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**POLICY PUBLICATION**

# Religious Contributions to Progress in Human Rights

## Social Benefits of Religion, Volume 2

Written by William C. Duncan

July 2024

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A NEW BIRTH OF FREEDOM



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# Publication Introduction

This publication, the second in a series, will discuss how people of faith and religious organizations have contributed to the climate of freedom in the United States. It looks at contributions of faith to promoting tolerance; the role of religion in the efforts to secure independence; abolitionism; environmental protection and civil rights; and examples of other efforts to secure protections that created precedents benefiting all Americans.



# Promoting Tolerance

Although there is not yet a lot of research on this point, there are studies that suggest that religious participation (as opposed to affiliation alone) is important in shaping positive attitudes of tolerance based on race.

Recent research found that "[c]onservatives' views of black people, Hispanics, and Asians improve the more frequently conservatives attend religious services" and "[f]requent conservative churchgoers also say they care more about racial equality." Additionally, "nonreligious white Trump voters are about three times as likely as churchgoing white Trump voters to say their white racial identity is 'extremely important' to them (26 percent vs. 9 percent)."[1]

Religious people will not be surprised that even some who profess religious faith harbor prejudicial views. They believe that all are susceptible to base motives and actions. They also believe that they are accountable to God for their actions, including in relation to others who are different than they are, and this reality can make people of faith powerful proponents of human rights.

## Gender Equality

A common (and incorrect) stereotype is that religions treat women as subservient to men. Both contemporary and historical evidence suggest this is not true.

In a 2020 *New York Post* story, Naomi Schaefer Riley and Hal Boyd used recent evidence to point out that this condescending view of religion and women does not reflect reality.[2]

They pointed to a recent study from the Wheatley Institution at BYU, which found that "women in Shared Home Worshiper Couples are significantly more likely to report joint decision making than women in Shared Secular Couples. We found similar levels of shared decision making among women in Shared Attender Couples." (In the study, a "Shared Home Worshiper Couple" is a couple where both spouses consider themselves to be equally committed to "attend church weekly, pray individually and with their family, read scriptures, and engage in religious conversation in their home several times per week." "Shared Secular Couples" do not engage in these practices.)[3]

This is consistent with other research that finds that religious participation most often means greater gender equality in the home.

In a *Deseret News* column, Riley remarked on the contrast between the argument that traditional religion puts "men in the driver's seat," with her own observation that religion "may actually serve as a hidden feminist advantage that helps religious women to balance career and family life."[4]

She pointed to Supreme Court Justice Amy Coney Barrett, a devout Christian, who attributed some

of the opportunities she was able to pursue to help from her husband:

> "We just each shifted and assumed different responsibilities as it made sense. At some point, (my husband) Jesse started doing most of the cooking and grocery shopping," Barrett explained. She said she resisted at first, but Jesse prevailed. "I think this will make your life less stressful," he told her. "I'm going to take this on."

It turns out that this is not an isolated anecdote. A recent study found that "increased religious participation at the individual and cultural zone [i.e., countries where a high proportion of the population share the same religious affiliation] levels [was] associated with greater participation in some housework tasks and time spent on housework" by husbands.[5]

An important caveat is that it is religious participation, rather than mere affiliation, that is associated with this outcome. Family researchers have noted that this distinction is an important one: Determining the influence of religion on other indicators requires looking at whether an individual is engaged in religious practice rather than if they are simply members of a denomination or describe themselves as religious.[6]

The study of husbands' involvement in household tasks parallels the findings of other research that shows men who attend church regularly "are more likely to devote themselves to spending quality time with their wives." This, in turn, is correlated with wives' reports "that the housework is 'fair to both' husband and wife."[7]

A 2019 report from the Institute for Family Studies found that "highly religious women were more likely than their less religious counterparts to report making joint decisions" in their marriages.[8]

Shared religious practice is also associated with women's reports of being "very happy" or "extremely happy" in their relationships.[9]

W. Bradford Wilcox and Nicholas H. Wolfinger, in their groundbreaking study, "Soul Mates: Religion, Sex, Love, and Marriage Among African Americans and Latinos," give a reason why women can benefit from religious participation: "Religious faith makes for better men. Black and Latino men who attend church are more likely to be employed, to steer clear of substance abuse, and to avoid incarceration. This men's effect lends indirect support to higher quality family relationships among black and Latino families."[10]

## Antisemitism

RA high point in the early history of religious freedom was President George Washington's statement of the ideal of religious toleration from a 1790 letter: "For happily the Government of the United States gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support."[11]

The letter was addressed to the Jews of Newport, Rhode Island, responding to the very real concerns of persecution. A spokesman, Moses Seixas, had written the president:

> Deprived as we heretofore have been of the invaluable rights of free Citizens, we now with a deep sense of gratitude to the Almighty disposer of all events behold a Government, erected by the Majesty of the People — a Government, which to bigotry gives no sanction, to persecution no assistance — but generously affording to all Liberty of conscience, and immunities of Citizenship: deeming every one, of whatever Nation, tongue, or language equal parts of the great governmental Machine.[12]

The vision of Seixas and Washington would become officially codified in the First Amendment not long after their exchange took place, but this did not end the persecution of Jews and other in the United States.

