A MAGAZINE OF RELIGIOUS FREEDOM

SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY | REFORMATION AND COUNTER-REFORMATION

LIBERTY

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Faith as Politics

On display at the UN

CHANGE YOU CAN BELIEVE IN

It saddens me that so many people of "faith" are so ready to let the state decide what is marriage. As though it could!

A few weeks ago a fellow religious liberty activist and I exchanged words on the topic of California's Proposition 8, and how Bible-believing Christians should react to negative social change. He was troubled at my efforts to distinguish between the obligations of the faith community and the freedom of a secular community to choose a very ungodly path.

"I think you are a pietist," said my friend. Of course he is my friend. That is why I think he was couching his criticism in a seemingly innocuous but possibly damning appellation.

"Thank you," I answered. He had flattered me. Stripped of its historical excesses, Pietism seems an admirable model of religious behavior.

The *Britannica Online Encyclopedia* identifies Pietism as beginning in Germany in the seventeenth century: "It emphasized personal faith against the main Lutheran church's perceived stress on doctrine and theology over Christian living." The *Britannica* calls Pietism "a phenomenon of personal religious renewal." I could not help noting that both the *Britannica* and the sometimes maligned *Wikipedia* draw a bright line from Pietism to John Wesley, the founder of Methodism. I know that my Seventh-day Adventist lineage owes much to Wesley and the Holiness movement. On a broader scale, the *Britannica* concludes that "the religious revival movements of the nineteenth and twentieth centuries were influenced by Pietism and in turn influenced it." Looking up the movement in the *Catholic Encyclopedia*, I found a generally upbeat explanation of a Protestant movement that "aim[ed] at the revival of devotion and practical Christianity."

How to relate the best of Pietism's calls to our society under siege?

I am quite convinced that reflex religious legislation can only be counterproductive.

Let's take as exhibit A Islamic fundamentalism, and look at Afghanistan as a case study.

Most people have forgotten what led to our overthrow of the Taliban. In the 1970s the traditional tribal society of Afghanistan was dragged into the modern world by a weak but determined monarchy. The internal stress was enormous. It was agitated further by Soviet Communist meddling from the north. Socialist factions eventually seized power and removed the king, but lost popular support when the Soviets were seen to be propping up the government. At that point the West recruited religious zealots to drive out the secular oppressors. The tactic worked, but morphed into something unforeseen. In the chaos that followed the Soviet withdrawal, various fundamentalist and nationalist groups vied for power, none having enough support to remain in power for long—until the Taliban, meaning quite literally "students of Islam," took control and imposed an unyielding orthodoxy.

Did the Taliban have valid religious concerns? Well, yes. Modernization was itself a threat to the form of Islam they espoused. Communism was diametrically opposed to their faith view. The very fabric of their society, and its religious assumptions, was tearing apart.

Their solution: a reign of religious terror and intimidation. Kite-flying and football outlawed. Stone Buddhas destroyed. Women lashed into submission and kept behind lattice and mud-brick walls. But for endless Koranic recitation, education terminated. The result was a truly faithless, dysfunctional regime.

We are not Afghanistan, and even the most ardent protectors of the "Christian West" are not to be confused with the Taliban. But the underlying tensions are similar, and the question of how faith deals with shifts in society is very much ours today.

To Christians there can be no greater sign of a slide toward godless secularity than the emerging power and boldness of the gay movement. It evokes the sins of Sodom, Egypt, Babylon, and pagan Rome. It cuts to the great theme of a pure church and a profligate past; it contrasts the demure sexuality that the Bible uses to illustrate the relationship between God and His church with the unbridled sensuality that medieval artists were wont to hint at in their depiction of the horned and fleshy-tailed Lucifer and his sybaritic minions.

What do they do about this moral outrage at what they took to be a Christian society?

I would be less than consistent with a theme that *Liberty* has long pursued if I did not bring up the Christian society conundrum. The disillusion, even rage, that many Christians in the United States show is heightened by their misapprehension about the structure we have inherited. Clever revisionist historians aside, there is no basis for thinking the United States was ever structured as a religious state. There is a delicious irony in the fact that it has been the very secularity of the Constitution—particularly its separation of church and state—that has freed faith to flourish here.

Like it or not, our Western society has drifted considerably from religious, moral norms. Do we talibanize it back on track, or is there another way?

We must recognize the shifts for what they are: changes in thinking. We must recognize the greatest weakness of secular government: it is bad at changing thinking. In fact, the more democratic the system the more likely it is to act on that changed

IN THIS ISSUE

Religious diversity and the very concept of religious liberty in the modern United States both ultimately derive from the English Reformation. | P22

thinking. Remember, too, that when a government is thwarted by too much oppositional thinking it has little recourse but repression.

Back to Pietism. I still believe—several decades on from my youth, when like all the young I thought ideals could be realized—I still believe that the greatest power is the power of ideas. I still believe that the idea of faith in God can transform the behavior of anyone. I still believe that the greatest privilege I can exercise in a free society is to call my fellows to the absolute liberty of a faith-filled life.

Back to Prop. 8 and gay marriage. It saddens me that our society has so forgotten the norms of most every other culture on the face of the earth—that under a misbegotten rubric of civil rights it is enabling something that by the models of history will end badly.

It saddens me too that so many people of "faith" are so ready to let the state decide what is marriage. As though it could! Not since the Middle Ages and a Western form of Taliban rule have we entered that merry way. It is anything but the road to religious freedom. It is absolutely dismissed by the Christ holding up a coin and asking whose face is on the coin. Can we ever put His face on our modern society?

In reality the state is happy to legitimize serial heterosexual marriages that would be the "envy" of the woman at the well. In reality the state is happy to have you sign the civil contract before witnesses, give a little blood, and send your progeny to school on pain of removing them if it deems you unfit. It cares little about your faith—your piety or your lewdness. In reality the state merely manages the ever-present greed and class oppression—it does not deal with moral absolutes other than its own collective needs. The state is secular. It should never be a controlling moral authority.

My call for people of faith is for them to see the issue as less legislative and more communicative. Let's really use the religious liberty we have. Tell it like it is. Speak to public attitudes. Give reasons for your faith that persuade.

And if you are so moved, take advantage of the obligation a democratic, representative system gives to participate. Vote when most do not. Let your representatives know your views. Become involved on any level allowed. Thank God we live in a benign system that encourages us to participate. Just don't confuse what Caesar grants with what your faith requires.

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

A United Nations Faith Forum

FAITH AS POLITICS

By Jules Ribot

At first glance, the faith forum held at the United Nations in the waning days of 2008 would seem a miracle: the kind of event that everyone who was anyone would want to participate in, to have their pictures taken with the dignitaries, to have their name and their organization represented. After all, look what it was about.

First, it was about religious freedom, religious tolerance, and religious liberty for everyone. Who—with the exception of Al-Qaeda, the Taliban, and Hamas—would be against that?

Second, many religious groups were represented: Jews, Muslims, Christians, Taoists, Buddhists, Hindus, and assorted other faiths gathered in the United Nations General Assembly Hall to talk about these crucial issues in the twenty-first century. Crucial because religious extremism, far from fading away, is as dangerous as ever, especially when the Pandora's box of scientific technology has made the potential for mass destruction in the name of someone's deity or deities a frightful reality.

Third, it was actually held at the United Nations, long a symbol of, if not power and authority in the traditional sense, then certainly of influence and prestige. And not only was it held at the United Nations building, but in the world's premier diplomatic chamber, the U.N. General Assembly Hall itself.

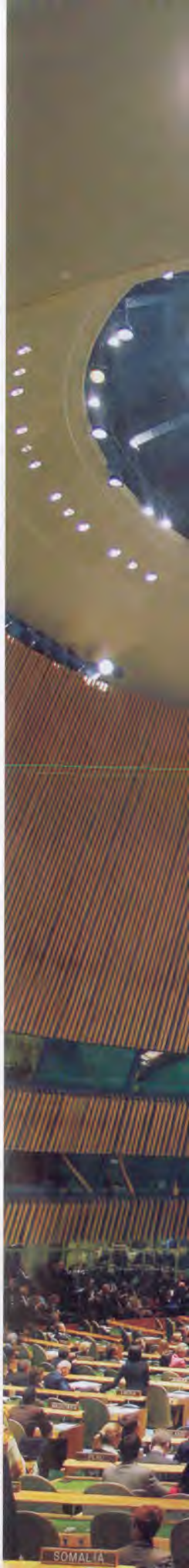
Fourth, the group said all the right things, denouncing religious intolerance, religious extremism, religious violence, and so forth.

Fifth, among those there, in the same room at a private banquet, were Saudi Arabia's King Abdullah and (believe it or not) Israeli foreign minister Tzipi Livni and Israeli president Shimon Peres. And Peres actually had some good words to say about Saudi Arabia; he even called some of its actions in regard to this dialogue "inspirational and promising—a serious opening for real progress." Speaking directly to the king, Peres continued: "Your Majesty, the king of Saudi Arabia, I was listening to your message. I wish that your voice will become the prevailing voice of the whole region, of all people. . . . The initiative's portrayal of our region's future provides hope to the people and inspires confidence in the nations."

An Israeli leader speaking positive words about religious freedom to the king of Saudi Arabia at a forum on religious liberty held at the United Nations?

Who said that truth is not stranger than fiction?

There's more, though. Most top political leaders from Europe, along with Latin America and Africa,



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Shimon Peres,
President of Israel

George Bush,
Former President of the United States

Salam Fayyad,
Prime Minister of the Palestinian Authority

Asif Ali Zardari,
President of Pakistan

Jean-Louis Tauran,
President of the Pontifical Council for Interreligious Dialogue of the Roman Curia

ABOVE PHOTOS © UN PHOTO/PAULO FILGUEIRAS

hat occurred in United Nations General Assembly, version of one religion in its own country nevertheless

U.S. President George W. Bush and Saudi Arabia's King Abdullah in New York, November 13, 2008.

REUTERS/Ho New

shied away from attending, sending instead only low-level flunkies as representatives to the meeting in November. Why? Though a number of problems existed (among them that some U.N. delegates were uptight about holding a religious event in the General Assembly chamber, which is used for a host of political and diplomatic issues, as opposed to religious ones), the biggest one was that this conference on religious tolerance and freedom and interfaith dialogue had been sponsored by—of all countries—Saudi Arabia.

Saudi Arabia holding a conference on interfaith dialogue and religious tolerance, at a conference attended not just by Jewish people, but Israeli Jewish people, even Israeli Jewish people who happened to be political leaders?

As strange as all that is, the strangest was the Saudi sponsorship itself. The idea of the desert kingdom, not exactly a haven for progressive religious freedom and tolerance, sponsoring a conference on religious tolerance is akin to having the Ku Klux Klan convene a conference on the need for racial harmony in the United States.

No wonder many expressed disdain and concern about the whole thing.

"Saudi Arabia is not qualified to be a leader in this dialogue at the United Nations," said Ali Al-Ahmed, a Saudi who is director of the Washington, D.C.-based Institute for Gulf Affairs. Writing in the *New York Post*, he said that "a recent U.S. State Department report on religious freedom documents appalling trends in Saudi Arabia, which aspires to be the center of a major world religion yet still practices discriminatory policies toward other religions and oppression of other Islamic sects."

