

May/June 2014

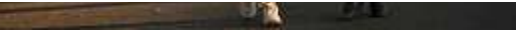
Existential Threat (<http://www.libertymagazine.org/article/existential-threat>)

Religious liberty is that most precious commodity; but one that is the most easily skewed from conscience to privilege, to entitlement, to demand upon other.



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Existential Threat

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Editorial, by [Lincoln E. Steed](#)

Sometimes I see things on TV that I would rather forget. Some of those shocking things are real events made surreal by the flickering pixels that leave shadows on your memory. One event I cannot quite erase was a discussion some years ago between two religious figures on a talk show. The Reverend Jerry Falwell and the Reverend Al Sharpton spent a good deal of time railing on about their shared views on abortion. All went well until the Reverend Al took a little time out to argue for social justice for the underclass in America. The late Jerry Falwell did not take kindly to this veering off-message. He turned on his fellow rev and said this—as exact a wording as I can remember: “If you believe that,” he said in a menacing tone, “You are not a Christian; you are not an American; you are a terrorist sympathizer!” He was not smiling. Everyone knew what we did and do to terrorist sympathizers! The ease of his segue astounded me. I have not heard it as boldly stated since, but in different guises—especially on radio talk shows—I hear it regularly. And it usually involves the same leap from religious difference to political pariah.

When, following real terrorist attacks, we liberated Afghanistan from the religious overlordship of the Taliban, we learned a few things about life under religious absolutists. And the Taliban turned out to be very much religious absolutists.

Originally students in madrasahs or religious schools, the Taliban took their name from an Arabic word, adopted in the Pashtun dialect as *talib*, or student of religion. They came by their religious monomania fairly directly: in a region of high illiteracy, “learning” that consisted mostly of rote memorization of often obscure passages of the Koran led directly to absolutism. It led to their conviction that everyone should adhere to their singular religious vision. It led to intolerance. And encouraged by international forces that saw them as useful opponents to godless Communism, the Taliban became a political force. In a chaotic political situation they emerged as the only coherent power. And they wielded power with a frightening consistency.

In a Taliban-ruled society every religious rule was policed with often bloody vigor. Women who dressed immodestly were publicly beaten and shamed. Men were required to grow beards and punished if they shaved. Thievery was punished by amputation. Women were forced out of public life, covered from head to toe in suffocating anonymity. Young girls were forbidden from attending school. Young boys were punished for flying kites. A fun time was had by all, because “Allah is merciful.” And well He may be. Unfortunately, those who spoke for Him were not.

For me, the Taliban experience in Afghanistan—an experience likely to be resumed again once foreign troops leave—is a salutary lesson in the dangers of absolutist religious power. Every direct rule by religionists reverts to horror of compelled religious conformity. I believe with every fiber in my body that true spiritual faith is the fountain of public manners and morality. But when the element of compulsion—of civil power—is introduced to the equation, things invariably turn to the dark side.

The late Reverend Jerry was no Talib, but he certainly shared their urge to project faith through political power—and, as I saw, appeared as troubled by those who exercised their faith a little differently from him. Religious liberty is meaningless unless we grant the right to others to think and

act differently from us. It means nothing if compulsion is involved.

The media were full of buzzings of late over the so-called Hobby Lobby case before the Supreme Court. And the case certainly has plenty of interesting angles. For most people the interest lies in that it is the latest challenge to the Affordable Health Care Act, or Obamacare.

It yet remains to be seen how helpful the act will be for a society in thrall to high medical costs, the plaything of out-of-control medical insurance, and the object of disbelief from the rest of the publicly insured developed countries. It yet remains to be seen how the animosity of the one party that contributed not one vote to the act's passage will play out. Yet, as the issue goes to the High Court once again it is against the backdrop of the court's last decision to uphold the act.

It troubles me that this latest challenge is given on the basis of religious objection.

It troubles me because the real opposition to the act is political, and the same players who opposed it for purely political reasons are now ready to give the challenge a cast of martyrdom.

It troubles me that the rocky beginning of the act's ad hoc implementation involved a large corporate church structure challenging the state, which from the get-go would rather make an accommodation than stand and fight.

It troubles me that the growing conservative religious preoccupation with abortion—an issue that should trouble any Christian or person of faith in the integrity of human life—has been co-opted to a political end here.

It troubles me that the objection as first enunciated by the Catholic Church as regarding their institutions, like hospitals, amounts to a demand for a legal pass to write their view into the larger society.

It troubles me that with the Hobby Lobby objection, by owners who undoubtedly have deeply held personal convictions, we again have a dynamic that will require compliance by a much larger community than the faithful.

It troubles me that the court's curious holding recently about the rights of corporations comes at precisely the same time that the Roman Catholic Church and some Protestant groups are enunciating the corporate rights of church entities and the faith community—by inference even over the rights or wishes of the individual.

It troubles me that we have morphed from Christian-run businesses making an admirable and perhaps costly statement of faith by being closed for business on a day they presume to be holy, to a claim that they will not bear the cost of a generally applicable allowance that does not require anyone to actually use the provisions regarded as questionable.

It troubles me that Christians who should know better are sending out scurrilous fund-raising letters that accuse our chief executive of being an undercover Muslim and the administration of being socialist—as in Communist. They forget that the Constitution would protect anyone's faith and right to hold office, even if they were as godless as Thomas Jefferson was held to be by some of his detractors at the time. They forget that most of the enlightened West is socialist in regard to medicine—not by some nefarious ideology, but by a more enlightened view of one's responsibility for another. In short, they forget themselves as Christians. It might not hurt to broaden our faith concern to social justice and how that plays out against unbounded capitalism and militarism. It might not hurt to think a little on the poor, pillowless Christ who eschewed political power and spent much time with the needy sinners.

I do not know how the court will call this one. I might hope they thread the needle with this camel. And I am not so tone deaf that I do not see a real issue of conscience at play. But there are those who do not play nicely. Political forces are afoot that would derail all the norms that once informed the Constitution. And politically ambitious religionists, not content to study their faith and preach on street corners and around their own hearth, would surely like to tie down all the kites that blot out their view of the sun.

Religious liberty is that most precious commodity; but one that is the most easily skewed from conscience to privilege, to entitlement, to demand upon other. What troubles me the most at the moment is the redefinition of religious liberty; a redefinition that is in the process of removing it from the province of the individual conscience to the stuff of the body corporate, both religious and political.



Living for an Ideal

 libertymagazine.org/article/living-for-an-ideal

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by [Wintley Phipps](#)

The world held its breath that day in 1990. What would Nelson Mandela say? What could he say after 27 years of imprisonment by a repressive regime? One word of rancor or bitterness and his country of South Africa would become engulfed by an inferno of revenge and retaliation. Amazingly his speech was filled with words of profuse gratitude as well as warning. He ended by invoking the words he used at his trial in 1964. "I have fought against White domination, and I have fought against Black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for, and to see realized. But, my Lord, if needs be, it is an ideal for which I am prepared to die." Bishop Desmond Tutu, the future chair of the Truth and Reconciliation Commission, called Mr. Mandela a man of "extraordinary magnanimity" who would share power with his enemies, self-limit his political aspirations, and even hire his jailer.

So it was that on a warm summer day, February 11, I was privileged to be a silent witness to history. I found myself standing in the crowd, in front of Cape Town City Hall to welcome Nelson Mandela as he came out of prison. Walter Sisulu, who had spent many years with Mr. Mandela on Robben Island, took the microphone. "I now present to you the great leader who has been in jail for 27 years; who has done everything for your freedom. I therefore present Nelson Mandela to you." A roar of jubilation went up from the crowd as they heard Mr. Mandela's first word: "*Amandla.*" "*Awethu,*" the crowd responded. John Battersby, of the *Christian Science Monitor*, said that we were watching "history and legend merging and becoming reality."

I had arrived in Johannesburg two days earlier, unaware this would be one of the most momentous weeks in the history of South Africa. Then a quick trip to Cape Town the following day had afforded us the rare privilege of meeting with South African president F. W. de Klerk and his foreign minister, Pik Botha.

The president came into the room like a man on a mission: resolute, determined, fully aware that the weight of history sat squarely upon his shoulders. After polite diplomatic pleasantries, he got straight to the point. "You have come a long way to remind us apartheid is wrong," he said, but you must understand you are now "preaching to the choir. We know it is wrong, but we need time to change it." In the meeting, President de Klerk never hinted to the breakneck speed with which he was moving South Africa to a true democracy, one in which the principle of majority rule would be enshrined. Neither did he intimate to us that the very next day he would be meeting with Nelson Mandela to confirm with him the date of his release. Then, at a press conference that next day, on February 10, President de Klerk stunned the world by announcing that Nelson Mandela, after spending 27 years in prison, most of them on the infamous Robben Island, would be released the very next day.

