



Department of Justice

ADDRESS

OF

THE HONORABLE EDWIN MEESE III
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE CHRISTIAN LEGAL SOCIETY BREAKFAST

SAN DIEGO, CALIFORNIA

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Thank you very much Fred and thank you Bob Toms and thank you ladies and gentlemen.

It is a great honor to receive this award. I knew nothing about it until I got here this morning. I am very grateful to the Christian Legal Society.

It is a pleasure to be with all of you this morning and I am tremendously impressed by this turnout at such an early hour.

I do want to complement the Christian Legal Society for again holding this prayer breakfast in conjunction with the state bar convention. Indeed, some of you were in London this summer when the CLS put on a program there--two programs actually--as a part of the American Bar Association Convention in the United Kingdom. There was an excellent service on the 14th of July at St. Paul's Cathedral at which both Chief Justice Burger and Lord Denning from the Fellowship of Christian Lawyers in Britain read the lessons. And then the following Tuesday there was a very interesting communion service that was held in Temple Church in the law courts of the Inner Temple.

It was a great experience to be there and I certainly commend Bob Toms who was instrumental in arranging those meetings in England, and who presented, on behalf of the Christian Legal Society in this country, a communion set to the Temple Church and to the Fellowship of Christian Lawyers in Britain.

I also commend the Christian Legal Society for the very valuable and important work that Greg Cassidy and others are doing throughout this country as the spark plugs, really, for the protection of religious liberty in the United States.

Many people don't realize the number of threats to religious liberty made each year. I'll talk a little about them this morning. Threats to religious liberty do take place in our country. The Christian Legal Society has been on the cutting edge of defending the real meaning of the First Amendment from these attacks upon religious liberty.

One of the highlights of the convention in London was an address by Prime Minister Margaret Thatcher. It was during her speech that she referred to the patron saint of lawyers, St. Ives. We also found in the course of her speech that even the patron saint of our profession is not immune from criticism. It seems that each year there is a special celebration in Cornwall, England on the feast day of Saint Ives. Part of that celebration is a high Mass at which at one point the priest offers this eulogy in latin in honor of the saint. And it goes "Advocatus quonon latro/res miranda populo." Which all of you I'm sure know means "an advocate but not a thief/a think well nigh beyond belief."

In other words it seems that lawyer jokes have an ancient heritage. Lawyers it seems have always been at the center of controversy. In part this is probably due to our adversary system of justice, which guarantees the right of representation to all people, even the most unpopular clients and the most unpopular causes. And in part it may also be due to the changing nature of our profession. The growing number of attorneys will reach one million by the year 2,000. Coupled with the way that some lawyers are now advertising, this has contributed to a

higher public profile for the legal profession as a whole. But I think that another factor that explains why lawyers are now at the center of political and social controversies as never before in our nation's past is that there has been a tremendous explosion, if you will, in the alleged rights of due process, and an expansion of the types of causes of action generally over the past several years.

Disputes that were once resolved informally, or were left to the political process, are increasingly grist for the judicial mill. As more social controversies make their way into the courtroom, lawyers and judges find themselves more and more involved with controversial issues, and sometimes become the subjects of controversy themselves.

This morning I would like to speak about one issue that has always been controversial but which has recently been receiving increased attention.

I'd like to preface my remarks by saying something that I think is very important about our American democracy and which I think you will all agree with. We should never expect any religious group or any other group in society necessarily to be 100 percent in agreement with any political movement or any political party or any particular administration of the government.

But we can share important principles between the few who are called into the government and the many who stand as the foundation for that government. I think it's important to talk

about the principles that we share, and that's what I'll be dealing with this morning.

Today I'd like to talk about a matter that concerns Americans of every religious persuasion and Americans generally. It's a matter that's not too often articulated, particularly in a clear and effective way where we look into its history and look at what really we have as a resource to deal with.

Indeed, it is an issue that has occupied Americans ever since the first Europeans came to our shores. It was one of the motivating forces that caused many people to leave their homelands and come to this country. In recent years this issue has attracted more rather than less attention. What I'm talking about is the subject of religious freedom.

In discussing religious freedom I suggest to you this morning that there are two phenomena that we ought to observe. First I would propose that America's novel experiment in behalf of religious freedom has proved to be a tremendous success. But at the same I would suggest also that there are ideas that have gained influence in some parts of our society, particularly in some important and sophisticated circles, that are opposed to religious freedom, indeed that have an attitude of hostility towards religion in our country. There are some people that have espoused this hostility and it must be recognized for what it is and forcefully opposed. There is a hostility in some places to certain basic values of the American people that must be clearly described, and equally clearly opposed. Of course, I think that

this is a group that has already been in the forefront of taking on this battle.

I think it is also important that we speak candidly about this subject. I think that as lawyers we have a particular obligation because a great deal of the activity in this field has taken place in courtrooms, in legal circles and in the name of the law.

As I've said, America's novel experiment in behalf of religious freedom has been a tremendous success. What was this experiment, and why did the Founders of our Republic undertake it?

