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The Electoral College is the Best, the Worst

By Sarah Elfreth, Junior, Political Science

The 2000 presidential election recount in Florida revived interest in and fascination with an established and largely misunderstood political American institution: the Electoral College. The controversy consisted primarily of two separate yet symbiotic points: one, that voters, Floridians, had been disenfranchised by not receiving adequate assistance from poll officials or did not have their votes counted because of inefficient balloting methods; and two, that the system used to determine the presidential election winner, the Electoral College, was antiquated, undemocratic, and inefficient in accurately reflecting the mass will of the people by not honoring the popular vote totals.

Along with protracted recounts, the weeks following Election Day were occupied with calls to reform election mechanics and the Electoral College. As if the litigation and Supreme Court intervention were not embarrassing enough on a global scale, an estimated 1.5 million ballots cast on Election Day were disposed of at polling stations across the country due to voter errors. In perspective, only 500,000 votes separated George Bush from Al Gore in the popular vote. How did such errors occur in a nation that prides itself on its democratic processes? Inevitably the mechanical problems at the polls on Election Day were invariably linked to the Electoral College, adding to the negative stigma surrounding it.

The idea of “one person, one vote” speaks to the very core of the American belief in an inherent right the U. S. Constitution guarantees. And yet, the great wheels of democracy have experienced trouble turning on several occasions; of the fifty-four presidential elections, eight have resulted in controversy. Immediately after the elections of 1800, 1824, 1876, 1888, 1912, 1948, 1960, and 2000, proponents of reform called for a number of changes to the way we elect the president.

When the framers developed the Electoral College, they envisioned a reasonable compromise between the proponents of a popular vote and advocates for congressional selection in electing a president. Slight evolution over the past two hundred years has developed into today’s Electoral College that selects a president in two parts. The first counts the popular votes

of each of the fifty states plus Washington, D.C., and the second allocates the electoral votes, which is determined by each state's congressional representation (the total of each state's House and Senate seats), to the winner of the popular vote in each state. Each state, with the exception of Nebraska and Maine, which both divide their electoral votes according to the popular vote of each congressional district, utilizes the winner-take-all method in which the totality of a state's electoral votes are allotted to the popular-vote winner of that state. In order to win the presidency, a candidate must receive a minimum of 270 of a potential 538 electoral votes.

Criticisms of the Electoral College include the disproportionate and unfair attention paid to so-called "battleground states:" those that could go for either candidate on Election Day. In this year's election, states like Pennsylvania, Virginia, and Ohio could have swung either red or blue and thus received a bombardment of advertisements, visits from the candidates, and unprecedented amounts of money spent to spread each candidate's message. Conversely, states such as Maryland with a strong tradition of voting one party into office were less contested and therefore received less attention from the candidates. Another criticism assesses the winner-take-all method used in all but two of the fifty states (Nebraska and Maine). Reformers claim this method contributes to the sense of disenfranchisement citizens feel when they do not live in a battleground state. This sense of ambivalence and lack of voter efficacy negatively affects voter turnout on Election Day when people feel that their voices are not counted.

In light of such criticisms, many reformers have addressed the concerns about the Electoral College. One group that has gained national attention is the nonpartisan National Popular Vote (NPV) Interstate Compact, which is a grassroots organization for electoral reform. The plan, which calls for a compact between all states that pass its suggested bill, is a creative way to achieve a popular vote without amending the Constitution: each state passes the supporting bill and then pledges to give its electoral votes to the national winner of the popular vote, even if the majority of the state did not vote for that particular candidate. The plan only comes into effect when enough states with a collective electoral vote of 270 have passed such a bill. If the NPV were to gain approval from the necessary number of states, the Electoral College for all intents and purposes would be circumvented. To date, only New Jersey, Illinois, Hawaii, and Maryland have passed laws, vowing to contribute their electoral votes (collectively 50, or roughly 19 percent of the total votes needed to take effect) to the popular vote winner.

