

A MAGAZINE OF RELIGIOUS FREEDOM

FAITH, CHARITY, AND GOVERNMENT MONEY

GR8 PL8 DEB8

LIBERTY

NOVEMBER/DECEMBER 2008

**"CHURCH-
STATE
'08"**

GENDRON

CHANGING TIMES

The reality of our present economic meltdown is that it found much of its genesis in a theology of wealth, sprinkled as a type of holy water on the capital markets and called a moralizing force.



Change: how's that for a politically charged title? In your eye, lawyers who might say that *Liberty* can't speak to political issues! Especially now—either just before or just after a U.S. Presidential election! Well, let's roll, as they say, and speak directly to the times and the issues.

First a backup, to keep my job and our readership. *Liberty* has to speak to issues of great political import, and indeed call the religious liberty implications as we see them. However, we cannot, dare not, be partisan. We cannot buy into or automatically be opposed to any political agenda. We cannot support any political party. And I write this not because to do so might lose our church-related nonprofit status—not even because it would deny our overarching principle of the separation of church and state—but because it would betray the truest principles of religious liberty. If religious liberty—one of those “self-evident” realities—supposes anything, it is that it transcends political loyalty. It is a divine right and relates to the higher sphere. Why demean it by partisan squabbling?

Another backup—not to run over your sensibilities again but to explain the title—in case it was so obvious as to seem as meaningless as most political slogans. Correct me if I am wrong, but it seems to me that both major candidates in the U.S. presidential election ran on a platform of change. One as the candidate of change, the other promising “change.” The electorate will obviously decide what that means. But I have news for those who base their perceptions on political “chatter”: change is here to stay. “The times they are a changing” is not just a protest refrain from another era but the narrative to our careening times.

How to characterize our times? As I write this the media is saturated with

news of Hurricane Ike and the biggest single point drop on the Dow Jones since 9/11. Terrors without and within it seems. And while the faraway troop surge in Iraq seems to have accomplished something, the increasing numbers of desert-fatigue-outfitted soldiers in airports and public places creates the ambience of war. Things are not quiet on the Western front!

But of course religious freedom is safe here, you might say.

And I can certainly praise God that no one has yet forbidden me to worship at my church, has yet locked its doors, or has yet denied my right to speak of my faith. I have not even been criticized for my faith outside of my own faith community. (There's often more criticism of one's faith view and particulars *within* a religious community than without.)

The reality is that judging an overall situation by my own case can be very misleading.

The reality is that we are in a global war against an extremist view of a particular religious view.

The reality is that a form of civil religion is rapidly coalescing around American exceptionalism.

The reality is that religious bona fides were a defining element in the lead-up to the 2008 election. “No religious test for public office” seems far distant from the attacks on the Mormonism, Pentecostalism, and supposed Islamic connections of various candidates. We have come to see religion as a very important marker of public policy, if for no other reason than that so many have pursued a religiously oriented public policy.

The reality is that the once suspect public funding of church activity has moved from constitutional debate to a bipartisan rush to facilitate the new entitlement. After all, in *Hein* the Supreme Court justices denied taxpayer standing to challenge Faith-Based Initiative funding.

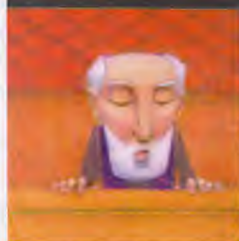
The reality is that a triumphalist form of state religion seems to have infected even U.S. military training institutions. The reality is that a particular prophetic scenario for end-time events in the Middle East seems to be adding an extra frisson to overseas missions. Great powers are always tempted to use military power—some may argue that they are required to. But salting the need with religious justification always risks devaluing faith and extending the conflict.

The reality of our present economic meltdown is that it found much of its genesis in a theology of wealth, sprinkled as a type of holy water on the capital markets and called a moralizing force. We seem to have forgotten that man is a rather selfish creature; and that just as the supposed workers' paradise of communism foundered on inequality, so aggressive capitalism can dry up even a trickle-down effect of concern for the man on the street.

The reality of our present *spiritus mundi*—in the United States at least—is a willingness to agree to any mistreatment of fellow human beings, so long as they are accused terrorists, prisoners of war, detainees under suspicion of antisocial sympathies, murderers; and one gets the impression from talk radio that included on the list are political opponents. In short, the old dislikes have now been imbued with the state theology of evil. No wonder waterboarding seems mild! Such deserve the eternally burning fires (not really in my Bible, by the way). Tell me how the rabid, constantly repeated radio talk show denunciations of this type differ from the barrage of radio incitements that goaded Rwandans to genocide and I'll accept only answers that acknowledge a difference of degree and frequency, not of underlying message. This is not the type of civil discourse that protects religious free-



IN THIS ISSUE



The framers of the Bill of Rights got it right when they drafted the two religion clauses of the First Amendment. | P19

4 "CHURCH-STATE '08"

Partisan politics aside, there *are* real religious freedom issues at play.

10 FAITH, CHARITY, AND GOVERNMENT MONEY

When, how, and under what circumstances.

14 RELIGIOUS LIBERTY DINNER

An annual statement for freedom in a nation's capital.

20 | GR8 PL8 DEB8

24 | WHAT A BLESSED COUNTRY IT IS!

28 | RELIGIOUS FREEDOM UNDER ATTACK AROUND THE WORLD

dom. When the other is theologically recategorized as nonhuman—as was done during the years of slaveholding, for example—even lynching takes on a redemptive aspect in moments of crisis.

Back in the Vietnam era, when vast crowds of war protestors flooded the Washington Mall, there was active debate about the direction our society was taking. In retrospect we can see, I think, that it was healthy to have a public debate about the issues of life and death in our world. Maybe some of the protesters just wanted to shirk their civic duty. Maybe some of the National guardsmen unthinkingly equated their longer-haired peers with Soviet menace. The upshot was a reasonable recognition that the United States was on a course that was at odds with its own creation myth.

Is it significant that back in that era religious yearnings and secular dissent came together in the Jesus Movement—a somewhat new age, free-form Christian revival? Is it significant that this time around dissidence is

both legally frowned on and eschewed by a passive population stirred on many fronts by a sense of disease but not clear about the issues? Is it significant that this time around our spiritual yearnings settle so much on the state?

That, I hold, is a change we should regard with deep dread. It is a societal shift that is dragging our very mindset away from the constitutionally mandated disestablishment of religion.

Back a few years ago, I often saw bumper stickers carrying the message "America: love it or leave it." I saw them on Hondas, Cadillacs, and pickups. Thankfully that was actually an era when we would embrace the refugee who had crossed a wall under gunfire. Usually they were leaving a country that was giving them such an ultimatum. They came to the U.S. because they believed that in this new world context they would have freedom to differ on all the important issues: politics to be sure, but worldview, culture, and religion equally.

More recently I have spotted bumper stickers with the message "My country, right or wrong." I do not find these so much belligerent as misguided. After all, these might still be England's North American colonies if that had been the attitude to perceived injustice. It certainly confuses the admirable trait of patriotism with a nationalism that can be enlisted to almost any cause.

I am still hoping to see a bumper sticker with something to this effect: "My Country—setting right the wrong."

Change is here to stay, even as it moves on. Let's make sure that we take our moral compass with us on our journey.

Lincoln E. Steed, Editor
Liberty magazine

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DECLARATION

of Principles

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience; to worship or not to worship; to profess, practice, and promulgate religious beliefs; or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed in the interests of each, subversive of human rights, and potentially persecuting in character; to oppose union, lawfully and humbly, is not only the citizen's duty but the essence of the golden rule—to treat others as one wishes to be treated.



“Church-State”



Issues regarding the proper relationship between church and state have affected presidential elections for the past several decades and will undoubtedly do so again this year.

However, in this time of war (especially an unpopular one) and economic woes, the church-state issues are somewhat less likely to sway large voting blocs, in comparison to the “values voting” that contributed to George W. Bush’s narrow reelection four years ago.

Church-state issues are usually included under the rubric of social issues to differentiate them from economic and foreign policy questions. These issues are often said to be most important to the party bases. Political analyst E. J. Dionne, Jr., reckons that about 15 to 20 percent of voters favor the “accommodationist” side while another 15 to 20 percent lean to the “separationist” point of view. That leaves 60 to 70 percent of voters who hew toward the center, or are not particularly concerned by or interested in social issues.

Positions on church-state issues are often directly related to religious affiliation, or, more recently, to frequency of attendance at worship services. Pew survey data released in February (the *U.S. Religious Landscape Survey*) breaks down American adults into a number of categories: Evangelical Protestants (26 percent); Roman Catholics (24 percent); mainline or nonevangelical Protestants (18 percent); religiously nonaffiliated (16 percent); members of historically Black Protestant churches (7 percent); all others (9 percent). Evangelicals have been strongly conservative and Republican, while Catholics and mainline Protestants are divided, depending on the issue. Catholic voters are classic swing voters

who usually end up supporting the winner. Mainline Protestants, once the most loyal ally of the GOP, have moved toward the Democrats in recent elections, making them a potential swing vote. The nonaffiliated and most of the “other” category are liberal and Democratic leaning. African-Americans are mainly Democrats but lean to the conservative side of some church-state issues. So far, these leanings have not produced significantly higher Republican levels of support among African-Americans. Some of these issues are losing their salience or ability to convince voters while new issues, such as environmentalism (or “creation care” among evangelicals), are threatening to realign voters.

Issues alone do not determine election outcomes, since charisma, character, and personality are also factors. Candidates’ personal religious involvements and commitments, including rhetoric, may influence voters, particularly within the religious traditions that are targeted. Barack Obama has appointed religious affairs advisers for his campaigns and seems much more comfortable in using religious language than most recent Democratic candidates, except Jimmy Carter and Bill Clinton. Senator Obama made frequent references to his religious convictions in his autobiography. He seems to belong to the liberal Protestant tradition.

Senator John McCain has always been more reticent to discuss personal religion and has so far not appointed a religious adviser. But during his

The church-state issues are important to many voters because they impact society and culture in such broad areas as education, family life, health-care and medical ethics, and social welfare.

campaign he announced his belief that America is a Christian nation, though he later downplayed that statement somewhat. He also apparently cannot decide whether he is an Episcopalian or a Baptist, though his lifelong family affiliation was Episcopalian. His second wife is a Southern Baptist and McCain told audiences in heavily Baptist South Carolina that he is really more of a Baptist, though not officially so. (The Pew survey found that 44 percent of American adults have changed their religious affiliation since childhood, and the changes move in every conceivable direction.)

The church-state issues are important to many voters because they impact society and culture in such broad areas as education, family life, health-care and medical ethics, and social welfare. Here, briefly, are some of the major church-state issues and how the potential candidates and parties are likely to address them in the ensuing campaign and in office.