A public acknowledgment of error in the name of religion.

Nelson Mandela was arrested that last time on August 5, 1962, at the age of 44. He would spend



the next 27 years of his life a silent yet powerful advocate for the demise of apartheid. The hardships borne at the hands of the racist apartheid regime would eventually catapult him to the pinnacle of political achievement. Without benefit of an army, navy, or air force, he would assume his nation's reins in large measure by, literally, suffering himself into power. To Mr. Mandela's mind, his imprisonment was necessary, for there was no way a political system that "inequitable and unjust in its essence could be modified." It had to be radically transformed.



Throughout his years of captivity Mr. Mandela remained steadfast in his belief that a nonracial democracy could be peacefully rebuilt from the ashes of apartheid. This man with a warm smile and a forgiving heart would have the opportunity to counsel a nation back from the brink of extinction. Yet it was not until the ripe old age of 75 that he could cast his first vote in a new post-apartheid South Africa.

Some might not naturally see Nelson Mandela as a champion for religious freedom. But in a profound way he was one of the greatest heroes for religious freedom in modern memory, not only because of what he built up, but because of what he dedicated his life to—the tearing down of the system and dogma of apartheid.

The ugly truth is that, at its core, apartheid was state enforcement of a religio-political miscreation that denigrated humanity and violated the sacred ground of conscience. The power of a nation state was used to enforce a misguided theological belief, the profane religious teaching that all men were not created equal, and were not endowed with unalienable rights of life and liberty. The church provided the state theological underpinnings for the belief that people of color were cursed by God and were only to be "hewers of wood and drawers of water"—the manual laborers referred to in Joshua 9:21. It taught that race mingling and miscegenation was prohibited by the biblical injunction to be separate (Genesis 11; 2 Corinthians 6:17). And though all men might have the same blood, according to Acts 17:26, God hath determined the times before appointed, and the "bounds of their habitation," declaring His will that geographic boundaries and borders be set, drawn and determined by race. Early military victories of the Boers over African natives were seen as a sign of divine election and were taken as a mandate from God to extend ethnic and racial domination over conquered tribes—a kind of Kuyperesque extension of the sovereignty of Christ. This strange amalgamation of theology, race pride, and ethnic entitlement became a state idol from which worship was either compelled or coerced.





REUTERS/Dylan Martinez

According to the Kairos Document, published in 1985 by a group of Black South African theologians, this church-state idol is “the god of teargas, rubber bullets, *sjamboks*, prison cells, and death sentences,” “the very opposite of the God of the Bible”—“the devil disguised as Almighty God.” “State Theology,” the theologians stated, “is not only heretical, it is blasphemous, and “the church cannot collaborate with tyranny.”

Searching for the genesis of apartheid uncovers no theological smoking gun, no clear manifesto one can point to before 1948. Instead, coming from a jangled web of theological confusion and delusion, the birth of apartheid was, at best, historically complicated.

In the early 1500s Johann Boemus (1485-1535), a German Hebrew scholar, considered to be the first true scientific ethnographer, put forward the theological postulate that the barbarous peoples of Africa were the cursed descendants of Ham. On the soil of southern Africa this teaching would be fused with a perversion of John Calvin’s (1509-1564) doctrine of predestination. In this convenient iteration God had made a covenant with the racially favored, superior Boers, to have dominion over the “obviously damned” Bantu bushmen. So out of this religio-political nuptial, apartheid was born.

In 1948 the National Party, often called the Dutch Reformed Church at prayer, declared apartheid to be merely “separation on Christian principles of justice and reasonableness.” It fell to President Malan, an ordained minister of the Dutch Reformed Church, to implement it, and President Verwoerd, whose father was an assistant evangelist in the Dutch Reformed Church, to enforce what he described as a benevolent policy of “good neighborliness.” The lead article for the September 22, 1948, issue of the Dutch Reformed Church’s official newspaper, *Die Kerkbode*, read: “As a church we have . . . striven constantly for the separation of these two national groups [White and Black]. In this regard one can correctly refer to apartheid as church policy.” In the April 19, 1950, issue they wrote: “White guardianship is not so much a right as a high calling . . . because we have not just a policy, but a message: the everlasting gospel.” At the high point of the world’s opposition to apartheid, the Dutch Reformed Church was even receiving money from secret government funds to develop and disseminate effective counterarguments, to fight what was seen as theological propaganda emanating from the World Council of Churches, opposition to apartheid. At its height, the grip of apartheid seemed unbreakable.

Born July 18, 1918, Rolihlahla Mandela was the great-grandson of the ruler of the Thembu people in the Transkei. A product of Christian education, Rolihlahla was sent at the age of 7 by his devout Methodist mother to the Clarkebury Methodist Missionary School in the Eastern Cape. Upon baptism his English teacher gave him the name Nelson.

In 1937 at the age of 19 Mr. Mandela enrolled in Healdtown Wesleyan College at Beaufort. It was there that he met Seth Motikimi, who served as chaplain at the college from 1937 to 1951. Chaplain Motikimi had a “tremendous impact on me,” said Mr. Mandela later. “He really molded me. He influenced us. Of course we tried in our small ways to imitate him, but we did not have the courage. It is good

when you have heroes around you. Reverend Mokitimi was a hero.” Two years after the Sharpeville massacre in 1960 Seth Mokitimi would go on to become the first Black minister to be elected as the leader of any major church denomination in South Africa.

Nelson Mandela’s journey to Nobel Peace Prize winner and caretaker of a peaceful transition to power in South Africa was a circuitous one. But it was no accident that his faith and convictions were framed by one of the few faith traditions that dared to officially oppose apartheid. Though complicated by paradox and controversy, Mr. Mandela’s faith and worldview were nurtured in one of the most anti-apartheid faith traditions in South Africa, the Methodist Church. At a September 18, 1994, address to the Annual Conference of the Methodist Church, Mr. Mandela said: “I cannot overemphasize the role that the Methodist Church has played in my own life *It is fitting that this conference is taking place in this particular chamber, after the advent of democracy in our country. The Methodist Church was the only Church to be declared an illegal organization under apartheid, and for ten long years you were forbidden to operate in Transkei bantustan. It is in this very chamber that this banning order was promulgated.*”

From the onset of apartheid, English religious denominations, while not always shining examples of racial enlightenment, faced off with the Dutch Reformed Church over apartheid. Anglicans, Methodists, Presbyterians, Congregationalists, Catholics, and, most notably, the Methodist church of South Africa, rejected apartheid. Before the Group Areas Act of 1950 and the Separate Amenities Act of 1953, with some notable exceptions Black and White Methodists worshipped and studied together. Those laws making it unlawful to attend churches across racial lines were seen as a vile affront to their religious freedoms and commitment to remain, if only structurally, a racially integrated denomination. The members of the church were instructed to find ways of loving the nation, but not the nation’s sins.

In 1966 the Central Methodist Mission, on Buitenkant Street, Cape Town, provided transportation for their multiracial congregation when the national government implemented the forced territorial segregation of their congregants to separate racial areas. In protest a plaque was placed conspicuously in the front of the church reading: “All who pass by remember with shame the many thousands of people who lived for generations in district six and other parts of this city, and were forced by law to leave their homes because of the color of their skins. Father, forgive us . . .”

The Methodist Church understood that freedom is threatened not only by prohibitions enacted by the state but also by church collusion with it. Clearly members of all faiths shared, as Bishop Tutu said, in the “maintenance and collaboration of apartheid’s unjust laws.” One of the most powerful documents I have ever read is “Statement of Confession” submitted by my church, the Seventh-day Adventist Church in South Africa, to the Truth and Reconciliation Commission. It is a poignant warning to those who oppose the state enforcement of religious beliefs: to be voiceless in the face of religious tyranny is to be complicit with it. It reads: “We confess that we were altogether too caught up with maintaining our traditional apolitical stance with regard to the separation of church and state to effectively combat the viciousness of apartheid. Under the pressure of the times we allowed the structures of the church to gradually become patterned along the lines of apartheid, by providing separate church regional organizations for different racial groups within the church. We failed to realize that the state demanded of its citizens things to which it had no claim and that, as Christians, we should have resisted this usurpation of God’s authority to the uttermost. . . . We commit ourselves, therefore, once again and all the more earnestly to the proclamation of the eternal gospel of the universality of God’s love; the denouncement of the Babylonian captivity of the church in which it sells its soul to the state; and the articulation of a more effective and clear warning against the worship of the beast that civil-religious concoction of blasphemy, coercion, human arrogance, and injustice that seems to find root all too easily in our midst (Revelation 14:6-11).”

