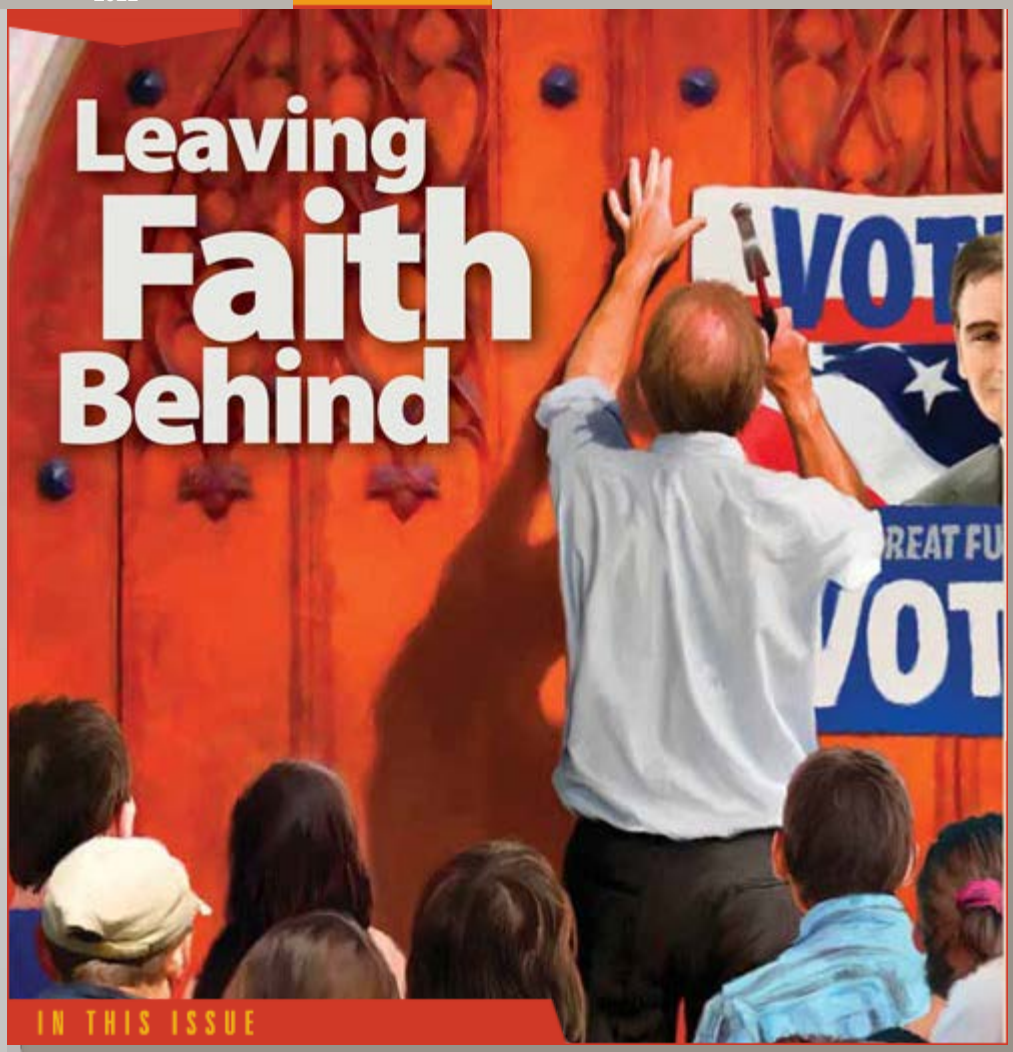
A MAGAZINE OF RELIGIOUS FREEDOM
LIBERTY



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NOVEMBER / DECEMBER 2011

The Story Of A Life

Editorial

BY: LINCOLN E. STEED

Charles Dickens began one of his essentially autobiographical tales by wondering aloud if he would prove to be the hero of his own life. Reality is so dynamic and changeable it is hard for anyone to know where their actions will lead them, or how they will bear up to the challenges of the day or the year.

Those same questions tugged at me recently when I traveled half a world away from our editorial offices in Silver Spring, Maryland, U.S.A., to Australia, to participate in a religious liberty meeting of experts in Sydney, Australia. I left Australia some decades ago as a teenager; and each time I return, the question of what I have made of my life nags at me.

The day I arrived in Sydney I stopped off at Paddy's Market, where they sell things like kangaroo skins and souvenir hats made in China. It was crowded and noisy, with commerce yelled out in mostly accented English. I found that I was less interested in buying than analyzing the sellers. They struck me as an incredibly diverse group, and I wondered about the story of their lives.

One especially vigorous and vocal Chinese woman caught my attention. "You want to buy souvenir pens?" she pitched. I looked over the products briefly, and asked her where she was from. "I come from Hong Kong," she answered in a voice still pitched for Mandarin but heavily accented with Australian inflections. "Where are you from?" was her bounce back.

I told her I had grown up in Sydney but lived in the United States for most of my life. "Australia is different for you now, isn't it?" she offered. I had to admit she was right. "I go back every year to Hong Kong," she continued. "But people are rude there. There is trouble between the Chinese in Hong Kong and the mainlanders."

We talked more, and I found in her the same realization of the foreigner transplanted: that both homeland and new land can take on a sense of otherness. The same sense of a lost certainty, if not identity. We talked so long she seemed to forget that there were other customers clamoring to buy. Finally I had to leave, and she pushed a little bit of ribbon into my hand as a gift. "Never the same," she said almost wistfully.

I saw them more clearly then—the exiles; the Diaspora of the market.

A man with a swarthy face and a loud voice was pitching women's clothes to passersby. His gaze barely rested on me as I approached him. Until I asked him where he was from! "Iran," he said proudly, but then grew cloudy as we discussed the theocracy and daily life in the new Iran. It was his homeland, but no longer his country!

Another man sat languidly in front of a pile of wares, stirring himself periodically to instruct a young helper on how to arrange matters. The language he used sounded Turkic. I asked. And yes, he was from Turkey. We talked, and I asked about Kemal Ataturk and the formation of the modern secular Turkish state. He did not seem impressed. "Turkey has changed," he said.

Nearby a nervous-looking gentleman was using a large handle with a flat end to retrieve delicious-smelling flatbread from a half-open wood oven. I couldn't resist; and bought a freshly baked flatbread from him. As I handed him the dollar coins, I asked where he was from. I expected him to say Turkey, but I was barely correct.

"I am a Kurd," he told me proudly. "Are you from Turkey?" I asked. "Yes," he answered. "But we Kurds are from many countries: Iraq, Turkey, and Iran. We have tried to have our own country, but they will not let us. The Turkish people persecute us." I asked about Kemal Ataturk, the secularizer of Turkey, and the father of a modern nation. As with my other encounter, he was not too impressed. "Ataturk promised us a lot," he said. "But when the state was formed, Ataturk said that our hopes of autonomy were a threat to the unity of the new country. He let us down." There were several customers lined up to buy, even though the Kurdish proprietor showed no sign of wanting to slow his pent-up opinions. "You should visit the Kurdish area where I came from," he said. "It is beautiful," he added, with a sad face. I thanked him and quickly moved away to let his customers pull him back to commerce.

I realized by then a little more about the wellspring of otherness held in the minds of these citizens of the world. There are stories that may

never be told or shared other than around family tables or in letters between friends and family. Letters often sent far away.

Later I stopped by a fish-and-chip shop near the beach. Such places are a quintessential icon of Australia and the beach—albeit derived from the British shops of the same, reflecting Irish preferences for a South American import! The lady behind the counter asked me about my order of chips in a soft accent that I could not quite place. “Where are you from?” I asked in a now-familiar approach.

“Egypt,” she replied in a way that made me think that she was not often asked.

“Oh,” I replied, “then you must have some knowledge of the Arab Spring situation there. What do you think of it all?”

“I am a Copt,” she said in a voice that implied that that was enough to explain things. And in a way it was. The direct antecedent to the Tahrir Square demonstrations was a January bombing of a Coptic Christian church in Alexandria and other religious violence that followed. Then, like the other shopkeepers, she warmed to my questions and began to open up about the situation in her country of birth. For her, though, the Arab Spring is ominous. She spoke freely of her fear that the Muslim Brotherhood, the now-dominant Islamist party, will eventually gain full power and restrict religious diversity. “Oh, I wish my husband were here to meet you,” she said over and over as we talked, and I told her that I edited a religious liberty journal.

Then we talked about the same model of home and adopted country that seemed to so perplex my other contacts. And of course she likes the sunny new country she and her husband had found. But she worries about its future in a post-September 11 world of religious activism. It was curious that she should bring this up. I was, after all, in Australia to participate in an International Religious Liberty Association meeting of experts tasked with analyzing the effect of secularization on religious freedom. And Australia is one of the most secular societies in the Western world.

She helped me untangle one of the more bizarre incidents in recent Australian legal happenings. I had seen the footage of the original incident, the court case, and the demonstrations on television. A police officer had stopped a woman for speeding. He had asked her to step out of the car and found she was wearing a burka. He asked her to uncover her face. She refused, and in a string of very earthy Australian profanity accused him of harassment. It went to court—and was thrown out because if could not be proved that the woman in the court was even the woman caught speeding. Then the crowd of very secular Australians jeered and jostled the authorities. I wondered how this sort of theater of religious confrontation could happen in secular Australia.

My Coptic friend had strong opinions on it. “Australians are naive,” she said. “Religion has been removed from their lives. Now the young people are moved by curiosity to investigate religion, and they are adopting some of the worst aspects of faith behavior. I am afraid they are going to repeat what I saw in my home country.” I hope not. But I see now that freedom and tolerance are just elements of what we must communicate. There must be knowledge: knowledge of history, knowledge of other religions themselves. And we must remove religion from the orbit of nationalism. As an alien exile, as a Christian, I know that while we must work to honor and support whatever society we find ourselves in, ultimately we serve the Lord of that “far country.”

Lincoln E. Steed is editor of *Liberty*.