School Vouchers

Despite a string of more than two dozen defeats at the polls over four decades, advocates of state aid to faith-based and other private

schools have not given up hope that some program, usually cloaked in "school choice" rhetoric, will someday be enacted by Congress. John McCain favors vouchers, as have Republican candidates since the Nixon-Ford-Reagan days, and Republican Congresses have enacted or tried to enact a few voucher experiment programs, particularly in the District of Columbia. Democratic candidate Obama opposes vouchers or similar programs, preferring to concentrate resources on the nearly 90 percent of students who attend public schools. Democratic presidents and Congresses are unlikely to support any programs of this kind, and the Democratic majorities in the current Congress will almost certainly reject President Bush's \$300 million proposal for Pell grants to private elementary and secondary schools. This has generally been a point of division between the two parties, though Democrat Lyndon Johnson included faith-based schools in his 1965 Elementary and Secondary Education Act.

Faith-based Initiatives

The signature domestic program of the Bush presidency, one that supposedly highlights "compassionate conservatism," is the faith-based initiative that has funneled billions of dollars to religious social welfare organizations through several cabinet departments. McCain favors these programs, and so does Obama, though the Democrats have repeatedly stressed the necessity of making hiring practices religiously nondiscriminatory and forbidding proselytizing among recipients of aid programs. These nondiscrimination provisions have never passed Congress, though the Bush administration claimed they are unnecessary. It should be noted that many church-based charities, those run by Catholics and Lutherans, for example, have not engaged in proselytism and participated in government aid programs for years before Bush became president. Bush's officials extended the aid to more conservative evangelical groups by claiming to have leveled the playing field for aid applications, but critics say these programs encourage favoritism toward faith-based groups that lack a heritage of nondiscriminatory practices or policies.

Republicans are certain to continue these programs. Senator Obama has made a rather sweeping statement of support for the faith-based concept, so it is unlikely that a Democratic president and Congress will end them but will probably press for non-discrimination provisions.

Abortion, Gay Rights, and the Hot-button Issues

The Religious Right's influence on the GOP has elevated abortion and gay marriage to top tier issues, though polls this year show they are at the very bottom of voter concerns.

While Republican Party platforms for decades have endorsed passage of a Human Life Constitutional Amendment to outlaw abortions, Senator McCain has not supported it, though his overall "pro-life" voting record has earned praise from anti-choice groups. Senator Obama opposes such an amendment and is on record as favoring freedom of choice in the matter. In the primaries Senator Clinton told one pro-choice group that abortion should be seen as a "tragedy" and all efforts should be made, through comprehensive sex education and anti-poverty measures, to reduce the incidence, so that abortion will be "safe, legal, and rare" (echoing her husband).

Polls consistently show that a majority of Americans (55 percent) think abortion should be "mostly or always legal," compared to 42 percent who think it should be "mostly or always illegal." Exit polls from recent elections, however, show that intensity of feeling is greater on the anti-choice side, so there are probably more one-issue anti-choice voters than one-issue pro-choice voters.

While Republicans have held the presidency for 20 of the past 28 years, no far-reaching legislation banning abortion has been enacted. Only the ban on a rarely used lateterm procedure has been adopted and upheld narrowly by the U.S. Supreme Court.

An attempt to enact a federal constitutional ban on same-sex marriage is favored by social and religious conservatives and most Republicans, but not Senator McCain, who says the issue belongs at the state level, where, indeed, it has been outlawed by nearly half of the states. Senator Obama has not endorsed same-sex marriage but seems open to some kind of civil union or domestic partnership arrangement. The issue has been used to inflame the electorate in recent elections, but polls in 2008 show it dead last among issues that engage the attention of voters or that would potentially affect the choice of a president. Democrats are likely to support legislation protecting gay and lesbian Americans from job discrimination and may reopen the "don't ask, don't tell" policy regarding military service.

Both of these questions are likely to be resolved in the judicial branch of government, which makes the selection of Supreme Court justices a sleeper issue. The next president will likely

choose one to three new justices in his first term. Senator Obama has "the right to privacy" concept, which encompasses a number of issues and would be a major consideration in his selection of nominees to the High Court.

The Roberts Court, incidentally, seems inclined to take fewer church-state issues than its predecessors. For example, only two abortion-related cases have been decided during the first eight years of this decade, compared to 13 in the 1970s, eight during the 1980s, and seven during the 1990s.

The last Democratic president, Bill Clinton, signed the Religious Freedom Restoration Act and legislation making religious freedom a cornerstone of U.S. foreign policy. Ironically, Republicans have succeeded in depicting Democrats as "anti-religious," an erroneous label that has stuck. This may explain why Democrats are trying to play the religion card as effectively as Republicans have done in recent elections.

Church-state and social issues did not attract as much attention during the primary season as one would expect; the economy, the Iraq war, health care, and immigration have overshadowed them. But the parties are sure to address these issues in their platforms in the general election campaign as both seek to rally their base.

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Good Faith

A legal philosopher applauds
America's history of religious tolerance

EMILY BAZELON

Comment on *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*. By Martha C. Nussbaum, 406 pages, Basic Books.

In Sophocles' tragedy *Antigone* is caught between her religion and her state. After her brother is killed assaulting the city, her uncle Creon forbids her to bury him. But according to the tenets of her faith, if Antigone does not bury her brother, she will have disobeyed the gods and forfeit her own afterlife. Eventually, she kills herself.

Martha C. Nussbaum tells the ancient Greek story in *Liberty of Conscience*, her grand and penetrating discourse on religion and American law, to illustrate how an unbending state can impose a "tragic burden" on a member of a religious minority. This demonstrates two of Nussbaum's prodigious strengths. As a teacher and scholar of law, philosophy, and religion at the University of Chicago, she brings the insights of each discipline to bear on the others. And because she's attuned to the "springs of conscience" that well up from faith—Nussbaum left the Episcopal Church for Reform Judaism when she married—she can analyze some of the Supreme Court's recent jurisprudence on religion with sympathy rather than disdain for the enterprise of accommodation. She's no atheist, she's no evangelical, and she's still worried.

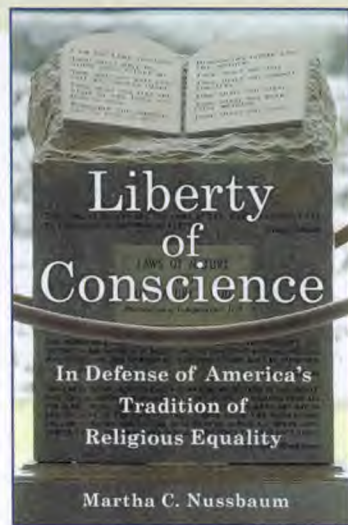
As Nussbaum unpacks the Court's interpretation of the Constitution's free exercise and establishment clauses, her premise is that "equality is the glue that holds the two clauses together." A longtime enemy of elitism in a variety of guises, she fiercely resists the power of a majority religion, aided and abetted by the state, to create an in-group while subordinating out-groups. Nussbaum anchors the countervailing equality tradition in the writings of Roger Williams and James Madison. Williams, who had extensive friendly dealings with the Narragansett Indians, wrote

into the charter for the Rhode Island colony a right to freedom of conscience that shocked the British. He coined the phrase "soule rape" for the limiting of religious expression that does not violate civil law or harm others.

Nussbaum draws a straight line from Williams' fusion of respect and fair play for religious groups to John Rawls' vision of people choosing the basis of their common governance without knowing where they will be situated in the society that results. Williams and Rawls also agree that the state has a moral foundation that is religious for some people and nonreligious for others. Nussbaum finds this construct of "overlapping consensus" to be "a much more helpful idea to think with than the bare idea of 'separation' " between church and state. She lauds Madison for seeing tax support for religion as an inevitable source of hierarchy and favoritism. But she does not read the establishment clause as erecting a wall that discounts the contributions of religion; this she sees as another "type of unfairness."

How does Nussbaum apply her equality principle to Supreme Court jurisprudence? She thinks the Court avoided the trap that snared Antigone with a 1963 ruling in favor of *Adell Sherbert*, a Seventh-day Adventist fired from her mill job for refusing to work on Saturdays. According to Justice William Brennan's test, a job requirement violates the right to free exercise when it imposes a "substantial burden" without being justified by a "compelling state interest," or being narrowly tailored to achieve such an interest. This is the right standard, Nussbaum argues, because it treats religious outliers as the equals of the majority, who weren't being asked to work on Sunday, their day of rest.

In 1990 the Supreme Court moved away from the equality principle in a case that rejected the claim of *Al Smith*, who fought his denial of unemployment compensation after he was fired for using peyote during ritual Native American worship.



*Liberty of Conscience:
In Defense of America's
Tradition of Religious Equality.*
By Martha C. Nussbaum, 406 pages,
Basic Books.

Equating accommodation with anarchy, Justice Antonin Scalia's majority opinion declared that religious beliefs had never been held to excuse compliance with a valid law. Nussbaum turns to another conservative, the scholar and judge Michael McConnell, to fend off Scalia's argument on the history and the merits. She notes approvingly that with prodding from Congress, the Court seems to be heading back toward acknowledging, as Scalia himself later put it, that "you can make an exception without the sky falling."

Thus far, Nussbaum's equality principle has served as a useful prism for a familiar point of view. The book takes a more surprising turn when Nussbaum examines an 1874 ruling in which the Supreme Court rejected polygamy as an expression of Mormon duty. Nussbaum sides with the Mormons, primarily, it seems, because their opponents hypocritically kept their own wives bound by unequal marriage laws. Polygamy looked pretty good compared to other marriages of the time, and that's good enough, Nussbaum argues; the more obvious point might be that neither type of marriage deserved constitutional protection. She gives a scant few sentences to the contemporary sex-equality argument against polygamy and dismisses as fear-mongering "Under the Banner of Heaven," Jon Krakauer's disturbing 2003 book about women and girls exploited by extremist Mormon sects. ("Krakauer is known for writing about mountaineering and appears to have no credentials in the area of religion," Nussbaum sniffs in a footnote—a strange note for an anti-elitist to sound.)

But if Nussbaum is a bit off-key in her defense of the Mormons, her moral clarity snaps back into focus when she turns to the establishment clause clashes of the last half century. The Supreme Court has gradually turned this area of law into a tangle of not-quite-abandoned constitutional tests. Nussbaum is particularly good at showing how both liberals and conservatives have contributed to the snarl.