The house of racism built by church and state would be dismantled in part by the efforts of the abolitionist faiths of South Africa and the life and legacy of Nelson Mandela.

I was privileged to meet Mr. Mandela on several occasions and to be in South Africa during the campaigning and lead-up to his election as president. I pray that his transformative vision will continue to bring peace and religious freedom to South Africa.

Nelson Mandela once said that we serve a Messiah “whose life bears testimony to the truth that there is no shame in being persecuted: Those who should be shamed are they who persecute others.

“Whose life testifies to the truth that there is no shame in being conquered: Those who should be ashamed are they who conquer others.”

On December 15, 2013, millions of us around the world gathered by television to say goodbye to one of the greatest champions for peace, equality, and religious freedom the world has ever known. Nelson Rolihlahla Mandela had gone from church school innocence to daring dissident, from Sunday school teacher to tactical agitator, from calculating barrister to contentious activist. History, I think, will long celebrate his achievements and not much remember his flaws; we will continue to celebrate his unlikely ascension from prisoner to president and the dismantling of the church-state idol known as apartheid.

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That Wild Young Man

 libertymagazine.org/article/that-wild-young-man

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by [Rita Schaffner Corbett](#)

I was very young when I first heard of Nelson Mandela, and my first impression was not good. The early events with Mr. Mandela occurred while my parents struggled to keep Songa Hospital in Zaire open, which is how I found myself in South Africa.

For safety's sake, I had been sent as a boarding student to Helderberg High School, near Cape Town. I was 12 years old, and suddenly lived 20 minutes away from where all the action was taking place. In my immaturity the news of Mandela's arrest, trial, and sentencing quickly led me to conclude that this stranger was simply no good—troublemaker, a criminal, someone to be afraid of, and very powerful. No one had coined the term terrorist yet, but just the same, this man was frightening to me!

The news station reports all sounded the same, though the local populace was pretty tight-lipped about things. No one wanted to explain to me who Nelson Mandela was. Or maybe they really didn't know. It was also obvious that the descriptions of his character varied quite a bit depending on who was telling the story; the story bent and twirled with the teller's color, language, political orientation, and background. Sometimes it seemed that those who spoke of him most angrily were really angry about something else altogether.

As students, we regularly drove past Pollsmoor Prison as if it wasn't there. And we peered at Robben Island through the ocean mist like visitors at the zoo. Blithely floating through my teens and into young adulthood, I was completely unaware that in spite of all the judgments against him, somewhere a young man was, by choice, by character, by revelation, and by sheer grit and tenacity, becoming a great statesman. Who would have known?

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A Civil Right Tested - Part 1: Title VII and Beyond

 libertymagazine.org/article/a-civil-right-tested-part-1-title-vii-and-beyond

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by [Keith Blair](#)

One of the greatest legislative achievements of the twentieth century was the Civil Rights Act of 1964. Title VII of the bill was enacted in an attempt to eradicate discrimination in the workplace. The main focus of the bill was racial discrimination, but protections were included for color, sex, and national origin. Subsequent to the act's passage, religion was added as a protected category under Title VII.

Religious discrimination is the category of discrimination that has been the hardest for courts, employers, and employees to deal with. Discrimination that is based on race is relatively easy to spot and, in theory, to remedy. The same is true of discrimination based on sex, national origin, or color. Religion is different. First, employees who sue because of discrimination based on race, color, sex, or national origin are seeking to be treated the same as other employees. They want the ability to get a job, keep a job, and be paid the same as everyone else.

Employees who seek redress for discrimination based on their religion do not want to be treated the same. Instead, they wish not to work a particular day or shift; or they wish to wear a particular piece of religious clothing that does not conform to company policy; or they wish to groom themselves in ways that meet a religious obligation but that conflict with a workplace rule. Employees who complain of religious discrimination want to be treated differently—or “accommodated”—so that they can meet both their religious and work obligations.

Employment discrimination claims that arise on account of religion can generally be classified into three primary areas. The first area of such claims concerns conflicts between work requirements and holy day or Sabbath observances. Employees in these cases wish to have time off in order to observe a day of worship. Next are the dress claims, which involve religious-clothing requirements. Employees in these cases generally seek to wear an article of clothing that does not conform to an employer's uniform or dress policy. Finally, there are the grooming claims, in which an employee needs to be groomed in a particular manner to meet a religious obligation, but in which the grooming conflicts with an employer's policy. These cases arise frequently and are sometimes difficult to resolve.

Employers seek to have workplaces that are as free from conflict as possible. Accommodating employees who have religious needs not only affects the religious employee but also affects the nonreligious employee who might be asked to work overtime to cover the religious employee's absence on a day of worship. It also affects other religious employees who might not have the need for an accommodation but who feel as if the employer is favoring the religion of the employee who has been accommodated.

Despite the perceived challenges that accommodating the needs of religious employees poses, there are benefits to meeting those challenges. The United States is an extremely diverse country. We celebrate the fact that our society is a melting pot. We value the wide variety of thought that our diverse society brings. The conversation in the public square is richer because we include multiple races, colors, gender, and nationalities in the public conversation on the issues of the day. Similarly,

the inclusion of the multitude of religions in our society at large enriches society. Inclusion of the views of people of faith adds another bit of diversity to the melting pot.

Just as society benefits from the inclusion of diverse voices and thoughts, the workplace also benefits from diversity. That was recognized by the passage of Title VII. Although the main impetus of the Civil Rights Act was to stop discrimination, part of the push came from people's realization that the inclusion of all members of society in the workplace benefits all society.

Despite the passage of Title VII and the inclusion of religion as a protected category, religious discrimination in the workplace persists. Between 1997 and 2009, claims of employment discrimination on account of a worker's religion increased 82 percent, while claims of discrimination based on race or color increased only 16 percent during the same period.¹ Similarly, claims of sex discrimination increased only 15 percent,² and age discrimination increased 55 percent.³ Minority religions became especially vulnerable to discrimination after the September 11, 2001, attacks on the United States. Because of the importance of protecting the rights of religious workers, the accommodation of these workers must be revisited.

The United States Supreme Court has examined workplace religious discrimination in two cases, *Trans World Airlines, Inc. v. Hardison*⁴ and *Ansonia Board of Education v. Philbrook*.⁵ Those two cases have shaped the law of religious discrimination in employment. Because of those cases, courts view what must be done to accommodate the needs of religious employees through the lens of the employer, not the employee. No employee is entitled to claim an accommodation that would pose a burden on the employer's ability to run his or her business.⁶

Rather than looking at the accommodation through the eyes of the employer, however, I would argue that courts and employers should look at the accommodation through the eyes of the employee. The religious-discrimination provision of Title VII is an accommodation to the employee, not to the employer.⁷ The legislative history of Title VII shows that the drafters of the bill had the needs of the religious employee at the forefront of their efforts.⁸ The Supreme Court, in *Hardison* and *Philbrook*, has shifted the focus of the accommodation incorrectly to the employer rather than to the employee.

Requiring that any accommodation be viewed from the viewpoint of the employee, however, does not mean that the employee gets a free pass. The employee must genuinely work with the employer to ensure that the accommodation enables the employee to meet both his or her religious and professional obligations and that the employer is able to operate its business efficiently and free of conflict.⁹ The employee might need to mitigate some of the cost of the accommodation.¹⁰

The History of Title VII and Its Amendments

Congress enacted the Civil Rights Act of 1964 to combat racial discrimination in the United States.¹¹ The act contained numerous titles that addressed distinct forms of discrimination.¹² Title VII of the Civil Rights Act of 1964 was enacted to give workers broad protection from discrimination in employment.¹³ Title VII provides, in relevant part, that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."¹⁴

The Civil Rights Act of 1964 was passed because of the vision of President John F. Kennedy, who pledged to protect workers from discrimination based on race, creed, or ancestry.¹⁵ The resulting legislation, passed after President Kennedy's assassination, provided protection not only for race, creed, or ancestry but for color, religion, or sex.¹⁶ Although the final version of Title VII included protection from a broad range of discrimination, Title VII was envisioned as a way to combat

discrimination based on race.¹⁷ There is little legislative history explaining why religious discrimination was added to Title VII.¹⁸

The Equal Employment Opportunity Commission issued guidelines in the 1960s that stated that accommodation of religious employees should be made unless the accommodation would be a “serious inconvenience” to the employer’s business.¹⁹ The next year the EEOC modified the guidelines, stating that employers must accommodate employees’ religious needs unless the accommodation would be an undue hardship to the employer.²⁰

