

ANTI-CATHOLICISM AND THE COURTS

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William Bentley Ball, perhaps this century's leading Catholic constitutional lawyer, frequently took note of the anti-Catholic animus that has pervaded our judicial system. No doubt he looked down with disgust when he learned of the recent ruling in Federal District Court in Ohio that blocked Cleveland's voucher program. The decision was vintage anti-Catholicism.

For the past four years, Cleveland has had a voucher program that services the needy. Under the program, low-income families can choose to send their children to private or suburban public schools. But because most of the parents have chosen to send their kids to Catholic schools, Judge Solomon Oliver, Jr. found that to be a problem. So the day before school began this year, he issued an injunction to stop the program; a few days later he ruled that the program could go forward for returning students, but no new students could be admitted until a final judgment was reached.

Judge Oliver was disturbed to learn that 85 percent of the students attended sectarian institutions. To him, this meant that "the Cleveland program has the primary effect of advancing religion," adding that these children suffered "irreparable harm" because they weren't attending the city's public schools. How he could reach this conclusion—when Cleveland's public schools has a dropout rate of 46 percent—is a mystery.

Notice that Judge Oliver did not say that voucher programs, per se, violate the Constitution. No, what bothered him was the kind of school that most parents elected to send their

children to, namely, Catholic schools. He went so far as to say that some of these schools had "a pervasively religious mission," and were therefore taboo. Indeed, the *New York Times* even ran an editorial (supporting the judge, of course) entitled, "Parochial School Vouchers," thus making clear its worry.

All of this smacks of anti-Catholicism. Yes, there are principled constitutional objections to vouchers that can be raised that have nothing to do with bigotry. Just as all opponents of busing are not bigots, all those who oppose vouchers are not bigots. But one would have to be awfully naïve to think that many of those who oppose busing are not racists and many of those who oppose vouchers are not anti-Catholic.

Ira Glasser, executive director of the ACLU, expressed his support for Judge Oliver's ruling by saying that the ACLU opposed public monies to "pervasively sectarian" institutions. Once, just once, I would like to know how these folks figure out what constitutes a "pervasively sectarian" institution? How is it different from one that is "merely sectarian"? To put it differently, how many crucifixes in a classroom can be tolerated before the place becomes "pervasively sectarian"?

The idea that judges—committed to separation of church and state—should take it upon themselves to make such decisions is scary. Even worse is that they should enjoy the support of leading newspapers and civil libertarians. The reason why this happens has more to do with politics than principle, and that is why it so difficult to win these wars: under the guise of constitutional fidelity we are dealing with America's deepest bias, anti-Catholicism.

To show how elastic, how utterly without principle, is this invidious notion of "pervasively sectarian" institutions, consider what happened when a district court issued a Stipulation Agreement in 1987 regarding New York City's foster

care facilities. In that ruling, the court held that Catholic, Protestant and Jewish foster care homes (all of which received public funding) must operate on a first-come, first-serve basis, meaning that parental choice for religious placement was denied. In addition, restrictions were placed on teaching religious values and the agencies were prohibited from displaying "excessive religious symbols." What constituted "excessive," the court did not say.

If this wasn't bizarre enough (the ACLU was the organization that filed suit), the Stipulation Agreement granted one exception—Orthodox Jews could continue to service only Orthodox Jewish children. The reason: the religious beliefs of these children, the court said, "pervade and determine the entire mode of their lives." So now Catholic institutions were found to be insufficiently "pervasive" in their religious expression to qualify.

The courts, then, have proven to be quite slippery on these issues. The slipperiness is a function of bias, an hostility to an ascendant Catholicism. Designed to keep us in our place, these rulings would not be tolerated if they burdened some other segment of the population. It is hard to believe, for example, that if a large portion of the Jewish community were to suddenly opt to put their kids in a yeshiva that the courts wouldn't notice.

As for the judges, their black robes cannot hide the white sheets that some are cut from.