"Salting" the Mounds
Did Solomon's Sailors Ever Do New Mexico?

In response to our Columbus issue (September-October 1992), Liberty received a letter with photographs about a "fascinating archaeological" discovery in Los Lunas, New Mexico: "the remains of an ancient Hebrew settlement dating from the time of Solomon, or approximately 3,000 years ago." The letter said that site, called the Hidden Mesa, was an almost "exact copy of the ancient city of La-chish [in Judah]," and in it was a large stone on which was "inscribed the Ten Commandments, in a very, very ancient Hebrew script, of the type used 3,000 years ago." According to the letter, the inscription was decoded by people from the University of New Mexico.

Realizing that ancient Hebrew ruins in New Mexico would, indeed, be a revolutionary discovery, Liberty asked William Shea, Ph.D., an Ancient Near Eastern scholar who specializes in inscriptions, to analyze the photo sent to us.—R.R.H.

By William Shea

Anyone involved in the realm of antiquities has to watch for forgeries. Forged artifacts have been distributed through antiquities shops and even in museum collections. Some have also been "produced" from archaeological excavations. How could something that came out of the ground by means of an archaeologist’s spade be a forgery? In the earlier days of Middle East excavations, the directors would pay a bonus to workmen who turned up valuable artifacts. With this incentive, some would concoct "artifacts" at home and then "discover" them at the dig. In the trade, this act is called "salting" the mound.

Apparently, someone had salted the mound at Hidden Mesa. It was easy to tell because inscriptions are among the hardest artifacts to forge. The forger must know both the language in which the inscription was written and the particular script. The Hidden Mesa forger didn’t know either very well.

Scholars who study ancient Hebrew inscriptions have a modest-sized collection of authentic texts beginning with the tenth-century B.C. Gezer Calendar. Other inscriptions can be dated through Babylonian King Nebuchadnezzar’s conquest of Judah in the early sixth century. Thus, it did not require much of a scholarly eye to see that the inscription at Hidden Mesa, far from being dated to Solomon’s time (tenth century B.C.) had been adapted from a late period form of Hebrew. Whoever inscribed these letters on the rock weren’t ancient Israelites of the Solomonic period.

More than likely, the Hidden Mesa inscription was one of many done in the nineteenth century (A.D.) by Bible enthusiasts who had a smattering of knowledge about the Hebrew language, usually acquired from concordances. When they tried to translate this rudimentary knowledge into something that would lend credibility to their ideas—such as that Solomon’s sailors made it to the New World—their texts turned out as rudimentary as the historical ideas they were based on. Though Solomon’s navy went to many distant lands, New Mexico (besides being landlocked) doesn’t seem to be one of them.
From Our Readers

"Evolution: The Working Model Doesn't Work"

I read with great interest this interview with Ariel Roth by Richard Utt (March-April). For a new perspective on this subject the author should read the books by Zecharia Sitchin, focusing especially on The Twelfth Planet, and Genesis Revisited. Sitchin gives a complete account of man's origin as recorded by the Sumerians on clay tablets 6,000 years ago.

To me, the most fascinating aspect of Sitchin's writings is that he proves that the Bible is extremely accurate (names, places, dates, events) and should be read literally.

Roth says a 1982 Gallup poll found that 44 percent of people believe that God created man within the past 10,000 years. That's pretty close to what the ancient tablets say.

RONALD C. MILLER
Kirkland, Washington

Thank you, Mr. Utt, for writing an interesting article.

I'm a housewife who likes to stay informed on a wide of variety of issues. I also agreed with Dr. Roth's summation: "I believe the best evidence shows there must be a Designer behind the extremely complex creation I see around me."

After all, the watch on my arm had a designer and takes its time from the time piece of the universe. The sun hasn't failed to come up yet and Halley's comet comes right on time. A "Master Designer"? You bet! Creation has a lot going for it.

DOLORES BIXLER
Addison, Illinois

"Creation Holding Its Own"

I am amazed at Dr. Roth's appeal to the Gallup polls (March-April) as some kind of scientific assessment of the validity of evolution. A poll taken on the Galileo theories, would certainly, in its day, have indicated that Galileo was wrong. People would have considered his ideas nonsense, not because of the Church, but because of their common sense: "The earth is turning and goes around the sun? He's got to be crazy! Besides, everyone knows the earth is the center of the universe!"

The polls also indicate that we are a nation of fundamentalists, who, by nature, want simplistic answers, with no dangling questions. The text contains all the answers. My students, mostly fundamentalist Christians, are convinced of UFOs, extra-terrestrials, etc., because they have read about these things!

The problems of evolution are filled with questions that will never be completely answered. That is what science is all about. That is also what theology is all about. Faith is not knowledge; it is the "substance of things hoped for." Beware the priest, prophet, scientist, or humanist who has all the answers.

Those whose faith is knowledge run concentration camps, send men to die in holy wars, commit mass suicide or kill their children so they can be safe forever in heaven. Religion is not a search for the truth in this country, but a set of truths that can never change. Science is getting into the same rut.

JOSEPH D. CIPARICK
New York, New York

I found it nothing short of astounding to read Ariel Roth's five suggestions at the end of his short essay. They are really not suggestions at all. Although Dr. Roth obviously believes in an omnipotent deity who controls and contravenes the known laws of nature, and in spite of his disparagement of the enormous amount of knowledge that is known about evolutionary science, his questions arise out of an implicit acknowledgment that there is much about creation and evolution that is not known. It almost sounds as if he is somewhat curious about what he does not know. He writes, "It is difficult for us to think that the working universe, including... life, just happened." Further, "It is even more difficult for us to think that life... just came about by itself." Also he says, "How did the phenomena of mind ever develop...?"

Thoughtful readers of Dr. Roth's essay might easily have wondered why he did not subscribe to his #4 choice: "I don't know."

ROBERT SANDLER,
Professor Emeritus
South Miami, Florida

DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice and promulgate religious beliefs or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the Golden rule—to treat others as one wishes to be treated.
“The Hialeah Animal Sacrifice Case”

Shame on you for supporting Santerian contention that the anti-animal sacrifice ordinances violated their free exercise of religion.

Your insensitivity is giving religion a bad name (and creating atheists).

E. ALBERTINE
Long Island City, New York

Mr. Goldstein's article (March-April) was both interesting and informative. I only wish it had been in greater depth (perhaps delving more into both party and amicus briefs rather than merely relying on oral arguments presented to the Supreme Court).

Articles such as this make thought-provoking discussion to be shared with friends and people of differing religious backgrounds. This is the type of journalism that makes your magazine worth reading. For this reason, I was disappointed in your presentation on the creation/evolution debates (by Richard Utt and Harold Coffin).

While the firm position of the organization responsible for publishing your magazine is known to its readers, your presentation was unbalanced. By not seeking an evolutionist to respond (and perhaps offer a different interpretation) to the information presented in these articles, the impact of these articles is greatly negated. What could have been an informative discourse was reduced to tract literature.

But despite these hit-and-miss presentations, your publication fills a void between academic and activist literature regarding religious freedoms. I eagerly await the next issue.

JENNIFER A. NICKEL
Riverside, California

[Please note in the March-April 1979 Liberty an extensive article by creationist Dr. Harold G. Coffin and response by evolutionist Dr. James W. Valentine. Also see the September-October 1978 issue for the article by creationist Dr. Ariel A. Roth and counter-argument by evolutionist Dr. William V. Mayer.—Ed.]

“Seventh-day Adventist Guidelines on Abortion”

I have just read the Seventh-day Adventist Guidelines on Abortion and I am both amazed and delighted.

I am amazed, because I have often in the past despaired of reading either balanced or compassionate statements on this most divisive of issues aired in the context of any purportedly spiritual and Christian publication. And yet, here before my very eyes, I see both qualities amply represented, and hence all my past skepticism laid to rest. Without sidestepping the moral dimension of abortion, the committee responsible for the guidelines has nonetheless avoided the harsh dogmatism and not so subtle misogyny that pervades almost every other Christian statement that I have previously read on this subject. These guidelines are, in my opinion, a masterpiece of compassion.

I am delighted, as well, because the guidelines represent the triumph of love and balance over rigidity and stricture. They are the most open, honest, positive, inclusive, and warm-hearted reflections on the subject that I have read in any Christian publication to date. They resonate deeply with sentiments that I have acquired, over the years, on the subject of abortion and the issues of meaning and existence that underlie it.

I am a doctor. I talk with women about pregnancies that are crisis pregnancies, and I have always considered it a privilege and a high responsibility to do so, although as a man I am equipped only in my imagination to understand this experience (and it has taken me precious long years to inform my most stubbornly ignorant imagination, let me assure you!). I can only think that some of the people on the committee that drew up the guidelines must have been women, or thoughtful men, who had direct experience with the intense personal dilemmas that a crisis pregnancy entails.

I congratulate the Seventh-day Adventist Church collectively, and the committee that drew up the guidelines in particular, for the focusing of wisdom and caring that has led to this expression of what I consider to be the sort of values that Christ would clearly advocate.

WARREN BELL, M.D., C.M.
Salmon Arm, British Columbia

“Call to Compassion”

Thank you for printing this article by Richard Fredericks (January-February). It was so refreshing to feel the author's true compassion and his encouragement for providing options to abortion.

The truth is, when I opened your magazine and saw this article on abortion, I got a sinking feeling in the pit of my stomach. But I'm so glad that I fought the urge not to read it. Because as I read, my heart rejoiced. I appreciated Fredericks's sincere faith in God as the Supreme Helper to people in desperation. I agree that "to a life-affirming church, God is able to give abundantly so that we have sufficiency in everything... an abundance for every good deed."

I also appreciated the short piece accompanying this article entitled "The Second Victim." I do hope that I'm not alone in echoing an
emphatic amen to the thoughts shared by Fredericks. Thanks again for sharing it with your readers.