That might be an understatement. It's no secret that Saudi Arabia is one of the most religiously repressive regimes in the world, allowing no other religions to be practiced there, and strictly enforcing its version of sharia law on its citizens. Jews, Christians, and all other non-Muslims are not allowed to practice their faith inside the kingdom, and those who try can face severe punishment if caught doing so. Religious texts not state approved are banned, confiscated, and destroyed. The list goes on, but the point is—Saudi Arabia is one of the worst violators of religious freedom in the world. Hard as it might be to stomach, more religious freedom existed in Saddam Hussein's Iraq than does now in King Abdullah's Saudi Arabia, which also happens to be one of America's greatest allies in the Middle East.

A report, "The Hadi Al-Mutif Project for Human Rights," by the Institute for Gulf Affairs claims: "Religious freedom in Saudi Arabia does not exist. Non-Muslims are banned from practicing their faith or even possessing its symbols and artifacts. The government also imposes severe restrictions on its citizens, and especially on those who do not follow the Wahhabi strain of Islam.

"The religious policies of the Saudi government have contributed to the rise of extremism and terror groups worldwide, including Al-Qaeda and others. Saudis are leading contributors of money and support to international terrorist groups and make up the highest numbers of suicide bombers around the world, which often occurs with either the direct support or the tacit approval of Saudi authorities.

"The Saudi educational system provides an ideological foundation for violence and future jihadists. The textbooks currently used in Saudi schools, including those in the U.S. and Europe, preach hatred toward other Christians, Jews, other religions, and even most Muslims."

The United States Department of State International Religious Freedom Report for 2008 took a little more diplomatic approach, and yet the verdict isn't exactly glowing, either: "The government confirmed that, as a matter of public policy, it guarantees and protects the right to private worship for all, including non-Muslims who gather in homes for religious services. However, this right was not always respected in practice and is not defined in law. Moreover, the public practice of non-Muslim religions is prohibited, and

then, was that a nation that regularly oppresses and limits all but a distinct sponsored a summit that advocates religious freedom for all faiths.

mutawwa'in (religious police) continued to conduct raids of private non-Muslim religious gatherings. Although the government also confirmed its policy to protect the right to possess and use personal religious materials, it did not provide for this right in law, and the mutawwa'in sometimes confiscated the personal religious material of non-Muslims. . . . There were also several positive developments in government policy that, if fully implemented, could lead to important improvements in the future. The government reiterated its policy to halt the dissemination of intolerance and combat extremism, both within Islam and toward non-Muslim religious groups, in the country and abroad."

What occurred in United Nations General Assembly, then, was that a nation that regularly oppresses and limits all but a distinct version of one religion in its own country nevertheless sponsored a summit that advocates religious freedom for all faiths. Some might cynically respond, *Only at the United Nations could this happen* (after all, this is the same body that has had such paragons of liberty and freedom as Sudan, Syria, Cuba, and Libya seated on human rights commissions).

The meeting itself was an outgrowth of a previous one, held in Madrid earlier in the year, in which about 300 representatives from various world religions (Jews, Sikhs, Hindus, Muslims, Christians, Buddhists) came together to discuss the need for religious toleration and pluralism—all sponsored by the Saudis. It was at that meeting that the idea of a similar one be held at the United Nations itself, ostensibly to give it whatever moral authority the U.N. might have to the proceedings.

Both the Madrid meeting and the one at the United Nations in November received little press coverage; there were a few articles in the major newspapers, not much more. Human rights groups, though, reported on both, the slant being the disgrace that such an egregious violator of religious freedom as Saudi Arabia should sponsor a forum on religious pluralism, tolerance, and freedom. In the Middle East, especially in Saudi Arabia, the United Nations forum was heavily covered in a manner that made the conference look like a bigger deal than it really was.

Why, though, would the United Nations agree to such a meeting, especially in the General Assembly itself, especially one sponsored by a nation that was universally known to be so weak on religious freedom? The New York *Times* speculated, in an article buried on page A14, that "diplomats around the building noted that because the Saudi government recently donated $500 million to the World Food Program, no one was likely to confront it openly about domestic issues of religious freedom."

Another reason, one more subtle, could be found perhaps in the one big dignitary who did make an appearance: then United States president George W. Bush. According to the White House, all moves by any Middle Eastern country to promote human rights and religious freedom should be supported in every way possible, especially when it comes from a country as important as Saudi Arabia. Bush's presence said, basically, that whatever the problems with religious freedom in Saudi Arabia, the nation remains a key political ally, not to mention a crucial source of crude oil. Thus, with the kind of cold political calculations politicians often need to follow, Mr. Bush apparently decided to ignore the irony of it all and attend the meeting.

In other words, however important religious freedom may be, at least on paper, many nations, the United States included, have bigger concerns—i.e., terrorism, economic uncertainty, and the free flow of oil—and these concerns obviously trump religious freedom.

While sounding good to those who don't know the facts, the forum itself cost the Saudis nothing, at least in terms of reforming its own practices. The presence of the then U.S. president, even with his remarks about freedom and tolerance, did not result in any change in that desert kingdom in regard to religious freedom and tolerance within its own borders. Instead, if anything, his presence tacitly says, *We're here to support you, even though we know what is really going on.*

Good news, no doubt, for the forces of extremism and religious fanaticism within Saudi Arabia. Not so good for others in the Middle East who don't have religious freedom, especially with that news echoing out of the United Nations General Assembly itself. For the real message wasn't what was uttered about tolerance and religious freedom. The real message was who said it, and where—and what that message says is that religious freedom and tolerance are mere words spoken to everyone else, about everyone else, but not for Saudi Arabia.

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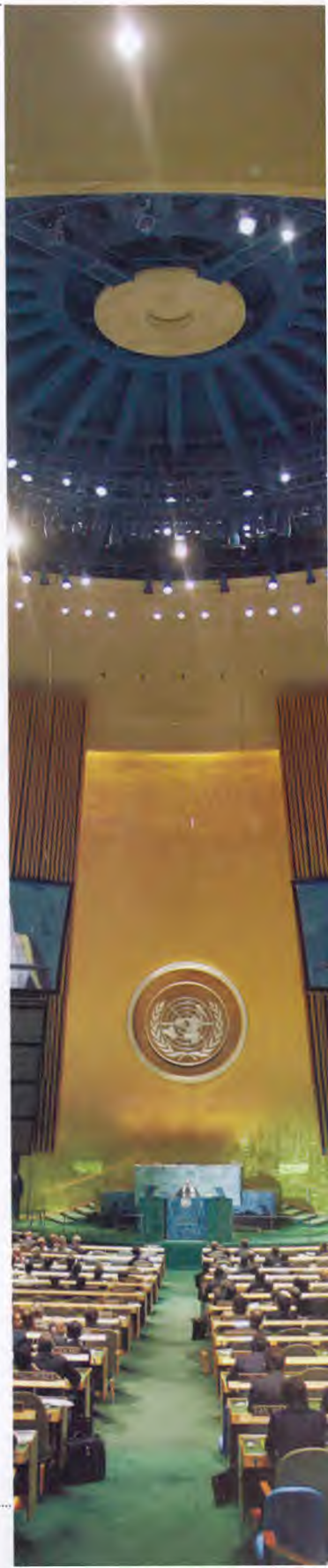

SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY

COEXISTENT RIGHTS

By Alan Brownstein

On November 4, 2008, California voters approved Proposition 8, a state constitutional amendment prohibiting same-sex couples from marrying. The proponents of Proposition 8 based several of their arguments supporting this amendment on the premise that same-sex marriages posed a threat to religious liberty. Many of these arguments were exaggerated and disproportionate to any real conflicts that may arise between laws recognizing same-sex marriages and religious freedom. Indeed, as I hope to demonstrate in this article, the basic premise of their argument—that the right of same-sex couples to marry and the liberty of religious individuals and institutions cannot coexist together—may be misguided and could turn out to be counterproductive.

Certainly many religious people believe that homosexual relationships violate the tenets of their faith and are concerned that a decision by the state to permit same-sex couples to marry legitimates conduct that they believe to be immoral. There is no doubt that our society is divided on this moral issue. But this moral debate is distinct in important respects from the legal question of whether same-sex couples should have the right to marry. We typically do not conflate the state

ILLUSTRATION BY SCOTT BAKAL

permitting the exercise of a right with the state's (or the majority's) approval of the way the right is exercised. Freedom of speech, for example, protects the right to express messages that many people consider immoral, and it protects the right of those who are offended by such speech to criticize and challenge its expression. Similarly, state recognition of the right of same-sex couples to marry does not suggest that everyone in our society acknowledges the moral propriety of such relationships, and, more important, it does not interfere with the religious liberty of those who challenge the morality of same-sex relationships as a matter of faith.

The claimed conflicts

The proponents of Proposition 8 made two primary arguments during their campaign. First, they said if Proposition 8 was not passed, churches would be required to marry same-sex couples and would lose their tax-exempt status if they did not do so.[1] Second, they argued that without Proposition 8, schools would be required to teach young children about same-sex marriage, even over parental objections.[2]

The first claim—that churches will lose their tax exempt status if their clergy refuse to solemnize the weddings of same-sex couples—is simply false. The California Supreme Court explicitly noted in the *Marriage Cases* that "no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs."[3] No evidence exists that churches have been subject to legal sanction for refusing to marry same-sex couples, interfaith couples, previously divorced couples, or anyone else for that matter. The First Amendment clearly prohibits government from regulating religious ceremonies.[4]

The second claim—that children in public school will be taught about same-sex marriage even though their parents object to such instruction—ignores the California Code section providing a right to opt out of objectionable lessons related to sexual health education.[5] But that isn't its major failing.

Religious parents are often concerned about material taught in public schools today. Some parents object to lessons discussing heterosexual conduct and contraception, for example. Equally intense conflicts arise when public schools teach about religion or celebrate religious holidays.

All of these disputes raise important and difficult questions. But the same-sex marriage issue is the only one in which advocates assert the kind of disproportionate response presented by Proposition 8 supporters—that to avoid the possibility of a controversial discussion in a classroom, we should amend the Constitution to ensure that a group of adults cannot exercise the right to marry. No one would think it was reasonable or fair to contend that a dispute about teaching birth control to students justifies banning adults from obtaining access to contraceptives. Similarly, if some teachers improperly teach religion in their classes or take students to a religious service during a field trip, no one would argue that the appropriate response is to prohibit religious services by the faith in question. Put simply, it just doesn't make sense to argue that the state should limit the rights of adults as a way of controlling the lessons taught to children in school.

The use of exaggerated and disproportionate arguments to support Proposition 8 is no small matter. Because there is no objective way to define or measure religious belief and commitment, religious liberty, more than any other right, depends on the credibility of its advocates. As anyone who has lobbied and argued for religious liberty legislation and policies knows, we are often challenged by arguments about sham claims and manufactured beliefs. Thus, religious liberty advocates must be credible and their arguments must be accurate. The campaign for, and passage of, Proposition 8 will be a Pyrrhic victory for religious liberty at best if, as I fear, it convinced many Californians that claims about religious liberty cannot be trusted.

It is not necessary to prohibit same-sex couples from marrying to protect religious liberty.

In the great majority of situations, the state recognizing same-sex "marriages" will not burden religious liberty in any way. But on some occasions conflicts will arise. In other contexts in which conflicts arise between religious liberty and important interests and public policies, we use appropriately limited legal tools, such as religious accommodations and exemptions, to resolve the problem.