One question is which system of electing the president best represents the ideals of the United States? Does a popular vote better suit American democracy and majority rule, or does the Electoral College best embody the fundamentals of federalism, the separation of power, and checks and balances? Despite popular conceptions, the Electoral College did not fail in 2000. We did elect a new president. Until any reform occurs, whether by the National Popular Vote method or by another system of selection, candidates for the presidency are morally bound to uphold the Constitution as if they were already the president. To claim he was wronged by the Electoral College system, as Gore did after the 2000 election, does not serve the public's best interest. Candidates have little right to contest the rules of the game after they have lost.

The constitutionality of the NPV is subject to debate. Disenfranchisement undoubtedly does occur in the current electoral system, but this is not to say that reform is unwelcome. New methods should be explored even when no system will be perfect. Like democracy itself,

paraphrasing Winston Churchill, the Electoral College, until proven otherwise, is the worst system we have to pick the president. That is, except for all the others.

A Man's Home: His Castle, His Booth?
By Richard Billingsley, Junior, Political Science

The single question for consideration is this: May the government . . . tap wires, listen to, take down, and report the private messages and conversations transmitted by telephones?

Justice Pierce Butler dissenting in *Olmstead v. U.S.* (1928)

In *Katz v. United States* (1967), the Supreme Court was once again asked to address the constitutionality of police conduct, specifically the issue of wire tapping under Fourth Amendment scrutiny. Charles Katz contended that the use of wiretapping constitutes "unreasonable searches and seizures" and unconstitutionally violated his individual privacy. Found to be guilty of illegal gambling and wagering, Katz was convicted based on evidence gathered by FBI agents who had been listening and recording conversations transmitted in a public telephone booth. He argued that the location of the conversations should be considered constitutionally protected, considering that one has, as Justice Harlan stated, a "reasonable expectation of privacy" while using a public telephone booth. In addition, the wiretapping challenge raised another question previously ruled upon by this Court, namely, whether there must be a physical breach of privacy on the part of police to constitute an "unreasonable" search or seizure, *Olmstead v. United States*. The majority in the *Katz* case unreasonably found justification to overturn the *Olmstead* precedent after nearly forty years when it determined that wiretapping was unconstitutional.

The difficulty in all matters of determining constitutionality lies in the vague nature of the Constitution's language, compounded further by the Court's differing interpretations of the text. Furthermore, it has been argued that the Fourth Amendment, the basis of challenges to wiretapping, is the least vague provision of the Constitution. The amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In an initial reading of the text, there would appear to be sufficient justification for challenging police wiretapping for violating the protection against "unreasonable" searches and seizures. Seemingly straightforward, consideration of the Fourth Amendment has led to the development of several questions in terms of challenges to wiretaps. Is wire tapping "unreasonable?" What constitutes a search and seizure? Are warrants always required? Considering these questions inherent in the Fourth Amendment, however, the issue becomes far more complex and requires considerable analysis of the text of the Constitution and its history, previous determinations of Fourth Amendment challenges by this Court, as well as a discussion of the possible ethical considerations when addressing matters of individual privacy.

The Supreme Court initially attempted to determine the constitutionality of wiretapping in 1928 in the *Olmstead* case. The appellant in that case was a man named Roy Olmstead who was convicted of bootlegging, which was outlawed during Prohibition. The prosecution relied on evidence attained from wiretaps at Olmstead's home. Olmstead argued that this use of evidence violated his Fourth Amendment right against unreasonable searches and seizures. Chief Justice William Howard Taft wrote the majority opinion in which the Court determined that wiretapping did violate the Fourth Amendment. Taft wrote that "there was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only...and that the wires beyond his house . . . are not within the protection of the Fourth Amendment." Taft adopted a rather rigid interpretation of the Fourth Amendment's language, an interpretation that has important implications for the discussion of wiretaps.

By following the doctrine of "original intent" or rather the well-known historical purpose of the Fourth Amendment, Taft narrowed the scope of the Amendment to only protect against the Framers' feared "general warrants." By this standard, he implied that the Fourth Amendment only served to protect against physical governmental invasions feared by the framers while drafting the Constitution, wiretapping not being among those fears. Taft's opinion clearly shows the judgment that wiretapping is essentially eavesdropping. If the framers wished to protect against seizure of such intangible evidence, the Constitution would have included such a provision. In addition, Taft effectively dodged the question of determining reasonableness by ruling that there was not even a search or seizure for him to determine to be reasonable. By default then, his opinion upheld the government's use of wiretapping and established the tangible objects test for determining seizures.

