant, Jewish, Unitarian Universalist, and humanist denominations and groups that embrace a wide spectrum of views on reproductive matters but which agree on the importance of reproductive choice as a religious liberty issue. Arrayed on the other side of the question are powerful religious leaders representing the more conservative end of the Catholic, Protestant, and Jewish spectrum.<sup>34</sup> It should also be noted that conservative religious opposition to choice has less to do with theology (the Bible is silent on abortion) than with a patriarchal bent toward male dominance.

The Supreme Court's 1973 ruling in *Roe v. Wade* and *Doe v. Bolton* recognized a constitutional right to privacy that covered not only the right to use contraception but also the right of a woman to choose to terminate a problem pregnancy. *Roe* has so far stood the test of time and public opinion, but the Supreme Court has allowed state legislatures to impose some restrictions on the right to choose, such as waiting periods, mandatory presentation of misinformation to women seeking abortions and burdensome or excessive regulation of reproductive health clinics.

Although the Supreme Court has dealt with reproductive choice as a "constitutional right to privacy" matter, the issue also clearly has to do with "establishment" and "free exercise." Government restriction of choice is tantamount to establishing or preferring one religious perspective over all others, that is, the theological notion that "personhood" begins at conception as opposed to the view that "personhood" begins much later, such as after the cerebral cortex is sufficiently developed to permit the possibility of consciousness or at birth. Governmental restriction on choice also runs counter to "free exercise," which is largely synonymous with freedom of conscience.

As for the relation between reproductive choice and global population/sustainability, the Reagan, Bush I, and Bush II bans on US aid to overseas reproductive health agencies that might provide abortions or abortion counseling with other than US tax monies represent political cave-ins to sectarian special interests, which exacerbate population/sustainability problems and actually endanger the health and lives of countless women and children in developing countries.

One tragic consequence of conservative religious influence on public policy was what happened to a report titled "Implications of Worldwide Population Growth for US Security and Overseas Interests" ordered by President Nixon and approved in 1974 by President Ford.<sup>35</sup> Had this report not been classified and suppressed for fifteen years, it might have helped prevent the Rwanda massacre in the early 1990s, which it essentially predicted, and allowed the United States and other countries to get a more timely start on dealing with the population/sustainability problem. The report actually anticipated the proposals that the Clinton administration brought to the 1994 UN population conference in Cairo. Another consequence was President George W Bush's withholding of \$34 million that Congress had appropriated for the United Nations Population Fund.

## WHAT TO DO?

Though the preceding discussion is admittedly sketchy and incomplete, it does present a bird's-eye view of a major set of problems. Added to the plate of other concerns of thoughtful citizens in the arena of politics, civil liberties, civil rights, environment, economics, and so forth, we clearly face a concern overload. No one person or group can deal with all of these issues, but each of us, I think, has a moral and social obligation to become involved to the extent of our ability and resources.

We can all participate in the political process, not merely by voting but also by working in and supporting the political organizations and candidates we prefer. We also need to bear in mind that no religious tradition is monolithic. Liberals and progressives in all traditions can, do, and must cooperate in the defense of fundamental liberties, while fundamentalist factions in many traditions work for opposite ends.

We can work in and through – and provide financial support for – the local, state, and national organizations that we consider important. A few of the groups actively dealing with the problems treated in this article are the American Civil Liberties Union, People for the American Way, Americans for Religious Liberty, the Interfaith Alliance, teacher and school administrator organizations, NARAL Pro-Choice America, Planned Parenthood, the Religious Coalition for Reproductive Choice, and the Texas Freedom Network, to name but a few. As the old proverb has it, it is better to light a candle than to curse the darkness.

## NOTES

1. James Madison, "Memorial and Remonstrance against Religious Assessments," in *The Papers of James Madison*, ed. William T. Hutchinson and William M. E. Rachal (Chicago: University of Chicago Press, [1962]-1991), 8:298-304; "Amendment I (Religion)," *The Founders' Constitution*, [http://press-pubs.uchicago.edu/founders/documents/amendI\\_religions43.html](http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html). Also published in its entirety in *Great Quotations on Religious Freedom*, comp. and ed. Albert J. Menendez and Edd Doerr (Amherst, NY: Prometheus Books, 2002), p. 209.

2. Although a whole library has been devoted to this issue, the most concise treatment of it is probably Robert S. Alley's *Public Education and the Public Good* (Silver Spring, MD: Americans for Religious Liberty, 1996), reprinted from Alley's long article in *William and Mary Bill of Rights Journal* 4, no. 1 (Summer 1995).

3. Jefferson to the Baptist Association of Danbury, Connecticut, January 1, 1802, in *Writings* (New York Literary Classics of the US, 1984), p. 510.