In thinking about such situations, it is important to remember that all antidiscrimination laws create some risk of conflict with religious freedom. Laws prohibiting gender-based and religious discrimination in hiring risked serious interference with the autonomy of many religious institutions and employers. These concerns did not prevent our society from prohibiting religious and gender-based employment discrimination, however. Nor do similar concerns justify prohibiting a large class of individuals from marrying the persons with whom they want to share their lives. There is no basis for rejecting a public policy that may result in occasional burdens on religious liberty when carefully drafted accommodations can be employed to reconcile those conflicts that do arise.

Some may argue that I understate the danger to religious liberty. The model used for recognizing same-sex marriages, they say, has been racial equality. Gays and lesbians have been analogized to African-Americans. This means that protecting same-sex marriages against discrimination will constitute a sufficiently compelling state interest to justify intruding into the autonomy of

religious institutions. The controlling case here is *Bob Jones University v. United States*.[6] If a fundamentalist religious college can lose its tax-exempt status because it denies admission to participants in an interracial marriage and prohibits interracial dating, religious institutions that adopt similar rules relating to same-sex relationships may be similarly sanctioned.

This argument is unpersuasive. First, we need to understand the cultural foundation on which the *Bob Jones* decision is based. Bob Jones University was an extraordinary outlier in its beliefs. By 1983 virtually every religious denomination of any size in the United States rejected racism as a religious tenet. Without that kind of normative consensus among religious faiths, the decision in *Bob Jones* would have been untenable. No similar religious consensus exists with regard to sexual orientation.

Second, sexual orientation is not race. Nothing is. Race discrimination is the quintessential evil that has plagued American history. No other antidiscrimination interest carries with it the force of eradicating racial discrimination from our society. The goal of prohibiting gender discrimination, for example, carries far less weight. Gender exclusive private colleges are not treated the same way as racially exclusive schools. Thus, the likelihood that race and sexual orientation discrimination cases will always parallel each other seems speculative at best.

Third, there is a much more accurate analogy for dealing with discrimination based on sexual orientation than race discrimination. For liberty and equality purposes, gays and lesbians are not like African-Americans. Liberty and equality rights based on sexual orientation share common foundations with rights based on religious identity and belief. Like religion, a person's sexual orientation is a core aspect of his or her identity.

In fact, analogizing the right of same-sex couples to marry to religious liberty and equality rights resolves many of the supposed "threats" to religious liberty alleged by Proposition 8 proponents. Our commitment to religious liberty and equality has never been understood to interfere with a religious institution's decisions to reserve its spiritual activities for those individuals who adhere to the tenets of its faith. That principle should protect a church's decision not to honor or solemnize same-sex marriages as well.

Arguments can be counterproductive for the cause of religious liberty.

Not only does same-sex marriage present much less of a threat to religious liberty than Proposition 8 proponents claimed, but arguments asserted in opposition to same-sex marriage actually undermine many of the foundations on which religious liberty is based.

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Protesters against Proposition 8 demonstrate in front of the California State Capitol in Sacramento.

San Francisco Mayor Gavin Newsom speaks at an Anti-Proposition 8 Rally.

One of the primary grounds for opposing same-sex marriage is the argument that there is no history or tradition recognizing such marriages. This position—that Western traditions determine the scope of fundamental rights—has been rejected by people of faith committed to religious liberty, and for good reason. Free exercise rights would be unreasonably narrowed under this model. Traditionally, Jews, other religious minorities, and indigenous peoples have received little respect for their religious beliefs and practices.

Another argument against recognizing same-sex marriages insists that there is a religious dimension and a sacred quality to the institution of marriage—and that it is unacceptable for government to permit same-sex couples to marry when God reserves marriage for a man and a woman. But if religious liberty and equality mean anything, it is that the theological understanding of majority faiths as to what is sinful and sacrilegious cannot be imposed by government on minorities. We cross an important line when we contend that some faith communities' understanding of the sacred nature of marriage should be enforced by government.

Religious liberty and equality is predicated on the right to be different. Its underlying principle is that we do not have to accept the truth or value of someone else's religious beliefs in order to agree that those beliefs and practices deserve protection against discriminatory treatment. Followers of faiths we consider to be false may be sinners in our eyes, but we still protect their right to be free from government coercion and discrimination. For example, the Ten Commandments state that "You shall have no other gods before Me." Yet the Constitution and religious liberty statutes clearly protect religions that violate this commandment. Doing so neither undermines the meaning of the Ten Commandments nor expresses government approval of nonmonotheistic faiths. It simply recognizes the importance of religious autonomy to human dignity and personal liberty.

The willingness of opponents of same-sex marriage to accept the disparagement of same-sex couples by assigning them the subordinate status of civil unions also clashes with basic religious liberty and equality principles. Even when there is no material discrimination among religions, we don't dismiss the disparagement of minority faiths. Thus, for example, if the government declared that from now on Judaism and the Seventh-day Adventist faith would be classified as "belief systems" rather than religions, but they would still receive the same legal protections provided to recognized faiths, I doubt that I or many readers of this magazine would find that declaration acceptable. Similarly, even if the government protects the free exercise rights of non-Christians, it cannot declare the United States to be a Christian nation. Yet opponents of same-sex marriage minimize the stigmatic consequences of the government imposing a badge of inferiority on gays and lesbians by restricting their relationships to civil unions.

What is most tragic about Proposition 8 is that it will make it even harder for people to understand that instead of being seen as inconsistent values, religious liberty and gay and lesbian rights should be understood to reinforce each other. Both religious individuals and gays and lesbians seek personal autonomy. They want to be able to live their lives based on who they are—not on someone else's idea of who they should be. The best way to resolve conflicts between the right of same-sex couples to marry and free exercise rights is for advocates from both sides to recognize the basic truth that the best way to persuade someone to respect your rights is to demonstrate that you are willing to respect their rights.

Alan Brownstein is a professor of Constitutional Law at the University of California, Davis, School of Law. He holds the Boochever and Bird Chair for the Study and Teaching of Freedom and Equality.

[1] Laurie Goodstein, "A Line in the Sand for Same-Sex Marriage Foes," New York *Times*, Oct. 27, 2008, A12 (noting that "in television advertisements, rallies, highway billboards, sermons and phone banks, supporters of Proposition 8 are warning that if it does not pass, churches that refuse to marry same-sex couples will be sued and lose their tax-exempt status").

[2] Jessica Garrison, "A Prop 8 Fight Over Schools; Gay Marriage Will Be Taught if Item Fails, Say Backers," Los Angeles *Times*, Oct. 19, 2008, B1.

[3] 183 P. 2d. 384, 451-452 (2008).

[4] 59 constitutional law professors from 14 California law schools signed a statement affirming that the First Amendment "protects a religion's decisions about whether to solemnize or recognize particular marriages." Michael Gardner, "Law Professors Enter Prop 8. Fray on Church's Tax-Exempt Status," San Diego *Union-Tribune*, Oct. 30, 2008, A3.

[5] California Education Code Section 51240.

[6] 461 U.S. 574 (1983).

A CLASH OF RITES

By Alan J. Reinach

As the election season was building to a climactic finish, and opponents of California's Proposition 8 publicly mocked claims that gay marriage would impact public school curriculum and religious freedom, the San Francisco *Chronicle* reported that a first grade class was taken on a field trip to attend the wedding of a popular lesbian teacher.[1] This story demolished the credibility of Prop. 8 opponents and heightened fears of marriage supporters. Clearly, gay marriage was already having a demonstrable impact on impressionable young children.

Earlier in the year, National Public Radio, not exactly a bastion of right-wing hysteria, chronicled some of the major legal and legislative challenges to religious freedom posed by gay rights in general, and same-sex marriage in particular. The report declared:

"[S]ame-sex couples are beginning to challenge policies of religious organizations that exclude them, claiming that a religious group's view that homosexual marriage is a sin cannot be used to violate their right to equal treatment. Now parochial schools, 'parachurch' organizations such as Catholic Charities and businesses that refuse to serve gay couples are being sued—and so far, the religious groups are losing."[2]

This really gets to the core issue. It is one thing to claim the right to marry, and quite another to restrict the religious beliefs and prac-

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Rally for Yes on Prop. 8 in Fresno, California.

tices of those who do not approve of same-sex marriage. The stories reported by NPR include both large institutions and small businesses. Catholic Charities shuttered its Boston adoption services when legislators refused to enact a conscience clause respecting its rights to refrain from placing children with same-sex couples. Yeshiva University's Albert Einstein College of Medicine in New York City opened up its married student housing to same-sex couples after the state's highest court ruled that its exclusion violated discrimination laws. In New Mexico, a wedding photographer was fined for refusing to provide services to a same-sex couple. And in a case being closely watched by religious groups around the nation, a Methodist camp meeting organization in Ocean Grove, New Jersey, has had a portion of its property tax exemption revoked for refusing to permit a same-sex couple to conduct a commitment service on its grounds.

The cases cited above scratch only the surface of the legal challenges to religious freedom, which are analyzed by some of the top legal and constitutional scholars in the nation in a new book: *Same-Sex Marriage and Religious Liberty: Emerging Conflicts.* One of the editors, Professor Douglas Laycock, a top First Amendment scholar himself, summed up the problem this way: "All six contributors—religious and secular, left, center and right—agree that same-sex marriage is a threat to religious liberty."[3]

The threat to religious liberty is even more acute in California, due to the legal landscape established by the California Supreme Court last year. As a general proposition, when rights conflict, courts engage in a balancing of interests, seeking to protect the rights of all parties, and weighing individual cases to determine how best to uphold these rights. The California Supreme Court effectively held that the right to be free of dis-

crimination on the basis of sexual orientation trumps religious freedom.

The conflict arose in a case in which Christian physicians were sued for refusing artificial insemination to an unmarried lesbian patient, and instead, referred her to another clinic where she obtained the desired services. The court set up the case as a direct conflict of rights:

"Do the rights of religious freedom and free speech, as guaranteed in both the federal and the California constitutions, *exempt* a medical clinic's physicians from complying with the California Unruh Civil Rights Act's prohibition against discrimination based on a person's sexual orientation? Our answer is no."[4]

Under long-established principles of constitutional adjudication, courts ordinarily approach these problems differently. Instead of declaring one set of rights preeminent, as the court did here, courts have engaged in a more rigorous analysis. The analysis begins by considering whether the application of a law or policy to the religious person or institution would cause them to violate a sincerely held religious belief. Once it has been determined that there is a genuine religious freedom interest at stake, the courts will inquire whether the state's interest in restricting the religious practice is sufficiently important or compelling. We can assume that the state's interest in eradicating discrimination on the basis of sexual orientation would be considered compelling. This sets up a genuine conflict of competing rights or interests, requiring the court to search for a way to reconcile these interests that has the least intrusive impact on religious freedom.

In the given case, the least restrictive means had already been accomplished. The Christian doctors had referred the patient to an outside clinic where she obtained the desired care. The doctors also claim they offered to pay any added expense incurred by the patient that insurance did not cover. It was not necessary, then, for the California Supreme Court to exalt the right to be free of discrimination on the basis of sexual orientation at the expense of religious freedom. It could have demonstrated respect for both rights. That it chose not to do so, but to devalue religious freedom, has alarmed churches and their lawyers not only in California, but nationally.