The Early History of Religious Accommodation

An example of the treatment that religious discrimination claims received in the courts can be found in *Dewey v. Reynolds Metals*.²¹ Dewey was employed by the Reynolds Metals Company as a dye repairman.²² He started his employment with Reynolds in 1951 and became a member of the Faith Reformed Church in 1961.²³ Reynolds had collectively bargained an overtime agreement with the labor union representing its employees.²⁴ That agreement required that “all employees shall be obligated to perform all straight time and overtime work required of them by the Company except when an employee has a substantial and justifiable reason for not working.”²⁵

Dewey never volunteered for overtime work on Sundays, his Sabbath.²⁶ Nevertheless, he was scheduled for work on Sunday, November 21, 1965.²⁷ He refused the work assignment because of his religious beliefs, was given a warning, and was told that it was necessary for the company to maintain a seven-day work-week.²⁸ Dewey was subsequently scheduled to work five Sundays between January and August 1966.²⁹ He did not report to work but obtained replacements for those days.³⁰ However, because of his beliefs he declined on August 28, 1966, to obtain a work replacement.³¹ This continued for the next two Sundays.³² Dewey was subsequently fired for violation of plant rules.³³

Dewey sued Reynolds for employment discrimination because of his religious beliefs.³⁴ The district court found that the collective-bargaining decision that mandated the overtime was discriminatory in its impact, and found for Dewey.³⁵ The Sixth Circuit reversed the district court, finding that Reynolds had provided a reasonable accommodation to Dewey by providing a replacement system.³⁶

Congress’s Response

As a result of the decision in Dewey, Senator Jennings Randolph introduced legislation to amend Title VII.³⁷ Randolph was a Seventh Day Baptist and was alarmed at the inconsistent Title VII decisions with respect to religious discrimination.³⁸ Senator Randolph believed that the courts were not adhering to the original intent of the Civil Rights Act of 1964, and his amendment meant to codify what he believed was the original intent.³⁹ Specifically, Senator Randolph wanted to protect Sabbatarians from religious discrimination in the workplace.⁴⁰ Congress subsequently passed the amendment.⁴¹

On July 2,
1964,
President
Lyndon B.
Johnson
shakes hands
with Martin
Luther King,



Jr., after presenting him with one of the pens used to sign the Civil Rights Act of 1964.



The amendment tracked the EEOC guidelines that were published in the 1960s in that it codified the requirement

that employers provide a reasonable accommodation for the religious needs of their employees. The amendment, however, did not provide guidance as to what constituted a reasonable accommodation except that the accommodation could not pose an undue hardship.

The amendment also modified the definition of religion in the statute. The statute now defined the elements of religion that must be accommodated to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”⁴²

The Supreme Court’s Response—*TWA v. Hardison*

The Supreme Court was finally able to take up the issue of religious discrimination and Title VII in 1977 in *Trans World Airlines, Inc., v. Hardison*.⁴³ Larry Hardison was hired as a clerk by Trans World Airlines (TWA).⁴⁴ Hardison was a clerk in a department that operated 24 hours a day, 365 days a year.⁴⁵ Subsequent to his hiring, Hardison became a member of the Worldwide Church of God.⁴⁶ One of the basic tenets of the Worldwide Church of God is the observance of a Sabbath from sundown Friday until sundown Saturday.⁴⁷ Because of this belief, Hardison informed TWA that he would not be able to work during those times.⁴⁸ Hardison was initially able to avoid working on his Sabbath.⁴⁹ However, because of seniority rules that were present in contracts that TWA had collectively bargained with its unions, Hardison was ultimately required to work on Saturdays.⁵⁰

Hardison was fired on the grounds of insubordination because he would not work on Saturday.⁵¹ He sought relief under Title VII, asserting that his discharge constituted religious discrimination, that his union had not adequately represented him in the matter with TWA, and that he had been deprived of his right to exercise his religion.⁵² The United States District Court ruled in favor of TWA and the union, finding: (1) the union’s seniority rules could not be trumped by the duty to accommodate Hardison; and (2) TWA had reasonably accommodated Hardison and further accommodation would have been an undue hardship.⁵³ The Court of Appeals for the Eighth Circuit reversed the judgment of the district court, finding that TWA had not met its burden to accommodate Hardison.⁵⁴

The Supreme Court reversed the Eighth Circuit Court of Appeals, finding instead for TWA.⁵⁵ The

Court attempted to analyze the legislative history of Title VII and the EEOC guidelines.⁵⁶ The Court determined that “the employer’s statutory obligation to make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship, is clear, but the reach of that obligation has never been spelled out by Congress or by EEOC guidelines.”⁵⁷

The Court found that the collectively bargained seniority agreement was not unlawful under Title VII and could not be ignored to accommodate an employee’s religious needs.⁵⁸ The Court further held that requiring TWA to incur more than a de minimis cost in accommodating Hardison would be an undue hardship under Title VII.⁵⁹

The EEOC’s Response

The Hardison decision was not well received by some members of Congress.⁶⁰ Attempts were made to amend Title VII to change “undue hardship” to “severe material hardship.”⁶¹ Ultimately, the EEOC held hearings that resulted in new guidelines for religious discrimination, which went into effect in 1980.⁶² The new guidelines stated that an employer could not claim an undue hardship simply based on a “mere assumption” that additional employees would request and require accommodations if the employer were to accommodate one employee for religious reasons.⁶³ The new guidelines also stated that there was not a set definition of “undue hardship” or “reasonable accommodation,” but that the definition depended on various factors including the size of the employer, the number of employees who needed accommodation, and the employer’s operating costs.⁶⁴

Hardison was fired on the grounds of



insubordination because he would not work on Saturday.

Given that the EEOC’s guidelines were a response to *Hardison*, it is no surprise that the guidelines required more accommodation than *Hardison*.⁶⁵ The guidelines had suggested accommodations for employees who had work conflicts because of their religious practices.⁶⁶ In addition to setting guidelines for what a reasonable accommodation would be, the guidelines also stated that an undue

hardship could occur only when an employer was able to show an actual hardship, not merely a hypothetical or anticipated hardship.⁶⁷ Finally, the guidelines defined “religious practices” broadly so as to include moral and ethical beliefs that are sincerely held.⁶⁸

The broad definition of religion in the guidelines meant that employers no longer were able to question whether a belief or practice was religious or a necessary part of a particular religion. Employers were, however, now allowed to question the sincerity of the employee’s religious belief.⁶⁹ Courts, however, have not embraced the broad reading of religion contemplated by the EEOC and have not been receptive to offering protection for ethical beliefs that are not associated with a religious tenet.⁷⁰

1. See “Race-based Charges, FY 1997-FY 2008,” U.S. Equal Employment Opportunity Comm’n, <http://www.eeoc.gov/eeoc/statistics/enforcement/race.cfm> (last visited Sept. 19, 2010).
2. See “Sex-based Charges, FY 1997-FY 2008,” U.S. Equal Employment Opportunity Comm’n, <http://www.eeoc.gov/eeoc/statistics/enforcement/sex.cfm> (last visited Sept. 19, 2010).
3. See “Age Discrimination in Employment Act” (includes concurrent charges with Title VII, ADA and EPA), FY 1997-FY 2008, U.S. Equal Employment Opportunity Comm’n, <http://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm> (last visited Sept. 19, 2010).
4. 432 U.S. 63 (1977).
5. 479 U.S. 60 (1986).
6. See *id.* at 68.
7. See 42 U.S.C. § 2000e(j) (2006).
8. See *infra* under “Congress’s Response.”
9. *Ansonia Bd. Of Educ. v. Philbrook*, 479 U.S. at 69.
10. See, e.g., *id.* at 80-81 (Stevens, J., concurring).
11. H.R. Rep. No. 88-914 (1963), reprinted in 1964 U.S.C.C.A.N. 2391, 2393, 1963 WL 4735, at *3-4.
12. See 42 U.S.C. §§ 1981 to 2000h-6 (2006).
13. 42 U.S.C. § 2000e to 2000e-17.
14. 42 U.S.C. § 2000e-2(a)(1).
15. See H.R. Rep. No. 88-914, reprinted in 1964 U.S.C.C.A.N. 2391, 2391-92, 1963 WL 4735, at *2.
16. 42 U.S.C. § 2000e-2(a)(1).
17. James A. Sonne, *The Perils of Universal Accommodation: The Workplace Religious Freedom Act of 2003 and the Affirmative Action of 147,096,000 Souls*, *Notre Dame L. Rev.* 79 (2004): 1023, 1034.
18. *Id.*
19. Debbie N. Kaminer, “Title VII’s Failure to Provide Meaningful and Consistent Protection of Religious Employees: Proposals for an Amendment,” *Berkeley J. Emp. & Lab. L.* 21 (2000): 575, 581 (citing 29 C.F.R. § 1605.1 [1968]).
20. *Id.*
21. 429 F.2d 324 (6th Cir. 1970), *aff’d* by an equally divided court, 402 U.S. 689 (1971), superseded by statute, 42 U.S.C. § 2000e(j) (2006), as recognized in *Smith v. Pyro Min. Co.*, 827 F.2d 1081, 1087 (6th Cir. 1987).
22. *Id.* at 329.

