

THE CROSS ON THE COURTHOUSE WALL

Sermon given by Rabbi Herbert Baumgard, DHL,
at Temple Beth Am
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In recent weeks, there has been much controversy in the Miami area concerning the cross that appears on the outside wall of the County Court House. The cross, formed by a series of lighted bulbs, has been there for years at Christmas time and no one has objected publicly, although rumblings have been heard. Now it seems that a Christian lawyer, representing Christian clients, has threatened to bring the County to court for violating the constitutional provision requiring the separation of Church and State. Specifically, the charge here is that no governmental funds or institution should be used for the support or advocacy of a particular religious group.

I wish to speak this evening about both Christian and Jewish reaction to the problem. In the first place, it is not surprising to me, as it is to some, to discover that there are conflicting Christian viewpoints on this subject. Many of us fall into error when we assume that all Christians are in favor of the cross on the Courthouse wall and all Jews are against it. Some of us made the same kind of mistake when we assumed that all Christians were in favor of Bible-reading in the schools and all Jews were against it. The vote of the U. S. Supreme Court in the famous decision of last year found a large Christian contingent on the Court voting against such Bible reading, just as it has been the large Christian contingent which has voted against prescribed prayers in the public schools.

Uninformed observers were surprised to discover that many of the nation's outstanding political columnists and religious leaders, who happened to be of the Christian faith, applauded these decisions of the Supreme Court as being consistent with the best tradition of Americanism.

On the other hand, some Jews were especially outspoken in their opposition to the High Court on these issues. One of them was Rabbi Stern, who is the Rabbi of the largest orthodox congregation on Miami Beach. Almost all of those who expressed themselves publicly on the issues of Bible reading and prayer in the public schools, were very strong in their opinions. They were either completely against these practices or overwhelmingly for them. Perhaps this kind of emotionally supported response was to be expected on so personal a matter involving religious faith.

Is The Supreme Court Right?

The Supreme Court decisions on these matters accomplished some very important side effects. In most parts of the nation, Americans of all faiths sat down and did some serious thinking about fundamental questions like - - Is America a Christian nation? - and - Where is the proper place for religious instruction, - - the school or the home? The Supreme Court has evidently concluded that America is not now, nor was it ever, a Christian nation. It is a nation consisting of many peoples with different religions, and the rights of all are to be equally secured. The philosophy of the Supreme Court seems to be that a man's religion is a sacred personal matter, and no governmental agency, be it

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a school board, or county board, or state board, has the right to impose religious proceedings in a public supported institution. Is the Supreme Court right in these conclusions? It seems to me that there are two answers to that question.

The Supreme Court is right if we analyze the Constitution which makes no mention of Jesus or of Christianity. It is right if we analyze the writings and teachings of the Fathers of the Constitution. Thomas Jefferson wrote in a letter to Thomas Cooper in 1814, "We may safely affirm that Christianity neither is, nor ever was, a part of the common law". The treaty adopted between the United States and Tripoli on November 4, 1796, and signed by President Washington, recites in the Eleventh Article as a reason why harmony with that Mohammedan country could be preserved that, "The government of the United States is not in any sense founded on the Christian religion".

The Supreme Court is wrong, however, if we ask, "Does its recent opinions concur with the feeling of the majority of present-day Americans?" The majority of Americans, rightly or wrongly, have always been taught that America is a Christian country. Most Americans are today of the opinion that in a public situation, if a majority of the people want a certain kind of religious expression, they ought to get it.

The history of America shows that the founding groups in America left Europe because they were persecuted in their religious beliefs there. When they established their religious freedom here, they were no longer interested in allowing other peoples to share this freedom. They had obtained what they wanted, and they were willing to shut the door. Early Massachusetts was clearly a congregationalist state, while early Virginia was an Anglican state. Neither of these states offered religious freedom to those of other religious persuasions at the beginning of their history.

How far America has come can be measured by the fact that congregationalist Massachusetts is now dominated, at least in the Boston area, by non-Protestant religious power. But the Catholics had to fight bitterly for the religious freedom that they enjoy. Indeed, the huge expansion of Catholic parochial schools is, in part, a response to the refusal of the Protestants to use anything but the King James version of the Bible in the public schools, and Catholics were enjoined by their churches, from reading this version.

In spite of the broad liberalism of Thomas Jefferson and the Constitution, historians record that America had religious freedom for Protestants but not for Catholics until about 1833. And the further extension of this full freedom to Jews, in spite of many accommodations, is still in the making. Americans have been slow in surrendering the popular notion that America is a land for Anglo-Saxon Protestants. Anyone who questions this fact has only to read the Walter-McCarran Immigration Act passed in the 1950's which states in its preamble that this Anglo-Saxon nation has the right to limit entries of people from anything but Anglo-Saxon countries to preserve the status quo.

Looking back in American history then, we can say that there have been two very distinct views on religious freedom in America, one which began with Jefferson, which was incorporated in the Constitution, and which today is being upheld by the Supreme Court, and another which has always been in the popular mind, and which has held de facto power for 180 years.

What is Religious Freedom?

Any consideration of the pros and cons concerning the cross on the Dade County Courthouse must be made in the light of the long-term controversy on the basic question of religious freedom. Several years ago, I was one of several Rabbis who met with a group of Dade County clergymen to discuss the possibility of coming to an understanding on the nature of prayers to be recited at public assemblies. One of these clergymen told me that he was startled by the pressure in Miami on the part of Jews to have words relating to Jesus excluded from public prayers. Back home, he said, our Jews never gave us any trouble. "I assumed," said the minister, "That they were well satisfied". Sometimes, religious freedom is defined in terms of a quiescent and accepting minority. If the minority does not complain, the majority assumes that the public expression of its religious forms is "freedom" for all.