GWEN SIMMONS
Centerville, Iowa

On the News

Ambassador to the Holy See

By Bert B. Beach

For the following reasons the General Conference of Seventh-day Adventists has asked President Bill Clinton not to reappoint an ambassador from the United States to the Holy See, nor to accredit a pro nuncio in Washington.

Separation of Church and State. Diplomatic ties with the Holy See based on its claimed civil authority, its size, and its influence, run counter to U.S. tradition and the concept of separation of church and state. Not only do diplomatic relations with the Holy See entangle the United States with the problems, views, and claims of a church, but they involve that church in the political affairs of the United States. Church political ambition runs counter to the American national spirit and heritage.

A Form of Religious Discrimination. Diplomatic relations with the Holy See violate the American principle of pluralism and the equality of all religions and churches before the law. The diplomatic tie in question shows special favor for one church. Granting the Roman Catholic Church special recognition and direct access to the State Department and the White House constitutes discrimination towards other churches, especially world churches and world ecclesiastical councils.

Pope and Curia Comprise Holy See. It is impossible to differentiate between the pope as head of the Roman Catholic Church and as head of the Vatican City State. In fact, diplomatic relations are not with Vatican City but with the Holy See. The pope and the curia together comprise the Holy See. Any interpretation making a separation between the Holy See and the Roman Catholic Church is misleading. The Roman Catholic Church itself makes this clear by the dual role assigned to nuncios as ambassadors to the government and as papal representatives to the Catholic bishops of the same country.

Official Diplomatic Relations Unnecessary. While the appointment of a U.S. ambassador to the Holy See represents a triumph for the diplomatic initiatives of the Roman Catholic Church, it provides no value to the United States. If he so chooses, the president can have a personal envoy, and there is a heavily staffed U.S. embassy in Rome.

Possible Damage to Interchurch Relations. Sending a U.S. ambassador to the Roman Catholic Church is not conducive to good interchurch relations because it confers on one church sovereign international political status, which no other church has. At best other churches receive "nongovernment organization" status (for example at the United Nations). The charge of favoritism and discrimination does not sit well. No church wants to be discriminated against or see another church receive special political favors.

The Seventh-day Adventist Church's opposition to U.S. diplomatic recognition of the Holy See is not based on bigotry. The pope's status as a significant international figure is not the issue. The basic problem is diplomatic relations with any church. We are opposed to this. In addition, of course, our views are reinforced by prophetic understanding.

Dr. Bert B. Beach is director of the department of Public Affairs and Religious Liberty for the Seventh-day Adventist Church world headquarters in Silver Spring, Maryland.

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In 1988 heaven came down to Hialeah, Florida. A vision from the courts of glory descended upon the Reverend Henry Jackson. "God showed John of Revelation a number," he wrote to followers, "And God showed me in a vision coming down from heaven a holy number. 'God's blessing number.'"

And what was this mysterious "blessing number"? The mark of the beast? The date of Christ's second coming? The time of the secret rapture? No. As Jackson dutifully explained to insiders on his mailing list, it was a holy hot lottery number!

Not wanting to keep this divine secret to himself, generous Jackson offered to share it with supporters: "I will send you a red-hot one-day, one-way straight money blessing free for Saturday or next week" that could put into your pockets $5,000 or even more in just one day. Free—Free."

From whatever the Lord blessed insiders with, however, the anointed quartermaster suggested they send him 10 percent. A little love offering in advance, he hinted, such as $12, wouldn't hurt either.

Many eager believers applied for their "one-day, one-way straight money blessing," often enclosing a donation for good luck as well. After all, Jackson surely understood their financial situation. "God showed me," he wrote, "that you have been struggling with those unpaid bills and I want you to know that God can put cold green cash into your pockets in just 24 Hours."

Unfortunately, the heavenly lottery numbers weren't all that heavenly. In fact, they were downright duds, and ungrateful donors complained to Florida authorities about this divine rip-off. Awash in their wrath of disappointed saints, the Department of Legal Affairs investigated. They discovered four additional mail-order sugar daddies: Rev. Lee, Bishop Joseph Casper, Rev. Wallace Blackwell, and Rev. John Devine III. These four men of the cloth were, figuratively, cut from the same cloth. All were different names for the Reverend Henry Jackson.

It was "absolutely a sham," said Richard Scott of the Florida attorney general's office. The district attorney subpoenaed Jackson's records to inquire into a possible violation of the state's Deceptive and Unfair Trade Practices Act. In response, Jackson hid within the skirts of Lady Liberty, claiming First Amendment protection from even preliminary inquiry. When the Dade County Circuit Court voted in favor of Jackson, the Florida Department of Legal Affairs appealed to the Third District Court. The state argued that it had a justifiable secular purpose for the subpoenas. The higher court concurred unanimously, citing the controversial 1990 Supreme Court ruling in Oregon v. Smith.

Judge Levy wrote that "First Amendment freedom of religion arguments are not a bar to enforcement of laws which are directed at conduct rather than belief, have a secular purpose and effect, and are justified by governmental interests." Judge Gersten noted, however, that never does Jackson "make a specific offer to exchange a winning number for money. He simply promises to send 'red hot numbers' revealed to him by God. Jackson says he will even send the numbers for free…. There is no evidence in the record, however, of anyone receiving numbers for free." Gersten was afraid that the request for the subpoena could amount to nothing but a "fishing expedition" against Jackson for future criminal prosecution. Nevertheless, he concurred in the result of the majority, but "only because it allowed the State to proceed in some fashion against this person."

While Jackson deals with the legal issues of his case, theologians can wrestle with the dilemma of why the Lord, who turned water into wine, chose not to transform red-hot lottery numbers into cold green cash. Or psychologists can wonder why anyone with even a room-temperature IQ should do business with a shaman.

Jackson has been unavailable to comment on the controversy. Perhaps he is busy receiving a vision of another number.

For a mug shot, maybe?

Footnotes
1 Recorded in Southern Reporter, 2d series, p. 867.
2 Ibid.
3 Section 501.203 (1).
4 Also cited was the Florida case Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, a 1989 ruling involving municipal ordinances regulating ritual animal sacrifices.
THE TAX WOMAN COMETH

by Richard H. Utt

What do not-for-profit organizations like the Slingshot Beer Committee, the Pink Agenda, the U.S. Committee on Poland’s Environment, Friends of the Squelch, and local Christian churches have in common?

Berkeley, California, may be the freest place on earth. The city buzzes and crackles with the freedom to be different. Freedom of speech, press, and assembly is pushed beyond limit.

But suddenly the tax woman cometh. Incredibly, the city mothers and fathers of Berkeley decided to tax religion!

When Sonali Bose became director of finance for Berkeley,* she was handed an assignment: compile a list of all 600 nonprofit organizations in the city, including churches—and collect taxes. No exceptions.

An ordinance to tax nonprofit groups had been on the books since 1977, but enforcement was spotty. Thanks to the recession, mid-1992 finances were so severely strained that the city let 41 employees go, and even then its $219 million budget was stretched.

Berkeley, population 107,000, is not your average city. Unlike its larger neighbor, Oakland, of which Gertrude Stein wrote that “there is no ‘there’ there,” Berkeley definitely has a “there.” It’s the home of the University of California, one of the world’s great educational centers, where Chancellor Chang Lin Tien presides over a faculty that includes nine Nobel laureates, 94 members of the National Academy of Engineering, plus Guggenheim Fellows, Presidential Young Investigators, et al.

The University of California at Berkeley awards more doctoral degrees than any other American university, and more such degrees to women and minorities. Its 30,000-plus students swarm its spacious campus and congregate in Sproul Plaza, epicenter of counterculture. They spill out onto Telegraph Avenue and through the city, flavoring it with an unlikely mix of hedonism and save-the-world concerns.

In language notable for its restraint, a tourist brochure describes Berkeley as one of the “most lively, culturally diverse, and politically adventure-some communities.” But the city is more: it is a caldron of activism with numerous groups trying to expose something, save something, create something, change something, improve something, demolish something, or—believe nothing! It cradled the free speech movement of the sixties. Last September a contingent of sun worshipers paraded in Sproul Plaza dressed, except for sandals, like Adam and Eve before the Fall. No one called the police, and no police came.

The city has been called the “People’s Republic of Berkeley.” It is, declared Howard Bloch, a Berkeley professor of French, a town in which “half of the people are seeking to overthrow the federal government, while the other half are seeking the perfect croissant.” A ubiquitous poster invites students to a rock concert “louder than God.” October 12 is observed as “Indigenous People’s Day,” and Malcolm X’s birthday is a holiday, with all city offices closed.

Against this nonconformist backdrop with its proliferating societies, clubs, foundations, and charitable causes, Sonali Bose, a pleasant, capable, and determined young woman of East Indian heritage, prepared to go after the nontaxpayers. The city attorney had found that the city violated the U.S. Constitution by taxing nonprofit entities unevenly. “The law is on the books,” said Bose. “It’s my job to enforce it.”

Bose knew that this was Berkeley, not Duluth or Dubuque. But she was hardly prepared for what she found: not 600-plus nonprofit groups, as she had thought, but 979 of them abutting on and abounding in the city. Some were the expected: California Teachers’ Association, Red Cross, Humane Society, YMCA, Alzheimer’s Services, Bay Area Wind Symphony. But the list swelled as others were added: Slingshot, Beer Committee, The Byzantium, Friends of the Squelch, League of Khmer Students, OUT!, Bananas, Inc., Copwatch Report, New Age Academy, U.S. Committee on Poland’s Environment, Healing Ourselves, Mustard Seed Preschool, Smell This, Pink Agenda, Old...
Blue Rugby Football Club, Prana Yoga Ashram, Uppity Productions, Turkish Students Association, Afghan Cultural Association, Deja Vu Metaphysical, and Laotian Handcraft Center. Possibly some of these groups operate from a kitchen table, as they have not the luxury of a listed telephone number.

One nonprofit outfit exists for every 108 people in Berkeley. Can civilization as we know it survive when so many people are so busy helping one another?