23. *Id.*
24. *Id.* at 327.
25. *Id.* at 328. It is arguable that, even absent Title VII, Dewey had a “substantial and justifiable reason for not working” and should not have been required to work overtime on his Sabbath pursuant to the collective bargaining agreement.
26. Dewey, 429 F.2d at 329.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. Dewey, 429 F.2d at 329. Dewey apparently believed that not only was it a sin for him to work on the Sabbath but also for him to obtain a replacement to work for him. See *id.* at 330. This belief is not unique to Dewey. See, e.g., *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1084 (6th Cir. 1987).
32. Dewey, 429 F.2d at 329.
33. *Id.*
34. *Id.* at 327.
35. *Id.* at 329.
36. *Id.* at 331.
37. Sonne, *supra* note 17, at 1039.
38. See *id.*; Robert A. Caplen, Note, “A Struggle of Biblical Proportions: The Campaign to Enact the Workplace Religious Freedom Act of 2003,” *Fla. J.L. & Pub. Pol’y* 16 (2005): 579, 584, 585.
39. See Sonne, *supra* note 17, at 1039; Caplen, *supra* note 38, at 584, 585.
40. Sonne, *supra* note 17, at 1039 (quoting Cong. Rec. 118 (1972): 705,706 [statement of Sen. Randolph]), Caplen, *supra* note, at 584, 585.
41. See 42 U.S.C. § 2000e(j) (2006).
42. 42 U.S.C. § 2000e(j).
43. 432 U.S. 63 (1977).
44. *Id.* at 66.
45. *Id.*
46. *Id.* at 67.
47. *Id.*
48. *Hardison*, 432 U.S. at 67, 68.
49. *Id.* at 68.
50. *Id.*
51. *Id.* at 69.
52. *Id.*
53. *Hardison*, 432 U.S. at 69, 70.
54. *Id.* at 70. Additionally, the court found that *Hardison* had not directly challenged the district

court's judgment in favor of the union and affirmed without passing on the merits of Hardison's case. *Id.*

55. *Id.* at 85.
56. See *id.* at 71, 72.
57. *Id.* at 75.
58. Hardison, 432 U.S. at 80, 81.
59. *Id.* at 84, 85. ("To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship.")
60. Caplen, *supra* note 38, at 592.
61. *Id.*
62. *Id.* at 593, 594; H.R. 8670, 95th Cong. (1977).
63. 29 C.F.R. § 1605.2(c)(1) (1981).
64. 29 C.F.R. § 1605.2(e)(1).
65. Kaminer, *supra* note 19, at 591 and n.108.
66. 29 C.F.R. § 1605.2(d).
67. 29 C.F.R. § 1605.2(c)(1).
68. 29 C.F.R. § 1605.1 (1981): 317, 386.
69. Karen Engle, "The Persistence of Neutrality: The Failure of the Religious Accommodation Provision to Redeem Title VII," *Tex. L. Rev.* 76 (1997).
70. Maxine M. Harrington, "The Ever-expanding Health Care Conscience Clause: The Quest for Immunity in the Struggle Between Professional Duties and Moral Beliefs," *Fla. St. U. L. Rev.* 34 (2007); James M. Oleske, Jr., "Federalism, Free Exercise, and Title VII: Reconsidering Reasonable Accommodation," *U. Pa. J. Const. L.* 6 (2004): 525, 535, 536.

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Faith and Security: The Role of Religion in a Police State

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Based on what I know of our present circumstances, coupled with what I have studied about past regimes, the outlook does not look good. Already Christians and other religious individuals are finding themselves jailed and fined for holding Bible studies and church meetings in their homes and backyards. Others are being prosecuted for daring to help those less fortunate by feeding the poor and housing the homeless. Still others are being criticized for daring to stick to their religious principles and resist government attempts to track their whereabouts by way of surveillance and tracking devices. All the while individual Christians are being prosecuted for standing up for their religious beliefs, few are finding themselves supported by their churches or larger religious institutions.

Sadly, those hoping that religious liberty will survive in the midst of a police state may find themselves in for a shock when they learn that in past regimes, save for a few renegades, the established church has colluded with authoritarian regimes. One need look no further than Jesus Christ Himself, an itinerant preacher who was betrayed by the Sanhedrin—the established Jewish hierarchy—and given over to the governing body for execution. Yes, Jesus lived in a police state.

I have long warned that all freedoms hang together. If free speech goes; if due process goes; if the rights to bear arms and assemble and be secure in your homes and free from unreasonable searches and seizures go—then religious freedom will be extinguished alongside them. Even so, the question is not what will happen to religious freedom if America becomes a police state, but will religious institutions actually stand and fight for freedom or will they be complicit in our downfall?

Present-Day America

Before we can look to the past for clues about the future, however, we would do well to truly understand the state of affairs today in the emerging police state that is America. Let us begin, then, with a brief overview of our present circumstances, wherein with each passing day, as I document in my book *A Government of Wolves: The Emerging American Police State*, America inches further down the slippery slope toward a police state. While police clashes with protesters, small farmers, and other “lawbreakers” vividly illustrate the limits on our freedoms, the boundaries of a police state extend far beyond the actions of law enforcement. In fact, a police state is characterized by bureaucracy, secrecy, perpetual wars, a nation of suspects, militarization, surveillance, widespread police presence, and a citizenry with little recourse against police actions. In this regard the signs of an emerging police state are all around us. In true Orwellian fashion, it has infiltrated most aspects of our lives.

We were once a society that valued individual liberty and privacy above all else. Increasingly, however, we have morphed into a culture that has quietly accepted surveillance in virtually every area of our lives—police and drug-sniffing dogs in our children’s schools, national databases that track our finances and activities, sneak-and-peek searches of our homes by government agents without our

knowledge or consent, and antiterrorism laws that turn average Americans into suspected criminals. All the while police officers dressed in black Darth Vader-like costumes have more and more assumed the persona of armed militias, instead of the civilian peacekeepers they were intended to be.

This is not to say that the police are inherently “bad” or “evil.” However, in enforcing policies that both injure citizens and undermine freedom, the police have become part of the bureaucratic machine that respects neither citizen dignity nor freedom. Operating relatively autonomously, this machine simply moves forward in conveyor-belt fashion, utilizing the police and other government agents to establish control and dominance over the citizenry.

Gradually, but with increasing momentum, a police/surveillance state has been erected around us. This is reflected in the government’s single-minded quest to acquire ever-greater powers along with the fusion of the police and the courts and the extent to which our elected representatives have sold us out to the highest bidders—namely, the corporate state and the military-industrial complex, which was warned about long ago by President Eisenhower but is all too real today. Even a casual glance at the daily news headlines provides a chilling glimpse of how much the snare enclosing us has tightened and how little recourse everyday citizens really have.

As anyone who has studied history knows, police states assume control with the mantra of “freedom, equality, and fraternity”—and maybe more apropos for us, “security and safety.” The world, it must be remembered, has not often been terrorized by despots up-front enough to advertise themselves as devils. As former presidential adviser Bertram Gross, who worked in both the Roosevelt and Truman administrations, explains in his book *Friendly Fascism: The New Face of Power in America*.

“I am afraid of those who proclaim that it can’t happen here. In 1935 Sinclair Lewis wrote a popular novel in which a racist, anti-Semitic, flag-waving, army-backed demagogue wins the 1936 presidential election and proceeds to establish an Americanized version of Nazi Germany. The title, *It Can’t Happen Here*, was a tongue-in-cheek warning that it might. But . . . anyone looking for black shirts, mass parties, or men on horseback will miss the telltale clues of creeping fascism. . . . In America, it would be supermodern and multiethnic—as American as Madison Avenue, executive luncheons, credit cards, and apple pie. It would be fascism with a smile. As a warning against its cosmetic façade, subtle manipulation, and velvet gloves, I call it friendly fascism. What scares me most is its subtle appeal.”¹

An emerging American police state can already be seen in subtle trends introduced by those in leadership—government, media, education—toward greater control and manipulation of the individual, helped along in no small part by religious institutions lacking any true awareness of the world around them.

