This is not to say that the decision in *Engel v. Vitale* can not be supported, but only to question establishment as its basis. There are those who would discount the proclaimed voluntary nature of the prayer ceremony, and find in a psychic coercion to conform a resulting infringement of freedom of religion, and therefore of liberty. This is not the occasion to inquire whether courts are equipped to measure coercion of this type, or whether political liberty and religious liberty are of such different nature that a school may not offend equally when it dismisses children to applaud a parade featuring a political figure. Nor should one now inquire whether portraits of political figures who happen to hold, or to have held, public office would, if displayed on schoolroom walls, constitute an unconstitutional political hagiology.

Since Professor Kurland's admirable book deals only with cases thus far decided, he does not touch one religious problem looming over the horizon. With the concept of state action expanding, and probably to be expanded, in other areas, will its course not inevitably intersect the questions of religion? One of the establishments occupying part of the premises of the Wilmington Parking Authority was, we are told,[15] a bookstore. Passing the problem of its freedom to choose the literature it might sell, could it sell religious books at all? Could it limit its selections to the denominational preference of the proprietor? Christmas carols and Christmas symbols are perhaps now suspect in the public schools. Will they soon be equally suspect in retail establishments?

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[15] Burton v. Wilmington Parking Authority, 365 U.S. 715, 720 (1961).

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Render unto Caesar: The Flag-Salute Controversy. By DAVID R. MANWARING. Chicago: University of Chicago Press, 1962. Pp. x, 321. $5.50.

Professor David Manwaring's meticulous study of the adventures of the Jehovah's Witnesses in their campaign against the compulsory flag salute arrives at a propitious moment. Advocates of prayer and Bible reading in public schools, currently smarting under the Supreme Court's recent ban on the New York "non-sectarian" formula,[1] are demanding that such invocations of divine grace be legitimized on the ground that an appropriately non-partisan prayer does not violate the separation of church and state. The notion behind this seems to be that a neutral prayer (perhaps addressed "to Whom it may concern"?) is actually a secular exercise, a component in the American version of Rousseau's "civic religion." In other areas too—most notably education—the Supreme Court has been called upon to clear away the fog that conceals the location of that "impenetrable wall" separating the secular from the religious jurisdictions in American life. As Philip Kurland demon-

[1] Engel v. Vitale, 370 U.S. 421 (1962).

strated in a superb essay,[2] the whole church-state issue constitutes a logician's nightmare, and while *Render Unto Caesar* is a rather inert volume—an insufficiently reformed doctoral dissertation—Manwaring has nonetheless brought home some extremely valuable lessons to those who talk glibly of "absolute rights" or, on the other side of the barricade, of "neutral principles of constitutional law."

Perhaps, since Manwaring has avoided theoretical considerations like the plague, it might be well to put the key issue of his book in perspective. The core dilemma is as old as human speculation on the relationship of the individual to the community. It was already ancient when St. Augustine excoriated the Donatists, and lay at the root of much bitter controversy in the age of the Protestant Reformation. In a nutshell, the question is: What does society do with the disruptive messenger from God? As the Jehovah's Witness brief put the matter to an undoubtedly startled Supreme Court in the *Gobitis* case:[3] "The flag salute regulation is invalid because it may not be assumed that it was within the intention of the [Pennsylvania] legislature to empower school authorities to enact regulations contravening the law of Almighty God."[4] This presentation of the "law of Almighty God" as if it were a matter of common knowledge may have surprised the Justices, but it was merely an echo of the historic claim of religious enthusiasts to the right of private judgment.[5] To put the matter differently, the issue ultimately results in the injection of subjective matters of belief into the framework of objective legal decision-making: An individual or group, on the basis of unverified and by the very nature of things unverifiable inspiration (at least by the standard canons of evidence), asserts the right to reject the norms of the community.

Moreover, the confrontation between the enthusiasts and the community is seldom a matter of abstract argument; the Cathari, the Quakers, the Hasidim, the Dukhobors, or the Jehovah's Witnesses have never taken their theological case to a Church council, a Sanhedrin, or a seminar at Union Seminary for rational adjudication. In part the anti-theology of enthusiasm is directed against the very existence and structure of religious authority—there is a heavy dosage of anarchy and spiritual megalomania—and in part the message itself demands stark evangelism. Thus the chiliast, cherishing his special state of grace, will seldom let sleeping dogmas lie. He must carry the fight into the

[2] "*Of Church and State and the Supreme Court*," 29 U. CHI. L. REV. 1 (1961); RELIGION AND THE LAW (1962). I regret that I can find no solace in Professor Kurland's prescription that the Court employ "neutral principles" of constitutional law. This phrase always puts me in mind of an event in the Irish Parliament in September 1939. When Prime Minister De Valera announced that Eire was neutral in the War, a spokesman for the *Clan na Gael* opposition arose and stated that his party was in full agreement with De Valera in principle, but demanded to know whom the Irish were neutral *against*.