Another minister with whom I met, leader of one of the most powerful churches in Dade County, asked me if I could approve of public school prayer where each child would publicly lead the prayer on a different day in terms of his own religious faith. I replied that if there were 25 children of one faith and one child of another, the latter child would be coerced to pray in an alien situation 25 days out of the 26. The minister's reply to me was, "You don't believe in freedom".

It is clear that those who believe in this kind of religious freedom think that religion, like politics, is a matter of counting hands, whereas the authors of our Constitution were not concerned with majorities and minorities in matters of religious faith. They were concerned with the right of each individual to believe and to practice such religious faith as he chooses in such situations as he chooses. The basic question which Americans have to consider in any religious issue is -- Do we have religious freedom when we adopt public practices pleasing only to the majority religious faith?

If the answer to this question is "yes", then Protestant America, which now constitutes the majority, had better consider the dangers that threaten it. For the number of Catholics in this country is sharply increasing, and it is well-known that the Catholic birth rate far exceeds the Protestant birth rate. It is entirely possible that 100 years from now America will be a country with a Catholic majority. How, then, will Protestants answer this basic question which now, temporarily, can be answered in their own favor. In 1776, Massachusetts was dominated by congregationalists. Today, it is dominated by Catholics. In 1776, Virginia was dominated by Anglicans. Today, it is dominated by Baptists. Religious majorities, like political majorities, fluctuate. The only security is in a law which protects all individuals equally, without respect to majority or minority.

On general grounds, it seems to me logical to conclude that the use on public property of a religious symbol specifically identified with one religious group, however large that group may be, is a violation of the constitutional rights of individuals not within that group. While Jews do not seem to organize often to oppose the use of Christian symbols on public property, it seems to me that the sensitive Christian might ask himself the question, "Suppose the Jews were the majority in this country, would I be happy with the Star of David on the Courthouse"? The Christian in that situation, would be justified in saying, "After all, it is my courthouse too. Why should I have to conduct my legal business in a building which bears the chief religious symbol of another faith?"

The Christian might also bear in mind that the Star of David bears no theological implications which are unacceptable to the Christian, but no Jew can accept a symbol which suggests that one man, more than any other, is God. For the Jew,

the acceptance of any figure alongside that of God, whether it be Jesus or Antiochus Epiphanes, or any other human which Jews have been asked to worship, is a violation of the Second Commandment, "Thou shalt not have any other gods before Me". The Hebrew translated "before Me", actually implies "in My presence". For us, the divine spirit is in all men, and while we are able to appreciate the wisdom of the Galilean, we are bound to our ancient teaching that the worship of any one human being is a profound departure from the faith of our fathers.

When some Christians are reminded of the problem the cross presents for us as Jews, they become angered. They say, "If the symbol of my God disturbs you, this is an insult to me". Our answer to these people is, "We mean no insult. We respect your symbol and its meaning for you. We ask you to respect the fact that it is not our symbol, and its meaning to us is different from its meaning to you". The irritation that people experience when another person manifests difficulty in accepting their religious symbol, is proof enough of the kind of tension that the use of a religious symbol on a public building incites. Those who place the cross on the Dade County Courthouse are either unaware of the problem they are creating, or they are deliberately challenging. I prefer to believe that the former is true.

The Cross and Coercion

We here in Beth Am may be entitled to a special hearing on the matter of the Courthouse cross, for our congregation only recently conducted a worship service under a cross in the sanctuary of the First Methodist Church of South Miami. We did so at the gracious invitation of the Pastor and the church, and we did so gladly. When Jews accept the invitations of Christians to attend their church, we do so in the same manner that we respectfully honor an invitation to visit a man's home. A good host does not attempt to force his own opinions on his guest, and, indeed, the invitation of the host is a sign that he respects the differing opinion of his guest. Our acceptance of the unusual invitation of the Methodist Church was a sign of our complete confidence that we were accepted as equals by our warm and friendly hosts.

The County Courthouse, however, is not a Christian Church, nor ought it to be a place where the symbols of any particular religion are especially favored or advocated. Jews and non-Christians who perform their business in the Courthouse have no choice but to enter it. The religious symbol that the Courthouse bears is forced upon all who wish to enter. Non-Christians are free not to enter a Christian Church if they choose. Non-Christian lawyers do not have a similar prerogative with respect to the Courthouse. No Jew is unhappy about a cross or a nativity scene on Church grounds. We are fully capable of appreciating the beauty and propriety of these symbols on religious property. Our conflict arises when these sectarian Christian symbols are placed on public property.

As many of you know, I am a Virginian by birth and rearing. I am a graduate of Thomas Jefferson's university, and I have seen the epitaph on his grave which reads, "Here was buried Thomas Jefferson, author of The Declaration of Independence, of the Statute of Virginia for Religious Freedom, and Father of the University of Virginia." The epitaph does not mention that this truly great man was President of the United States. It does not fail to include, however, that he was the author of the Virginia Statute for Religious Freedom which reads in part, "Be it therefore enacted by the General Assembly, that no man shall be compelled to frequent or support any religious worship, place, or ministry, whatsoever..." I believe that Thomas Jefferson would disapprove of the cross on the courthouse wall. I am not among lawyer Kaufman's clients who seek to have the cross removed, nor do I intend to take Dade County to court. I am hopeful, however, that those who have placed the cross there will come to a broader understanding of its implication, and will want to take it down themselves. On the other hand, I want to congratulate lawyer Kaufman's Christian clients who are wise enough to understand that unless they protect the religious sensibilities of others, they are endangering their own.