It is a tragic reality that for centuries, many people tried to justify their antisemitism with religious beliefs.[13] This may explain a reaction reported by Naomi Shaefer Riley, a senior fellow at the American Enterprise Institute, in a *Deseret News* article published a few months ago:

> "Be careful," my elderly aunt admonished me before I left New York City 22 years ago to visit a number of Christian colleges across the country for research on a book I was writing.
>
> She and others in my Jewish extended family were genuinely worried about my physical safety, with one even muttering something about lynching. They warned me about antisemitism and cautioned me to watch my back.[14]

Sadly, university campuses have become more dangerous for Jewish students, particularly since the savage attack on Israel in October 2023.

A recent report from the Anti-Defamation League and Hillel International found that "73% of Jewish college students surveyed have experienced or witnessed some form of antisemitism since the beginning of the 2023-2024 school year." Since the Oct. 7 massacre in Israel, the percentage of Jewish students in the United States who said they "felt comfortable with others knowing they're Jewish" dropped from 63% to 38%. The percentage who "said they felt 'very' or 'extremely' physically safe on campus" dropped from 66% to 45% since October.[15]

A Brandeis University study from December 2023 surveyed 2,000 Jewish university students from 51 college campuses, chosen because they had large populations of Jewish students. These students expressed more concern about "antisemitism coming from the political left than from the political right on their campus" occasioned by anti-Israel criticisms.[16]

To be clear, it is not that students felt others were just criticizing Israeli policies. These students reported "a general climate of antisemitic hostility at their school."[17]

In fact, a large portion of the Jewish students surveyed "had unfavorable views of the Israeli government" and a large portion characterized themselves as politically liberal. But these students also reported that they were concerned about antisemitism on their campuses. Thus, large proportions of Jewish students who "had unfavorable views of the Israeli government" or were politically liberal reported antisemitism concerns on their campuses. Most of the antisemitism came from fellow students, although "at the most hostile

schools," 30% of surveyed students "reported encountering hostility toward Israel from faculty."

In the Brandeis study, the schools at which Jewish students experienced the greatest fear were secular schools. This, of course, does not necessarily mean that religious schools are safer. Perhaps those schools have fewer Jewish students and so were not surveyed in this study.[18]

There is some anecdotal evidence, however, that suggests that support for Israel and opposition to antisemitism is embraced by people of faith.

For instance, the Ethics and Religious Liberty Commission of the Southern Baptist Convention issued a strong statement in the wake of the October attacks, including a forthright repudiation of antisemitism: "The Jewish people have long endured genocidal attempts to eradicate them and to destroy the Jewish state. These antisemitic, deadly ideologies and terrorist actions must be opposed."[19]

In a recent Sutherland Institute Defending Ideas podcast, Rabbi Chaim Zippel contrasted the widely reported hostility towards Jewish students on some campuses with Brigham Young University's positive efforts to support its Jewish students.[20]

Rebecca Sugar, a columnist writing in *The Wall Street Journal* prior to October, said: "Institutions that honor the Judeo-Christian tradition and celebrate Western civilization tend to resist the academic decay, and attendant anti-Semitism, now plaguing many first- and second-tier campuses." She points to data from the Israel on Campus Coalition on "anti-Semitic and anti-Israel events across 1,100 campuses nationwide, during the 2021-22 academic year" which found that "only two of the 225 incidents recorded took place on Christian campuses. Neither was violent." She also points to positive examples from schools such as Notre Dame, Hillsdale, Pepperdine, Loyola Marymount and Wake Forest.[21]

Indirectly, the existence of religious schools is, in itself, an important protection of religious minorities. The pluralism that allows Christian schools to flourish allows Jewish schools like Yeshiva University to flourish as well.

Perhaps as religious commitment wanes across society generally, those who believe are finding more in common with other believers despite differences in the specifics of those beliefs.

As with other significant challenges facing higher education, religious colleges and universities may have something important to offer in the effort to end antisemitism.

# Religiously Motivated Advocacy

## Independence

This section describes how religious ideas and people of faith helped shape the freedoms of the United States. All of this, however, would be moot if there were no United States in the first place. Religious teachings and religious individuals were critical in this respect as well.

The British Parliament imposed the Stamp Act – its first "direct tax on the colonists"– in an attempt to pay down the debt from the Seven Years' War (the 1756-63 conflict between England and France over colonial claims). The law "required that, starting in the fall of 1765, legal documents and printed materials must bear a tax stamp provided by commissioned distributors who would collect the tax in exchange for the stamp. The law applied to wills, deeds, newspapers, pamphlets and even playing cards and dice."[22]

In 1766, Congregationalist minister Jonathan Mayhew preached a sermon in Boston that would shape the colonists' reaction not only to the Stamp Act but to relations with England. Mayhew talked about "civil liberty," which, he explained, meant that laws "are made by common consent & choice; that all have some hand in framing them, at least by their representatives, chosen to act for them, if not in their own persons."[23]

When government ignores this principle, the subjects are "in a state of slavery." This would be the state of the American colonists "if they are to possess no property, nor to enjoy the fruits of their own labor, but by the mere precarious pleasure of the mother [country], or of a distant legislature, in which they neither are, nor can be represented."