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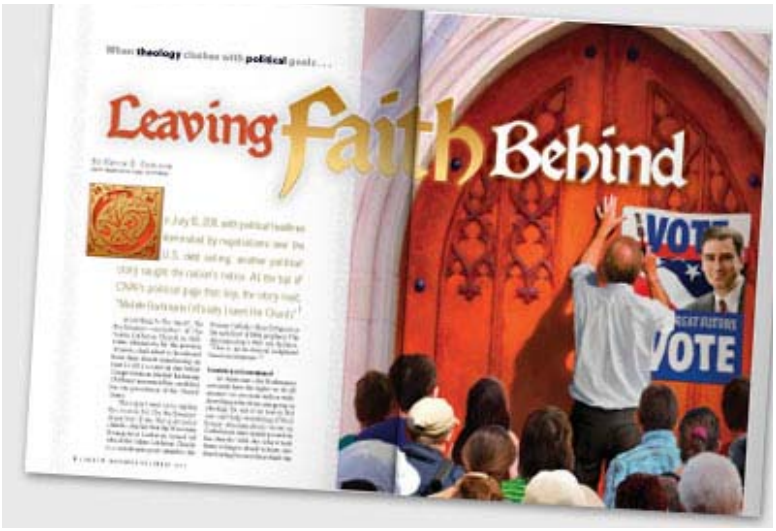
Leaving Faith Behind: When Theology Clashes With Political Goals

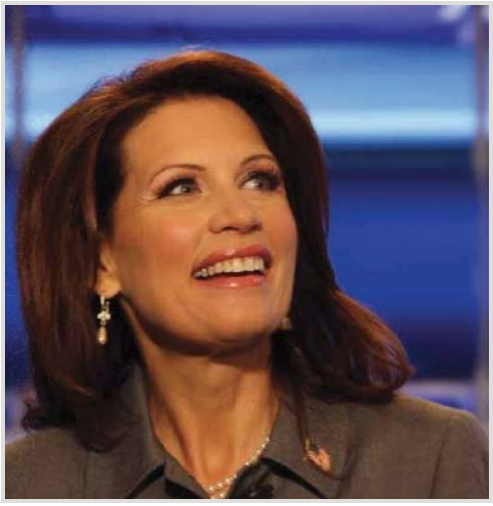


BY: KEVIN D. PAULSON

On July 15, 2011, with political headlines dominated by negotiations over the U.S. debt ceiling, another political story caught the nation's notice. At the top of CNN's political page that day, the story read, "Michele Bachmann Officially Leaves Her Church."[1]

According to the report, the Bachmanns—members of the Salem Lutheran Church in Stillwater, Minnesota, for the previous 10 years—had asked to be released from their church membership on June 21, 2011, a scant six days before Congresswoman Michele Bachmann (R-Minn.) announced her candidacy for the presidency of the United States.

The report went on to explain the reason for the Bachmanns' departure from this particular church—the fact that the Wisconsin Evangelical Lutheran Synod (of which the Salem Lutheran Church is a constituent part) identifies the Roman Catholic Church Papacy as the antichrist of Bible prophecy. The denomination's Web site declares, "This is an historical judgment based on Scripture."[2]



Presidential candidate Michele Bachman.

Conviction or Convenience?

As Americans, the Bachmanns certainly have the right—as do all citizens—to associate with or withdraw themselves from any group or ideology, for any or no reason. But one can't help wondering, if their former denomination's views on Catholicism were openly posted on the church's Web site, why it took them so long to decide to leave. Are they leaving because they think the teachings of their former church contradict the Bible on this point? Do they hold that these teachings constitute "anti-Catholic bigotry"? If so, when did they decide this? And why did they choose to leave but a few days before Michele Bachmann announced her candidacy for the presidency?

In short, was this a decision based on religious conviction, or political convenience?

Conservative Politics and the New Ecumenism

The CNN article in question went on to trace the historical roots of Protestant beliefs regarding the Roman Papacy, in particular Martin Luther's use of the term antichrist to describe the Catholic system on account of its conflict with what Luther held to be key features of the New Testament gospel.[3] The fact that Roman Catholics dismiss such views as bigotry was also noted in the article.[4]

Since the emergence of the Religious Right on the American political scene in the late 1970s and early 1980s, cooperation between Protestants and Catholics for political purposes has been both open and active. Such religio-political alliances have also existed, of course, in the context of liberal causes (e.g., civil rights, the Vietnam War), though the corporate nature of these and similar moral issues made religious involvement less problematic for the separation of church and state, at least in many minds. Within the setting of the Religious Right, many trace the culmination of such harmony to the 1994 document "Evangelicals and Catholics Together,"[5] which proclaimed a new Christian unity relative to both theological and political goals. The document was prepared and endorsed by such prominent Catholic thought leaders as Richard John Neuhaus and George Weigel, and by such Protestant luminaries as former Nixon aide Charles Colson and televangelist Pat Robertson.[6]

What I have chosen to call the "new ecumenism" is significant because of its differences from the old ecumenism. When many conservative Christians think of the ecumenical movement, they think of such organizations as the National and World Councils of Churches, or of meetings at which doctrinal compromises are crafted for the sake of denominational mergers—often by theological liberals with nontranscendent, less-than-absolute views of biblical authority. For this reason the very phrase "ecumenical movement" has long evoked

negative responses from the conservative wing of Protestantism. And yet, with the rise of the Religious Right, it has been these very conservative Protestants that have been most proactive in forging unity with Roman Catholics for political purposes. Rather than seeking unity through some doctrinal "middle ground," achieved through the give-and-take of dialogue and negotiation, the new ecumenism simply ignores doctrinal differences—even major ones—for the sake of a united front against what is held to be a permissive, morally bankrupt culture at odds with a wide range of religious and conservative cultural beliefs.

The Problem

But expedient unity of this sort carries with it a major problem.

Adherence to moral absolutes is a cornerstone of conservative Christianity. For Protestants, historically, this has meant holding to the Bible as the exclusive guide to faith and practice—sola scriptura, as the Reformers said. On this basis, conservative evangelicals condemn fornication, adultery, homosexual practice, the production and viewing of pornography, and other practices considered to be immoral and sinful.

The challenge arises when the same Bible that condemns practices generally viewed by conservative Christians as morally wrong is also found to condemn beliefs and religious practices held dear by a large segment of the "moral majority" thus built. This problem, when considered, poses some serious questions for those with a high view of biblical authority. If the Bible is truly the source of the moral convictions by which one measures society, on what basis does one refuse to apply the biblical standard to political allies whose teachings or religious practices contradict the Bible? If one chooses simply to ignore such contradictions, what is to be made of the biblical command not to be "unequally yoked together with unbelievers" (2 Corinthians 6:14)? In short, what happens when, for the Christian seeking to blend biblical teachings with a political agenda, biblical absolutes become politically inconvenient?

Perhaps the Bachmanns will say they left their former church because they disagree with what many are pleased to call the "anti-Catholic bigotry" of its position on the Papacy. If so, what guides the Bachmanns' definition of bigotry? The Bible? Popular opinion? Many, after all, would describe the Bachmanns' stand on homosexual practice as bigoted. If the Bible is their authority on moral issues despite accusations of bigotry, what about theological issues? If the Bible is truly God's infallible Word, shouldn't its adherents stand by all of its teachings, even if others call such teachings bigoted? If the Bachmanns are prepared to do this regarding the issue of homosexuality, why not regarding their church's stand on Catholicism? Again, if they believe their church's stand in this regard is unscriptural, why did it take them 10 years to figure this out? And why did they decide to sever their connection with this church only as Michele Bachmann was about to announce her run for president?

The Bottom Line

This, at the bottom line, is why politics is such a dangerous means by which to advance the church's mission, and it offers yet another reason that the separation of church and state is an imperative for the church as well as the government.

In the world of politics, success is defined by 50 percent plus 1. In the biblical worldview, by contrast, success is defined exclusively by faithfulness to the divine Word, regardless of how inconvenient or unpopular such faithfulness might be. In the pursuit of politics one is obligated to please the majority; in the preaching of the gospel one is obligated only to please God. When the so-called Moral Majority first came on the American scene, many Christians (as well as others) found the name unsettling. After all, the Bible never promises that God's true followers will ever comprise a majority, even among professing Christians. Jesus Himself declared, "Narrow is the way which leadeth unto life, and few there be that find it" (Matthew 7:14). According to the Bible, only eight people got on board Noah's ark (Genesis 7:7; 1 Peter 3:20); only three stood unmoved when the rest of the world bowed before Nebuchadnezzar's image (Daniel 3:12). And at the end of human history, according to the Bible, those found faithful are described, not as a majority, but as a remnant (Revelation 12:17).

According to Scripture, the Christian's duty is to adhere to the counsel of God, even if the result is revilement and ridicule by the rest of society. Biblical teachings cover more than sexuality issues. They place in the crosshairs of scrutiny a wide range of cherished beliefs and practices, including many held dear by conservative Christians. Something is very wrong with the spiritual integrity of church members who are prepared to sacrifice biblical teachings for the sake of political objectives. Such dilemmas, however, become inevitable when Christians seek to blend the church's agenda with that of the state. Majority opinion is the guiding force in representative government, and when the biblical message is subjected to such a standard, much of it will be lost. And with it, the most basic authority of the Christian faith itself.

Kevin D. Paulson, a minister of religion, writes from New York, New York.

1 Eric Marrapodi, "Michele Bachmann Officially Leaves Her Church," **http://religion.blogs.cnn.com/2011/07/15/michele-bachmann-officially-leaves-her-church**.
2 *Ibid*.
3 *Ibid*.
4 *Ibid*.
5 "Evangelicals and Catholics Together: The Christian Mission in the Third Millennium," *First Things*, May 1994, pp. 15-22.
6 *Ibid*.

NOVEMBER / DECEMBER 2011

Adventists, Prohibition, And Political Involvement

BY: JARED MILLER

Just two years after the Seventh-day Adventist Church officially organized, it met for its third General Conference session in 1865. The church made one of its first official statements on voting at that time: “Resolved, That in our judgment, the act of voting when exercised in behalf of justice, humanity and right, is in itself blameless, and may be at some times highly proper; but that the casting of any vote that shall strengthen the cause of such crimes as intemperance, insurrection, and slavery, we regard as highly criminal in the sight of Heaven. But we would deprecate any participation in the spirit of party strife.”[1]

There were some Adventists early on that were against political involvement for any reason. But the majority of Adventists, and especially the church leadership, supported political involvement concerning vital areas such as prohibition.

About 17 years later, in 1882, the president of the General Conference, George Butler, wrote a very balanced article for the *Review*, the church’s official paper. In it he pointed out that some had gotten so involved in politics that they had forgotten the Lord, and warned against such involvement. At the same time he also encouraged voting in favor of prohibition, “We hope every Seventh-day Adventist voter in the State [Iowa] will vote for this law [prohibition], and induce [or persuade] all others to do so whom he can influence by honorable means.”[2]

Another article in the *Review* in 1891 suggested, “Were we living under an absolute monarchy, all we could do would be to pray; but in this Republic we have an instrument given with which we can second our prayers, and that is, our ballot.”[3]

Adventist pioneer and visionary Ellen White was present at the meeting in 1859 when her husband, James White, and J. N. Andrews voiced their approval of voting for temperance men. Concerning this event she wrote in her diary: “Men of intemperance have been in the office today in a flattering manner expressing their approbation of the course of the Sabbathkeepers not voting and expressed hopes that they will stick to their course and like the Quakers, not cast their vote.”[4]

In 1873 Ellen White “spoke in the Methodist church of Salem [Oregon], on the subject of temperance. She stated that “the attendance was unusually good, and I had freedom in treating this, my favorite subject.”[5] Temperance had a broad meaning for Ellen White, but certainly an essential part of it was refraining from drinking any kind of alcohol.

In 1877, while addressing a very large crowd of about 8,000 in Indiana, she and Elder J. H. Waggoner went beyond most other temperance speakers in that they “traced the origin of the prevailing intemperance to the home, the family board, and the indulgence of appetite in the child. . . . The great work of temperance reform, to be thoroughly successful, must begin in the home.”[6] This indicates that Ellen White strongly influenced not only Adventism’s involvement in prohibition but also that of the larger community.