In 1984 a majority opinion by Justice Brennan struck down a New York City program that brought remedial teachers into sectarian schools to teach low-income children. Nussbaum stands with Justice Sandra Day O'Connor, casting the New York case as the flip side of Antigone's tragedy. The students could express their faith, but doing so deprived them of a public benefit available to everyone else. The Court went on to overrule the 1984 precedent, and Nussbaum's equality principle illuminates why this was the better call.

Nussbaum also looks closely at a difficult pair of 2005 rulings in which the Supreme Court said no to a Ten Commandments display planned for a Kentucky courthouse, while allowing a less obtrusive Texas monument to remain. In the majority for the Kentucky case, O'Connor and Justice David Souter emphasized equality among people inside and outside the Judeo-Christian tradition as well as believers and nonbelievers. But in the Texas ruling, Justice Stephen Breyer found in favor of keeping the Ten Commandments in place by introducing a new rationale—the desirability of averting social conflict.

Nussbaum thinks the Texas case is a close one that could have gone either way, but she shreds Breyer's methodology. "Should we really say that a display that everyone likes and that isn't stirring up trouble, because the offended minorities are too powerless to make trouble, is for that reason constitutional?" she asks. "This seems to be a very bad theory for an egalitarian nation to adopt." Worse, Breyer left it "no longer clear that the equality theory is consistently endorsed in hard cases." Nussbaum's contribution is to show vividly how the equality tradition leads the Court, and the rest of us, to ask the right questions. As she understands, this is what we can ask of the law.


Emily Bazelon is a senior editor at *Slate*. This article appeared as a book review in *The New York Times Book Review*, March 23, 2008.

FAITH CHARITY



& GOVERNMENT MONEY

BY SHEILA S. KENNEDY
ILLUSTRATION BY MICHAEL HOGUE



In 1996, as part of a massive welfare reform bill, Congress enacted a provision that came to be known as "Charitable Choice," requiring government to partner with "faith-based" organizations (FBOs) on the same basis as other nonprofits to deliver services to the poor. The legislation was hotly debated, and later became the basis of President George W. Bush's much-touted "Faith-Based Initiative."

Whatever the merits or demerits of Charitable Choice, and whatever the rhetoric surrounding it, government partnerships with religious organizations are anything but new. Federal and state governments have partnered with religious organizations to provide social services since the beginning of government welfare programs.

A bit of history may be in order here: In 1965 a survey of 406 sectarian agencies in 21 states found that 70 percent of them were involved in some type of purchase-of-service contract with the government. A 1982 study of Protestant social service agencies in one Midwestern city found that some agencies received between 60 and 80 percent of their support from the government, and that approximately half of their combined budgets were government-financed. In 1994, still two years before enactment of the first Charitable Choice provision, government funding accounted for 65 percent of the nearly \$2 billion annual budget of Catholic Charities USA, and 75 percent of the revenues of the Jewish Board of Family and Children's Services.

Given this history, we might have expected Congress to address several important questions in connection with Charitable Choice legislation: What kind of FBOs was this legislation targeting? How do the targeted orga-

nizations differ from religious organizations that have partnered with government for years? What are the barriers to their participation in social service delivery? To what extent are those barriers constitutionally required? What is the level of availability and interest, and what are the capacities, of these organizations? (Are there *really* "armies of compassion" just waiting to be asked to help the needy?) Few of these questions, however, were raised, let alone answered. In contrast to other portions of the welfare reform legislation, the record contains very little debate over Section 104.

Most of the congressional testimony supporting Charitable Choice reflected two assumptions: first, that government contracts had required FBOs to "secularize"—to remove religious icons and "hide the Bibles." Actually, studies show that this is simply not the case—very few religious contractors have experienced such demands. Second, support for Charitable Choice was based on the assumption that religious providers are more successful, that they do a better job at lower cost. In fact, there was no data either confirming or rebutting that presumption, because there was virtually no scholarship addressing the issue. Such evidence as existed was entirely anecdotal—and the plural of "anecdote" (congressional testimony notwithstanding) is not "data."

The most basic question raised by Charitable Choice legislation was "What's new?" It was quite obvious that the intended beneficiaries of this initiative were *not* the more traditional FBOs that had been doing business with government for decades. But how were the YMCA, Salvation Army, Catholic Charities, Jewish Welfare Federation, and countless other religiously-affiliated organizations that had historically partnered with government different from the glowing "faith-based" examples cited by supporters of the legislation? The answer seemed to be that government's traditional partners had been *motivated* by religion to provide purely secular social services—in other words, their religious beliefs led them to feed, clothe, and house the poor. The organizations cited by supporters of Charitable Choice, on the other hand, were in the business of *spiritually*

Under this provision, religions teaching that women are to be subordinated or Jews abominated could hire and fire based upon those beliefs.

transforming individuals. (Usually, this was euphemistically described as giving them “middle class” values.) What the champions of government funding for these organizations seemed not to understand was that using tax dollars for religious or spiritual transformation is forbidden by the establishment clause of the First Amendment.

In 1998 my research team began a three-and-a-half-year study of Charitable Choice. We compared the performance outcomes of faith-based and secular job training organizations.¹ We looked at issues of capacity and accountability—the capacity of the targeted organizations to provide the services in question, and the capacity of state governments to work with and monitor them. We also wanted to understand how contracting with government affected smaller religious organizations. A number of ministers we talked to expressed concern that “with the government’s shekels come the government’s shackles,” and it is certainly true that with government contracts come rules, regulations, and reports. How would small religious organizations cope with the fiscal and management burdens imposed by government reporting requirements? What about the dangers of becoming too dependent on government for funding? Would such dependence mute the church’s prophetic voice?

Our final area of inquiry was constitutional. The media had focused primarily on the danger that social service contracting with unsophisticated providers might lead to proselytizing of vulnerable populations or to religious discrimination in providing the services in question. While those were understandable concerns, Charitable Choice raised a number of equally important but less obvious constitutional issues.

- ⊗ Are nonmainstream and minority religions treated equally in this newly aggressive bid process? When government dollars are at stake, religious power struggles are inevitable. That was one reason the Founders separated church and state.
- ⊗ Will government fiscal or programmatic monitoring rise to the level of entanglement for purposes of the Lemon test (or what is left

of it?), thus infringing on the free exercise rights of religious contractors?

- ⊗ What about the one provision of Charitable Choice that is undeniably new—the provision that allows FBOs to engage in employment discrimination even when the jobs in question are being funded by tax dollars? Under this provision, religions teaching that women are to be subordinated or Jews abominated could hire and fire based upon those beliefs. While religious organizations are already exempt from certain civil rights laws, those exemptions generally apply when they are spending their own money, not when they are using tax dollars.

The employment discrimination issue goes to the heart of the debate over what we mean by a “level playing field.” First Amendment separationists and accommodationists both will agree that religion should not be *disfavored* by government. The ideal is neutrality, with religion receiving neither extra burden nor special benefit. Despite considerable evidence to the contrary, supporters of Charitable Choice insist that FBOs have been the victims of antireligious bias, and that the legislation was necessary to correct that situation.

This element of the debate has become particularly fascinating, because what many proponents of Charitable Choice are advocating is essentially “affirmative action” for religious nonprofits. When Massachusetts, for example, declined to do special outreach to FBOs and continued to apply the same rules to all bidders, religious and secular, the Center for Public Justice criticized the state for failing to “affirmatively act” to implement Charitable Choice. In this view, implementation requires “special” outreach and rules rather than equal treatment.

Some Charitable Choice supporters have argued that faith organizations should be exempted not just from antidiscrimination laws, but also from licensing requirements that apply to all other bidders. Les Lenkowsky, for example, has argued that “pastoral counseling” certification should be considered the equivalent of social work degrees or drug treatment credentials. (What makes this even more interesting is that virtually all of the proponents of special rules for FBOs are adamantly opposed to affirmative action for racial minorities. This is noteworthy on two levels: the philosophical inconsistency, and the fact that the vast majority of FBOs we talked to don’t believe that bending licensing rules to benefit religious entities is either necessary or desirable.)

None of this, no matter how interesting, gives us an answer to the underlying question: If numerous FBOs were already participating in

the provision of welfare-related social services, and if there was little or no social science data addressing comparative effectiveness, what was the real impetus for Charitable Choice?

Some commentators dismiss the enthusiasm for faith-based partnerships as a cynical attempt by Republicans and President Bush to play to the Christian Right, an important constituency. But I think this explanation ignores the bipartisan embrace of these initiatives, their timing, and the general political context within which they have emerged. It is far more illuminating—and arguably more accurate—to view Charitable Choice and its progeny as part of the “reinvention” trend that has been reshaping governments, particularly at the state and local level, for at least the past 25 years. “Reinvention” and “privatization” have involved the vastly increased use of private for-profit and nonprofit providers to deliver government services.

While governments have always purchased goods and services—including social services—in the market, the enormous growth of contracting out, where services are increasingly provided and paid for by government but delivered by for-profit or nonprofit contractors, raises significant constitutional and public policy issues.

⊗ Are these public sector partnerships with businesses and nonprofit organizations creating a new definition of government? Is this form of privatization extending, rather than shrinking, the state? That is, does the substitution of an independent contractor for an employee really mean there has been a reduction in the scope of government, as proponents believe? Or does the substitution operate instead to shift the location but not the scope of government activities, blurring the boundaries between public and private and making it more and more difficult to decide where “public” stops and “private” begins?

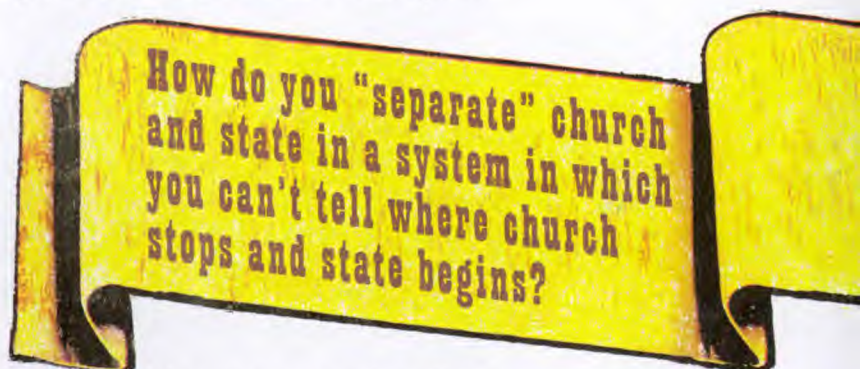
⊗ If we are altering traditional definitions of “public” and “private” by virtue of these new relationships, what will be the effect of that alteration on a constitutional system that depends upon the distinction to safeguard individual rights? If workers in nonprofit agencies are executing government contracts, logic would compel us to consider them government agents. Current law rarely does so. But in our constitutional system, only the government can violate the Bill of Rights. When we fail to identify contractors—religious or secular—as government agents, we lose the right to hold them to constitutional standards. How do you “separate” church and state in a system in which you

can’t tell where church stops and state begins?