Canadian lawyer and keen observer of the battles over same-sex marriage in his country, Barry Bussey analyzed the prospects for a "live and let live" compromise between the religious and gay rights communities, in a chapter titled "The Marriage Debate: The Hidden Danger."[5] With an evenhandedness often lacking in these discussions, Bussey concludes:

"In the end, it is unlikely that moderation will prevail in either camp. Neither side seems ready to recognize that liberty of conscience cannot be secured for one group alone. The risk remains that the veneer of civility could be swiftly peeled back to reveal the persecuting spirit of those who know they are right, believe their issue is critical, and are convinced that coercion is worth the risk."[6]

In a sign that such "persecution" is not merely theoretical, following the November election, opponents of Proposition 8 engaged in widespread intimidation of some who donated money to support Prop. 8, costing some people their jobs.

Writing in the L.A. *Times* prior to the election, Dean R. Broyles observed:

"[A] broad range of constitutional attorneys and scholars . . . affirm that this 'rights' clash is real. Marc Stern of the American Jewish Congress calls it a pending 'train wreck' or 'Armageddon.' In a chilling statement, Chai Feldblum, Georgetown University law professor and thoughtful gay activist who helps draft federal legislation related to sexual orientation, said that when push comes to shove and religious- and sexual-liberty conflict, 'I'm having a hard time coming up with any case in which religious liberty should win.'"[7]

If the NPR survey of cases is an accurate indication, the courts share Professor Feldblum's views. Writing in the L.A. *Times,* Marc Stern expressed his concern about the prospect of protracted conflict between gay marriage and religious freedom:

"If past rulings are any guide, it is religious rights that are likely to be 'obliterated' by an emerging popular majority supporting same-sex relationships—and it seems unlikely that the California courts will intervene. That's a shame."[8]

Reasonable people may disagree about how the conflict of rights should be resolved in specific cases, but the existence of the conflict between gay rights and religious freedom is undeniable. In fact, it is likely to be the main event in religious freedom jurisprudence for the foreseeable future.

Alan J. Reinach, an attorney and director of the Department of Public Affairs and Religious Liberty for the Seventh-day Adventist Church in the Pacific Union (an area of several Western states), writes from Thousand Oaks, California.

[1] Erin Allday, *Newsom Becomes Campaign Tool for Prop. 8 Backers,* San Francisco *Chronicle,* October 14, 2008, www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/14/MNKT13G9AD.DTL&type=politics. See also, John Diaz, "A Lesson in Political Naivete," San Francisco *Chronicle,* Oct.14, 2008, www.sfgate.com/cgi-bin/article.cgi?=/c/a/2008/10/14/EDGE13G80Q.DTL&hw=first+graders+attend+lesbian+wedding&sn=002&sc=68.

[2] Barbara Bradley Hagerty, *When Gay Rights and Religious Liberties Clash,* NPR, June 13, 2008, www.npr.org/templates/story/story.php?storyId=91486191.

[3] Douglas Laycock, Anthony R. Picarello, Jr., Robin Fretwell Wilson, eds., *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Lanham, Md.: Rowman & Littlefield Publishers, Inc., 2008).

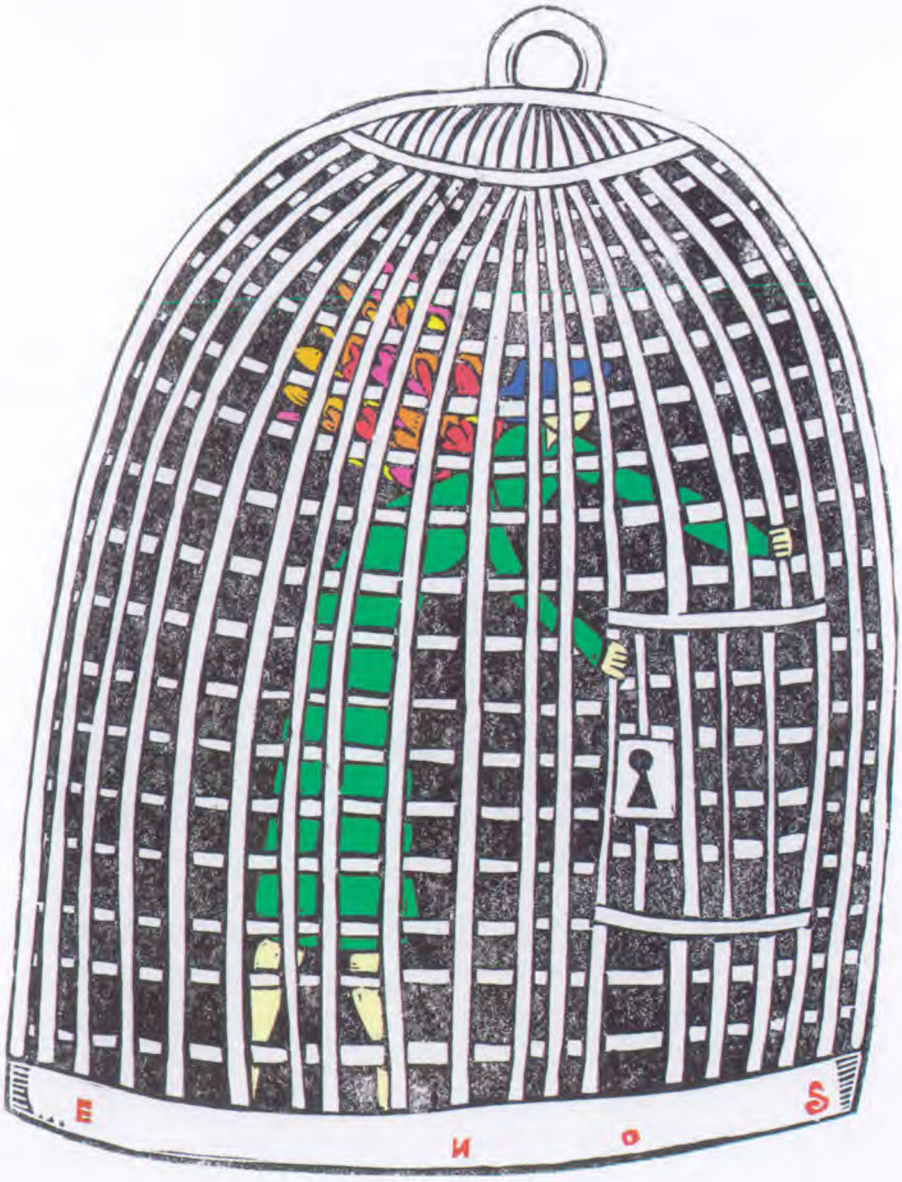
[4] *North Coast Women's Care Medical Group, Inc. v. San Diego Superior Court, Guadalupe Benitez, Real Party in Interest;* California Supreme Court, Aug. 18, 2008.

[5] Chapter 9 of the book *Politics and Prophecy: The Battle for Religious Liberty and the Authentic Gospel,* Christa Reinach and Alan J. Reinach, eds. Pacific Press, Nampa, Idaho, 2007.

[6] *Ibid.,* p.143.

[7] "A Gay-Marriage Pandora's Box?" Los Angeles *Times,* Oct. 27, 2008.

[8] "Will Gay Rights Trample Religious Freedom?" Los Angeles *Times,* June 17, 2008.



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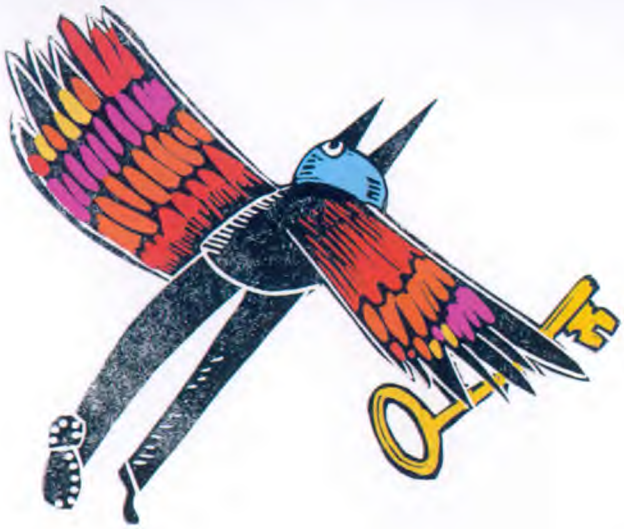


to Get a Get

By Kevin L. Boonstra

Illustration by Randall Enos

Canadian courts deliberate on law and religion.

Canada prides itself on being a tolerant, multicultural society. Or, as stated in the opening paragraphs of the Supreme Court of Canada's decision in *Bruker v. Marcovit:*

"Canada rightly prides itself on its evolutionary tolerance for diversity and pluralism. This journey has included a growing appreciation for multiculturalism, including the recognition that ethnic, religious or cultural differences will be acknowledged and respected. . . . The right to have differences protected, however, does not mean that those differences are always hegemonic. Not all differences are compatible with Canada's fundamental values."[1]

What does a proudly multicultural state do when confronted with an agreement to enforce a private religious practice that is out of step with modern egalitarian thinking? This is a very relevant question in postmodern Western society, confronted as it now is with a variety of peculiar religious practices and the desire of religious groups to legally impose them on their adherents. One thinks immediately about the place of sharia in the West.

Bruker v. Marcovitz involved a religious divorce between two Jews and an old practice that arguably subjugates women to their husbands. This is clearly in conflict with modern views on equality rights

and values enforced by the Canadian courts under the Charter of Rights and Freedoms.

Stephanie Bruker and Jason Marcovitz, both religious Jews, married in 1969. Ms. Bruker commenced divorce proceedings in 1980, when she was 31 and Mr. Marcovitz was 48. They made an agreement on matters corollary to the divorce, both with the assistance of legal counsel. This "consent to corollary relief" included terms regarding custody of their two children, child support, and spousal support. They agreed to appear before the rabbinical authorities to obtain a *get* immediately upon the granting of a decree nisi of divorce.

A *get* is a Jewish divorce that is within the husband's power. The process takes place under Jewish law before three rabbis in a *beth din,* or rabbinical court. A wife cannot obtain one without her husband's agreement. With a *get*, the husband releases his wife from the marriage and authorizes her to remarry.

The vast majority of Jewish husbands in such a situation freely give their wives a *get*. Those who do not have created a long-standing source of concern and frustration in Jewish communities. There is no mechanism in Jewish law by which a wife can compel her husband to grant a *get*.

According to Jewish law, when a husband refuses to agree to give a *get*, the wife is without legal recourse. She remains his wife according to religious laws and unable to remarry, despite the granting of a civil divorce. Any children she has on civil remarriage would be considered "illegitimate" under Jewish law.

When a husband refuses to agree to give a get, the wife is without legal recourse. She remains his wife

Despite agreeing to grant a *get*, Mr. Marcovitz refused to do so for 15 years, despite her repeated requests, both personally and through various rabbis, that he honor their agreement. In the interim, Ms. Bruker did not remarry or have any other children.

When he finally granted a *get* in December of 1995, he was 63 and she was almost 47. Ms. Bruker sued for breach of their agreement, seeking damages. Mr. Marcovitz defended by arguing that the agreement, being religious in nature, was unenforceable by the civil courts. He said he was shielded from the legal claim by the constitutional guarantee of freedom of religion.

When the matter went to trial in the Quebec Superior Court,[2] Mass J. enforced the agreement, holding that the object of their agreement was not primarily religious and that Mr. Marcovitz had undertaken an obligation, enforceable at civil law obligation, to appear before the rabbinical authorities.

