

Separation of Church and State

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"The religious liberty proclaimed by the First Amendment is not a piece of religious mysticism, but a practical political principle, ethically grounded on the obligations of the State to the consciences of its citizens and to its own end—social harmony, prosperity and peace."

With the advent of cold weather, the fires of religious controversy may be expected once again to blaze up cheerily. They die down during the summer, quite understandably; for—to paraphrase a famous saying—misery were it, in those scorching days, to be alive, but to be in controversy were very hell. However, as autumn wears on to winter, a man can catch his breath, and perhaps use a bit of it to blow up some of the dying embers.

The chief embers already brightly glowing are, of course, those of the old "separation of Church and State" issue. They were blown up most recently (and with reckless success) in Wisconsin, in the debate over bus transportation for parochial-school children. And dozens of articles and speeches will make the blaze hotter and hotter. I think, however, that what the whole controversy needs is a lot more light, rather than more heat.

I hear it said, of course, that we Catholics cause confusion and dismay to our Protestant brethren by our stand on religious liberty. But my initial and frank reply is that we are not the prime cause of the confusion. As a matter of fact, the Protestant mind is itself natively confused, endemically unclear in this whole matter. Evidence of the fact may readily be gathered by going through the theoretical part of Dr. Bates's recent book, *Religious Liberty: An Inquiry*. The confusion of thought that pervades the whole book grows almost riotous when the author takes up the nature and grounds of religious liberty. He does indeed make it obvious that Protestants are most terrifically in moral earnest over the so-called "principle of separation of Church and State," but he fails rather signally to explain what kind of "principle" it is, and what it rests on, demands, implies or excludes.

Similar confusions appear in contemporary discussions of the first clause in the First Amendment to the U. S. Constitution: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." These words, it is said, embody the "principle of separation of Church and State." Then the confusion begins. Imperceptibly it is assumed that the First Amendment is a theological document—a sort of dogmatic decree that lays down a rule of faith. Thereafter it suddenly appears that the First Amendment implicitly "establishes," as the obligatory belief of the American people, the doctrine that all churches are simply voluntary societies, of equally human origin and of equal value in the sight of God, each of them offering to man an equally good way to eternal salvation. In other words, it appears that the First Amendment canonizes Liberal Protestant ecclesiology in an extreme form, and anathematizes as un-American all dissenters. From this premise, it is possible to condemn Catholicism as an alien thing, a heresy from the "democratic faith," because it denies the equality of all religions before God, and even denies

that all religions must, of intrinsic necessity and in all circumstances, be declared equal before the constitutional law of every land. It is further possible to accuse Catholics of supporting the First Amendment only "in practice" (on grounds of expediency) and not "in principle" (on grounds of conviction); the reason, of course, is that Catholics deny in principle the ecclesiology supposedly contained in the First Amendment.

This whole line of thought is ordinarily not put as baldly as I have put it; but one detects its presence. And it gets the whole controversy off to a bad start. It makes the First Amendment do the very thing that Congress is forbidden by the First Amendment to do, namely, to play the theologian and promulgate articles of faith.

We should, therefore, make some advance toward clarity if we could all agree to take the First Amendment exactly for what it is—not a theological, but a political document. It does not define a concept of the Church but a concept of the State. Fundamentally, the First Amendment asserts that political sovereignty is limited by the rights of conscience inherent in man. It has simply an ethical and a political content. Its ethical content is the doctrine that religious conscience is immune from governmental coercion. And its political content is the assertion that the rights of conscience will be most securely protected and the political ends of the American State most effectively furthered by guaranteeing the equality of all religious consciences (and, by implication, of all religious bodies) before the law. It cannot be too much emphasized that the religious liberty proclaimed by the First Amendment is not a piece of religious mysticism, but a practical political principle, ethically grounded on the obligations of the State to the consciences of its citizens and to its own end—social harmony, prosperity and peace. One can indeed cast up a theology of religious liberty, but one may not legitimately read it into the First Amendment.

It is historically evident that the First Amendment had a factual premise—the religio-social situation in the nascent republic. All Americans were members of the one political community, but not all were members of the one religious community. This fact put a problem to government; in fact, governments all over Europe had been wrestling with it for more than a century. But they were hampered in their efforts by the stubborn perdurance of the medieval "one-society" theory. This theory held that religious unity was essentially constitutive of social unity, and that community of faith was integral to the common temporal good; in consequence, it held that the state was charged with the preservation of religious unity, as the price of its own preservation, and that dissenters from the official faith could be only "second-class" citizens.