[3] Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

[4] Manwaring, p. 110.

[5] See generally, RONALD A. KNOX, ENTHUSIASM (1950).

enemy fortress and, completely eschewing a "no-win" policy, demand unconditional surrender. Rarely will he settle for "toleration"; indeed, the notion that Evil should be tolerated is precisely the source of his complaints against the Establishment.

The reaction of a society to such divine messengers has in historical terms varied from indifference to savage persecution. If a community was nurtured upon a set of religious convictions (Catholic, Presbyterian, Puritan), it generally reacted by invoking sanctions against sacrilege, blasphemy, or heresy (the ecclesiastical twin of high treason). When James Naylor rode a mule through Norwich accompanied by women distributing palms and announcing the second coming, Cromwell's judges were surprisingly lenient. Perhaps touched by the decency of a devoutly mad Christian, they bored his tongue for blasphemy and turned him loose. During the same period, the Puritan Zionists of Massachusetts Bay were cursed by a "pestilence" of Quakers.[6] In the Bay Colony, the judges tried a number of coercive techniques upon the Quaker commandos: They were put in the stocks, whipped and exiled to Rhode Island, where a joyous state of religious anarchy prevailed. But these dogged enthusiasts were not interested in debating with Roger Williams; back they rushed to the Bible Commonwealth to stand witness to their truth. Finally, in a fit of bored rage, the Massachusetts judges hanged four, including a woman, Mary Dyer. In 1661 the newly restored Charles II ordered Massachusetts to send all Quakers under indictment to England for trial and the Puritans lost their *vires* over seditious heresy.

Massachusetts has been condemned for this condign action, but, given the premise that the Commonwealth was established upon the Word of God, it is difficult to know what else the judges could have done. Later generations, which look on the whole affair as an exercise in comparative superstition, have done less than justice to both sides. The Quakers challenged the fundamental principles of ecclesiastical polity which supported the regime and invited martyrdom—they never advanced any claim to a privilege against self-incrimination. Puritans and Quakers alike realized that this was no trifling matter of "opinion"; the attack on the theocracy jeopardized the whole structure of the community. When a society is integrated around the matrix of religious truth, it must exterminate religious opposition or abdicate its claim to legitimacy.

A society founded on secular premises handles the problem in a different fashion. The fundamental operating assumption is that religion is a "private" matter, and every effort is made to "take religion out of politics." A chiliastic troublemaker is therefore subjected to sanctions as a public nuisance (or, as in

[6] It should be noted that seventeenth century Friends were hardly the gentle quietists of later times. In Britain, George Fox was addicted to heckling the sermons of Puritan divines and on at least one occasion rode his horse into a hostile church. One can perhaps even sympathize with a Puritan congregation when a nude Quaker crashed its Sabbath service announcing himself a symbol of the "Naked Truth."

Elizabethan England, where the supremacy of the Crown was an article of faith in the Established Church, as a sedition-monger and traitor). The state, in other words, invokes no ecclesiastical authority but disposes of the disruptor as a menace to public order. As John Locke put it in his *Letter Concerning Toleration:* "[N]o opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated."[7] The first two drafts, but not the final version, of Jefferson's great Virginia Statute of Religious Freedom echoed this Lockean concern: "[B]ut this [liberty of religious opinions] shall not be held to justify any seditious preaching or conversation against the authority of the civil government."[8] Note carefully the definitional device employed here: "Seditious preaching" was put in a different *category* than religious opinion. Thus one could suppress "seditious preaching" without in any way impairing religious freedom; in logical terms, freedom of religion stopped where sedition began.

