

Mencken on Church and State Author(s): George W. Liebmann

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Mencken on Church and State

BY GEORGE W. LIEBMANN

I am honored to be asked to deliver this talk, but in some measure your presence here is due to false advertising. I am a lawyer who has written about constitutional law, but I am not here, your newsletter to the contrary notwithstanding, to make the case for a militant secularism in the law. Mencken's attitude toward religion was more nuanced than that. He was that rarest of things, a militant advocate of tolerance, and as the events of the last few months in Baltimore should remind us, demands for tolerance must be directed inward as well as outward.

What did Mencken say about religion, and where would he have stood on the church-state controversies of our time? Here are my recollections and speculations.

Was Mencken an atheist? Clearly not. His statement on this was characteristic and unequivocal. "Atheism, properly so called, is nonsense. I can recall no concrete atheist who did not appear to me to be a donkey."¹

Was Mencken an agnostic, as many, including my friend Marion Elizabeth Rodgers, have suggested? Hearken to the Sage of Hollins Street: "He may after all awake post-mortem and find himself immortal. This is the agnostic's hell."² And elsewhere: "I can well understand the human yearning that makes for a belief in immortality."

On the Catholic Church, he observed: "Its basic doctrines are plainly preposterous and its hopes are futile, but nevertheless it continues in being and perhaps serves a genuine need."³ "At compromise and connivance the Catholic church shows a much greater limberness than any other Christian church, and so it seems likely to survive all the rest. It avoids the capital mistake of assuming that all Christians are actually Christians: even the pope himself is under formal suspicion, and must confess his sins like anyone else. . . . Once a Frenchman announced to an American friend that he was leaving the

church of his fathers. The American asked what variety of Protestantism he proposed to patronize. 'I have lost my faith,' answered the Frenchman icily, 'but not my reason.'⁴ Aquinas, Mencken said, "got rid of the age-old conflict between the unhealthy catacombish utopianism of the early Church and the everyday needs and desires of normal men living in a naturally pleasant world."⁵

To the Christian Scientist Marion Bloom, with whom his relationship foundered on matters of religion, he wrote:

"The God business is really quite simple. No sane man denies that the universe presents phenomena quite beyond human understanding and so it is a fair assumption that they are directed by some understanding that is superhuman. Anyone who pretends to say what God wants or doesn't want or what the whole show is about is simply an ass."⁶

In what is perhaps his clearest statement on matters of religion, he observed: "If there is anything plain about the universe it is that it is governed by law and if there is anything plain about law it is that it can never be anything but a manifestation of will."⁷

Mencken, in short, was a believer in intelligent design, or of deism, the faith of most of the Founding Fathers, other than those from the deep South. His view was that the "scientific view leaves a good many dark spots in the universe but not as many as theology." He did not pretend that there were no unknowns. The late George Kennan was a latter-day adherent of this view, believing, in the words of Michael Prowse, "in two Gods: a Primary Cause who brought the physical world into being and has no interest in our fate and an entirely separate Merciful Deity, partly within us, to whom we can turn at a time of need."⁸ Mencken believed in at least the first of these Gods.

Mencken on Church and State

GEORGE W. LIEBMANN

I am not sure that he would have embraced the doctrinaire anti-clericalism of Justice Black, and of Justice Douglas (at least when he was not running for President). The justice who seems to me to have most closely shared his ideals and personality was Mr. Justice Jackson, notwithstanding that Jackson had been both a New Dealer and an interventionist. "Jackson," Philip Kurland observed, "in many ways was representative of the best that the era of the 1920s could produce. But it was an era that ended with the depression and the New Deal. And so he found himself a 'loner' in a group-oriented society, an individualist in a collectivist world."⁹ It was Jackson who lamented, at the end of his life, that "The American industrialist has just ceased to be an individualist. . . the liberals have tended to collectivism and communism. . . Both groups, it seems to me, lack imagination and constructive thinking."¹⁰ This view was shared by Learned Hand: "The herd is regaining its ancient and evil primacy; civilization has been reversed, because it has consisted of exactly the opposite process of individualization."¹¹ It was Jackson who declared, in the second flag salute case,¹² "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

It seems clear that Mencken would have applauded the unanimous judgment of the Supreme Court in *Epperson v. Arkansas*¹³ invalidating a statute like that involved in the Scopes trial prohibiting the teaching of the theory of evolution in the public schools. But it is far from clear to me that he would have joined the 1987 opinion in *Edwards v. Aguillard*¹⁴ invalidating a statute which while contemplating the teaching of evolution also required the teaching of what was described as "creation science." The decision was a 7 to 2 decision with several anguished concurrences. The dissenting opinion of Justices Scalia and Rehnquist observed: "The people of Louisiana including

those who are Christian fundamentalists are quite entitled as a secular matter to have whatever scientific evidence there may be against evolution presented in their schools just as Mr. Scopes was entitled to present whatever scientific evidence there was for it." A later statute authorizing teaching of 'intelligent design' was condemned by a District Court in Pennsylvania charging the defenders of the statute with "an utter waste of monetary and personal resources."¹⁵



Photo of Supreme Court Justice Robert H. Jackson, circa 1945, from the Harris & Ewing collection at the Library of Congress.