The boldness with which Ellen White addressed prohibition is remarkable. For instance, in 1880 she wrote, “Intemperate men should not by vote of the people be placed in positions of trust.”[7]

Ellen White went on to make possibly her most direct statement on voting in favor of prohibition. “‘Shall we vote for prohibition?’ she asked. ‘Yes, to a man, everywhere,’ she replied, ‘and perhaps I shall shock some of you if I say, If necessary, vote on the Sabbath day for prohibition if you cannot at any other time.’”[8]

A few months later, in 1881, she wrote another conspicuous message about prohibition: “There is a cause for the moral paralysis upon society. Our laws sustain an evil which is sapping their very foundations.”[9] The evil she was speaking of was the legalization of alcoholic beverages. She continued: “In our favored land, every voter has some voice in determining what laws shall control the nation. Should not that influence and that vote be cast on the side of temperance and virtue? . . . The advocates of temperance fail to do their whole duty unless they exert their influence by precept and example—by voice and pen and vote—in favor of prohibition and total abstinence. We need not expect that God will work a miracle to bring about this reform, and thus remove the necessity for our exertion. We ourselves must grapple with this giant foe, our motto, No compromise and no cessation of our efforts till the victory is gained.”[10]

This is one of Ellen White's strongest statements regarding involvement in prohibition. She is essentially urging people to do everything in their power (using their voice, pen, and vote) to influence society to implement prohibition. She referred to the above motto as "our motto," which shows that Ellen White believed in prohibition with every fiber of her being. For her there would be "no compromise" and "no cessation" of her prohibitionist work until the "victory [was] gained." Sadly, Ellen White did not live to see the Eighteenth Amendment take effect in 1920. The repeal of the Eighteenth Amendment a short 13 years later surely would have rekindled in her the same motto—no compromise and no cessation until they regain the victory.

In 1886, at the request of the temperance society's president, Ellen White spoke to about 1,600 people on the topic of temperance. She shared that "the Bible is full of history bearing upon temperance, and that Christ was connected with the work of temperance, even from the beginning."[11] She highlighted many Bible stories that address the temperance question, including the sin of Nadab and Abihu caused by drinking wine, the prenatal influence of the mother upon the unborn baby the angel indicated when counseling Manoah and his wife, the superior health of Daniel as a result of temperance, and the importance of total abstinence from alcohol in the ministry of John the Baptist.[12]

Toward the end of her address she appealed to the people to be like Daniel, a "radical temperance [reformer]."[13] She made a general appeal, saying, "Let every Christian see that his example and influence are on the side of reform." Then she followed by a specific appeal to ministers, "Let ministers of the gospel be faithful in sounding the warnings to the people."[14]

Ellen White wrote, "What can be done to press back the inflowing tide of evil? Let laws be enacted and rigidly enforced prohibiting the sale and use of ardent spirits as a beverage."[15] Again Ellen White loudly shares her support for prohibition by voice, pen, and, we assume, her vote. One reason she adds for why prohibition should be enforced is this statement: "How many innocent persons have been condemned to death, how many more have been robbed of all their earthly possessions, by the injustice of drinking jurors, lawyers, witnesses, and even judges!"[16] For Ellen White, if prohibition were enforced it would result in a much safer, moral, and noble society. Ultimately prohibition would result in people having clearer minds, and sober minds were much more receptive to the truths the Seventh-day Adventists were trying to share. She wrote, "The use of intoxicating liquor dethrones reason, and hardens the heart against every pure and holy influence. The inanimate rocks will sooner listen to the appeals of truth and justice than will that man whose sensibilities are paralyzed by intemperance."[17] Ellen White was very evangelistic-minded; she wanted souls to be saved in Christ's kingdom, and alcohol was clouding the minds of the people she, and the Adventist Church, were trying to reach.

Temperance was a continual focus for Ellen White, as indicated by a statement she made in 1898: "I will inquire why some of our ministerial brethren are so far behind in proclaiming the exalted theme of temperance. Why is it that greater interest is not shown in health reform?"[18]

For Ellen White and the early Adventist Church the real purpose for temperance work was to sober people up so they could connect with God and be transformed by His grace. Her influence concerning prohibition was not just political activism for a good cause—it was political activism with the goal of souls saved because of sobriety.

Ellen White pointed out that "houses of prostitution, dens of vice, criminal courts, prisons, almshouses, insane asylums, hospitals, all are, to a great degree, filled as a result of the liquor seller's work."[19] Clearly she viewed the liquor seller as responsible for much of the utter wickedness in society: "[The liquor seller] will be charged with the hopelessness, the misery, the suffering, brought into the world by the liquor traffic. . . . He will have to answer for the souls he has sent unprepared into eternity."[20]

Ellen White was appalled that "Christian" countries, like the United States, were exporting alcohol (which she referred to here as "the curse") to the rest of the world. People in other countries were devastated by the intoxicating liquors, and it made the work of missionaries very difficult. In her own words: "It becomes an almost hopeless undertaking to send missionaries to these lands."[21]

The legality of selling alcohol led Ellen White to use a creative analogy in supporting prohibition: "The man who has a vicious beast and who, knowing its disposition, allows it liberty is by the laws of the land held accountable for the evil the beast may do. In the laws given to Israel the Lord directed that when a beast known to be vicious caused the death of a human being, the life of the owner should pay the price

of his carelessness or malignity. On the same principle the government that licenses the liquor seller should be held responsible for the results of his traffic. And if it is a crime worthy of death to give liberty to a vicious beast, how much greater is the crime of sanctioning the work of the liquor seller!"[22]

Ellen White could see no sense in the government authorizing the sale of such a deadly poison that results in it paying much more for its destructive results than it received in taxes. Her point is applicable in our day just as it was in her day. The government legalizes alcohol and makes a large amount of money from it because of taxation, but then millions or billions of dollars are spent by our country as a result of the accidents, violence, court costs, broken homes, and death caused by drinking alcohol.

How did Ellen White view the church's role in prohibition? "When a ship is wrecked in sight of shore, people do not idly look on. They risk their lives in the effort to rescue men and women from a watery grave. How much greater the demand for effort in rescuing them from the drunkard's fate!"[23] Again, prohibition was really a salvation issue for Ellen White—she viewed the drunkards as lost just as the Bible indicates, and so her mission, and in her view the church's mission, should include rescuing the drunkards from their vice and prohibiting the sale of alcohol.

Ellen White viewed the selling of alcohol and their families. Therefore, she thought everyone should be involved in putting an end to its sale. "There is no man whose interests the liquor traffic does not imperil. There is no man who for his own safeguard should not set himself to destroy it."[24]

A few years after the publication of The Ministry of Healing Ellen White again appealed to the church to be active in the prohibition movement. In an article for the Review she wrote: "Shall there not be among us as a people a revival of the temperance work? Why are we not putting forth much more decided efforts to oppose the liquor traffic, which is ruining the souls of men, and is causing violence and crime of every description?"[25] The motivation for temperance work appears to have waned every so often in the Adventist Church, and so Ellen White would call for a revival of this important work. She continued: "With the great light that God has entrusted to us, we should be in the forefront of every true reform." 26 Again, surprising to some, Ellen White urged the church to be the head, not the tail, of the prohibition movement.

She also gave two helpful illustrations of the relation of crime to intemperance: "In the words of a Philadelphia judge: 'We can trace four-fifths of the crimes that are committed to the influence of rum. There is not one case in twenty where a man is tried for his life, in which rum is not the direct or indirect cause of the murder. Rum and blood, I mean the shedding of blood, go hand in hand.' And 'A district attorney in the city of Boston is reported as declaring that 'ninety-nine out of one hundred of the crimes in our commonwealth are produced by intoxicating liquors.'"[27]

In the next week's article she suggested, "Should not the liquor-saloons that have wrought so much evil be entirely abolished?"[28] Then the following week, in her concluding article, she showed how the city of San Francisco's crime problem basically ended temporarily while the liquor saloons were temporarily closed because of the great earthquake. According to Ellen White, "this remarkable freedom from violence and crime was largely traceable to the disuse of intoxicants."[29]

Others noticed this as well: "The editors of some of the leading dailies took the position that it would be for the permanent betterment of society and for the upbuilding of the best interests of the city, were the saloons forever to remain closed."[30] However, as soon as the liquor saloons reopened their doors, violence and crime filled the city once again.[31]

Adventists would have been involved in the prohibition movement without the influence of Ellen White, but her influence led our involvement to be persistent, thorough, balanced, and Christ-centered.

As the years rolled on, and the prohibition movement gained momentum en route to the passage of the Eighteenth Amendment, the church continued its official support. In 1909 a General Conference *Bulletin* recommended that "our ministers, teachers, physicians, nurses, and people generally, engage in a vigorous campaign in behalf of total abstinence, by means of lectures, demonstrations, and the distribution of health and temperance literature, and that whenever consistent our people, by voice, pen, and vote, place themselves on record as favorable to its restriction and entire

prohibition."[32]

C. S. Longacre was another strong supporter of the prohibition movement. He argued that it was wrong for the government to allow alcohol to be legal and then tax the rest of society to pay for all the murders, crime, and jail time that drunkards cost society. He protested "against the liquor business as being a curse to society, a nursery of crime, and a menace to human liberties."[33] Several years later he wrote in the Review that "our duty is to make the world sober and deliver to it the last message of hope and salvation."[34]

From the General Conference to the North American Division, and even to conference presidents, the church leaders unanimously favored voting for prohibition. Historian Douglas Morgan writes, "In the final drive for a prohibition amendment, Adventists gave indefatigable support to the cause."[35] At last, after a long and hard battle, prohibition became nationwide through the Eighteenth Amendment to the Constitution. "Americans had not awakened on January 6, 1920, to find that prohibition had suddenly been thrust upon them. There had been a concerted effort by Protestantism and progressivism that had produced the Eighteenth Amendment."[36] Seventh-day Adventists were an enthusiastic support to this movement, and they celebrated the passage of prohibition.

However, prohibition came to an end much quicker than it had become law. Prohibition via the Eighteenth Amendment lasted only a little more than 13 years. What caused the quick demise of prohibition? C. S. Longacre noted, "After prohibition was written into the federal Constitution, many of the temperance organizations were left without financial support because the people thought that national prohibition was forever secure in the federal Constitution and that the Eighteenth Amendment could never be repealed."[37]

One church historian noted: "Part of the impetus for the amendment derived from a patriotic mood of self-denial in support of World War I, but the amendment did not go into effect until 1920. By that time the war was over and the mood of self-denial had vanished. . . .Fear that the amendment would be repealed prompted the church to resurrect its defunct temperance organization in 1932, under the new title of the American Temperance Society."[38]

Seventh-day Adventist prohibitionists were not going to be beaten without putting up a fight. One "direct and official" way the church used its influence in favor of prohibition is by sending a "memorial favoring prohibition . . . to President Hoover from the 1930 General Conference session."[39] The General Conference session is the most authoritative meeting of the worldwide Seventh-day Adventist Church, and so that action demonstrated the worldwide support the church gave toward prohibition.