The sermon extended the argument he had developed in a 1750 pamphlet, *A Discourse Concerning Unlimited Submission to the Higher Powers*, which made the case that it could be appropriate to resist unjust authority.[24] Fourteen-year-old John Adams read and reread it until "the Substance of it was incorporated into my Nature and indelibly engraved on my Memory." This sermon, Adams later said, would help anyone understand the "principles and feelings which produced the Revolution."[25]

A Library of Congress exhibit explains:

> Religion played a major role in the American Revolution by offering a moral sanction for opposition to the British–an assurance to the average American that revolution was justified in the sight of God. As a recent scholar has observed, 'by turning colonial resistance into a righteous cause, and by crying the message to all ranks in all parts of the colonies, ministers did the work of secular radicalism and did it better.'

Ministers served the American cause in many capacities during the Revolution: as military chaplains, as penmen for committees of correspondence, and as members of state legislatures, constitutional conventions and the

national Congress. Some even took up arms, leading Continental troops in battle.[26]

Mayhew's argument "anticipated the position that most ministers took during the conflict with Britain."[27] Political scientist Mark David Hall notes "the almost unanimous support Calvinist clergy offered to American patriots."[28]

Religious ideas were also influential. Most conspicuous are the references to a "Creator," "Nature's God," "divine Providence," and the "Supreme Judge of the world" in the Declaration of Independence.[29] Hall notes examples of "Christian ideas" with significant influence on the Founding:

1. The belief that "humans were sinful" contributed to the adoption of "a constitutional system characterized by separated powers, checks and balances, and federalism," rather than "a strong, centralized government run by experts."

2. An understanding of "liberty" as "the freedom to do what is morally correct."

3. The belief that humans are created in the image of God, which "led them to conclude that we the people (as opposed to the elite) can order our public lives together through politics rather than force. It also helped inform early (and later) American opposition to slavery."

4. The need to protect religious freedom and, eventually, to drop support for established religions "primarily because they thought that such establishments hurt true religion."[30]

By design, the new U.S. government was not "religious" in the sense of requiring allegiance to any particular faith. It was, rather, dedicated to a comprehensive protection of the religious exercise of all its citizens. The framers knew by experience that this protection would allow people of faith to continue to exercise the powerful influence that had created the free nation.

## Abolitionism

Religious organizations and people of faith played a central role in the civil rights struggle of the 19th century – the abolition of slavery. Of course, there were many terrible instances of hypocrisy with nominal Christians justifying the practice of slavery, as Frederick Douglass noted so powerfully,[31] but as one historian summarized: "The abolitionist movement was primarily religious in its origins, its leadership, its language, and its methods of reaching the people."[32]

Harriet Tubman, the heroine of the Underground Railroad, "led about a dozen rescue missions" and during the Civil War "helped guide three Union steamboats around Confederate mines and then helped about 750 enslaved people escape with the Federal troops." Professor Robert Gudmestad from Colorado State University noted, "Tubman's Christian faith tied all of these remarkable achievements together," saying her "belief in God helped Tubman remain fearless, even when she came face to face with many challenges."[33]

Presbyterian minister John Rankin was another participant in the Underground Railroad. It is estimated that 2,000 fleeing slaves stayed in his Ohio home on the way to freedom.[34] When he learned that his brother had purchased slaves, he wrote a series of letters arguing the immorality of

slavery: "God 'hath made of one blood all nations of men.' [Acts 17:26]. Whenever we find a man, let us treat him as a brother without regard to his color; let our kindness sooth his sorrows and cheer his heart."[35]

Rankin's letters worked. Soon after, his brother freed his own slaves.

## Women's Suffrage

In 2020 we celebrated the 100th anniversary of the 19th Amendment to the U.S. Constitution, which provided for women's suffrage in all federal elections,[36] and the 150th anniversary of the right of women to vote in Utah. As a territory, Utah extended to women the right to vote in 1870 in a unanimous vote of the legislature (a few weeks after Wyoming, which was the first territory to do so), a right that would not be available at the federal level until 1920.[37]

On January 13, 1870, women from the Utah Territory congregated in an "Indignation Meeting" to protest a federal law against polygamy, a religious practice these women defended. The meeting was organized by the Fifteenth Ward Relief Society of The Church of Jesus Christ of Latter-day Saints. This religious freedom gathering, and similar ones that followed, also called for women to have the right to vote.[38]

Within a month, the territorial legislature unanimously voted to extend to women the right to vote. That right was taken away by Congress the next year as part of anti-polygamy legislation,[39] but when Utah became a state in 1896, women's suffrage was written into its constitution, making it the third state to allow women to vote.[40]

During the national debate over suffrage, there were faith groups and individual believers on both sides of the issue. But people of faith played a major role.[41]

For instance, Frances Willard, the second president of the Women's Christian Temperance Union, was a devout Christian. Under her leadership, the mission of the WCTU extended beyond promoting prohibition of alcohol to include other causes, most prominently women's right to vote.[42] Willard pushed a state-by-state strategy for securing the right to vote and "was successful in inspiring reluctant women to support suffrage."[43]

In the southern United States, other devout women leaders were instrumental in promoting women's suffrage. Laura Clay, a devout Episcopalian, wrote: "To do what I can to help on the great cause of Woman's Rights seems to be that sphere of activity in His service to which God has called me."[44]

Emmeline Wells, a leader in The Church of Jesus Christ of Latter-day Saints who was influential in the suffrage movement in Utah, was elected vice president of the National Woman Suffrage Association in 1874.[45]

These examples illustrate the powerful contributions that people of faith make to civil rights causes.

First, for these women, religious faith sustained their efforts. This was particularly important given that the struggle lasted for decades.