Mr. Marcovitz appealed.[3] The Quebec Court of Appeal reversed the trial decision, holding that because the substance of Mr. Marcovitz's obligation was religious in nature, it was a moral obligation and unenforceable by the courts. The court relied on statements by the Supreme Court of Canada that the courts are not, nor should they become, the arbiters of religious dogma.[4]

It was Ms. Bruker's turn to appeal, which she did to the Supreme Court of Canada. The majority of the Supreme Court of Canada allowed the appeal and restored the damage award granted by Mass J.[5] Two justices, Deschamps and Charron JJ., writing in dissent, would have denied the appeal.

The majority relied on the principle that the courts will not consider matters that are strictly spiritual or narrowly doctrinal, but may intervene when civil or property rights are in issue. They determined that Mr. Marcovitz's agreement to give a *get* was therefore a valid and binding contractual obligation under Quebec law. The religious aspect of the agreement did not make it nonjusticiable.

The sympathetic position of Ms. Bruker undoubtedly influenced the court. The majority justices emphasized that Mr. Marcovitz's promise was the result of negotiation between two consenting adults, each represented by legal counsel. They also stressed that Mr. Marcovitz's refusal to give a *get* was "based less on religious conviction than on the fact that he was angry at Ms. Bruker."[6]

The civil law of Quebec recognizes three kinds of obligations: moral, civil (or legal), and natural.[7] The majority's determination did not undermine the principle of Quebec law that moral obligations cannot be enforced at law. This is because Mr. Marcovitz's obligation to provide a *get* arose under divorce agreement recognized by the law. The majority categorized the agreement as a civil one and therefore prima facie enforceable under Quebec law.

They then considered whether the agreement was contrary to public policy, in which case the courts would still not enforce it. This is an artful way of enforcing a religious obligation but without establishing a legal precedent that could also enforce religious obligations that are out of step with modern equality thinking.

There could be contracts with religious aspects that could be against "public order"—for example, a religiously motivated agreement to resolve a custody dispute that offends a child's best interests. The court avoided this difficulty by concluding that Mr. Marcovitz's obligation to provide a *get* "harmonizes with Canada's approach to religious freedom, to equality rights, to divorce and remarriage generally." [8]

Importantly, the majority also focused on the fact that Mr. Marcovitz's refusal to grant a *get* was not based on his personal religious conviction. Even if this were not the case, the majority concluded that granting the *get* was consistent with public policy in Canada to reduce barriers for women in divorce and remarriage:

> "The public interest in protecting equality rights, the dignity of Jewish women . . . , as well as the public benefit in enforcing valid and binding contractual obligations, are among the interests and values that outweigh Mr. Marcovitz's claim that enforcing [the agreement] would interfere with his religious freedom."[9]

Implicit in this reasoning is that a court would not enforce a religiously motivated provision in an otherwise legally enforceable contract if the court found that the provision was contrary to the court's perception of "public policy." Given how increasingly out of step religious people (particularly those who are seen as fundamentalists within their religions) seem to be with society as a whole, there are many ways in which this reasoning could undercut agreements focused on religious practices in the future.

The dissenting justices focused instead on the principle that the courts will remain neutral where religious precepts are in issue. Given that there are no civil law rules with respect to the absence of a *get*, all consequences flow from religious rules. Deschamps J. wrote that only religious rights were in issue, and the court's nonintervention in such rights makes it possible to avoid situations in which the court is asked to "decide between various religious rules or between rules of secular law and religious rules."[10]

Deschamps J. analogized the contractual promise to attend before the rabbinical authorities to give the *get* to a promise to go to church. This, she held, is a moral obligation that cannot be enforced by the courts.

The majority did not decide to enforce a religious obligation. The reasons for judgment are clear that, under Jewish law, Mr. Marcovitz had no religious obligation to give a *get*. Clearly, it would be inappropriate for the courts to interfere in a strictly doctrinal dispute within a religious community. Equally, it would be inappropriate for the courts to order compliance with a religious practice for religious reasons. To do so would involve an unwarranted intrusion by the civil authorities into the affairs of a private religious community. It would also undermine the freedom of religion guaranteed by the Charter.

according to religious laws and unable to remarry, despite the granting of a civil divorce.

The agreement entered into between Ms. Bruker and Mr. Marcovitz dealt with a variety of issues, including their respective civil rights under divorce law to child and spousal support. In this context they agreed to deal with all matters of their marital relationship, including those touched by their religious beliefs and practices. For the courts to enforce a portion of the contract while ignoring the benefits provided by another would create a new and different bargain between the parties. In other words, the courts enforced the *get* obligation because the parties chose to convert it from simply a moral or religious obligation to a civil one.

The court may well have been motivated by the fact that Mr. Marcovitz would otherwise be able to retain the benefits he acquired in the contract, while avoiding one of his freely undertaken obligations. There is nothing in the majority's reasons to suggest that, had Mr. Marcovitz made the promise to give a *get* outside of a legally enforceable contract, the court would or could have intervened to assist Ms. Bruker.

This is an appropriate balance. The courts should remain neutral in religious matters and should avoid interference in religious disputes. However, when parties voluntarily mix the civil and the sacred, they should not be able to retain the civil advantages while avoiding their reciprocal religious obligations.

That having been said, the analysis undertaken by the majority of the Supreme Court of Canada with respect to considering whether contractually undertaken religious obligations meet with public policy objectives still leaves the door open for the courts to express their opprobrium for religious beliefs and practices in future

cases. This may create troubling consequences in future cases, as it may allow courts to refuse to enforce a voluntary civil contract where it disagrees with the religious belief or practice on which the contractual obligation is based.

The majority indicates their intention to avoid "judicial sanction of the vagaries of an individual's religion."[11] This approach is somewhat undermined by later analyzing whether the religious obligation to be enforced is "prohibited by law or . . . contrary to public order."[12] Using the courts to enforce a bargain involving a religious practice will continue to create judicial discomfort in the future, thereby necessitating a basis upon which a valid contractual bargain with a religious component would not be enforced.

Courts should not make a decision where a contractual promise with religious significance has no substantive impact on other persons or their rights. Such a claim would have no damage to the person making the religious claim. For example, a failure to abide by a promise to attend temple or church regularly likely creates no harm to the person to whom the promise was made. It should therefore be unenforceable in secular courts. Otherwise, the courts are too close to interfering in religious practices and social obligations between citizens.

It is interesting that Ms. Bruker did not seek an injunctive relief, compelling Mr. Marcovitz to give a *get*. The court stayed clear of opining on what the result of such an application would be. In other words, the court did not so much enforce a religious obligation as visit Mr. Marcovitz with the consequences of failing to abide by the bargain he made. Significantly, the damage award was not made simply because of Mr. Marcovitz's failure to perform a religious act, but because of the impact that his breach of contract had on Ms. Bruker.

The court did not so much enforce a religious obligation as visit Mr. Marcovitz with the consequences of failing to abide by the bargain he made.

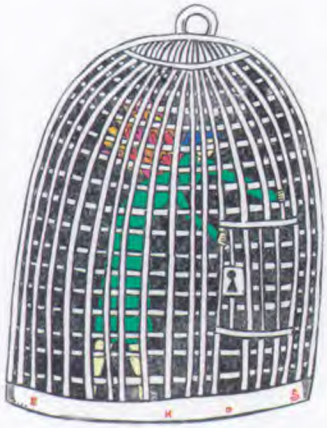
It remains to be seen whether the courts will issue orders to compel religious acts promised under contract. This will be particularly interesting where the failure to perform such religious acts does not create a significant and civilly recognizable detriment to the other contracting party. The *Bruker v. Marcovitz* decision does not dictate that such an order would be necessarily forthcoming, or that any award would be made in the absence of a real detriment to the other party. In the absence of such a detriment, the argument that a court is interfering in a strictly religious matter would have much more force, as would the objection to the court's involvement.[13]

The court's decision also challenges the idea that a "secular" state must not permit any meaningful interaction between the affairs of the state and the sacred. Many people misunderstand the meaning of "secular" and believe that postmodern secularism requires no interaction between the state and religion.

In this case, the court, which is an arm of the state, involved itself appropriately in a religiously motivated matter because of the impact it had on the lives of citizens. It did so only through a proper application of contract law. Philosophically, the misguided approach to secularism must give way in these circumstances.

Religion and the state coexist and will always interact. The influence that the religion has on the state and government is assiduously limited in Canada and the United States. The reverse must be true as well in terms of preventing the state from direct involvement and interference with the affairs of religious communities. These two spheres of human activity intersect in how religious people organize their lives within the law. The issue is not control by one over the other, but recognition of the reality that the religious and the secular intersect and influence one another within their properly defined jurisdictions.

Religious belief and practice must be treated with respect in Canada in order for religious freedom to have meaning. Courts must eschew assessing the appropriateness of religious doctrine. This does not prevent the enforcement of religiously motivated contractual provisions in which there is an intersection with legal rights. Doing so honors the religious and civil commitments of Canadians. Failing to enforce such commitments can undermine a person's ability to live a full life in accordance with his or her religious beliefs. That was the cost imposed on Ms. Bruker, and the court was right to recognize the religious harm caused by Mr. Marcovitz.



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[1] 2007 *SCC* 54.
[2] [2003] R.J.Q. 1189.
[3] [2005] R.J.Q. 2482.
[4] *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47.
[5] Subsequent to the Supreme Court of Canada's decision, Mr. Marcovitz brought an application for the court to reconsider the result by constitutionally challenging a provision of the federal Divorce Act that provides a court with discretionary powers to preclude a spouse from obtaining relief or proceeding under the Divorce Act where that spouse refuses to remove a barrier to religious remarriage. The Vancouver *Sun*, February 2, 2008—"Man Challenges Divorce Act in Supreme Court." On March 10, 2008, the application was dismissed by the Supreme Court (Supreme Court of Canada bulletin of March 20, 2008).
[6] 2007 *SCC* 54, par. 69.
[7] Unlike almost all of the rest of North America, which has common law, Quebec (like Louisiana) still has civil law, governed by a civil code.
[8] 2007 *SCC* 54, par. 63.
[9] *Ibid.*, par. 92.
[10] *Ibid.*, par. 131.
[11] *Ibid.*, par. 18.
[12] *Ibid.*, par. 59.
[13] See par.18 of the majority's reasons, in which they mention the importance of taking into account the "particular personal . . . consequences" of enforcing a right with religious connections.

Embarkation of the Pilgrims by Robert W. Weir

Taking the Lead

The decision for complete religious freedom and for separation of church and state in the eyes of the rest of the world [was] perhaps the most important decision reached in the New World. Everywhere in the western world of the eighteenth century, church and state were one; and everywhere the state maintained an established church and tried to force conformity to its dogma.

The British had attempted—half-heartedly—to extend the Anglican Establishment to America, but they had, on the whole, permitted a good deal of religious freedom and independence. When the American states became independent they inevitably threw off the Anglican Establishment. A few of them tried to keep an establishment of their own, but given the pluralism of American religion, that attempt was clearly foredoomed.

Virginia led the way by announcing not only complete religious freedom, but the separation of church and state, and thereafter, one after another, all the original states followed this principle. When James Madison introduced the Bill of Rights to the first Congress, the very first of them embraced freedom of religion, and that was adopted by the Congress and by the states, and incorporated as a fundamental article of American constitutionalism.

Thus the new United States took the lead among the nations of the earth in the establishment of religious freedom. That is one reason America has never had any religious wars or any religious persecutions.