Years ago William L. Shirer, author of *The Rise and Fall of the Third Reich*, observed that America might be the first country in which fascism comes to power through democratic elections.² When and if fascism takes hold in America, the basic forms of government will remain. That, as Bertram Gross notes, is its “subtle appeal.” It will appear friendly. The legislators will be in session. There will be elections, and the news media will cover all the political trivia. Moreover, churches—at least, the established ones—will still be open for business. “But the ‘consent of the governed’ will no longer apply,” writes journalist Chris Floyd, because “actual control of the state will have passed to a small group of nobles who rule largely for the benefit of their wealthy peers and corporate patrons.”

Fear as Control

“It is always a simple matter to drag people along, whether it is a democracy or a fascist dictatorship

or a parliament or a communist dictatorship. . . . Voice or no voice, the people can always be brought to the bidding of the leaders. This is easy. All you have to do is tell them they are being attacked and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same way in any country.”³

This was the testimony of Nazi field marshal Hermann Goering at the Nuremberg trials. Goering, an expert on the propaganda of fear, knew very well how to cow and control a populace. In like fashion the very real transformation of our society is based on fear. In fact, one of the major forces currently shaping the psyche of the American people is fear. People are afraid of Communists and socialists. People are afraid of crime. People are afraid of their neighbors. People are afraid of terrorism, and so on, ad infinitum.

Thus, as the rationale goes, to save our democracy (or republic as it used to be called), we have to be secure and free of the onslaught of terrorism and the infiltration of immigrants, protesters, and other misfits (that is, other American citizens with whom we might disagree). That’s why, we are told, we need a war on terrorism, a war on crime, a war on drugs, and other military euphemisms.

Fear, and its perpetuation by the government, is the greatest weapon against freedom; and propaganda is the most effective tool for keeping the populace in check.

Religious Freedom and Submission

Regardless of the specifics of one’s faith, submission to God is a given, but what about submission to the state? This is a problem that has plagued Christians since Christ walked the earth. From the persecution of early Christians under the government of Rome to the adoption of Christianity as the official religion of the empire, Christians in the first millennium lived under a variety of regimes, with radically varying accommodations to their religious beliefs. This tension between faith in God and obedience to the state continued through the next millennium. From the various warring kingdoms in Europe taking up the cross during their attempts to conquer the world, to the resistance to empire practiced by such Christians as Leo Tolstoy—whatever the time period, one can find a Christian on either side of the submission-versus-resistance debate.

Perhaps the greatest failures and victories of Christian resistance to state power were seen during World War II, when the Nazi regime in Germany was able to convince the vast majority of Christians in that country not to wholly abandon their faith, but to translate their passion for God into passion for the state. Through a mixture of lies, propaganda, and careful politics, the National Socialists were able to persuade most of the Christian churches to support the Nazi regime.⁴ This was largely owing to Adolf Hitler, an astute politician who flattered the Christian churches at every turn, while slowly amassing all political power in the country.⁵ The conflation of patriotism and religion was a major aspect of Hitler’s rise to power.

There were, of course, some Christian churches, Protestant and otherwise, that refused to go along with the dictates of the Third Reich. The Jehovah’s Witnesses, for example, paid a high price for their rejection of state authority. As Peter Matheson notes in his compendium *The Third Reich and The Christian Churches*, “Virtually every single member suffered, and many were executed or died in a concentration camp.”⁶ One of the most vocal and dogged opponents of the Nazi regime was Dietrich Bonhoeffer, a Lutheran pastor and member of the Confessing Church, who eventually paid for his resistance with his life.

Nazi Germany might seem an extreme example, but its relevance to any discussion about the role of religious institutions in a police state cannot be understated. Based on the German model, it seems likely that most religious institutions would be willing participants in enforcing police-state regimes,

so long as the state provided basic assurances to the churches that their autonomy in matters of religious faith would be respected.

America, which has been steeped in religion since its foundation, is unique in the developed world for its embrace of religion alongside liberal democracy. It is indeed one of the most religious of the developed nations in the world. However, as we have seen in recent years, the American governmental system has become increasingly authoritarian. Yet apart from politically charged discourse, religious institutions have exhibited little opposition to government power grabs. To the contrary, examples of Christian leaders supporting various politicians and cozying up to the seats of power are numerous, especially when “their” party is in power. This can take the relatively benign form of Christian pastors encouraging congregants to sign up for Obamacare,⁷ or various political rallies for favored candidates, as in the case of Rick Perry’s rally during his run for the Republican nomination for the presidency in 2012.⁸

However, this comfort with cozying up to power and taking orders from politicians has more insidious manifestations as well. During Hurricane Katrina, when martial law was established in New Orleans, “Clergy Response Teams” were dispatched to encourage the public to conform to all orders by government officials responding to the disaster.⁹ While federal agents confiscated guns and ushered people into makeshift relief centers, members of the clergy were encouraging the public to cooperate with any and all orders. As Durell Tuberville, a chaplain of one of the clergy response teams, noted: “The primary thing we say to anybody is let’s [cooperate] and get this thing over with, and then we’ll settle the differences once the crisis is over.”¹⁰ Tuberville went on to say that “the government is established by the Lord, ... and that’s what we believe in the Christian faith, that’s what’s stated in the Scripture.”¹¹ Tuberville’s claim that Scripture justifies governmental authority comes from an oft-quoted biblical passage that states: “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God” (Romans 13:1).¹²

Yet this call to submit is not a plea to actively support the state, but rather to understand that God is the ultimate authority, regardless of who is in power. As Mennonite John Howard Yoder explains: “The imperative . . . is not literally one of obedience. . . . Subordination is significantly different from obedience. The conscientious objector who refuses to do what his government asks him to do, but still remains under the sovereignty of that government and accepts the penalties which it imposes, . . . is being subordinate even though he is not obeying.”¹³

Christ’s life was one of profound resistance to not only police state regimes but also to the authority of religious leaders as well. Christ was put to death by the representative of the Roman state, Pontius Pilate. But Pilate did not execute Christ out of a feeling of malice. Rather, he deferred to the desires of Christ’s interlocutors, the religious elite who were threatened by His call for a radical departure from business as usual; which included embracing the dregs of society and rejecting authorities other than God.

Christians are called to do the right thing while operating under the sovereignty of the state. Many Christian activists, including the Berrigan brothers, Dorothy Day, and Martin Luther King, Jr., did just that. They disobeyed laws that compelled them to perform immoral actions, but fully accepted the ramifications of their disobeying, usually resulting in arrest and time in prison. Unfortunately they were the exceptions. More often those who professed love for God were inclined toward conformity rather than engaging in acts of civil disobedience.

The state’s penchant for creating morally gray situations forces Christians to abandon their commitment to live in Christ’s example. Leo Tolstoy, a committed Christian and lifelong critic of the state and the church, understood this. Tolstoy wrote: “The organization of our society rests, not as

people interested in maintaining the present order of things like to imagine, on certain principles of jurisprudence, but on simple brute force, on the murder and torture of men.”¹⁴

While Tolstoy wrote primarily about the czarist government of Russia and the Russian Orthodox Church, his criticisms ring true for the American government and churches in America today. He understood that the reason that society, even a society full of self-professed Christians, was able to commit crimes on a daily basis was because people are alienated from their moral choices. He wrote: “This conviction that the existing order is the necessary and therefore immutable order, which it is a sacred duty for every man to support, enables good men, of high principles in private life, to take part with conscience more or less untroubled in crimes.”¹⁵

Christians are not uniquely tempted by power, but they have undertaken a unique commitment to eschew formal systems of power in favor of following in Christ’s footsteps. In truth, the toughest aspect of being a Christian is fully acting out in the radical manner that Christ demanded. As Chris Hedges has noted: “The fundamental lesson of the resurrection, which is the crucifixion, is that if you don’t love, you die. And if you do love, they kill you. . . . The cost of the moral life or the religious life is a high cost.”¹⁶

Despite the high cost, the task must still be attempted. Anything less is unacceptable. As Tolstoy says: “A man of the modern world who profits by the order of things based on violence, and at the same time protests that he loves his neighbor and does not observe what he is doing in his daily life to his neighbor, is like a brigand who has spent his life in robbing men, and who, caught at last, knife in hand, in the very act of striking his shrieking victim, should declare that he had no idea that what he was doing was disagreeable to the man he had robbed and was prepared to murder.”¹⁷

In police states the religious institutions that praise, embolden, and fund the state are elevated. Those that resist, that reject the supremacy of the state and follow in the footsteps of Christ, are punished and driven underground. Despite the high personal costs, Americans, Christian or otherwise, must resist the temptation to celebrate and exercise state power, regardless of their good intentions. The moral life cannot be truly expressed through ballot boxes and pulpits, but rather requires individual, daily actions that bring about a more just and equitable society.