4. *Reynolds v. United States*, 98 U.S. 145 at 164.
5. *Everson v. Board of Education*, 330 U.S. 15, 16.
6. Irving Brant, *The Bill of Rights: Its Origin and Meaning* (Indianapolis: Bobbs-Merrill, 1965), pp. 318-43.
7. Edd Doerr and Albert J. Menendez, *Religious Liberty and State Constitutions* (Amherst, NY: Prometheus Books, 1993).
8. *Ibid.*, pp. 20, 35.
9. *Ibid.*, p. 16.
10. See, for example, Edd Doerr and Albert J. Menendez, *Church Schools and Public Money: The Politics of Parochialism* (Amherst, NY: Prometheus Books, 1991); and Edd Doerr, Albert J. Menendez, and John M. Swomley, *The Case against School Vouchers* (Amherst, NY: Prometheus Books, 1996).
11. *Ibid.*
12. U.S. Department of Education, *Barriers, Benefits, and Costs of Using Private Schools to Alleviate Crowding in Public Schools* (Washington, DC: November 3, 1999), cited in Edd Doerr, "Give Us Your Money . . .," *Phi Delta Kappan* (June 1999).
13. See Albert J. Menendez, *Visions of Reality: What Fundamentalist Schools Teach* (Amherst, NY: Prometheus Books, 1993); Edd Doerr, *Catholic Schools: The Facts* (Amherst, NY: Humanist Press, 2000); Frances R.A. Patterson, *Democracy and Intolerance: Christian School Curricula, School Choice, and Public Policy* (Bloomington, IN: Phi Delta Kappa Educational Foundation, 2003).
14. Albert J. Menendez, "Voters Versus Vouchers: The Forgotten Factor in the Debate," *Americans for Religious Liberty Newsletter* 86, no. 1 (2004).
15. *The New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education* (Albany, NY: February 9, 1972), cited in *Church and State* (April 1972).
16. *Zelman v. Simmons-Harris*, 122 S. Ct., at 2460 (2002). The dissenting opinion showed how the majority played word games to dilute the Cleveland program, 96 percent of whose funds went to sectarian schools.
17. See Albert J. Menendez, "Blaming Blaine: A Distortion of History," *Voice of Reason*, no. 2 (2003).
18. *Brusca v. State of Missouri*, 332 F.Supp. 405 US 1050.
19. Albert J. Menendez, "Voters versus Vouchers."
20. *Norwood v. Harrison*, 93 S. Ct. 2804.
21. Edd Doerr, letter to the editor, *New York Times*, May 2, 2001.
22. Albert J. Menendez and Edd Doerr, *The Case against Charitable Choice: Why President Bush's Faith-Based Initiative Is Bad Public Policy* (Silver Spring, MD: Americans for Religious Liberty, 2001).
23. Texas Freedom Network Education Fund, "The Texas Faith-Based Initiative at Five Years: Warning Signs as President Bush Expands Texas-Style Program to National Level," Texas Freedom Network, October 10, 2002, <http://www.tfn.org/issues/charitablechoice/report02.html>.

24. Perhaps the most useful summary of leading Supreme Court rulings in this area is Robert S. Alley, ed., *The Constitution and Religion: Leading Supreme Court Cases on Church and State* (Amherst, NY: Prometheus Books, 1999).

25. *Ibid.*, pp. 171-93, 195-218, 249-69.

26. *Ibid.*, pp. 219-31.

27. Edd Doerr, "Religion and Public Education," *Phi Delta Kappan* (November 1998): 223-25.

28. *Ibid.*, p. 224.

29. American Civil Liberties Union et al., "Religion in the Public Schools: A Joint Statement of Current Law," April 1995, Religious Liberty, American Civil Liberties Union Freedom Network archives, <http://archive.aclu.org/issues/religion/relig7.html>.

30. Doerr "Religion and Public Education," p. 224.

31. *Ibid.*

32. American Civil Liberties Union et al., "Religion in the Public Schools."

33. *Abington Township S.D. v. Schempp*, 374 U.S. 203, at 224-25.

34. While there is an abundance of literature on this subject, two useful books are Edd Doerr and James W. Prescott, eds., *Abortion Rights and Fetal "Personhood"* (Centerline Press, 1990), and John M. Swomley, *Compulsory Pregnancy: The War against American Women* (Amherst, NY: Humanist Press, 1999).

35. Stephen D. Mumford, *The Life and Death of NSSM 200: How the Destruction of Political Will Doomed a U.S. Population Policy* (Raleigh, NC: Center for Research on Population and Security, 1996).

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Doerr is a prolific writer, the author, coauthor, editor, or translator of twenty books that include *Great Quotations in Religious Freedom*. His editorials and letters to the editor regularly appear in such major newspapers as *The New York Times*, and he has addressed audiences in more than thirty states and five countries and led workshops at humanist conferences and Unitarian Universalist general assemblies, to which he has often been a delegate.