There is more than a small irony in the resistance in the name of science to even a modicum of religion in the schools. The historian Page Smith, in his history of towns in America, made the interesting discovery that a disproportionate number of the nation's scientists and inventors had their origins in towns founded as covenanted communities by religious sects. His explanation, not his only, was that "Protestant orthodoxy and the psychology of the small town engendered an ideal of professional calling a fluidity of social organization and an ethic of service to the larger good that, in an increasingly materialistic and secular society, made science a most attractive field for young men from thousands of small-town communities. The fact that a very large proportion of scientists were the sons of Protestant clergymen would seem to give added emphasis to this generalization."¹⁶

One can even suspect that the passion of the more doctrinaire secularists is inspired less by a devotion to science than a devotion to upper-Bohemian life styles.

Mencken had a deep dislike of both religiosity and nationalism. "I am sick and tired of this nationalism anyhow. That goes for racialism. I want to travel without visas, on one passport, without crossing any frontiers. I am sick and tired of calling a man a Catholic or Jew."¹⁷

He had a violent prejudice against 'identity politicians', who dominate both political parties in our time. He observed, with fine impartiality: "You have professional Jews. I don't like religious Jews. I don't like religious Catholics and Protestants." His denunciation of

Mencken on Church and State

GEORGE W. LIEBMANN

Zionism united his dislike of religiosity and of nationalism and resembled that of Joseph Roth, the great elegist of the Austro-Hungarian Empire, in *The Emperor's Tomb*¹⁸: “If you want to live differently and have your own two by four country like all those Wilsonian creations in the Balkans, go right ahead!”¹⁹

We need not speculate too much on where he stood on most other church-state legal issues: he was fundamentally a separationist, as was disclosed in his 1937 draft for a new Maryland Constitution which I have perused thanks to the good offices of one of your members, Henry R. Lord:

*“No law shall be passed establishing a religion or favoring the tenets or practices of any faith or sect or penalizing any discussion thereof as blasphemy or impeding the conduct of religious exercises at any place or in any manner not imperiling the public peace or health, or appropriating any funds for any religious purposes or for any institution controlled by a religious body; but the funds of any division or agency of the State may be paid out to such an institution by law to an amount not greater than the reasonable and actual value of its care for public charges.”*²⁰

Thus he would have opposed direct aid to parochial schools or religious colleges. On the other hand, it is far from clear that he would have opposed school vouchers or aid to parents. He had no particular affection for public schools. His draft constitution made no provision for them. His book *Happy Days* ends with the end of his stay at Dr. Knapp's academy, a private school. He then attended the Baltimore Manual Training School, later Baltimore Polytechnic. While he made excellent grades in most subjects, he left with no love of the sciences and a keen dislike for his chemistry teacher. In his *Treatise on Right and Wrong*, he declared:²¹ “The evil growth of the more absurd forms of nationalism during the past

century is probably due to the spread of free education. When the pedagogue becomes a public functionary, his natural puerility and timidity are increased, and he is a docile propagandist of any doctrine enunciated by the politicians. It would be hard to imagine a more shaky guide to sound morals and common decency.”

After the Second World War, Agnes Meyer, the wife of Eugene Meyer, the publisher of the *Washington Post*, tried to enlist Mencken in her “campaign against what she describes as a Catholic plot to seize the public schools” only to be met with the reply: “if it succeeded, the schools would be greatly improved.”²²

Mencken's draft Constitution prohibited religious tests for office and provided that “no juror be deemed incompetent because of his religious belief or lack of belief.” With respect to the legislative body, it declared that, “No person shall be eligible who is or has ever been a minister of the gospel.” There had been a similar provision in Maryland's 1851 Constitution, carried forward in 1867 notwithstanding that George William Brown, a delegate to the Convention, observed that in his experience the worst demagogues were not ministers but lawyers.

