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INTRODUCTION

More than three decades have passed since *Law and Contemporary Problems* last presented an issue on the topic of religion in American law. Then as now one could say with Walter Kaufmann that no subject is more important to human communities and their commonweal than religion.[1] Next to other highly visible signs confirming the truth of that bold generalization in contemporary American society, one need only attend to the passionate tones in which the writers assembled here set out their sometimes discordant viewpoints.

In the 1949 issue of this journal John Courtney Murray forthrightly registered his deliberate use of "a tinge of rhetorical emotion" in discussing the clash of ideologies and of power in the controversy over religious instruction in the public schools.[2] In varying states of excitation all eight articles in that installment tangled with the startling doctrine developed by the Supreme Court in *McCollum v. Board of Education,* 333 U.S. 203 (1948) and *Everson v. Board of Education,* 330 U.S. 1 (1947). This year only one of our eight articles tackles what Murray called "the cult of Diana, the Divine Public School."[3] The questions raised here by Russell Kirk concerning the false religion of the educationists also animate, in part at least, James Serritella's scrutiny of the unsatisfactory judicial formulations of the entanglement test as well as the exploration by Thomas Pickrell and Mitchell Horwich of the nature and desirable degree of partnership between State and Church in modern democratic society.

The two centrally positioned papers likewise convey a high commitment to their respective theses. Thus the thread of intense personal conviction unites, in a paraphrase of a letter to me from Leo Pfeffer, strange bedfellows indeed. E. L. Hebden-Taylor trenchantly argues that a criminal law sheared from a sense of sin and individual and collective responsibility has far-reaching implications for society as a whole. Pfeffer's contribution provides us with an insider's understanding of the power and effect of the most vocal religious "lobbyists" before the Supreme Court. The principles of many such groups are assailed by authors who speak earlier in this issue.

This feature of deeply entrenched disagreement is the substantive fuel for the fiery rhetoric displayed both by our 1981 and our 1949 commentators. It would

1. W. Kaufmann, Religions in Four Dimensions (1976).
2. John Courtney Murray, *Law or Prepossessions?* 14 LAW & CONTEM. PROB. 23, 35 (1949).
3. Murray, *supra* note 2 at 35.

have been intellectually dishonest to have sought to package the new symposium in ecumenical wrapping-paper and to decorate it with irenical ribbons. Pfeffer argues elsewhere that religions are today more similar than they are dissimilar, owing largely to the triumph of secular humanism.[4] Whether that is accurate or not as a generalization, in these pages belief does battle with nonreligious (secular) culture, as I think it still does in our wider life.

It would also be disingenuous to pretend that the Court has much improved on its jurisprudential theories of the meaning of the Religion Clauses in the First Amendment in these intervening three decades. The sad disarray in religious constitutional law continues to give witness to the accuracy of Murray's perspective in 1949:

> No one who knows a bit about the literature on separation of church and state, that for centuries has poured out in all languages, will be inclined to deny that hardly another problem in the religious or political order has received so much misconceived and deformed statement, with the result that the number of bad philosophies in the matter is, like the scriptural numbers of fools, infinite.[5]

Murray was joined in our earlier issue by, although not necessarily aligned with, Edward Corwin and Alexander Meiklejohn. Their criticisms of the Court as "National School Board" are widened here by James Hitchcock and Francis Canavan to an even more fundamental attack on the neutrality dogma embedded in the standard catechism of the civil religion of the pluralist American state.

As long ago as 1913 Woodrow Wilson warned us in *The New Freedom* that the negative notion of freedom as mere insulation from governmental coercion would create a vacuum that is quickly enough filled by other tyrannies, which then pervade and direct governmental processes. Kenneth Thompson illuminates our understanding of aspects of this phenomenon in his examination of the peculiar moral ambiguity which obtains in such a vacuum. Murray prophesied that the tyrannies in the area of religious constitutional law would consist of "irreligion, secularist ideologies, false political and educational philosophies, and the dangerous myth of 'democracy as a religion'"[6] and that their hegemony would spell disaster to our society.

Since my own biases have by now been fervently alluded to or admitted, I must leave it to the reader to weight the arguments to follow. Each of us can only measure for himself the eligibility of self and others for inclusion in the scriptural number of fools; at the same time we might also try to determine how many more angels will try to dance on the head of the First Amendment pin.

JOYCE S. RUTLEDGE*

4. Leo Pfeffer, *Issues that Divide: The Triumph of Secular Humanism*, 19 J. OF CHURCH & ST. 203 (1977).
5. Murray, *supra* note 2 at 23.
6. Murray, *supra* note 2 at 40.

*Law Clerk to the Honorable J. Dickson Phillips, United States Court of Appeals for the Fourth District.