Second, these women of faith were willing to work together with secular and even anti-religious proponents of women's right to vote. This set an

important precedent that would be followed in other civil rights struggles, helping increase tolerance and civility among people with real differences.

Third, they brought needed numbers to the movement. It is safe to assume that in the early days of the movement, there were more women who cared deeply about their faith than were involved in the effort to secure the right to vote. Religious involvement introduced some of the former group to the latter, increasing its power.

The effort to secure women's right to vote took many people and groups with very different motivations and perspectives, but the religious motivation and the involvement of people of faith was an important component of the movement's success. Protecting the ability of women of faith to act on their convictions benefited society during that effort and continues to do so today.

## Environmental Protection

The Sierra Club, founded in 1892, describes its founder, John Muir, as "America's most famous and influential naturalist and conservationist." Muir was instrumental in promoting national monuments and national parks that continue to preserve wilderness areas in the United States. "His writings contributed greatly to the creation of Yosemite, Sequoia, Mount Rainier, Petrified Forest, and Grand Canyon National Parks." Documentary filmmaker Ken Burns places him among "the pantheon of the highest individuals in our country … people who have had a transformational effect on who we are."[46]

Muir was also a deeply spiritual person. The exact nature of his religious beliefs is contested and complicated by a challenging relationship with a severely religious father. But following a period of temporary blindness, one author says, Muir "experienced something of a conversion as his sight slowly returned." Muir himself said later:

> As soon as I got out into Heaven's light I started on another long excursion, making haste with all my heart to store my mind with the Lord's beauty and thus be ready to any fate, light or dark. And it was from this time that my long continuous wanderings may be said to have fairly commenced. I bade adieu to all my mechanical inventions, determined to devote the rest of my life to the study of the inventions of God.[47]

Religious faith can be a powerful motivation for efforts to protect the environment.

In 2015, Pope Francis issued an encyclical letter, *Laudato Si'*, with the subtitle "On Care for Our Common Home." The letter decries the harm we "have inflicted on her [the Earth] by our irresponsible use and abuse of the goods with which God has endowed her. We have come to see ourselves as her lords and masters, entitled to plunder her at will." He warns of pollution, waste and a "throwaway culture." While recognizing that specific solutions will arise in "honest debate," he urged readers to "take a frank look at the facts to see that our common home is falling into serious disrepair."[48]

As Muir demonstrated, religious and spiritual concerns about caring stewardship of our physical environment can produce effective action as well.

A recent example comes from close to home. Responding to the drying of the Great Salt Lake

with the potential implications of "increased dust, poor air quality, reduced snow, reduced lake access, [and] habitat loss," The Church of Jesus Christ of Latter-day Saints in March 2024 donated thousands of water shares to the state of Utah. The donation "is equivalent to over 20,000 acre-feet … and up to 50 cubic feet per second of water. … The 20,000 acre-feet donated are equivalent to a water supply for 20,000 single-family homes." The "water will continue to flow to the lake and preserve critical shoreline and wetland habitat in Farmington Bay."[49]

In addition:

> On its farms the faith uses soil moisture probes to inform irrigation decisions. They are also developing water management plans for all the Church's agricultural properties. And at its meetinghouses, temples and other facilities, the Church has installed smart controllers, hydrometers, rain sensors and drip irrigation systems.[50]

This, and similar practices, have resulted in saving millions of gallons of water.

Other faith groups are working to preserve lands they consider sacred. Ongoing litigation is seeking to prevent mining in Oak Flat, Arizona, in an area that Apache peoples have used for religious ceremonies for generations.[51]

The precise beliefs and commitments of various faiths and individuals differ. However, the outcomes they seek have the potential to benefit not only adherents of a particular faith, but everyone who would be impacted by environmental degradation. Anyone concerned about the environment, whatever their political or religious beliefs, should surely welcome the efforts and dedication of those motivated by faith.

Many environmental efforts, understandably, involve government regulations. Faith-based efforts, however, add a different dimension of voluntary, sometimes sacrificial dedication to fulfill a sense of sacred stewardship for the Earth and its resources. Religious teachings can motivate people who might not be aware of or know how to preserve the natural environment to take steps that will reduce waste, pollution and the exhaustion of natural resources.

## Civil Rights Movement

Are religious beliefs the cause of or solution to racism? NPR recently, and mistakenly, suggested they are the *cause*.[52] But a more thorough analysis of history suggests religion was – and still is – a critical part of the *solution*.

If a survey were conducted asking Americans who the most influential religious figure of the 20th century was, the answer would almost certainly be the Rev. Martin Luther King Jr. He would also be on any list of the best-known people of the 20th century, religious or not. No one person did more to advance the cause of civil rights than this Christian pastor. It's just one of the reasons why a 2020 piece by NPR, "White Supremacist Ideas Have Historical Roots In U.S. Christianity," is significantly distorted.

In fairness, NPR does note briefly that religious groups and clergy were a critical part of the Civil Rights Movement. But the focus on statements and actions of very few clergy and parishioners

"operat[ing] within a cultural context" of the American South who supported racial discrimination, while spending very little space on the enduring contribution of people of faith to the cause of racial equality, is misguided.