—*Modern Maturity* (June-July 1976).

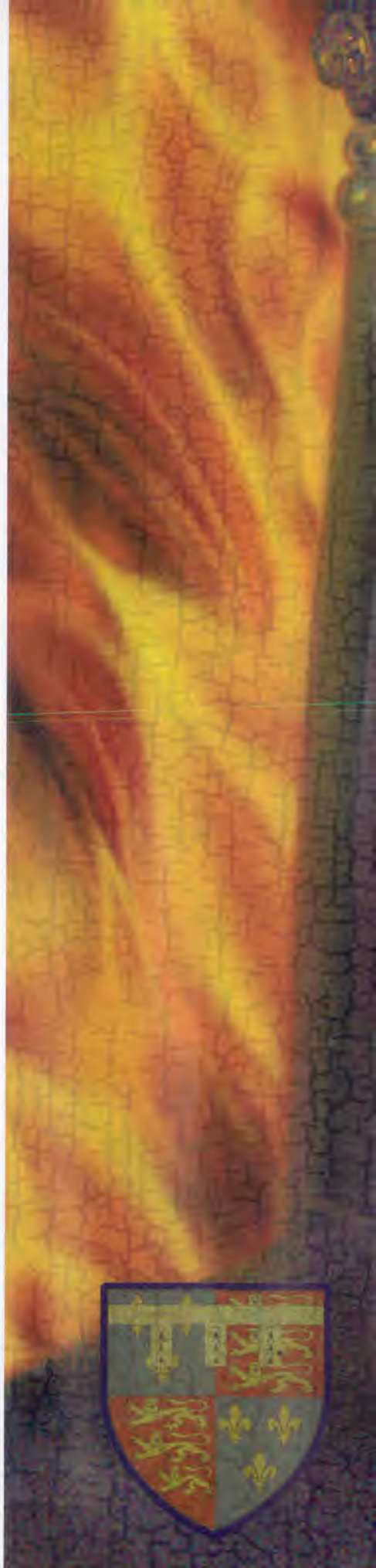
Reformation and Counter-Reformation

By David J. B. Trim
ILLUSTRATION BY DAN CRAIG

Religious diversity and the very concept of religious liberty in the modern United States both ultimately derive from the English Reformation, which ultimately resulted in a fragmented English Christianity that was transmitted, via English settlers, to North America. In the past the English Reformation's causes and progress seemed simple and its consequences obviously positive; however, now things are much more complicated. The English adoption of Protestantism is increasingly portrayed as having been caused by Henry VIII's desire for a different wife, rather than by doctrinal dissent, and as having taken root only because Henry enforced his will on an unwilling population.

Two previous articles showed, firstly, that the English separation from Rome under King Henry VIII was due not to the king's libido, but rather to his desire for dynastic and national security and for greater power and wealth; and secondly, that, contrary to many school and college textbooks, Henry VIII's assertion of his own (and denial of papal) authority over the English Church did not constitute a Reformation. By the end of his reign more heterodox beliefs were circulating and more people were interested in them than ever before—but England had its own peculiar church, the fruit of Henry's idiosyncrasies. It had not yet moved decidedly toward either the Catholic or the several Protestant camps. England was poised to go in potentially different directions.

The third article of this series on the English Reformation and religious freedom tells the dramatic story of Henry VIII's youngest and oldest children: Edward VI, who succeeded Henry and initiated radical Protestant reforms; and Mary I, who succeeded Edward and attempted a Catholic reformation. Both died prematurely; both initiated programs of religious reform that divided their people; but the attempted Marian Counter-Reformation, an integral part of which was state-directed religious persecution, was the most divisive. It antagonized not only its confessional opponents, but also many of the indifferent and even some supporters of Catholic restoration. When Elizabeth became queen England was still not yet Protestant—but it was a far more fertile seedbed for Protestantism than it had been nearly 12 years earlier, in the last days of Henry VIII.



▲ Edward as Prince of Wales, c. 1546 shortly before his father King Henry VIII died.

➤ Prince Edward in 1539, by Hans Holbein the Younger. The following text is inscribed across the bottom: Little one, emulate thy father and be the heir of his virtue; the world contains nothing greater. Heaven and earth could scarcely produce a son whose glory would surpass that of such a father. Do thou but equal the deeds of thy parent and men can ask no more. Shouldst thou surpass him, thou has outstript all, nor shall any surpass thee in ages to come. Sir Richard Morison

PROTESTANTS IN POWER

Edward VI was only 9 years old when he succeeded his father as king in January 1547. The new king's uncle, Edward Seymour, earl of Hertford, secured power as "lord protector," but though he immediately promoted himself in the peerage to be duke of Somerset, Seymour was only partly motivated by desire for power; he also believed that God had placed him in this position so that he could lead England, its church and people, in a reformation.

Somerset probably had been leaning toward Protestantism for several years but, like a latter-day Mordecai, had carefully kept his views to himself during his tyrannical brother-in-law's lifetime. On Henry's death, Seymour was able to express himself, both personally and in policy.

As a recent biographer sums up, his program "of religious reform . . . transformed the Henrician church into one that can be described as protestant."[1] Seymour did not, however, act alone: he had two key allies; and his policies were to outlive him.

His first ally was the archbishop of Canterbury, Thomas Cranmer.[2] From long Bible study, Cranmer had come to believe that kings should be the heads of the church in their own realms. For this reason he had supported Henry VIII's assertion of supremacy over the English Church, but had felt obliged, too, to conform to Henry's religious views, even though by the mid-1530s Cranmer was a committed Protestant. Like Nicodemus, he tried to steer his master, rather than confront him. On Henry's death, he finally had a sovereign willing to be an instrument of reformation. For Edward VI himself was Seymour's second chief ally.

Thanks to his stepmother, Queen Catherine (Henry VIII's sixth wife and another covert Protestant), and Cranmer, Prince Edward had been schooled, even during his father's lifetime, by teachers "zealously committed to evangelical reform, and under their influence Edward was brought up a protestant."[3] He had a comprehensive knowledge of Scripture, and after his accession to the crown Cranmer took a personal interest in his education. At age 11, the boy-king wrote a lengthy treatise on the papacy, concluding that "the Pope 'is the true son of the devil, a bad man, an Antichrist and abominable tyrant.'"[4] He even criticized his father's religious policies, albeit blaming the pope for them. So indignant was the youthful Edward that he actually wrote of the pope, "He burns *us*"—and had to be obliged by his tutors to write more dispassionately.[5]

RADICAL REFORMATION

Cranmer sought nothing less than to re-create the English Church. With the support of Seymour and Edward, he began to do just that.

The language of the Eucharist and prayers was changed: for the first time, church services were in English. The Scriptures were read in English, too, and the so-called "Great Bible" (1540), translated during Henry's reign at Cranmer's urging, became integral to worship services, for which a new standard liturgy was introduced: the Book of Common Prayer. It promoted a distinctively Protestant theology, ecclesiology, and spirituality and probably has influenced the English language and culture more than the King James Version of the Bible.

Not only doctrines and worship changed; so, too, did the way they were experienced. The iconoclasm of the 1530s was renewed and extended. Church walls were "newly whitewashed," stained glass windows re-glazed with plain glass, and stone altars replaced by wooden tables; liturgical music was virtually abandoned; and clerical vestments were made simpler. "Within two years the rich pictorial heritage of medieval Christianity had largely disappeared, and along with it such aspects of popular culture as processions, mystery plays, [and] pageants on holy days."[6] A program of public preaching was inaugurated to explain these drastic changes in religious culture to the masses. "In London there was as remarkable a group of evangelists as can ever have been seen," including Bishop Hugh Latimer, later famously martyred; John Knox, founder of the Presbyterian churches; and Miles Coverdale, chief translator of the Great Bible into English. "Elsewhere, there were sermon-tours by the great preachers" and by a whole group of lesser-known but effective "roving preachers."[7]

However, there were many nobles and officials who used the change in religious policy either to advance themselves in the government, by demonstrating their (seeming) devotion to the cause of reform, or to enrich themselves, by plundering churches and old monasteries. Their actions undermined the efforts of the evangelists and sincere Reformers.

RESPONSES TO REFORMATION

Cranmer's alliance with Edward was so close that it outlasted Seymour. In 1547 the regency faced widespread peasant rebellions. In the east of England the concerns of the lower orders were largely socio-economic in nature, but their demands were partly expressed in Protestant language, and the rebellious peasantry listened to Protestant sermons. In contrast, the West Country rebellion seems to have been triggered by the introduction of the first edition of the new prayer book, copies of which were burned en masse by the peasants, who demanded the restoration of the church as it had been in Henry's day. Hastily imposed, wholesale, and radical, the government's innovations in religion were dividing the nation, satisfying some ordinary people, but deeply alienating many others.

Seymour took the blame, and in October 1549, after the rebellions had been quelled, he was overthrown by an aristocratic coup. Yet the regime's

Edward VI's uncle, Edward Seymour, Duke of Somerset, ruled England in the name of his nephew as Lord Protector from 1547 to 1549.

Seymour believed that God had placed him in this position so that he could lead England, its church and people, in a reformation.

Hugh Latimer is depicted preaching to King Edward VI in this woodcut from John Foxe's *Acts and Monuments*, better known as *Foxe's Book of Martyrs*. By the time this book was published in 1563, Edward VI was revered as a pious patron of the English Reformation, a new Josiah who loved nothing better than to hear sermons, during which he often took notes. He is portrayed here listening from a gallery to a sermon by Bishop Hugh Latimer, who, along with Thomas Cranmer and Nicholas Ridley, was a key figure in the development of Protestantism in Edward's reign and, like them, a martyr under Edward's Catholic successor Queen Mary I.

religious policies did not change. To strengthen his grip on power, the new regent, John Dudley, duke of Northumberland, cleverly accommodated the adolescent king's "keen intelligence and . . . sovereign will."[8] And that meant endorsing further reformation, for Edward was a zealot. In 1550, for example, about to witness the "official confirmation of the aggressively advanced reformer John Hooper as bishop of Gloucester," the king noticed that Hooper was about to be asked to take an oath whose wording was traditional and Catholic; Edward promptly "struck out" the offending words "with his own pen."[9]

Due to Dudley's policy of indulging Edward's enthusiasms, the intelligent, well-educated, and willful young king, mentored by Cranmer, increasingly shaped the regime's religious policies. Many of the reforms described earlier were implemented fully after 1550, and a second, even more radical edition of the Book of Common Prayer was issued in 1552. Leading Reformers recognized that "official Protestantism was still a minority faith," but it must have seemed to contemporaries that by the time the vigorous young king had grown old and died, England would be unambiguously Protestant.[10]

And then, in the spring of 1552 Edward contracted tuberculosis. A year later his illness took a fatal turn and he died on July 6, 1553. Desperate to preserve "his proceedings in religion,"[11] he tried to ensure that the crown passed not to his Catholic eldest sister, Mary, nor even to his evangelical elder sister Elizabeth, but to his radically Protestant cousin, Lady Jane Grey.

Edward VI's almost bizarre attempt to flout English law speaks eloquently both of the strength of his attachment to reformed religion, yet also of the shallowness of its roots on his death, that such extraordinary measures were necessary to preserve it.

