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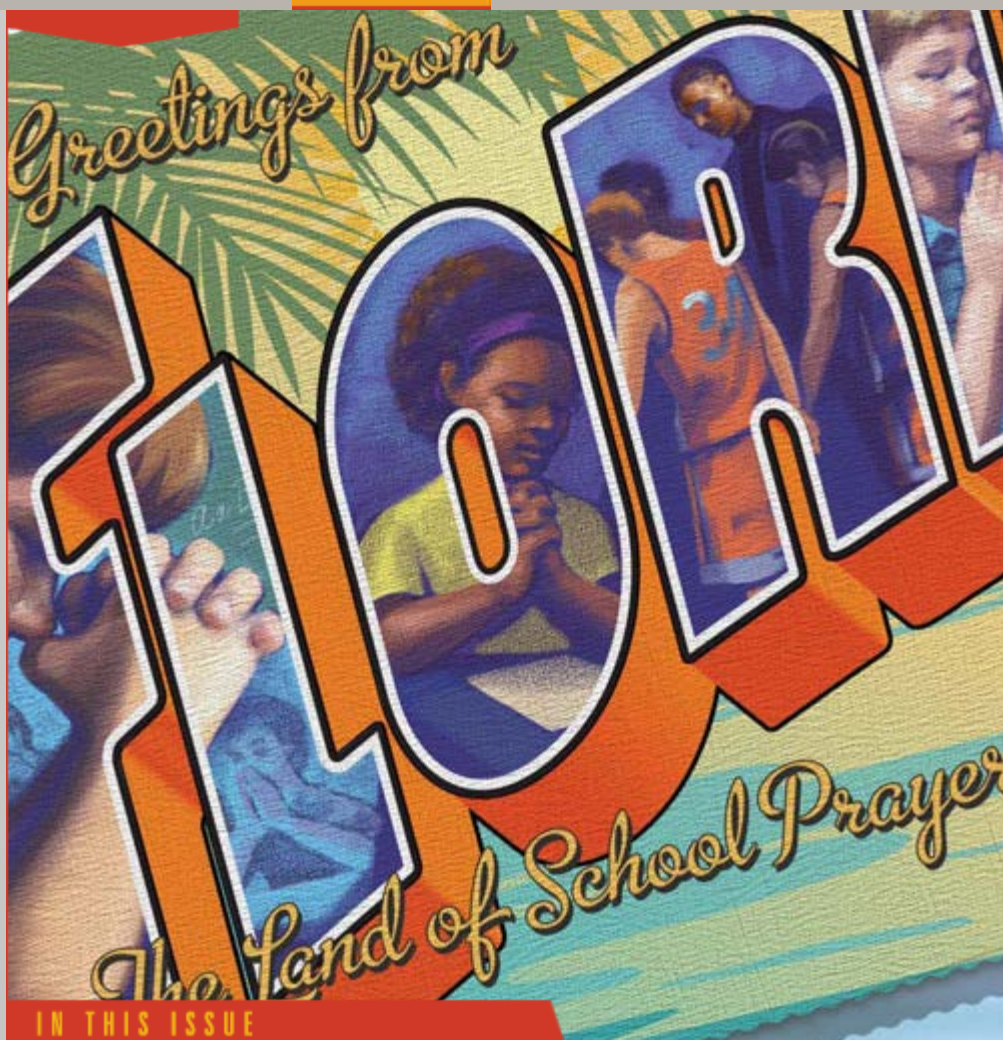
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SEPTEMBER / OCTOBER 2012

An Act Of Faith

Editorial

BY: LINCOLN E. STEED

From earliest days I was taught to respect the Bible as God's holy Word. In particular that meant respecting the actual physical Bible. It was to be handled with reverence; never thrown away carelessly, and never stacked under lesser books. It was even suggested by some that I not mark up my Bible; but I could never resist the need to underline and comment on the more engrossing passages. Whenever I am inclined to question the Muslim reverence for their Koran, I remind myself of the respect I give to the Bible. And my much respected Bible shows the creasing, curling, and staining of much use.



A few days ago I chanced upon a Bible that suggested both new beginnings and a handsome artifact to use in preaching sermons. It was heavy and large, with very big, clear type—almost a necessity now in my time of 2.00 reading glasses. It was leather-bound in supple blue and gray tones. And it was displayed in a presentation box that featured historical Americana—the pilgrim landing at Plymouth Rock, George Washington praying at Valley Forge, and a facsimile of the Declaration of Independence. The box proclaimed this as "The American Patriot's Bible." That title is also embossed on the leather cover. Only on the box does it explain that this is "the Word of God and the Shaping of America." This Bible has many historical inserts and even sprinkles power quotes on Americana among the texts of Scripture.

I remember hearing Justice Scalia, an arch-conservative Supreme Court justice, explain why he voted to uphold a constitutional right for someone to burn or mistreat the flag. He remarked that even his wife railed at his considered but controversial decision. Well, I now possess a Holy Bible that includes a retelling of American history as a God-directed thing. And I wonder, is reverence for the integrity of the physical Bible transferred and incorporated into American patriotism? It certainly looks like the affairs of the secular state are being subsumed into the sanctity of the Divine Word. To me, it is a step back in time, to the era of Parson Weems and the theological imagining of a "holy nation" on a new continent. It is a step back to the days when public school prayers were the stuff of patriotism and a study of the Bible was but another part of the book of American manifest destiny.

In religious liberty circles there is often mention of the *Abington School District v. Schemp* case, even if the general public has forgotten it. I stumbled across a summary of it the other day on an atheist website and couldn't help but be reminded at the polarizing effect it had in 1963. After all, why should atheists be the ones so happy at a decision that not only upheld the Constitution, but protected all from a biased or incorrect state religion. Till that point Bible reading had been routine in public schools. Then one day at the Abington High School near Philadelphia, schoolboy Ellery Schemp, asked to read from the Bible over the public address system, instead read from the Koran. He was expelled. But it was not a thoughtless prank. His family, Unitarians, did not believe the schools should promote any religion. Their son's action led to a good deal of harassment, and threats. They were accused of being un-American.

In an 8-1 decision the high court upheld the lower court ruling against the religious requirements in the schools. Many mainline Protestants and Jews saw the decision as a protection not an attack. However many evangelical Protestants and conservative Catholics strongly opposed it. Evangelicals thought it natural for the United States to advance their form of religion; and the Catholics perhaps were more comfortable with state paternalism. What many even today miss in that decision was a clear recognition by the court that religious ideals are a vital part of society—but not under a government mandate to inculcate them. In writing for the majority, Justice Thomas Clark noted that the Constitution requires neutrality in matters of religion—and allows "teaching the noblest principles of virtue, morality, patriotism, and good order."

One could wish that "good order" were more present in politics today. Sometimes I think the good order is gone and replaced by bad religion. To me, bad religion is a belief that needs coercion to flourish; that seeks to restrict other religious opinion; and in the model of medieval times, seeks political power to advance a religious agenda. This year has seen too much of that.

Oh, I know the temptation to demagoguery knows no political party. And it has become all too obvious that all the major actors have an eye toward influencing religious sensibilities and the vote that comes with them. And yes, some will even play against religion; but that too is playing the religion card.

There was one recent political advertisement that caught my eye for its over the top invocation of religious motivation. I feel free to comment on this "Catholic" video, since like so many other proxy ads of late, the track to any parent organization is unclear. All I know is that "The Test of Fire" was produced by a conservative, Florida-based Catholic organization. It is a powerful presentation and extremely persuasive once

you suspend concerns for a separation of church and state.

The visual theme is a blacksmith's shop as he forges iron brands ranging from "jobs," "election," "taxes," "energy," to "life," "marriage," and "freedom." As the music swells the faithful are asked to vote in the presidential election. Why? The banner says that "Catholics across the nation will have an opportunity shape the future for our generation and the generations to come." A little more than the four-year call, obviously. Eternity is alluded to, and the text from Psalm 127:1 flashes across the screen: "Unless the Lord builds the house then those who build it labor in vain." A sobering text and one that should guide each of us in our daily lives, in our homes and influence our interaction with society. But this is a political advertisement and call to political action. Are Catholics or anyone else to see the building of the body politic as analogous to the Lord's house? My Patriot's Bible would also suggest as much, but my knowledge of history, theology, and the Constitution warns me otherwise.

Now I know that the Catholic Church is supersensitive on the issue of contributing to a healthcare system that provides services that it disagrees with. One must respect that sensitivity. One also cannot write such sensitivity too large or many individuals and maybe churches would refuse any support or taxes, direct and indirect, toward a system that does innumerable things we disagree with—at times immoral things. That said the call of the video does encapsulate as false a dynamic as that lovely Patriot's Bible and those comforting pre-Abington Bible readings. Bannered large at the beginning was this: "In generations past, the church has always been able to count on the faithful to stand up and protect her sacred rights and duties. This generation of Catholics must do the same." Now I have enough faith in this generation of Catholics that as before they will vote every party on the ticket, as their consciences and understanding of the issues call them to. What I pray is that they continue to see their vote as a civic duty and not just as an obligation to protect the rights and obligations of the church. We are voting for the secular state, not for the remaking of a subsidiary regime that might echo the needs of the church.