In my view, the *Katz* decision, in overruling *Olmstead*, unjustifiably negates sound judgment. The majority opinion illustrates "manifest neglect if not open defiance to" the *intent* of the Constitution, *Weeks v. United States* (1914). The evidence gained in *Katz* was clearly not obtained in violation of the Fourth Amendment. I do not support the notion that mere conversation can be conceived as protected by an amendment whose text strictly limits the protection to "the person, the house, his paper, or his effects." This is raw judicial activism in its barest form carried out, as Justice Black observed, by "language-stretching judges" attempting to "keep the Constitution up to date."

Keeping Creation Out of Education

By Matthew Payer, Senior, Law and American Civilization and Political Science

There are two main ideas of how the Earth was created, and how humans came to be on this planet. One is that a Supreme Being known as God over seven days magically fashioned it all. The first man, Adam, then gave names to all the animals God had created, and we started living our lives. This is the Christian version of how the world came to be and how humans were created. It is known as the theory of Creation, or Creationism, and it is taken has long been accepted as truth to many until a man by the name of Charles Darwin challenged it.

In 1859, Darwin argued in his Theory of Evolution that we evolved from some lower animal form. Part of his theory is that evolution involves natural selection, in which animals better adapted to their environment will have a greater chance of survival and will pass on their

characteristics that have helped them survive. Over the years, we evolved (probably from monkeys) into what we are today. His theory is based observation, which is a part of the scientific method.

One theory has a religious foundation, while the other has a scientific one. The problem with the first of these is that you might believe something else entirely. But is there proof to the theory of Creation? Christians may argue that the Bible is all the proof you need. Some, however, do not worship a Christian God or any God at all, whereas Darwin's theory of Evolution has scientific support based on observable evidence.

This leads me to ask whether Creationism should be taught in public schools. Some argue that the idea of humans coming from monkeys is absurd. Before Darwin, Creation was taught in schools, but things changed because public schools are institutions of government. Under the Establishment Clause, the government has no right to establish a religion. By teaching the ideas of Christianity (that God created the Earth and all living things on it), the government promotes religion, and violates the First Amendment.

In 1968, the Supreme Court addressed the issue in *Epperson v. Arkansas* when it ruled that an "anti-evolution" statute, forbidding public school teachers "to teach the theory or doctrine that mankind ascended or descended from a lower order of animals," violated both religion clauses. "Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine." Clearly some people did not want the evolution taught because it challenged their religious doctrines about how the world and humans came into being. The statute violated the Establishment Clause because if school children learned only the religious view of how the world was created and forbidding the teaching of evolution, the government was establishing a religion.

Almost 20 years later, in *Edwards v. Aguillard* (1987), the Supreme Court held that a Louisiana statute, barring the "teaching of the theory of evolution in public schools unless accompanied by instruction in 'creation science,'" had "no clear secular purpose." Those behind the statute supported it, not because they wanted the children to have a better education, but probably because they did not want their religious viewpoint to be suppressed by a superior theory. "Because the primary purpose of the Creationism Act is to endorse a particular religious doctrine," the Court said, "the Act furthers religion in violation of the Establishment Clause."

The idea that there should be no religion in schools whatsoever is clearly illustrated by Justice Black in the case of *Everson v. Board of Education* (1947) when he famously wrote, "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. . . . In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" If Creationism is taught in school, is the government setting up a church? After all, instructors are teaching the words of the Bible, which is taught in churches. The Bible is considered the word of God, and a teacher lecturing on the Bible is like a priest giving a sermon on it.

Knowledge is based on facts. Children are sent to school to obtain knowledge through the instruction of facts, which are supported by evidence. There is evidence that leads us to believe that the theory of Evolution is a fact. What is the evidence that Creationism is a fact? Is it the Bible? Surely not: to believe that the Bible is fact is to have faith, and not evidence. James Fraser once pointed out that Carl Sagan, one of the nation's most famous and respected scientists, stated that "claims that cannot be tested, assertions immune to disproof are veridically worthless, whatever value they may have in inspiring us or in exciting our sense of wonder." Based on this statement, the theory of Creation cannot be tested. Nor can it be disproved. Something that has no evidence as proof should have no place in a school setting.