In its essence this theory was simply political, not theological. It was in no wise part of the Christian faith. But at the end of the eighteenth century it was still the common property of both Catholics and Protestants. In colonial Virginia, for instance, baptism into the Anglican Church was regarded as a compulsory initiation into citizenship, and support of the Establishment was a duty.

It is a tribute to American political genius that this theory was finally buried, unwept, in American soil. And its death was accomplished, so far as the national government was concerned, by the First Amendment. Historical experience, in the Colonies as in Europe, had demonstrated that the attempt to create or restore religious unity by governmental coercion of dissenters was the highest political unwisdom. It defeated its own goal—social unity—by introducing religious divisions into social life, and thus making them all the more bitter. Consequently, there was put into the First Amendment a prohibition against the use of government authority to create an official American faith and enforce adherence to it as the bond of national unity. The national political community was to achieve its own proper unity, on a political level; in order to do so, it was to remain “separate” from the religious community with all its inner divisions. In turn, the religious community, so far as government was concerned, was to be free to be divided; but to this end, it had to remain “separate” from the united political community, and not let its own divisions disrupt the sphere of civic life. In the circumstances, this “separation” was the only way to social peace.

It was, therefore, initially in the name of the state's own end that the First Amendment uttered its prohibition against a State Church and against state interference with the rights of conscience. Religious liberty was rightly regarded as functional to a particular political order and its unity. In this sense, therefore, the so-called “principle of separation of Church and State” appears as a political principle; for it is related to a political end.

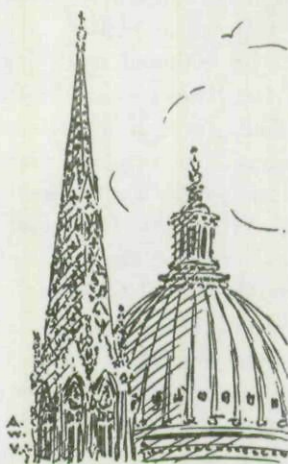
However, the legitimate and necessary political pragmatism of the First Amendment rests, at a more profound level, on absolute and sound ethical doctrine. The First Amendment does more than recognize, as its factual basis, the religious pluralism existent in American society; as its essential ethical basis, it recognizes the dualism inherent in man himself. Every individual is a civic person, a member of organized society, subject to the authority of its government, ordained to its earthly end. And every individual is likewise a religious person, a creature of God, subject to the authority of conscience, and ordained to an end transcending time. This dualism is inherent in the very nature of man. And every man has the right to have his nature respected for what it is. As citizens of a state, therefore, all men, whatever their religion, have the right to be equal in their civic liberties and in the freedom of their access to all the benefits of organized society. As religious men, all citizens have equal right, as against the state, to follow in every rational way the will of God as it is known to them through conscience.

The First Amendment recognizes this dual set of rights, as flowing from man's dual capacity. Consequently, it forbids government so to legislate as to establish distinctions in citizenship on grounds of religious belief; a man's religion cannot be made a civic asset or liability. Similarly, government is forbidden so to legislate as to coerce religious conformity as the condition of civic equality; a man's civic status cannot be made to depend on his religion. The civic person and the religious person are to be “separate” in law as they are distinct in nature.

This distinction between the citizen and the believer is the basic ethical content of the First Amendment; at bottom, it is *the* principle of the First Amendment. In its essential political consequences, valid in all social contexts, it means the limitation of governmental authority to the area of civic life, and the immunity of the religious conscience from all coercive pressures exerted by any agency of government. And in its further necessary consequences in the American scene, given the religious pluralism of our society, it means constitutional equality for all religious beliefs and for all the religious bodies in which they are held. It is the fact of the pluralism that induces the necessity of the equality; were there only one faith, the problem of equality would simply not arise.

However, in the U. S. there are a dozen major faiths, as well as hundreds of smaller sects. All are faiths held

by those who are equally American citizens, and who are not to suffer inequalities in their citizenship by reason of their faith. In the face of this situation, there is no other course open to government than to regard the faiths of those who are equally its citizens as faiths equal in its eyes. Were it to do otherwise, it would instantly confuse religion with citizenship, bring religious consciences somehow under



pressure, and thus violate the essential principle enshrined in the First Amendment.