My Bible speaks much of holiness. There is a thread of a yearning for holiness in the American experience. When at its best it was expressed in the national regeneration of at least two Great Awakenings. At its worst it was the misdirected battle hymns of the Civil War, where as Abraham Lincoln observed, both sides imagined they were fighting a holy war. Holiness yearning was once motivated by a Protestant insistence on personal spiritual renewal. A small vision holiness has led to thinking that the state might teach morals and faith where home and church have been found wanting.

To keep to the model of a separation of church and state will require some conscious choices by a lot of individuals. Not just at the ballot box.

Lincoln E. Steed is editor of *Liberty*.

SEPTEMBER / OCTOBER 2012

Prayers In Florida

BY: NAN FUTRELL

In early March the Florida legislature passed SB 98, a bill authorizing public school districts to adopt policies that would encourage prayer at secondary school events. Specifically the bill authorizes the use of student-led "inspirational messages, including. . . prayers of invocation or benediction." School events include "school commencement exercises or any other noncompulsory student assembly."

The bill follows a 2008 lawsuit, filed by the American Civil Liberties Union on behalf of two high school students, alleging widespread and pervasive establishment clause violations by public school officials in Florida's Santa Rosa County. Some of the examples of the school officials' endorsement of religion and coercive religious practices that students objected to included actions that facilitated prayer at school events, whether offered by students, employees, or invited guests.

The parties ultimately entered a consent decree that permanently prohibited school officials from "promoting, advancing, endorsing, or causing prayers during or in conjunction with school events" for any school within the district. The order specifically barred school officials from authorizing students to pray at school events, or inviting any other person to do so. Finally, the order stipulated that, when permitting any individual to speak during school events, school officials should instruct the speaker to exclude prayer from its address.

SB 98, which went into effect in July, is an unabashed attempt to authorize sectarian prayer in public schools. Indeed, one media outlet quoted Florida governor Rick Scott—who signed the bill into law March 23—as saying of the legislation, "As you know, I believe in Jesus Christ, and I believe that individuals should have the right to say a prayer." Another state legislator reportedly expressed hope that "many . . . students [will] choose to use their time for an inspirational message to offer a prayer." And the bill's legislative history shows that the state senate education committee actually removed language that would have required the "inspirational messages" to be nonsectarian and nonproselytizing—a limitation the committee found "unnecessary."

The public school context is a favorite locus for political battles over church and state. Despite relatively well-delineated—and well-functioning—rules protecting student religious expression in the public schools, SB 98 and similar legislation reflect a larger movement to portray Americans' religious liberty as being under siege. Considering it's been more than a decade since the U.S. Supreme Court last addressed the topic of prayer in the public schools, it seems a topic worth revisiting.

The School Prayer Cases

The Supreme Court first considered an establishment clause challenge to a school prayer practice in *Engel v. Vitale* (1962),¹ a case in which the High Court invalidated a school board policy that instructed all students to recite a state-composed prayer at the beginning of each school day. The following year the Court struck a state statute that required daily Bible reading in classrooms, even though students could be excused from the exercises by written request from a parent or guardian. In that case, *Abington School District v. Schempp*,² the Court applied its emergent purpose-effect establishment clause test, writing that "if either [the purpose or the primary effect of an enactment] is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution." This test—which would come to full fruition in the later case of *Lemon v. Kurtzman*—is one courts continue to employ today.

It is thus well established that school officials can neither compose prayers nor direct the content of any student religious messages. SB 98 was clearly written with these restrictions in mind, employing language that prohibits school personnel from participating in or influencing any student in (1) deciding whether to use a prayer as the inspirational message; (2) selecting the student volunteer who will give the inspirational message; or (3) determining the content of any such message. It also provides that the decision whether to use an inspirational message at a school gathering rests with the student government.

Often, though—and especially in matters of public school prayer—provisions that appear facially sound may guard against some establishment clause problems but invite others. Even internal analysis by a Florida senate education subcommittee acknowledged, "It is difficult to gauge how [SB 98] would be implemented in practice."

The High Court next confronted the issue of school prayer two decades later, in an establishment clause challenge to an Alabama statute that authorized a period of silence at the beginning of each school day for "meditation or voluntary prayer." The Court applied an enhanced secular legislative purpose test—again, reflecting developments in its own precedent—that asked whether the government's actual purpose in enacting a law was to endorse or disapprove of religion. The Alabama statute failed this prong: the Court concluded that the record unambiguously showed the law had no secular purpose. In particular, the legislative record quoted the bill's sponsor as explicitly stating that the law's sole purpose was an "effort to return voluntary prayer" to the state's schools.



Another aspect of the Alabama case, *Wallace v. Jaffree*,³ is especially germane to a discussion of SB 98. In *Wallace* an earlier version of the statute provided for a moment of silence, but mentioned only "meditation." The only notable difference between the challenged law and its predecessor was the insertion of the words "or voluntary prayer." This, the Court found, showed that the more recent statute had a purely religious nature.

The Court rejected Alabama's contention that the prayer statute was a valid attempt to accommodate students' free exercise rights, because in effect there had been nothing to accommodate: under the earlier statute, nothing had prevented students from using the legislatively authorized moment of silence for voluntary prayer.⁴ In essence the state could not show any secular purpose that was not entirely served by the prior law.

Likewise, Florida law already allows schools to designate up to two minutes each school day "for the purpose of silent prayer or meditation."⁵ Accordingly, SB 98 does not provide any necessary protection for students' (already secured) right to pray during the school day; and, compounding the problem, contemporaneous comments by state legislators suggest the bill was entirely motivated by lawmakers' intent to authorize more prayer. Taken together, these elements cast doubt on the law's stated purpose of "[providing] for the solemnization and memorialization of secondary school events," portending legal challenge.

The two most recent Supreme Court school prayer cases emphasized the special concerns that arise in the public school context. In *Lee v. Weisman*⁶ the Court invalidated a school's practice of inviting clergy to deliver sectarian prayers at school graduation ceremonies. It applied a "coercion test" that emphasized the "heightened concerns with protecting [students'] freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." Students, the Court noted, are likely to feel pressure—even if "subtle and indirect"—to participate in a prayer when school officials supervise and control a school event. This places students in the constitutionally unacceptable position of either participating or protesting—the latter of which adolescents are less likely to do at school, where social conformity is highly valued. Further, it is irrelevant that a school event may be technically non-compulsory—schools cannot exact religious compulsion as the price of student participation in important school events.⁷

In *Santa Fe Independent School District v. Doe*,⁸ a Texas school district policy permitted student-initiated, student-led prayer at home football games. Pursuant to that policy, one high school conducted student elections to determine whether a prayer would be delivered, and if so, to select the student speaker. The Court struck the policy, finding the student prayer practice bore the State's imprimatur because of the degree of school involvement and placed objecting students in an untenable position. The fact that the policy's literal language referred only to "messages," "statements," and "invocations"—but not prayer specifically—was inconsequential. Moreover, the fact that the student speaker was selected through a student election process did not dispense with the harm: "The student elections take place because the District. . . 'has chosen to permit' student-delivered invocations."

As in *Wallace*, the school's decision to permit only one type of message—an "invocation"—was not necessary to protect students' right of free expression or to promote some other valid secular purpose. And as in *Lee*, it was irrelevant that extracurricular sporting events might be "voluntary" for some students.

The lessons of *Lee* and *Santa Fe* are manifold, but the essential takeaway is this: public schools warrant a unique establishment clause analysis. School officials have special duties to maintain neutrality in matters of religion; to avoid appearances of endorsement; and to distance themselves from truly voluntary private student expression. Students are impressionable and vulnerable to suggestions—even implicit ones—that school employees favor certain religious messages and disfavor others. Such legislation as SB 98 flouts these important constitutional commands.

At the same time, SB 98 belies the many ways in which student religious expression is already protected and permitted in the public schools. Students are free to pray and share their religious beliefs with others during noninstructional school hours. Voluntary, student-initiated prayer is welcome, as long as it isn't disruptive to others or the educational process. Students may gather for group prayer or Bible study to the same extent other student clubs do. Moments of silence are an appropriate means of permitting private student meditation, including prayer. And federal guidelines provide that "where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content."⁹ The goal is to strike the appropriate balance between honoring individual private expression, which is constitutionally protected, and avoiding government promotion of religion, which is constitutionally forbidden.

It is important to recognize that the establishment and free exercise clauses are the "twin pillars" of religious freedom. In a 1998 "Letter to Educators," U.S. Department of Education secretary Richard Riley wrote, "The United States remains the most successful experiment in religious freedom that the world has ever known because the First Amendment uniquely balances freedom of private religious belief and expression with freedom from state-imposed religious expression." SB 98 suffers from too many of the constitutional flaws the Supreme Court has identified in its school prayer jurisprudence: it singles out "prayers of invocation or benediction" as a preferred type of message; it authorizes schools to facilitate student prayers at all school events; it disregards the implicit influence that school officials and peers project upon student speakers; and it is a wholly unnecessary means of protecting the free expression rights that students already enjoy. In short, SB 98 is little more than a solution in search of a problem.