Another strong attempt to influence political leaders was undertaken by F. D. Nichol, one of the pillars of the Adventist Church in the mid-twentieth century, who stood firmly for prohibition. He wrote a book entitled *Wet or Dry?* It "attempted . . . to combat the propaganda of a minority which was backed by the millions of the wealthy and was leading the majority to believe prohibition was a failure."[40] He got great reviews of the book by the president of the National Women's Christian Temperance Union as well as the superintendent of the National Temperance Bureau, and therefore it was decided that it should be sent to every member of Congress along with a personal letter.[41]

C. S. Longacre, a strong Adventist prohibitionist, argued that "bank savings deposits had increased over two hundred percent in a few years after prohibition's inception." Others noted, "Roosevelt [who became the U.S. president in 1933] claimed that legalized liquor would mean more revenue for the government, but that idea was rebuffed by Review writers when they said it would cost many times more to take care of the drunks and their families and to pay for the crime that liquor caused, than all the revenue received through taxes."[42] Longacre also recorded that the constituents of the American Temperance Society (ATS) of Seventh-day Adventists distributed an amazing amount of literature, totaling more than 88,593,600 pages, during 1932 in order to save the Eighteenth Amendment.[43]

Despite the church's noble efforts, "In February of 1933 the Congress passed a bill repealing the Eighteenth Amendment and sent the newly proposed constitutional amendment to the states for ratification."[44]

Adventists did not give up even after national prohibition was repealed. Adventists continued to promote "liquor controls through local elections, rehabilitation of alcoholics, and education to avoid the problem in the first place."[45]

Eventually the church's *Liberty* magazine changed its tenth principle after it became apparent that prohibition was not going to make a comeback. "The tenth item of the 'Religious Liberty Association Declaration of Principles' printed in *Liberty* asserted that 'the liquor traffic is a curse to the home, to society, and to the nation, and a menace to civil order, and should be prohibited by law.'"[46]

There is still a debate over whether prohibition was successful or not at cutting back most alcohol use and abuse. Certainly most Adventists in the early twentieth century argued that prohibition was a great success. It is absolutely clear that Adventists viewed prohibition as a moral and civil issue that required their involvement. The church tried to steer clear of partisan politics throughout this process, as the issue they were passionate about was prohibition, not one particular party.

This article is redacted from a larger research paper that Jared Miller presented as part of a seminar on church-state thought at Andrews University, Berrien Springs, Michigan.

1 *Advent Review and Sabbath Herald*, May 23, 1865, p. 197.

2 In *Advent Review and Sabbath Herald*, Apr. 11, 1882, p. 234.
3 *Advent Review and Sabbath Herald*, Feb. 17, 1891, p. 104.
4 Ellen G. White, *Temperance* (Mountain View Calif.: Pacific Press, 1949), p. 256.
5 White, p. 261. (Italics supplied.)
6 Ellen G. White, In *Advent Review and Sabbath Herald*, Aug. 23, 1877.
7 White, *Temperance*, p. 254.
8 In *Arthur L. White, Ellen G. White: The Lonely Years, 1876-1891* (Hagerstown, Md.: Review and Herald , 1984), vol. 3, p. 16l.
9 E. G. White, *Temperance*, p. 253.
10 *Ibid.*, pp. 253, 254.
11 *Ibid.*, p. 267.
12 *Ibid.*, pp. 267-273.
13 *Ibid.*, p. 273.
14 *Ibid.*
15 Ellen G. White, *Christian Temperance and Bible Hygiene* (Battle Creek, Mich. Good Health Publishing, 1890), p. 29.
16 *Ibid.*, p. 30.
17 *Ibid.*
18 E. G. White, *Temperance*, p. 244.
19 *Ibid.*, p. 24.
20 Ellen G. White, *The Ministry of Healing* (Mountain View, Calif.: Pacific Press, 1905), pp. 341, 342.
21 *Ibid.*, p. 339.
22 *Ibid.*, p. 343.
23 *Ibid.*, pp. 344, 345.
24 *Ibid.*, p. 346.
25 Ellen G. White, in *Advent Review and Sabbath Herald*, Aug. 29, 1907.
26 *Ibid.*
27 Ellen G. White, “Drunkenness and Crime,” *Signs of the Times*, Nov. 20, 1907.
28 Ellen G. White, “Drunkenness and Crime,” *Signs of the Times*, Nov. 27, 1907.
29 Ellen G. White, “Drunkenness and Crime,” *Signs of the Times*, Dec. 4, 1907.
30 *Ibid.*
31 *Ibid.*
32 *General Conference Bulletin*, May 24, 1909, p. 8.
33 *Liberty* 8, no. 4 (1913): 188.
34 In *Advent Review and Sabbath Herald*, Oct. 9, 1919, p. 30.
35 Douglas Morgan, *Adventism and the American Republic* (Knoxville: University of Tennessee Press, 2001), p. 63.
36 Larry White, “The Return of the Thief: The Repeal of Prohibition and the Adventist Response,” *Adventist Heritage* 5, no. 2, (1978): 36.
37 In *Advent Review and Sabbath Herald*, Dec. 29, 1938, p. 57.
38 Richard Schwarz, *Light Bearers* (Boise, Idaho: Pacific Press, 1995), pp. 489, 490.
39 Morgan, p. 207.
40 Larry White, p. 37.
41 *Ibid.*, pp. 37, 38.
42 *Ibid.*, p. 44.
43 In *Advent Review and Sabbath Herald*, Dec. 29, 1938, p. 58.
44 Larry White, p. 40.
45 Schwarz, pp. 491, 492.
46 Rachel E. Whitaker, “Adventist Activists: Seventh-day Adventists in the Fight for National Alcohol Prohibition, 1913-1920” (Honors project, Andrews University, 1997), pp. 10, 11.

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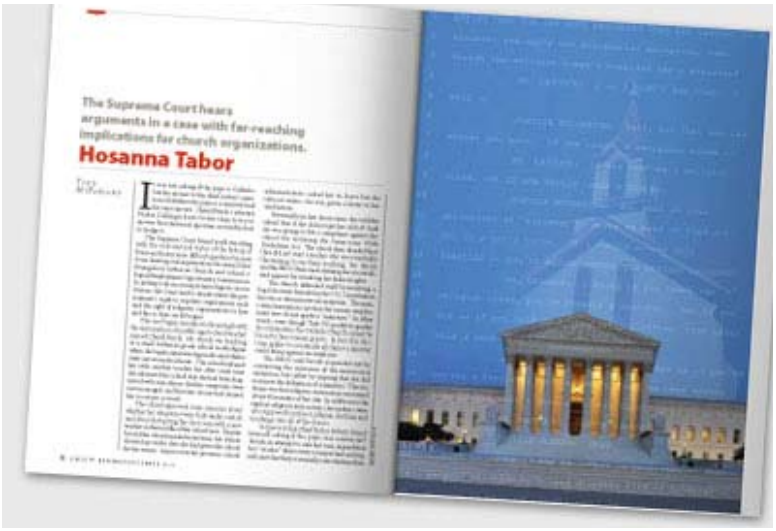
Hosanna Tabor

The Supreme Court Hears Arguments In A Case With Far-Reaching Implications For Church Organizations

BY: TODD M. MCFARLAND



It was not asking if the pope is Catholic, but the answer to the chief justice's question of whether the pope is a minister had the same answer. Cheryl Perich's attorney Walter Dellinger knew better than to try to answer this rhetorical question, instead he had to dodge it.

The Supreme Court found itself wrestling with the ecclesiastical status of the bishop of Rome and many more difficult questions because it was hearing oral argument in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*. In perhaps the most important religion case in 20 years, the Court had to decide where the government's right to regulate employment ends and the right of religious organizations to hire and fire as they see fit begins.

The case began inauspiciously enough with the termination of middle-aged schoolsteacher named Cheryl Perich. Ms. Perich was teaching at a small Lutheran grade school in Michigan when she began experiencing medical problems went out on medical leave. The school replaced her with another teacher but after some time she informed the school that she had been diagnosed with narcolepsy, that her symptoms were now managed, and that her doctor had cleared her to return to work.

The school expressed some concerns about whether her symptoms were truly under control and about disrupting the classroom with a new teacher in the middle of the school year. Despite be told the school needed more time, Ms. Perich showed up on the date she had given the school for her return. Surprised at her presence, school administrators asked her to leave but she refused unless she was given a letter to her satisfaction.

Eventually in her discussions she told the school that if she did not get her old job back she was going to file a complaint against the school for violating the Americans With Disabilities Act. The school then decided that they did not want a teacher who was essentially threatening to sue them teaching. Ms. Perich and the EEOC then sued claiming she was retaliated against for invoking her federal rights.

The church defended itself by invoking a legal doctrine founded in the U.S. Constitution known as the ministerial exception. The ministerial exception says that the various employment laws do not apply to "ministers." In other words, even though Title VII prohibits gender discrimination, the Catholic Church cannot be forced to hire women priests. In fact, this doctrine applies to essentially all claims a minister could bring against an employer.

The EEOC and Perich responded not by contesting the existence of the ministerial exception, but rather by arguing that she did not meet the definition of a minister. The evidence was that religious instruction consumed about 45 minutes of her day. In addition to the explicit religious instruction, the teachers were also supposed to infuse Lutheran doctrine and teachings into all of the classes.

Justices of the U.S. Supreme Court.

So how is it that Chief Justice Roberts found himself asking if the pope was a minister? Perich, in attempt to save her case, argued that her "secular" duties were so important and significant that they essentially overwhelmed her religious duties and therefore she was not a minister. It was not clear how many, if any, of the justices bought this argument.

It would not be accurate to say that this is an easy case for either side. The outside boundaries were more or less agreed on by both sides, but where the line should be drawn was hotly disputed. The government and Perich agreed that the government could not force the Catholic Church to ordain and hire women priests. For Hosanna-Tabor it was important to limit the ministerial exception to employment laws. Hanging over the argument was the specter of this doctrine being expanded to other areas, such as torts, i.e., child sex abuse cases.

This line drawing was the fundamental problem both sides face. The reality is government does have some say in church hiring decisions. In the starkest example for instance recently Catholic bishops have been criminally charged for keeping priests who abused children in pastoral

roles. While on its face it seems remarkable that a church leader could be jailed for decisions regarding who serves as a priest, no one wanted to defend the right of the church leader to keep a known abuser in a church.

But the government had its own line drawing problem as well. Many religious entities have policies regarding who can serve as clergy that in the secular world are prohibited. The most well known, of course, is the male-only clergy within the Catholic Church. Just like Hosanna-Tabor did not want to be seen as advocating the right to let child sexual abuse continue, the government did not want to be arguing that it could force the Catholic Church to hire women priests.

When Hosanna-Tabor's lawyer, Douglas Laycock, was asked about the exception extending beyond the employment realm, he was able to draw a bright line—this doctrine applies only in the employment law context. The government did not have such a clear-cut way to limit the government's intrusion. As a result it was forced to rely on two other arguments, namely, that this is a retaliation claim and that this is a school that provides services to the public.

