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**Joseph P. Viteritti: The Last Freedom**

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## FEAR AND LOATHING

AS IT HAPPENS, I started thinking about this book while writing another. The earlier project was on a similarly controversial topic, school vouchers. When I began my research in the mid-1990s, national opinion was divided over the proposition that public money might be used to pay tuition for children to attend religious schools, as already was happening in Milwaukee and Cleveland. White liberals and Democrats had lined up against the idea in near unison for a variety of reasons, one being an abiding demand for the constitutional separation of church and state. As someone who had studied urban education for more than twenty years, I saw the issue somewhat differently. I was impressed with polls that were showing strong support among African-American and Hispanic parents for school choice in general and vouchers in particular. Such support was a major reason why voucher bills were passed by the state legislatures in Wisconsin and Ohio.

Poor parents in Milwaukee and Cleveland, as in most cities across the country, were desperate to find alternatives to the failing public schools to which their children were routinely assigned. When I spoke to these same parents about the constitutional problems that vouchers raised with regard to religion, they would look at me rather quizzically as if I were just another fuzzy-headed academic. They had real problems to face. Generation upon generation of their children had been forced to attend neighborhood public schools that were unsound and unsafe. For years, politicians had been promising these parents education reform, but there were no visible signs of change. The same politicians had sent their own children to private schools or public schools that bore no resemblance to schools in the inner city. To these parents, the concept of church-state separation was an irrelevant abstraction, a white middle-class hang-up that had no connection to their reality-packed lives.

At the time I started writing on the subject, school choice and vouchers were widely understood to be conservative issues. For economic conservatives, choice was a way to impose competition and market discipline on underperforming public schools. For religious conservatives, vouchers were a mechanism for channeling public dollars into sectarian schools. Again, I saw the issue differently. I understood school choice primarily as a matter of social justice.<sup>1</sup> Education has always been an essential part of the American dream, so much so that every state constitution defines it as both an individual right and a parental obligation. As long as middle-class parents have the means to remove their children from undesirable schools—either by selecting private schools or by moving to high-priced communities with better public schools—we owe poor parents similar opportunities to control the education of their children. It is morally indefensible to confine poor students to schools that middle-class families would never consider for their own children, especially when other educational options exist that poor parents prefer.

I began my earlier book with an assumption. Knowing that many of those on the political left who opposed vouchers genuinely cared about the plight of poor and minority children, I assumed that if I explained school choice in the context of an egalitarian agenda, I could at least get them to pay attention, to be open-minded. I tied the demand for choice to the moral mandate that Chief Justice Earl Warren, writing for a unanimous Supreme Court, had set down in the landmark *Brown* decision of 1954, declaring that education “must be made available to all on equal terms.”<sup>2</sup> I explained that a needs-based choice program targeted at poor families is a form of redistributive public policy. It was not my intention to dismiss separationists’ long-held concerns about the First Amendment, but to remind them that there may be more compelling social demands that need to take precedence over their legal challenges. I also disagreed with their strict interpretation of the Establishment Clause, which is probably already apparent to anyone who has gotten this far in the book.

I think my assumption was correct. I don’t know how many minds I changed, but I do know that advocates and academicians on the left whom I later encountered in public forums conceded that my argument had merit, that I had offered a perspective on the voucher

question worthy of consideration. Many had spent years working for education reform and trying to improve the lives of disadvantaged populations. They got the point. A targeted voucher plan directed at poor underserved populations, which I proposed, was different from the universal voucher schemes advocated by free market economists like Milton Friedman.<sup>3</sup>

Choice advocates on the right also got the point, and ran with it. On the day the United States Supreme Court decided that the Cleveland voucher program was permissible under the First Amendment,<sup>4</sup> Clint Bolick, then the very able litigation strategist for the Washington-based Institute for Justice, a libertarian public interest law firm, declared the 2002 ruling to be the most important education decision since *Brown*. Four days later President George W. Bush drew the same analogy, followed shortly by conservative columnist George F. Will.

While I had linked the plea for choice to the egalitarian mandate sounded in *Brown*, I had never taken the step of planting the Cleveland decision on the same sacred ground where *Brown* stood in the civil rights community. The comparison angered some African-American leaders, including officials at the NAACP whose lawyers had argued the *Brown* case, and who did not support vouchers.