The illustration accompanying the NPR article shows John Lewis and James Zwerg spattered by blood after being violently attacked. They were two of the original 13 Freedom Riders, volunteers who rode interstate buses into the South in the 1960s to ensure that a legal ruling that ended discrimination on segregation in interstate travel was enforced.[53]

Lewis went on to lead the Student Nonviolent Coordinating Committee, where he organized and directed civil rights activism. He helped organize the March on Washington, organized free schools for African Americans in the South, organized voter registration efforts in Selma, etc. He was later elected to Congress, representing a district in Georgia. In 2016, he talked about the personal influence of faith on his activism:

> The prayers, the songs, the hymns fortified me, made me stronger, gave me the power and the ability, the capacity to keep moving, to pick 'em up and put 'em down. If it hadn't been for my belief in God Almighty, the civil rights movement and my own participation would have been like a bird without wings.[54]

Zwerg went on to serve as a Christian pastor. He was asked later if he had been religious before he had been involved in the rides and responded:

> That was probably one of the reasons why I even had an interest in this [work as a Freedom Rider]. I had been brought up in the church. I had been active in my church. My parents had instilled in me a view that all men are created equal. … [Describing a time when he was violently attacked, he said] I bowed my head and asked God to give me the strength and love that I would need, that I put my life in his hands, and to forgive them. And I had the most wonderful religious experience. I felt a presence as close to me as breath itself, if you will, that gave me peace knowing that whatever came, it was okay.[55]

Sens. Kyrsten Sinema and Mike Lee both noted the "critical role" faith communities played in the Civil Rights Movement during Brigham Young University's 2020 Religious Freedom Annual Review. Both noted that religious organizations and people of faith, both Black and white, had played a key role in moving the nation in the direction of equality.[56]

The NPR article was right to note hypocrisy among some religious people in regards to civil rights, but it is important that "Civil Rights Have Historical Roots In U.S. Christianity" is true as well.

## Political Participation

While politics can be frightening, broad participation in elections and voting is a sign of civic health.

A recent survey by Pew looked at one aspect of that participation: the influence of religious groups and people of faith.[57]

A significant majority of respondents (67%) said churches should stay out of political matters. What does that mean? Some hearing that question might assume this reflects opposition

to churches endorsing political candidates. That question, however, was asked separately. Direct endorsements are prohibited by law and 77% of survey respondents opposed these endorsements.[58] Presumably, if respondents believed involvement in political matters and specific endorsements were the same, their answers would have been the same.

Perhaps it means that respondents believe that churches should not speak about policies and issues that are considered political. If so, that view might be shortsighted.

Historically, religious groups and people of faith have played an important role in securing broader voting rights. They were prominent in the movement to secure women's suffrage.[59] One of the most important milestones in the effort to secure "equal voting rights" in the face of "policies – such as literacy tests, poll taxes, English-language requirements, and more – aimed at suppressing the vote among people of color, immigrants and low-income populations" were the protest marches from Selma to Birmingham, Alabama, led by the Rev. Martin Luther King Jr. These protests led to the Voting Rights Act enacted later that year.[60]

When Martin Luther King III spoke at BYU in 2021, he encouraged greater emphasis on civic responsibility, including voting: "Being taken seriously as an adult means that you take your love for your fellow citizens and your love for America to the ballot box, where it counts."[61]

Religious groups play an important role in encouraging civic participation, including voting. As the title of an article published by Rice University noted: "The Black Church has been getting 'souls to the polls' for more than 60 years."[62] Other religious organizations, like the Sikh Coalition and



the Episcopal Church, provide examples of recent nonpartisan get-out-the-vote efforts.[63]

Religious schools, in particular, seem to promote civic involvement. Of students who attended public, private and private religious schools, those in the latter reported the most involvement in political organizations. Students from private religious universities were significantly more likely than students in public universities to believe they had a moral obligation to participate in the political process.[64]

We all benefit when diverse voices are included in the public discussion. One benefit could be a greater involvement of a wider proportion of the nation's citizens in civic affairs, including by voting.

Of course, some people will disagree with specific moral issues on which religious groups and people of faith take a stand. This was also true in the past, when religiously motivated abolitionists and opponents of eugenics were criticized. It is OK to disagree with religious people on issues, but – as history demonstrates – to categorically dismiss their viewpoint because of its religious motivation is detrimental.

It could also be dangerous to everyone's freedom. To borrow the logic of Abraham Lincoln regarding arguments in favor of American slavery, the same arguments being used in attempts to silence religious voices in the public square (e.g., they promote hate and harm others) can become the basis for silencing other voices as well. If opponents of religious viewpoints are successful in suppressing them, they may be planting the seeds for their own suppression at some point in the future.

In the Pew survey on religion and politics noted above, another potential response to the question of whether churches should "keep out of political matters" was: Churches should "express views on day-to-day social/political questions." That view was not as popular, but it more accurately reflects what churches have done in the past, leading to results that have benefited all Americans.[65]

It is ironic that some of the most important actors in securing and supporting voting rights are now seen by many as disqualified from speaking to civic issues with moral and religious implications. Our nation's experience shows that this viewpoint is misguided. Religious groups and people of faith have an appropriate and vital role in securing civic health.