Assistant to the Solicitor General Leondra Kruger argued that while the government's interest in eradicating discrimination was not sufficient to overcome the Catholic Church's right to choose priests based on gender, it had a greater interest in insuring access to the courts. Because this is a retaliation case, Krueger tried to argue that this was about the ability of Ms. Perich to report illegal activity to a governmental agency, the EEOC.

Perhaps realizing this was not the strongest argument, she also argued that the fact that this is a school gives the state more power and less protection to the religious entity. In essence, the government's position is that schools inherently get less protection even when dealing a religion teacher such as Ms. Perich.
This argument was met with considerable skepticism by Justices Scalia and Roberts. They questioned the government about whether this was simply a judgment call about how important the particular belief at issue was to the Lutheran Church. Their concern was that the government decided that the Catholic belief on a male priesthood was older and more important, and deserved more protection than the Lutheran belief of handling disputes internally. The government of course denied making this judgment, but how convincing the argument was remains to be seen.

However, this line of reasoning was warmly received compared to the government's position on where the ministerial exception comes from. For non lawyers it is often enough to call something "unconstitutional" and be satisfied that somewhere in the document the appropriate language exists. Supreme Court justices of course tend to want something more specific.

When pressed to say what part of the Constitution the ministerial exception is based on Ms. Krueger denied that it is found within the either the free exercise or establishment clauses of the First Amendment. Rather, it said it came from the freedom of association right found in the First Amendment.

Justice Scalia described this position as "extraordinary" and Justice Kagan as "amazing." The government's position puts religious entities in the same place as a labor union or a Rotary club. While these entities do enjoy some protection, this reasoning essentially writes out of the U.S. Constitution the free exercise and establishment clauses in employment and substantially weakens the protections for religious entities. The implications of the Obama administration's decision on this issue go far beyond this case.

Regardless of where the ministerial exception can be found in the Constitution, both the government and Perich wanted the Court to adopt a standard that would allow cases to go forward if the court would not have to decide disputed matters of religious doctrine. This is a naive view of how employment cases are litigated. Almost every employment case is a "pretext" case. The employee claims she was terminated because of some protected characteristic; the employer says it was for some legitimate purpose. The courts then decide who is telling the truth.

In the secular context this may be straightforward. But in the religious context almost every aspect of a minister's job is going to touch on a religious issue. Was the pastor meeting the needs of the congregation, were the homilies engaging? It is hard to see a case in which where some religious aspect is not second-guessed.
The fundamental reason this case is so hard is that two rights we hold as a nation are in stark conflict. The uncomfortable truth is that all civil rights legislation presents a conflict of rights. If the government wants to prohibit an employer from discriminating on the basis of race, it is in fact infringing on that private entity's right to spend its money how it sees fit. In effect, one entity loses a right (the employer to hire as it wants), and other group gains a right (the right to not to be discriminated against based on race).

As a nation we long ago made the inherent value judgments with regard to secular employers. No one in mainstream society argues that they should have the right to discriminate any more based on race. That battle is over, and society is better off for all as a result.

But we have not decided where we are on the issue of religion. Government has two strongly competing interests. Religious freedom is a bedrock principal enshrined in our Constitution. But, protecting workers from discrimination is crucial to achieving a more just and equitable society.

What the Court should recognize and what the government and Cheryl Perich failed to realize is that this is a false choice. A robust ministerial exception does not mean a return to 1950s (or 1850s) America. Religious institutions are not the enemies of liberty and justice. They are not seeking to deny the rights of Americans. What they are seeking is the right to worship as they see fit. Will they make mistakes? Yes. There is little question that given the number of religious entities in America that some will not always live up to their ideals.

However, this does not mean the answer is government intrusion. Religious institutions are voluntary organizations. Any church, synagogue, or house of worship that does not live up to its own teachings will eventually find itself in trouble with its own congregants. Having the federal government impose its view on a religious body is simply not the answer. We routinely accept that certain injustices will occur in order to further other goals; this is one of those cases.

Our founders recognized religions special place in society and history. It is not an accident that the first freedom of the U.S. Constitution is religion. A robust ministerial exception benefits all by keeping the government out of religion.

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Dissent, Dismissal, And Discernment

Justice Elena Kagan And The Constitution's Guarantee Of Religious Neutrality

BY: DAVID A. PENDLETON

Suppose a state desires to reward Jews—by, say,$500 per year—for their religious devotion. Should the nature of taxpayers' concern vary if the state allows Jews to claim the aid on their tax returns, in lieu of receiving an annual stipend?

Suppose the state of Hawaii, in its desire to preserve the ancient native Hawaiian religion, granted families sending their children to such schools a waiver of their income taxes for so long as their children were enrolled in qualified native Hawaiian religion schools. No such tax benefits were conferred to families with children enrolled in Buddhist or Christian parochial schools. Might taxpayers have any grievances about governmental subsidies for religious activities and the consequences for the public treasury?

Or assume a state wishes to subsidize the ownership of crucifixes. It could purchase the religious symbols in bulk and distribute them to all takers. Or it could mail a reimbursement check to those individuals who buy their own and submit a receipt for the purchase. Or it could authorize those persons to claim a tax credit equal to the price they paid. Now, really—do taxpayers have less reason to complain if the state selects the last of these three options? The Court today says they do, but that is wrong.

Justice Elena Kagan posed the first and third hypothetical situations in her dissenting opinion in a recent U. S. Supreme Court case.

We know very little about Justice Kagan, other than what appears in her stellar résumé, and constitutional law scholar Erwin Chemerinsky reminded us why: "Kagan offered President Obama a seemingly easy confirmation process. She has little paper trail; she was never a judge and has no judicial opinions to scrutinize and has written relatively few law review articles."[1]

As to her specific views on religious liberty, other than what was briefly discussed during her Senate confirmation hearing, we also know very little—at least until now.

With the recent *Arizona Christian School Tuition Organization v. Winn*[2] case Justice Kagan was given her first opportunity since her confirmation on August 7, 2010, to comment on religious liberty.

On April 4, 2011, Justice Anthony Kennedy delivered the opinion of the Court (in which Chief Justice Roberts and Justices Scalia, Thomas, and Alito joined), dismissing the case for want of standing. Justice Kagan (joined by Justices Ginsburg, Breyer, and Sotomayor) dissented, and her arguments against this tax credit provide an opportunity to consider her understanding of the Constitution's guarantee of religious neutrality.

Just the Facts, Ma'am

The state of Arizona enacted a law giving state tax credits to taxpayers for contributions to qualified secular and religious school tuition organizations.3 Some taxpayers filed suit, claiming the law violated the U.S. Constitution's establishment clause ("Congress shall make no law respecting an establishment of religion"), which clause was held applicable to the states.[4]

The Supreme Court had to determine two questions. First, did the taxpayers have standing[5] to challenge the tax credit law? Second, if they had standing, whether the law had the purpose or effect of unconstitutionally advancing religion. Answering the first question regarding standing in the negative, the Court never reached the second question. That is, the Court did not find Arizona's tax credit constitutional, only that taxpayers had no right ("standing") to question its constitutionality in federal court.

Article Ill of the U.S. Constitution grants federal courts the power to hear "cases and controversies." Genuine harm must be shown—that is, injury in fact, causation, and redressability—not simply the "generalized interest of all citizens" in a particular case.

Exceptions and Extractions

This rule against generalized taxpayer standing does have an exception enunciated in *Flast v. Cohen*,[6] a near-unanimous opinion by Chief

Justice Earl Warren involving a congressional expenditure. *Flast* held that a taxpayer had standing consistent with Article III to bring suit to prevent an unconstitutional expenditure.
Justice Kennedy's majority opinion determined that the Arizona taxpayers failed to meet the requirements for the *Flast* exception. When the government appropriates tax revenues for religious activity, then under the exception in Flast a taxpayer has standing to bring suit under the establishment clause.

The majority saw this case as different because it involved a tax credit, not a tax. Decisions of taxpayers regarding their own funds determined where the money went. According to the Court, because the government had not extracted the money from the taxpayer in the first place, no *Flast* exception would be available for bringing a claim.

The Court conceded it had previously reached the merits in establishment clause cases involving tax expenditures. Indeed, it had previously decided this same Winn case in an earlier iteration. But those cases did not expressly discuss standing.

The upshot: the Arizona tax credit was not tantamount to a religious tax, as nothing had been actually extracted from the taxpayer, and so no injury could be alleged. The challengers lacked standing, they failed to fall within the *Flast* exception, and the case was "dismissed for want of jurisdiction."

Justice Elena Kagan talks with President Barack Obama and Chief Justice John Roberts before Kagan's Investiture Ceremony at the Supreme Court, Oct. 1, 2010.

A Split Decision
The divided Court, which split 5-4 in disposing of the appeal, arguably exemplified a similarly divided public, whose fault line did not follow the expected secular versus religious demarcation. Nor did the split occur between religions. Christian and Jewish groups, and others religiously inclined, were to be found on both sides of the issue. Some saw the credit as consistent with free exercise; others deemed the credit a breach of the antiestablishment principle. Reasonable minds can differ, especially when they hire accomplished attorneys.[7]

Some have speculated that Justice Kennedy, habitually the swing vote on the Court since Justice O'Connor's retirement, sought the Aristotelian Golden Mean. It's not easy to get into a man's head without tousling his coiffure, as it were. But surely Justice Kennedy had colleagues to his right hankering for the outright overruling of *Flast*, which Justice Scalia considered anomalous, misguided, and worthy of repudiation. A cursory review of the numerous amicus curiae briefs filed in this case indicates that Justice Scalia was not alone in his thinking.

At the same time, Justice Kennedy may have perceived from his other colleagues a comparable tug to the left—a jurist's version of Newton's third law (for every action there is always an equal and opposite reaction). Reckoning a middle passage between the polarized positions, as Odysseus he attempted to sail between the Scylla of overruling *Flast* and the Charybdis of "extending" *Flast*. His opinion allowed *Flast* to be preserved, at least for purposes of challenging direct appropriations.

But as an attorney friend of mine quipped, Kennedy saved *Flast* only to "divulge that the key was under the doormat!"

Treasure for the Taking
Arizona's own accounting showed the credit diverted nearly $350 million in tax revenue. Justice Kagan explained that when government calculated losses to its coffers attributable to tax law, such losses were often dubbed "tax expenditures." It mattered not whether the revenue loss was occasioned by a tax exclusion, exemption, deduction, credit, preferential rate, or deferral of tax liability. If the tax provision caused a revenue loss, it was a "tax expenditure."

Whatever vehicle for tax expenditures the tax system employed, it had to be accounted for in the budget. The bookkeeper's complaint that "revenue loss is revenue loss" is a tautology, but it's also true. And in a footnote to Justice Kagan's dissenting opinion we learn that the National Commission on Fiscal Responsibility and Reform describes such tax subsidies, breaks, and loopholes as "just spending by another name."