The classic American doctrine of religious freedom must, I submit, be understood in this historical context. And superadded upon this formulation, which Mr. Manwaring styles the theory of "secular regulation," are the complications of the principle of the separation of church and state and the first amendment guarantee of religious liberty. Let us assume for purposes of discussion what I believe to be the case, namely that the evidence available does not support a broad construction of the first amendment provisions on religion.[9] With a minimum definition we have two limitations on congressional power: *First*, there shall be no established church nor multiple establishment under the auspices of the general government; and, *second*, the United States cannot favor or penalize any one religious body, or coalition, in

[7] THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION 154 (Gough ed. 1948).

[8] 1 THE PAPERS OF THOMAS JEFFERSON 344, 353 (Boyd ed. 1950).

[9] Dean Leonard W. Levy of Brandeis University, has recently argued that the first amendment provisions on religious freedom were intended to establish an "impenetrable wall," but the evidence he advances indicates that this was James Madison's view. The others involved in the formulation and passage may have agreed with Madison—there is no basis for saying they disagreed—but I still stand by my view that without a great deal more data than appears to be available, the minimal interpretation of the reach of the amendment seems most plausible, *i.e.*, "In God We Trust" on the coinage, the Supreme Court's opening invocation, and Thanksgiving proclamations would not fall under the amendment's interdiction. See Levy, *School Prayers and the Founding Fathers*, 34 COMMENTARY 225 (1962); Roche, *The Founding Fathers: A Reform Caucus in Action*, 55 AM. POL. SCI. REV. 799, 815 (1961). Perhaps I should add that the Bill of Rights was not in my view inspired by libertarian sentiments, but by states'-rights commitments, *i.e.*, the new general government was forbidden to dabble in religion, press, speech, etc., but the states retained the right to handle these matters as they saw fit. Only a *state* bill of rights could inhibit a member of the union from, say, establishing Catholicism and hanging Protestants for heresy or, conversely, renewing the suppression of Catholicism. "The inner life of the states, or of private organizations within the states, was thus [virtually placed] beyond constitutional jurisdiction." Roche, *American Liberty: An Analysis of the "Tradition" of Freedom*, ASPECTS OF LIBERTY 145 (Konvitz & Rossiter, eds. 1958). See also the superb analysis of freedom of speech and press in early American history, LEVY, LEGACY OF SUPPRESSION (1960).

the enactment of public policy. Now we have the full dimensions of the quagmire into which all legal explorations of church-state problems must penetrate.

Let us begin with some examples and examine the various facets that emerge. The United States enacts a draft law applicable to all men between the ages of eighteen and forty-five. This is clearly a "secular regulation"; indeed, it is only a national application of the ancient common-law institution of the militia. A Quaker claims that the statute is unconstitutional as a "conscription of conscience" and invokes the first amendment as a bar to military service for those with religious scruples. A court confronted with this issue can rule in either of two fashions: First, it can announce that it is the character of the statute rather than the individual response that determines the outcome and sustain the conscription of the pacifist on the ground that the law—although it has provoked a religious riposte—is secular and that the nature of an individual's reaction is wholly irrelevant. Second, the court could hold that the draft is an unconstitutional restriction on the religious freedom of Quakers, a holding that should bring equally loud cheers from opponents of both war *and* the separation of church and state. In effect, this holding gives a special benefit to one religious persuasion: It would be roughly analogous to a ruling that Catholics who support their own schools as a matter of faith cannot be taxed for the support of public education.

The Supreme Court found itself in precisely this sort of dilemma in a recent case where Orthodox Jewish storekeepers asserted that Massachusetts' Sunday closing legislation worked a religious discrimination against those who closed shop on Friday night and remained closed through sundown on Saturday. In objective terms the law did penalize the religious, both Jews and Seventh Day Adventists. Yet, if the Supreme Court had agreed that the plaintiffs could not be penalized for their religious convictions, it had either to declare Sunday-closing laws generically unconstitutional as a violation of the separation of church and state, or give Orthodox Jews and Seventh Day Adventists a special dispensation which would itself amount to a violation of that principle. The opinion of the Court is, perhaps understandably, a bit obscure, but it appears that reliance was placed on the "secular regulation" rule; Sunday was miraculously transformed into a secular day of rest.[10]

There is one more thorny hedge to be surmounted involving that Forgotten Man, the secular non-believer. To put the problem succinctly, when statutory exemption from military service is granted to members of the historic "peace churches" (Friends, Mennonites, Brethren) because of religious scruples, why should similar exemption not be given to the free thinker who, bereft of revelation or scripture, is simply against fighting? Some years ago the Federal Communications Commission enlivened discussion of this topic by momentarily suggesting that an atheist had the right to equal time on the airwaves to coun-

[10] Gallagher v. Crown Kosher Super Market, 366 U.S. 617 (1961).

ter the "opinions" of churchmen on the role and functions of the Deity.[11] The FCC's position was intrinsically sound, though it ran into heavy weather, and a logician could argue with equal soundness that exemption from military service (which Congress has ruled can be granted only to those with bona fide religious motivation) can not disciminate against the non-believer without violating the separation of church and state.