The embattled director of finance divided her 17-page single-spaced list of not-for-profit societies into four categories: 424 “only paying for for-profit activities”; 17 “nonprofits who claim to be charitable, not verified”; 135 “notified by letter, no response”; and 403 “that have not been notified yet.” The educational colossus, the University of California at Berkeley, is, of course, state-owned and beyond the city’s power to tax.

Coexisting with other nonprofit organizations in Berkeley are 91 churches, temples, and meeting halls that have always been exempt from income taxes and business licenses. Major denominations are represented, plus many others: Solid Rock Church of God in Christ, Chinese for Christ, Set Free Christian Fellowship, Divine Healing Holiness Church, Buddhists, Sikhs, Hindus.

By far the largest religious institution is the Graduate Theological Union, a consortium of seminaries sprawling over several blocks of prime real estate just north of the University of California campus. This center is an umbrella organization comprising Baptist, Episcopalian, Roman Catholic, Lutheran, Unitarian, Disciples of Christ, and interdenominational graduate schools, plus affiliations with an Orthodox institute, a center for Jewish studies, and two schools for Buddhist studies. Nothing just like GTU exists elsewhere. Because of its size, its prominence, and even its imposing collection of architecture, some believe it to be the prime target of tax-starved Berkeley.

The city sent out notices that each nonprofit organization henceforth was to pay the city $51 a year for a business license, and 60 cents for each $1,000 of receipts as income tax. The notice warned, “A review of our records indicates that your agency is not registered and/or licensed to operate in the city of Berkeley.”

Reaction was prompt, led by the spiritual grandchildren of Roger Williams. “They are trying to tell me I have to get a city license to preach! What are they going to do if we don’t pay? Are they going to close our doors?” demanded Elvin Baker, Jr., pastor of the 300-member Olive Grove Baptist Church.

The East Bay Baptist Association advised him not to pay the tax, and Robert Rasmussen, executive minister of the American Baptist Churches of the West, said he had urged four Berkeley Baptist groups to refuse. He predicted that Berkeley would back down. “This is crossing the line,” he said. “We have churches feeding the hungry, taking that burden off the city, and now they are trying to tax us.”

Other churches were more relaxed. Berkeley’s First Presbyterian Church sent in its license fee. LaVonne Niccolls, administrator of the 1,900-member church, mildly protested, “They are say-
(Left) Activist posters at U.C.: in center is picture of a man with his nose cut off, quoting Columbus: “If you discover that some among them steal, you must punish them by cutting off the nose and ears, for those are parts of the body which cannot be concealed.” (Right) Students at U.C. in Sproul Plaza.

ing there should be no separation of church and state. They’re dipping into our offering plates.” She estimated that the new tax would cost her church $900 a year.

Jesse Cooper, a professor at the University of California at Berkeley’s Boalt Hall Law School, delivered his opinion: “The general rule is that, so long as a tax is not directed at churches but is imposed on organizations across the board, the Constitution does not entitle churches to any special exemption. And Berkeley taxes everybody.”

When the city council convened on a Tuesday night, 300 filled the chamber and overflowed into the hall. A succession of speakers opposed the taxes, stressing that even in a recession some things are sacred. Charles Kazarian, pastor of the Seventh-day Adventist church, told the crowd, “We regularly give a tithe of our income to the church. Taxing that, I would consider an infringement of my religious freedom. We’re asking for freedom to manage our finances without government and city influences.” He drew a chorus of “Amens.” Others reminded city officers that churches invest much time and money in community service—feeding the homeless, fighting substance abuse, providing education.

Phil Hiroshima, attorney for the Seventh-day Adventists’ Northern California Conference, pointed out that to license churches is a form of “prior restraint” and a form of government entanglement with religion, thus forbidden by the First Amendment. As for the proposed income tax, he cited the act of Congress specifying that nonprofit organizations are not to be taxed. Because “the power to tax is the power to destroy,” and even a nominal tax puts the secular taxing authority where it could create a hardship on religion, or even destroy it, the free exercise clause of the First Amendment forbids it.

The council decided to put the dispute on hold until a committee could sort out the constitutional issues. They decided to ask three attorneys, Phil Hiroshima, Pat Finley, and David Owen-Ball, to prepare legislation that the city could adopt and live with. Tom Brown, deputy city attorney, said he feared that if taxes were not collected from the churches, the city’s secular forces would sue, and if the taxes were enforced, the churches would.

The U.S. Constitution itself sheds little light on the debate, other than the principle of separation. However, the issue of church taxation was investigated—and supposedly settled—by the Supreme Court in 1970. A real estate investor named Walz had sued the city of New York, claiming he was being forced by the tax laws to support churches and religious activities in which he did not believe. Tax exemptions for religious properties all over town, he alleged, threw an extra burden onto all nonexempt properties. Of course, he was correct; that is what happens, and it has been happening for a long time.

Further, some religious organizations, often as a result of sitting on urban real estate, grow enormously wealthy as the years pass, far beyond the designs or even the dreams of their founders. Why should these valuable properties continue to enjoy a safe haven from the tax assessor while others groan under the fiscal load, all in the name of
In Berkeley, like in the rest of America, liberty and law, individual rights and collective restraints, are at a tension. The boundaries are rarely clearcut; they often need to be redefined.

religion freedom?
In Berkeley, like in the rest of America, liberty and law, individual rights and collective restraints, are at a tension. The boundaries are rarely clearcut; they often need to be redefined.

The arguments on both sides are weighty. Justice William O. Douglas disagreed with his fellow judges in their decision to uphold the historic tax exemptions for churches (Walz v. Tax Commission of the City of New York).

“... the power to tax is the power to destroy,” any kind of tax on religious exercise can be a form of hostility toward religion. It can result, among other things, in the confiscation of property for nonpayment of taxes. Walz, however, continues: “New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its moral or mental improvement, should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes.

Walz admits that “governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms—economic, political, and sometimes harshly oppressive. Grants of exemption historically reflect the concern of authors of constitutions and statutes as to the latent dangers inherent in the imposition of property taxes; exemption constitutes a reasonable and balanced attempt to guard against those dangers.”

Because “the power to tax is the power to destroy,” any kind of tax on religious exercise can be a form of hostility toward religion. It can result, among other things, in the confiscation of property for nonpayment of taxes.

Walz, however, continues: “New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its moral or mental improvement, should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exception to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, and scientific, professional, historical, and patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest.”

Patrick L. Finley, a San Francisco attorney involved in the Berkeley matter, listed some of the social services provided by the city’s churches: “counseling (family, youth, HIV, etc.), youth programs, incest survivor programs, addiction programs, job and housing services, police coordination and crowd control, primary and secondary education, childcare programs, night adult classes, tutoring programs, food basket programs, household goods and clothing collection and distribution, hospital and rest home visitations, funeral services, culture and art programs, and recreation. The churches also provide care for the homeless and disenfranchised by participating in or providing for the general shelter program, special shelter for women and children, meal services, clothing collection and distribution, and hospitality centers.”

He concluded that “religious organizations, including their churches, schools . . . were never intended to be covered by the [tax] code . . . . The preferential treatment given by Berkeley to nonprofit religious organizations is not only supported by the U.S. Constitution . . . but by the legitimate recognition that these exemptions advance the secular purpose of encouraging private, noncommercial groups to undertake common projects at their own expense that improve the community’s well-being.”

The appointed attorneys fine-tuned and clarified certain points of the city’s tax ordinances and submitted legislation with few surprises for consideration by the city. Indications are that the city will accept the proposals, and that nonprofit organizations, including religious ones, will continue to enjoy exemption from taxation, as they do in other American cities.

Actually, Berkeley may not be that different from Duluth and Dubuque. Anarchy may seem to perch and bubble from every manhole, but Berkeley is still under the rule of law. Ask the sad-faced citizen who files through city hall’s cluttered corridors to the window, where he or she parts with $16 for overtime parking. And in its parks one is forbidden to (1) camp overnight, (2) litter, (3) consume alcohol, (4) exercise one’s well-loved pooch without carrying the appropriate implement in the event of lapses.

In Berkeley, like in the rest of America, liberty and law, individual rights and collective restraints, are at a tension. The boundaries are rarely clearcut; they often need to be redefined. These adjustments come by public hearings, debates, and even by the courts when necessary. The recent tussle over church taxation illustrates the process.

Berkeley, on reflection, really isn’t a place “where there aren’t no Ten Commandments,” as Kipling wrote. In its own raucous, eccentric style, this city is a working model of what America is all about.
The Supreme Court’s 1990 decision in Employment Division v. Smith1 gutted the law of free exercise. The Court said that since generally applicable laws are neutral, and neutrality is all the Free Exercise Clause requires, even worship services may be prohibited. The Court sharply changed existing law, with no opportunity for briefing or argument, and then issued an opinion claiming that its new rule had been the law for a hundred years. An extraordinary coalition of religious and civil liberties groups has sought to have Smith overturned, first by an unsuccessful petition for rehearing and now by proposed legislation.2

The coalition’s concerns are justified. Courts and government agencies have already relied on Smith for authority to dictate the location of a church altar,3 to suppress animal sacrifice among Afro-Caribbean immigrants,4 and to equate the rights of churches with the rights of pornographic movie theaters.5 Smith may authorize all these things or none of them. It announces a dramatic new rule and a number of ill-defined exceptions, the scope of which remains to be litigated.

Smith has been subjected to substantial scholarly criticism showing that the understanding of free exercise in the founding generation included exemptions for religiously motivated conduct.6 Justice O’Connor’s dissent and this early scholarly commentary document the obvious: the Court’s account of its precedents in Smith is transparently dishonest.7 Perhaps the point is made most effectively by quoting Justice Scalia in a pair of opinions 14 months apart. Here is Scalia in 1989:

“In such cases as Sherbert v. Verner, Wisconsin v. Yoder, Thomas v. Review Board of Indiana Employment Security Division, and Hobbie v. Unemployment Appeals Commission of Florida, we held that the free exercise clause of the First Amendment required religious beliefs to be accommodated by granting religion-specific exemptions from other-applicable laws.”8 And here is Scalia in 1990 for the Court in Smith:

“We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.”9

He was right the first time.