Christ’s message was a radical one, but He did not require a stage, a ballot box, or even a pulpit in order to make it clear that He was advocating for a complete departure from business as usual. And unlike politicians who claim they will change our country and set things right, Christ knew that exercising political power was not the solution, but rather part of the problem. When we react to polling numbers and stump speeches rather than moral imperatives we compromise that which makes us human. No amount of politicking can bring about a society dedicated to freedom, religious or otherwise.

1. Bertram Gross, *Friendly Fascism: The New Face of Power in America* (Cambridge, Mass.: South End Press, 1980), p. 3.
2. Referred to in Gross, p. 6.
3. Hermann Goering, quoted in Gustave Gilbert, *Nuremberg Diary* (Cambridge, Mass.: Da Capo Press, 1995), pp. 278, 279.
4. Peter Matheson, *The Third Reich and the Christian Churches* (Grand Rapids: Eerdmans, 1981), p. 1.
5. *Ibid.*, p. 9.
6. *Ibid.*, p. 47.

7. Billy Hallowell, "'Health Care From the Pulpit': Here's How Some Churches Are Spreading the Word About Obamacare," *The Blaze*, Oct. 28, 2013, www.theblaze.com/stories/2013/10/28/health-care-from-the-pulpit-heres-how-some-churches-are-spreading-the-word-about-obamacare/.
8. Manny Fernandez, "Perry Leads Prayer Rally for 'Nation in Crisis,'" *New York Times*, Aug. 6, 2011, www.nytimes.com/2011/08/07/us/politics/07prayer.html?_r=0.
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10. "Clergy Response Teams," www.youtube.com/watch?v=SRIDNQN5Uss.
11. *Ibid.*
12. See John Blake, "Torture Prompts Soul Searching Among Some Christians," May 22, 2009, http://articles.cnn.com/2009-05-22/us/torture.christian_1_support-torture-god-and-country-new-testament?_s=PM:US.
13. Duane Heffelbower, "The Christian and Civil Disobedience," *Direction*, Spring 1986; www.directionjournal.org/article/?534.
14. Leo Tolstoy, *The Kingdom of God Is Within You*, trans. by Constance Garnett, p. 147.
15. *Ibid.*, p. 151.
16. John W. Whitehead, "I Don't Believe in Atheists: An Interview With Chris Hedges," *The Rutherford Institute*, June 2, 2008, www.rutherford.org/publications_resources/oldspeak/i_dont_believe_in_atheists_an_interview_with_chris_hedges.
17. Tolstoy, p. 171.

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Sing Me a Song of Freedom

libertymagazine.org/article/sing-me-a-song-of-freedom

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by [Taneshia Kerr](#)

The Seventh-day Adventist Church has been a forceful advocate of religious liberty in the United States since its inception nearly 150 years ago. In step with celebrating this commitment, the Church's Central California Conference Department of Education hosted a tribute concert for World War II veterans to honor the sacrifice they made to protect liberty for the nation. One hundred sixty-two students, from six Christian academies across central California, performed the "God Bless America" concert under the patronage of Senator Tom Berryhill.

Kurt Miyashiro (front, center) directs the 162-student Senior Academy Chorale as they pay tribute to the veterans in song.

The patriotic choral concert was held February 1, 2014, at the Veterans Memorial Auditorium, in Fresno, California. "The concert provides an opportunity for the choral students to honor our World War II veterans who protected our freedom to live the 'American Dream,'" explained Ken Bullington, an associate superintendent of schools for the church in central California.



"Seventh-day Adventist schools strongly support the cause of liberty and the freedoms available to us," added Dave Gillham, vice president for education. The concert will help students "develop an understanding of cultural and historical heritages, affirm a belief in the dignity and worth of others, and [acceptance of] responsibility for local, national, and global environments," added Bullington.

World War II veteran Paul Bullington (right), at 88 years old, is unable to participate in many veteran events, because of medical complications. "The concert was very good; the kids did an awful good job," he said.

Veterans attending the Saturday afternoon event included Frank Miyashiro, who served as a medic during the Vietnam War. "I love that we have many things to honor us veterans, but there's been nothing like this," he said of the concert. "Our veterans deserve the honor and appreciation for their dedication



to the liberties [that] we have,” Gillham said. “The concert in [their] behalf was a small thanks for a life of service.”

The Senior Academy Student Chorale hosted the concert on behalf of Central Valley Honor Flight. The goal was to raise sponsorship funding for two World War II veterans to visit their memorial in Washington. Since 2004 the Honor Flight Network program has transported more than 100,000 World War II veterans to visit the memorial erected in their honor. Many veterans lack the physical and financial ability to make these trips on their own. Honor Flights also transports terminally ill veterans from any war. In the future, the group will begin transporting heroes from the Korean and Vietnam wars as well.

After their performances, students took the time to greet each of the veterans and thank them for their dedicated service.

Central Valley Honor Flight board member, military wife, and volunteer, Leah Kidwell explained that there are approximately 5,000 World War II veterans living in the Fresno area. “Our first full charter flight was on October 29-31, 2013. We took 75 veterans to the World War II Memorial, Arlington Cemetery and the



Library of Congress,” she said. Honor Flight and the academy choirs were happy to partner for the event: happy to honor the veterans; able to raise significant funds to continue the veterans’ trips to the memorial; and happy to be able to thank God and country for the freedoms we enjoy.

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The Ideal and the Real

 libertymagazine.org/article/the-ideal-and-the-real

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by [Clifford R. Goldstein](#)

Imagine this image: Jewish believers in *Yeshua Ha'Mashiach* (Hebrew for “Jesus Christ”) living in Israel. Though loyal Jews who love their nation and their Jewishness, they face persecution from religious zealots who, hating the belief in Jesus as the Messiah, try to make their lives miserable, especially when they seek to witness to other Jews about their faith.

At first glance these scenes sound like they belong in the biblical book of Acts, an account of the early days of the church, which was then composed mostly of Jews who faced persecution from fellow Jews, such as Saul of Tarsus, who “made havoc of the church, entering into every house, and haling men and women committed them to prison” (Acts 8:3 kjv).

But the situation described above isn't first-century Israel, but twenty-first-century Israel. Unlike the first-century persecution, which had official sanction, Jews who believe in Jesus in Israel today are promised the protection of the law, and for the most part enjoy it too. Nevertheless, the parallels are still there, and they present just one of many prickly and difficult issues for Israel itself, a democracy based on many of the principles of freedom and equality that we take for granted in the West, including religious freedom.

What, then, is the status of religious freedom in Israel, and how does the Jewish state deal with the tensions, struggles, and conflicts that arise in any pluralistic democracy that seeks to balance the promises of freedom with the need for stability and security?

The Ideal and the Real

The International Religious Freedom Report for 2012, issued by the United States Department of State, released its report entitled “Israel and the Occupied Territories.” It began: “The country’s laws and policies provide for religious freedom and the government generally respected religious freedom in practice. The trend in the government’s respect for religious freedom did not change significantly during the year. The Basic Law on Human Dignity and Liberty protects religious freedom through reference to the Declaration of the Establishment of the State of Israel. The declaration describes the country as a Jewish state with full social and political equality, regardless of religious affiliation, and provides for freedom of religion. However, governmental and legal discrimination against non-Jews and non-Orthodox streams of Judaism continued.”

In other words, as with other democracies promising religious freedom, including the United States, the ideal and the real don't always perfectly match. As Americans have learned through the centuries, balancing freedom and security, freedom and stability, is not always easy. After more than 200 years the United States is still learning how to juggle these crucial principles. How much more so, then, for Israel, a nation less than 70 years old? Nevertheless, especially in contrast to what is found in that part of the world (think, for instance, Saudi Arabia), Israel has done remarkably well in regard to religious liberty.

The Ideal

The Declaration of the Establishment of the State of Israel, mentioned in the report, is the Israeli version of the American Declaration of Independence. Like the Declaration of Independence, the Israeli version doesn't have the force of law, nor is it a binding legal document. However, it does provide guiding principles for the nation in ways that its American counterpart doesn't. (After all, how often do Americans go back to the Declaration of Independence for legal or moral guidance today?)

The Declaration of the Establishment of the State of Israel does promise that the nation "will be based on freedom, justice, and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex; it will guarantee freedom of religion, conscience, language, education, and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations."

Unlike the United States, in Israel there is no constitution or laws or policies that specifically provide for religious freedom. But, as the State Department report said, the Israeli government does respect religious freedom. The Israeli Supreme Court has repeatedly ruled that the Basic Law on Human Dignity and Liberty protects freedom to practice all religious beliefs, and its rulings incorporate the religious freedom provisions of international human rights agreements into the country's body of law.