Nan Futrell is staff counsel for the Baptist Joint Committee for Religious Liberty, Washington, D.C.

1 370 U.S. 421 (1962).

2 374 U.S. 203 (1963).

3 472 U.S. 38 (1985).

4 The Court elaborated: "[The State's] arguments seem to be based on the theory that the free exercise of religion of some of the State's citizens was burdened before the statute was enacted. . . . [But in] this case, it is undisputed that at the time of the enactment of [the prayer statute] there was no governmental practice impeding students from silently praying for one minute at the beginning of each school day; thus, there was no need to 'accommodate' or to exempt individuals from any general governmental requirement because of the dictates of our cases interpreting the Free Exercise Clause" (*id.* at 57, n. 45).

5 See Fla. Stat. § 1003.45(2) (2011).

6 505 U.S. 577 (1992).

7 *Id.* at 595. ("Law reaches past formalism. And to say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme.")

8 530 U.S. 290 (2000).

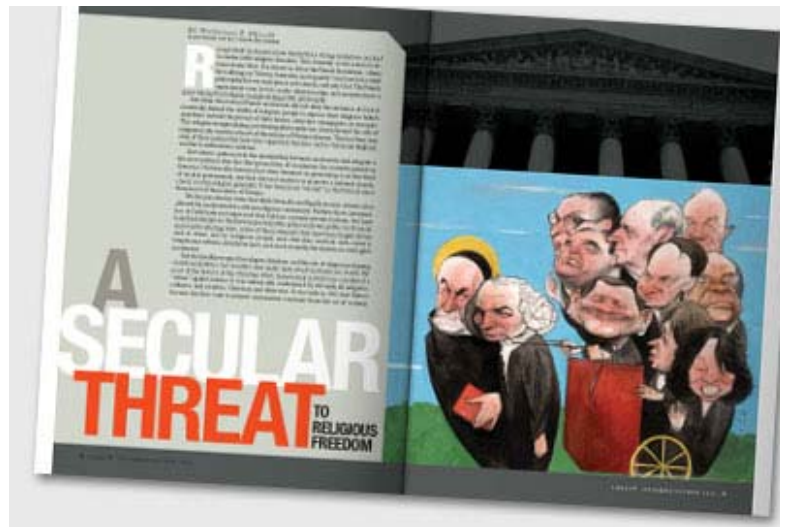
9 SB 98 does not set forth "genuinely neutral . . . criteria" because it authorizes only "inspirational" messages—not student speech generally—and further singles out "prayers of invocation or benediction" as a preferred type of inspirational message. As the Supreme Court wrote in *Lee v. Weisman*, "a school official . . . decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective, it is as if a state statute decreed that the prayers must occur" 505 U.S. at 587 (1992). Even though, under SB 98, the initial decision whether to offer an inspirational message may rest with a student volunteer, the statute essentially equates "inspirational" with "prayer," evincing a legislative decision that a religious message (if any) should be given.

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A Secular Threat To Religious Freedom

BY: NICHOLAS P. MILLER

Recent events in America have shown that a strong secularism can lead to clashes with religious freedom. This, however, is not a new occurrence in the West. It is at least as old as the French Revolution, where the rallying cry "liberty, fraternity, and equality" was based on a dark philosophy that was anti-priest, anti-church, and anti-God. The French experiment soon lost its crude, atheistic edge, and morphed into a quasi-tolerant but religion-marginalizing public philosophy.



But while this revised French secularism did not deny the existence of God, it essentially denied the ability of religious people to express their religious beliefs anywhere outside the privacy of their homes, churches, synagogues, or mosques. This religion-marginalizing, privatizing philosophy has characterized the role of religion in the societies of most of the nations of Western Europe. This has been true even of those nations that have state-supported churches, such as Germany, England, and the Scandinavian countries.

But what is quite new in the relationship between secularism and religion is the new potency that this European form of secularism has recently gained in America. Historically America has been foremost in promoting a certain kind of secular government, one that does not endorse or promote a national church, creed, or even religion generally. It has been more "secular" in this formal sense than most of the nations of Europe.

Yet, the paradox has been that while formally and legally secular, America has allowed for and protected a vibrant religious community. Further, those communities of faith have not expressed that faith in a purely private fashion, but have launched enterprises that have impacted public policy and even politics in dramatic and society-altering ways. A few of the movements that have been largely driven and at times led by religious people and churches include anti-slavery, temperance reform, child labor laws, and, most recently, the American civil rights movement.

But this healthy respect for religious freedom, and the role of religion in shaping society and politics, has recently come under open attack in American society. For most of the history of the Christian West, homosexual activity was considered a "crime" against nature. It was universally condemned by virtually all religions, cultures, and societies, Christian and otherwise. It was only in 1961 that Illinois became the first state to remove criminal sanctions from the act of sodomy. Even in the modern, secular West, homosexual orientation was considered to be a mental defect or illness until 1973. As recently as 1986, the U.S. Supreme Court affirmed that state criminal laws against homosexuality were acceptable under the Constitution.

These facts make all the more stunning the reversal that has happened over the past two decades. A growing secular rights movement has made gay rights the centerpiece of its agenda. In 2003 the U.S. Supreme Court reversed its earlier decision, and ruled in the case of *Lawrence v. Texas* that states could not criminalize homosexual behavior between consenting adults. This invalidated sodomy laws in 13 states, and strengthened the cause of a growing same-sex marriage movement.

Less than 10 years from the time that the Supreme Court decriminalized homosexual behavior, a federal appeals court has now ruled that the U.S. Constitution requires that the state of California must provide homosexual couples with the highest level of rights and state approval in its legal and educational systems. It has ruled that the desire to protect marriage as a union between man and woman is merely religious bigotry that deserves no place or consideration in the law. This is a stunning and dramatic reversal that squarely pits the competing claims of a secular, relativistic, even nihilistic morality with the natural law morality shared by nearly all the great religions and cultures of recorded civilization.

The decision in the *Perry* case in California puts us in much the same place as the French Revolution today. Something very basic is at stake in our society's moral ordering and framework, and the ability of not just historic Christianity but almost any form of traditional religion to survive is being threatened by a zealous movement to overturn the basic, natural moral order of society. This kind of extreme secularism cannot exist with religion, but must displace religion, at least traditional versions of it.

While we might presume that churches, temples, and synagogues will probably never be required to hire or marry homosexuals, the same cannot be said for church-affiliated institutions, such as colleges, hospitals, and social welfare charities. Already a number of religious

charities have had to close in states in which gay marriage has been adopted, because they refused to provide adoptions or other services to gay couples. The public role of the church's mission is at stake in this very public battle over sexual "freedom" and family welfare. Thus, it becomes vital for us to be able to distinguish between traditional American secularism and the European version that is hostile to individual religious freedoms.

A recent American Supreme Court case was heralded as a strong victory for religious freedom. But the decision, in the case of *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, which upheld the ministerial exemption from federal antidiscrimination laws, is, in my view, a mixed bag. That the decision attracted the unanimous support of both very liberal and extremely conservative justices should indicate that there are some deeper things going on than just the protection of religious freedom.

The case involved an elementary school teacher for a Lutheran church school. The teacher taught a wide variety of subjects, such as math, English, and science, and also taught one religion course a day. The church viewed her as a commissioned minister of religion. The teacher began experiencing some health problems, a sleeping disorder, and needed to take time off from work. After a four-to-five-month absence, she desired to return, but was essentially told that she had been replaced, as the board thought that her health issues would prevent her from functioning successfully. She indicated she intended to enforce her legal rights in court under the Americans with Disabilities Act. After receiving the legal threat, the school board voted to rescind the teacher's religious call, as lawsuits within the church are considered a breach of moral duty.

The question the Supreme Court had to decide was whether the teacher really qualified as a pastor, and would thus be prevented from bringing any kind of discrimination suit under the ministerial exemption. Just a word about the ministerial exemption. This is a legal doctrine, based on the Constitution, carved out by federal courts, that says that churches have the right to hire, fire, and otherwise manage ministerial employees without oversight or interference from the state. This is because, courts have reasoned, ministers are so important to the shaping and teaching of doctrine and worship practices, which are the essential, core functions of what churches are about. A church needs to have a free hand to change, replace, or discipline pastors if they start straying from the theological and ritual beliefs of the church.

A number of federal courts had affirmed this exemption, though it had never been considered by the Supreme Court. So the Supreme Court had to decide two things: (1) is there actually a ministerial exemption to civil discrimination laws, and if so, (2) was this exemption broad enough to cover elementary school teachers in church schools who have as part of their duties the teaching of Bible class? The Court unanimously answered yes to both questions. The ministerial exemption is a constitutionally founded doctrine, and thus ministers cannot sue churches under antidiscrimination laws, and schoolteachers who have some religious roles are considered ministers.