# Securing Specific Rights

## Compelled Speech

The first U.S. Supreme Court decision to deal with the specific question of compelled speech or whether the government can require citizens to endorse a message was decided in a 1943 case. *West Virginia State Board of Education v. Barnette* was initiated by a religiously motivated refusal to salute the flag and say the Pledge of Allegiance.[66] Two young girls, Marie and Gathie Barnett, had been expelled for their refusal based on their Jehovah's Witness faith.[67] The court explained in a powerful passage:

> 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.[68]

Then in 1976, George Maynard, also a Jehovah's Witness, objected to the motto on the New Hampshire license plate, "Live Free or Die." He explained: "It would be contrary to that belief to give up my life for the state, even if it meant living in bondage. Although I obey all laws of the State not in conflict with my conscience, this slogan is directly at odds with my deeply held religious convictions." So, he cut the words "or die" from his plate and was sentenced to six months in jail.[69]

In *Wooley v. Maynard*, the Supreme Court said:

> Here, as in *Barnette*, we are faced with a state measure which forces an individual, as part of his daily life — indeed, constantly while his automobile is in public view — to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.[70]

The court struck down the license plate requirement, concluding:

> The First Amendment protects the right of individuals to hold a point of view different from the majority, and to refuse to foster, in the way New Hampshire commands, an idea they find morally objectionable.[71]

The religious motivations in the *Barnette* and *Wooley* cases were not just incidental facts to the creation of new free speech protections but rather were their *primary drivers*. In other words, these individuals' pursuit of their religious freedom resulted in protection for everyone – religious or not – from being forced to endorse messages and ideas that the government or society favors but that you disagree with.

The precedent established in these cases has been applied to a range of other cases.

In 1972, Pat Tornillo ran for the state legislature in Florida. Upset at his role in leading teacher strikes, the *Miami Herald* ran two editorials criticizing

Tornillo, who then demanded to have the paper publish his rebuttal verbatim.

Florida law was actually on his side. The relevant statute said that

> if a candidate for nomination or election is assailed regarding his personal character or official record by any newspaper, the candidate has the right to demand that the newspaper print, free of cost to the candidate, any reply the candidate may make to the newspaper's charges.

Failure to do so was a misdemeanor.

The *Miami Herald* refused, and the case went to the Supreme Court, which struck down the Florida statute in *Miami Herald Publishing Company v. Tornillo*.[72] The court said: "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public official — whether fair or unfair — constitute the exercise of editorial control and judgment." The First Amendment did not allow a state to interfere with this control and judgment.[73]

Building on this ruling, in 1986 the court invalidated a California agency's ruling that a utility had to publish statements from an opponent of the utility's views.[74]

In *National Institute of Family and Life Advocates v. Becerra*, in 2018, the court struck down a California law that, among other things, required licensed pregnancy clinics to "notify women that California provides free or low-cost services, including abortions, and give them a phone number to call" and unlicensed clinics to display a conspicuous notice that they are not a medical facility. The court opinion said both violated the First Amendment. The requirement that licensed clinics share a "government-drafted script" essentially required the pro-life clinics "to inform women how they can obtain state-subsidized abortions—at the same time [the clinics] try to dissuade women from choosing that option," which compelled them "to speak a particular message."[75]

In another case that same year, *Janus v. American Federation of State, County, and Municipal Employees*, the court held that Illinois could not force public employees to pay dues to a union. The court said the statute violated the First Amendment because it "compels [employees] to voice ideas with which they disagree." In *Janus*, the court referenced *Barnette* as a "landmark free speech case" which had established the principle "that a law commanding 'involuntary affirmation' of objected-to beliefs would" be even more troubling "than a law demanding silence."[76]

The decisions to protect the convictions of people of faith have clearly resulted in important precedents that protect a wide range of other interests and personal freedoms. This illustrates a fundamental phenomenon: Protecting religious freedom results in protecting other individual rights essential to all Americans.

## Conscientious Objection

In 1987, a 15-year-old girl from California, Jennifer Graham, took a stand for conscience. In a mandatory class assignment, she and her classmates had been

asked to dissect frogs. She objected because she believed "animals were being needlessly killed simply to be used for such projects."[77]

Eventually, she had to litigate her conscientious objection and won a partial victory in court (the requirement stood but only if "frogs that died naturally" were used), and the state eventually enacted legislation to protect students with this and similar objections. The California law provides that "any pupil with a moral objection to dissecting or otherwise harming or destroying animals, or any parts thereof," can request an alternative assignment.[78]

One thing to note in this example is that Graham's objection was not religious in motivation. However, the genesis of her legal right to object in America was.

From the outset of the United States, governments have had to determine how they would approach conscientious objectors. In its 1777 Constitution, New York attempted to accommodate them:

> And whereas it is of the utmost importance to the safety of every State that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it; this convention therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that the militia of this State, at all times here-after, as well in peace as in war, shall be armed and disciplined, and in readiness for service. *That all such of the inhabitants of this State being of the people called Quakers as, from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature*; and do pay to the State such sums of money, in lieu of their personal service, as the same may, in the judgment of the legislature, be worth.[79] (emphasis added)

This policy is striking given the context. Despite ongoing military occupation of New York City by the British army and navy, the state convention endorsed the Declaration of Independence and thus knew military hostilities would continue. So even though the state and its citizens faced an existential military threat from tens of thousands of British soldiers and heavy weapons, they were still willing to make concessions to the religious objections of some of their citizens to military service.

Thus, the American right to conscientious objection was born. Today it has grown to encompass full rights of conscience. As the Selective Service explains about such rights: "Beliefs may be moral or ethical."[80] What began as an accommodation of religious commitments has grown to include many whose ethical and moral beliefs are not necessarily religious in nature but who benefit from the principle of accommodation of strongly held beliefs in a variety of contexts.