In short, religious freedom is promised, and to a great extent that promise is realized for all faiths. The Jews—pretty much at some point in their history denied religious freedom by everyone—now extend it to everyone.

The Real

Yet problems exist, even if in unexpected places. While about 75 percent of the population is Jewish, one quarter isn't. This quarter includes Muslims, Druze, Catholics, Orthodox Christians, and numerous Protestant churches, such as Jehovah's Witnesses, Mormons, Baptists, Lutherans, Presbyterians, Seventh-day Adventists, Pentecostals, and others. Despite the wide diversity of faiths, and the inevitable tensions that the coexistence of various religions brings (think of the problems that Mormons and Jehovah's Witnesses faced in America, for example), the biggest religious liberty challenges generally don't come from tension between the Jewish majority and non-Jewish minorities, but from tension between Jews themselves.

In fact, a previous (2011) State Department report on religious freedom in Israel expressed concern about the religious freedom of non-Orthodox Jews, by far the vast majority in Israel. According to the report, "a minority of Jews in the country observes the Orthodox tradition, and the majority of Jewish citizens objected to exclusive Orthodox control over fundamental aspects of their personal lives."

Though the ultra-Orthodox make up about only 10 percent of Israel's 8 million citizens, these Orthodox Jews hold enough seats in the Knesset to be kingmakers. That is, any prime minister who wants to form a government needs the ultra-Orthodox to do so. But, in order to get ultra-Orthodox support, the government has to acquiesce these people, who at times seem determined to stop at nothing short of a theocracy. Though Zionism, as originally conceived, was a secular movement, the influence of the *Haredim* (ultra-Orthodox) has injected a religious element into national life that most Israelis, generally secular, resent. Here, then, is the source of a great deal of the religious tension in Israel, a big reason for the gap between the ideal and the real. And it comes, not between the Jews and Islam, or between the Jews and Christians, but between the Jews themselves.

"How ironic," wrote Rick Jacobs, president of the Union for Reform Judaism, "that the Jewish state is the only democratic state in the world where a non-Orthodox rabbi cannot perform a legal marriage,

and where a non-Orthodox congregation has to struggle with the state even to obtain the right to build a house of worship. And what lover of Zion is not deeply offended that Israel is the only state where a Jewish woman is imprisoned for praying the Sh'ma [a Jewish prayer] out loud while wearing a tallit [prayer shawl]?"

Marriage Vows

Rick Jacobs' word cut to the heart of a deep divide in Israeli society between the ultra-Orthodox and all other Jews in the Jewish state, even other Orthodox Jews not deemed "orthodox" enough. Because of the power of the Orthodox "religious right," for instance, civil marriages are not allowed or recognized in Israel. Even worse, only those who are deemed truly Jewish in accord with Orthodox standards are allowed to marry in Israel. Members of other religions can marry spouses of the same religion but only by their own recognized religious authority, and not in a civil ceremony. Jews marrying non-Jews is forbidden, and many Israelis who marry non-Jews or who don't want an Orthodox ceremony fly to Cyprus or somewhere else and get married. Those marriages are, then, recognized by the state when the couples return.

The matters get even more complicated because only marriage officiated by recognized Orthodox rabbis are legally recognized. Marriages conducted by Reform, Conservative, Reconstructionist, or Renewal rabbis are not deemed legitimate. And though the Law of Return recognizes converts who converted in a non-Orthodox ceremony, and though these people are given immediate Israeli citizenship, the chief rabbinate does not recognize them as Jews nor as eligible for Jewish marriage. Thus converts to Judaism who convert through progressive movements and, in some cases, Orthodox converts who converted by moderate Orthodox rabbis cannot get married in Israel. Many have asked about the logic and reason behind the thinking of a nation that will grant you citizenship because of your religion but, because of the same religion, will deny you the basic right of marriage.

"The right to marry is one of those universally cherished civil liberties," Uri Regev, CEO of Hiddush, an Israeli human rights organization, said. "It is the one area in which Israel excluded itself from the international covenant of civil and political rights. The law adversely impacts the lives of hundreds of thousands of Israeli citizens who cannot marry at all because of religious coercion and of millions who cannot have a marriage ceremony which fits their lifestyle and beliefs."

Though polls in Israel show that a majority support civil marriage, it remains a hot-button religious and civil liberty issue, and a cause for a great deal of internal strife. If it's easier for some Jews to get married in Germany, Russia, or Iran than in Israel, the gap between the ideal and the real obviously remains.

The Messianics

Another religious liberty problem, though on a much smaller scale, deals with the status of another group of Jews: Messianic Jews, who face difficulties in Israel that their counterparts in other countries don't. How ironic: Jews in Israel face persecution that they don't face in Gentile nations. Though there are an estimated 175,000 to 250,000 Messianic Jews in the U.S. and about 350,000 worldwide, Messianics are a tiny minority in Israel, estimated at about 10,000 to 20,000. These are Jews who believe that Jesus is the Messiah but who seek to retain their Jewish heritage and Jewish customs, as did the first Jewish believers in Jesus.

And, of course, what could be more Jewish than making *Aliyah* (moving to Israel)? Messianic Jews view themselves not only as loyal Jews but also as über-Zionists (most willingly serve in the army, in contrast to their Orthodox counterparts), seeing Israel at the forefront of final events that,

according to their interpretation of the Bible, must occur before *Yeshua* returns to earth. Most also support the expansion of Jewish settlements in the West Bank and were vehemently opposed to the withdrawal from the Gaza strip.

Even with these fervent Zionist credentials, Messianics are regarded by some in Israel with deep suspicion, and in some cases open hostility, especially because—taking seriously Jesus' words to preach the gospel to the entire world—Messianics will proselytize. Considering the long, harsh, and bitter history Jews have had with Christian proselytism, most find it exceeding offensive, especially coming from other Jews (though in Israel many challenge the Messianic Jews' status as Jews because of their belief in Jesus, and some have faced deportation threats). And though proselytism isn't exactly illegal in Israel, it is frowned upon, and thus Messianic Jews must work under the radar in ways that they don't in most Western countries or in the United States. Still, over the years they have faced harassment, legal challenges, threats, and police indifference.

Things turned especially ugly five years ago when a package, disguised as a holiday gift filled with chocolate, was dropped off at the apartment of a Messianic Jewish pastor named David Ortiz. "When Ortiz's 15-year-old son Ami plucked off a chocolate," said an article in *Time* magazine, "it detonated a bomb powerful enough to blow out all the apartment's windows and to be heard a mile away. The bomb was packed with nails, screws, and needles. Doctors found more than 100 pieces of metal embedded in the boy's body by the blast, which sheared off the skin and muscle on his legs and chest. The teenager survived, but still faces six more operations of skin grafts and the removal of shrapnel from his eyes."

Israelis, even those with no affection for Messianics, were outraged by the attack, and years later the man responsible was tried and found guilty, not only of the Ortiz bombing but of the murder of two Palestinians. He got two life sentences plus 30 years.

Though Israeli attitudes toward Messianic Jews are softening (many Israelis are indifferent), the ultra-Orthodox, with the inordinate influence they wield in Israel, keep the pressure on them. "Persecution is on the rise," says a Web site for Maoz ministries, a Messianic Jewish ministry. "As the number of Israelis turning to their Messiah *Yeshua* (Jesus) increases, the need for legal aid has also escalated. Messianic believers in Israel have been severely persecuted, mainly by ultra-Orthodox organizations whose acts of violence and legal harassment in the last few years are meant to intimidate and suppress the free practice of faith in *Yeshua* the Messiah." Something like this could have been written in the earliest day of the church in the land of Israel. It was: it's called the book of Acts.

The Gap

No question, Israel still has a long way to go in bridging the gap between the reality and the ideal. What else could be expected? The United States has been for centuries the beacon in the world for those who aspire for religious liberty. And there's no question that in the 225 years since the ratification of the Constitution, the United States' experiment in religious freedom has been a success. Not an unqualified success, however, as this nation, now in its third century, still struggles with questions about the role of religion in public life, about the extent of free exercise protections, and about what the nonestablishment clause truly means. Other democracies have their struggles in these same areas as well. For instance, think France and the headscarf ban, or Germany and its Scientologists.

Thus it's no surprise that Israel—burdened by a "religious right" with the kind of political clout that Pat Robertson, James Dobson, or the late Jerry Falwell could only have dreamed about—has its religious freedom challenges as well. Yet, considering the pressures it faces, both from within (the

Haredimagainst pretty much everyone else) and from without (Hezbollah in the North, Hamas in the South, and a generally hostile Muslim world everywhere else), it is astonishing that the Jewish state has preserved religious freedom as well as it has.

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