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By Russell Kirk

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THE FIRST CLAUSE OF THE FIRST AMENDMENT: POLITICS AND RELIGION

by Russell Kirk

"Original intent," a doctrine much debated in connection with the Constitution of the United States nowadays, is easily determined when the first clause (or clauses) of the First Amendment is discussed. That provision is simply and directly expressed: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

This "freedom of religion" right was so expressed by two eminent congressmen who disagreed considerably about several other matters: Fisher Ames of Massachusetts and James Madison of Virginia. Their motives in drawing up this guarantee of liberty of worship are readily ascertained. And yet this first clause, in very recent decades, has been interpreted by federal courts most extravagantly, so that some writers suggest a quite new signification for those few words: "freedom from religion."

Such an inversion would have startled Congressman Madison, a rather liberal Episcopalian, and Congressman Ames, a Congregationalist, later an Episcopalian. They were not advocating some radical new understanding of the old doctrine of church and state; and commentators on the Constitution who argue that the Congress affirmed a novel abstract principle concerning religion are wide of the mark.

The reasons for advocating the "religion clause" of the First Amendment were two. The first--which weighed heavily with Ames--was that Massachusetts and two other New England states still maintained churches established by law in 1790--Congregational establishments. And in that year it still was conceivable that some other states, notably Virginia, might decide to restore their old church establishments. Should Congress decide to establish a national church, almost certainly that national church would not be Congregational. Therefore, Ames and other New Englanders insisted on prohibiting federal legislation on such matters, lest their state churches be disestablished by act of Congress. (It should be remembered that the provisions of the First Amendment were not regarded as binding upon the several states until the year 1940.)

No "Wall of Separation." The second reason advanced in favor of the proposed first clause was a desire to avert disunity among the several states. The differences in theology and church structure between Congregationalist New England and Episcopalian Virginia were conspicuous enough; still more formidable, in some ways, were the doctrinal disputes among Presbyterians, Quakers, Baptists, Methodists, Dutch Reformed, Deists, and other denominations or religious and quasi-religious

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associations. Had any one of these churches been established nationally by Congress, the rage of other denominations would have been irrepressible; the only security lay in forbidding altogether the designating of a national church. Surely the Union was shaky enough in 1790 without risking hostilities to the tune of fife and drum ecclesiastic. The first clause, in short, was in no way a disavowal of the benefits of religious belief; it owed nothing to the atheistic preachments of Diderot, D'Alembert, and other free Gallic spirits of the Enlightenment. It was out of expediency, not from anti-religious principle, that Congress accepted, and the states ratified, the first clause of the First Amendment.

Some people persist in fancying that somehow or other the Constitution, or at least the First Amendment, or perhaps the Declaration of Independence, speaks of "a wall of separation" between church and state. But of course no such phrase appears in any American state paper. Those words about the hypothetical "wall," which have provoked so much controversy during the latter half of the 20th century, occur merely in a letter written in 1802 by Thomas Jefferson, addressed to an assembly of Baptists. All but three or four of the fifty-five delegates to the Constitutional Convention in 1787, incidentally, had been members of Christian churches.

A Guarantee of Freedom. The first clause, in short, merely declares that the national government must tolerate all religious beliefs--short of such fanatic beliefs as might undo the civil social order; and that no particular church may be endowed by Congress with privileges of collecting tithes and the like. The purpose of the clause is placatory: America's numerous "dissidence of dissent" is assured that no orthodoxy will be imposed upon their chapels, bethels, conventicles, meetings, and churches; and Roman Catholics, too, are satisfied with a guarantee of freedom to worship freely in their way, as are the few Jews in 18th century America.

The general understanding of the Framers of the Constitution, and of the Congress that approved the First Amendment, was this: Christian teaching is intended to govern the soul, not the state. But also the leading Americans of 1787-1791 believed that religious convictions form the basis of any good society. They were aware that both Christianity and Judaism have coexisted with imperial structures, feudalism, national monarchies, aristocracies, republics, democracies. Religion, they assumed, is not a system of politics or of economic management: it is an attempt, instead, to relate the human soul to divine power and love.

Yet many people, judges among them, today maintain a very different view of the meaning of the first clause of the First Amendment; and much confusion exists concerning the relationships between religion and politics or between church and state. I offer you therefore the following considerations on these grave concerns.