It is a good thing for everyone that what began as a right of religious expression has grown – for as legal regulation has spread to more and more areas of life, so too has the potential for a conflict between demands of conscience and legal requirements.

The healthcare field raises a number of potential conflicts. Do hospitals have to perform every procedure a potential patient demands? Would a nurse or doctor have to participate in an abortion?

Does a pharmacist have to fill a prescription for a drug they feel would implicate them in moral wrongdoing?

Congress has enacted measures to alleviate these concerns. In 1973, as abortion was mandated by a Supreme Court decision, Congress enacted the Church Amendment to ensure that medical professionals would not be required to participate in abortion or sterilization procedures if doing so "would be contrary to his religious beliefs or moral convictions."[81]

The scope of this law has since been expanded to apply to "any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services."

The best-known type of conscientious objection is to military service, thanks in part to Muhammad Ali's objection to enlistment in the military during the Vietnam War.[82] Federal law specifically allows conscientious objectors – defined as "one who is opposed to serving in the armed forces and/or bearing arms on the grounds of moral or religious principles" – to substitute alternative service for military service in the event of a draft.[83]

Whether protecting deeply held moral beliefs about animal rights, healthcare, abortion or military service, the right to conscientious objection is an important example of how the efforts of people of faith and religious organizations to secure their ability to exercise their beliefs has increased the circumference of freedom for many others – including (perhaps especially) the nonreligious. By extension, it makes clear the value of continuing to protect religious exercise, even when it is not popular.

Just as the legal and philosophical foundations for rights of conscience sprouted from religious roots, the reasoning for overruling conscientious objections can sprout from uprooting the right to religious exercise. As the stories of 18th-century Quakers and Jennifer Graham make clear, our rights as Americans are interconnected. Throwing away one for the sake of a short-sighted political or policy agenda is to jeopardize them all.

## Parental Rights

Any parent would be overwhelmed and stunned to learn their child had cancer. That was true for a Utah couple, Daren and Barbara Jensen, when their 12-year-old son, Parker, was diagnosed with Ewing's sarcoma in 2003. They faced serious questions, including whether to have their son undergo 48 weeks of chemotherapy with all the difficulty that would entail, especially for a child.[84]

After the tumor was removed, the doctors recommended Parker receive chemotherapy, but the Jensens weren't sure that was a good idea. The state intervened and a court ordered the treatment, so the Jensens left the state with their son and were charged with kidnapping. Public pressure finally led the state to relent,[85] and a decade later, Parker was still cancer free.[86]

One legacy of this dispute was a Utah Supreme Court decision specifying that parents have a fundamental right to direct the medical treatment of their children.[87] This decision built on an earlier Utah decision determining children could not be removed from parents unless the parent was

unfit.[88] This holding, in turn, referenced two key U.S. Supreme Court decisions from the 1920s that provided the basis for the expectation that parents can make decisions about rearing their children without interference from the government.

The first involved a challenge to a Nebraska law that prohibited "the teaching in any private, denominational, parochial or public school, of any modern language, other than English."[89] The law had been enacted in 1919 during a period of hostility to German instruction in schools. In 1920, it was applied in the conviction of Robert Meyer, a teacher in a Lutheran school, for teaching about the Bible in German to students during a lunch period. A commentator has noted that the conviction "had important religious overtones," since "Meyer understood that it was impossible to teach children to read the Bible in German if their education was limited to churches on Sunday." That was true because their parents and congregational leaders would have spoken and taught about their faith in German.[90]

In 1923, the Supreme Court struck down the law as a violation of the right of parents to choose how their children could be taught in schools, rejecting the state's argument that the law was necessary to Americanize its citizens.[91]

The next case, which was decided in 1925, had even more explicit religious overtones. It involved an Oregon law that required children to attend public schools, effectively banning religious or other private schools. The law had been proposed to dampen the influence of Catholic schools in particular, and it was supported by the Ku Klux Klan and the Federation of Patriotic Societies. The archbishop of Portland, taking note of the anti-Catholic impetus for the law, "founded the Catholic Civic Rights Association of Oregon to combat the initiative."[92]

The Supreme Court invalidated this law, too. It was challenged by an organization of nuns who operated orphanages and schools and by a private military academy. The unanimous opinion concluded that the Oregon law

> unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. … The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.[93]

Five decades later, the court held that a Wisconsin law making attendance at school mandatory until they were 16 could not be applied to punish Amish parents. These parents had withdrawn their children from school after eighth grade based on their religious belief that after basic education, their children needed to pursue only vocational education. Some parents had even been willing to go to jail.[94]

The majority weighed the state's interest in promoting education with "the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children." It concluded that the rights of the parents, particularly when combined with their free exercise rights, took precedent over the state's considerations.

These cases, taken together, form the foundation for the now well-established right of a parent to make decisions on behalf of their child, free of government coercion, except for cases of abuse or unfitness. It is also yet another example of how the efforts of individuals to secure their religious freedom have widened the secular circle of freedom for everyone.[95]

## Right of Association

The term "right of association" does not appear in the text of the U.S. Constitution, but the concept is among the basic preconditions for the Constitution. The idea of this right is that citizens should be free to join with others to pursue a common cause. This applies in both the positive and negative senses – the ability to form associations, and the ability to refuse to participate.