Reactions to Smith also make the point that the decision is inconsistent with the apparent meaning of the constitutional text.10 The Court concedes that religious conduct is the exercise of religion,11 and it accurately describes the law at issue as a “criminal prohibition” of this religious exercise.12 On its face, such a law would seem to be a law “prohibiting the free exercise thereof.” The Court does not really dispute the point; it says only that this is not the only “permissible” meaning of the text.13

When a decision is dubious or demonstrably wrong as a matter of text, precedent, and original intent, it must be based on something else. I will examine the theoretical conceptions revealed by Smith and the scholarly supporters of its approach;14 especially the Court’s conception of religious neutrality.15

The Free Exercise Clause is now principally a special case of equal protection, forbidding religious discrimination. It also survives as an adjunct to the Free Speech Clause, but has little independent substantive content.

The practical impact may be limited or enormous, depending on the ultimate content of the various exceptions and limitations in the opinion. The Court’s announced rule should mean that neither criminal punishment nor civil disabilities can be inflicted on religious minorities identified by name, doctrine, or ritual. But those forms of persecution are not the most likely ones. The scope of regulation in a modern state creates ample opportunity for facially neutral religious oppression enacted through hostility, indifference, or ignorance of minority faiths. If the Court intends to
defer to any formally neutral law restricting religion, it has created a legal framework for persecution. I use that word, not hyperbolically or rhetorically, but literally.

The Case: Smith and the Regulation of Religious Conduct

Smith began as an unremarkable unemployment compensation case, with facts that could have been made up for a law school exam: two counselors in a drug and alcohol abuse clinic fired for taking peyote at a Native American Church worship service. When the Supreme Court finished, the case was certainly not routine, and the facts had become utterly irrelevant.

Peyote is a hallucinogenic drug that one takes by eating the buds of a small cactus plant. Although illegal, peyote has never been an important recreational drug. The buds are tough, bitter, difficult to chew, and frequently cause nausea or vomiting.17 Peyote appears to be much safer than illegally produced synthetic hallucinogenics that are more widely abused; adverse reactions are only very occasionally reported.18

There is no dispute that peyotism is an ancient and bona fide Native American religion, where peyote is a sacramental substance and a source of divine protection, used in a highly structured ritual.19 Federal drug laws and many state drug laws exempt such religious use, and federal drug authorities issue licenses to grow peyote for religious use. Evidence indicates that on balance the religion is a positive influence on its members, especially on recovering alcoholics.20 The irony of drug counselors fired for peyote use may be more apparent than real; their religion teaches total abstinence from all other drugs, and from recreational use of peyote, emphatically and with some success.

In its first encounter with the case, the Supreme Court announced that it wanted to decide whether Oregon could criminally punish those who use peyote.21 The Court remanded the case, asking the Oregon supreme court to determine whether sacramental use of peyote violated Oregon criminal laws. After an affirmative answer from the Oregon court, both sides briefed the criminal law issue under the prevailing standard: Would criminal punishment of religious peyote use serve a compelling interest by the least restrictive means?

The Court rejected that standard and announced a fundamentally different one that required no attention to the facts of the case, nor to any of the issues argued by the parties:

"If prohibiting the exercise of religion ... is not the object of [a tax or regulation] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. . . . The right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'"22

Because Oregon’s prohibition of peyote use is generally applicable, the peyote worship service is not constitutionally protected.

The scope of this new principle is not clear. It applies to religious conduct, but apparently not to religious speech.23 Even with respect to conduct, the Court recognized exceptions for "hybrid" cases that involve free exercise and some other constitutional right—freedom of speech, for instance.24 And while an explication of the requirement that laws be neutral and generally applicable preserves the Court’s earlier unemployment compensation cases,25 this proviso did not apply to Smith itself.

These exceptions and limitations rest on ill-defined principles. Their most obvious feature is this: although the Court distorted the rationale of its precedents beyond recognition, the exceptions and limitations preserved all its prior results. This result is inexplicable unless someone in the majority wishes to preserve these precedents. Part of the task in future cases is to search for principled lines between what the Court has preserved and what it has rejected.

The lines to be drawn apparently depend on definitional categories. Belief is protected, but conduct generally is not; speech is protected, but other conduct generally is not; even conduct is protected against non-neutral laws, but not against laws that are neutral and generally applicable. To apply these rules, courts must sort cases into the various categories: belief or conduct; speech or something else; neutral or not neutral.

The lines require no balancing of competing interests. The importance of the state’s policy or the religious practice is irrelevant. It makes no difference whether peyote is deadly or harmless or whether Oregon has forbidden peyote, or wine, or unleavened bread. In Justice Scalia’s example, it makes no difference whether the prohibited religious practice is “throwing rice at church weddings” or “getting married in church.”26 The Court’s ground of decision was precisely that courts should not assess the importance of either government interests or religious practices.27

The point is underscored by the religious practice at issue. However unfamiliar or even dangerous the peyote ritual may seem from a majoritarian perspective, it is also the central religious ritual of an ancient faith. The Court held that Oregon can suppress a worship service, and that so long as that is the incidental effect of a generally applicable law,
Oregon need have no reason for refusing to grant a religious exemption.

The Misconceptions—The Court’s Conception of Neutrality

1. Formal neutrality and majoritarianism. Smith makes formal neutrality the dominant principle of free exercise jurisprudence. Instead of a substantive right against government, churches and believers now get a right to equal protection. Instead of an exemption from regulation, they get the right to be regulated no more heavily than secular institutions. But in the modern regulatory state, secular institutions are pervasively regulated. Religious exercise is not free when it is pervasively regulated.

The Court has chosen an equal protection rule instead of an exemption rule. And in applying that rule, the courts need not distinguish the unique features of religion from any other human activity. In the Court’s view, religious use of peyote or of wine is no more protected than is recreational use. Soldiers who believe they must cover their head before God are constitutionally indistinguishable from soldiers who want to wear a Budweiser gimme cap. The Free Exercise Clause now grants only religion-blind equal protection: “formal neutrality.”

The Court says that although exemptions for churches are not required, they may be permitted. Government may grant religious exemptions from regulation, and secular courts may defer to religious authorities in religious disputes. With respect to taxation, formal neutrality in theory is both the minimum and the maximum. Government may not exempt religious income, property, or activity from taxation except as part of some larger exempt class defined in secular terms. But in practice, legislatures exempt from taxation most church income and property, and the Court is unlikely to rigorously scrutinize the boundaries of the secular exemptions that are said to include religion.

This pattern is in fact a move to majoritarianism; the Court is getting out of the business of enforcing the religion clauses. Legislatures and agencies choose when to provide only formal neutrality and when to grant exemptions. Favored religions can be exempted from the rules that burden them, while disfavored religions are denied such exemptions.

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The Court has said little to defend this proposi-
stateside Air Force base. In Justice Stevens’ view, the resulting burden on observant Jews is justified because it avoids both any appearance of discrimination against the wearers of saffron robes and the necessity of judicial distinctions among religions. He prefers evenhanded repression to imperfect liberty.

Similarly, some complain that “Christians sometimes win, but non-Christians never do.”44 Better, therefore, to repress Christian minorities as well. In fact, there have been judicial wins for non-Christians,45 and many of the Christian wins have been achieved by small and highly unconventional Christian sects. The point: Judges are more likely to respond sympathetically to religious claims that are familiar, easily understood, and unthreatening. That problem cannot be solved by judicial abdication: legislators are even more likely to favor familiar faiths than are judges.

Constitutionally adjudicated exemptions for small or unpopular religious minorities merely match the legislative exemptions commonly granted to larger or more accepted faiths.46 Even if the Court were to forbid legislated exemptions, the majority would rarely be required to violate their deeply held beliefs, because those beliefs will normally be reflected in legislation, without the need for exemption.

With or without constitutional exemptions, some religions will be burdened by law more than others. Without exemptions, the line will be drawn between those faiths that can prevail in the legislature and those that cannot. With exemptions, the line will be between those faiths that can prevail either in the legislature or in the courts and those that can prevail in neither place. Thus a rule of constitutional exemptions would produce more religious liberty, as it would give religious liberty claims two chances to prevail.

Should we expect legislatures to draw more principled lines than do the courts? Legislators are under no obligation to be principled. Subject only to their oath to uphold the Constitution, they are free to reflect majority prejudices and to ignore problems that have no votes in them. This political freedom is good for many things, but not for achieving evenhanded treatment of many small, disparate, and sometimes obnoxious religious minorities.

Judges, though imperfect, are sworn to provide equal justice for all, to treat like cases alike, and to give principled reasons for their decisions. Justice Blackmun argued in dissent that the state’s obligation to treat all religions equally “is fulfilled by the uniform application of the ‘compelling interest’ test to all free exercise claims, not by reaching uniform results as to all claims.”47 While judges cannot achieve the ideal of “uniform application,” a line based on compelling interest is likely to be more principled than a line based on who can get the sympathetic attention of enough legislators. The goal of neutrality among faiths is no reason to reject the substantive entitlement in the Free Exercise Clause.

There is a separate concern about neutrality between religion and nonreligion. The Free Exercise Clause comes paired with the Establishment Clause, and government neutrality toward religion is an important part of the combined mandate. But if the clauses also create substantive entitlements defined in terms of religion, then formal religion-blind neutrality must not be the kind of neutrality they mandate. Neutrality requires that like things be treated alike, and that unlike things be appropriately distinguished.

Because the founders thought religion to be unlike other human activities,48 the Constitution includes two clauses that apply to religion and nothing else. These clauses presuppose that religion is in some way a special human activity requiring special rules applicable only to it. To distinguish between a yarmulke and a gimme cap is not to discriminate between indistinguishable head coverings, but to distinguish between a constitutionally protected activity—religious exercise—and an activity not mentioned in the Constitution.