* * *

Crushing a College. A few years ago I was a witness, allegedly expert, in litigation concerning a little Christian college in New Jersey. The educational authorities of New Jersey determined to crush that college, because it did not conform abjectly to state regulations for higher education; and eventually, after the

case was fought in a whole series of state and federal courts (at huge expense to the little college and the small denomination supporting it), crush it the state did.

One round of this case was tried in Atlantic City, a most dismal and corrupt place nowadays, half in ruin. On the occasion, I reflected that all culture arises, in the beginning, from the religious cult. Without religious culture and religious hope, the modern world would come to resemble a half-derelict fun fair, gone nasty and poverty-wracked, life a gamble at best--one enormous Atlantic City.

The managers of that dismal world might be the sort of men and women who now run most state departments of public instruction. Their charter might be John Dewey's "Humanist Manifesto," as reaffirmed a few years ago by some eminent and militant American secularists. That domination would be what my old friend Max Picard called the world of the Flight--that is, of the flight from God, who pursues.

Silly Utterances. These fulminations are provoked by a multitude of silly utterances in recent years, by judges and lawyers and professors and publicists, about "entanglement" of church and state and about the First Amendment's alleged guarantees of freedom from religion. Entanglement! There exists something worse even than the confounding of religion and politics: I mean total separation of religion from the civil social order, so that--in the phrase of Dr. Philip Phenix--church and state would rot separately in separate tombs.

For the first clause of the First Amendment never was meant to signify that the American government was indifferent to religion, or hostile to it. Justice Joseph Story, in his *Commentaries on the Constitution* (1833), gave a clear explanation of the clause. "Probably at the time of the adoption of the Constitution and of the First Amendment...," Story wrote, "the general if not the universal sentiment in America was that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."

The Ruin of Democracies. Religion in America never has been a private concern merely. It is religious belief, indeed, that has made the American democracy successful; the lack of religious foundation has been the ruin of other democracies. Alexis de Tocqueville makes this point strongly in *Democracy in America*: "I do not know whether all Americans have a sincere faith in their religion," Tocqueville put it, "--for who can search the human heart?--but I am certain that they hold it to be indispensable to the whole nation and to every rank of society....While the law permits the Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash or unjust."

Religious concepts about order and justice and freedom powerfully influence the political beliefs of the large majority of American citizens. These convictions join us together as a people. Were it otherwise, we would be exposed to the merciless politics of ideology, and parties would become fanatic ideological factions like those that devastate much of the world today.

Of course, religious belief is not confined to one party. It is to be expected that in the United States nearly all candidates for office will declare that religious assumptions underlie their political programs. But neither party can claim to know the will of God. In the words of Abraham Lincoln, "In great contests each party claims to act in accordance with the will of God. Both may be, and one must be, wrong. God cannot be for and against the same thing at the same time." Religious convictions do not confer political infallibility. But political action without religious restraints can bring on public ruin.

A Religious People. Those militantly secularistic liberals who would like to erase religious principles from political contests ought to be reminded of the opinion of that liberal Justice, William O. Douglas, in the *Zorach* case (1952):

> We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma....To hold that government may not encourage religious instruction would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe....We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.

We being "a religious people whose institutions presuppose a Supreme Being," it scarcely is surprising that our President should entertain religious convictions. To try to govern a country by religious dogma alone always has been a mistake. It is a mistake still worse to argue that politics comes first and that one's religion ought to be subordinate to political programs.

An Evil Substitute. Was Hitler's neo-paganism of no public concern? Was Stalin's hatred of all religion irrelevant to the welfare of the Russian people? Does anybody really think it is desirable to elect as President of this country a person lacking religious convictions and moral principles?

"If you will not have God--and He is a jealous God--you should pay your respects to Hitler or Stalin." So T.S. Eliot wrote on the eve of the Second World War. A President who should fancy that he is not responsible to divine power--or, at best, that faith, hope, and charity are merely private eccentricities--would be a lion in the streets, seeking whom he might devour.

There exists an evil substitute for religion in public affairs: fanatic ideology, which pretends to offer the people an earthly paradise, to be achieved through revolutionary politics. But all that ideology can create is an earthly hell. When such an ideology is intertwined with false religious notions, as in the "liberation theology" of Latin America today, a country may experience the worst excesses of political fanaticism and religious fanaticism combined.