The Scopes trial fully aroused his passions: “On the one side was bigotry, ignorance, hatred, superstition, every sort of blackness that the human mind is capable of.”²³ As for the Holy Rollers of Tennessee, they “rose to

such heights of barbaric grotesquerie that it was hard to believe it was real” His obituary of William Jennings Bryan danced on his grave and was founded on a similar view, even though he and Bryan, along with Robert La Follette were the most prominent Americans to oppose American entry into World War I.

Mencken was a skeptic, but not a nihilist: “I doubt everything, including my own doubts.”²⁴ Like Jefferson (who prepared a Bible with the theology removed), and the late Clement Attlee, who urged “Christian ethics without the mumbo-jumbo”, Mencken “preferred a code of ethics divorced from a religious creed of any sort”, “forgetting what the vague gods ordain and concentrating



Photo of Joseph Roth, Austrian author, 1918.

Mencken on Church and State

GEORGE W. LIEBMANN

upon what mere man is able to do, and in fact does. . . this essentially scientific apparatus is really possible”²⁵ His difficulty, and ours, is how to root such a code in the conduct and feeling of the great mass of men. “Some will do the right thing out of charity,” the great British Catholic jurist Lord Patrick Devlin observed in his book on *The Enforcement of Morals*²⁶, “but for the great mass of men faith and hope are necessary also.”

Where would Mencken have stood on the great constitutional controversies of our time? He probably would have approved of the Supreme Court decisions of the 1920s invalidating prohibitions of the teaching of German and the operation of private and parochial schools,²⁷ but like the free speech scholar Harry Kalven would have wanted to rest them on the First Amendment rather than property rights. There is language in his draft of a Maryland Constitution suggesting that he might have agreed with the ban on prohibition of contraception imposed by *Griswold v. Connecticut*²⁸. He regarded the Roman Church’s exaltation of chastity as obsolete even in his time; anticipating the advent of the pill, he observed: “I tremble to contemplate what would happen if an infidel scientist discovered that conception could be prevented by some indubitably ‘natural’ means, such as a manganese-free diet.”²⁹

But I doubt that he would have stayed on board for *Roe v. Wade*³⁰ with its transformation of medical ethics; even the feminists of the 1930s perturbed him: “Nor is the moral virtuoso made more prepossessing when he takes the Devil’s side and howls for license instead of for restraint. The birth controllers, for example, often carry on their indelicate crusade with the pious rancor of prohibitionists.”³¹ And further: “In order that women may cease to be ruined for one banal indiscretion, we are now asked to abandon not only the idea of chastity but also that of fidelity to contract.”³²

Mencken knew too much about the history of morals to embrace Justice Stevens’ proposition in the *Webster* abortion case³³ that legislation could be condemned if it

looked like “official endorsement of a theological tenet.” After all, Justice Holmes had famously cautioned on the first page of his book on *The Common Law* that “The life of the law has not been logic, it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious. . . had a good deal more to do than the syllogism in determining the rules by which men should be governed.”³⁴



American diplomat and political scientist George F. Kennan (1904-2005). From the Harris & Ewing collection at the United States Library of Congress.

Still less would he have embraced as a constraint on legislation governing conduct, as distinct from expression, Justice Kennedy’s declaration in the *Casey*³⁵ and *Obergefell*³⁶ cases that, “At the heart of the concept of liberty is the right to define one’s own concept of existence, of meaning, of the universe and of the mystery of human life.” Mencken aspired to an ethical code, not to moral anarchy. “Man, the first mammal to be domesticated, has been a docile member of society since the

Pliocene: it is now too late for him to behave as anything else. Save as an occasional aberration, recognized as such, it is in fact simply impossible for him to think of himself as standing alone. He is the social animal par excellence, and he is incurably resigned to enduring whatever goes with that character, the bitter along with the sweet.”³⁷

I have the suspicion that Mencken would not have disagreed with the sentiment inspired in George Kennan upon viewing a Catholic religious procession in Mexico in 1950:

“I have never taken offense at the thesis of the Roman Church that many men require a spiritual as well as a profane framework of law: a moral order founded on an appreciation of the dilemmas of birth and death and of the requirements of social living; a moral order drawn up by those who are wiser and more experienced than themselves and capable of channeling into the body of spiritual law the ponderous experiences of the millennium of human progress. For many people it is better

Mencken on Church and State

GEORGE W. LIEBMANN

*that there should be some moral law, even an imperfect one or an entirely arbitrary one, than that there should be none, for the human being who recognizes no moral restraints and has no sense of humility is worse than the foulest and cruelist beast.*³⁸

Writing of an era in which social Darwinism held sway and there were few restraints on economic self-indulgence, Justice Brandeis said that, “The worst years were before 1929.” His sometime law clerk, Dean Acheson, referred in his eulogy of Brandeis to the same period as “the desert years of the human spirit.”