The neutrality mandated by the Constitution is not formal but substantive: government should “minimize the extent to which it either encourages or discourages religious belief or disbelief, practice or nonpractice, observance or nonobservance.”49 So defined, substantive neutrality is consistent with the substantive entitlement created by the text of the Free Exercise Clause.

To consider the claim that religious exemptions are substantively neutral, one must consider the incentive effects of denying or granting them. It is clear that criminal punishment of religious practice discourages that practice. But an exemption for religious practice does not often encourage nonbelievers to join the faith. Much religious activity is restraining and meaningless to nonbelievers. Gentile soldiers will not wear yarmulkes just because it is permitted, and there is no evidence that drug abusers are switching to peyote in states where peyote worship is permitted. The magnitude of encouragement incident to an exemption is generally smaller than the magnitude of discouragement incident to criminalization of a practice, and so exemption comes closer to substantive neutrality.50

3. Free exercise and other constitutional doctrine.
It has been said that the United States is on a tilt, and all the loose nuts roll to California. Whatever the real reasons, the state has long been a haven for social, political, and religious misfits, which is why it has been especially tolerant of deviant lifestyles and personalities. Any state that's home to Jerry Brown, Jim Jones, and Phyllis Diller would have to be.

But exceptions to its tolerance exist. California seems to be more tolerant of deviancy than of devotion, of perversion than of piety. Agnes and Jack Donahue's refusal to rent an apartment to an unmarried couple is a case in point. Their situation represents a classic case of conflict of rights, this time between the free exercise of religion and discrimination on the basis of moral behavior. Which prevails ultimately depends on the California Supreme Court.

The Donahues' problems began when Verna Terry and her boyfriend, Robert Wilder tried to rent an apartment from the Donahues, who own a five-unit apartment complex in Downey, California. Ms. Terry said that she needed a garage so her "boyfriend would have a place to store his tools." When it became apparent that Terry planned live in the apartment with her boyfriend, Mrs. Donahue said that "we would prefer a married couple." The Donahues are devout Roman Catholics who believe that sex outside marriage is a mortal sin.

The Donahues were convicted of civil discrimination. They claim that they were merely exercising their religious rights. What happens when civil and religious rights conflict?

Embarrassed by the rejection and anxious to find an apartment as their deadline to move approached, Terry and Wilder filed a claim with California's Department of Fair Employment and Housing Commission (FEHC), accusing the Donahues of marital-status discrimination.

The FEHC used "testers," FEHC agents masquerading as prospective renters, who called the Donahues. The testers represented themselves as unmarried couples looking for living quarters. The Donahues gave the same response, that they preferred married couples. Based on Terry's complaint and the testers' reports, the FEHC brought a test case against the couple.

A cadre of state attorneys then confronted the Donahues, who were represented by their son Thomas, a Fresno lawyer. At the trial, the court ordered the Donahues to pay Ms. Terry and Mr. Wilder $1,023 in lost income for the extra time they had to take to search for an apartment, $75 a month for the difference in rents between their apartment and the apartment Verna and Roger found, $4,000 to Vena and $2,000 to Roger for emotional injuries (the emotional damages were later stricken as being outside the jurisdiction of FEHC), and 10 percent interest until the Donahues allowed Terry and Wilder to move in. The court also ordered the Donahues to post signs stating that they would not discriminate based on marital status.

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The Donahues appealed, and won in the California Appeals Court. The FEHC then appealed to the California Supreme Court, which accepted the case. It is to be decided shortly.

Donahue v. Fair Employment and Housing Commission comes at a critical moment in legal history. In 1990 the U.S. Supreme Court, in Employment Division v. Smith, severely weakened protections provided by the Free Exercise clause of the First Amendment to the U.S. Constitution. In Smith the Court did away with a test that required the government to have a “compelling interest” before it could infringe on the religious exercise of citizens. After Smith the government needed only to have a rational reason to infringe on an individual’s religious practice. As all lawyers know, the “rationality” standard allows the flimsiest of reasons to justify government action.

Overnight, state constitutional protections of religious freedom became exceedingly important. Citizens now must try to use state constitutions for the protection that the federal once gave. Because states relied for years on the federal Constitution, most state law in this area was extremely undeveloped. Only recently have states needed to decide on what kind of religious freedoms their constitutions should provide. The Donahue case is now California’s opportunity to decide for itself.

As it has progressed through the courts, the case has drawn a great deal of attention. Numerous institutions and organizations, from the ACLU to religious universities and hospitals, believe that crucial issues of freedom and equality are in the balance for California. Among those filing amicus briefs are the ACLU, Loma Linda University, and Adventist Health System-West.

The FEHC argued that recognizing a religion exemption from the California anti-discrimination statute would give religions a special status over other groups, and thus violate the Establishment Clause in the federal Constitution.

Loma Linda University’s amicus brief countered that FEHC’s “assault on the entire concept of religious freedom . . . is truly shocking.” It pointed out that the California courts have rejected FEHC’s argument in previous litigation. The Smith case itself, which severely undercut protection for religious freedom in the federal Constitution, says that the states can pass legislation to protect religions from laws or regulations that might infringe on their practices. This kind of protection, the Supreme Court has stated, does not violate the Establishment Clause.

Arguing more subtly than FEHC, the ACLU contended that while religious exemptions do not necessarily contravene the Establishment Clause,
in this instance the state’s interest in preventing discrimination outweighs the Donahues’ religious convictions. The ACLU, along with Loma Linda University, supported the “compelling interest” test dismantled by Smith, but the ACLU views the state’s interest in preventing discrimination as “compelling.”

The ACLU also argued that merely because the Donahues rent apartments, they shouldn’t have the power to set private moral standards for renters. Occupancy, they held, should not be conditioned on a required adherence to the landlord’s moral beliefs.

The amicus brief filed by Loma Linda University said that the only explicit limit on California’s constitutional religious practice guarantee is that the state shall not protect religious practices “licentious or inconsistent with the peace or safety of the state” (Calif. Const. § I, Sec. 4). The Donahues’ refusal to rent the apartment, it argued, would have been in no way licentious. In fact, the refusal was meant to prevent licentious acts.

Furthermore, it asked, can such discrimination really be against the public peace, when the state itself discriminates on the same basis in public universities? California allows student housing only to married couples. How, then, can it maintain that it has a “compelling interest” of the highest order to eradicate discrimination, even to the point of restricting religious freedom, when it’s guilty of the same type of discrimination itself?

Ms. Terry and Mr. Wilder have split up since the commencement of the case. They claim that the stresses linked to the discrimination and the litigation were instrumental in their separation. Wilder purchased a house in San Diego, and Terry lives with friends.

Though the Donahues’ fate is still undecided, they are amazed, and disappointed, at their situation. They have expended a good deal of time, money, and energy on the case, but most difficult is the misrepresentation and misunderstanding to which they are subjected. Early in the dispute, one of the FEHC representatives intimated that Mrs. Donahue was a scofflaw for not complying with the FEHC regulation. Mrs. Donahue protested that she had “always been a good, upstanding citizen.” The FEHC agent retorted that “she used to be.”

This remark particularly stung both Jack and Agnes. Both are law-abiding citizens. Agnes worked for the U.S. government, and Jack served in the Air Force in Europe during World War II. Agnes served on committees for the Catholic Women’s Guild for many years, and was active in forming parish prayer groups. Born and raised Catholics, they attend Mass daily.

The Donahues say that they acted “from deep convictions stemming from our strong faith in the Ten Commandments, taught us from our childhood.” Their request, they believe, is simple: “We would like to conduct our affairs and our lives according to our God-given right to follow God’s will and our own consciences.”

The Donahues have been accused of trying to force their morality on others. “We would emphatically tell everyone that we do not try to force anyone to do anything,” explains Mrs. Donahue, “nor do we even ask them to do anything. We would appreciate the same courtesy from others.”

The dispute, says Mrs. Donahue, strikes at the heart of their own religion. They believe that they are guilty of sin when they aid others in committing it. “Fornication is so deadly a sin,” says Mrs. Donahue, “that one must confess it and be forgiven before one’s death or suffer the consequences of eternal damnation.”

Meanwhile, the Donahues might have to suffer the consequences of their views on sin. Even if the California Supreme Court rules against them, they’re not going to change their religious convictions. What’s at stake is whether—even in liberal and tolerant California—they will still enjoy the freedom to practice them.
How can creationists explain, within a short chronology, 50 superimposed forests of upright petrified trees in apparent position of growth? That was the first question faced (see the March-April Liberty) by 43 creationist theologians, scientists, college presidents, and church administrators during an 11-day geology field trip through four Western states. In this second article of a three-part series on creation and evolution, Dr. Ariel Roth, director of the Geoscience Research Institute at Loma Linda University, Loma Linda, California, discusses differing concepts of how life originated.—R.R.H.

fifteen major wars have started and ended since the middle of the nineteenth century, when Darwin’s Origin of Species (1859) challenged the biblical account of creation. No guns have been fired in the origins conflict, no territory has changed hands; but barrages of alleged scientific facts have captured university centers and changed the loyalties of millions who were once committed to the Genesis hypothesis: “In the beginning, God…”

Today it’s “in the beginning” Big Bang. The six days of creation week are replaced by an intricate geologic column that measures time in epochs. We are told that an evolutionary process, devoid of God, resulted in development of all forms of earthly life. These ideas have permeated many areas of intellectual inquiry, including psychology, sociology, geography, and theology.

However, some evolutionists outdo creationists in raising problems about their theory. While evolution is broadly accepted, a satisfactory mechanism for the process has yet to come forth. Over the past two centuries at least five major evolutionary mechanisms have been introduced only to be replaced by new ones. At present newer and more complex proposals are competing for survival. However variant their viewpoints, most creationists and evolutionists agree that the stakes in the dispute are of epic consequence.
Superpowers

Science is a much-admired enterprise. It can grow plants that glow in the dark, and the technology based on science can build electronic chips less than a square inch that contain a million functional units, and instantly send full-color messages around the world. Such achievements bring science well-deserved esteem while masking its limitations. For example, science cannot adequately answer questions about the origins of consciousness (mind), concepts of good and evil, or free will.

