



The Rise and Eclipse of Religious Liberty in America Toleration Hard-Earned Over Centuries Is Threatened by New 'Rights'

Religious liberty stands as a concept unique to Western societies, derived from historical experience and Judeo-Christian principles. Religious liberty did not come easily to the West and remains absent in most of the world today. Founders of the U.S. Constitution believed that religious liberty was so important that the first article of the Bill of Rights affirmed this freedom. Without the right to express freely religious views, they believed, all other liberties would be subverted.

This belief in the importance of religious liberty in a free society developed through centuries of historical experience. The Protestant Reformation had led to devastating wars in Europe. These wars began as ostensible religious conflicts between Roman Catholics and Protestants, but involved power struggles between principalities and over crown authority. The Thirty Years War (1618-48) devolved into chaos with armed bands and armies, without loyalty to any prince, that pillaged villages, killed and raped at random, and left devastation. The English Civil War (1643-51), occurring in the last years of the Thirty Years War, divided Protestants and Catholics. Out of these conflicts emerged the beginning of a conviction that Protestants should have the liberty to express and practice their faith. It was not until the late 18th century that the full expression of religious liberty, its inclusion of all Protestants and Roman Catholics, emerged. Still, not until the 19th century were religious liberty and religious toleration put into full practice.

The Attack on Religious Liberty Today

Religious liberty, the right to express and practice one's religious faith, is under siege in America today. Same-sex marriage, upheld by the Supreme Court, has become the instrument for attacking the foundational religious principles of the American republic. Activists assert that homosexual rights and abortion rights trump religious rights.¹ The American Civil Liberties Union's current opposition to the Religious Freedom Restoration Act (RFRA), which it once supported, illustrates that the left will no longer tolerate religious freedom. Signed in 1992, RFRA stated that the government needed to show a "compelling interest" in restricting the free exercise of religion.

The American Civil Liberties Union (ACLU) at one time represented civil libertarianism without restraint. Previously the ACLU defended free speech, the free press and the right to free assembly on behalf of antiwar protestors, communists, Nazis and pornographers. The ACLU defended religious conscientious objectors as well as religious groups—Jehovah's Witnesses and the Amish—who for religious reasons refused to pledge allegiance to the secular state. The ACLU acted on the behalf of conscientious objectors during World War II. When Jehovah's Witness students refused to say the Pledge of Allegiance in their classes, the ACLU rose to their defense. In these cases, the ACLU claimed it was upholding the principles of religious liberty.² Its rejection of RFRA last year suggests that the ACLU is really about a political agenda, not liberty per se.

Founded in 1919, the ACLU began with a leftist agenda. A number of prominent founders, such as Elizabeth Gurley Flynn, were members of the Communist Party or had close connections with the party. Following the Stalin-Hitler Pact in 1939, Roger Baldwin, the principal founder of the ACLU, joined with other anti-communists on the board, including socialist Norman Thomas, to pass a resolution expelling board members who supported totalitarian regimes. The following year, 1940, the ACLU board expelled Flynn. Into the 1950s, the ACLU national board excluded Communists from membership. Many of the local affiliates, however, accepted Communist Party members. In 1968, ACLU rescinded its exclusion of Communists, and Flynn was posthumously reinstated as a board member. Having expelled Communists from the ACLU board in the 1930s because party members such as Flynn believed free speech was a bourgeois concept was seen as a capitulation to "McCarthyism."

ACLU vs. RFRA

The ACLU's opposition to RFRA today is not an expression of a communist conspiracy to subvert America. Instead, the ACLU's position represents a left-wing sentiment that replaces traditional Judeo-Christian values—those values which the Founders believed were essential to maintaining a well-ordered republic—with a secular society that condones

hedonism. The secular society espoused by today's left appeals to the base instincts of a secular population. Leftist calls for abortion rights and gay marriage rights beckon youth and many unthinking adults to replace logic with unthinking emotion.

Initially the ACLU seemed fine with the concept of religious liberty when it came to allowing Jehovah's Witness students to leave the classroom instead of saying the Pledge of Allegiance or allowing religious pacifists the right to avoid conscription by declaring themselves conscientious objectors to war. RFRA was supported by Democratic progressives when drug laws barred Native Americans from using the hallucinogen peyote in religious services. The ACLU used RFRA to defend Sikhs from having to remove their head garments in a courtroom or having to shave their beards in the military. Today, however, because religious liberty is a defense raised by religious organizations, such as the Little Sisters of the Poor, to object to mandates forcing them to condone abortifacients, or by small business owners who refuse to provide services that conflict with their moral and religious beliefs, the ACLU stands against RFRA.

Feminism, Gay Rights Trump Faith

The ACLU came out against RFRA in the summer of 2015. Writing in an op-ed in the *Washington Post*, deputy legal director of the ACLU Louise Meling declared that her organization could no longer support RFRA in "its current form" because the act was "often used as a sword to discriminate against women, gay and transgender people and others."³ This position, which contends that religious liberty is acceptable for some but not for others, is legal sophistry. If religious liberty does not afford an opportunity to dissent on religious grounds from state mandates that force individuals to behave contrary to their religious views, then such a liberty is hollow.