CONSERVATIVE REACTION

For all Edward's wishes, Jane "ruled" England for only nine days before Mary swept into power. In that brief interregnum Mary carefully worded her public pronouncements so as to leave her future religious policy vague; many devout Protestants supported her succession, for she unquestionably was legally the rightful heir to the throne.

Once she safely wore her father's crown, however, Mary I set about to undo not only her brother's radical reformation but even her father's more moderate reform. When she summoned her first parliament, there was widespread surprise at "the scope of the legislation designed to turn the clock back to 1529."[12] Those who resisted would have to face the full weight of the ancient sanctions against heresy. Although today we know that she was to fail, we need to put ourselves in the circumstances of 1553. If many people had been won over by the reformed liturgical and theological regime, many were appalled by it. For many others, there seems to have been yet no clear sense of what was "Catholic" and what was "Protestant." While there was widespread openness to new, heterodox doctrines and practices, at the same time, innate attachment to time-honored forms of worship (and, to a lesser extent, to traditional beliefs) was pervasive.

Thus, had Mary acted differently, then England might well indeed have been led back to the Roman fold and become once more the bastion of the Catholic Church it had been only 30 years earlier. Instead, her conduct as sovereign helped to achieve the opposite of her intention.

Mary had been brought up a devout Catholic. Her father had slighted and discarded Mary's mother and had even, in 1534, proclaimed Mary herself illegitimate—a cruel act; though by 1543 he had declared her legitimate again, restoring her to the succession, he also regularly made her life difficult because she refused to conform to his church. Mary unsurprisingly had a bitter, personal hatred of "heresy," which she associated with the loss of her father's love, the destruction of her family, and the disruption of her life. She had, moreover, yearned for nearly 20 years for the day when traditional religion could be restored to England. Her

animus against Protestantism and enthusiasm for her faith led her into a series of disastrous decisions (not all of which need concern us here).

Mary recognized that all her subjects had been obliged to participate in heretical religious rites, and that some had actually embraced heresy, but she and her advisers thought that England had been hijacked by a small number of extremists, and that on their elimination the great mass of people would happily return to traditional religion. The new regime realized that decided, doctrinaire Protestants were a minority but failed to comprehend that so were convinced, committed Catholics.

Yet it might not have mattered if Mary had realized her mistake. Her personal history meant that there was no prospect that, once firmly on the throne, she would go slowly or softly. Those who had been forced to dabble with false religion and those who had done so willingly would all be given a chance to recant and return to the embrace of the true church. But those who, in contemporary parlance, "contumaciously" clung to their heresy would receive no mercy.

THE FIRES OF PERSECUTION

Perhaps nothing did more to doom Mary's attempted Catholic restoration than her regime's determined persecution of all dissidents. Mary I has been known to generations of English and American schoolchildren as "Bloody Mary." Recent scholars point out that, to *political* (rather than religious) opponents, she was merciful rather than "the simplistic bloody tyrant of protestant mythology";[13] and they emphasize that her failure to reestablish Catholicism was by no means inevitable.

Nevertheless, one cannot simply ignore the Marian persecutions, which were on a scale unparalleled in English history, then or since. Mary's ecclesiastical policy was central to her reign. To be sure, the queen was not simply vindictive. Along with Cardinal Pole and her other bishops, she "wanted converts, not martyrs" and "thought [that] heresy was a minority problem," which "a few salutary burnings" would crush.[14] However, evidence to the contrary soon piled up, as did the number of executions for heresy—but they did not stop, though the queen could have halted them at any time. Some of her councilors eventually advised a more merciful policy, including even Cardinal Reginald Pole, papal legate and Mary's archbishop of Canterbury. Yet the executions continued. In the area of religion, the unwelcome sobriquet of "bloody" is deserved.

Burning at the stake had never been as common a punishment for heresy in England as it had elsewhere in Europe. The horrors of immolation were thus even more shocking for mid-sixteenth-century Englishmen and- women than for people on the continent.

Thomas Cranmer originally recanted—his faith shaken by the apparent overturning of what he had thought was God's will, and by witnessing others burning alive—but later he publicly disavowed his retraction of Protestantism and was burned at the stake. Four other bishops were likewise executed: the radical John Hooper, burned outside his own cathedral at Gloucester; Robert Ferrar, bishop of Saint David's in Wales; and Hugh Latimer, who famously bid Nicholas Ridley, who was burned with him, "Be of good comfort, Master Ridley, and play the man: we shall this day light such a candle by God's grace in England, as (I trust) shall never be put out."[15] These executions of ecclesiastical hierarchs had a shocking quality for sixteenth-century people impossible to grasp in our democratic age. But the horror of five elderly men being burned alive is not just one we share today; it also features strongly in contemporary reports. While many victims died relatively quickly and painlessly from smoke inhalation, others (including Hooper and Ridley) literally burned slowly to death, suffering appalling agonies that traumatized onlookers.

If the stories are horrifying, so are the statistics. Mary's government executed at least 287 people in 46 months from February 1555 to November 1558, when Mary died. Nor was there any letup in persecution—the last victim, Agnes Prest, was burned while Mary literally was on her deathbed. Although the high-profile executions of bishops drew much attention, the majority of martyrs were common, working people. They were often burned in batches of five or six—but, at least once, 13 were executed in one great conflagration. Fifty-one (more than one in six) were women, including a 60-year-old widow and a blind girl.[16] While the majority of executions took place in London, the capital and largest city, Protestants were also burned in towns both small and large across England and Wales: Beccles, Cambridge, Canterbury, Cardiff, Carmarthen, Colchester, Dartford, Derby, Exeter, Gloucester, Newbury, Norwich, Oxford, Reading, St. Albans, Swansea, and others. A large part of the English population was exposed to the horrible spectacle of burning at the stake.

During 37 years of the reign of Henry VIII,

Queen Mary c. 1555

PERHAPS NOTHING DID MORE TO DOOM MARY'S ATTEMPTED CATHOLIC RESTORATION THAN HER REGIME'S DETERMINED PERSECUTION OF ALL DISSIDENTS.

some 50 heretics had been burned at the stake, while in its last 15 years, 69 Roman Catholics had been executed. Under Edward, there had been just two executions on religious grounds (an anti-Trinitarian and an Anabaptist). Elizabeth I, in a 44-year reign, was to execute six heretics and another 187 Catholics for religious reasons. Thus, Mary's brutal father had executed on average not quite one and a half heretics a year in his reign, plus nearly five people per year after his break with Rome for denying the royal supremacy over the Church of England; under Elizabeth I all executions for religious reasons averaged about four a year. In sharp contrast, the average number of people executed during the Marian persecution was more than 70 per year. More people were killed during Mary's reign, though it was the briefest of any sovereign in the sixteenth and seventeenth centuries, than under any other Tudor (or any Stuart, for that matter).

THE EFFECTS AND END OF PERSECUTION

The burnings were produced by the determination of ordinary Protestants to witness for the truth, and the determination of ordinary Catholics to destroy error."[17] But to many English people, this clash of ideologies discredited both those who did the burning and their system of belief. It was not merely that people were revolted by so appalling a form of execution on such an alarming scale, though they undoubtedly were; but they also drew conclusions about those responsible. Within three days of Cranmer's execution in 1556, a foreign Catholic ambassador in England wrote of the "commotion" it had produced among common people, "as demonstrated daily by the way in which the preachers are treated, and by the contemptuous demonstrations made in the churches."[18] The same year, the bishop of London was told by one devout adherent of Rome that the heretics did more harm in their dying than in living. By 1558 burnings were so unpopular that many were staged "at dawn to ensure minimum publicity."[19]

Nevertheless, there were some who viewed the burnings and felt that the executed heretic had it coming, while others responded only with mild distaste. Had Mary lived another 10-15 years and the program of persecution combined with Catholic evangelism been able to continue, then, given the embryonic nature of organized Protestantism in the 1550s, the Marian Counter-Reformation might have succeeded. England probably would have become like France, where Protestants were significant and influential, but very much a minority—in which case England, like France, might have suffered a series of violent civil wars of religion. However, England possibly might, like Italy, Spain, and Austria, have become almost completely Catholic. In either case, the

Thomas Cranmer's execution in 1556.

implications for global, not just European, history would have been immense, because either the extraordinary wave of English colonization would not have occurred, or the English would have planted in North America and Australasia "the cobalt flag of the throne of Peter."[20] Had the United States ever even come into existence, it would have been dramatically different.

These possibilities remain, however, mere hypotheses or fantasies. For Mary contracted cancer and, on November 17, 1558, she died. She had married late, had no children, and so she was succeeded by the middle child of Henry VIII, Elizabeth, who was a committed, though not dogmatic, Protestant—and had been lucky to survive her sister's reign. The fires of persecution were put out. England was about to undergo another radical change of religious direction.

CONCLUSION

What, then, was the state of English religion in 1558, on Mary's death?

England had undergone an extraordinarily swift series of dramatic, diametrically opposed changes in religion, which must have been bewildering and destabilizing. Many ordinary English people were alienated by the massive changes, especially in the way they *experienced* religion, which amounted to a religious "cultural revolution," as the most distinguished historian of Puritanism, Patrick Collinson, put it. "Many people voted with their feet against the new services" and absenteeism from church became a matter of great concern for Edward VI's reforming bishops—and have been emphasized by some historians. However, similar problems were noted during Mary's reign. Those who favored a traditional style of worship returned to church, but the people who now preferred a more radical, distinctively Protestant, style stayed away. Many, perhaps most, of those charged with heresy during Mary's reign had been converted during Edward's reign—conversions they described "with pride." Not everyone felt able openly to defy the government, but clearly many people had been won over, at least in their sympathies, to a Protestant style of worship; they might not risk burning as a heretic by openly denouncing Catholic worship services, but they could resist passively—and they did. "The background to the fresh crop of Marian absentees [from church] was an Edwardian success story which had bred real hostility to Queen Mary's reversal of religion."[21]

In fact, the Edwardian combination of favorable laws and widespread preaching had undoubtedly had a significant "impact . . . on ordinary people."[22] As one agricultural laborer later recalled, "By the preaching of the Word" the seeds of Protestantism had "been sown most plentifully . . . in the days of good King Edward."[23] Although out-and-out Protestants were still a minority, there were many more than there had been on the death of Henry VIII—and crucially, too, sympathy for Protestant ideas was much more widespread. The Marian persecutions had, moreover, served to create deep-seated hostility to the Church of Rome—denial of religious freedom had achieved the exact opposite of its intention.

Government by a zealous Protestant regime and then by an equally zealous Catholic regime had, in sum, served to advance Protestantism. But England had not yet been transformed into the Protestant nation of the history books. Elizabeth was a Protestant queen; the majority of her people had still to decide definitively where their confessional allegiances lay.

The execution of John Rogers at Smithfield, London in 1555.

Professor David J. B. Trim teaches history at Newbold College in Bracknell, Berkshire, near London, England.

[1] Barrett L. Beer, "Seymour, Edward, duke of Somerset (c. 1500–1552)," *Oxford Dictionary of National Biography*, Oxford University Press, Sept. 2004; online ed., Jan. 2008 (www.oxforddnb.com/view/article/25159, accessed May 2, 2008).

[2] The authoritative biography is Diarmaid MacCulloch, *Thomas Cranmer: A Life* (New Haven, Conn. & London: Yale University Press, 1996).

[3] Dale Hoak, "Edward VI (1537–1553)," *Oxford Dictionary of National Biography*, Oxford University Press, Sept. 2004; online ed., Jan. 2008 (www.oxforddnb.com/view/article/8522, accessed May 2, 2008).