Clint Bolick, who has represented black parents and children in more voucher cases than any other litigator in the country,<sup>5</sup> had a broader strategy in mind. Bolick appreciated the symbolic value of a landmark case in which liberal civil rights groups were attempting to strike down a law that was expanding the range of educational opportunities available to low-income children in Cleveland. He wanted to steer public discussion of the case in a particular direction. As he explained to Linda Greenhouse of the *New York Times*, “We wanted to make sure that this was seen not as a case about religion but education. If the court perceived it as a religion case, then we would be in serious trouble. If they saw it as an education case, then we would win.”<sup>6</sup> I believe that Bolick’s insight on the case was correct. In this book I want to explore why. I want to explain why this negative predisposition toward religion in the courts is a symptom of a larger problem worthy of our attention.<sup>7</sup>

Religion evokes deep passions in people. Those who practice it devoutly use it as a guidepost to their lives. Many of those who do not

hold such fervent beliefs view it as divisive and potentially dangerous. I am troubled by the animosity that so many good people exhibit towards religious observers and institutions. Granted, living in New York and working in a university setting exposes me to a peculiar slice of life that is not entirely representative of the American psyche. Manhattan, with all its creative energy, can also be the narrowest slip on the planet. Yet the cosmopolitans who inhabit it influence the way many others think. They are opinion leaders.

Many individuals who describe themselves as “multiculturalists,” who sincerely support the causes of racial minorities, women, gays, immigrants, and other groups that have been the victims of discrimination, exhibit a genuine hostility towards the devoutly religious. They are not ashamed to say it. Their sentiment is proudly worn as a badge of sophistication, yet it is nothing but a form of prejudice, a snobbish bigotry. The underlying premise of this book is that if American liberalism is in trouble, the threats against it are coming from the left as well as the right.

Like all forms of prejudice, religious bias is rooted in fear—in this instance a fear concerning cherished values that are targeted by religious activists who aggressively pursue their political agenda. Like all forms of prejudice, it is based on ignorance. Those who are most susceptible to it don’t know very much about the people they dislike. They rarely bother with deeply religious people; so they only know what they read, and they prefer reading material that confirms their own prejudices.

Like all forms of prejudice, religious bias has serious consequences for those against whom it is directed. It undermines values that are fundamental in a liberal democracy, the same values that perpetrators of this sentiment so dearly want to protect for themselves. It is especially harmful when those carrying the bias employ the Constitution as a tool for acting on it. Reasonable men and women can argue over the meaning of the First Amendment; we can be certain, though, that the framers did not write the Bill of Rights to indulge individual bias.

It may seem fanciful to write a book about antireligious bias as we find ourselves in the second term of President George W. Bush. Political analyst Kevin Phillips has written forcefully about the rise of an “American theocracy,” brought on by religion’s surge of political pro-

ess in the last two presidential elections. Phillips traces public policy towards Iraq, Israel, abortion, gays, stem-cell research, and sex education to a “religiously correct” worldview that is the mirror image of the political correctness of the political Left.<sup>8</sup> His vision is ominous, and not without merit.

Bush, after all, presented himself to the country as a born-again Christian, and successfully cultivated the support of evangelical groups to win reelection. His comfortable margin of victory in 2004 cast popular sentiment about religion and the fears associated with it in bold relief. His public remarks brought things to a fever pitch. I will say more about him later. Here I want to make a more central point about what the discussion that framed the 2004 election told us about ourselves.

My point is illustrated in a cover story by Ron Suskind that appeared in the *New York Times Magazine* weeks before the election. Suskind, a former national reporter for the *Wall Street Journal*, had coauthored Paul O’Neill’s memoir of his experience as secretary of the treasury in the Bush administration. In the *Times* article, the well-regarded journalist depicted the Bush White House as a “faith-based presidency,” shaped by religious belief rather than reasoned judgments.<sup>9</sup> He repeats a claim lodged in the O’Neill memoir, that the circle of decision makers in the Oval Office was a closed one, averse to dissenting opinions. The point of the article was to show that this alleged close-mindedness is a function of religious conviction. What I found interesting about the piece is that it devoted less attention to substantiating that claim than it did to drawing a portrait of the kind of person who supported the president’s bid to stay in office. It read as if it were a warning posted to voters on the eve of the election.