Now, this seems like a good victory for religious freedom. But what kind of religious freedom is it? Is it individual religious freedom? Or is it more about institutional autonomy, the right of institutions to be free from government oversight? Indeed, if you ask about the individual rights perspective in this case, you might say that individual freedom or rights lost out to institutional interests. It should be of some caution that such strong conservatives as Justices Scalia and Thomas voted for this outcome, along with such liberals as Justices Kagan and Ginsburg. There is a paradox that Justice Scalia was the author of the opinion in *Oregon v. Smith*, which *denied* religious freedom rights to *individuals*, but in *Tabor* he *granted* religious freedom rights to *institutions*.

What is going on here? Well, for the liberals on the Court, the notion of group rights, even religious groups' rights, is of high value. An important aspect of French secularism, even in the early days, was the treating of religion as a group function. Contrary to popular impressions, French secularism tended not to be entirely atheistic. Voltaire and Rousseau, far from being the atheists that some imagine, were at least deists who saw an important social role for religious belief. Indeed, Rousseau believed that religion was sufficiently important that a very basic set of religious beliefs should be officially promoted by the government, and anyone who rejected them should be exiled or even executed. For the French philosophes, religion was not to be entirely abandoned, but a minimalist version needed to be created, and then enforced by the state.

This secular enlightenment model was not so different from what we might call a medieval model, which also valued religion, but also at the expense of the individual. The medieval church had a sense of the separate spheres of church and state, but they viewed these two as collaborating to oversee and monitor the individual, who had no meaningful rights at all. Religious institutions, on the other hand, had rights to be free from state intrusion or oversight, even in many criminal matters. In the Middle Ages there was a separate system of church courts that handled many matters relating to the church, including oversight of cases and even criminal claims involving clergy and other church employees.

This parallel system of courts meant that the institutional church was insulated from state oversight, and individual church employees and members would not have recourse in civil courts against abuses, even criminal ones, of the church or its employees. This medieval model was one that Martin Luther sharply criticized. He said that the church *should* be subject to the laws and magistrates of the land. The conflict well illustrates how the protection of so-called group or institutional rights can conflict and even suppress individual religious rights.

Now, I do not want to overstate this point. I think that the *Hosanna-Tabor* case probably came out correctly. I am certainly happy that the Supreme Court upheld the ministerial exemption. I do think that ministers do play a special role in defining and propagating the mission and beliefs of a church. But this exception needs to be applied carefully, as not all employees of religious institutions play this special role. Nor do

they all have the prestige and respect usually held by ministers, which gives them greater protection and authority in their communities.

This case may mean, depending on how lower courts interpret it, that almost all teaching employees of any church institution will be deemed ministers, and thus may well be stripped of civil rights and antidiscrimination protection. Do we really want to accept that once you join a religious employer, you trade in most of your civil rights? Do we really believe that the state has an important interest in protecting only the religious rights and autonomy of the institution, and not the civil rights and freedoms of the individual? I hope not.

The concern and protection for community institutions, governmental and religious, at the expense of individuals and their rights is found in the skeptical enlightenment secularism of Rousseau and Hobbes and the medieval absolutism of Aquinas and Innocent III. It is a commitment to the rule of the majority in both the political and religious realms that the Protestant Reformation confronted, slowly unraveled, and ultimately opposed by creating an order of rights based on the individual in the founding of the American republic.

The irony is that the last and greatest attack of secularism on religion and religious freedom may ally itself with the overtly religious model of medieval Europe that also discounted the religious and civil freedoms of individuals and minorities.

It is at this time that we must promote more broadly the dissenting Protestant view of the importance of the individual conscience. The individual's standing before God is of highest import; this standing must be respected by both the state and the church, and our system of rights is first and foremost meant to defend individual, personal rights. Institutional rights, while also meaningful and important, and in their own way an expression of individual rights, still must be kept in their proper place and not allowed to suppress or abuse the individual inappropriately.

We must beware of political candidates, or any other civic or religious leaders, who insist that the threat to religious freedom comes only, or even primarily, from an antireligious secularism. Religious people and forces have shown themselves well capable of doing just as effective a job at trampling on the religious rights of the individual.

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SEPTEMBER / OCTOBER 2012

Religious Bigotry

BY: BILLY GRAHAM

W do not want to see religious bigotry in any form. It would disturb me if there was a wedding between the religious fundamentalists and the political right. The hard right has no interest in religion except to manipulate it."

Rev. Billy Graham, quoted in *Parade*, Feb. 1, 1981.



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The Vision Thing

A Catholic View Of Religious Freedom In The United States

BY: EDWIN COOK

In the fall of 2011, the U.S. Conference of Catholic Bishops (USCCB) formed the ad hoc committee for Religious Freedom, headed by Bishop William Lori. He appeared before the U. S. Senate on October 26 of that year to address the concerns of the Roman Catholic Church regarding the *libertas ecclesiae* (freedom of the church, as an institution) against perceived threats from groups advocating abortion and contraceptive rights.¹ On November 8, 2011, he told Catholic News Agency (CNA) that the first goal of the ad hoc committee was "to lift up the whole area of religious freedom, beginning with the teachings of the church in *Dignitatis Humanae*—the Second Vatican Council's declaration on religious freedom" and also to recoup "the vision of our Founding Fathers of the United States" regarding religious freedom.² For him, religious freedom, one of the chief cornerstones of American society, is being violated through restrictions on the free exercise of religion in the public square by some liberal groups.



Implicit in Bishop Lori's statement regarding the religious freedom vision of our Founders is its compatibility with a Roman Catholic understanding of religious freedom. Is this a historically accurate characterization? Perhaps a short review of a Roman Catholic understanding of religious freedom and that of the American republic is in order. Modern Roman Catholicism struggles with adaptation to the prevailing democratic political systems of our world today, many of which allow for religious pluralism.³ Accustomed to centuries-long church-state relations in Europe in which the secular political order was based on monarchical rule, the Catholic Church at that time easily influenced society, producing the *Corpus Christianum* ("Christian Commonwealth"). Conformity, both moral and religious, was the norm. Defining the state as of divine origin, Roman Catholic political philosophy consequently advocated the moral obligations of the state to uphold and foster religious life.⁴

The Protestant Reformation (1518) and the near-simultaneous beginnings of the modern political era led to the eventual rise of the nation state. Such a fracturing of the body politic, once unified under the single religion of Roman Catholicism, allowed for the gradual development of religious tolerance and, finally, religious freedom guarantees. The desire for civil peace among varying religious groups (primarily Roman Catholics and Protestants in Western Europe, England, and North America) was, of course, not the only consideration that prompted philosophical consideration of establishing freedom of religion in society. Enlightenment thinkers, with their emphasis upon humanity's rational abilities, opened the way for a new evaluation of the world, its political systems, its study of the sciences, and societal norms. In order to search for truth, humanity needed the unconditional freedom of conscience, thought, and expression. Under such conditions the moral influence of Roman Catholicism no longer guided such evaluations. With the growth of other religious groups, primarily varying Protestant bodies, the norm of religious pluralism became the societal cornerstone, at least in America, along with Enlightenment arguments advocating freedom of conscience.⁵

Being a minority faith in America at the time of our nation's founding, Roman Catholics fought for religious freedom against predominantly Protestant establishments. By 1789 the First Amendment guarantees of religious freedom had been ratified, being established upon religious norms⁶ and Enlightenment philosophical propositions.⁷ The First Amendment clauses put forward by James Madison took some authority from "the law of nature" as propounded by John Locke,⁸ and reflected the thinking of the French *philosophes*.⁹ It was a straightforward proposition: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

In recent years, Roman Catholic scholars have attempted to blend Roman Catholic political philosophy with that of our nation's founding, portraying the ideas of Locke's "law of nature" as a derivative of Roman Catholic "natural law" theory.¹⁰ They assert such arguments in an attempt to reduce anti-Catholic sentiment among the American populace and to influence morals in the public sphere.¹¹ If, Catholic revisionists argue, Madison and Jefferson truly conceived of the American nation as being founded upon concepts of Catholic natural law theory, then Catholic natural law arguments regarding humanity's moral nature should govern public policy discussions. Attempting to argue that pro-choice abortion legislation and other societal moral issues, such as contraceptive services required as part of health-care insurance, euthanasia, and same-sex marriages—when legalized—become a denial of Catholics' free exercise of religion rights, assumes that society is founded upon Roman Catholic moral values. Yet current statistics do not support the implied contention that America is a Roman Catholic nation.¹² Even among those Catholics living in America, the majority of them do not agree with the moral teachings of the magisterium on the issue of birth control.¹³ And contrary to ideas of Catholic dominance, America is a republic founded upon a constitutional democracy. Democracy, by definition, is government of those governed—*demos*, meaning "people" in Greek, and *krateo*, meaning "to rule, to govern," thus, a "government of the people, by the people, and for the people."