In reflecting on Thomas Jefferson’s respect for the natural world, the historian Daniel Boorstin wrote: “Jefferson had justified toleration and the differences of ideas primarily because a designing Creator had intended variety in minds as in the rest of the creation. It was this sense of creaturehood that finally gave the Jeffersonians their sense of community and prevented an emphasis on ‘rights’ from becoming anarchy or from making society seem a hopeless jungle. . . . One hundred years after Jefferson, man had arrogated to himself the energy, craftsmanship and power of his Creator. When man should conceive himself his own Creator, the full danger of ‘the will to power through the understanding of nature’ would be laid bare.”³⁹

I have tried to show that for Mencken, the claims of science were not absolute; what was absolute was the right of free discussion. There is inscribed around the dome of a public building in Washington, erected and maintained at public expense, the essence of Mencken’s creed: “I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.”

NOTES

1. F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 292, citing HLM, Clinical Notes, *American Mercury*, May 1924
2. F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 293, citing Miscellaneous Notes, Envelope A 100.8, Enoch Pratt Free Library
3. HLM, *Autobiographical Notes*, 1941, quoted in F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 53
4. HLM, *Treatise on the Gods* (2nd ed. 1946) (Baltimore: JHU Press), 279, 281
5. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), 244
6. F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 292 citing HLM to Marion Bloom, May 9, 1921
7. F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 292, citing HLM, Clinical Notes, *American Mercury*, May 1924
8. M. Prowse, Book Review of G. Kennan, *Around the Cragged Hill: A Personal and Political Philosophy* (New York: Norton, 1993), *Financial Times*, May 10, 1993
9. P. Kurland, Robert H. Jackson, in L. Friedman and F. Israel (eds.), *The Justices of the Supreme Court of the United States Supreme Court, 1789-1969* (New York: Chelsea House, 1969), 2544
10. R. Jackson, *Statement to the Columbia Oral History Project*, quoted in P. Kurland, *supra.*, 2543
11. L. Hand, *The Spirit of Liberty* (New York: Knopf, 3rd ed. 1960), 166, 171
12. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943)
13. 393 U.S. 97 (1968)
14. 482 U.S. 578 (1987)
15. *Kitzmiller v. Dover School District*, 400 F. Supp.2d 707 (M. D. Pa. 2005). See P. Irons, *God on Trial: Dispatches from America’s Religious Battlefields* (New York: Viking, 2007), chapter 8
16. P. Smith, *As a City Upon a Hill: The Town in America* (New York: Knopf, 1966), 252
17. J. Brainin, “Is H. L. Mencken an Anti-Semite?”, *Jewish Criterion*, April 1, 1930
18. J. Roth, *The Emperor’s Tomb* (New York: Overlook Press, 2002)

Mencken on Church and State

GEORGE W. LIEBMANN

19. M. Rodgers, *Mencken: The American Iconoclast* (New York: Oxford, 2005), 355, quoting J. Brainin, *supra*.
20. *Baltimore Sun*, April 12, 1937
21. At 289-90
22. C. Fecher (ed.), *The Diary of H. L. Mencken* (New York: Knopf, 1989)
23. HLM, "Aftermath," *Baltimore Evening Sun*, September 14, 1925, in M. Rodgers (Ed.), *The Impossible H. L. Mencken* (New York: Doubleday, 1991), 611
24. F. Hobson, *Mencken: A Life* (Baltimore: JHU Press, 1994), 292, citing HLM to Marion Bloom, December 11, 1920
25. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), viii
26. P. Devlin, *The Enforcement of Morals* (Oxford: Oxford U., 1965)
27. *Pierce v. Society of Sisters*, 268 U.S.510 (1925); *Meyer v. Nebraska*, 262 U. S.390 (1923)
28. 381 U. S. 479(1965)
29. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), 272
30. 410 U.S.113 (1973)
31. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), 300-01
32. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), 316
33. *Webster v. Reproductive Health Services*, 492 U. S.490(1989)
34. O. Holmes, *The Common Law* (Boston: Little Brown, 1881),1
35. *Planned Parenthood v. Casey*, 505 U.S.833(1992)
36. 576 U.S. (2015)
37. HLM, *Treatise on Right and Wrong* (New York: Knopf, 1934), 318
38. F. Costigliola (ed.), *The Kennan Diaries* (New York: Norton, 2014), 244 (entry for February 26, 1950)
39. D. Boorstin, *The Lost World of Thomas Jefferson* (Chicago: U. of Chicago, 2nd ed. 1961), 245 ff.

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