Probably the classic case of the enforcement of "secular regulation" was the savage campaign mounted by the federal government in the 1870's and '80's to extirpate polygamous Mormonism. The details of this police action have never been adequately chronicled. Congress employed the mailed fist—barring Mormons from juries, requiring from them a "disclaimer affidavit" before voting, and eventually escheating all the non-ecclesiastical properties of the Mormon church. The Mormons relied heavily on the first amendment to protect their peculiar institution of "celestial marriage," but to no avail. Polygamy was a crime, and, said Justice Field for a unanimous Court, "crime is not the less odious because sanctioned by what any particular sect may designate as religion."[12] The same rationale was more recently employed to sustain the use of the Mann Act against polygamous Mormon remnants.[13]

To summarize, the background of the church-state discussion is a logical shambles. If one interprets the first amendment as *protecting* religious eccentricities from the police power, he suddenly finds himself hurdling the "impenetrable wall" between church and state and claiming special rights or exemptions for specified categories of citizens *on the basis of their religious views*. Moreover, can one not argue (as Justice Jackson did in the first *Russian Orthodox Church* case[14]) that when the courts begin to define religious points —for example, by deciding that polygamous Mormonism was *not* a free exercise of religion but a criminal conspiracy—their very intervention constitutes a violation of the principle of separation? If Congress has no right to interpret religious doctrine, it could hardly confer jurisdiction to do so upon the federal courts. The legitimate role of a court under this interpretation is to examine the statute or ordinance—not its impact—and determine whether it is secular in purpose. The moral fervor of those opposing it is irrelevant; they can take their problems to a different court and perhaps get suspended sen-

[11] Scott, 11 F.C.C. 372 (1946). This remarkable, if murky, ruling touched off a congressional investigation of the FCC. See H. R. Rep. No. 2461, 80th Cong., 2d sess., 1948. The Select Committee of the House, after grilling Chairman Wayne Coy, called upon the Commission to "expunge" the decision from its records as an offense against "the moral standards of the nation." The FCC hastily realigned itself with the *Zeitgeist*. See 10 J.F.C. BAR ASS'N 245-46 (1949).

[12] Davis v. Beason, 133 U.S. 333, 345 (1890). Even such a fine study as Harold Hyman's TO TRY MEN'S SOULS, LOYALTY TESTS IN AMERICAN HISTORY (1959) omits any reference to the Mormon episode.

[13] Cleveland v. United States, 329 U.S. 14 (1946).

[14] Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 126 (1952) (dissenting opinion).

tences for sincerity. Yet nothing is quite so elusive as "purpose." As Manwaring points out, "secular regulation" readily lends itself to disguised persecution—as in the Oregon system for ending Catholic parochial education by requiring all children to attend public schools, a technique highly touted by the Ku Klux Klan, which the Supreme Court blocked in 1925.[15]

In short, any road one takes leads to difficulties. In Massachusetts a year or so ago there was a textbook case of the logical bind: The Orthodox Jewish community requested the Commonwealth to appoint an Orthodox rabbi as state supervisor of kosher products, claiming that otherwise the state inspection laws worked discrimination against them. In essence, they demanded equal protection of the health laws. The Civil Liberties Union of Massachusetts, however, after a discussion worthy of a theological conclave, opposed this request as a breach in the wall of separation between church and state.[16] Even a "neutral principle" of constitutional law could hardly provide guidance in this labyrinth.

Professor Manwaring's Witnesses marched squarely into this chaotic intersection of personal liberty and the police power. Their rejection of the flag salute was only incidental to their basic contention, namely, that the Witnesses had the right to select those aspects of the police power to which they would conform, and repudiate those which, in their view, had received divine condemnation. Now it is obvious that an organized society cannot permit any individual or group to revise the criminal code on the basis of an alleged relationship with higher authority. But, at the same time, a democratic society must put a high valuation on the conscience of the individual (whether founded on religious or humanistic values). The characteristic democratic technique for dealing with such a conflict is to ignore it in the hope it will go away, to apply in sensible fashion an administrative version of *de minimus* (the teacher overlooks the non-saluting child, he is quietly told to come to school *after* assembly, etc.). The truth of the matter is that democratic political theory has never managed to reconcile its two essential but antipodal elements: The rights of the majority and the authority of individual conscience. And, as a matter of fact, a number of sticky problems have been "solved" over the years by the tactic of evasion. The British are particularly adept at this.