Well, basically the Founding generation decided that America should not have a national church, that government should neither establish a religion nor prefer one religious group over another. This decision distinguished the early United States quite clearly from the Old World, which the early Pilgrims and subsequent immigrants left behind. It had long been the custom in Europe--and still is in many countries--that church and state should be yoked together. Some of the early colonies and later in the some of the states, supported particular religions. In doing so they often showed their clear preference for one religious persuasion over another. Just as in the Old World, in the New World such preferences sometimes precipitated armed conflicts between the adherents of different religions. It was recognized early that one of the founding principles of our new country was that it was an unfair burden for people of one religion to have to bear, by

their taxes, the cost of another religion to which they did not personally subscribe.

It was for this reason that the Founding Fathers 200 years ago, in the development of the Constitution, decided to break from the old pattern of establishing a church as an instrument of official or governmental policy. It is interesting to note how they did this. It was so clear in the minds of the people who wrote the Constitution that there would not be a national church that that subject was left out of the Constitution originally. But it was written into the Constitution in 1787, an event the bicentennial of which we'll celebrate in two years. It provided simply that a religious test for public office was prohibited. Well, several states then asked to make explicit in Constitutional language what was implicit in the thoughts of the Founding Fathers. And so an amendment was proposed as a part of the Bill of Rights some years later. This amendment, the First Amendment, deals, as we know, with several matters. One of these is freedom of religion. The two religious clauses in the First Amendment constitute our fundamental legal charter on the issue of religious liberty. And these clauses, as I'm sure the members of this group well know, state "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

This language represented what Thomas Jefferson termed a great experiment, which would test the proposition that the religious benefits and the religious beliefs of the American people would flourish without the coercion of the state.

It is important for us to be clear, and to make clear, that the Founding Fathers sought to avoid the establishment of a particular religion in America, but that in doing so they were not hostile to the subject of religion in general. What Jefferson correctly called a great experiment was done with confidence that the religious beliefs of the American people would flourish even in the absence of any state coercion. Indeed, perhaps even would flourish because of the lack of state coercion.

The Founders wanted religious belief and religious practice to flow from the hearts of men and from their personal association with their churches, not because the heavy hand of government, either as a tax collector to support the churches, or to inflict any particular religious tests or to require any religious practices, was present in the new world. In addition, they wanted religion to thrive for reasons that to religious people may seem secondary but to the Congress was very important. They anticipated the success of religion and they found that religion as a part of society was a very important aspect of our civilization.

The Founders had devised a political system to restrain power, to preserve liberty, and it was a system that included such principles as representation, representative government, separation of powers and federalism. It was a system that specified that individuals had a right to life, liberty and property. It wasn't just a benevolence that was granted by a monarch or by some titled individual. And yet the Founders

recognized that there was a limit to what they could do by the installation of any political system or by the formulation of any particular set of institutions. They understood that without a fair degree of virtue in the people, as Madison put it, without a sense of public and societal morality, democracy might not be able to endure. And most of them believed that religion was that important source of morality and virtue. We only we have to go back to Washington's Farewell Address as he was leaving the presidency to get a sense of what the people believed in those days about religion, morality and virtue. Washington said:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports...

And he went on to say:

Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle."

So it was that the while the Founders of our Republic broke from the past with the experiment that they hoped would eliminate the conflicts of religion, they nevertheless felt it important to provide the conditions in which religion itself might not only exist but might flourish in our country.

In evaluating the success of their experiment, it may prove useful to know in some detail the terms of that experiment. As I said earlier, the First Amendment forbade the establishment of a

particular religion or a particular church. It also precluded the federal government from favoring one church, or one church group over another. That's what the First Amendment did, but it did not go further.

It did not, for example, preclude federal aid to religious groups so long as that assistance furthered a public purpose and so long as it did not discriminate in favor of one religious group against another.

These, then, were the terms of the novel experiment with church and state. The separation of church and state according to each one their rightful place in this new land of ours. And in retrospect, some two hundred and some odd years later, I think it is clear, and we would agree that basically this experiment has been a success.

There never has been, and hopefully there never will be, an official Church of the United States. But at the same time we have to recognize the Congresses, from the very First Congress on, have aided religion on a non-discriminatory basis. It was, for example, the First Congress that established a congressional chaplaincy which still continues to this day. They also authorized the President to establish a military chaplaincy; the Second Congress created a separate chaplaincy for the Army; and the Third Congress created a separate chaplaincy for the Navy.

Over the years, it is interesting to know that Congress also ratified with Indian tribes treaties which provided for the building of a church on Indian reservations at government expense, and which paid for the support of a priest for the

religious education of the Indians. It is interesting also that a century later Congress decided that this wasn't a good idea and repealed that law. But the important thing is that non-discriminatory religious aid coming from the Congress was not at all deemed in the First and subsequent Congresses a violation of the constitutional prohibition against the establishment of religion.