The balance between religious conscience and social interests is delicate, but integral to our constitutional order. A racial segregationist offering a public service, such as running a hotel, does not have a constitutional right under U.S. law to discriminate against an entire race based on religious grounds. No doubt, balancing property rights, the right of free assembly, and religious conscience can present hoary constitutional and legal problems. Nevertheless, the use of federal power, often mandated not by legislation but by administrative fiat, to force a religious order to offer insurance policies that provide abortion, or to force a baker to make cakes for a homosexual wedding, is a different matter altogether.

Most Americans believe that a business owner serving the retail public should sell to anyone who wants their product without discriminating because of race or religion. Some Americans would say that businesses should not discriminate on the basis of sexual orientation. Still, there is a difference between selling a product or offering a service, on the one hand, and being

forced to participate in an activity that is against one's religious principles, on the other hand. Should a wedding planner who happens to be black be forced to participate in a wedding of KKK members who insist that white supremacy should be the theme of the wedding? Does a Holocaust survivor or an Orthodox Jew have to offer services to a neo-Nazi group planning a celebration of Adolf Hitler's birthday?

The ACLU announcement that it was opposed to RFRA was preceded by legal actions demonstrating the organization's hostility to religious liberty. Those legal actions reveal an authoritarian streak that belies the ACLU's claim to be an organization defending American freedoms. In 2008 the ACLU brought a civil contempt case against Michelle Winkler, a Santa Rosa, Florida school employee and district school superintendent, for violating a court injunction against sponsoring school prayers, proselytizing students or promoting religion in school. ACLU lawyers had crafted a consent agreement used to threaten school district employees in Santa Rosa County with fines and jail time for praying over a meal. The ACLU filed contempt charges when Winkler's husband, who was not a school employee, offered a prayer at a dinner honoring donors to the school athletic program.⁴ After a 7½-hour hearing, the court ruled in Winkler's favor in 2009.⁵

Religious Foundations of the U.S.

Those who settled the New World were motivated by religious principles. The settlers included Puritans in New England, Anglicans in Virginia, Quakers in Pennsylvania and Roman Catholics in Maryland. Religious conscience, the principle which allowed the practice of their religious beliefs, was central to these settlers. Religious conscience was initially framed within a Protestant Christian context. Roman Catholics settled the Maryland colony, but Catholics quickly became a minority as the population grew. Religious conscience did not necessarily include religious toleration. The belief that other religious believers should be allowed to practice their beliefs and not be excluded from public life emerged only gradually.

The framers of the Constitution defined religious liberty as: opposition to an established national church and the right of individuals to practice their religious faith uninhibited by government. Although opposed to a federally established church, many Founders accepted state-supported churches. For example, the Congregationalist Church in Massachusetts received public funding into the 1830s. State-established churches had precedents in the colonies, including Maryland, Virginia, North Carolina, South Carolina and Georgia.

Most of the Founders did not endorse a high wall separating church and state. The notion of a high wall of separation between church and state was articulated by Thomas Jefferson in his letter to the Danbury Baptist Association in 1801.⁶ Jefferson's view—supported by James Madison—was

a decidedly minority position. Even dissenting ministers, for the most part, did not accept the concept of erecting a high wall separating church and state. Instead, they believed that religion, specifically Christianity, remained fundamental to maintaining a well-ordered republic; religion needed to be involved in public life. They opposed established state religion, while advocating for limits on religious discrimination by civil laws.

The belief that religion was essential to the new republic found many expressions. Benjamin Franklin wrote, “I see no harm in it being believed, if that Belief has the good Consequence as probably it has, in making his [the Lord’s] Doctrine more respected and better observed.”⁷ There was universal agreement that sectarian violence and oppression should be feared, but that religion was needed to maintain a virtuous people in the new American Republic. Furthermore, religion within the Judeo-Christian tradition was necessary to unify the nation. As a consequence, the nation’s first president, George Washington, believed that it was appropriate and important for the president to lead the nation in prayer and thanksgiving.⁸ Moreover, Americans of the new nation maintained that the expression of private religious opinion was an inalienable right.

The Emergence of Toleration—Until Recently

Out of religious conscience emerged religious toleration, which was not a common feature of the early colonies. The Second Charter of the Virginia colony proclaimed that “true religion” excluded Roman Catholics. Those who settled Plymouth and Massachusetts colonies excluded Catholics. Indeed, they held that the established Church of England was too papist. Even Rhode Island, after its founding by Roger Williams, one of the first exponents of separating church and state, enacted legislation barring both Catholics and Jews from voting in the colony.