We Americans stand in no clear and present danger of such a ruinous combination of two forms of intolerance. But those people--still happily a small minority--who would deny the President the right to let religious principles influence his public recommendations are no friends either to religious freedom or to the Constitution of the United States.

Nor are the people, some of them in high office, who would drive out of public instruction any remaining vestiges of religious teaching, true friends to the Constitution of the United States. Aside from communist-ruled lands, in recent years the United States has become the country most hostile toward religious studies in its system of public instruction--with the French government endeavoring in vain, not long ago, to become a close second. And yet we lament the decay of order and morality among the rising generation.

No "Neutrality." In dread of any form of religious activity--even Bible study before school or at lunch, even voluntary prayer or (quite as wicked) a moment of silence during which pupils might be praying, even (in many school districts) the mention of religious teachings in a course in history or literature--"neutrality" about religious beliefs has been carried beyond absurdity to positive prohibition. Most textbook publishers thoughtfully omit from their manuals all but incidental references to religion, lest they lose school adoptions. Christianity and Judaism are becoming forbidden faiths, so far as public instruction is concerned, although there is more indulgence of non-Western religions as part of "global education."

Formal schooling was commenced by churches. Ultimate questions cannot be answered except by religious doctrines--unless we are prepared to embrace the dialectical materialism of the Marxists. The Bible has been the most influential book in half the world, for hundreds of years. How nasty that some little wretches should wish to study it, and should be supported by their parents.

Divine Wisdom and Goodness. Congress has chaplains and engages in public prayer. The armed forces commission and pay chaplains, and support religious services. Every President of the United States has professed his belief in divine wisdom and goodness. Yet the American Civil Liberties Union and certain judges deny the right of young Americans to pray in the public schools--even as an act of "commencement" concluding their twelve or thirteen years of school.

If our federal Constitution were hostile toward religion, it would be hostile toward our survival. Solzhenitsyn touched on that memorably in his Templeton Address:

> Our life consists not in the pursuit of material success but in the quest of worthy spiritual growth. Our entire earthly existence is but a transition stage in the movement toward something higher, and we must not stumble or fall, nor must we linger fruitlessly on one rung of the ladder....The laws of physics and physiology will never reveal the indisputable manner in which The Creator constantly, day in and day out, participates in the life of each of us, unfailingly granting us the energy of existence; when this assistance leaves us, we die. In the life of our entire planet, the Divine Spirit moves with no less force: this we must grasp in our dark and terrible hour.

So the great exile expresses the ineluctable need for religious understanding in the civil social order: the alternative is grinding servitude, soon or late, to the total state. So much, at the moment, for the second great error in current discussions of religion and politics: the notion that religion should be driven out of politics altogether.

* * *

Politics is the art of the possible, not the reign of the saints upon earth. Religion is the means for an ordering of the soul, not the means for undertaking prudential political decisions. Yet great confusion plagues all this discussion. One cannot be surprised that certain Pietist sects, since the 16th century, have sought to withdraw the religious community almost wholly from concerns of state. In communist-ruled lands, religious communicants--supposing them to be tolerated at all--are compelled to renounce any participation in the political order.

Priests Are Not Statists. Nevertheless, Christian faith surely must be concerned to some degree with political questions, and surely Christian belief has affected political forms from age to age, and will continue to influence political modes, in any tolerably free society. But to assume that Christian dogmata, meant to order the soul, can be applied without qualification to the multitudinous prudential concerns of the civil social order--well, that way lies much confusion and violence. Christian faith may transform this world through working upon the minds and the hearts of many human beings, with healthy consequences in the body politic. But the Christian Church is no instrument for administering secular justice, conducting secular diplomacy, or waging war. By general vocation, priests and presbyters are not statists.

Nor are order, justice, and freedom to be preserved and advanced by Burckhardt's "terrible simplifiers" --whether those simplifiers be ideologues or professed Christians. The Kingdom of Heaven is taken by storm only in a personal and mystical sense.

"Revolutionary Christianity." We live in an era when the passions of ideology and the passions of religion become joined in certain zealots. Thus we hear intemperate talk, in many communions and denominations, of "Christian revolution." Doubtless most of the men and women who use such phrases mean a bloodless, if abrupt, transformation of social institutions. Yet some of them nowadays, as in past times, would not boggle at a fair quantity of bloodletting in their sacred cause. Whether bloodless or bloody, an upheaval justified by the immanentizing of Christian symbols of salvation defies the Beatitudes and devours its children. Soon the Christian ideologues (insane conjunction) find themselves saddled and ridden by some "great bad man," a Cromwell at best.