Given Shakespeare's oft-quoted "rose by any other name would smell as sweet," Justice Kagan called attention to the majority's "novel distinction" between appropriations and tax expenditures, one never seen before when considering standing. For the first time, the Court found the distinction not only legally significant but dispositive as to taxpayer standing. Hereafter, a taxpayer might have standing to challenge an appropriation, but not a tax credit, which "financed" religion.

"A Distinction in Search of a Difference"
The New York *Times* recently wrote that "Justice Elena Kagan, judging by her simultaneously conversational and caustic debut dissent last month, is also a formidable writer."[8] The *Times* was right. Her fiery prose illumined and heated up the discussion, taking to task the majority's

rhetorical sleight-of-hand expenditure evasions.

"[It] has as little basis in principle as it has in our precedent," she contended. The clear implication was that the determinative question should not be how but whether religion was subsidized by the government. "Taxpayers who oppose state aid of religion have equal reason to protest whether that aid flows from the one form of subsidy or the other," she asserted. "Either way, the government has financed the religious activity. And so either way, taxpayers should be able to challenge the subsidy."

Lowering the Wall

She warned that Justice Kennedy's majority's opinion shielded government financing of religion against judicial review by guiding governments to go by "just one simple rule—subsidize through the tax system—to preclude taxpayer challenges to state funding of religion." The lesson: circuitous subsidies skirt scrutiny.

While her dissent was measured and dignified, its subtext was not overly subtle. Justice Kennedy and his acolytes were averting appraisal of government funding for religion, thus violating the Constitution's guarantee of religious neutrality. Because enforcement requires a case to be brought, shrinking the pool of potential plaintiffs to challenge government subsidies of religion meant, in effect, lowering the proverbial Jeffersonian wall of separation between church and state. Legal scholar Ronald Dworkin doffed his derby to Justice Kagan's "devastating" dissent, contrasting it sharply with that of the "embarrassing" majority opinion led astray by a "bad" argument.[9]

As Justice Kagan and the dissenting justices saw it, the Arizona taxpayers demonstrated standing.[10] In fact, the majority admitted having reached the merits in previous establishment clause cases involving tax expenditures.[11]

End Runs and Endgames

Justice Kagan pointed out the Kafkaesque circumstance that if the government handed cash to religious schools, taxpayers would have had standing, but because Arizona utilized a more sophisticated tax credit, the same taxpayer would not have standing. In the endgame, the cost to the state coffers was identical, regardless of how the checkmate was accomplished. Potentially unconstitutional expenditures were effectively ensconced beyond the court's ken.

This result was a classic case of form prevailing over substance, she opined, and "the casualty is a historic and vital method of enforcing the Constitution's guarantee of religious neutrality." She wouldn't touch a colleague's coif but neither would she shrink from pointing out a cowlick in one's reasoning.

Whatever one's inclinations as to the merits of this case, we the people of the United States will never know whether such a tax system (scheme?) is constitutional. The only "check and balance," then, is the will of the Arizona legislature, which will remain free to divert hundreds of millions of tax dollars through tax expenditures to religious schools.

In conclusion, Justice Kagan has shown herself in full possession of both an analytical and discerning mind and an eloquent and persuasive pen. Her dissenting opinion reveals a jurist thoroughly committed to following case precedent, mindful that legal protections are most secure when access to the courts is not thwarted, and, while this case was not decided on the merits, it revealed a justice cognizant that a robust establishment clause is indispensable to the Constitution's guarantee of religious neutrality. No doubt Justice Kagan will continue to contribute to our understanding of the Constitution for years to come.

David A. Pendleton writes from Honolulu, Hawaii.

1 Erwin Chemerinsky, T*he Conservative Assault on the Constitution* (New York: Simon and Schuster, 2010), p. 28.
2 Decided April 4, 2011. **www.supremecourt.gov/opinions/10pdf/09-987.pdf**
3 Ariz. Rev. Stat. Ann. §43–1089.
4 The establishment clause setting forth the antiestablishment principle, as described by Harvard constitutional law scholar Laurence H. Tribe, is the first of several pronouncements in the First Amendment to the United States Constitution. Specifically, it provides that "Congress shall make no law respecting an establishment of religion. . . ." Paired with the free exercise clause ("Congress shall make no law . . . prohibiting the free exercise thereof . . . "), together these two clauses comprise what are often called the "religion clauses" of the Constitution. *The U.S. Supreme Court in Everson v. Board of Education*, 330 U.S. 1 (1947), applied the religion clauses of the Bill of Rights to states.
5 The case was technically about "standing," that is, whether there was a legal right to initiate a lawsuit because the taxpayer was affected by the matter and it presented a case or controversy resolvable by legal action. Procedurally, the U.S. Supreme Court reversed the U.S. court of appeals' determination that the taxpayers had standing. Earlier the U.S. district court had dismissed the case, concluding that the taxpayers lacked standing to bring the suit.
6 392 U.S. 83 (1968); **http://supreme.justia.com/us/392/83/case.html**.
7 Perhaps the divided Court was foreseeable, as the matter proved contentious from its inception. Even, or perhaps especially, groups deeply committed to religious liberty fractured over the issue. On the one hand, Becket Fund for Religious Liberty, Rutherford Institute, and even President Obama's solicitor general argued that the taxpayers had no standing to challenge the tax credit in the first place. On the other hand, American Catholic bishops, Orthodox Jewish rabbis, and the Christian Legal Society argued that the taxpayers had standing and that the tax credit passed constitutional muster. And finally, Americans United for Separation of Church and State, the American Jewish Committee, and the Anti-Defamation League argued that the challengers had standing, but that the tax credit was unconstitutional.
8 **www.nytimes.com/2011/05/21/us/politics/21court.html?_r=1**.
9 **www.nybooks.com/blogs/nyrblog/2011/apr/26/bad-arguments-roberts-court-religious-schools/**.
10 Justice Kagan opined that the exception in *Flast* was met when the taxpayers challenging the Arizona tax credit alleged that it was enacted (1) pursuant to the state constitution's taxing and spending clause in (2) violation of the U.S. Constitution's establishment clause. That allegation, she opined, satisfied both *Flast* conditions. Plaintiffs had a "stake as taxpayers" and should have been permitted to proceed to have the courts review Arizona's tax expenditure aid to religious schools.
11 Justice Kagan identified five cases in which the Supreme Court decided on the merits cases brought by taxpayers alleging that tax expenditures subsidized religion. While the justices had varying opinions as to the constitutionality of the tax expenditure, the Court in each case unanimously concluded that the taxpayer had standing to bring the claim: *Walz v. Tax Commission of City of New York*, 397 U. S. 664 (1970) (church property tax exemption); *Hunt v. McNair*, 413 U. S. 734 (1973) (tax-exempt bonds available to churches); *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U. S. 756 (1973) (tax deduction for religious school tuition); *Mueller v. Allen*, 463 U.S. 388 (1983) (state tax deduction religious schools), and *Winn I*, 542 U.S., at 112 (tax credit available to religious school tuition organizations). Neither the Arizona Department of Revenue nor

the dissenting judges of the court of appeals had questioned the plaintiffs' standing to file suit.

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The Christian Persecutory Impulse: Reformation, Tolerance, And Persecution

BY: DAVID J. B. TRIM

Editors' note: This is the fifth and final article in a series on the history of Christian persecution up to the end of the seventeenth century. The first, second, third, and fourth articles can be found here and here, here and here.

In considering religious toleration, it is helpful to bear in mind that it is not as generous and all-encompassing as religious freedom. The very word is noteworthy. As one distinguished historian of the French Reformation observes: "In English, tolerance is a purely pragmatic attitude. . . . One tolerates a necessary evil that cannot be avoided. This was precisely the meaning *tolérer* had in the late sixteenth century."[1] As we saw in the previous article, the other term used in sixteenth-century France when proposing toleration was that Protestants be "suffered" to practice their faith.

"Toleration" presupposes that there is a majority religion whose adherents may allow (even if reluctantly) other points of view to be expressed, perhaps even to flourish, but leave no doubt that there *is* a "right" way to believe and worship. This is different from a political and social framework in which all religions and sects are treated as equal—their members may assert their respective grasp of truth or closeness to the divine to be unique or supreme, but those views are not endorsed by the society or polity as a whole.

Toleration was rarely accorded because of ethical or moral conviction that it was Christlike. When it was conceded, it usually was very restrictive in terms of what was tolerated: liberty of *conscience* was usually all that could be permitted at first. Now, to be sure, as the historian Nicola Sutherland observes, this was not a negligible concession: "While belief is beyond external control, freedom of conscience was a valuable liberty, since dissenters were liable to betray themselves."[2] Nevertheless, if the freedom to believe is not accompanied by the freedom to worship, and to carry out the wider practices that are characteristic of virtually all religions, the believer is really given very little liberty at all. Because the nature of most religions is that they have a public manifestation, when religion is legally restricted to a purely domestic and private practice it is really still being persecuted.

Yet these were not the only limits on toleration. It generally was intended to be temporary; was often granted out of expediency, when persecution or war had failed to destroy a minority; or out of revulsion at violence, but with no presumption that it would endure; and was additionally or alternatively conceded in the expectation that dialogue would allow for more effective conversion than warfare.

This is not, to be sure, the whole story. There were places in the early-modern world where "the fullest toleration in the exercise of religion" was granted, permanently and on the grounds of principle.[3] Yet even when this was the case, there is a considerable difference between the toleration granted to minority groups by a privileged faith (such as by the Catholic Church in early-modern France, the Reformed Church in the seventeenth-century Dutch Republic, and the late-seventeenth-century Church of England) and the genuine freedom of religion that exists in the Netherlands and England today but which arguably first came into being in the United States of America in the early nineteenth century. "Toleration" was rarely or never (at least until well into the eighteenth century) "liberty" as it has come to be understood by modern political theorists.

In considering toleration, however, it is worthwhile observing that in addition to the limited concept of religious toleration, there is a broader "philosophical concept of toleration" that expresses "the more positive attitude of permitting difference as a source of benefit for all."[4] In the seventeenth century—and indeed, more recently—even those who were tolerant in the first sense very often were not tolerant in the second.