Public schools belong in the public sphere, whereas religious belief is a private matter. While the Free Exercise Clause allows us to choose our religion, the Establishment Clause prevents government from forcing religion on us. These two institutions, schools and churches, must never overlap when it comes to education. As a society, we must educate our young on what we know, and not what we believe. Creationism should never be taught on the same grounds as Darwin's theory of Evolution. By teaching Creationism, the government advances religion, endorses it, and coerces the young into following the ideas of that religion. That is unconstitutional.

A Double-Edged Sword: The Establishment Clause and Ceremonial Deism *By Nathan Frye, Senior, Political Science*

Despite the presence of the Establishment Clause in the First Amendment, many people argue that the United States is an overtly religious nation, if not a Christian nation. They easily highlight such simple practices as prayer within the halls of Congress or even the opening prayer in the Supreme Court. Many of the religious trappings found in the government are ceremonial and so old that their religious meanings have been watered down to solemnize occasions. This idea has been developed into a phrase the Court has used: ceremonial deism. In fact, the phrase is neither ironclad nor crystal clear.

"Ceremonial deism" was not coined by the Court, but by Yale Law School Dean Walter Rostow in a 1962 lecture at Brown University. Two years later, Arthur Sutherland reported that Rostow used it to describe governmental religious acts "so conventional and uncontroversial as to be constitutional." The Court has referred to ceremonial deism in only two cases: *Lynch v. Donnelly* (1984) and *Allegheny County v. ACLU* (1989).

Lynch took place in Pawtucket, Rhode Island, when the city erected a Christmas display in a park owned by a nonprofit organization in the center of a shopping district. Many of the items included in the festive display were secular (Santa Claus's house, a Christmas tree, and a banner of "Seasons Greetings"), but religious symbols were also displayed: a crèche and a Nativity scene. The holiday display had been part of the city's seasonal decorations for nearly forty years. Despite this long tradition, in 1984 several individuals claimed that the crèche violated the Establishment Clause.

In a five to four decision, the Court declared that the crèche could be displayed, explaining that "the inclusion . . . did not have the impermissible effect of advancing or promoting religion."

Meantime, while the term ceremonial deism was used only in Justice Brennan's dissent, Chief Justice Burger, in his majority opinion, referred to many religious aspects of ceremonial deism in which our government has had a long pedigree: prayers before sessions of Congress, Presidential Proclamations on religious holidays, our national motto, "In God We Trust," and "Under God" in the Pledge of Allegiance.

Allegheny County was similar to *Lynch* in that the issue was once again the constitutionality of recurring holiday displays on public property, this time in Pittsburgh. One display was a crèche placed on the Grand Staircase of the Allegheny County Courthouse and another a Chanukah menorah placed outside the City-County Building alongside a Christmas tree and a sign saluting liberty. The Court singled out the crèche first, saying that because it stood alone, no one can deny its religious message and the fact that government wished it to be known by its location. Moving onto the menorah, the Court used the position of the display, as they did in *Lynch*, to claim that a secular Christmas tree and a Jewish menorah "are part of the same winter-holiday season, which has attained secular status in our society."

While only finding direct links to ceremonial deism within the dissent, the Court made an appeal to it in spirit of its ruling. This is not surprising that since the *Lynch* case, with respect to the sensitive topic of religion, the Court confirmed no reasoning that creates a fixed law. Instead the Court has tried to draw lines by undertaking the dodge of "case by case" decision making. The Court could be seen as trying to stop the creation of a statute that inadvertently causes "an excessive government entanglement with religion," but the problem is that there are no such things as "niceties" in the name of the law. So no leeway should be given in the name of justice. Furthermore, ceremonial deism entangles the government too deeply with religion.