In the absence of state coercion, religion in America has indeed thrived. The few early denominations that were there at the founding of our Republic still exist. But in addition, other religious organizations and groups have grown in the country. The statistical abstract of the United States reports that there are some 87 different religious denominations in this country that have 50,000 or more adherents. And all religions continue to be treated equally under our Constitution.

Furthermore, I don't think there would be anyone here, and few in our country generally, that can doubt that the religious beliefs of the American people have proved a constant source of individual virtue and community values. Indeed, what de Tocqueville observed in 1835 remains true today. He said that religion has enabled Americans to use liberty and to preserve it. Clearly, we would be a much different American today were it not for religious faith. The American political tradition reflects our religious traditions and most importantly our traditional religious values. We living today owe the Founding Fathers a great debt for their novel and their successful experiment with church and state.

But at the same that we recognize the success of that novel and noble experiment, at the same that we express our debt of gratitude to the Founding Fathers, we have to recognize that some ideas that have become increasingly influential in recent years are ideas that threaten the concept of religious freedom. Some people would try to interpret the First Amendment in a way that is extremely hurtful to the cause of religion. In its application, the principle of neutrality toward all religions has often been transformed by some into a hostility toward anything religious at worst, or at best a general confusion over what religious freedom actually means.

In order to protect the religious liberty of the American people, President Reagan and this administration have argued on behalf of principles that reflect the text of and the intent behind the First Amendment. We have argued, for example, that religious programs can benefit both the religious and the nonreligious; that public school facilities can be made available equally to all student groups, religious and nonreligious alike; that government should be able to distribute tax benefits to parents regardless of where they send their children to school, whether they be church-related, or other private, or public schools. And we have contended that government must be able to extend financial assistance to all eligible persons, whether they intend to use this aid for a religious or a secular vocation.

Furthermore, we have argued for accommodation by government of the religious beliefs and conduct of our citizens. As the founding generation realized, religious convictions properly flow

from individuals and private associations of people and their churches. But this does not mean that the government must be indifferent, let alone hostile, to the convictions that are held by a large number of people.

This position keeps faith with our written Constitution and is particularly important today. For as government grows, as it has over the two centuries since the founding, the application of artificially strict principles of neutrality, which take these principles beyond real neutrality, to the public sphere has the practical effect of forcing religion and the exercise of religious faith into smaller and smaller private spheres. The danger is that religion, which has been such an important force in our country, can lose its social historical--indeed its public character.

There are nations, we should remind ourselves, where religion has just this status, where the cause of religion, and its expression has been reduced to something which people can only do behind locked doors. Certainly, this is an end for the novel experiment that no one would want in this country.

And there is a further danger that I would suggest we must be constantly aware of. And that is that by gradually removing from public education and public discourse all references to traditional religion, and particularly to religious values and moral values, and by substituting instead the jargon and the ritual and the morality of the cult of self, we run the risk of subordinating all other religions to a new secular religion which is a far cry from the traditional values which have been

successful and which have nurtured the morality and the values which underlie the American people. As the Lutheran writer Richard Neuhaus in New York has observed, there is no such thing as a "naked public square." As religion is pushed out of that square, other value systems will rush in to occupy it. The American Constitution makes no guarantee that the public square should be Protestant, or Catholic or Jewish; that it should be Muslim or Buddhist; or religious or non-religious for that matter. But it does provide that our people--the American people--should be able within the limits of the First Amendment to determine what are the values of the public square. And it begs credulity to argue that the value system most reflecting the beliefs and sentiments of the American people has to be primarily secular and cannot be based upon religious values.

Now I hope that you won't feel that this has been an unduly long excursion into Constitutional history in the United States. But I feel that it is important now and then, particularly in the context of a bar convention such as this, that we speak out forthrightly and clearly on a very important doctrine in our Constitution that are too often neglected, or even distorted, on the editorial pages of our newspapers. Too often these truths are forgotten by people--both citizens and those who are in positions of public trust. I feel it is important that this topic be brought up in groups such as yours and in public groups all over the country. I recognize that not everyone will agree with these sentiments or the views that I've expressed, but at least the issue of religious liberty deserves to be debated and

deserves to be in the forefront of American public policy discussions today.

I suggest that it is imperative that you and other liberty-loving Americans speak out for religious freedom. As I said earlier, the Christian Legal Society has noble history of religious commitment and of speaking out for religious freedom and of acting on behalf of religious liberty. You have contributed greatly to this cause in America today.

But the challenges that we face I would suggest have never been greater. And therefore, I ask you to join with our President and this administration in its efforts to protect religious freedom. The First Amendment as we all know, also guarantees freedom of speech and that freedom deserves to be exercised energetically and courageously in defense of all of our freedoms including the defense of religious liberties. Our Founding Fathers' novel and successful experiment in church and state relations can be sustained and carried ont to our children and future generations. Only if our nation clearly understands the real meaning of the First Amendment and how it must be applied, can we preserve traditional values.

I know the members of this society share my concern, both for the integrity of the law and the Constitution, and for preservation of a legal system that permits the reasoned moral development of the people.

With the perserverance and assistance of people like yourselves, we can and we will go forward as a nation under God.

Thank you.