Suskind describes a December 2000 meeting where the president-elect met with thirty ministers in an Austin church to explore how he could “speak to the soul of the nation,” and better understand poor people. He reminds us how Bush had reached out in 1985 to the Reverend Billy Graham for help to overcome his abuse of alcohol and turn his life around. As if to alert the reader to the dangers ahead, Suskind cites a statistic indicating that 42 percent of all Americans identify themselves as evangelical or “born again” (a figure that also includes African-Americans, who do not seem to concern him).

We then are introduced to a few of these worrisome types. Gary Walby is a retired jeweler who once told Bush during a meeting at a high school gymnasium in Destin, Florida, “This is the first time that I have felt that God is in the White House.” Walby didn’t actually think Bush was God, he just admired the president’s open identification with his faith. Then we meet Hardy Billington, a social conservative from Popular Bluff, Missouri, who is quoted as telling a rally of twenty thousand Bush supporters gathered at a Labor Day rally, “I love my president. I love my country. And most important of all, I love Jesus Christ.”

We then meet Mark McKinnon, a media advisor to the Bush campaign. He tells Suskind that the individuals being profiled love Bush, and detest people like Suskind who read the *New York Times*, the *Washington Post*, and the *Los Angeles Times*. Suskind interprets the statement to distinguish these folks from the “entire reality based community.” The article ends with a comment by Joseph Gilderhorn, a Jewish contributor to the Bush campaign, who respects Bush’s religion but expresses dismay that “he turn(s) to prayer or God rather than digging in and thinking things through.” This is the punch line of the article.

Of course, most religious people do not see praying and thinking as mutually exclusive, and many do pray. Nor is politics the domain of pure reason. As with religion, politics also can be animated by vision, zeal, and demagoguery. Suskind’s portrait is part of a larger picture that intellectuals and opinion leaders share of people who take religion seriously—that they are irrational and uninformed, a stupid lot who must be treated with suspicion.

The stammering Bush, who got the nation involved in a seemingly irresolvable global conflict on the basis of false information, fits the picture nicely. The big scare that hovered over the Iraqi conflict during the 2004 election could be summarized in one word—Vietnam. What if Iraq became Vietnam, the endless war that brought a generation to political maturity, cost thousands of lives, and ended in national humiliation? Those who make the comparison should be reminded that the ordeal in Southeast Asia was not attributed to religious zeal, or a God-struck chief executive. Vietnam was the handiwork of well-trained minds, the “best and brightest” that universities and expert think tanks could muster.

The picture Suskind draws is bolstered in a best-selling book that appeared at about the same time, in which the author, Sam Harris, asserts, "Religious faith represents so uncompromising a misuse of the power of our minds that it forms a kind of perverse, cultural singularity—a vanishing point beyond which rational discourse proves impossible."<sup>10</sup> There are no subtleties in the book. Harris exploits the devastating attack on the World Trade Center as proof positive of how monstrous religious fanaticism can be, warning that the worst may lie ahead in a world where maniacs have access to weapons of mass destruction. American leaders and commentators have exercised restraint in separating the suicide bombers from the teachings of Islam. Harris argues that the murderers were representative of mainstream Islamic beliefs recorded in the Koran.

For Harris, the boundaries between moderation and extremism are a blur, no matter what the religion. Whether Muslims, Hindus, Christians, or Jews, we are each intoxicated with our own irrational faith. Belief in the existence of one true God dictates an encyclopedic ignorance of the human experience. Religious moderation requires us to challenge the core dogmas of faith—including the existence of God—if it is to lead us out of the wilderness. The one thing that most Americans share with Osama bin Laden and the nineteen hijackers who carried out his deadly mission is that certain fantastic propositions can be taken as a matter of faith without the benefit of tangible evidence.