The USCCB, by means of its ad hoc committee for religious freedom, attempts to portray the Catholic Church and Catholics as being denied their religious freedom guaranteed under the First Amendment.¹⁴ Recent legislation requiring all institutions, whether private or public, to provide contraceptive options to their employees and clients is *demos* benefit-focused, rather than *anti-Catholic*-focused. Such legislation is not necessarily arbitrary action by the civil administration. Just as the federally mandated minimum wage law was passed for the benefit of all American citizens, so also a national, federally mandated, health-insurance coverage law has been enacted for the benefit of all American citizens. The claims of the USCCB would seem to be unfounded in light of our current administration's response to their inquietudes. The administration has proposed an exemption for religious institutions that, according to the dictates of their conscience, cannot offer such services. By requiring health-insurance companies to nonetheless offer such services removes the responsibility from those religious institutions while granting freedom of conscience and choice to the individual. Such a position is truly in harmony with the free exercise of religion clause of the First Amendment, which not only guarantees the free *religious* exercise of the individual, but also guarantees the free *irreligious* (not based on religious convictions) exercise of the individual citizen. This means that government is obligated to protect the conscientious convictions of the individual citizen, apart from religious foundations (the choice to use contraceptives), while also prohibiting the establishment of a religion, or its teachings, in society (in this case, Catholic moral theology).

The nearly 300 Catholic bishops in America are trying to present this issue in terms of a violation of the free exercise of religion, but at least one of the leading American Catholic media sources does not view it in that light. The *National Catholic Reporter* (NCR) describes the religious freedom of the Catholic Church advocated at Vatican Council II and how it applies to issues of euthanasia and contraception:

"The principle of religious liberty that the Catholic church observes, and that the church must ask the polity to observe as well, is not the insistence that the deprivation of artificial nutrition and hydration be punishable under civil law, but that to the extent one's freely chosen faith belief requires such forced feeding that the law not make it impossible for the believer to pursue that care. If the law allows for religious beliefs to be observed or unobserved as the authoritative family member may decide, the church really should not complain about the president if its own believer makes the wrong choice in terms of Catholic doctrine. In such circumstance, the church's focus should be upon the education and conversion of heart of its own believer, not whether the law permits a contrary belief.

"This same principle explains the limits of the law with respect to all manner of subjects, from abortion to artificial contraception. That the law may specify that abortion or contraceptive coverage be included as choices for employees ought not be seen as making the employer contributing to the legally imposed medical premium complicit in the act itself. To think that an authorizing statute or executive decision violates principles of religious liberty or free exercise merely because it allows a choice contrary to faith is to misunderstand the nature of democracy and individual freedom. It also vastly understates the responsibility of the church's own obligation of moral formation.¹⁵

If Catholics (or any other faith group) are properly instructed and converted to the doctrines they profess, then it matters not if any law is passed allowing them (not forcing them) to act contrary to those teachings, because they will uphold the principles enshrined in their hearts. So the real issue rests with the church (and all religions regarding their respective beliefs), not with the government or its enacted laws.

Another Catholic, Paul Moses, in a *Commonweal* Magazine article entitled "The Bishops, Religious Liberty, and Conscience," raises the question regarding the inconsistencies of religious freedom practiced within the church by its leadership trying to control the consciences of its members on issues that are not mortal sin, while also claiming religious liberty for the church to impose those same moral theological values upon non-Catholic citizenry in America by influencing Catholic voters through its Faithful Citizenship guidelines. If true religious freedom were practiced within the Catholic Church, Mr. Moses states:

"In the public arena, certain bishops would cease trying to limit the freedom of individual Catholics to make decisions in conscience when it comes to voting."

A comment newly added to the Faithful Citizenship guidelines for voting reflects the influence of this rather large number of bishops. It says the document "applies Catholic moral principles to a range of important issues and warns against misguided appeals to 'conscience' to ignore fundamental moral claims."¹⁶

Another blogger, under the username of "Crystal Watson," perhaps identified the central issue at play when she stated in the "Comments" section to this article by Paul Moses: "I think the bishops are being dishonest in their use of the expression 'religious liberty.' It used to mean that civil government did not have an obligation to officially recognize the church and support it. Pius IX actually said, 'The state must recognize [the Catholic Church] as supreme and submit to its influence. . . . The power of the state must be at its disposal and all who do not conform to its requirements must be compelled or punished. . . . Freedom of conscience and cult is madness.' It was against this mind-set that John Courtney Murray, S.J., worked so hard at Vatican II. When the bishops speak now about religious liberty, they don't mean what J. C. Murray and the council meant. They mean instead the opposite—a loss of Catholic influence on civil society, the inability to force everyone else to follow Catholic teaching."¹⁷

All American citizens can be grateful to those American Catholics who truly cherish and practice the American spirit of charity toward a fellow citizen, enough to recognize and respect their conscientious religious (or non) convictions, even when they differ from one's own.

Another dimension of the First Amendment religion clauses comes into focus, namely, "direct" and "corollary" effects. A "direct" effect, under the establishment clause, would be disallowed by the Supreme Court, but a "corollary" effect seems to be permissible in some instances, such as school vouchers. Under this argument, government cannot give money directly to private, religious schools in violation of the establishment clause,¹⁸ but it can give that money indirectly ("corollary") in the form of vouchers to the parents of those children who opt to send them to parochial schools, provided that religious schools are one among many educational options.¹⁹ Regarding contraceptive services as part of the health-care insurance law, the USCCB vociferously argues against what it terms "corollary effects"—i.e., *the individual choosing contraceptive services violates the conscience of the church*. Even though this law grants an exemption to religious institutions (out of respect for their conscientious convictions) but still requires the insurance company to offer contraceptives in order to give free choice to the individual, the USCCB considers this to be a "corollary" malfeasance and thus a violation of the Catholic Church's religious free exercise rights. It becomes evident, then, that the Catholic Church desires to receive public funding for its schools through vouchers, which has the indirect effect ("corollary") of promoting Catholic religious teachings, but also desires to restrict the conscientious, free choice of its employees, some of whom may not even be Catholic—even though this has only an indirect effect upon Catholic institutions ("corollary"). In the former case of school vouchers, "corollary" effects are a boon, and thus allowed, because they aid the church, but in the latter case of contraceptive services covered by health insurance, "corollary" effects are a bane because they run contrary to Catholic moral theology, and thus are condemned.

Not only are religious freedom guarantees at play in this debate, but also economic considerations. Stated otherwise, if an institution purporting to exist for the benefit of our nation's citizens seeks federal funding to operate, then it should be willing to accommodate the *demos* from all backgrounds and be willing to offer them all available services. Thus, the *demos* is given freedom of conscience to choose what service options are best in his or her case, rather than a religious institution trying to dictate the conscientious choices of its clients. Since the *demos* is required by law to pay taxes, should not the institutions offering services to the *demos* also be subject to laws that affect the availability of such services to the *demos*?

Conscience | vs Conscience

Reactionary responses to such statements include those conscientious believers who work at private, religious institutions, but who are placed under legal obligation to offer services that they in good conscience cannot perform. Thus, it becomes a *demos*-conscience versus a *religio*-conscience. Whose conscience is guaranteed protection under the First Amendment? Both.

The *demos* is the spirit behind the Constitution and the Bill of Rights. While some *demos*-consciences may not be religious in orientation, they nonetheless are protected by the First Amendment religion guarantees because Congress is prohibited from establishing any religion, whether Catholic or Protestant (or other), and because the Enlightenment influence behind the "free exercise" of religion also includes unbelief, that is to say, no religious orientation.

The *religio*-conscience also finds protection under the First Amendment, through the "free exercise" clause. The essential difference between both types of conscience, however, is the issue of federal funding. The *demos*-conscience is obligated by law to pay taxes, some of which under current church-state rubric is given to private, religious institutions. Should not the *demos*-conscience be able to secure services where federal subsidies make services affordable? Debating this viewpoint, the *religio*-conscience will argue for the right to practice their faith—i.e., not being legally obligated to offer, or perform services contrary to their convictions—but will still argue for their right, or their institution's right, to receive federal funding. Conscientious religious, or irreligious, convictions are guaranteed protection under the First Amendment religion clauses, but not the right to federal funding that derives from all tax-payers' dollars. To argue in support of such an erroneous view is the same as telling someone they have the legal obligation to pay a travel agency for services rendered, but also stating that the travel agency has the right to choose and prepare the travel itinerary regardless of the client's wishes.

The alternative scenario is to encourage such religious groups to adhere to a more robust concept of church-state separationism, as originally espoused by Madison and Jefferson, by cutting their federal funding for noncompliance of federal guidelines. If such religious groups cannot find the fine line of balance between providing for clients' needs and at the same time respecting their conscience, then perhaps those groups should seek funding elsewhere. To fail to do so is to argue for a religious institution's right to conscientiously follow its doctrinal teachings, even by imposing them upon its employees and clientele, while at the same time receiving federal funding—in other words, a religious establishment, and thus, directly in violation of the First Amendment establishment clause.

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¹ *National Catholic Reporter* online: <http://ncronline.org/blogs/distinctly-catholic/bishop-loris-testimony-religious-liberty/>, accessed Oct. 30, 2011.

² Catholic News Agency: <http://www.catholicnewsagency.com/news/bishop-lori-reveals-details-of-religious-liberty-committee/>, accessed Nov. 24, 2011.

³ Jacques Maritain, among the most renowned Catholic philosophers of the twentieth century, could not resolve the two. John Courtney Murray, the intellectual architect of the Declaration on Religious Freedom endorsed at Vatican II, acknowledged in *We Hold These Truths: Catholic Reflections on the American Proposition*, that religious pluralism was here to stay.

