The effort to neutralize religion in America

By L. Edward Robbins

> *"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."*
> --From the First Amendment

Through a series of decisions beginning in 1947, The United States Supreme Court has adopted "neutrality" as the cornerstone of its First Amendment freedom of religion philosophy. Unfortunately, "neutrality" as applied by the Court too often translates either as hostility toward traditional religion or as endorsement of a modern religious philosophy known as "humanism." This philosophy holds, at worst, that God does not exist, and at best, that the question of his existence is irrelevant.

This sort of "neutrality" stands in stark contrast to the views of the Founding Fathers, who believed that government should indeed play an active role in encouraging religion, although not the tenets of a particular denomination. Let's look first at the Founders' philosophy and then consider the decisions through which the Supreme Court has endeavored to neutralize religion in America.

On December 1, 1763, nearly thirteen full years before the Declaration of Independence, a group of anxious spectators packed a small town courthouse in Virginia to listen to a young Patrick Henry excoriate the clergy of the tax-supported colonial church, who, even though they had been paid in full according to the laws of the Virginia colonial assembly, still wanted more. The clergy premised their claim on an old English statute, and the court ruled that the clergy's claim was valid since a colonial act could not overrule a parliamentary one. Nevertheless, the court left the question of damages to the jury. In token obedience to the law, the jury returned a verdict for the clergy after five minutes of deliberation—but for only one penny in damages.

Experiences like this convinced our Founding Fathers of the evils of an official church endorsed by the government. Thus they wrote in the First Amendment to the United States Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Over the years, this phrase has lost its original clarity. The phrase "an establishment of religion" meant simply a church. Thus the intent of the First Amendment was to prevent a church-state relationship such as that enjoyed by the old Church of England, at the same time insuring unimpeded individual denominational worship. The amendment was certainly not intended to prohibit government encouragement of religion; indeed, in the prevailing view of the Founders, it was the government's responsibility to protect, preserve, and encourage religion generally.

Perhaps the most basic declaration of this responsibility is found in the Northwest Ordinance of 1787, passed by Congress in the same year it approved the newly written Constitution. Therein Congress declared: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[1]

Here, then, is a perspective of government and religion altogether different from that practiced today. It is an unequivocal declaration that government has an affirmative responsibility to encourage religion, morality, and knowledge, since, without a strong intellectual, moral, and spiritual fiber in the people, a free government cannot be maintained. George Washington echoed this sentiment when he wrote:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports . . . And let us with caution indulge the supposition that morality can be maintained without religion . . . Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."[2]

> *A prohibition of denominational preference was what the Founding Fathers were driving at...*

Does this mean that government should establish the tenets of one particular denomination, excluding others? No, it does not. Thomas Jefferson, in drafting a Bill for Establishing Elementary Schools in Virginia, wrote, "No religious reading, instruction, or exercise shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination."[3]

Note that Jefferson did not proscribe the teaching of religious principles generally, only such as would be offensive to students of particular sects. This standard left a wealth of common ground for all religions, exemplified best by the private "creed" of Benjamin Franklin:

"Here is my creed: I believe in one God, the Creator of the universe. that he governs it by his providence. That he ought to be worshipped. That the most acceptable service we render to him is in doing good to his other children. That the soul of man is immortal, and will be treated with justice in another life respecting its conduct in this. These I take to be the fundamental points in all sound religion."[4]

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In short, the Founders felt that government had a duty not only to allow the free exercise of religion but also to encourage and recognize religious principles generally. This conviction grew from a wealth of historical study which proved to them that religion was an "indispensable support" of free government.

Now let's look at a few of the major cases through which the Supreme Court in recent years has altered the original intent of the religion clauses of the First Amendment.

In 1947, the Supreme Court reached a correct result in a major case, while at the same time declaring principles at odds with the Founders' view of the First Amendment. The case was *Everson v. Board of Education of Ewing Tp.*,[5] involving a New Jersey law which allowed parents of schoolchildren attending private schools to be reimbursed for the school related transportation expenses of their children. A local taxpayer challenged payments which went to parents of Catholic parochial school students, asserting that they unconstitutionally established Catholicism.

The Supreme Court found the law to be constitutional, noting that since reimbursement was equally available to parents of all private schoolchildren, the law was really no different from other public welfare legislation. This was a correct result. While lawmakers may debate the wisdom of such legislation, the Supreme Court was correct in concluding that it had no First Amendment reason to declare laws such as this unconstitutional.

Unfortunately, the *Everson* opinion also contained *dicta*, or language not directly related to the decision of the case, which said: "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 over another."[6] Not surprisingly, lawyers in later cases, while ignoring the result in *Everson*, seized this broad language and began to use it to undermine any form of government benefit to religion.