This "revolutionary Christianity" has been popularized by professors of theology tenured at good salaries in American universities, remote in place and time from immediate consequences of their doctrines. Consider the curious case of Dr. Harvey Cox, at Harvard's divinity school. Professor Cox has been called the most influential Protestant theologian in America; that was nearly true, at any rate, during the 1960s. From Harvard, Cox has preached "liberation theology" in the name of a

"politician-God" (Cox's phrase) and a servant-God who through Jesus has shown his willingness "to become the junior partner in the asymmetric relationship" between God and man. This Zeitgeist deity, politician, servant, junior partner, nevertheless decrees a world in which people no longer will crave power and property. As Dale Vree comments on Cox, "It is apparent that Coxian liberation is nothing other than the non-alienating, classless society that dialogical and revisionist Marxists have been advocating." Stalin and Mao as liberators? But doubtless Harvey Cox has in mind revisionist Marxism--which offers the dreary prospect of a universal Secular City, utterly immanent, utterly boring.

Professor Cox is merely a well-known, if somewhat shallow, example of this mode of ideologized religiosity. It would not be difficult to point out his counterparts in every Protestant mainline denomination and among the Catholic clergy. But the views of such persons are not the teachings of the historic Christian Church.

Patient and Prudent Striving. The Church always has striven for liberty, justice, and peace; but throughout the centuries, the Church has known that man and society are imperfect and imperfectible, here below. The only possible perfection is perfection through grace in death. Christian teaching has endured because of its realism; because it does not mistake the City of This Earth for the City of God. In upholding the theological virtues of faith, hope, and charity, the Church has not neglected the cardinal virtue of prudence. And most of the time the Church has not endeavored to usurp the powers of the State. "Two there are by whom this world is ruled," said Gelasius I, saint and pope, in the 5th century.

The Church cannot confer upon the world immediate, perfect secular liberty, justice, and peace--any more than could the zealots of the French Revolution or the Russian. But Christian truth does offer this: that perfect freedom which transcends time and circumstance, that peace which passeth all understanding. The Church has known that liberty, justice, and peace are preserved and extended only through patient and prudent striving; that Providence moves deliberately, while the devil always hurries.

Christian faith may work wonders if it moves the minds and hearts of an increasing number of men and women. But if professed Christians forsake Heaven as their destination, and come to fancy that the State (which nevertheless they denounce in its present form) may be converted into the Terrestrial Paradise--why, they are less wise even than Marx.

Saving the World From Suicide. Such distortions of Christian teaching rise again and again, through the centuries, among professing Christians. One such was the Lambeth Conference of 1930, which provoked T. S. Eliot into writing one of his more enduring essays. All times are corrupt, Eliot declared then, and in our time Christianity is dispossessed and divided. "The world is trying the experiment of attempting to form a civilized but non-Christian mentality," Eliot concluded. "The experiment will fail; but we must be very patient in awaiting its collapse; meanwhile redeeming the time; so that the Faith may be preserved alive through the dark ages before us; to renew and rebuild civilization, and save the world from suicide."

Just so. Although Church and State stand separate, the political order cannot be renewed without theological virtues working upon it. This consideration brings us back to the question I raised at the beginning of my words to you, "Is there such a thing as a Christian polity? Does Christian doctrine prescribe some especial form of politics--and conformity by all communicants to that political model?"

If we know the history of the Christian Church, particularly in the West, we are aware that no, the Church does not prescribe some one particular civil social order. When the Church has presumed to decree the prudential policies of the State, the Church has failed, falling into dismal confusion. The political successes of the Church have occurred rather in limiting the claims of the State than in dictating courses to the captains and the kings.

Political Regeneration. All the same, it is conceivable that the Church may do a work of political regeneration in our bent age, rebuffing the totalist dominations that would convert man into a producing-and-consuming animal merely. Permit me to explain succinctly; I am not contradicting myself.

Christian belief works upon the political order in three principal ways, sometimes effectually. These three ways are faith's influence upon statesmen; faith's influence upon the mass of mankind; and faith's shaping of the norms of the social order.