In summary, ceremonial deism is an unsound way to vet supposedly religious symbols used by the government as being conventional enough to be secular. By its definition, it says that it is protecting religious symbols and rituals. Its only defense is that these symbols are too old for us to care. It presupposes indifference because it is in the past. It never takes into account the very real living and breathing perceptions at the moment. This argument tends to confirm the belief that the framers generally wanted the government to accommodate the beliefs of a religious people. This is untrue, however, because several of the framers had a different understanding on the role of government in terms of religion. Furthermore, ceremonial deism cannot be used as a constitutional test at all; it creates direct government entanglement with religion.

Christmas is a Christian holiday, and if it were not possible for time to dissolve that, Christmas as a national holiday would be unconstitutional as well. It needs no elaboration on how such an entrenched tradition in America being taken away would start a huge outrage. The problem is, ultimately, if we believe in the prospects of a "more perfect union" we should give up Christmas as a national holiday, saving it for Christians to observe alone. Another alternative is to remake it into a secular observance of the winter solstice, which still allows the commercial genius of Santa Claus who long ago became a secular figure when drawn as a portly toymaker by Thomas Nast. As our society becomes increasingly diverse, the United States will seem more biased to those who practice non-Judeo-Christian faiths, such as Buddhists, Hindus, Muslims, and Sikhs. If we truly believe in a representative democracy, we cannot have any group feel that the government is excluding them or holding that their beliefs are inferior to others.

Separation of Powers

By Charles Devault, Freshman, Political Science

The separation of powers is often cited as one of the major components that make the American system of government so enduring. But does this separation actually exist to the extent that it is touted? Is each branch of government charged with particular duties that no other branch can infringe upon? To a certain extent this is true, but it does not represent the whole truth. In all actuality our government consists of separate institutions sharing concurring powers.

As America's Chief Executive it is the president's duty to make certain appointments. These appointments extend from United States Supreme Court justices to heads of the different regulatory agencies. According to the United States Constitution, the president makes his appointments with the "advice and consent" of the Senate. This means that the Senate is responsible for either rejecting or passing by majority vote the president's appointments. Then there is the less-known power the Senate holds called senatorial courtesy. This courtesy entitles a senator to block an appointment of someone from their state from reaching confirmation for any reason whatsoever. This courtesy is extended by the president, so it more or less only applies to senators from the same political party as the president.

The President possesses the power of commander in chief of the United States Armed Forces. This means that he is the supreme commander of all the branches of the military. However, it is the responsibility of Congress to declare war and to regulate the armed forces. So the President's power in this context is contingent upon the actions of Congress. To command troops during battle the President must rely on Congress to determine if war is necessary and whether to pay for it.

This is where the controversial War Powers Resolution of 1973 comes into play. In the two decades prior to this legislation, America found itself fighting two conflicts, Korea and Vietnam, without an actual declaration of war. Both chambers of Congress passed the resolution before President Nixon vetoed it, and Congress was forced to override the veto by two-thirds vote. The resolution states that the president can only commit troops to military action for 60 days without the consent of Congress and Congress must be notified within 48 hours of the president committing troops. All presidents have argued that the law violates their Article I role as Commander in Chief. Meanwhile, President George W. Bush has complied with the law once he received congressional approval to invade Afghanistan and Iraq.

The federal budget is another area where Congress and the president must share power. It is the responsibility of the president to develop a budget and submit it to Congress for the next fiscal year usually sometime in February. The president does this through the Office of Management and Budget which is part of the Executive Office of the president. Once Congress gets hold of the proposed budget, it is given to committees to make revisions. When Congress is satisfied with the budget, it returns it to the president for signature or veto.

While Congress has the power to draft legislation and the president can make executive orders or enter into executive agreements, the Supreme Court has final authority over them all. The Supreme Court's responsibility to interpret the laws has given it substantial power. The Court

has the power to nullify any statute or agreement on the basis of its constitutionality. What is remarkable about this power of judicial review is that it was never outwardly granted to the Supreme Court in the Constitution. Rather, it was a self-declared power initiated in the *Marbury v. Madison* case of 1803.