⁴ Pope Leo XIII, promulgated perhaps the most significant encyclical on church-state relations, *Immortale Dei* (The Christian Constitution of States), on November 1, 1885, which defined the purpose of the state in relation to the church. After establishing that political authority derives from God, Pope Leo XIII declares, "As a consequence, the State, constituted as it is, is clearly bound to act up to the manifold and weighty duties linking it to God by the public profession of religion." He later defines religion as Roman Catholicism. Pope Leo XIII, *Immortale Dei* (November 1, 1885), and appearing in Gerard F. Yates, ed., *Papal Thought on the State: Excerpts from Encyclicals and Other Writings*

of *Recent Popes* (New York: Appleton-Century-Crofts, Inc., 1958), p. 23.

5 Latitudinarianism, or the belief that no one religion should be considered as absolute, guided much of societal thought regarding the formulation of civil society so as to achieve societal peace.

6 "The absence of protection for religious freedom was particularly noted. The Baptist General Committee, for example, announced opposition to the proposed Constitution solely because it had not 'made sufficient provision for the secure enjoyment of religious liberty.'" Michael W. McConnell, John H. Garvey, and Thomas C. Berg, *Religion and the Constitution* (New York: Aspen Publishers, 2002), p. 72. This led to the inclusion of religious freedom guarantees in the Bill of Rights.

7 Primarily the views of Pierre Bayle on "toleration" as "a commitment to a constitutionally guaranteed freedom of conscience without exception" influenced Jefferson, who, in turn, influenced Madison. Anson Phelps Stokes, *Church and State in the United States*. (New York: Harper & Bros., 1950), vol. 1, pp. 134-136; Ruth Whelan, "Bayle, Pierre," in Alan Charles Kors, ed., *Encyclopedia of the Enlightenment*. (New York: Oxford University Press, 2003), vol. 1, pp. 123, 124.

8 Stokes, 1:141.

9 This influence was through Thomas Jefferson. Edwin Gaustad notes that while Jefferson was in France as an emissary in 1785, he bought books for Madison on a variety of subjects dealing with "all treatises on the ancient or modern federal republics, 'on the law of nations, and the history natural and political of the New World.'" Views of the French philosophes, who appealed to "nature and reason," are echoed in Madison's arguments in support of the *Memorial and Remonstrance* (1785), as Gaustad remarks, "Like his Monticello neighbor, Madison found succor and support in the appeal to Reason and to Nature. Religion can be 'directed only by reason and conviction, not by force or violence.' The right of every person to exercise his or her conscience in this realm 'is in its nature an unalienable right.'" (Edwin S. Gaustad, *Sworn on the Altar of God* [Grand Rapids, MI: Eerdmans, 1996], pp. 19, 59).

10 "America's Fourth Debt", *National Catholic Register*, "So America is an ally in [Pope Benedict XVI's] quest to rebuild modern society on the basis of natural law – God's law. . . As Cardinal Francis George points out in his recent book *The Difference God Makes*, the Declaration of Independence affirms the right to life, liberty, and the pursuit of happiness, but the 'form of that life, the purpose of that liberty, and the proper ground of that happiness are left completely unarticulated.' The founders left us to work that out for ourselves. They assumed that we would find the answers where they too had sought them: Christian truth." http://www.ncregister.com/site/article/americas_fourth_debt/, accessed June 11, 2012.

11 Charles E. Rice, *50 Questions on the Natural Law: What It Is and Why We Need It* (St. Ignatius Press, 1999).

12 Based on the most recent census information, Roman Catholics make up only 24.5 percent of the current U. S. population. http://www.adherents.com/adh_dem.html/, accessed Feb. 15, 2012.

13 According to Newsmax, a group supporting expanded access to birth control indicated that 57 percent of American Catholic women support the Obama health-care law that includes making contraceptive services available to those insured. *Newsmax*, "U.S. Bishops: Rescind the Obama Birth-Control Rule," Feb. 12, 2012, http://www.newsmax.com/Newsfront/obama-birth-control-shift/2012/02/10/id/429117?s=al&promo_code=E27F-1/, accessed Feb. 13, 2012.

14 Joan Frawley Desmond, "Bishop Lori: Religious Liberty: 'The Pre-eminent Social Justice Issue' of Our Time," *National Catholic Register*, Nov. 30, 2011, <http://www.ncregister.com/daily-news/bishop-lori-religious-liberty-the-preeminent-social-justice-issue-of-our-ti/>, accessed Jan. 27, 2012.

15 Douglas W. Kmiec, "Obama Cannot Be at War With Catholics if He Is at Peace With Religious Freedom," *National Catholic Register*, Nov. 22, 2011, <http://ncronline.org/news/politics/obama-cannot-be-war-catholics-if-he-peace-religious-freedom/>, accessed Nov. 24, 2011.

16 Paul Moses, "The Bishops, Religious Liberty, and Conscience," *Commonweal Magazine*, Nov. 16, 2011, <http://www.commonwealmagazine.org/blog/?p=15944/>, accessed Nov. 24, 2011.

17 *Ibid.*, under Comments section, username "Crystal Watson," accessed Nov. 24, 2011.

18 *Lemon v. Kurtzman* (1971); *Committee for Public Education and Religious Liberty v. Nyquist* (1973); *Levitt v. Committee for Public Education and Religious Liberty* (1973); *Meeke v. Pittenger* (1975); *Wolman v. Walter* (1977); et al. Cf. Ronald B. Flowers, *That Godless Court? Supreme Court Decisions on Church-State Relationships* (Louisville, Ky.: John Knox Press, 2005), pp. 69-98.

19 *Zelman v. Simmons-Harris*, 2002.

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For The Good Of All

BY: MATT MCMEARTY

Have you noticed that when some people speak of religious liberty, they mean something different from individual religious liberty? They use the same term but they mean something else. In fact, there are two distinct approaches to religious freedom: majoritarian and individual.

Protestants and Enlightenment philosophers, from the founding era of our nation, tended to view the church and voluntary religious societies as the outworking of individuals in agreement with each other on matters of belief and practice. A church exercises authority delegated to it by its members and subject to the control of the people via constitutions and bills of rights. In this way, church and state on the federal level were to remain separate; and even among the states they were in various degrees of separation. Thus, our nation was established on principles of individual religious freedom, a freedom that also encompassed the voluntary associations in churches.

The view of churches as the product of personal choices developed in contrast to the historic reality of "Christendom," a unique blending of religion, culture, and society. For centuries government and religion were two parts of one society. In both Roman Catholic Europe and the emerging Protestant countries, society was seen as before and above the individual, but not as the product of the people's choices. The church and the state were seen as ordained by God, established to reveal the complete will of God for society. The church and the state were the essence of society, while individuals' lives were molded by both. The church, whether Catholic or Protestant, shaped the individual according to its teachings, while the state controlled the people by its laws formed in harmony with the teachings of an established church. Thus, the individual's mind and body was not their own, per se, but the domain of the church and the state or the society.

This basic historical difference leads to either an individualist or a communitarian approach to defining religious liberty. In the former perspective, religious freedom was defined as beginning with the individual conscience and ending with the people determining the role of the church and the state in relation to the individual's rights. In the latter perspective, religious freedom is defined on a communitarian basis in that the individual's rights are shaped and determined by the needs of the community as directed by the church and, ultimately, the state. The two approaches are diametrically opposed. By way of comparison, Islam in various Muslim countries is communitarian in outlook.

Thus, in our day many Christian leaders express an essentially communitarian ideal when they speak of America as a Christian nation. They think of religious liberty in these terms, that the nation must first and foremost uphold its social and legal commitments to being Christian, while still respecting the rights of others to their own beliefs and observances. Many enduring church-state battles begin to make sense when this is understood. Thus, for example, arguments over prayer and Bible reading in the public schools reflect the conflict between communitarian values ("Of course a Christian nation must conduct devotional services in our public institutions!") and the individual value ("no student should be made to feel excluded by the religious practices of the majority").

When communitarian values prevail, individual rights are subordinate. Yet when individual rights prevail, communitarians argue that the state subordinates religion to a purely private matter, thereby diminishing the rights and respect for religious institutions and the Christian society itself. Thus, communitarians see the emphasis on individual rights as sowing the seeds for the destruction of the society. By contrast, the individual rights perspective views communitarian arguments with suspicion, convinced that the communitarian approach tramples on the rights of individual conscience, especially of those belonging to minority religions.

Christian nation advocates, both Protestant and Roman Catholic, seek a common agreement among all Christians, and reinterpret our nation's history by applying the basic assumptions of Christendom thinking. For them, the First Amendment cannot mean what the Supreme Court says it means, because that would have meant our Founders intended to dismantle "Christendom." Precisely! Instead, such Christian nation advocates insist that our Constitution was intended to uphold and preserve the Christian society and culture, and to shape our nation based squarely on legislating the Ten Commandments as the basis of all civil laws. Today's secular government profoundly undermines the influence of Christian religion, thus leading to the disintegration of the moral fabric of society. Ultimate collapse is the expected outcome. This is why the Supreme Court remains the scapegoat of many communitarians as a central cause for many of the ills of society.