The concept of religious tolerance posed difficulties even to the tolerant (for his era) 17th-century English philosopher John Locke, who articulated the concept of natural rights that influenced the American Founders. Although Locke believed that “neither Pagan nor Mahometan, nor Jew” should be excluded from civil rights in a commonwealth, he was not prepared to extend religious tolerance completely to Catholics because he believed their allegiance rested in the service of another prince, i.e., the Pope. A number of the states following the American Revolution wrote provisions into their constitutions barring Roman Catholics and Jews from holding state offices. Most states including New Jersey, Delaware, North Carolina, Georgia, South Carolina and Vermont placed legal restrictions on non-Protestants from holding state office. All states, however, allowed people to practice their religion in peace.

By the 1830s, all the states had lifted legal restrictions against non-Protestants. States accepted the disestablishment of churches. This did not mean that public funds could not be

used to promote religion. Instead, funds were not designated to a single established denomination. Public support of religion—through funds and voluntary commitment—was seen as important to civil society. Only in the late 19th century, largely because of anti-Catholic sentiment, did talk of erecting high walls of church-state separation become acceptable. The Warren Court in the 1950s drew on Jefferson’s Danbury letter to support the concept that church should be totally separate from the state, and held that prayer in public school is unconstitutional. The ACLU today frequently challenges any expression of religion in state-supported institutions—from moments of silence at football games, commencement speeches by individuals expressing religious views, or army chaplains expressing opposition to homosexual marriage.

Stand Up for Religious Freedom

The concept of religious liberty rests at the very core of America. Without religious liberty, there can be no other liberty. America once stood as a shining example of religious toleration in which people of all faiths could practice and express their religious beliefs. The concept of religious conscience and religious toleration derived from deep historical experience in which societies were torn apart in the absence of religious toleration.

Many pundits have pointed to economic factors to explain the anger of the electorate today. Less attention has been given to voter anger about the culture under attack by activists. The *Mindszenty Report* has in the past described how Christian student groups have been thrown off campuses because they forbid the election of leaders who stand in direct opposition to the main tenets of their faith. These student religious groups allow practicing homosexuals to participate in group activities. They refuse, however, to sign enforced university regulations requiring that their groups allow professed homosexuals to serve as leaders and spokesmen of their organizations. This principled stance has given university administrations a pretext, under pressure from activist groups, to remove dozens and dozens of evangelical Christian organizations from campus.

Homosexual activists, feminists and pro-abortion advocates are waging campaigns to try to force the Catholic Church and seminaries to admit practicing homosexuals and women into seminaries and the priesthood.⁹ They demand that the Little Sisters of the Poor condone and support abortion, in effect, by requiring the order to accept insurance plans for FDA-approved contraceptives, some of which the Little Sisters consider abortifacients.¹⁰ These activists want to replace historical experience and core Catholic tenets with an immediate political agenda. They seek to force private individuals and business owners to participate in activities Christians consider immoral and in direct opposition to their faith. These activists demand, in effect, that Christians reject

and betray their religious conscience. These left-wing agitators do so in the name of toleration and social justice, but they project little tolerance for those who disagree with them.

The hypocrisy of the left has outraged many voters. Their anger also reflects a deeper knowledge that the very principles on which America was founded, core principles which made this nation so exceptional in human history, is being subverted by left-wing activists who despise Western civilization and the Judeo-Christian tradition. Voters of religious faith have every right to be angry. The nation's core values are at stake.

- 1 Emma Green, "The Little Sisters of the Poor Are Headed to the Supreme Court," *The Atlantic*, November 6, 2015; Liz Fields, "Judge Orders Colorado Baker to Cater for Same-Sex Weddings," *ABC News*, December 7, 2013; "Oregon Judge Fines Christian Bakers \$135,000 for Refusing to Bake a Gay 'Wedding' Cake," *LifeSite*, April 27, 2015.
- 2 Linda K. Wertheimer, "50 Years After *Abington v. Schempp*, a Dissenter Looks Back on School Prayer," *The Atlantic*, June 17, 2013.
- 3 Dr. Susan Berry, "ACLU: 'We Can No Longer Support Federal Religious Freedom Law,'" *Breitbart News*, June 30, 2015; and Robby Suave, "The ACLU Now Opposes Religious Freedom," *Reason* magazine, June 29, 2015.
- 4 Matt Barber, "ACLU v. Religious Liberty," *American Thinker*, March 23, 2011.
- 5 "Michelle Winkler Is Cleared of Civil Contempt in Santa Rosa Prayer Case," *Christian NewsWire*, August 9, 2009.
- 6 For an excellent discussion of American concepts of the separation of the church and state, upon which this report relies heavily, see Philip Hamburger, *Separation of Church and State* (NY, 2009).
- 7 Leland and Franklin are quoted in Michael Meyerson, *Endowed by Our Creator: The Birth of Religious Freedom in America* (New Haven, 2012), p. 9.
- 8 *Ibid.*, p. 11.
- 9 Examples of this coming argument can be found in "Excluding Homosexuals from Catholic Seminaries," *ReligiousTolerance.org*. and James Marlin, S.J., "Weeding Out Gays from Seminaries," *America*, May 31, 2010.
- 10 Emma Green, "The Little Sisters of the Poor Are Headed to the Supreme Court," *The Atlantic*, November 6, 2015.

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— *Joseph Cardinal Mindszenty*

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