Harris's irreverence for what believers hold as sacred is truly ecumenical. Catholics are derided for accepting the doctrine of the Virgin birth, Jews for believing in a benevolent God after experiencing the Holocaust. The objective of Harris's book is unambiguous; it is to "close the door to a certain style of irrationality."<sup>11</sup> The reader is treated to a litany of historical travesties that have been committed in the name of God: feudalism, the caste system, slavery, execution, castration, chastity belts, human sacrifice, cannibalism, all sorts of sexual taboos. He might have mentioned pedophilia, too. In Harris's mind, faith and reason are irreconcilable. His vision of a better world, I would add, is difficult to reconcile with a vibrant notion of religious freedom. This is how far the American conversation has come. Kevin Phillips, the author of *American Theocracy*, concedes, "In the 1960's and 1970's, to be sure, secular liberals grossly misread American and

world history by trying to push religion out of the public square, so to speak. In so doing they gave faith-based conservatism a legitimate basis for countermobilization.”<sup>12</sup>

There are important substantive issues that separate secularists from the devout. These issues involve risks to other cherished freedoms, which we will begin to take up in the next chapter. These differences, however, are not a justification for the kind of intolerance that comes to the surface when mainstream liberals dismiss religious observers as being otherworldly or irrational. Many deeply religious people are not politically active, and most do not identify with the so-called religious Right. For most religious observers, prayer and love of God gives meaning to the practice of faith. Some are more vocal about religion than others. Such exuberance, however, should not be used against individuals or communities to disqualify them from full participation in democratic life, no matter how odd it may appear to the majority.

The true measure of religious freedom is the tolerance it affords those whose behavior is most out of step with the rest of us. At the same time, religious organizations should not be permitted to impose their faith on nonbelievers or those who follow a different religious tradition. The trick has always been to find a proper balance between protecting an individual’s right to practice religion to the fullest, and guarding against the use of state power to endorse or sanction religion.

Despite the alarm sounded over the Bush presidency, much of which is legitimate, I will argue that the balance has been, and will continue to be, weighed against those who are deeply religious, whose day-to-day existence is shaped by their faith. This is not merely a legal question that pits the Free Exercise Clause against the Establishment Clause, or a citizen’s right to practice religion against a citizen’s right to not. Constitutional law, as interpreted by the Supreme Court over our two-hundred-year history, is in no small way a reflection of larger political forces. These political tides flow from a deeply felt public philosophy, one imprinted on the minds of the American people, that reinforces and is reinforced by public policy. This confluence of the legal, political, and social is the source of the problem that I identify. It is the full measure of religious freedom, or the lack of it.

This is not to say that Americans are contemptuous towards religion. The United States is among the most religious countries in the Western world. But our religiosity on the whole does not reflect the intensity of

belief that characterizes the most religious among us. It is wider than it is deep. It is not at the heart of our lives as it is for the deeply religious. Many Americans who believe in God and attend church regularly are enmeshed in a ubiquitous secular culture that defines their morals and their mores. They are out of touch with the sentiments and values of people whose life is defined by their faith.

The great majority of the American people who inhabit the center of political life, whom I will later describe nonpejoratively as the *hollow middle*, are uncomfortable with extremists on both the right and the left. They do not want religion to be used as a guide to govern the country, nor do they want the public square to be rid of it. They are troubled by the activists who have enjoyed a disproportionate measure of influence in the two major political parties. They are not satisfied with the answers these operatives have offered us on the “religion question.”

But since the lifestyle of most Americans has more in common with the secular minority than the deeply religious minority, they are more prone to overlook the needs of the latter. Since opinion leaders make the false assumption that the so-called religious Right speaks for most people of faith, these influential writers and thinkers exaggerate the threats posed from the right. That being said, we need to guard against the dangers posed from all sides of the political spectrum. Before I get to that, let me say more about what I mean by “extreme secularism” and what it might produce.

The French come to mind. On March 15, 2004, President Jacques Chirac signed a law that made it illegal for students in elementary, middle, and high schools to “wear symbols or clothes through which students conspicuously (*ostensiblement*) display their religious affiliation.” In Paris coffeehouses, Article 141-5-1 became known as the *la loi contre le voile* because it was directed at young Muslim women who wore headscarves to school as an expression of their religious beliefs and identity. The veil issue had always been a sensitive one in French schools. It found new meaning after 9/11, as immigration swelled the ranks of the Arab minority to an estimated 5 or 6 million, about 10 percent of the population. Chirac, who is usually a cautious politician on domestic issues, decided to take a tough stance as the spring elections approached. France, after all, had defined itself as a secular state for more than one hundred years.