The Persecutory Impulse

Persecutory attitudes certainly persisted and were held by otherwise liberal, progressive men. Even opponents of arbitrary, absolutist civil government might envisage religious toleration as fairly circumscribed. The Spanish writer Diego de Saavedra Fajardo (1584-1648), like his

kinsman Miguel de Cervantes, queried traditional hierarchical social values and was a proponent of peace in an age when war was generally seen as the ultimate aristocratic virtue. Nevertheless, he had no doubt that violence "was often necessary in defense of true religion" and that "the cross of crusade sanctioned all" actions carried out in its name.[5] In the 1640s, in the English parliament that waged a civil war against the crown, overthrew the monarchy, and created a republic, the term *toleration* was "consistently used . . . pejoratively."[6]

So influential was the paradigm of unity enforced by persecution that even some of the first Christian skeptics still accepted that religious uniformity was essential. The Dutch academic Justus Lipsius, "a leading skeptic and irenicist in post-Reformation Europe," was "a firm supporter of religious persecution," on the traditional grounds that "religious pluriformity would lead to civil strife and encourage religious fanatics who in turn would destabilize society, something which had to be prevented at all costs." The most Lipsius would concede was that "if repression turned out to be politically too costly" (as was the case in several European countries, including France and the Netherlands), then, and only then, should "toleration be contemplated." So willing was he to contemplate persecution that, in his classic *Six Books of Politics or Civil Doctrine* (1589, first English edition 1594), as the scholar Ole Peter Grell points out, Lipsius chillingly urged that "religious dissenters . . . be shown no clemency, but [instead] be burned, since it was better to sacrifice one member rather than risk the collapse of the whole commonwealth."[7]

In the seventeenth century the great political theorist Thomas Hobbes vigorously argued "that a politician was preferable to a fanatic," so that the religious beliefs of the citizens of a polity could be subordinated to the needs of the polity as a whole. Hobbes insisted on a "distinction between public and private religion: outwardly, at least, the believer had to conform to the religion of the ruler."[8]

Roger Williams

Roger Williams and Repression

Roger Williams believed that religious liberty (or "soul liberty," as he termed it) was an absolute right, rather than a concession.[9] He argued that the state of men and women's souls were a matter only for God, and that, since salvation was a product of an innately personal transaction—the acceptance by the individual of Christ's sacrifice and then the transmission of divine grace to that individual—what people believed and how they practiced their faith was intrinsically beyond the scope of state power. Unlike many of his contemporaries, he urged that liberty of "*consciences* and *worships* [should] be granted to all men in all *nations* and *countries*"—even to those who were "*paganish*, *Jewish*, *Turkish*, or *antichristian*" (meaning, by the last, Roman Catholics).[10]

In his willingness to allow a right of public worship not only to different types of Protestants but also to Roman Catholics, Jews, Muslims, and pagans, Williams was extremely unusual. Many tolerationists were like John Foxe, who could tolerate groups he could identify with even though he disagreed with them, but not groups who were without his sympathies. Williams demanded toleration even for groups whose views he detested, such as Catholics. Yet in our admiration for his open-mindedness in an era of oppression, we have perhaps focused too much on his "commitment to the principle of religious toleration," and thereby, as an eminent historian of Puritanism suggests, "domesticated Williams into a gentle liberalism."[11]

Williams was clear, however, that "a false religion . . . will not hurt the *church* no more than *weeds* in the wilderness hurt the enclosed *garden*."[12] However, Williams also had no doubt that the weeds would be destroyed. His polemic against the "bloody tenet of persecution" also eagerly anticipates the ultimate harvest, when "the angels, with their sharp and cutting sickles of eternal vengeance," would scythe down the followers of the antichrist "and bundle them up for the everlasting burnings."[13]

In addition, Williams did not reject all forms of religious repression. For Williams the very basis for separation of church and state was also a basis for not conceding complete liberty to Roman Catholics. Williams, like many other Protestants, believed that no Catholic could ever be a good citizen of a Protestant state on the (spurious) grounds that their primary allegiance would always be to a foreign sovereign (the pope), and therefore held that even though the state should allow Catholics to practice their religion freely in private, it could also require them to wear distinctive clothing and prohibit them from bearing arms. Yet imposing social and civic sanctions on a group meant that true religious freedom was being denied.

John Locke and Intolerance

Locke, too, denied that any group should be persecuted on account of their religious beliefs—but accepted that they could be persecuted on civil or social grounds. He too does not seem to have recognized that this still amounted to religious persecution.

Locke's landmark *Epistola de Tolerantia* (1689), better known as *A Letter Concerning Toleration*, is generally agreed by scholars of most shades of opinion to be the "classic statement" of the principles of religious toleration. Yet in it he still made exceptions to the rule of toleration. To be sure, he did so nominally on secular grounds, arguing that civil authorities ought generally to tolerate religious beliefs and practices, but were under no obligation to tolerate "opinions contrary to human society, or to those moral rules which are necessary to the

preservation of civil society."14 But to Locke, this meant that atheists did not deserve to be tolerated. Similarly, he argued that toleration ought not be extended to those who "ipso facto deliver themselves up to the protection and service of another prince."15 This could conceivably have perhaps applied to Muslims, since the title of Caliph had been assumed by the Ottoman sultans, but in fact it is very clear from the context that Locke means Roman Catholics.[16] And Locke simply assumed that neither atheists nor "papists" could be good citizens: the former because people who disbelieved eternal punishment and reward would not keep oaths or contracts; the latter because their primary allegiance would be to the pope, not their own state. However, the pope's place as head of the church was an integral part of Catholicism, and so the alleged distinction that sanctions were being imposed for secular reasons, rather than religious ones, was in reality specious. Furthermore, recent English and British history would have shown Locke that English Catholics did not necessarily obey the pope ahead of the British sovereign—they were capable of distinguishing between the pope's requirements as head of the Catholic Church and his desires as an Italian prince. Locke was simply motivated by his prejudice, as Williams had been.

John Locke

We can admire Locke's arguments for toleration and the fact that he ruled out, on a priori grounds, the very possibility of state intervention in religious matters, and thus drew "a demarcation line between church and state," whose contours were adopted and then developed further by James Madison, among others, in adumbrating the concept of separation of church and state.[17] However, his inability to grasp that Roman Catholics and atheists could be good citizens stemmed from prejudice, not reason. He was himself guilty of that irrationality regarding heterodox religious opinion that he condemned in others as "monstrous."[18]

Persecution and Prejudice

We are all creatures of our own time. It is easy for historians to criticize thinkers who transcended their times in some ways for not doing so in other ways. My point here is not that we should dismiss the significance of Williams and Locke as important advocates of toleration and critics of persecution. They played a key role in concluding the paradigm shift away from persecution to toleration. However, I do want to highlight how alluring the Christian persecutory impulse is; even those who think they have overcome it have very often still succumbed to it to some extent.

Even tolerationists could be intolerant, because it was universally assumed that there must be *some* group(s) so alien that persecuting them was justified. Many Protestant tolerationists drew their line at Roman Catholics, Quakers, and/or anti-Trinitarians. Most Roman Catholics agreed on the last group. Many Catholics and Protestants agreed about Jews and Muslims. Almost all Christians agreed on atheists.

For a religious freedom paradigm to endure and not instead revert to a tolerationist paradigm, people must not be prejudged solely on the basis of their religion. In every faith or church there are people who are ethical and unethical, moral and immoral, generous and selfish, noble and ignoble, peaceful and violent, respectful and bigoted—and tolerant and intolerant.

The Reformation and Toleration

A little more than a quarter of a century ago one of the leading historians of the sixteenth century argued that whereas Protestant attitudes "did not preclude genuine toleration for varieties of the faith . . . the attitude of Catholics did."[19] Few scholars today would agree, and we saw in the penultimate article of this series that, at least among statesmen, as opposed to theologians, the most passionate sixteenth-century critics of persecution were Roman Catholic. Nevertheless, while authorities of *all* confessions tended to be predisposed against confessional plurality and in favor of persecution, even so, as the editors of one important collective study of tolerance and intolerance conclude, there is evidence that "Protestant authorities *were more likely* to grant freedom of belief to individuals than were their Catholic counterparts."[20]

While this remains debated by scholars, what does seem to be clear is that the Reformation was important for the history of religious liberty: not by immediately effecting a sea change in opinion on confessional diversity, persecution, and the place of the state in religious affairs; nor by producing, in the Reformation era, genuinely tolerant societies or polities; but rather "in its questioning of authority and blind obedience." To be sure, "its insistence on the right of individuals to exercise private judgment" was not realized in its own time.[21] But the principle was an immensely important one; a new study even identifies the Reformation concept of an individual right to exercise judgment in religious matters as the real foundation of the separation of church and state in the United States of America.[22]

Even if that were not the case, however, and even though it meant different things to those who initially propounded it than to subsequent generations, the concept was a vitally significant precedent. Having once been envisioned, it was grander than those who first advocated it could visualize, but its inner logic was such that some of those who followed would naturally push toward its logical extent and occupy the conceptual terrain that its first advocates had hoped would remain terra incognita. Yet that first visionary conceptual step, which opened up the intellectual territory, was vital.

One of the most distinguished historians of seventeenth-century Puritanism suggests that although the "pursuit of freedom" was not what inspired "revolutionary Puritans," it was "an unintended consequence of [their] activities."[23] In a similar way, the Protestant Reformation was neither a tolerationist nor a religious-libertarian movement—but without it, religious liberty as we understand it today would not exist.

Religious Belief and Toleration

Religious liberty is the fruit not of the skepticism that emerged in the seventeenth century, but of zealous, fervent Christians. Skeptics, because they believed in little, often found it easy nominally to conform themselves to official religion; and many, like Lipsius, argued that others ought to be forced to do likewise, for the general good. Skeptics often shared the ancient presumption that a society divided in religious could not flourish. As the historian John Coffey writes: "In the eighteenth century . . . . it was perfectly possible to inhabit the brave new world of printing, science, urbanization, religious pluralism, commercial prosperity, and global exploration, and still remain wedded to traditional ideals of religious uniformity and coercion."[24]

It was fervently religious tolerationists who were not willing to conform nominally, and who, because of their own firm convictions, could see that whatever the fate of individuals, it was improbable that a whole movement characterized by inner faith could be destroyed by external force. They accordingly "insisted that the enforcement of uniformity was bound to fail, and would lead only to rivers of blood."[25] By the end of the seventeenth century Christians typically could no longer contemplate that prospect with equanimity.

Today persecution seems so hateful that it is easy to assume that it derived from hate—it seems so manifestly wrong and unchristian that it is easy to assume that the impulse to persecute comes only from what we perceive as the darker side of humanity. But if that were so, it would not be as common. Persecution often springs from our higher, rather than our baser, instincts—harassment of the heterodox does not always derive from the desire to hurt, but sometimes from the desire to help; religious liberty is often denied out of the finest of motives. In trying to counteract the seemingly perpetual human addition to persecution, therefore, we need to recognize that generosity of spirit and humane instincts are not enough, for they have been found among persecutors. Those who combine Christian faith with a commitment to complete religious freedom consistently need to be on guard against any desire to compel others, even for the best of motives.

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Afghanistan: The Land That Freedom Forgot

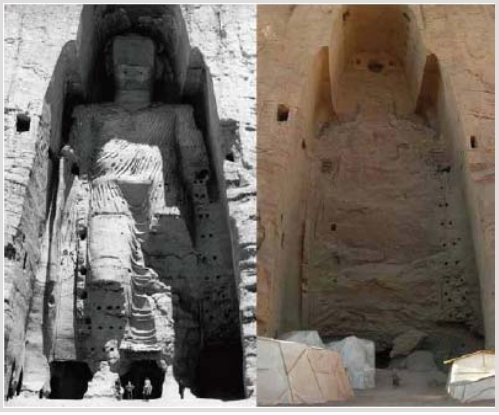
BY: MARTIN SURRIDGE

The sound and smell of motorcycles roaring down a street in Kandahar must have overwhelmed 16-year-old Atifa in the moments before the attack. Before she really knew what was happening, one of the cyclists approached Atifa, her sister Shamsia, and several other girls and threw acid onto their faces. Atifa's scarf melted into her hair, and 19-year-old Shamsia lost much of the skin on her face and the temporary use of her eyes, swollen shut from the inflammation.