When government is providing a service—whether directly or through an intermediary—government must ultimately be accountable for that service. Public officials can’t simply give tax dollars to organizations—no matter how saintly they may seem—and just trust that good things will happen. There is a fiscal and constitutional duty to confirm that public dollars are appropriately spent. What is appropriate, of course, depends upon our goals. And that takes us nearly full circle.

In a very real sense, this whole debate is a throwback to some of our oldest conflicts about social welfare policy, and the “deserving” and “undeserving” poor. If poor people need help because they are disabled, or because the factory closed, or because other problems have disadvantaged them, then we focus on giving them food, jobs, or shelter. If, however, poor people are poor because they lack virtue, because they are morally defective, then the goal is not merely to feed, house, or educate them; it is to *transform* them.

Whatever the underlying dynamics, the question is not whether government should cooperate with faith communities. It always has,

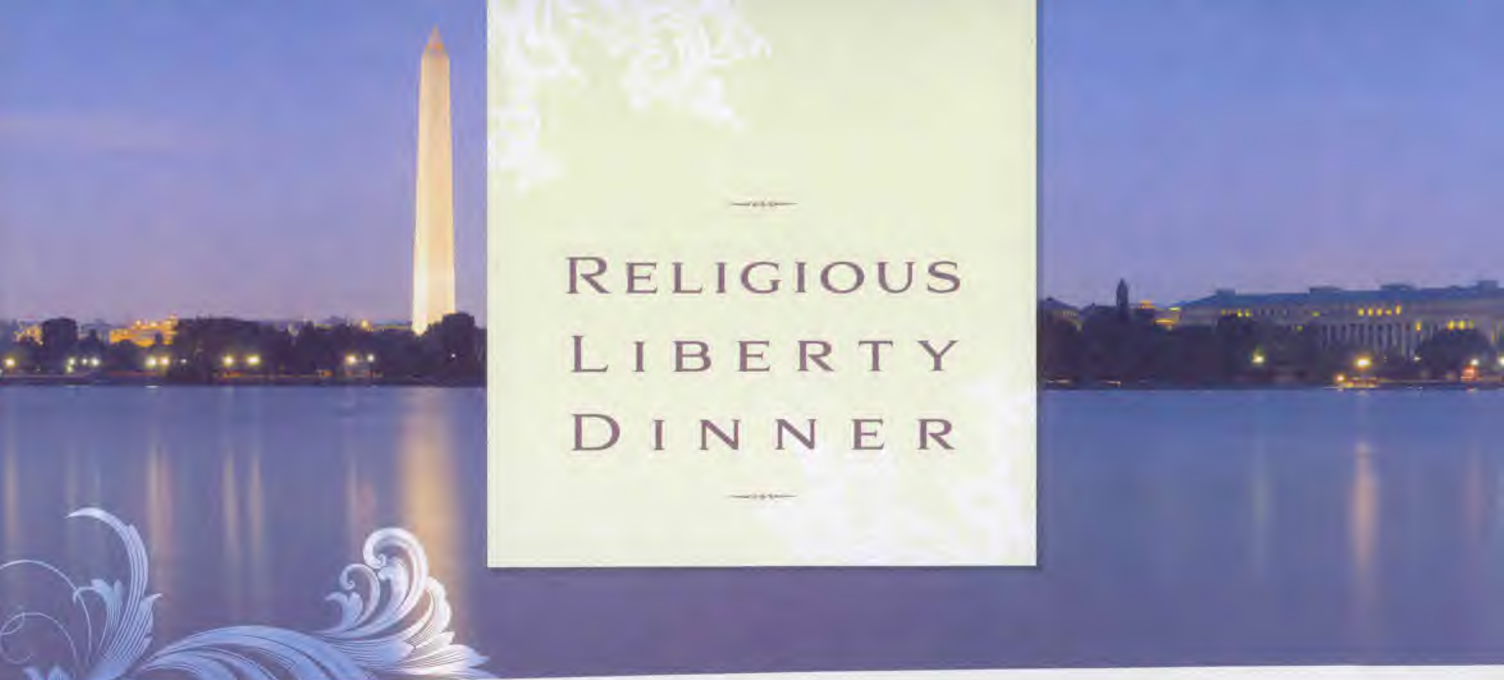


and presuming the continuing vitality of both the religious sector and the equal protection doctrine, it always will. The real questions are: When? How? Under what circumstances? With which providers? For what purposes?

Those questions may not be useful when devising handy political slogans, and they don't adapt well to bumper stickers. But we need to answer them if we are going to serve people in need while remaining faithful to the Constitution.

Sheila S. Kennedy is professor of Law and Public Policy at the School of Public and Environmental Affairs at Indiana University-Purdue University Indianapolis.

¹ Our findings and methodology, as well as the sources for other information contained in this article, are detailed in *Charitable Choice at Work: Evaluating Faith-Based Job Programs in the States*, published in 2006 by Georgetown University Press. In brief, we found that religious and secular organizations placed a similar number of clients in jobs at comparable rates of pay; however, those placed by secular organizations worked more hours each week and were much more likely to have jobs offering benefits such as health insurance.



RELIGIOUS LIBERTY DINNER

“I truly believe that this is the true mark of respect for religious freedom—when you stand up not only for your own rights, but when you also stand up for those of your neighbor, even when they believe something that may be radically different from you. You see, true tolerance is not in pretending that you have no differences; true tolerance is in loving and respecting your neighbor in spite of those differences,” said Trent Franks, United States congressman (R-AZ-2nd) and co-chair of the Congressional Task Force on International Religious Freedom, at the sixth annual Religious Liberty Dinner, held at the Capital Hilton in Washington, D.C., June 12.

These remarks were part of his keynote address to dinner attendees, who included foreign ambassadors, federal government staffers, and leaders from the NGO and faith communities. Sponsored by *Liberty* magazine, the International Religious Liberty Association, and the North American Religious Liberty Association, the event is an opportunity to honor those who work to preserve religious freedom in the United States and champion its necessity abroad.

Rep. Franks told attendees that protecting religious freedom at home is key to ensuring similar freedoms around the world, and that “it’s critical that other nations join with us in reaffirming this foundational human right and stand for the freedom of all people to choose their religious beliefs.”

Honorees at this year’s event included UC Davis School of Law professor Alan E. Brownstein, a nationally recognized constitutional law scholar whose assistance is often sought by advocacy groups on issues relating to religious liberty and equality; Zaoksky Adventist University Bible Translation Institute director Mikhail Kulakov, Sr., who endured persecution and imprisonment for his religious teachings and beliefs in the former Soviet Union; and former aid worker Carl Wilkens, who was stationed in Rwanda during the 1994 genocide, and stayed behind to help save hundreds of lives in Kigali.

“It is vital that we continue to make this annual statement for the importance of religious freedom in the capital of the United States of America,” says Lincoln Steed, editor of *Liberty*, major financial sponsor of the event. “We will continue to honor individuals and nations like the United States for upholding this most indispensable of freedoms.”

Melissa Reid, Associate Editor



Trent Franks is co-chair of the Congressional Task Force on International Religious Freedom.



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CARING FOR OUR BROTHER

BY TRENT FRANKS

Religious freedom is not only for Democrats or Republicans, Americans or Christians. It's a sacred right that all humanity should stand for. It's something that is written in our hearts. Alexander Hamilton, one of the architects of our republics, said it this way: "The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the divinity itself, and can never be erased." The Founding Fathers knew what it was about.

Religious freedom is that universal human right. Over 2,500 years ago, Cyrus the Great issued the first written edict ever found that calls for the protection of an individual's right to religious freedom. It was also at this time that Cyrus the Great allowed the Jewish people to return to their homeland.

Early Christians also had a few struggles. Probably one of the most poignant verses to me is Hebrews 11:36, 37: "Others had trial of cruel mockings and scourgings, yea, moreover of bonds and imprisonment: They were stoned, they were sawn asunder, were tempted, were slain with the sword: they wandered about in sheepskins and goatskins; being destitute, afflicted, tormented."

Religious persecution and the battle for religious freedom are not new battles in this world, ladies and gentlemen. But one of the greatest hopes, one of the greatest steps towards religious freedom came when that moment in history occurred—when inspired by their own Christian faith, America's Founding Fathers penned those timeless words enshrined in our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." Religious freedom is such an indigenous part of the pursuit of happiness in the Founding Fathers' minds. They understood what it really meant.

This is something that has set America apart from all nations across the world since that fundamental truth was written over 230 years ago. We hold that humanity has a choice to believe or not to believe, to worship or not to worship, and that freedom of religion is truly the cornerstone of all other human freedoms. In Thomas Jefferson's words, "The constitutional freedom of religion [is] the most inalienable and sacred of all human rights."

Of course, those early colonists came in search of a freedom to worship without fear of persecu-



(L to R) James Standish (NARLA), Ambassador John Hanford (US State Dept), and Eric Treene (US Dept of Justice). Standish was a co-organizer of the event.

tion in this country, and many have come since with that same hope and desire. The many people that meet with me in my office, many of them seek to find that same hope here. They want people of all faiths to be able to continue to come to the United States, and to be able to find that freedom of religion. And they believe the United States will advocate for their freedom and dignity because of the priority that we have placed on that foundational right for more than two centuries.

Let me just say I believe that, as we do this across the world, we must make sure that our own base of freedom of religion in our country is also protected. Sometimes it's the water on the inside of the ship that sinks it, isn't it? But one of the great Founding Fathers, Daniel Webster, put it like this—and he was speaking of many constitutional rights, but the constitutional right to freedom of religion, was foremost in his mind. And he said: "Hold on, my friends, to the Constitution and to the Republic for which it stands. Miracles do not cluster, and what has happened once in 6,000 years may not happen again. Hold on to the Constitution, for if the American Constitution should fail, there will be anarchy throughout the world."