In the 1962 case of *Engel v. Vitale*,[7] the Supreme Court ruled unconstitutional the use of a school prayer, written by the New York Board of Regents, which read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country." In striking down this prayer, the Court claimed that it was improper to place the "power, prestige and financial support of government...behind a particular religious belief."[8]

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That is a particularly curious statement. Certainly such a general prayer does not benefit a particular denomination. It does, however, promote faith and belief in God, as opposed to no faith and no belief in God. By declaring such a prayer unconstitutional, the Supreme Court, in a backhanded way, declared disbelief in God to be a religion which must be protected against the "particular religious belief" of the believers in God. In short, the same Supreme Court which has told us that its version of the First Amendment prohibits state endorsement of *any* religion has itself endorsed and established disbelief in God as the national religion of America.

One year after the *Engel* decision, the Supreme Court declared unconstitutional a Pennsylvania law requiring the selection and reading of Bible verses at the opening of the school day. The case was *Abington School District v. Schempp*.[9] In that case, the Supreme Court openly declared itself hostile to the Founders' reading of the First Amendment by stating that it had "*rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another.*"[10]

A prohibition of denominational preference was, in fact, what the Founding Fathers were driving at, and no more. If a government rule or benefit were applied equally or were equally available to all religions, then, to the Founders it was a legitimate expression of government's duty to encourage religion.

Finally, by 1968, the Supreme Court was comfortable with declaring, on the basis of its own prior decisions, that absolute neutrality in all religious matters was the real intent of the First Amendment. In *Board of Education v. Allen*, [11] the Court concluded the following from the 1963 *Schempp* case:

"The test may be stated as follows: What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and primary effect that neither advances nor inhibits religion."[12]

That is certainly a peculiar declaration. Laws may promote religion as long as they are not really meant to promote religion. Religion, which George Washington considered an "indispensable support" of free government, is now only an incidental or an accidental one. To require a separate, independent, and primarily secular purpose to all laws is not only to separate church and state; it is to completely divorce the two, in the process certainly destroying the latter.

In 1984, the Supreme Court ruled that a public Christmas display which included a Nativity scene was constitutionally permissible.[13] The Court saw no real constitutional threat from something as innocuous as a Nativity scene, and it said as much: "Any notion that these symbols pose a real danger of establishment of a state church is far-fetched indeed."[14]

Some saw hope in this decision for a revival of the Founders' perspective of the First Amendment religion clause. But this past summer, the Court made it clear that it continues to adhere to its old doctrines. *In Thorton v. Caldor, Inc.*,[15] the Court explained once again that to "pass constitutional muster...a statute must not only have secular purpose and not foster excessive entanglement of government with religion, its primary effect must not advance or inhibit religion."[16] On this basis, the Court struck down a Connecticut law which gave all employees the right *not* to work on their

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Liberal think-tank says: "secularism doesn't work"

The Brookings Institution, a leading liberal think-tank, has concluded that the future of America democracy depends on the strength of the nation's religious institutions.

The new study also states flatly that secularism—defined as the idea of a society based on non-religious values—provides no adequate foundation for democracy in America.

Democratic government "depends for its health on values that over the not-so-long run must come from religion," according to the study, which breaks with past positions taken by secular organizations.

Through religion, the study says, "human rights are rooted in the moral worth with which a loving Creator has endowed each human soul, and social authority is legitimized by making it answerable to transcendent moral law."

Titled "Religion in American Public Life," the report forecasts a religious revival in the United States and takes heart in surveys showing widespread belief in God and importance placed by people on religion.

In a twist, the liberal think-tank calls for authorization of a "moment of silence" that can be used for voluntary prayer in public schools, use of school facilities for student religious meetings, and tax allowances for tuition paid by parents of parochial school children.

Brookings is the largest and perhaps most prestigious liberal research and study organization in America. A. James Reichley, the study's author, takes a highly negative view of "civil", or secular, humanism, a viewpoint often contrasted with the religious view of the world which the study asserts has become a strong force in America.

"In a democratic society, persons subscribing to a classical humanist ethic are driven to hypocrisy or cynicism—either pretending admiration or fellow-feeling for the masses that their value system does not sustain or scorning the political forms under which they live. In either case, social bitterness between humanist elites and the mass of working-class and middle-class citizens is bound to follow."

The report rejects the argument advanced by church-state separationists that removal of religious symbols from government-sponsored settings has made the government neutral on religion. "Banishment of religion does not represent neutrality between religion and secularism; conduct of public institutions without any acknowledgment of religion is secularism," the report stated.

It says that "a society that excludes religion totally from its public life, that seems to regard religion as something from which public life must be protected, is bound to foster the impression that religion is either irrelevant or harmful.

"The First Amendment is no more neutral on the general value of religion than it is on the general value of the free exchange of ideas or an independent press. The founders' conviction that free institutions derive much of their moral vitality from religion also led them to authorize numerous symbolic expressions of the religious character of the American people."