The Bible, to the contrary, while sending no full-color messages, does point the way to communication with heaven. It reveals origins and destinations, and claims inspired authorship. Though the secularizing influences of the past two centuries have eroded confidence in its messages, the Bible commands markets no other book approaches—more than 127 million copies are distributed yearly. The American Bible Society alone has published 5 billion Bibles or portions thereof. Mao Zedong's Red Book places a distant second, with a mandated distribution of only 800 million copies.

Respect for both science and the Bible remains so immense that the war between them is really a clash of Titans.

Eight Columns of Attack

At present, many different interpretations exist for the geologic column. The major ones are:

1. Creation

Based on the most direct reading of Scripture, this model teaches that life on earth was created in six literal days, with a short period between creation and the Genesis flood, a major catastrophe that produced most of the fossiliferous sedimentary layers. This model fits well with, among other things, the design and orderliness in nature, together with catastrophic geologic interpretations.

The problems: it disagrees with several scientific interpretations that specify long ages—especially radiometric dating, the rate of molten rock cooling, of fossil reef formation, and of successive forest growth.

2. Gap Theory

After creating earth life in the distant past, God destroyed it in a judgment against Satan. This ruin was followed by the creation described in Genesis 1 and 2.

This model has little scientific or scriptural support. If a gap had existed, a distinct blank period should appear in the fossil record. None has.

3. Progressive Creation

God’s multiple creations over long time periods are documented by the increasingly complex life forms from the bottom to the top of the geologic column.

Roots

Much of their warfare is, in a sense, fought underground, in the geologic column, where hundreds of thousands of different fossil species have been found. In the lowest level, the Precambrian, fossils are rare and their authenticity often debated. Most fossils are found in the overlying Phanerozoic level, which forms about two thirds of the total volume of sediments. Human fossils exist only in the upper part of this level. The main conflict between science and Scripture is over how this column is to be interpreted.

The creationist believes that the fossils represent remains of life-types created by God during creation week and buried by the Genesis flood. Factors involve (1) an original, well-ordered, unique ecology buried by gradually rising waters; (2) sorting by water current; (3) faster motility of larger organisms; and (4) sorting in water by density. The evolutionist believes that the column resulted from a naturalistic evolutionary process covering millions of years. Intermediate views accept varying degrees of evolutionary theory while usually preserving God’s involvement in the process.

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3. Progressive Creation

God’s multiple creations over long time periods are documented by the increasingly complex life forms from the bottom to the top of the geologic column. This theory fits both the evidence of gaps in the fossil record, which supports creation, and the alleged long ages in the geologic column, which supports evolution.

Yet neither science nor Scripture suggests this progressive means of creation. The presence of the vicious Tyrannosaurus rex in the earlier fossil record makes evil, in the form of predation, appear before humans—a progression that negates the Genesis story of a good God and a good creation followed by the fall of humanity and the consequent evil.
Because light is necessary for many of the life forms now locked in the fossil record, the concept of an extended period for the development of advanced life forms before creation is unbiblical.

4. Theistic Evolution
   God directed continuous evolution from the simple to complex. This model fits well with many concepts of evolution. The theistic component answers questions that evolution can't: how life originated, the development of complex, interacting biological systems, and the source of man's higher mental capacities.
   However, gaps in the fossil record, especially those between the major groups of organisms, don't suggest continuous evolution, nor does the evolution of advanced life forms fit the biblical Creator. The slow, vicious struggle of evolution, leaving a trail of extinct taxa, challenges the creative power, knowledge, and goodness of a God who does not forget the sparrow (Luke 12:6) and whose ideal for life includes the lion and the lamb living together peacefully (Isaiah 11:6; 65:25).

5. Deistic Evolution
   God started life, and then allowed naturalistic evolution to progress. This model addresses how life originated, perhaps the most difficult issue for evolutionists.
   However, this model struggles with the main issue in theistic evolution: reconciling the loving God depicted in Scripture with the struggle and competition of evolution. Also, how do inept, intermediate stages survive while changing from one functional type to another? How could an intermediate appendage that is neither a good leg nor wing permit an organism to survive? Major changes that have detrimental intermediates are difficult to justify in the economy of evolution. And how did human beings attain such characteristics as love, morality, and freedom of choice through a naturalistic process?

6. Pantheistic Evolution
   According to this view, God, as part of nature, progresses with evolution. Nevertheless, He is still God.
   The problems: besides those of deistic evolution, this model contradicts the biblical teaching that God is the Creator, not part of the creation itself.

7. Space Ancestry
   Addressing the problems that naturalistic evolution faces regarding the origin of life on earth, which have become more acutely popular in the past few decades, this model suggests that extraterrestrial life forms seeded or modified life here.
   This flight of fancy suffers from lack of support, either scientific or scriptural. Doubts arise too about the ability of life to travel through space by natural means. Also, pushing the origin of life to a corner of the universe doesn't answer the basic question of how it got started.

8. Naturalistic Evolution
   Various life forms have developed without intelligent design or supernaturalism.
   This model fails to answer such important questions as How do complex life systems originate without a designer? or, as seen in earlier models, How can one bridge the gap in the fossil record? or How can humanity's higher characteristics, such as free will, love, and morality, originate from a purely mechanistic system?
   Of the above models, only the first has biblical support. Several do involve the concept of God, but impute characteristics to Him that do not harmonize with His revelation in Scripture. The most scientific model—naturalistic evolution—has serious scientific problems.

The Biblical Thrust
The Bible describes a short creation period of six literal days several thousand years ago that produced all basic life forms. Long ages are not suggested. Also, primordial earth is described as empty and dark (Genesis 1:2). Because light is necessary for many of the life forms now locked in the fossil record, the concept of an extended period for the development of advanced life forms before creation is unbiblical.
The intermediate views between creation and naturalistic evolution assume that the Genesis account is allegorical. Genesis teaches only that God is the Creator; the facts of the story aren't true. This approach undermines the Bible as a whole because the leading personalities in the Bible refer to the
Genesis creation and flood as factual.

Peter: “Long ago by God’s word the heavens existed and the earth was formed out of water and by water. By these waters also the world of that time was deluged and destroyed” (2 Peter 3:5, 6 NIV; see also 1 Peter 3:20).*

Paul: “As for in Adam all die, so in Christ all will be made alive…. So it is written: ‘The first man Adam became a living being’” (1 Corinthians 15:22, 45). Paul believed also in the Genesis flood (see Hebrews 11:7).

Jesus Christ: “Haven’t you read that at the beginning the Creator made them male and female?” (Matthew 19:4). “For in the days before the flood, people were eating and drinking, marrying and giving in marriage, up to the day Noah entered the ark” (Matthew 24:38).

Thus, those who accept the biblical account of creation are in good company. Also, why would God take millions of years to create the world and then ask His followers to keep the fourth commandment—the Sabbath—(Exodus 20:8-11) as a memorial to a mere six-day creation? It would be a strange God indeed who would allow His prophets to be deceived on the important question of beginnings, only to wait for Charles Darwin to deliver the truth!

Public Skepticism

Despite the attraction of so-called scientific models, the public remains skeptical.

A 1991 Gallup poll of adults in the United States revealed that only 9 percent believe in naturalistic evolution (model 8), whereas 40 percent believe that God was instrumental in the evolution process (models 3 and 4) and 47 percent that humans were created by God within the past 10,000 years (model 1). (Four percent didn’t know.)

Over the past century, churches have accommodated the intermediate views, such as deistic or theistic evolution. Several factors can be cited for this shift.

First, scientists are viewed as unbiased appraisers of data. Because they generally are evolutionists, Christians have concluded that the biblical account of beginning must be erroneous.

Second, leading biblical scholars deny the validity of the Genesis account, which lends further support to the scientific view.

Third, church support for biblical creation has been perceived as challenging both academic authority and academic freedom.

Fourth, in the heated conflict between science and the Bible, creationists have given quick and often erroneous answers, which are then criticized by knowledgeable people.

And finally, in today’s relativistic intellectual environment, scientists and theologians tend to question everything. Skepticism, relativism, and agnosticism are respected—firm positions, suspect. This attitude has influenced the churches, weakening their faith in the “truth” of creation.

Well they might ponder a sobering question Jesus asked: “When the Son of Man comes, will he find faith on the earth?” (Luke 18:8).

Evolution: No Workable Model

Though science has rejected the biblical creation model, it has failed to produce a workable model of its own. The problem has worsened in the past few decades, as the complexities of even the simplest organisms have been discovered to be so immense that the organization of life by itself cannot be reconciled with basic knowledge of chemistry, physics, and probability.

Many scientists, though rejecting creationism, have repudiated Darwinian evolution. Nobel laureate Francis Crick (of Watson-Crick DNA fame) proposed that the problems of life originating on earth are so great that life must have arisen elsewhere in the universe and then been transported here.12 Australian scientist Michael Denton called Darwinian evolution “the great cosmogenic myth of the twentieth century.”13 Swedish embryologist Soren Lovtrup, in Darwinism: The Refutation of a Myth, wrote: “I believe that one day the Darwinian myth will be ranked the greatest deceit in the history of science. When this happens many people will pose the question: How did this ever happen?”

Though it has become almost fashionable among scientists to criticize many aspects of evolutionary theory,14 science still clings to the general concept of evolution, even without a plausible mechanism to explain the process. Because the concept of God is not acceptable in current scientific thinking, the creation alternative is rejected out of hand. God was part of scientific interpretation when the foundations of modern science were laid, but no longer.