The three branches of the United States federal government in some respects do have separate powers. However, the majority of their responsibilities are intricately linked to one another. This linkage often makes many processes in the government move at a slow pace. The positive side is that the power sharing provides for a stable government so no branch can acquire excessive power. The next time a person flaunts the government's separation of powers as its crowning achievement, you will have to consider the validity of this statement.

Religious Practices and Instruction in the Public Schools

By Divya Potdar, Senior, Political Science, Co-President, Prelaw Society

In the early twentieth century, America's Judeo-Christian heritage came into the daily lives of Americans by the federal government by means of anti-communist propaganda when the words "Under God" were added to the Pledge of Allegiance in 1954. Two years later, the words "In God We Trust" were placed on U. S. currency. The assumption underlying these moves was that a way to ward off "godless communism" was to ensure that America was a religious nation. President Eisenhower expressed his ideals about "civil religion" by trying to persuade the U. S. Senate that "our form of government makes no sense unless it is founded in a deeply felt religious faith." Religion was good for society, and faith guaranteed proper behavior. That was alarming to many citizens because the nation was built on the doctrine of the separation of church and state. More recently, a July 2008 Gallup Poll revealed that ninety-four percent of Americans believe in a God or a higher power.

The question is whether religion has a part to play in government and whether the framers of the Constitution would agree. The Supreme Court has decided a number of cases that involve the role of religion in government, especially in regard to prayer and religious instruction in public schools, which has reassured those of no faith or a faith other than Christianity. In 1962, after hearing the landmark *Engel v. Vitale*, Justice Black stated that "a union of government and religion tends to destroy government and degrade religion." Almost ten years later, Chief Justice Burger developed a three-part test dealing with religious establishments in his majority opinion in *Lemon v. Kurtzman* (1971). The "Lemon Test" involved the criteria a statute must meet for it to be constitutionally sound. A statute must have "a secular legislative purpose;" its principal effect must neither advance nor inhibit religion; and it must not foster "an excessive government entanglement with religion." Although vague, the test served for years as the basis for many court decisions.

As the Supreme Court ruled since *Lemon*, prayer in public schools and at graduation ceremonies along with religious instruction during school hours are unnecessary because they violate the First Amendment prohibition against church establishments. People who wish to take part in organized prayer may do so in their respective churches, synagogues, temples, private homes, and private schools. In these places of worship and privacy, the clergy and parents teach their children about their faith. It is not the government's responsibility to do so, and parents

should not demand such measures. Justice Stevens expressed the Court's view in *Santa Fe Independent School District v. Doe* (2000): "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." The Bill of Rights is not subject to majority rule and it protects us from the tyranny of the majority. Using the government and the public school system as tools to expose children to religion completely undermines everything the framers worked to achieve when writing the Constitution.

Religious freedom can bring about harmony among nations and also something that has always been out of reach, namely, permanent peace on earth. In the words of the Supreme Court of Wisconsin, "There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once enter our civil affairs, our government would soon be destroyed. Let it once enter our common schools, they would be destroyed." In today's American melting pot, religious intolerance or majority rule over religious practices has no place in the public sphere. In a rapidly changing America, which is home to growing numbers of Muslims, Hindus, Buddhists, and "non-believers," teaching and preserving this nation's "Judeo-Christian" roots seem irrelevant. In addition, the non-sectarian and non-denominational prayers that organizations come up with offend not only the non-religious, but also the so-called religious right when prayers are watered down so much to become useless and meaningless.

The term "non-sectarian" prayer is an oxymoron: true prayer has to emerge from a sectarian tradition. If it were non-sectarian, it loses all meaning and is not a prayer. Prayers reflect the missionary purposes of a religion. Thus, it is not possible, by definition, for a prayer to be "non-proselytizing." Prayer does not belong in public school classrooms, which are filled with young children who may become confused as to what their parents teach them and what they learn in school. The conflicting traditions at home and at school may cause children to feel alienated outcasts or pressured to conform to the majority against the will of their parents. Whether in after-school activities, in-school prayer, or instruction about religion or evolution, the posting of religious texts on school walls or the endorsement of a minute for voluntary prayer, the public schools promote the religious beliefs of the majority when they should leave religious instruction and faith to people and places more appropriately equipped to handle them. Prayer is a private matter and should be left to the homes and the religious institutions in our communities.