As Jane Kramer explained it in the *New Yorker* after interviewing Chirac, “France is an idea of citizenship, an identity forged in the neutral space of its public schools,” referred to by the secular educator Jules Ferry as *ecole sanctuaire*.<sup>13</sup> There was no place for religious expression or exceptionalism in these institutions, although it should be mentioned that the French government pays 85 percent of the costs for religious schools that meet specified academic standards. Article 14-5-1 implied that there was an inherent tension between being French and being Muslim, or being a practitioner of any faith, for that matter. While the law was prompted by animosity towards the Arab community, it banned all forms of religious expression. A student could be expelled from school for wearing a Jewish yarmulke, a Christian cross, or a Sikh turban.

Could this happen here in the United States, where the idea of the hyphenated American has been taken for granted by so many for so long? Well, yes and no. Like the French, our public school system was also founded on the premise that education could serve as a mechanism for converting a diverse body of people, mostly immigrants, into a single populace. As we say on our currency, *E Pluribus Unum*. It is unclear what we mean by that today. Is our much celebrated pluralism a myth? Is it more about race and ethnicity than about religion? Or does it mean different things to different people: race and ethnicity for those on the political left, religion for those on the political right?

That approach to diversity, if taken to its logical conclusion, could easily degenerate into a notion of tolerance that holds, “If we like them, they’re welcome; if not, then not. We just can’t agree on whom we like.” Fortunately, life in America is more complicated than that. An examination of present immigration patterns will show that race, ethnicity, and religion are bound together. We also have laws, based on lofty aspirations, that tell us that we need to learn to tolerate other people whether or not we agree with the way they live their lives, even if we do not like them a whole lot. How we as individuals view each other, nevertheless, has as much to do with guaranteeing freedom or equality as laws and constitutions do. How opinion leaders and the media deal with such sensitive issues matters as well. Since this book is about religion, let me draw on another foreign example to explain the point further.

In the fall of 2005, violent protests broke out in cities around the world when a Danish newspaper published a dozen political cartoons that Muslims found to be blasphemous towards the prophet Mohammed. One drawing portrayed Mohammed wearing a bomb as a turban. Another pictured him in heaven greeting suicide bombers. Muslims believe that it is sacrilegious to produce any representation of their holy Prophet. This collection of illustrations was especially offensive in the way it portrayed Islam as an intrinsically violent religion. The Western press was, nonetheless, taken by surprise by the rioting carried out by angry Muslims.

Aside from the indefensible violence that occurred, there was a notion of civility behind the reaction of many Muslim leaders that was somewhat incomprehensible to Western journalists. As Prime Minister Anders Fogh Rasmussen of Denmark explained, "I personally have such respect for people's religious feelings that I personally would not have depicted Mohammed, Jesus, or any other religious figures in such a manner that would offend other people."<sup>14</sup> Western journalists saw the incident primarily as a free press issue, but because no government authority was exercised either to encourage or discourage the publication of the cartoons, it really was not about freedom. This imbroglio was about the exercise of discretion.

Flemming Rose, the editor of *Jyllands-Posten*, the newspaper that printed the cartoon, insisted that his decision to do so was an "an act of inclusion" towards the two hundred thousand Muslims living in his country. He wrote, "By treating a Muslim figure the same way I would a Christian or Jewish icon, I was sending an important message: You are not strangers, you are here to stay, and we accept you as an integrated part of our life. And we will satirize you too."<sup>15</sup>

The difference between Prime Minister Rasmussen's notion of multiculturalism and Mr. Rose's is striking. I personally favor the prime minister's conception, believing that mutual respect is more effective way for fostering good fellowship in a diverse setting than wholesale antagonism. Disagreement is essential in a free society, but it is not necessary for the press, or anyone for that matter, to denigrate a group when being critical of it. Yet Mr. Rose, in his appeal for equal treatment, has a point also, perhaps best appreciated when comparing the reaction of the Danish press to the violence with that of the American.