What’s at stake in this clash of the Titans is not so...
The Strange Case of the Missing Layers

Evolutionary geologists have created a geologic column, each layer representing, we are told, millions of years. (1) At Dead Horse Point, Utah, the Colorado River has carved a canyon that reveals parts of the column. In ascending order they are: Permian, Triassic, and Jurassic. But in the far cliff, the Middle Triassic (10 million years) and the Upper Permian (20 million years) are missing! The expected erosion is not there. In the Grand Canyon (2) the Ordovician and Silurian (100 million years) are missing. Farther up (3) the Ordovician, part (14 million years) of the Pennsylvanian—lower arrow—and part (5 million years) of the Permian—upper arrow—are missing. Yet the layers are parallel and do not show the degree of erosion expected if these long time periods between the missing layers had taken place. (4) We ponder the mystery of the missing millions... (5) Robert Folkenberg (right), President of the General Conference of Seventh-day Adventists, and tour leader Ariel Roth consider the implications.
Does field evidence indicate a Genesis flood?

Certainly it indicates rapid, recent, and catastrophic transport. Evidence of rapid action may indicate only partial and repeated catastrophes over long periods of time.

(1) Erratic distribution of dinosaur bones (at Dinosaur National Monument) suggests catastrophic transport.
(2) Clastic pipes in Kodachrome Basin State Park, Utah, appear to have been intruded rapidly from below.
(3) The parallel pattern of these coal seams in Utah's coal country suggests the vegetation forming the coal was transported in, as would be expected during a flood, and did not grow there as has been traditionally interpreted.
(4) How many thousands of years did it take to produce this mound of travertine in Thermopolis, Wyoming? Would you believe less than a hundred years by simply piping water from a hot spring!
much where humans have come from, but where they are going. The attack on biblical creation is inevitably an attack on biblical salvation. If Scripture can’t be trusted regarding humanity’s origins, why should it be regarding its destiny? Thus, the stakes in the dispute are indeed of epic consequences.


**FOOTNOTES**

11. Ramm, p. 113.
Religious freedom, the subject matter of Liberty, implies belief in the right to freely pursue a concept of God. The result of such a pursuit is described in the paper that follows. It is hardly usual Liberty fare: its authors are two prominent Russian scientists who assert that the path of scientific truth leads to God, a premise the majority of American scientists would not accept.

The Russian scientists (of the Institute of Thermal Physics, Siberian Branch of the U.S.S.R. Academy of Sciences), Dr. Yurii Kulakov (retired) and Dr. Yurii Koropanchinskii, sent the manuscript by Dr. Ray Hefferlin, professor of physics, Southern College, Colle­gedale, Tennessee. Hefferlin, who spent 15 months in the Soviet Union (in a program jointly sponsored by America’s National Academy of Sciences and the Soviet Academy of Sciences) explains the circumstances. Liberty asked Hefferlin and three theologians, Fernando Canale, George Reid, and William Shea to comment on sections of the paper.

In November 1990 I received an invitation to attend the International Conference on Religious and Scientific Knowledge, to be held in Akademgorodok, an academic city not far from Novosibirsk, the capital of Siberia. Organizers of the conference included Professor Ershov, of the Department of Mathematical Logic at Novosibirsk State University, and Professor Samokhvalov, rec­tor of the newly formed Chair [Department] of Religious and Philosophical Knowledge. The formation of such a department in a Russian university emphasizes the new interest in religion, now regarded as a necessary discipline in the moral training of students.

Novosibirsk State University is an unusual institution. It has almost no full-time staff; essentially all instruction is given by researchers at the multi­tude of institutes concentrated in Akademgor­odok.

Along with three colleagues—Michael Pearson, professor of ethics at Newbold College, Berkshire, England; Stephen Howkins, professor of theology at St. Alban’s University; and Michael Kulakov, director of the Seventh-day Adventist Seminary in Zaokski, near Moscow—I was invited to dinner at Yurii Kulakov’s home. The evening was pleasurable not only because of the hospitality of the Kulakov family, but because Professor Kulakov once shared my research interest—the construction of periodic systems (tables) of molecules that serve the same role for diatomic, triatomic, and larger molecules as the chart of elements does for atoms. It was at this dinner that Professor Kulakov entrusted me with the following paper written by him and Professor Koropanchinskii. It has been translated by Pnina Levemore, of Palo Alto, California.—Ray Hefferlin
Our intention is to show how seeking to comprehend the structure of nature invariably leads one to address matters of the divine.

Our search began in Moscow more than 30 years ago. There, Yuri Ivanovich Kulakov had the good fortune to become a graduate student of physicist Nobel laureate Igor Tamm. With the appearance of quantum mechanics, Tamm and his students, like all theoretical physicists at the time, were occupied with the cumbersome and, as time showed, ineffective models of strong interactions. Igor often said: "You know, Yuri, we're working for the wastebasket. In 10 years our work won't be worth anything to anyone. The problem is that we're imposing a foreign tongue on nature and she doesn't understand us. That's why she's not answering our questions."

And so in 1961 the decision was made to rethink the language of physics. But what does that mean? And where is the true language of nature concealed? The answer is that it is contained in nature's laws.

Professors Kulakov and Koropanchinskii demonstrate the inevitable proximity between the pursuit of understanding nature and an explanation of purpose in nature, but they go beyond a philosophical search for First Cause.

They maintain that an adequate understanding of nature requires recognition of a two-tiered reality, one in which two quite diverse processes are at work. In effect they call for restoration of a perspective dominant prior to the eighteenth-century Enlightenment.—George Reid

The Russian scientists, using quantum mechanics, were trying to understand how protons and neutrons in nuclei interacted. Tamm sensed they were in a blind alley, and their work was later superseded by the L-S coupling shell model, by the liquid drop model, and by von Weizsäcker's model.—Ray Hefferlin

It is possible to interpret this paper from two widely different perspectives. First, from a theological perspective it can be read as a scientific proposal. Second, from a missionary perspective it can be read as a testimony of faith. In my view, the value of the paper in general is to be found in the latter rather than in the former.—Fernando Canale

What they are saying relates the laws of matter to the matter of nature. The matter is real and tangible in the sense that we can handle it, feel it, see it, taste it. But this matter functions in a certain way; it moves and reacts according to certain laws. In a sense those laws are intangible and

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Ray Hefferlin, Ph.D.,
is professor of physics at Southern College, Colledale, Tennessee.
Physicists are certain that Newton’s second law of mechanics is objective; that is, irrespective of whether humans exist, an object’s acceleration is always directly proportional to the force acting upon it, and inversely proportional to its mass. Indeed, Newton’s law is not dependent on humanity. Humans can destroy the planet, but they can never alter Newton’s law. Newton’s law does not exist in the same sense as do the objects of the material world. It is not subject to decay, it is not material—it cannot be seen with the eye, although our minds contemplate it. But in a sense, Newton’s law is more real than are the material objects that surround us.

Essential to any fundamental physical law is the existence of physical structures—of particular sorts of relationships in which pairs of objects within the material world find themselves. In contrast to a cause-and-effect relationship, these relationships are of a different nature; they express the idea of completeness and oneness of the “real world.” The actual world that is visible to us is the shadow of that real world. This discovery was achieved through rigorous mathematical analysis of existing laws of physics. It is itself a distinct field of specific scientific research. Unfortunately, it is impossible to expound on it convincingly for nonspecialists. This new area of science, which they are researching, deals with relationships in which objects in the actual (material, physical) world find themselves. An example of the research in this field is the periodic chart of the atoms. Another example is the pretty pictures of various quarks and how they interact to make protons and neutrons and all the other heavy particles (baryons).—Ray Hefferlin

They are saying that most science deals with cause and effect relationships (for instance, Newton’s law), and that while Newton’s law is “in a sense . . . more real” than the material objects—things in the actual world—which surround us, another area of science, called the theory of physical structures, is even more real. This area, which they are researching, deals with relationships in which objects in the actual (material, physical) world find themselves. An example of the research in this field is the periodic chart of the atoms. Another example is the pretty pictures of various quarks and how they interact to make protons and neutrons and all the other heavy particles (baryons).—Ray Hefferlin

Nowhere is the sterility of naturalism more evident than in its inability to cope with questions of greatest concern for humans. The pure objectivity of natural science, dogma for two centuries, suffered body blows in the work of Thomas Kuhn and Michael Polanyi, whose arguments compel recognition of the subjective element in the scientific enterprise.—George Reid

Matter, in a sense, carries with it the laws under which it operates. The matter can be seen, but the laws cannot. Nevertheless, the laws go with the matter and operate upon it in all conditions. They are, therefore, inseparable and should be taken together as a package. This is the completeness of nature they speak of.—William Shea

We have two worlds: Actual, material, physical: cats, protons, and sealing wax are in it. Real world: these structures refer to abstract things that can be called primordial matter.—Ray Hefferlin

Though the article seems to assume a materialistic starting point when it identifies “primordial matter” with the “real world,” its ontological assumptions make sense only within a classical (Platonic-Aristotelic) or neoclassical (Hegel-Whitehead versions of process philosophy) interpretation of metaphysics and physics.—Fernando Canale

Most scientists would agree with this paragraph; however, most philosophers would gag at the last sentence. But the scientists would assert that philosophy is a matter of taste.—Ray Hefferlin

For the past two centuries science has regarded it scandalous that the pioneers of science, such as Copernicus, Galileo, and Newton, were persons of deep faith, seeking to understand how the actions of God reflect in the world as we see it. It was the subsequent science of the Enlightenment that dissolved the two-tiered universe into one, and the dialectic materialism of Hegel and Marx represents its full flowering.—George Reid

Attention is paid not so much to the scientific results of the theory as to the world outlook that lies at the heart of the theory of physical structures.

Ironically, after a long and torturous journey, we have once again reached the threshold of truth known for thousands of years:

1. At the basis of the world (in the sense of universe) lies primordial matter. Let us call the world of primordial matter the real world.

2. Objects in the real world are ontological structures.

3. The real world is eternal and con-
stant. No matter how hard they try, human beings cannot add even a speck of dust to it.

4. The world in which we live and act—the actual world—is a shadow of the real world. This actual world is under our control. In this world, says G. P. Schchedrovitsky, “there are no objective laws of nature, only thought and activity, and everything else is a by-product.”

5. Everything in the actual world is temporal, transient, changeable. In this world things exist only as reflections of the real world.