Nationalization of the Bill of Rights ***By Anthony Puglisi, Junior, Political Science***

The first ten amendments to the United States Constitution, known collectively as the Bill of Rights, contain the individual rights guaranteed to citizens by their government. They allow citizens to live freely and to question the government without fear of being reprimanded. Rights like these give essential meaning to being an American. As a result, the average U. S. citizen thinks that each right stated in the Bill of Rights is applied to their state. This, however, is not the case because a total of five provisions in the first ten amendments are still not applied to the states today.

Throughout the history of the United States, the Supreme Court has ruled, in numerous cases, that certain rights are applicable to the states. The Court has done this through the Due Process Clause of the Fourteenth Amendment, which protects individuals from having their rights or privacy suspended or violated by a state. The protection of these rights has been enforced by this amendment on a case by case basis. As of now, five provisions in the Bill of Rights have not yet been applied to the states: the Second Amendment's right of the people to keep and bear arms; the Third Amendment's limitation on the quartering of soldiers in a person's house; the Fifth Amendment right to an indictment by a grand jury; the Seventh Amendment right to a jury trial in civil cases; and the Eighth Amendment right against excessive fines and bail.

Although average U. S. citizens assume that the Bill of Rights should be applied to their state, great legal minds have felt differently about the issue. Over time, the Supreme Court has had two main positions on this issue. The first is that of Chief Justice John Marshall in his 1833 opinion in *Barron v. The Mayor and City of Baltimore*. He stated that none of the Bill of Rights is applied to the states because the states have the authority to apply the ones they choose through their own state constitutions. This stance of the court would last until *Palko v. Connecticut* (1937) when Justice Benjamin Cardozo's opinion set a new standard.

Cardozo claimed that there is a scheme of ordered liberty when certain rights established in the first eight amendments are considered to be the "fundamental principles of liberty and justice," so that a few rights are essential to the purpose of the Constitution. He ultimately meant that there is a hierarchy of liberty within the Bill of Rights, and only those that are so fundamental to the Constitution are to be applied to the states. In light of this view Cardozo and the Court ruled in *Palko* that double jeopardy was not one of the essential rights in the Constitution. This position of the nationalization of the Bill of Rights is still in effect today. However, some legal minds, like that of Justice Hugo Black, have stood for another position.

In 1947, although the Supreme Court in *Adamson v. California* held to its decision in *Palko* that only some of the Bill of Rights are applicable to the states, Black filed a dissenting opinion, stating his view that has not yet been constitutionalized. Black wrote that "the chief objects that the provisions of the [Fourteenth] Amendment's first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights, applicable to the states." This view has many proponents, but it has still yet to be put into effect.

It is clear that the Court should use a single method so that either all of the rights or none of them are applicable to the states. It would be essential for all the Bill of Rights to be applied to the states because the framers of the Constitution put forth these rights to protect the citizens from their government. These rights are the supreme law of the land regardless of who makes up the federal or individual state governments. This means that the framers would not have included a Bill of Rights in the Constitution if they did not see them as the "fundamental principles of liberty and justice."



Editors' Note: The editors of the spring/fall issue (2008) should have noted that the article by William Jones contained his personal views and reflected the views of neither the United States nor the United States Army. The journal and its editors deeply regret this omission.

The journal reflects the views and opinions of the writers whose work is contained herein and in no way reflects the views or opinions of the Towson University Prelaw Society or Towson University.

WRITE FOR *THE PRELAW JOURNAL*. Published once each semester, the journal is completely written and edited by Towson University students. If you have a legal or constitutional issue that you have strong feelings about, write a 1000-1200 word commentary, and we will consider it for publication. Please provide it to us via e-mail by a Microsoft Word (2003 or 2007) attachment (please forward all submissions to Dr. Fruchtman, jfruchtman@towson.edu). We also consider essays about legal internships and other experiences you may have had in a legal setting, including but not limited to law firms, prosecutors' offices, judges' chambers. In addition, we particularly would like to see a debate on a particular subject. If you wish to take a position and know someone who takes the opposite perspective, we would like to review both essays for publication.

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