In terms such as these one should construct an explanation of the First Amendment that would be properly devoid of all illegitimate theologizing or false mysticism about freedom of religion. What one should basically say is that the United States, by virtue of the First Amendment, is a “lay” state, in a unique and American sense of the term. And one should add that it is a “lay” state in consequence of ethical principle, and in the light of the factual American situation, and for the sake of its own end. It retains proper authority over the lay life of its citizens—their life as citizens; but it has no authority over their religious lives. It may not pretend to be a theologian, or a prophet of the way to eternal salvation. In Madison's phrase, it is “not a competent judge of religious truths,” and it has no power to enforce their acceptance. As a layman in matters of religion, the Amer-

ican state respects the religious authority inherent in the consciences of its citizens. The authorities conflict; but the state stands outside their conflict. It cannot silence any particular religious utterance, because it is the utterance of one of its citizens; on the other hand, it cannot espouse any religious utterance, because it is the utterance of *only* one of its citizens.

Nevertheless, it does not profess itself to be atheist or even agnostic. As a matter of fact, it professes neither knowledge nor ignorance in religious matters; it simply maintains reverence for knowledge or ignorance as these are present in its citizens. It does not deny or doubt that there is a religious authority; it simply denies that it is itself a religious authority. And for this reason it respects whatever religious authority is accepted by any of those whose temporal good it serves. Its single aim is to serve them all impartially, regardless of their religion. In this peculiarly American sense, the United States is a "lay" or "secular" state, and therefore "separate" from the Church; though in certain public acts it honors God.

One could possibly say, therefore, that the First Amendment embodies the "principle of separation of Church and State." But the formula is bad in itself and misleading in its connotations. At least, one should be careful to add that this "principle" is realized in the United States in a peculiarly American form, in consequence of a natively American and entirely valid theory of religious liberty. That is why Catholics support it, not only in practice (as expedient for themselves) but in principle (as sound in itself). When they opposed, and oppose, "separation of Church and State" elsewhere, they opposed and oppose something quite different in principle—a "lay" state predicated on atheistic or agnostic principles, militantly aggressive in its opposition to religion, and deliberately contemptuous of the religious realities of an historic situation. Fortunately, in America, when Americans are called on to support "in principle" the First Amendment, they are not called on to support the principles of Deism, or absolute rationalism, or Liberal Protestantism. The First Amendment itself forbids that such a demand be made on them. It forbids,

too, its own interpretation in such sectarian categories. In itself, it simply puts forward a political solution to the political problem put by the existence of many religions within one political community. The solution is based on sound ethical principle. And Catholics support it to the hilt, "in principle." They have, it is true, their own theology of religious liberty; so do Protestants. But neither Catholic nor Protestant theology is written into the First Amendment. If we could all get that much clear, it would be a great gain.

It would be a great gain, too, if it were agreed to drop the deceptive formula, "separation of Church and State." It is not an American coinage. Its origins were Continental; it was the shibboleth of the bitterly anti-religious factions in the Europe of the nineteenth century. And its currency in America has been given it both by secularists who want American society free *from* religion, and by Protestants who desire to make use of the overtones of religious prejudice attached to the formula. The confused polemist can, of course, make use of the formula to great effect: "Catholics support separation of Church and State in the United States; they oppose it in Spain. You see, therefore, what unprincipled power-politicians they are; they act solely on immoral grounds of expediency." The argument has gone over in a big way of late in the United States; the confused polemist have popularized their confusion with great success. But the whole success has been due to the ambiguity of the slogan, "separation of Church and State."

It is rather time to end the ambiguity, and kill all the false issues it raises. Why not drop the slogan? Admittedly less appeal would be made to latent bigotry if one were to say that the First Amendment embodies the principle of the "lay" state, in a peculiarly American realization of that institution; and if one were then to go on to explain, historically and philosophically, the principles in the name of which the American state is "lay." However, that is the truth. And I should not like to think that our fair-minded Protestant friends use the slogan, "separation of Church and State," because of its appeal to the bigoted.

Toward civilized industrial relations

Benjamin L. Masse

Before John L. Lewis made his fateful, and stupid, decision to challenge the Government of the United States, chances were that the Republican-dominated 80th Congress would have passed some mildly regulatory labor legislation and called it a day.

This would not have satisfied the fire-eaters in the Party, but they would have been forced to go along. With 1948 in view, calmer heads would have prevailed and nothing would have been done to antagonize needlessly the 15 million members of organized labor and their

"If the debate over industrial relations, which has raged all during the past year, proves anything, it proves that the problem of industrial peace is extraordinarily complex and that there are no simple solutions to it—especially no simple solutions that can be written into law."

families and friends. When a party has been out of the White House for four terms, it implies no cynicism to say that its primary concern is to get back into office, and that almost every other consideration will be subordinated to this one.

But the coal strike has changed this picture. It is quite probable now that the 80th Congress, swept along on a tide of popular feeling, will write some really crippling legislation, and it is no longer certain that President Truman will veto it. Indeed, if the Government, to pre-