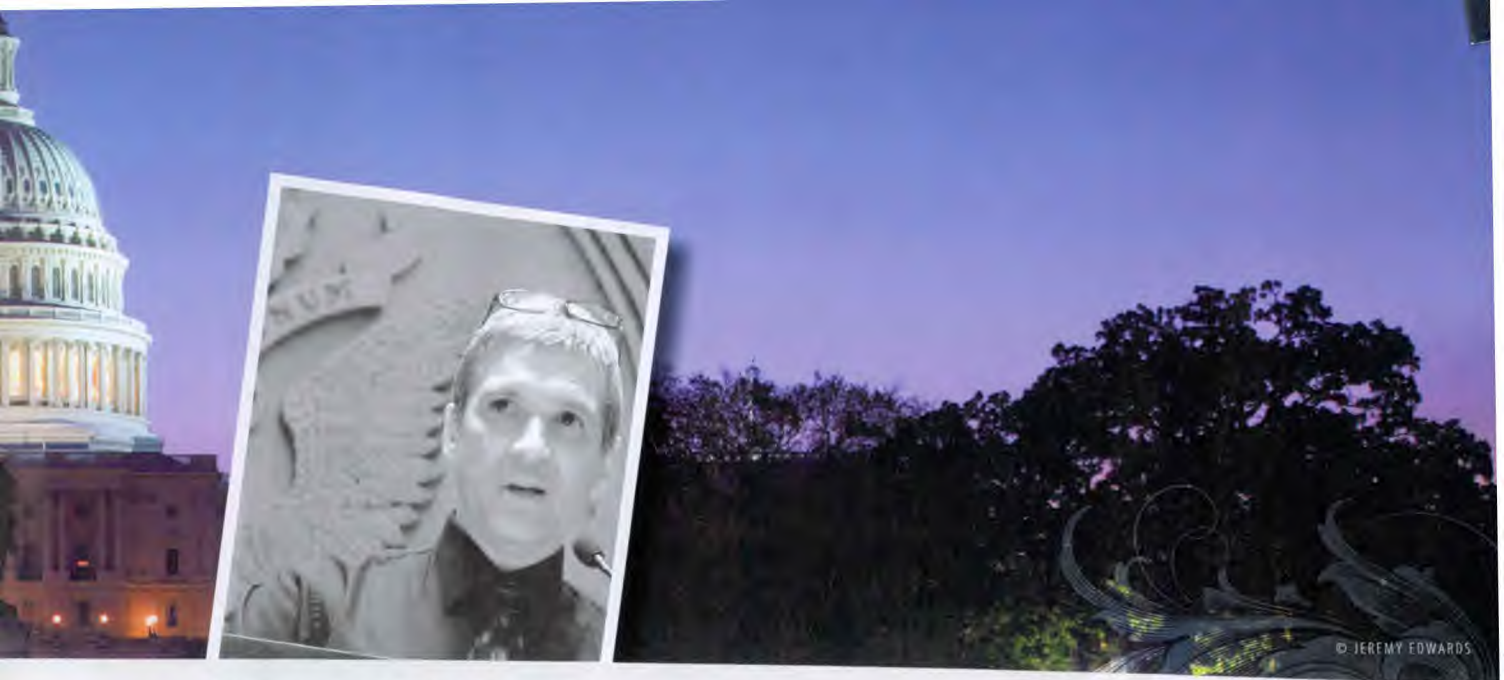
I am convinced that we have to protect religious freedom here at home so that we can be sure that we project it across the planet. It is vitally important.

Now, you know if religious freedom were not so intertwined with human dignity itself, and the human spirit, dictators would not be so threatened by it and work so hard to destroy it. But because it is, it should not surprise us that

now, more than one half the world's population lives in countries where they do not have true religious freedom.

Today in Eritrea, Adventists and people of many other faiths endure particularly severe restrictions on their freedom because of their religious beliefs. In Eritrea, all religious communities have been forced to register with the government if they want to continue their activities legally. Despite having submitted all of the necessary materials to the authorities, including names of church members, the Eritrean government has not registered Adventists and many other religious communities. As a result these communities are unable to worship publicly, and their churches have been closed.

Eritrea is considered one of the most egregious violators of religious freedom and is the only country which the president invoked a specific sanction for their violations of this right. And the situation there, as all of you probably know better than I do, is growing worse. Unregistered and unrecognized religious communities have been severely harassed in the last few years. In fact, just last year, the leader of one Evangelical church that tried to comply with the registration requirements, was arrested along with 70 members of his church and held without trial for months before the government finally released him. My office worked on this case and met with the pastor of this church, who detailed the suffering of the religious communities throughout Eritrea. This church must now operate underground as so many other churches have already begun to do.



Carl Wilkens captivated attendees with the retelling of his experience in Rwanda during the genocide.

Helen Berhane, a famous Eritrean gospel singer, was held in a metal shipping container in the desert for two and a half years, constantly tortured and forced to recant her faith. When she was finally released, she had to flee the country entirely. Thousands of others sadly remain in these containers in the desert simply because the government does not like what they believe, and seeks to destroy their spirit.

But persecution is not confined to Eritrea, or to communists, or to religiously affiliated nations. Individuals are persecuted to varying degrees throughout the world, and no religious community has been unaffected—Baha'is are persecuted in Egypt, Christians in Cuba, Jehovah's Witnesses in Greece, Muslims in India, Buddhists in Burma, Hindus in Bangladesh, Catholics in China.

This year marks the tenth anniversary of the International Religious Freedom Act of 1998, in which Congress recognized the importance of this foundational human right, and made the promotion of protection of religious freedom a fundamental part of our nation's foreign policy.

I've introduced a resolution to commemorate this act, which also calls upon the United States and our government to continue to stand up for those suffering around the world under those governments that are trying, once again, to destroy their spirits. As a co-chair of the Congressional Task Force on International Religious Freedom, my office regularly meets with individuals who have been persecuted for their religious beliefs. We hold briefings and write letters to advocate for the persecuted of all faiths, and we've had what

seem to be miraculous victories in so many areas—but there's always more work to do.

The contributions of organizations like the International Religious Liberty Association provide help that is vitally important to our efforts in helping the persecuted. Currently, most governments have agreed to the international standard for the right to freedom of religion, which entails the freedom to believe or not to believe; either alone or in your community; in public or in private; to practice your religion or belief through teaching, worship, and the observance of special holidays or the wearing of special religious symbols. But many increasingly view this right as a threat to their often dictatorial authority. The international standard for religious freedom must be reinforced and your work in this area is absolutely critical.

The International Religious Freedom Act sends a clear message to the world that this nation cares about the religious freedom of all people everywhere. And it's critical that other nations join with us in reaffirming this foundational human right, and stand for the freedom of all people to choose their religious beliefs. In so doing, ladies and gentlemen, I believe ultimately we will be protecting our own religious freedom, because, you know, somehow the environment that we work in and how we work to help others seems like it always comes home. I heard a little story years ago that touched my heart. And I think it, perhaps, is a way to bring this all together.

It so happens that off the coast of Scotland, many years ago, there was a shipwreck. They didn't really have a coast guard there, and a ship



Mikhail Kulakov, Sr. was recognized for his stand for religious freedom, even at the cost of imprisonment during the Soviet years.

went to pieces in a storm. The townspeople went out to the coastline there to try to meet the people that were coming ashore. They came ashore in just the one lifeboat that they had on this large, wooden ship. And the first question was, "Did you get everybody?" The survivors responded, "No. We didn't get everybody. There are a lot of people still out there clinging to pieces of the ship." And townspeople said, "Yes, but there's still a storm. It's dangerous to send a rescue team out." And a man named John stepped forward and—it happens to be a true story—he said, "Who will go with me? We will take the lifeboat out. We'll take every other boat that we have and we will go out there and we will try to find the vicinity and bring home as many as we can."

As soon as he said that he heard a scream behind him—it was his mother. And she said, "No, John, you can't go. You can't go. Your father died at sea, and your brother William went off to sea years ago and we've never seen your brother William again. I've lost your father, I've lost your brother William—I cannot lose you too. You're all I have." It seems like there's a price to pay when you're going out to help someone, doesn't it?

But John said, "Mom, if I don't go, they'll all die." And so he left his mother crying there on the beach, and the people began to follow him because of his courage, and he went out into the storm to try to find these lost people. In a sense, you know, I suppose my own faith is about a Savior that went out into the storm to try to rescue his lost brothers and sisters.

The townspeople built a fire and they waited

and they prayed, and they wanted to hope that somehow the rescue team would return. Finally, the storm calmed, and the night passed and it was the wee hours of the morning. Suddenly someone heard an oar out on the water. And those on shore called out, "Are you out there?" And a voice called back and said, "Yes, we're out here." They said, "Did you get everybody?" And they said, "Yes, we got everybody." Then John's voice yelled ashore and he said, "Tell my mother I'm OK. And tell her my brother William is with me."

And you know, that's really the way it is, folks. There is something in the heart of every last one of us that knows that this life is a miracle that beggars description or understanding. There is something in the hearts of all of us, telling us that when we look at the stars, beyond them is a God . . . who made them all. There is something in the hearts of all of us that knows our brothers and sisters are a profound creation of that . . . God. There is something in the hearts of all of us that sees the mortality of this life. We realize that this one ends in the short, brief time that we have with these flashes of light called days in our lives. And sooner or later, we have to step away from this life. And I really believe that the fight for religious freedom is so very important because of all those things, and maybe most of all it's important because someday we all pray that we will stand before God and say, "Lord! I am come safely home, and my brother William is with me."

Excerpted from the speech given by Representative Trent Franks (R-AZ-2nd) at the June 12, 2008, Religious Liberty Dinner at the Washington, D.C., Capital Hilton.



Alan E. Brownstein is a constitutional law scholar at the University of California, Davis, School of Law. He was recognized for his scholarship and advocacy of religious freedom.

LIBERTY AND EQUALITY

EXCERPTS FROM A SPEECH GIVEN AT
THE RELIGIOUS LIBERTY DINNER
BY PROFESSOR ALAN E. BROWNSTEIN

One of the things that I have learned over the years is that people of different faiths have to work together to protect religious liberty—not just for their own religious community, but for everyone. Let me be frank, here. Even when diverse religious communities work together on a religious liberty case or bill, that still does not guarantee success. I know that when we fight these battles together, we are not always going to win. But I also know that if religious communities go their own way and don't stand together and support each other, it is much more likely that we are going to lose. And I do not know any other organization in California that has been as effective in bringing religious communities together to work for the religious liberty of everyone as the Seventh-day Adventist Church State Council.

Since I am a constitutional law scholar, let me say just a couple of words about the substance of religious liberty and equality. Basically, on the issue of protecting religious liberty, I believe the framers of the Bill of Rights got it right when they drafted the two religion clauses of the First Amendment. They understood three core principles. First, it is inherent in the dignity of the individual that each person must be free to follow the dictates of his or

her own conscience in matters of religious faith. Second, when the people come together to form a government to represent their interests, they do not cede to that government the power to regulate the practice of their faith. Democracy is a wonderful system of government for many things, but we do not determine religious truth through the ballot box. Third, and finally, religion cannot be dependent on government for its financial support and at the same time be independent of government in expressing its prophetic vision.

Eighty years later, we added one other critical guarantee to our constitutional framework. After a terrible civil war, we committed ourselves not only to liberty, but also to equality. We finally recognized that government cannot create a hierarchy that ranks the status of its citizens based on their race or national origin or religion.