Of course, the Catholic community has its own unique commitment to communitarian ideals. It regards the teaching authority of the church, centered in papal encyclicals, as essential for understanding what is good for society. In turn, these teachings are applied by the bishops according to national circumstances. And when non-Catholics embrace this communitarian approach, Catholic ideals of social good obtain greater acceptance in the broader social and political realities. Undoubtedly the Catholic Church has obtained considerable



wisdom through its centuries of experience in dealing with society, and its policy positions often make a very positive contribution.

Although there remain important differences between Protestant and Catholic conservatives in the U.S., the socially conservative movement in the U.S. popularly known as "the Religious Right" is essentially a proxy war for the reinstatement of the historic Catholic communitarian ideal once described as "Christendom." Only now it will be not a Roman Catholic Christendom, but a "Catholic" Christendom or a "pan-Christian" social order supported by all forms of Christianity and religions.

Communitarians approach religious liberty first and foremost from what is best for the community, because what is at stake is the role of their institutional influence and the preservation or reintegration of a defined "Christian" morality for a sound Christian social order. They want religious freedom for the individual subsumed under the freedom of religious institutions influencing and guiding society from a generally Christian perspective. It is similar to the federal government thinking that in order to prevent collapse in our economy, it is necessary to "bail out" and uphold the financial institutions that are integral to the economy. In the past, a similar rationale justified the "divine right" of kings to preserve society and, in early colonial America, supported religious establishments as essential for social and political order. James Madison galvanized opposition to such religious establishments in Virginia by publishing his famous *Memorial and Remonstrance*.

Seventh-day Adventists, other Protestants, many Jews, and secularists, and even some among the ranks of Roman Catholics, view religious freedom as a matter of individual right that precedes and is independent of the formation and existence of any religious institution and any political or civil society. It is a right that cannot undermine the need for appropriate civil and social order, but neither can any civil and social order undermine the individual rights of the people who formed the social order. The goal is to find the balance between individual and social rights so that both are upheld. Communitarians will tend to choose communal rights over the individual's religious rights when the two conflict, while individualists will tend to favor individual rights as superior to the imposition of communitarian views toward life and society by law.

If the individualists have their heads on straight, and many today do not, they will seek to preserve the religious rights of religious institutions without endorsing communitarian viewpoints within the content of laws made for our society.

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Inside Interfaith Iran

BY: MARTIN SURRIDGE

For the past few months the eyes of the believers around the world have been fixed on an Iranian death row "apostate" who has refused to recant his faith in Jesus Christ. Yousef Nadarkhani was first arrested in his hometown of Rasht, Iran, in October 2009, for violating the law by his protesting the mandatory Islamic education of Iranian children. Nadarkhani is a Christian pastor, one of approximately 300,000 Christians in the country of Iran, a country of 78 million people. According to the U.S. State Department's 2010 International Religious Freedom Report, the majority of Christians are ethnic Armenians. The number of practicing Protestants is thought to be less than 10,000. Those Protestants worship mostly in secret, in house churches like the one led by Nadarkhani in the province of Gilan.



When the pastor was arrested, Iranian authorities, after learning of his religious leadership, added apostasy and evangelism to his list of crimes. The father of two was convicted and given the death penalty. Appeals were filed, Christians around the world prayed and fasted in solidarity, and human rights advocacy groups including Amnesty International demanded Nadarkhani's release. Yet as of mid-2012, Nadarkhani remained on death row in Iran.

Iran is clearly one of the world's most egregious violators of religious freedom. But the modern-day theocracy exists in what was once known as Persia—arguably one of the first societies to recognize basic human rights. Given the regrettable state of religious affairs in Tehran today, perhaps it is fitting that in order to find those original days of tolerance and human rights, one has to travel several millennia into the past.

The Cyrus Cylinder is one of the world's most remarkable ancient artifacts. Owned by the British Museum in London, the object was lent to the government of Iran last year for a three-month exhibit. The football-sized relic, dating back to the 530s B.C., is inscribed with ancient Babylonian cuneiform script. The text is an account of how King Cyrus of Persia conquered Babylon and captured the royal family of Belshazzar. The story, also chronicled in the Old Testament book of Daniel, is literally thousands of years old. When one examines the very fragile, very cracked Cyrus Cylinder, its ancientness is even more apparent. Naturally the artifact is placed behind protective glass. But for what reason would international politicians and museum curators place such importance and relevance on a dusty cuneiform artifact from an era that bears little resemblance to the world today?

Speaking during the TEDGlobal summer conference in July of last year, Neil MacGregor, director of the British Museum in London, argued that the Cyrus Cylinder is far more than a record of ancient Iranian military conquest. MacGregor explained that in that ancient cylindrical document, Cyrus, king of Persia, promises that since his conquest has been completed, as a sign of goodwill and traditional reform common to that time, "he will at once let all the peoples that the Babylonians, Nebuchadnezzar and Belshazzar, have captured and enslaved go free."

"He'll let them return to their countries," MacGregor continued, "and more important, he will let them all recover the gods, the statues, the Temple vessels that have been confiscated. All the people that the Babylonians had repressed and removed will go home,... be able to restore their altars, and worship their gods in their own way, in their own place."

MacGregor asserted that the Cyrus Cylinder "is the evidence for the fact that the Jews, after the exile in Babylon,... were allowed to go home. They were allowed to return to Jerusalem and to rebuild the Temple."

The director of the British Museum maintained that the decision set forth in the cylinder was part of Cyrus's deliberate effort to govern a multinational, multi-faith, multicultural empire, in which different religions would be respected and tolerated. This decision is where so many believe the international civil concept of respect for human rights first began its development. MacGregor is not alone in ascribing to the Cyrus Cylinder a great measure of importance, even placing it in on the same level as the Magna Charta, the English Bill of Rights, and other historic documents that paved the way for later, more comprehensive declarations of human rights, such as the U.S. Constitution and the United Nations Universal Declaration of Human Rights (UDHR).

Former United Nations secretary-general U Thant accepted a replica of the Cyrus Cylinder in 1971 as a gift from Iran just eight years before the overthrow of the shah. During those years the artifact made appearances on Iranian coins and postal stamps, and the country was eager to take its place alongside Greece, the United Kingdom, France, and the United States as having made vital societal contributions to the international development of religious liberty and human rights.

This version of history was embraced by the United Nations and in an online statement regarding the drafting of the UDHR, the U.N. acknowledges that the Cyrus Cylinder "is said by many to be the first human rights document" in world history. The copy of the artifact continues to be displayed next to the Security Council Chamber in the U.N. headquarters in New York City, where the text has been translated into all official U.N. languages.

However, some scholars have since come to see the Cyrus Cylinder in a less favorable light, one that may reflect the lengths to which Iran must reach in order to present itself as a protector and progenitor of human rights. In an article featured on the Web site of *The Telegraph*, Harry de Quetteville interviewed ancient history professor Josef Wiesehöfer, from the University of Kiel in Germany, who derided the Cyrus Cylinder in 2008 as "a propaganda inscription."

Wiesehöfer remarked that "it has become a very celebrated document, but Cyrus himself ordered it done, trying to make himself appear righteous. The real king was not more or less brutal than other ancient kings of the Near East, like Xerxes, but he was cleverer."

Another historian profiled by de Quetteville in *The Telegraph* was British author Tom Holland, who "joined the condemnation of the cylinder as a model text enshrining human rights." Holland described the claims as "nonsense, absolute nonsense. The ancient Persians were not some early form of Swedish Social Democrats."

Such current revisionism may do little to detract from the influential and impressive nature of the cylinder, but sadly, even with the revision of contemporary historians, Iran may be the only country in the world where the religious freedoms granted in its ancient kingdom thousands of years ago are more celebrated than those of its twenty-first-century successor. Iran has been on the United States' Country of Particular Concern (CPC) list for more than a decade, because of repeated, intentional, severe violations of religious freedom. Among the more alarming infringements within the nation's legal framework include a requirement that all women, regardless of faith, must adhere to conservative Islamic dress in public, a failure to "respect the right of Muslim citizens to change or renounce their religious faith," and a provision in which "the government automatically considers a child born to a Muslim father to be a Muslim."¹



Iranian Pastor Yousef Nadarkhani is under a death sentence for conversion.

The U.S. State Department's 2010 International Religious Freedom Report (IRFR) also explains that in Iran, "non-Muslims may not engage in public religious expression, persuasion, and conversion among Muslims, and there were restrictions on published religious material." And, as many people around the world found out as they followed the case of Nadarkhani this year, "apostasy, specifically conversion from Islam, is punishable by death."