As a foundational matter, the Constitution of the United States is an associational document. It begins by invoking the desire of the people of the various states to "form a more perfect union."[96] In the First Amendment, freedom of association is implicated in the guarantees of freedom of speech and the right to petition the government for a redress of grievances, since free expression and political influence are often channeled through and amplified by groups we participate in.[97]

In fact, one of the most famous Supreme Court decisions on freedom of association involved an attempt by the state of Alabama to obstruct the Civil Rights Movement, not by directly banning speech but by gaining access to membership rolls of the NAACP, which could allow individual members to be intimidated.[98]

Like other critical rights, the ideal of freedom of association has roots in, and has been enhanced by, the efforts of religions and people of faith to assert their convictions. We might even say that the United States had its genesis in a conflict over association – specifically, the quest of some religious dissenters to seek places in North America where they could form communities that were conducive to their beliefs and, at the same time, disassociate themselves with the official state religion of England.[99]

One of the primary constitutional manifestations of the freedom of association is another provision in the First Amendment. The Establishment Clause prevented the national government (it later would be interpreted to apply to the states) from creating an official church of the United States. This prevented a range of problems, like government compulsion of religious practice, tax funding of churches and clergy, and government interference with the operation of churches.[100]

Another problem that had already been addressed in the main body of the Constitution was the possibility of someone being denied opportunities for public office or public service based on their religious affiliation or belief.[101]

Some of the important freedom of association cases involved religious claims, such as the Boy Scouts' desire to ensure its volunteer leaders affirmed the message of its organization.[102] Perhaps the best example of the principle in action, though, comes from cases that do not explicitly mention association. These are the decisions in which the Supreme Court ruled the government could not hear lawsuits challenging internal religious

disputes, such as over who would promulgate the message of a religious organization.[103]

Like all constitutional rights, there are limits to the right. There have been cases where organizations challenged discrimination laws in order to avoid allowing women to be members, but in these cases, which did not involve speech or religious freedom considerations, the court declined to extend the right of association.

The contribution of religious groups to shaping the law of freedom of association is important because that freedom is so intertwined with important values like the protection of conscience and the ability to effectively participate in the political system. The Supreme Court has invoked it to prevent forced disclosure of donations to nonprofit organizations,[104] the use of mandatory dues or fees from unwilling employees to support unions,[105] and the ability of political parties to establish their own rules for selecting candidates.[106]

It is yet another important example of how increasing the circumference of freedom for people of faith increases it for everyone.



# Conclusion

Religious teachings motivate believers, and those motivations are often channeled into socially beneficial directions. Though, of course, some religious beliefs and actions have created harm, the history of the United States demonstrates the great potential of religious faith and the efforts of believers to promote positive change. It also demonstrates that securing greater freedom for some need not diminish it for others. The efforts of people of faith to secure their constitutionally protected rights made it more likely for people who did not share that faith to secure theirs.

As in other areas, the ability of religious groups and people of faith to practice their religion benefits not only those protected, but the society in which these groups and people contribute. By exercising their religious beliefs, individuals and organized religion help alleviate problems that affect everyone.



# Policy Recommendations

Though many of the protections described in this report have come through application by courts of constitutional provisions, other critical provisions were enacted through legislation. Legislative prevention of religious freedom conflicts is particularly valuable because it spares those who might be affected by unfair or discriminatory practices the difficulty and expense of seeking vindication through litigation. It also contributes to civic harmony by communicating to religious and other minorities that their rights are important to the majority.

There are three possible policy recommendations that follow from the content of this report.

First, legislators should couple protections against discrimination with protections of religious freedom. All states have laws prohibiting discrimination in employment, housing and public accommodations. Although many discrimination protections will not require religious organizations or people of faith to take actions that are at odds with their beliefs, we have seen an increasing number of instances where this type of conflict has been created. This is easily addressed by specific exemptions in the law, such as excluding religious groups from the definition of employers, or churches from the definition of a public accommodation, so that these individuals and groups can act on their beliefs without being sanctioned for them (such as beliefs about the sanctity of life or the nature of marriage).

Second, legislators should assess whether laws on the books or being considered may have the effect of coercing individuals or groups to endorse positions at odds with their conscience. It is appropriate for the government to endorse ideas that it believes are for the public good, but it need not require others to participate in advancing that message if doing so is at odds with their beliefs. For instance, some states would like to promote abortion and try to force organizations that endorse alternatives (like pregnancy resource centers) to refer those they are trying to help to abortion providers. That would make the believers complicit in an act deeply at odds with their faith. When a state has, or is considering, a law that creates duties for third parties, like pharmacists or nonprofits, it can include a conscience protection. In the alternative, the state could enact a general conscience protection providing that healthcare providers, nonprofits and others may not be required to speak or act in a way contrary to their beliefs.

Third, legislators should consider explicit protections of conscience. This would be an appropriate extension of recognized protections of religious practice. As this publication explains, protecting religious practice has led to greater protection of conscientious beliefs that are not

necessarily rooted in a religious teaching but are still formative for many individuals. A positive example is a recent Utah bill that requires public employees be extended reasonable accommodations for an employee's religious beliefs but adds that the employer must also accommodate the "conscience" of an employee.[107] This approach appropriately consolidates the increased circumference of freedom resulting from the protection of religious freedom.



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