

BALANCING RELIGIOUS FREEDOM

During the same week we were deploring U.S. Senate proposals for prayers in the schools, thousands of youngsters in Poland were parading to protest the Communist government's removal of religious symbols from their public schools.

Would we support the Communist government's action in Poland? Or were we on the wrong side of the barricades in this country?

There was another moment of apparent confusion when we expressed dismay at the Supreme Court ruling that it was okay for Pawtucket to place a creche on public property. Some people wrote the Bulletin, asking why we opposed the creche in Pawtucket, but approved of a Menorah on public property each year in San Francisco.

Spoken prayer in the schools has received a double knockout, the Supreme Court having unanimously reaffirmed its unconstitutionality, and the Senate having failed to pass a Constitutional amendment. But the Supreme Court has agreed to consider the legitimacy of silent prayer or meditation in the schools.

And on the state level, we have another church-state puzzler, in the form of the so-called "Get" bill. Fashioned after the new New York law, this bill would require that a petitioner for divorce state that he or she has "taken all steps in his or her power to remove all barriers to the defendant's remarriage." The purpose is to prevent a husband from blackmailing an Orthodox wife -- in the matter of divorce settlements, for example -- by refusing to give her a religious divorce. Even if they get a civil divorce, she cannot in conscience remarry without a religious divorce. The debate rages as to whether this is an undue state intrusion into the religious realm.

There are so many fine points raised in church-state questions because there is a certain conflict built into the First Amendment. One phrase says that government will do nothing to establish a state religion; the other phrase says that government will do nothing to impede the free exercise of religion. The two phrases often bump into each other and require a fine balance.

For example, we do not want the state of California to officially proclaim Jewish religious holidays. On the other hand, we do not want students to be unduly penalized because they absent themselves on Jewish religious days. Therefore we had laws

passed in the State which allow students to be legitimately "excused" on certain days of their choice. More than that, we tell all school administrators in the area about religious holidays on which many Jewish children will be absent, and suggest that, in the interests of the students, they would certainly not want to schedule major tests and such on those days. That is known as "accomodating" to the religious needs of the students, without establishing religion. If such accomodations did not take place, the requirements of the schools could interfere with the students' free exercise of religion.

The "Get" bill probably involves some considerations of balance -- and the creche/menorah syndrome raises a practical dimension. It would be a violation of free religious exercise to prevent anyone from espousing religious views on a public street or park. (And the Supreme Court felt that the amount spent for the Pawtucket creche was minimal, as is the amount used to maintain the Union Square grounds on which the Menorah is placed.) However, as a matter of practical fact, we are going to find a lot more Christian than Jewish symbols in the public places of the nation. That is why some believe that a menorah in a public place is probably a tactical error -- unless, of course, that battle is already lost forever.

Spoken prayers in the school do not present such a problem in balance. They are clearly an establishment of religion, since they require some official form of prayer. Silent prayers are more complicated. Certainly, it would be a violation of free religious exercise if the state were to prohibit silent prayer. The question is how far the state can institutionalize a period of silent prayer without imposing forms or prefaces which would erode religious pluralism.

Religious pluralism is, after all, what the "establishment" clause is all about. Religious pluralism is not perceived as the heart of free religious exercise in Poland; but it is in the U.S., where we have at least 25 different denominations with more than a million members each. So when we try to balance these two clauses of the First Amendment, we are really trying to balance one aspect of free religious exercise with another. It's not always easy.