This tragic story, as well as details of other acid attacks on Afghan school girls, was reported by CNN's Atia Abawi in January of 2009. Stunned observers around the world learned that the religious extremism in Afghanistan was more violent than many had thought possible. Despite the forty-fourth article of the Afghan constitution specifically promoting the education of women, many Islamists still hold the hard-line views of the Taliban, which from 1996 to 2001 banned even basic female education for being un-Islamic.

Afghanistan has been called a failed state—a nation incapable of governing itself adequately. It is a land marked by systematic corruption, widespread human-rights abuses, and continual violence. Landlocked in the mountains of central Asia and highly dependent on the export of heroin, Afghanistan has been gripped by war, civil unrest, and terrorism for nearly a century. Instead of improving, things there seem only to be getting worse.

Since regaining its independence from the British in 1919, Afghanistan has ousted kings and generals. The country endured and then resisted Soviet occupation in the 1980s, and suffered through a lengthy civil war. The civil war facilitated the rise of the Taliban, who gained power after storming the presidential palace in the capital city of Kabul in September 1996.



One of the two sixth-century standing Buddhas carved into the side of a cliff in the Bamiyan valley of central Afghanistan. The photo on the right was taken after the statue was destroyed by the Taliban in 2001.

Today Afghanistan is synonymous with oppressive conditions—both for the NATO troops enduring lengthy and dangerous tours of duty in a hostile, arid terrain and for its citizens, living in one of the least tolerant places on the planet. In the summer of 2001, at the height of their power, just months before al-Qaeda terrorists carried out the September 11 attacks that were planned in Afghanistan, the Taliban ordered non-Muslims to wear tags identifying their status as a religious minority and required Muslim and Hindu women to cover themselves with a veil. Additionally, those in power had destroyed several priceless, ancient Buddha statues in the central province of Bamiyan, as international organizations scrambled unsuccessfully to save them from such a fate.

The NATO troops have been fighting a costly and increasingly drawn-out war with the Taliban. But it is more than just set battles and insurgency violence against the military forces. The forces of Islamic extremism and religious tyranny remain and are felt throughout the country. Insurgents lit fires in classrooms, burning down school buildings, in blazes that were deliberately fueled with the papers and exercise books of children. A school caretaker's face was mutilated, Christian aid workers were murdered, and suicide bombs continued to devastate neighborhoods and kill not just American soldiers but Muslim civilians, too. The stench of religious intolerance —singed flesh, smoldering rubble, scorched textbooks—had become inescapable, burned into the very framework of the nation.

It had not always been this way. What we know now as the ravaged, failed state of Afghanistan, which tolerates only the intolerant, was once home to Amanullah Khan, king of the Emirate of Afghanistan from 1919 to 1929. Inspired by reforms in the West, specifically those instituted by Turkey's leader Kemal Ataturk, Amanullah modernized the nation by building roads, hospitals, and schools. He knew that in order to prosper in the rapidly modernizing world, women would be needed in the workforce, rather than be veiled and secluded, and he introduced measures to facilitate this. In 1953 General Mohammed Daud became the prime minister and also established a series of social reforms,

specifically abolishing the purdah, which secluded women from the public. For a short time, during the mid-twentieth century, Kabul was called "the Paris of central Asia," where, as Elisabeth Bumiller of the New York *Times* describes in an article from 2009, "there was relative stability and by the 1960s a brief era of modernity and democratic reform. Afghan women not only attended Kabul University, they did so in miniskirts. Visitors—tourists, hippies, Indians, Pakistanis, adventurers—were stunned by the beauty of the city's gardens and the snowcapped mountains that surround the capital."

One particularly telling photo from the article, taken by William Borders in 1977, is of two women in Kabul dressed in Western attire and has been referenced as evidence of a time when Afghans lived in a more progressive and freer nation. Yet in that same photo, off to the side and easy to miss, is another woman hidden behind her burqa, her face obscured by the fully opaque veil. Like the miniskirts in Kabul, the reforms and freedoms that Afghans enjoyed during the middle of the past century would not last. The changes implemented by Amanullah and Daud were resisted and led to their downfalls. What was once a more tolerant city with a community of several thousand Jews, Kabul now has a just single, unused, dilapidated synagogue and peculiarly only one Jewish Afghan, the synagogue caretaker Zablon Simintov, in a country of approximately 30 million people. As time progressed, Kabul was seriously and repeatedly damaged through a number of conflicts and lost both its tourist revenue and its Parisian moniker.

Today Afghanistan ranks among the least free countries on the planet. In 2009 UNICEF gave it the dubious distinction of being the world's worst country in which to be born. In Transparency International's 2010 Corruption Perceptions Index, Afghanistan was ranked 176 out of 178 countries, and only six countries were given a worse score in Foreign Policy's annual Failed State Index. And while the organization Freedom House accurately notes religious liberty is not as bad now as it was in 2001, when the Taliban were in total control, it declares that overall liberty in Afghanistan is still trending downward, especially because of the parliamentary elections in 2010, which were widely believed to be fraudulent.

The Afghan constitution, adopted in January of 2004 by Afghanistan's Grand Assembly, was intended to provide for freedom of religion and a greater sense of liberty for its citizens. Article II of the constitution declares that "followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law." This seemingly progressive statement almost gives hope that the legal system is indeed on the side of the persecuted. However, the first three articles also set up Afghanistan as an Islamic republic, where "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." In addition, no political party can be set up that might be "contrary to the beliefs and provisions of the sacred religion of Islam," and any member of the Afghan Supreme Court should either have a law degree or be educated "in Islamic jurisprudence." Article 62 limits the Afghan presidency to Muslims, and article 74 says that any government minister must swear an oath of office swearing to "support the provisions of the sacred religion of Islam." Perhaps most alarmingly, article 54 prohibits any private child-rearing activities or family "traditions contrary to the principles of sacred religion of Islam." The constitution of Afghanistan does not even allow for judicial review, which, given the propensity for Islamic jurisprudence among members of the Afghan Supreme Court, it is unlikely that any of these contradictory and intolerant measures would be struck down even if it did.

Afghanistan has approximately 3,000 Sikhs, 400 Baha'is, 100 Hindus, and as many as 8,000 Christians. But one has to wonder how any non-Muslim Afghans, estimated to be just less than 1 percent of the population, are truly "free to exercise their faith and perform their religious rites," as the national constitution so explicitly states, when they are barred from higher office, from forming any political party in opposition to state Islam, or from carrying out private ceremonies or household customs that may conflict with Islamic teachings. Additionally, Freedom House explains that any non-Muslim proselytizing is strongly discouraged and that "a 2007 court ruling found the minority Baha'i faith to be a form of blasphemy, jeopardizing the legal status of that community."

It might not come as a surprise that Afghanistan joins countries such as Somalia, Egypt, and Russia on the United States Commission on International Religious Freedom (USCIRF) Watch List for countries "which require close monitoring due to the nature and extent of violations of religious freedom engaged in or tolerated by the governments."

The 2010 International Religious Freedom Report (IRFR)—an annual report produced by the U.S. State Department, mandated by and presented to the U.S. Congress—said that Hindu and Sikh communities in Afghanistan face obstacles when trying to obtain land for cremation and discrimination when applying for public-sector employment. Harassment and intimidation during major celebrations is frequent, and media law prohibits the promotion of religions other than Islam. In another interesting contradiction, according to the IRFR, in legal scenarios in which "the constitution and penal code are silent, including conversion and blasphemy, courts relied on their interpretation of Islamic law; some interpretations of which conflict with the mandate to abide by the Universal Declaration of Human Rights, which the country has signed."

These predicaments cause understandable concern for the country's non-Muslim population. A lack of government response and protection for religious minorities is one of the IRFR's chief complaints against Hamid Karzai's administration in Kabul. Yet, despite the isolation and threats facing these communities, it is the religious oppression facing Afghanistan's Muslims that could be considered even more disturbing. Blasphemy and conversion from another religion are both religious crimes that apply only to the Sunni majority and the Shia minority, and both carry the potential of execution by stoning. The IRFR explains that even though in Afghanistan "the criminal code does not define apostasy as a crime, and the constitution forbids punishment for any crime not defined in the criminal code," "the penal code states that egregious crimes, including apostasy, would be punished in accordance with Hanafi religious jurisprudence. . . . Converting from Islam to another religion was considered an egregious crime, and therefore, fell under Islamic law." The report continues, stating that citizens who

had “converted from Islam had three days to recant their conversion or be subject to death by stoning, deprivation of all property and possessions, and the invalidation of their marriage.” Afghan Muslim blasphemers can expect very similar treatment, although, fortunately, penalties for these crimes have not been carried out in recent years by either national or local authorities.

When firebrand preacher Terry Jones burned a copy of the Koran earlier this year in Florida, he faced a barrage of condemnation. The backlash in Afghanistan was devastating. Foreign workers at a U.N. compound were killed in a series of violent protests. While the Koran burning may have been deplorable and inexcusable, the actions of Afghan protesters, who murdered innocent U.N. workers, are even worse.

Afghanistan may be a freer country now than it was under the Taliban. Its curiously worded constitution may theoretically allow for freedom of religion throughout the country. But Afghanistan should look to its more tolerant past if it hopes to create a safe, democratic, and prosperous future. The state of religious freedom in Afghanistan for now is deplorable.

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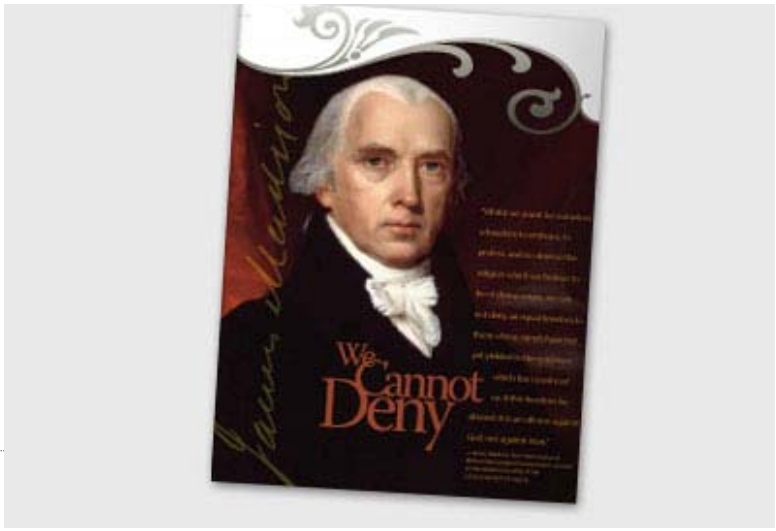
We Cannot Deny

BY: JAMES MADISON



Whilst we assert for ourselves a freedom to embrace, to profess, and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man."

James Madison, from "Memorial and Remonstrance Against Assessments," written to the General Assembly of the Commonwealth of Virginia.