I lack time to discuss with you in detail these three aspects of religion's beneficent improvement of the realm of politics. I must confine myself to the following suggestions.

A Colony of Heaven. People sustained by Christian faith, hope, and charity form a "colony of Heaven"--a social order in which it is possible to strive together for the preservation and the advancement of justice and freedom and peace. Without the bond of a shared faith, any society begins to disintegrate; even a society governed by soldiers and secret policemen. As Talleyrand put it, "You can do everything with bayonets--except sit upon them." Religious sanctions lacking, it becomes difficult even for the total state to enforce even the most essential laws.

During the Cambodian campaign, I talked for an hour, in the White House, with President Nixon. He was disheartened. He spoke of a lack of purpose and public spirit in the United States, and then inquired of me, "Do we have any hope?" He repeated the question, emphatically: "Do we have any hope?"

I replied that it is all a matter of faith. If the people believe the prophets of despair, then indeed hope vanishes, for everyone seeks his private hidie-hole, endeavoring to content himself with petty ephemeral pleasures. But if the people, not believing the prophets of doom and their self-fulfilling prophecies, still retain faith in a transcendent order--why, then, indeed hope for the social order has not departed, for it remains possible for men and women to brighten the corners where they are and to confront together the difficulties of the time. Given hope, great renewal is possible. The thinking Christian does not indulge hopes of Lotus-Land; he knows that politics is the art of the possible; he understands that his ultimate destination is not here below. Also he knows that here below the race is not

necessarily to the swift, nor the battle to the strong. Yet he is not easily beguiled by predictions of imminent dissolution. "The men signed of the Cross of Christ go gaily in the dark," in Chesterton's brave line.

The Art of the Possible. It is from religious belief that our norms for social order grow; and when faith decays, those norms are flouted. Then, order overthrown, squalid oligarchs seize power, and the Savage God lays down his new commandments.

In short, Christian faith does influence the political order, and should do so. Yet there is a gulf fixed between influence of this sort and presumptuous issuing of political rescripts to legitimate political authorities.

Those fulminatory men and women who set themselves up as judges of the actions and convictions of everybody else in our age, on the principles of "liberation theology," may come to worship the Savage God, mistaking him for the Redeemer. But when the revolution is done, the world is ruled not by self-proclaimed saints; those have been corrupted or extirpated in the process; no, the new masters are those hard-faced men who do well out of revolutions; gun and grenade have opened their path to power, and the spoils are theirs.

A Timeless Ground. Although human beings live in time, there exists a timeless ground of being, with which our little lives and our mundane institutions are interwoven. This is a perception of Christian mystics and philosophers. Only very gradually and imperfectly does humankind become conscious of this transcendent reality. Yet only through such imperfect human consciousness, painfully acquired, does it become possible for human beings to live together in peace and justice; to know a mundane order, both the internal order of the soul and the external order of community.

The myths and symbols through which the truths about order are conveyed grow dim with the passage of world-time and many disrupting events. When those symbols have become opaque at best, restless men seek to erect new symbols of their own creation, and to establish a new order in which the revolutionaries exercise total power. But this denial and inversion of the symbols of transcendence does not bring forth a new heaven and a new earth: instead, the Four Horsemen of the Apocalypse bring fire and slaughter. So it has come to pass in most of the world in our time.

Having Forgotten God. The fanatic political ideologies of the 18th, 19th, and 20th centuries, falsely promising the perfection of man and society, on earth and in time, are the present form taken by revolt against Christian insights into the nature of reality. Among the victims of ideological heresy are those "Christian activists" who presume to give commands to armies and orders to nations, confounding Caesar's things and God's. Some of them declare that they speak with the tongues of angels, binding all others who profess their faith in Christ. With just such good intentions is Hell paved.

"Over half a century ago, while I was still a child," Alexander Solzhenitsyn began his Templeton Address in 1983, "I recall hearing a number of older people

offer the following explanation for the great disasters that had befallen Russia: 'Men have forgotten God; that's why all this has happened .'"

And having forgotten God, one may add, such men embrace ideology, nature abhorring a vacuum. It is worse still when men pretend still to believe in God but in reality make themselves slaves to ideology, so living a lie. Let us reject, root and branch, ideology--political religion. But let us affirm, with all the strength that is in us, the high part of religion in the civil social order.

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