The Witnesses, unfortunately, were on the warpath; quite literally they were preparing for Armageddon and were bristling with resistance to the godless claims of the state, whether Pennsylvania or Hitler's Reich. Moreover, their strong language and persistence had aroused a great deal of public resentment: Catholics were infuriated by their references to the Holy Roman and Apostolic Church as the "whore of Babylon," and the American Legion

[15] Pierce v. Society of Sisters, 268 U.S. 510 (1925). The Court did not invoke the first amendment or deal with the issue of religious freedom in the decision; the Oregon measure was struck down as an infringement on property rights.

[16] The issue apparently was never taken to the courts.

was panting to teach them a lesson in patriotism and respect for the flag. In this regard, Manwaring has made a particularly useful contribution by his careful analysis of Witness persecution.[17] His statistics indicate that anti-Witness mob violence was most virulent in small-town America as distinct from the big cities, a conclusion that tends to confirm the thesis I advanced some years ago that there has been a direct correlation between urbanization and the decline of mob rule.[18] In any event, the confrontation could not be avoided and, as inevitably occurs in the United States, the courts were called upon to settle the issues in dispute.

It would be pointless to recapitulate the history of the litigation here. Manwaring has picked his way through the material in sharp, concise fashion and has for the first time set forth clearly just what the Supreme Court did and did not say. Suffice it here to note that in 1940 in *Gobitis*,[19] Justice Frankfurter upheld the Pennsylvania flag salute as a secular ceremony within the range of reasonable state authority and ruled that a private religious opinion to the contrary was irrelevant. In short, Frankfurter refused to consider the freedom of religion argument as analytically meaningful in the situation at bar. Justice Stone, in dissent, asserted that religious freedom was an issue, went on to weigh the merits of the religious claim against the merits of the police power, and found the latter wanting. In other words, Frankfurter and his seven colleagues held there was *no conflict* in the *Gobitis* case between religious freedom and the rights of the community, while Stone believed there was a confrontation and that the rights of the Witnesses should prevail. As he put it:

> If these guaranties [of civil liberty] are to have any meaning they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.[20]

Had the Court, when it shifted its view on the constitutionality of the mandatory flag salute, followed Stone's lead, it would patently have violated the separation of church and state. The Justice, in effect, gave a special constitutional bonus to religious dissenters. His sympathy, I take it, would not have gone out to the child who refused to salute because he detested the colors,

[17] Manwaring, pp. 163–75.

[18] Roche, *American Liberty: An Analysis of the "Tradition" of Freedom*, ASPECTS OF LIBERTY 129, 151–62 (Konvitz & Rossiter, eds. 1958).

[19] Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

[20] *Id.* at 604. Cited by Manwaring, p. 145. Presumably in this tradition the Philadelphia branch of the American Civil Liberties Union in 1962 "supported legislation to exempt members of the Amish religious sect from paying a Social Security tax on the grounds that the Amish conscientiously object to receiving benefits from anyone except God." *Freedom Through Dissent*, 42 ANN. REP. A.C.L.U. 26 (1962). The Amish are, of course, free to reject benefits, but a statute such as this would clearly run afoul of the logic of separation of church and state unless it exempted *anyone* with objections from the burden of taxation.

red, white and blue, or who rejected for rationalistic reasons the whole syndrome of flag fetishism. As Manwaring notes, his compassion had gone out to the religious pacifists of World War I, whom he distinguished from the political objectors, the "glib talkers."[21] But in the eyes of the law in a society founded on secular principles there can be no favoritism of this sort: "Glib" political objections to war can be no worse, nor better, than tormented and perhaps incoherent religious views. A jury may take sincerity into consideration in its meditations, a judge can evaluate it before sentencing, and the executive can take notice of it in his employment of the pardoning power, but it has no place in the objective legal structure. It is immaterial to constitutional law, for example, whether a state official denies a Negro the equal protection of the laws because he despises him or because he interprets the Old Testament as asserting the eternal subordination of the Sons of Ham.