6. Ontological structures form a distinct hierarchy, the reflection of which is the hierarchy of the actual world.

A good illustration of the relationship between the real world and the actual world is the ancient parable about the three blind wise men who had never before encountered an elephant.

Like the wise men, who through their contact with parts of the real elephant reconstructed only its pitiful image, so we interact with the objectively real, real world, but re-create only the actual world.

The outcome of contact with the real world is the actual world. By creating culture and its small part, science, humankind creates worlds and destroys them.

In discovering his laws, Newton discovered a new world, one of surprising simplicity and elegance. Only perfect essences inhabited it. Celestial and earthly spheres of activity were merely shadows of that world. But with the discovery of quantum mechanics we know that Newton’s world was also only a shadow of some more perfect structure. Now that we are aware of the theory of physical structures, the illusoriness and instability of the actual world has revealed itself with striking clarity. For the ability to see, as well as to speak and hear, is not objective. Rather, it is transmitted to us by culture.

Through our view of the world we perceive answers to the most important questions, although at first glance the answers are far from the physics with which we started.

This actual world, the transparent world that we see and experience and act upon, is transient and changeable because we act upon it and change it. So do the forces of nature. Thus a cliff of a mountain may erode, and we see it differently. The structure originally there has passed away. It did not endure permanently. Nevertheless, the substance, the primordial matter, is still present, even though its external configuration and appearance have changed.—William Shea

The professors’ argument, while rising from explorations in physics, echoes the ancient Aristotelian pursuit of First Cause, without directly drawing from it. Compounded with it is a Thomistic-like rationale drawn from the concept of perfection. But even more, Kulakov and Koropanchinskii find evidence in the invariability of natural laws. Their argument has merit, but stands vulnerable to the critiques that have weakened the force of both First Cause and the argument from the idea of perfection. While these provide useful corroborative evidence, they require a faith commitment to be truly persuasive. That commitment appears in the professors’ work.—George Reid

Notice the sequence of discoveries, each of which shows more perfectly the “real” world: Newton’s laws, quantum mechanics, and now the authors’ theory of physical structures.—Ray Hefferlin

This means that man can create (actually, I think the authors would agree to use the word “change,” although it is now possible to “create” all sorts of particles using high-energy accelerators) and destroy actual worlds. In the same way God can create/modify and destroy real worlds.—Ray Hefferlin

Newton gave us absolute laws of nature. Now we know that those laws do not operate as perfectly or exactly as he predicted. The authors may refer not only to quantum mechanics but also to Heisenberg’s uncertainty principle as applied to physics. Newton may tell us that an electron has to be at this point in its orbit, but Heisenberg says it may not be there.

Because of this uncertainty in nature, we must deal only with our perceptions, which also reflect this uncertainty.—William Shea

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The chain of the actual world has no final link. Each time humankind concludes that further advance is impossible, new and deeper abysses appear. But in this world everything is just a reflection of reality. It follows that among ontological structures as well, the hierarchy is without end. But an end must, nevertheless, exist.

But what shall we call this particular ontological object, without which the existence of the universe itself is inconceivable? Clearly, we may point to the symbol of His name, inasmuch as nothing else comes close to Him. We may say: “It is Word, or Idea, or Superstructure.” All these names are at once applicable and not applicable.

We prefer to say God.

Man occupies a special place in the actual world. He is the reason for and goal of that world; he is its creator. But at the same time human beings are the object of the actual world. And this means that they can exist exactly because they have a prototype—the Creator of the real world.

The existence of humanity is proof of the existence of God. Unquestionably, humans are the image and likeness of God. But only a likeness. And for this reason they must create new and newer worlds, in an attempt to draw nearer to the prototype.

But, then, are humans free if such is the world? Yes, they are free in the highest sense of the word. They are free in a godly way, since there are no limits to their ability to approach God. For there are no bounds to the penetration of the actual world by the real world.

And just as the real world came into existence from a word, so in the actual world an object comes into being only after the appearance of its name.

At each moment in time there exists for each person one world—the actual world. No other world exists except for the real world.

As the “divinely inspired” Francis Bacon said: “God created two books—the Bible, in which He expressed His will, and nature, in which He displayed His might.”

The conclusion that an end must exist seems to be particularly important in the authors’ scheme. The reasoning seems to be something like: because there is a finite end to space and matter and human thought and experience, there must have been some being greater than these that put them in place. The Prime Mover argument for God. All matter and its organization must have come into existence and been organized by an idea from some being. This they call “Word, Idea, or Superstructure,” which is in reality God. All first existed in the mind of God.—William Shea

It may well be that Professors Kulakov and Koropanchinskii will find themselves at the edge of a development in science that after two and one-half centuries’ exploration within a single plane recovers the two-tiered dynamic open to both nature, and the God, who established it.—George Reid

Certainly what they say is possible in the realm of theoretical interpretation of reality. This interpretation, however, is not compatible with the biblical interpretation of reality. The God that this argument proposes is not the God of the Bible. This “God” is just a necessary piece, required by reason, to complete the theoretical requirements of the scientific theory of “physical structures.”—Fernando Canale

Just as we create the actual world in our thought, so God created the real world in His thought. The experiences are parallel. Just as God created, one evidence of His image in us is that we create also, in the various ways in which human creativity is expressed.—William Shea

They are saying that they think no limits exist to their (the authors, their students, their colleagues) abilities to pursue the theory of physical structures and hence to penetrate the actual world with the real world.—Ray Hefferlin

Because of the dynamic nature of the world, full of processes, and because of the nature of individual perception, each person sees his own actual world. (Of course, what most of us see is similar enough that we can converse.)—Ray Hefferlin
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Understanding free exercise as a substantive right eliminates some anomalies hypothesized in *Smith*. The Court analogized formally neutral laws that prohibit religious exercise to formally neutral laws that disproportionately burden racial minorities.\(^51\) The disproportionate racial impact of formally neutral law does not raise any special issue under the Equal Protection Clause.\(^52\) Critics have argued that the Court is simply wrong about racial impact,\(^39\) on that view, the Court has ended the anomaly by getting the religion cases wrong as well.

Perhaps a better explanation is that the Equal Protection Clause really is just an equality right, creating no substantive entitlement for one to engage in any particular conduct or to be evaluated by any particular criteria. A civil service examination with disparate racial impact does not penalize an activity that the Constitution protects, but a law prohibiting peyote worship does. Moreover, the victims are given an incentive to avoid the penalty by abandoning their faith. Such a law directly penalizes religious exercise, even if it also has applications to nonreligious uses.

The Court in *Smith* also asserted that "generally applicable laws unconcerned with regulating speech that have the effect of interfering with speech do not thereby become subject to compelling-interest analysis under the First Amendment."\(^54\) Like the Free Exercise Clause, the speech clause creates a substantive right with a neutrality component. If the Court had rejected all challenges to formally neutral rules that suppress speech, that would support *Smith* by analogy. It did not.

Probably the best example is *Hustler Magazine v. Falwell*,\(^38\) which created special defenses to protect speech from the formally neutral tort of intentional infliction of emotional distress. The elements of the tort do not mention speech, and many of its applications do not involve speech at all.\(^56\) When so applied, the speech is typically deceptive, harassing, or both, often merely incidental to conduct, and thus of limited First Amendment significance.\(^57\) But the Court unanimously agreed that to apply the tort to outrageous speech about a public figure would violate the speech clause.

The rule in *Hustler* is modeled on cases like *New York Times v. Sullivan*,\(^48\) which imposed constitutional limits on defamation liability. The rules of defamation are not formally neutral because the tort can be committed only by speech. But even the law of defamation can be stated in formally neutral terms. Defamation applies to speech the formally neutral principle that underlies all of tort law: one who inflicts harm on another without legal excuse must pay compensation. Defamation is partly exempted from the formally neutral rules of punitive damages, a set of remedial rules that apply to a broad range of torts.

The constitutional defect in unlimited liability for defamation was that tort liability for speech penalized the exercise of a substantive constitutional right. Therefore the principle of the defama­tion cases clearly applied to emotional distress inflicted by speech, and it was irrelevant in *Hustler* that intentional infliction of emotional distress might be more readily conceived of as formally neutral.

The lesson is applicable to many of the Court's cases protecting speech. The laws were not formally neutral, but if they had been, they would have been struck down anyway. Consider *Schneider v. State*,\(^59\) holding that the state's interest in preventing litter was not sufficient to justify a ban on distributing leaflets. The problem in *Schneider* was not that leaflets were treated more harshly than cigarettes, but that leaflets were constitutionally protected and cigarettes were not.

Another example of exemption for speech is *Cantwell v. Connecticut*,\(^60\) protecting religious speech from a formally neutral rule about breach of peace. Justice Scalia in *Smith* treated another part of *Cantwell*, the requirement of a license for religious or charitable solicitation, as an unconstitutional but formally neutral law. And he recognized *Murdock* and *Follett* as exempting religious speech from formally neutral license taxes. These three cases were the basis for his recognition of a hybrid class of free speech and free exercise, protected from formally neutral regulation.\(^61\) But he ignored these cases in his footnote claiming that exemptions from formally neutral laws would be inconsistent with free speech doctrine.

For better or worse, the Court has never universalized the compelling interest test. A lower standard of review is more defensible in symbolic speech and time-place-and-manner cases; a restriction on a particular means or place of expression is unlikely to entirely suppress a viewpoint in the way that a restriction on a particular means of worship can entirely suppress a religious faith.\(^62\) But the point here is that the Court has not simply refused to review the burden on speech in these cases. Mere formal neutrality does not put restrictions on speech beyond challenge in the way that formally neutral restrictions on religious practice now appear to be beyond challenge.\(^63\)

The detail required to explore these inconsistent claims in the Court's opinion should not obscure the main point. The Court's conception of neutrality ignores the substantive content of the Free Exercise Clause, and begs the question of what kind of neutrality such a clause requires.
"Is it not possible that an individual may be right and a government wrong? Are laws to be enforced simply because they are made, or declared by any number of men to be good, if they are not good?"