If we honor these principles of religious liberty and equality, we, and our children, and our children's children can live in a country and a world where we are free to believe as we choose, according to the dictates of our conscience, and where our government will recognize that the members of both majority faiths and minority faiths are of equal worth and must be treated with equal respect.

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I was young. It was the 1980s. I had a hot, black car, complete with pop-up headlights and a

vanity plate reading "KTCHME." It was a great car, a great plate. Today if I chose a vanity plate it would probably be a bit more sedate. The question is: Would it be sedate enough, and, more important, noncontroversial enough, to be approved by the DMV?

Chances are that Shawn Byrne, a fellow Vermonter, wasn't worried about whether or not his plate was sedate or noncontroversial enough. It was all about love. He offered three choices: "JOHN316," "JN316," and "JN36TN." The first two were rejected on the basis that they violated the state's requirement that vanity plates have no more than two numerals. The third choice was rejected based on the fact that it conflicts with a rule against religious viewpoints on license plates. His choice is, of course, shorthand for a Bible verse: John 3:16, "For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life" (NIV).*

"The DMV has the right to prohibit religious messages on license plates provided it does not discriminate based on the particular message or viewpoint," U.S. Magistrate Judge Jerome J.

Niedermeier wrote in his 23-page report filed in U.S. district court in Burlington.¹ This, despite Niedermeier's admittance that getting the point of what Byrne's license plate refers to takes some mental gymnastics and that he wasn't sure anyone reading the plate would immediately realize it was referencing a Bible verse.²

Of course, one could argue that "JN36TN" could also be a reference to someone named John born at 3:16, or a father named John who passed away on 3/16. The point is it could mean any number of things. But because the most obvious reference, in fact the actual reference, is to a verse from the Bible, it's not allowed. End of discussion.

Since this issue has come to my attention I have personally seen the following vanity plates just driving around my little corner of the state: MRSTIFY (a Viagra salesman?),



KGB (the Russians are coming), CALLMOM (a desperate housewife?), and my favorite, HITMAN (oh, now I definitely feel safe). While each of these license plates is more or less offensive to me they also have more than one potential meaning. CALLMOM might be a reminder to reach out to our mothers, a worthy message. Perhaps the letters KGB are the initials in someone's name—Katherine Gloria Burns. MRSTIFY might actually be MRS TIFY, and who am I to denigrate her last name? Although the state of Oregon didn't seem to mind doing just that when they ordered Mike and Shelly Udink to turn in their vanity plates UDINK1, UDINK2, and UDINK3 because their Dutch last name is similar to an offensive word. And HITMAN? Saying hello to a college buddy—HI TMAN? Probably not, but still free speech is supposed to be free speech—others don't have to agree with us, but they must let us speak nonetheless.

The license plate issue is heating up in various states around the country. South Dakota, for example, considered doing away

with their vanity plates altogether. However, in January the bill was killed by a vote of 6-1 in spite of the fact that the state Division of Motor Vehicles director Debra Hillmer is convinced that the many combinations of letters and numbers are bound to offend either those reading them or those requesting them who are denied their combination of choice. "It is not an issue of if we will be sued," she said. "It is only a matter of when we will be sued."³ Although the personalized plates bring in about \$250,000 a year in annual revenues, Hillmer said that wouldn't be enough to cover a lawsuit.

The trouble is almost anyone can be offended by almost anything. It all depends on your point of view. "Professor Marybeth Herald, in her *Colorado Law Review* article 'Licensed to Speak: The Case of Vanity Plates,' " argues that judges must not allow government officials to regulate offensive vanity plates because offensiveness is in the eye of the beholder and is an almost limitless concept.

"The First Amendment is an insurance policy against government repression," Herald writes. "We pay for it all the time—in large and small ways—by tolerating the racist, the pornographer,



It's understandable why in the whole vanity plate/specialty plate debate, a big can of worms the government is making a mistake, and will end up being

and the generally offensive speaker. . . . So if someone wants a plate that says "GOVTSUX," let her have it. Who knows, it might even have been a popular plate among a few of the signers of the Declaration of Independence.³ ⁴

The debate over license plates centers around two primary types of plates: "vanity" and "specialty" plates. Vanity plates consist of a combination of numbers and letters chosen by individuals to express themselves. The question with vanity plates is How far can the government go in refusing or regulating personal expression, i.e. free speech, on government

property (the license plate) in public view? The second type of plates, "specialty plates," are those that organizations can petition for that raise money for their cause and publicize their message. The two most controversial so far have been those involving the anti-abortion message and the Confederate flag.

"To understand the free speech issue," writes Dahlia Lithwick, "it's important to clarify whether specialty license plates represent government speech or private citizens' speech. Why? Because there is no question that the government may speak in a partisan manner without violating the Constitution. The First Amendment applies only to government efforts to restrict *private* speech; it doesn't apply back to the state itself. This is why the state is perfectly free to tell you to stay in school, or drive sober, without having to broadcast the opposing viewpoint. States may have preferences for all sorts of messages. But if, on the other hand, the government opens a forum for private speakers—if it creates a park or builds a street where you and I are free to talk—it cannot be in the business of censoring some viewpoints while permitting others. This is the core of the First Amendment. So, the legal test for the courts is simply this: When the state gives license plates to certain private organizations to broadcast their messages, is it more like the state is talking (akin

to a public service announcement) or more like it's allowing private citizens to talk (like they would in a public square)? The former is constitutional, but the latter may well be censorship."⁵

The Issues Behind the Issue

License plates are owned by the government, but messages on vanity plates are personal and individual; they are clearly not government messages, but reflect the personality or creativity of the car owner. However, that does not mean that courts or legal commentators are agreed on whether or not individuals have the right to say what they want on this form of government property.

"Government officials in license plate cases repeatedly try to advance the so-called 'government-speech defense.' They claim that because specialty and vanity plates are a form of government speech, traditional First Amendment principles do not apply. The government-speech doctrine holds that the government can speak for itself and propound certain viewpoints when it is advancing its own speech."⁶

The issue becomes even more clouded in regard to specialty plates, as these are offered by the state and can encompass a plethora of themes. The state of Tennessee, for example, offers more than 90 specialty license plates for Tennessee motorists to choose from. The plates represent colleges and universities, military branches, professional organizations, special interest organizations, and more. Some are more controversial than others. In the state of Florida lawmakers are currently debating whether or not to offer a specialty plate with the design of a Christian cross and stained-glass window with the words "I Believe." If approved Florida would become the first state with a license plate featuring a religious symbol that isn't part of a college logo. You can bet if it's approved, it will be challenged.

"The problem with the state manufacturing the plate is that it 'sends a message that Florida is essentially a Christian state' and, second, gives the 'appearance that the state is endorsing a par-



The Florida Legislature is considering a new license plate that features the words "I Believe" and the image of a cross in front of a church stained glass window.

any people wonder if cialty plate issue is just vernment opened by ing a lose-lose situation.

ticular religious preference,' said Howard Simon, executive director of the American Civil Liberties Union of Florida.⁷

The opposing argument, of course, goes that no one is being forced to display any of the specialty plate statements on their vehicle. Participation is completely voluntary and, what's more, you must pay an additional fee for the privilege. Therefore while the individual state governments must approve which messages are chosen to be made available and those messages are supported by the government of that particular state, it's up to the individual who supports that message to purchase the specialty plate, thereby making it the statement of the individual.

Considering the quagmire surrounding this issue it's understandable why many people wonder if the whole vanity plate/specialty plate issue is just a big can of worms the government opened by mistake, and will end up being a lose-lose situation. It's no wonder South Dakota toyed with the idea of doing away with them altogether. But vanity plates have many supporters, so it's not likely that this issue will die down anytime soon.

Meanwhile, vanity plates will continue being requested, denied, and appealed. As for Shawn Byrne, he's not giving up. While he doesn't think they'll be able to change the legislation as they originally hoped, he's confident that in the end he'll get his plate.

"When the state opens up vanity plates to

wide-open expression on virtually any subject matter, including what people personally believe as their philosophy and belief system, they can't prohibit Christians or religious people from expressing their point of view on that same subject matter," said Byrne's lawyer, Jeremy Tedesco, of the Arizona-based Alliance Defense Fund.⁸

As Hillmer says, "Free speech means that I have the right to say on my plates pretty much what I want to.' . . . 'The state should not be in the position where we have to monitor what meets the test of free speech and what does not.'"⁹ In the end I have to agree with Ken Paulson, of the First Amendment Center, who wrote, "It's a remarkable nation that can tolerate 'ARYANI' in the interests of protecting 'ROMANS5.' In the end, it all comes down to protecting 'FRESPCH.'"¹⁰

Céleste Perrino-Walker, a frequent contributor to *Liberty*, writes from Rutland, Vermont.

⁷ From the Holy Bible: New International Version: Copyright © 1973, 1978, 1984, International Bible Society. Used by permission of Zondervan Bible Publishers.

¹ www.firstamendmentcenter.org/news.aspx?id=18923

² www.rutlandherald.com/apps/pbcs.dll/article?AID=/20050608/NEWS/50607014/0/FrontPage

³ www.firstamendmentcenter.org/news.aspx?id=19561

⁴ www.firstamendmentcenter.org/speech/personal/topic.aspx?topic=license_plates

⁵ www.slate.com/id/2078247/

⁶ www.firstamendmentcenter.org/speech/personal/topic.aspx?topic=license_plates

⁷ www.foxnews.com/story/0,2933,352398,00.html

⁸ www.firstamendmentcenter.org/news.aspx?id=18923

⁹ www.firstamendmentcenter.org/news.aspx?id=19561

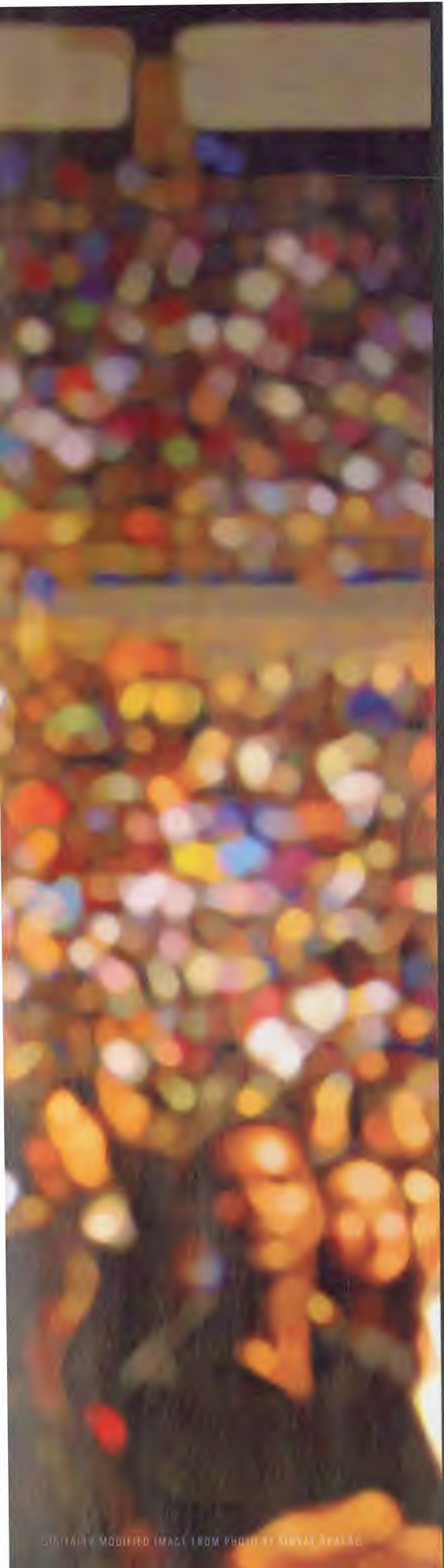
¹⁰ www.firstamendmentcenter.org/commentary.aspx?id=2293&searchString=gr8_debate



A large crowd of people is shown from a high angle, looking down. The scene is filled with a thick layer of multi-colored confetti (red, yellow, blue, green, pink) that has been thrown onto the ground. The people are mostly seen from the back or side, and their faces are not clearly visible. The overall atmosphere is one of a large-scale celebration or festival.