Ordinarily, mainstream American journalists would agree with their Western colleagues, who are inclined to operate under the assumption that the more exposure given to a controversial subject, the better. Newspaper editors said as much when the riots broke out, then refrained from printing the controversial cartoons out of respect for the religious sensibilities of Muslims. Their restraint was remarkable. The American press is not usually inclined to treat religion with such deference. In this situation, reproducing the controversial drawings would have allowed the reading public to draw its own conclusions about the Muslim reaction, but the press held them back. They rarely exercise such restraint when mainstream religions are concerned. Does this suggest a double standard?

All too often, Americans turn to government, especially the courts, to function as an impartial referee in the famous “culture wars” over religion. This inclination to invoke government authority does not always serve democracy well. Especially when the press is concerned, democracy is better served when the government lets private matters remain private matters, as it did with the Danish cartoon episode. In other situations the boundary between the private and the public spheres is more vague, and thereby invites governmental intervention.

In no sphere is the overlap between the private and the public more apparent than in education. There are several reasons for this. Since its inception in the early part of the nineteenth century, the public school has been the place where we have defined our aspirations as a nation, indeed the very definition of what it means to be an American.<sup>16</sup> The school is the institution through which society passes on its values from one generation to the next. But the question has always been, whose values?

Discord over controversial political issues commonly finds its way into the schoolhouse—not just education-related fights like desegregation and affirmative action, but hot-button social controversies like abortion, birth control, stem-cell research, and same-sex marriage—all of which have religious implications. These disputes inevitably need to be decided, if not resolved, by some governmental authority, whether it is a school board, a legislative body, or the courts. Because religion also involves fundamental values, it has always been at the center of the more contentious debates. The intensity of these conflicts, and their

outcomes, shed light on the larger problem that Americans confront today on the role of religion in public life.

That these disputes over religion inevitably end up in the courts is fortuitous for the student of public policy, because judicial opinions provide us with a record of well-reasoned, if contested, arguments that explain why public authorities have acted as they have. These opinions are also a window for peeking into the mind of the nation at particular periods in our history, including the present one. The record has not always been encouraging. At different times religion has been both oppressed and oppressive. Nonetheless, as a close observer to this unfolding saga, I remain a pragmatic optimist.

My optimism flows from a confidence in the capacity of our democratic form of government to mediate the most heart-wrenching disputes, even when the outcome leaves contestants feeling not entirely satisfied. This institutional capacity is a testimony to the genius of the men who designed our governmental system, how they both anticipated our divisions over religion and constructed a framework for accommodating it. It is virtually impossible to give this voluminous subject its due without conversing with the likes of Thomas Jefferson, James Madison, and the talented individuals who made up the founding generation. If the shelves at the local bookstore are any indication, Americans have an endless fascination with these giant personalities. One reason for this is that they can help us work through our ongoing anxieties.

My pragmatism flows from an understanding that political conflict, when it is so passionate, can be ugly. It is troubling when those who describe themselves as liberals are unable to distinguish between disagreement and disdain. It is equally disturbing when public officials are unable to reconcile the dictates of their conscience with their power to exercise public authority. I believe that the risks inherent in the outpour of antireligious sentiment now outweigh the risks that emerge from the outbreaks of religious zealotry that have dotted the political landscape; to put it more bluntly, the threats from the left are more dangerous than those from the right.

That, I am sure, appears unfathomable to some readers in the era of George W. Bush. They have let their fears outpace the protections the Founders have given us in the evolving experiment called American democracy. In the end, even a fair settlement of the dispute over the

role of faith in American public life will require the most religious among us to make the greatest concessions. In the final analysis we must define a constitutional standard that inhibits government from using its power to force an individual to act against the dictates of his or her conscience, whether its source is religious or not.

While I am not inclined to invoke the Founders to support my views on the Constitution, I am fairly confident that this basic proposition is not inconsistent with the ideals they had in mind when they wrote the First Amendment. In order to make sense of it, we need to adapt their eighteenth-century context into ours. It was virtually inconceivable for even the most able minds of the founding generation to divorce the notion of conscience from religion, or Christianity, to be more precise. Our notion of conscience and the need to protect it must be more inclusive. It must be appropriated to the religious and the nonreligious alike.