Stone may have gotten his logical categories a bit confused, but Justice Robert Jackson, who wrote the opinion of the Court in the *Barnette* case,[22] overruling *Gobitis*, kept his straight. Undoubtedly recognizing that Stone's line of reasoning led directly to a policy of special rights for the religious, that brilliant buccaneer took off on a different tack. Ignoring, except by implication, the religious issues in the case, Jackson accepted Frankfurter's earlier view that the flag salute was a "secular regulation," but held it to be a bad one, inherently unreasonable and arbitrary, which attempted to constrain freedom of thought—not religious thought, but *thought*. Thus the state, Jackson announced in the middle of World War II, had no right to demand this ritual of *anyone*. The crux of the argument between Jackson and Frankfurter was therefore not the rights of religious dissenters but the criteria the Supreme Court should employ in evaluating, in terms of the first and fourteenth amendments, the "reasonableness" of state action.

In his treatment of the flag salute litigation, Manwaring has given us a fine case study of the problems a court of law encounters when it attempts to arbitrate the claims of conscience. We see the whole range of positions: Frank Murphy at one extreme, who once he had become settled on the Court was *always* approving special privileges for those claiming a spiritual *imprimatur* (he even defended the Mormons against the Mann Act![23]); Harlan F. Stone, prudently weighing the conflicting claims of religious inspiration and the police power; Felix Frankfurter and Robert H. Jackson agreeing that the salute is a "secular regulation," but disagreeing violently on whether the Court should exercise restraint or oversight—whether it should act as a tight-laced constitutional chaperone to the state legislatures; Black and Douglas as-

[21] Manwaring, p. 143.

[22] Board of Educ. v. Barnette, 319 U.S. 624 (1943).

[23] See his dissents in Cleveland v. United States, 329 U.S. 14, 24 (1946), and in Musser v. Utah, 333 U.S. 95, 98 (1948) where the issue was a state law prohibiting the advocacy, encouragement, etc. of polygamy.

serting the "absolute" character of religious freedom up to the line of "clear and present danger" to the community. In addition, Manwaring has filled in a great deal of interesting background, examining, for instance, the attitudes of newspapers, journals and law reviews at the various stages of the adjudication, and the role that various pressure groups such as the American Legion, the American Civil Liberties Union and the Committee on the Bill of Rights of the American Bar Association played in supporting and arguing the test cases.

Finally, Manwaring has strengthened my conviction that existing legal precedents have outlived their usefulness in the religion-politics area and that before we can cope with the intricate dilemmas we confront in education, public ceremonies[24] and the rights of religious minorities, we must get some new categories. Manwaring concludes on a pessimistic note by saying that all the rules the Court has employed have "serious drawbacks" and adds: "Which is preferable would seem almost a matter of taste."[25] Taste does play a part, but on the fundamental level a huge pluralistic society has simply refused to be constrained by eighteenth century rubrics and has established a civic religion of a theologically non-partisan character. As Will Herberg pointed out a decade ago,[26] being Protestant, Catholic or Jewish is an essential part of being an American: We have an unofficial tripartite Establishment.[27] Even those who sympathize with his logic must admit that Justice Douglas' concurring opinion in the *Regent's Prayer* case[28] was distinctive for its archaic quaintness; it was rather like meeting a parade of suffragettes on the street, or hearing an oration on the economic virtues of free silver.

To state this is hardly to endorse it. I personally feel that this civic religion leads to a degeneration of spiritual values and a stultification of secular thought. However, as a student of American constitutional history, it seems clear to me that the classical theory of the relationship of politics and religion in the United States has reached dead end; it no longer has any logical nexus with social and political reality.[29] Where we go from here is anybody's guess. Perhaps to the Forum to burn incense before The God of One's Choice?

JOHN P. ROCHE*

[24] Query: When a President rolls the first Easter egg down the White House lawn, or lights the Christmas tree on the mall, is he boring into the "impenetrable wall"?

[25] P. 253.

[26] PROTESTANT, CATHOLIC, JEW (1955).

[27] While this is hard on the non-believer, he too has a solution: He can become a non-believing Protestant, Catholic, or Jew.

[28] Engel v. Vitale, 370 U.S. 421, 437 (1962).

[29] See my discussion of this in *Religion et Politique aux Etats-Unis*, LAICITE (1960).

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