What a Blessed Country It Is!

BY JOHN GRAZ



group of officials from a country in Central Asia were visiting the International Religious Liberty Association at the world headquarters of the Seventh-day Adventist Church. We did our best to make their visit interesting and invited them to a dinner in their honor. They asked us to explain the relations between the government and religious minorities in the United States. We talked about religious freedom and church-state separation. Sitting by me, a member of the delegation was listening very carefully. Then he said in a soft voice so only I could hear, "What a blessed country it is!"

Just a few words, but I will never forget them: "What a blessed country it is!" What a blessed country it is when religious minorities have the same rights and protections as the majority. What a blessed country it is when you are not discriminated against because you don't believe like others. In such a blessed country, we are used to complaining openly about minor restrictions or possible projects that could potentially create a problem in the years to come. We are quick to imagine the worst and speculate about the inevitable discriminations that may be secretly planned. But what about the gift we have had for more than two centuries in this country: religious freedom!

Time to Say Thank You

We received our norms of religious freedom as a gift from courageous people who sometimes did not share our beliefs, but wanted all humans to be free

- » To choose their religion;
- » To have or not have a religion;
- » To change their religion if they wanted to;
- » To teach their religion to their children; and
- » To share their beliefs.

This dream came about because of their understanding of human dignity. Few of us living in North America have been openly and legally persecuted or discriminated against. Why? Because religious freedom was already a fact a long time before we were born. What a blessed country it is where we have inherited religious freedom.

I think the time has come to say publicly: Thank you for religious freedom! Not a little or a timid or a confidential thank-you, but a massive thank-you!

More than half of the world population is living in 40 countries where religious persecution and discrimination are a fact. According to some experts, about 300 million Christians are legally discriminated against. Every day I receive information about churches attacked, believers arrested or beaten, or worship services interrupted by the police or the military. This world is not headed toward more religious freedom, not at all. The time has come for all citizens who care about religious freedom and live in countries where this fundamental freedom is protected, to say publicly: Thank you!

◀ A crowd of more than 30,000 attended the Religious Liberty Festival held in São Paulo, Brazil.



◀ A march-past of women and youth associations at the Luanda, Angola, Festival of Religious Freedom, June 28, 2008.



◀ Dr. John Graz prepares to address the crowd of 40,000 at the Luanda festival.



◀ Protestant, Eastern Orthodox, and Muslim leaders dialogued at the first North American Festival of Religious Freedom in Honolulu, Hawaii.

Thank you first to God, who gave us the freedom to choose. Thank you to those who gave their energy and sometimes their lives for it. Thank you to those countries that cherish freedom—particularly the United States, which protected freedom through its legislation and its Constitution.

We need to look to holding Festivals of Religious Freedom. We, here in places of religious freedom, need to proclaim what we believe in and want to protect and promote.

Celebration of a Freedom

I believe in religious liberty congresses, symposiums, and meetings of experts. They are important in our promotion and defense of religious freedom. They reach experts, government people, and religious leaders. But we need to involve all people. We need to involve people in great numbers. We have decided that in connection with every world congress on religious liberty organized by the IRLA (International Religious Liberty Association), we will hold a meeting for masses of people. The first "festival" was held in a church in Rio de Janeiro in 1997, a few days after the IRLA World Congress. Young people, musicians, and children were involved in the program. We enjoyed the same experience in Manila in 2002 and in Kiev and Trinidad in 2005.

The programs typically started on Saturday morning in a religious context, with testimonies, prayers, and a sermon. The afternoon was devoted to a more specific celebration, where experts and preachers led in a program featuring musicians, poets, actors, and others. These three-hour programs attracted more people than there were seats. A 2006 program in Bucharest attracted some 4,000 people to an outstanding program. It was a great beginning to a dream!

Why Wait?

In February 2006 I was in São Paulo, Brazil, meeting the IRLA secretary-general for South America, Williams Costa, Jr. I

PHOTOS: J. GRAZ

shared my dream of organizing a festival for 2009 that could attract a crowd of 10,000 people. He looked at me and said, "Why do you want to wait until 2009 to have 10,000 people?" I had expected a reaction like, "It won't be possible!" or "Nobody is interested in religious freedom!" He added, "We can do that in four months here in São Paulo!"

With the support of the Central Brazil Union Conference of Seventh-day Adventists, they did it. The festival attracted more than 30,000 people, even though the gymnasium itself could hold only 12,000. The program was excellent. It involved 27 soloists, a choir of 1,500 children, an orchestra, and a large adult choir of more than 1,000 singers. There was a special Web site for the festival, which attracted hundreds of thousands of hits from all over the world. The governor of the state of São Paulo and several other officials attended the program. It was a big thank-you for religious freedom to God and to the city of São Paulo.

In every country where we have religious freedom, in blessed countries such as Brazil, we should say a big "Thanks" for religious freedom.

The Dream Continues

In 2007 more than 4,000 people gathered in Cape Town, South Africa, for the festival that was held after the IRLA World Congress. The first festival in Mexico was held in Tijuana. As Roberto Herrera, Inter-American IRLA secretary-general, said, "The seed has been sown!" For 2008-2009 a number of celebrations have been planned on four continents. The first was a successful event held in a stadium in Luanda, Angola—with almost 60,000 people attending. Cities such as Saint Petersburg, Santo Domingo, Seoul, and Rome, and countries such as the Philippines, Mexico, Brazil, and Chile will soon have their festivals. Honolulu, Hawaii, recently hosted the first Religious Liberty Festival to be held in the United States, and while it was a modest step, it was the first of others to come. *Liberty*

magazine, the IRLA, the Adventist Church in Hawaii, and a wide array of religious and political leaders worked together to make a big "Aloha" statement.

It is time to celebrate what we have and that which is so precious: our freedom to choose our religion; to have or not to have any religion; and to change, to teach, and to share our beliefs. It is time to celebrate religious freedom—freedom that is only a dream for the millions who have been persecuted because of their beliefs.

November 21, Lima, Peru: World Capital City of Religious Freedom

I have been so encouraged when traveling around the world to see the enthusiasm with which the concept of celebrating religious freedom is received. An exciting upcoming event is the First World Festival of Religious Freedom, in Lima, Peru, November 21, 2009. It will be held in one of the largest stadiums in the country. From 50,000 to 70,000 people are expected. Religious leaders, human rights experts, officials, and members of the government will join us. Lima—which had been the capital city of the Inquisition for centuries—will become a capital city of religious freedom. A festival is a celebration. No church or religion will be attacked, but all people who love and believe in religious freedom will be invited.

A Festival of Religious Freedom is more than an event. It is becoming a movement. The dream of thousands of people celebrating this essential freedom continues. I love to think that one day people from all religions and beliefs will fill a 100,000-seat stadium to celebrate our common and precious freedom that gives us dignity and causes us to respect others.

What a blessed country is the one that protects and values God's gift of religious freedom for all.

Dr. John Graz is director of the International Religious Liberty Association. He is also secretary-general of the Christian World Communion. A Swiss, he works at IRLA headquarters in Silver Spring, Maryland, U.S.A.


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Religious Freedom Under

An adjunct fellow at the Claremont Institute in California, Dr. Paul Marshall tells us in *Religious Freedom in the World* (Nashville, TN: Broadman & Holman) that “by religious . . . persecution, I do not mean human rights violations against ‘religious’ persons. . . . Rather, we are concerned . . . with the persecution where the focus or the grounds are themselves religious—where a person’s religion is a component of the persecution or discrimination they suffer.” Dr. Marshall adds: “In the field of human rights, we must elevate concern for religious freedom. . . . It is historically the first freedom in the growth of human rights. Such freedom may at times have more to do with the growth of democracy than might a direct focus on political activity itself.”

In her introduction to *Martyrs* (Maryknoll, N.Y.: Orbis Books), social critic/essayist/poet Susan Bergman observes: “Drawing my finger across a globe of the world, I find the places where [victims of religious persecution] have died. . . . To be a martyr you have to believe that something matters more than life. With the death toll of Christians rising throughout the world in recent years, my thoughts are drawn to the point of intersection between faith and death.”

A recent report from Voice of the Martyrs presents disturbing news about religious persecution around the world:



Iran: “Believers are discriminated against in education, employment, and property ownership. Pastors have been murdered.”

Cuba: “Christians are still imprisoned and churches are destroyed.”

Sudan: Acts of religious persecution have included “bombing of Sunday school services, destruction of hospitals, schools, churches, and Christian villages. Pastors and church leaders have been killed. Men, women, and children have been threatened with death or torture if they refuse to convert to Islam.”

Attack Around the World

BY HAVEN BRADFORD GOW

This brief catalog of persecution against Christians worldwide should not lead readers to think one-denominationally. Hindus are persecuted in Bangladesh and other areas. Muslims are victimized in India. Bahai's and other religious minorities are persecuted in Iran. North Korea and Cuba, Vietnam and China, being Communist, have a history of antagonism to all faiths. Truth be told, religious intolerance and persecution are on the rise globally. *Editor.*

China: "More Christians are in prison or under detention than in any other country in the world."