[4] Diarmaid MacCulloch, *Tudor Church Militant: Edward VI and the Protestant Reformation* (London: Allen Lane/Penguin Press, 1999), p. 26.

[5] *Ibid.*, pp. 29,30, 226, emphasis added.

[6] MacCulloch, *Thomas Cranmer*, p. 511; Hoak, "Edward VI."

[7] Christopher Haigh, *English Reformations: Religion, Politics, and Society Under the Tudors* (Oxford: Clarendon Press, 1993), pp. 189, 202; Brett Usher, "Essex Evangelicals Under Edward VI: Richard Lord Rich, Richard Alvey and Their Circle," in David Loades, ed., *John Foxe at Home and Abroad* (Burlington, Vt.: Ashgate, 2004), p. 52, and cf. p. 54.

[8] Hoak.

[9] MacCulloch, *Tudor Church Militant*, pp. 35, 36.

[10] Haigh, p. 202, and cf. p. 183.

[11] Quoted in Hoak.

[12] Ann Weikel, "Mary I (1516–1558)," *Oxford Dictionary of National Biography*, Oxford University Press, Sept. 2004; online ed., Jan. 2008 (www.oxforddnb.com/view/article/18245, accessed May 16, 2008.

[13] *Ibid.*

[14] Haigh, pp. 224, 231.

[15] John Foxe, *Actes and Monuments*, 4th ed. (London: 1583), p. 1770 (spelling modernized).

[16] Haigh, p. 230; John Guy, *Tudor England*, pb. ed. (New York: Oxford University Press, 1988), p. 238.

[17] Haigh, p. 231.

[18] Quoted in MacCulloch, *Thomas Cranmer*, p. 607.

[19] Haigh, p. 234; Guy, *Tudor England*, p. 486.

[20] Geoffrey Parker, *Spain and the Netherlands 1559-1659: Ten Studies* (London: William Collins Sons, 1979), p. 144.

[21] MacCulloch, *Tudor Church Militant*, pp.106, 108; Patrick Collinson, *The Birthpangs of Protestant England: Religious and Cultural Change in the Sixteenth and Seventeenth Centuries* (New York: St. Martin's Press, 1988); Haigh, p. 190.

[22] MacCulloch, *Tudor Church Militant*, p. 108.

[23] Quoted in Haigh, p. 198.

"There are times when a nation becomes resilient with the insertion of a candidate who reflects our deeply held values, and as our representative he leads us to the higher ground."

Nuance and Maybe Understanding

I love reading *Liberty.* And my close friendship with another defender of religious liberty has convinced me *Liberty* writers have developed not only legal but also moral power of adjudication. I see this as the Solomonic fine-tuned ability to stand against debilitating principles and those who promote them with gentleness and firmness but also staying out of the other side, which has an equally bad argument. It is not an easy task.

I can tell from your writing and editorial work you look to God to mimic His fortitude and patience manifested in His long battle with Satan. It is a delicate art. So take the following suggestion in that light. You really are doing very, very well. But two authors in your last edition (September/October 2008) need some coaching on nuancing! And I probably wouldn't mention this, if it weren't for the fact I recognized both authors and think they will likely be published again by you.

Whitehead's "Are We Shedding Rights?" is an overall great article. Having worked for years with coaches who have a strong influence on kids, I see how their values to live a godly life really empower children. I agree with most everything he wrote. Then he goes and makes a backhanded, often popular diatribe on public schools. I believe it's unnecessary and naive.

"Many of America's public schools are in a deplorable state. . . ." While I support Adventist and Christian schools and want more children in them, I do not take such an uninformed view. He doesn't know the research as he should. Public schools have their problems (so do capitalism, Christianity, and the clergy). But, more often than not, in my working with public schools, I see how the children of darkness are wiser than the children of light. Often, public schools are the best and safest places available for MANY, MANY children.

His evidence about the high number of 14–19- year-old girls with sexually transmitted diseases is sad, but why make public schools shoulder the blame? I don't think most kids have sex on school grounds.

Next, Goldstein takes on the liberal "fundamentalism" in atheism (see "Faith Attack"). Once again, I agree more than disagree. . . . But why didn't he take some time to show what he shared with these atheists? I trust he also agrees that not all behaviors are protected by free exercise. "Certain bizarre views can, at times, get special protection under the principles of free exercise." So, when are bizarre views worth limiting?

We must be careful not to alienate unnecessarily.

DUANE COVRIG
Berrien Springs, Michigan

The Salient Point

In some political science courses long ago and far away, I've heard professors say that the best form of government is a "benevolent dictatorship." When the military took over Pakistan, many of the former expatriates and leaders felt that was the best alternative to chaos and corruption. Repeatedly, factions in various countries desire order, and it isn't because they are "intellectually lazy" or "morally decadent."

The 1939 article entitled "Democracy and Liberty Assailed" reprinted in *Liberty's* July/August 2008 issue was most salient and poignant for that time. But theoretically, it lacks a congruent application to today's environment. Yes, we have a government that sometimes overreacts to minority social action. Many of our people are mesmerized by Barack Obama, who some claim is an untried demagogue. However, it is a stretch to imply, if that's what the insertion of this article is supposed to do, that we are ripe for the destruction of our constitutional values.

There are times when a nation becomes resilient with the insertion of a candidate who reflects our deeply held values, and as our representative he leads us to the higher ground. Some may believe that our motivation is coerced. But the truth is that we are inspired.

The greatness of this nation, found in our constitutional principles, is that sometimes consensus is achieved by spontaneous acclamation and sometimes we are directed to it by the majority or the minority, by fate or divine providence, or by a strong leader.

No form of government has a monopoly on what is best for the polity. It all depends on the circumstance. Frankly, history will dictate how we view situations. The article was prescient for 1939.

The editorial in that same issue, however, should be considered most timely for today's application in the world of religious freedom in secular, antireligious, and so-called religious countries, including the U.S.A.

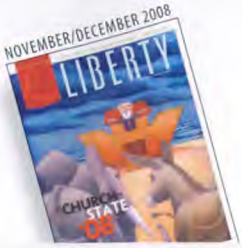
As stated in the article *The Christian Amendment,* "Religious liberty keeps the doors open to new truth about the nature of man and his life with his neighbor." And I would add that the love of God is a concept that is ever unfolding. No matter what form of government we adopt, if God isn't in the picture somewhere, we will have a very imperfect government. As I've said repeatedly, "A world without God is unrealistic."

ATTORNEY THOMAS WHALING
Laguna Hills, California

Thanks for the kudos. It should go without saying that no article written to 1939 could hope to equally apply to 2008. There are, of course, significant parallels and lessons to be learned. Editor.

Faith Not Religion

I would like to compliment your organization on the article "Minority Report" by Rodney Nelson (July/August 2008). The article was very thought- provoking and I feel very germane to the situation. It was very well written and



researched, and I enjoyed it very much.

Thank you very much for publishing this balanced and interesting insight into the separation of church and state.

Though I am definitely not a supporter of Barack Obama, I wonder if he has been treated fairly with regard to his religion? The Trinity United Church of Christ and Reverend Wright are more contemporary than the Mormon issues of polygamy and racism in the 1800s, but there may be some similarities.

I would like to know how religion has been so prominent in the political mix. I do believe that the candidates' beliefs, morals, and standards are important in allowing us to choose a president, but not their religion.

Thank you and keep up the good work.

LUKE W. LAW
E-mail

Home School and Alligators

This is in response to the article "Home-school Panic" in *Liberty,* September/October 2008. There the author seems to concede that the education being afforded the children in the *Rachel L* case was sub-par but then quotes Schwarzenegger in the paradoxical statement, "Every California child deserves a quality education, and parents should have the right to decide what's best for their children." The author then goes on to quote statistics showing that most home-schooled children do well.

Yet this all misses the alligator in the living room. If the parents have the absolute right to decide what education is best for their children and have a "constitutional right" to educate them in any way they think best, then what stops parents who themselves have never been to grade school and who believe that the only thing children need to know is the liturgy of grasshopper worship from educating their children such that at age 14 they cannot read or write, can't add 7 and 4 to get 11, don't know the earth is round, and can't spell the name of the governor of California? Are they allowed to do this under this supposed "constitutional right"? Surely there has to be some objective educational standard that home-schooling parents have to comply with in order to protect the children's right to some minimal "quality education."

So, if it's clear that home-schooled children of parents without a teaching certificate are meeting these minimal standards, that's fine. On the other hand, if the children of Harvard grad parents with 14 certificates each are not, that's not fine and something should be done about it. In sum, parents should have wide educational latitude, but should have to meet minimum objective standards within that latitude.

We appreciate the good writing in *Liberty.*

MICHAL F. SHEEHAM
Scappoose, Oregon

Don't worry, Michal, about homeschoolers and school standards. Regardless of the parents' qualifications, homeschoolers are usually required to operate under the oversight of accredited organizations or individuals and to follow curriculum material. There is an important issue of whether parents can teach their own children basic values, etc., or whether the state can trump that right and teach whatever it chooses. Editor.

The Mouse That Roared!

Re: "Torture and Religious Liberty" May/June 2008

Lawrence Swaim speaks of torture at Guantanamo but then admits his accusations are alleged. Even so, he continues writing as if all accusations have been confirmed. Anyone can claim torture, but the claim may be either magnified or diminished by the accuser to suit his purpose. Pain and suffering have a wide gradation.

You picture restraints as connoting torture. By so doing it is obvious that you have not dealt with maximum-security prisoners. Such restraints are not torture, but protection from the prisoner who has nothing to lose by expressing whatever violence he deals to indulge in.

Some of their complaints have proved to be no more than hazing as seen in some university frat houses. Some complaints have proved to be unfounded.

Guantanamo prisoners are clothed, fed, and housed in compliance with their needs: even fed to obesity, which some may call torture.

I'm not aware that any of them have been beheaded or subjected to the common forms of prisoner care meted out by terrorists. Nor has the Koran been subjected to such indignities as has the Bible, which has been used as toilet paper.

The U.S. may not be perfect, but I'm aware that millions from their countries are doing what they can to get into the U.S. The U.S. is the promised land for most of the world's population.

I'm reminded of a conversation I had with a German who was captured in North Africa during World War II. He said, "The way to fight a war is to get into it early and get captured by the Americans."

W. R. OLSON
Munising, Michigan

I placed this letter to illustrate how simplistic reactions to the torture questions can blind us to what is happening. No credible expert denies that treatment amounting to torture has been applied at times in the War on Terror. To compare what terrorists have done to what mistreatment we may have inflicted is almost a childish logic, as is the fact that since many desperate people want in to the United States, we cannot be mistreating others. We need to apply the principles held out in the Declaration of Independence, we need to honor international conventions against torture, and we need to see the immorality of human mistreatment. It is not enough to dismiss it as simple "hazing." Editor.

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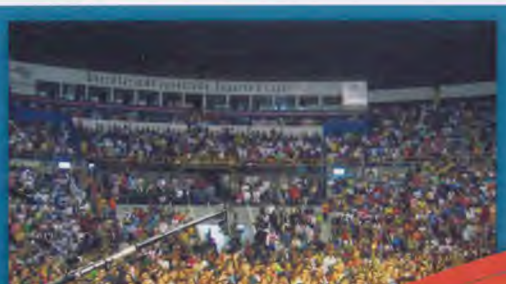

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