It might be rare for Iranians to actually receive the death penalty for religious crimes, yet other forms of punishment and harassment are quite common. With the exception of Sunni Muslims, members of religious minorities may not serve in the judiciary or security forces and may not be employed as public school principals. Members of the Baha'i faith are persecuted even worse than other minority religions. The Baha'i faith is a monotheistic religion that originated in nineteenth-century Persia and stresses the unity of the human race. There are more than 6 million Baha'is around the world, and despite numbering as many as 350,000 in Iran alone, Baha'is have been prevented from working in public sector employment, are frequently expelled from university after declaring their faith, are not free to teach or practice their faith, are detained without due process, are banned from the social pension system, are "regularly denied compensation for injury or criminal victimization and the right to

inherit property,"² and in 2010 "there were reports that Baha'i children in public schools faced attempts to convert them to Islam."³

Perhaps because of their low profile worldwide, the struggles facing the Baha'i in Iran fail to gather international attention. The attention paid to Nadarkhani, however, seems almost unrivaled for a news story on Christian persecution. His name has become a rallying cry for American evangelicals; it has even appeared on shirts of steadfast young Christians throughout the United States. But the sentencing of Nadarkhani is not even a unique case, even if his is the only name being discussed. Behrouz Sadegh-Khandjani, pastor of a house church in Shiraz, also received a death sentence for apostasy in June 2010 and awaits execution, and in the two years leading up to his sentencing "over 115 Christians were reportedly arrested on charges of apostasy, illegal activities of evangelism, anti-government propaganda, and activities against Islam, among other charges."⁴

The IRFR continues: "In a marked rise in the number of arrests from the previous reporting period, between July and December 2010, 161 additional arrests of Christians were reported. Of those arrested, 33 remain in jail or with an unknown status at the end of the year," including Heshmatollah Tabarzadi, who remains in solitary confinement in Evin prison on charges of propaganda against the state, gathering against national security, insulting the supreme leader and president, and insulting Islam. Christians also face weekly observations via security camera outside registered churches so that Iranian officials are able to document any potential converts.

The list of conspicuous offenses culminates with a particularly tragic and violent incident occurring at the hands of Iranian security forces sometime in 2008: "In 2008 plainclothes security officers raided the home of Isfahan Iranian Christians Abbas Amiri and his wife, Sakineh

Rahnama, during a meeting. Both Amiri and Rahnama died of injuries suffered during the raid. Authorities denied permission for the local Christian community to hold a memorial service for the couple."

Through allies who maintain diplomatic relations with Iran, the U.S. State Department continues to press Tehran on religious freedom and human rights, and has repeatedly condemned Iranian persecution in United Nations resolutions. However, the government of Iran offers a shallow, insufficient response to its critics in the international community, reserving five seats in their parliament for religious minorities, two for Armenian Christians, one for Assyrian Christians, one for Jews, and one for Zoroastrians. These members are allowed to vote but are constitutionally prohibited from becoming president.

It is unsurprising that the solitary Jewish member of the Iranian parliament is prohibited from running for the nation's highest elected office. It would be more surprising to hear that he or she even desired to run, given the comments made by the incumbent over the past few years. President Mahmoud Ahmadinejad is the head of the Iranian government, yet he remains subordinate to Supreme Leader Ayatollah Ali Khamene'i. Ahmadinejad, a former engineering teacher, has become a polarizing figure in international affairs during his two terms in office, and he draws sharp condemnation from all directions each time he has foolishly called the validity of the Holocaust into question. Under his leadership Iran has become both a mocked pariah state and a feared enemy. Openly anti-Semitic, Ahmadinejad provokes the wrath of Israel and its allies, most notably the United States, with each passing year. He questions the legitimacy of the Israeli state, continues to push for nuclear independence without international approval, rattles the Iranian saber by threatening to shut down the strategic Strait of Hormuz to shipping, corrupts the democratic process, represses his own people, and continues to overlook serious violations of religious liberty throughout his country. Ahmadinejad may have passed civil engineering, but he's certainly failing history.

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1 http://www.state.gov/j/drl/rls/irf/2010_5/168264.htm.

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

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Sadness Within Islam

Saudi Grand Mufti's Edict On Christian Churches

BY: IMAM SHAMSHAD

As a Muslim I am saddened to see the state of Islam today. Once again the beautiful message of Islam and the example of the prophet Muhammad is totally absent in the recent verdict by Saudi Arabia's grand mufti Abdul Aziz bin Abdullah. He has called for the destruction of all Christian churches in the region.

Such an ignorant ruling is totally against what I see as the teachings of Islam, which clearly support freedom of religion ("There shall be no compulsion in religion" [Sura 2:256]). Not only that, but Islam mandates—by military force, if necessary—the prevention of the destruction of places of worship, specifically mentioning those belonging to Christians, Jews, and Muslims ("And if Allah had not repelled some people by means of others, cloisters and churches and synagogues and mosques, wherein the name of Allah is oft remembered, would surely have been destroyed" [Sura 22:41]).

Even a child can see that if God commands Muslims to save Christian churches and other places of worship from being torn down, how could God (or His prophet) then sanction the very thing Muslims are forbidden to do? And to further invalidate the fatwa of the Saudi grand mufti, we have as evidence the "Charter of Religious Freedom for Christians" granted to St. Catherine's monastery in the Sinai by Muhammad in A.D. 628, which reads:

This is a message from Muhammad, son of Abdullah, and is a covenant with those who adopt Christianity, be they near and far, that we [the Muslims] are with them. Verily I, my servants, my helpers, and my followers will defend them because Christians are my citizens; and by Allah! I am against anything that displeases them. No compulsion [to convert] is to be put on them. Neither are their judges to be removed from their posts, nor their monks from their monasteries. No one is to destroy a house of their religion, nor damage it, or carry anything from it to the houses of the Muslims. Should anyone do any of these, he would spoil God's covenant and disobey His Prophet. Verily, they are my allies and have my secure charter [of protection]. No one can force them to migrate or oblige them to fight during wartime. The Muslims are to fight for them. If a female Christian is married to a Muslim, it must not take place without her approval. She is not to be prevented from visiting her church to pray. Their churches are to be respected. Christians are not to be prevented from repairing them. . . . No one of the nation [of Muslims] is to disobey this covenant until the Day of Judgment.

The Saudi grand mufti's extremist and un-Islamic edict fosters radicalism and animosity toward Christians, as well as prejudice against Islam in the world at large. Any resulting destruction of property or loss of life suffered by Christians at the hands of Muslims will be on his hands as well for instigating such reprehensible hatred and evil.

Ironically, at the same time as the Saudi grand mufti was inciting intolerance, destruction, and potential murder, Saudi king Abdullah was in Spain attending a Christian interfaith conference where he was extolling the peace, love, and tolerance of Islam. It's too bad these admirable qualities are so noticeably absent in the Saudi kingdom. It would be admirable if the king hosted an interfaith conference in Mecca or Medina, and allowed Christians and other "religious minorities" in his country to build and inhabit their places of worship in peace and security. He would then be following the example of the greatest grand mufti in Islam, the prophet Muhammad.

The prophet, by way of example, left a tradition for Muslims to host peoples of other faiths in the Muslim sacred cities. Let us not forget that the prophet hosted several delegations from other faiths in Muslim mosques, including the famous event of allowing the Christians of Najran to worship in the prophet's mosque in Medina. How can the Saudi kingdom prohibit the entry of non-Muslims into Mecca or Medina? It runs contrary to the practice of the prophet himself.

Extremism is running high in the kingdom toward Muslims and non-Muslims alike. Mufti Abdul Aziz bin Abdullah bin Baz has issued a verdict proposing the killing of Muslims who will not adopt the practice of offering daily prayers. In his book of edicts, *Fatawa*, published in 1995, he explicitly asks the authorities to force Muslims into repentance, and in cases of resistance writes, "Kill them."

This is why the edict by the Saudi grand mufti is such a disgrace—worse, an insult—to Islam. Can he truly be ignorant of the many verses in the Quran and the examples of the prophet that contravene and outright prohibit the intolerance, violence, and destruction his edict will



generate?

Doesn't the grand mufti remember that the prophet sent his persecuted Muslim followers to seek asylum in Abyssinia (now Ethiopia)—a Christian-ruled country? And doesn't the grand mufti know about the Charter of Medina that Muhammad, as the elected chief executive, signed along with all other leaders from the town's religious and tribal groups? In that charter of religious freedom and mutual protection, they pledged that all the residents of Medina, regardless of their faith or tribe, would live peacefully together and defend each other and their city against attack. Everyone would be free to worship as they pleased, with no forced conversion to Islam or any other religion.

At the time of the prophet Muhammad, the Muslims, Jews, Christians, and pagans in Medina were all allowed to pray according to their own beliefs and rituals without fear of persecution or violence against them or their places of worship. This is the true example of Islam set by the prophet Muhammad, which the Saudi grand mufti and all those who agree with his edict against the Christians are disobeying.

They all seem to have forgotten that the prophet remains the best and final word for Muslims. I fear their amnesia will cost them dearly.

Imam Shamshad writes from the Baitul Hameed Mosque of Ahmadiyya Muslims in Chino, California.

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Jeopardy

BY: DAVID POLISH

"The public schools of this country serve the admirable function of bringing together on common ground students from a diversity of cultural and religious backgrounds. The introduction of public prayer into such a setting jeopardizes the sense of community and unnecessarily intrudes an emotional and divisive character."

Rabbi David Polish, in testimony on behalf of the Synagogue Council of America, September 8, 1980, United States House of Representatives. (Cited in *Great Quotations on Religious Freedom* [Amherst, N.Y., Prometheus Books, 2002])