"The confiscation of church property and Bibles continues—even Bibles officially printed by the government. The house church movement (illegally unregistered churches), which comprises 90 percent of China's Christians, endures unimaginable persecution, yet stands on its commitment to preach the gospel no matter the cost."

Bangladesh: "Believers are often denied access to public water wells by Muslim extremists, and many have been forced from their homes and beaten by Muslim mobs."

North Korea: "All religions have been harshly repressed. Many thousands of Christians have been murdered since the Korean War."

Vietnam: "Believers are harassed, beaten, and imprisoned for preaching illegally or organizing evangelistic activities. Persecution especially harsh for unregistered and ethnic minority churches. Seeing the role of Christianity in the demise of Communism elsewhere, the regime has attempted to either control or wipe out believers."

Pakistan: "Christians are barred from some professions and the most menial tasks are reserved for Christians alone."

India: "Hindus who convert to Christianity are often cast out of their families and face poverty and ostracism. In the last year there have been reports of pastors and priests beaten, nuns harassed and raped, and other violence directed at Christians in Orissa and Gujarat."

Indonesia: "There has been orchestrated Islamic jihad against Christians—with over 600 churches destroyed by mobs. Christians have been forcibly converted to Islam, and men, women, and children forcibly circumcised."

The New Testament affirms: "Blessed are they which are persecuted for righteousness' sake" (Matthew 5:10). "All that will live godly in Christ Jesus shall suffer persecution" (1 Timothy 3:12).

As Susan Bergman observes in her introduction to *Martyrs*, "Of all spiritual concepts expressed in language, redemption through death seems . . . the most central to Christian faith and the most consistent to appear in the writings of twentieth-century Christian martyrs."

Haven Gow is a TV and radio commentator and writer who teaches religion to children at Sacred Heart Catholic Church in Greenville, Mississippi.

LETTERS

Like the Magazine

I enjoyed your editorial "Faith Talk" (September/October 2007) very much. As a lowercase atheist for many years, I think your publication is one of the most important I have read.

I try to never question anyone else's personal faith. I cannot prove anyone wrong, and it is none of my business what anyone else believes. I don't advocate a belief in nothing. That is my personal choice.

However, when religion creeps into the political arena, I get concerned. I am an American citizen, and my Constitution is implicated thereby.

Article VI is frequently overlooked in the rampant debate about religion in government. The First Amendment seems to get the lion's share of the fight. However, Article VI is very important and in my view illuminates the thinking of a majority of the Founders (not necessarily all of them) with regard to the full meaning of the First Amendment, which, I believe, prohibits any government embrace of or interference with any personal religious activity whatsoever. Some choose to disagree.

Article VI makes it very clear that there shall be no religious test for the holding of public office—federal, state, or local. I believe a majority of the Founders intended our governments to be rigidly secular. Some choose to disagree.

Therefore, I think it is unethical for a political candidate to promote his or her religious beliefs. It is also patently "unconstitutional," but the First Amendment protects such nonsense. I don't expect it to stop anytime soon.

I also think it is unethical for any journalist to ask about a candidate's religious beliefs and/or to write about them, UNLESS the issue be one of hypocrisy, where the candidate is apparently acting contrary to professions of faith.

"There is something strange going on in this country, and everyone seems afraid to talk about it."

Anyway, keep up the fine work. I really like your magazine.

H. WATKINS ELLERSON
HADENSVILLE, VIRGINIA

Good constitutional points. Of course, our common respect for it does not mean we share an atheistic viewpoint. The Constitution, correctly applied, will encourage true religion and allow a full expression of belief and unbelief. Editor.

Appreciation for Editorial

Just a note to say how much I appreciated your editorial "Freedom Wings," in the May/June 2007 issue of *Liberty*.

Is there any word on how Adventist service personnel are doing in Iraq and Afghanistan concerning bearing arms and the Sabbath?

R. WAYNE EPROSON
E-MAIL

Religious accommodation is problematic today in the volunteer army. While there may be individual cases of allowance for such things as Saturday Sabbath accommodation, there is no general guarantee or right. Similarly, noncombatancy is not an option, as it was during the draft and the Vietnam War. Editor.

Taking Flight

A very interesting editorial ("Freedom Wings," May/June 2007). I remember a movie in which the Amish eventually realized that evil must be met with a response of violence. Also, in the original *Star Trek*, one episode had a creature (but turned into Lincoln) say that this war (against other creatures turned into various historic criminals) was *forced* upon us. Also, may I point out that Archangel Michael's response to the rebel and his forces was definitely a battle!

My own thought is "Peace if possible, war if necessary," and if necessary, then an implacable energy I will not be sad the day Wahabist/Selafist Islamists exist only in his-

tory books or in a museum!

This also applies to those who proclaim cultural Marxism and have infiltrated this ideology into our country. Added to this list are large criminal capitalists of the Ken Lay ilk who are risking a bloody revolution by very angry citizens who will wake up! A lesson from France: When the people (especially the middle class) get squeezed too much, they tend to want to wipe out their oppressors.

DAVID BROCK
PORTLAND, OREGON

Glad my editorial hit the spot with you. While we can all wish for the day wars cease and God's peace is eternal, I think we must beware of slipping into a present militarism. Humans too easily descend into hate and violence—Marxism, secularism, violent fundamentalism, predatory capitalism, which are all dangerous, but are best challenged by dealing with root issues rather than violent clash. Editor.

Not a Cause for Violence

I read with interest Borg Schantz's article "Freedom of Expression and Religion" (November/December 2007), dealing with Islamic efforts to stifle criticism of their beliefs and portrayals of their prophet. I find it rather ironic that they raise such a furor over the caricatures of Muhammad, given the huge number of incredibly vile and offensive anti-Jewish caricatures and cartoons published regularly in Muslim newspapers and magazines around the world, in every Islamic country from Saudi Arabia and Egypt to Indonesia and Sri Lanka. They see nothing at all wrong with publishing depictions of Jews that might well have come from *Der Stürmer* magazine during the Nazi years. Such things are offensive to all Jews, regardless of whether they're secular or religious. Yet having a Danish newspaper publish a





few political cartoons is enough to justify rioting, arson, murder, and general destruction around the world. If we Jews reacted as they do every time a Muslim publication prints cartoons that are offensive to us, we would be rioting and demonstrating 24/7, 365 days a year, in just about every country in the world.

ELIYAHU ROOFF

WALLA WALLA, WASHINGTON

Right and Wrong

I enjoyed the article "Patriotism, Piety, and the Perfect Storm," by Michael Peabody, in the November/December 2007 issue.

It is interesting to me that in Nazi Germany there was a highly educated, theologically-liberal "German Church." It was the product of more than a century of the "German School" of thought. The church itself was also pacifist from its Lutheran roots and had little zeal in opposing Hitler's moves against the Jews.

The history I have read says the theologically-left German Church was exuberant because of the "social" input they had in the Nazi reconstruction of the nation. It seems to me that an appropriate parallel of that model would be today's "Religious Left" that is less fearful of government overreach and a proponent of more nationally sponsored social programs. Bonhoeffer's appeal was to return to orthodoxy in the "Confessing Church."

It seems to me that *Liberty* magazine primarily, if not exclusively, focuses on the Religious Right. However, we should remember that Scripture says the Sadducees and Pharisees came together for a common purpose. Neither Left nor Right should be too involved with the state at the church level.

PAT TRAVIS

OVIEDO, FLORIDA

Good point. Left and right markers can often be overly simplistic. Church organizations need to maintain moral independence from state control. Editor.

Bad Math!

To equate a misguided zealot that bombs an abortion terminal, suggesting that he is an exemplar of some unspecified body of Christian "fundamentalist" teaching or advocacy, with extremist followers of Allah who perform their acts of murderous violence in full accord with the plain words of the Koran is to engage in duplicity without any semblance of moral or logical balance ("Religious Freedom or Religious Fundamentalism," January/February 2008).

Only an insane person can claim to be acting in the name of Jesus while committing an act of mindless violence, for nothing in Jesus' teachings can justify it. Neither do the teachings of any Christian denomination or sect of which I am aware justify violence in the service of the Master.

However Bert Beach may choose to define religious fundamentalism, there can be no claim of comparability between, on one hand, the attitude of Muslim fundamentalists toward those whom their holy scriptures define as infidels who must be compelled on pain of death to submit to Allah and, on the other hand, the mind-set of Christian fundamentalists, who hope and pray that all might be motivated peacefully and willingly to accept their view of spiritual reality and how to live. That gulf is too wide and deep to permit their portrayal as two sides of the same "fundamentalist" coin.

LEONARD C. JOHNSON

MOSCOW, IDAHO

Concerns About Election Issues

I have so much appreciated your time and response to some concerns I have raised in the past.

I am concerned about a politician who recently announced his candidacy for president of the United States of America. In this announce-

ment, he called for strengthening and empowering labor unions. That candidate is Barack Obama.

I have been watching videos of Barack Obama's pastor—I find it difficult to believe that he is not overstepping the boundary between church and state.

RHONDA TOMLINSON

JACKSONVILLE, NORTH CAROLINA

Liberty does not take sides in partisan political issues. Among other points raised by candidates, Obama's support of unionism could raise a flag for religious liberty concern. Compulsory unionism has implications for restricting religious liberty in the workplace. Of course, the union movement is part of a history of increased workers' rights and improved conditions. And, yes, many people are troubled by the shrill and overt political tone in Minister Wright's pronouncements. This is a very interesting time in America's political life. Editor.

Need Insider Now!

Can you please direct me to where I can go to view or purchase copies of *Liberty Insider*? I greatly appreciate your help! I love the news shows because they speak about the truest issues that weigh heavy on many minds. If the magazine is anything like the news show, I would love to subscribe to that, too. Please get back to me as soon as possible. I am too excited and can hardly wait to show my mom that there are others who are aware and believe in Jesus! Thank you.

KATIE

E-MAIL

Liberty Insider is a weekly half-hour television program featuring Liberty editor Steed and a variety of guests—and, most important, a discussion of vital religious freedom issues. It is produced by 3ABN and distributed worldwide. It may be in your area. Editor

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RELIGION AND GOOD CITIZENSHIP



Among the features peculiar to the Political system of the United States, is the perfect equality of rights which it secures to every religious Sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and oppressed elsewhere, a happy illustration of the safety and success of this experiment of a just and benignant policy. Equal laws protecting equal rights, are found as they ought to be presumed, the best guarantee of loyalty and love of country; as well as best calculated to cherish that mutual respect and good will among Citizens of every religious denomination which are necessary to social harmony and most favorable to the advancement of truth.

—James Madison in a letter to Jacob De La Motta, August, 1820.
Quoted in *The Republic of Reason* (Harper & Row, 1958), pp. 320, 321.