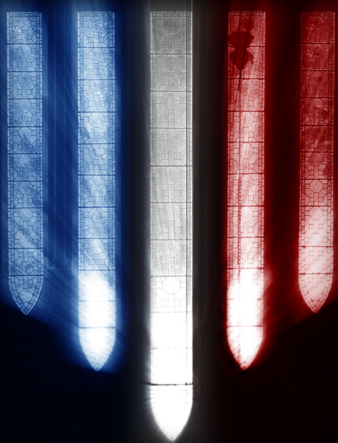


DEEP COMMITMENTS

THE PAST, PRESENT, AND FUTURE
OF RELIGIOUS LIBERTY

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5. As Government Expands, So Should Religious Liberty Protections

Doug Bandow

Issues of liberty and religion—how church and state relate—are always important. Religious liberty has greater urgency these days, and people in the religious community are concerned, because they're seeing challenges to their faith that they hadn't seen in the past. The historical context of religious liberty issues is worth considering as we look at the changes around us.

Religious liberty has been called the first freedom. It played an especially important role in early America, which was filled with European transplants fleeing various forms of religious tyranny. Of course, a number of those coming to America were willing to coerce others when given the opportunity. Nevertheless, the First Amendment showed real genius in attempting to simultaneously protect the free exercise of religion and bar government establishment of religion. But it necessarily creates a tension in practice, and we live with that tension even today.

In the early days, government rules on religion had limited impact, primarily because the federal government was quite limited. The First Amendment originally applied only to the national government, and the national government didn't do an awful lot. So God was kept out of public affairs because most public affairs were fairly minor. If you were going to be salt and light, as Jesus enjoined his believers as Christians, you could be salt and light in most of your community and social life without having to worry about what government rules were coming out of Washington.

Since then, however, the ambit of government has greatly expanded, affecting our economic, personal, and religious liberty. The regulatory state inhibits believers in a number of ways in what they consider the free exercise of their religion. Government itself has taken over areas once considered both private and very often religious: charity, education, and medicine, for instance. These realms once had very important roles for religious faith and are today very much affected by the government, which imposes its own dictates and rules. Today, this expansion of the governmental sphere is creating greater social conflict and resistance to government policy. It's hard to imagine it being otherwise.

A citizen might reluctantly give way before state dictates concerning political or personal preferences. But, if you're a religious believer convinced that God requires a particular course of action, you may very well feel you have little choice but to refuse a similar government demand affecting your religious liberty. No one gains from that kind of confrontation. Thus, in a world with so many changes, we need to think through the theory of religious liberty, how to protect it, and how strong that protection should be.

Controversies involving the relationship between faith and politics go back to humankind's beginnings. Politics and religion were often entwined. Public officials and clerics often attempted to dominate and use one another. There was no stronger buttress for political power than to proclaim that you were responding to God's dictates, whatever god you claimed to be serving. Ancient empires tended to merge the two realms. In the Old Testament world, Judaism had its own state that embodied, sustained, and protected the official faith.

Christianity began as an outcast faith, of course. With the conversion of Emperor Constantine, however, Christianity became the imperial religion and then took on many of the negative attributes that came from that. Even after the empire's collapse, the Roman Catholic Church fought for a very long time to retain a

central political role—causing many battles over the years. Today, the Orthodox Church in the East, which arose out of the geographical division of the Roman Empire, pursues many of these same approaches, such as a central political role. We see, for example, a revival of the Orthodox Church and its political role in Russia.

Divisions within Christendom in general undermined support for a united religious political order. Various models competed: Catholic, Lutheran, Reformed and other Protestant sects, Orthodox, and non-Christian faiths. This fracturing on the theological side created leeway for dissenters and ultimately led to political turbulence. In Great Britain, an important model for the United States, the king wished to divorce his queen and thus decided to get rid of the Catholic Church and start his own. I suppose it's nice to have that power—I'm going to create my own church, and we are going to do it my way. Nevertheless, that was a very important part of this battle. We begin to see the political and religious systems pulling apart—including fights between kings, parliaments, and others.

Today, there is much greater separation between the religious and political realms within Christendom. Many countries in Europe have vestigial state churches, but the only question is whether there is a public role for religion at all or it should disappear altogether. However, in some of the Orthodox countries, and certainly in predominantly Islamic nations—in which one sees less separation of church and state—the debate over the role of religion is ongoing.

It is critically important to find some kind of consensus on the role of faith because religion drives human behavior more powerfully than politics. Religion speaks to the transcendent, generating principles regarding both what must be done and what ought to be done. As such, spiritual views usually trump economic, political, and social opinions. Religion is really the ultimate trump. A few years ago, a cartoon in *Christianity Today* showed a room with several people around a table with one person saying, "I see that

Donald, Freda, and George are for the measure, but God and I are against it." That is the extraordinary kind of power that comes from claiming you have the divine on your side.

Expecting people to violate their conscience rather than violate the law is to trust hope rather than experience. This makes the spiritual impulse so very powerful and, for the political order, so very dangerous. If I think that God, the all-powerful creator of the universe, is on my side, then I am on the side of the winner regardless of what happens today. No matter what kind of short-term failures occur, I must stand with him and therefore reject the political order.

Moreover, religion reaches beyond simple belief. There has been some talk recently about the freedom of worship as opposed to freedom of religion, suggesting some degree of internationalization or privatization of faith. For Christianity at least, faith cannot be internalized. It requires action; it motivates conduct. Believers live out their faith with others, as is true in most faiths. Religion takes on most of its power in community. In a favorite parable in the New Testament, the question is about who has been good and who has been bad during life. Jesus asks, have they fed the hungry, have they clothed the naked, have they helped the sick? And he declares, "Whatever you did for the least of these brothers of mine, you did for me." In other words, there is an expectation that you will live out that faith, you will be salt and light. So, one cannot privatize that faith.

That brings us to the current issues facing faith-based businesses. Do people live out their faith in business, as was asked in the *Hobby Lobby* case and many others? Looking at religion as faith, there are a series of concentric rings. First, faith enriches the individual; then those responsibilities radiate outward to family, church, and other intimate forms of community. Ultimately, Christians, in the book of Galatians, are instructed by the apostle Paul to do good to all people. The question of how a Christian lives out this mandate has taken on greater urgency today because of the expanding role of government.

Changes in social attitudes matter, but so does the changing role of a government that is taking in larger swaths of human activity. As I mentioned at the outset, when this nation started, politics controlled a fairly small area of life. Of course, politics was important and hard fought: consider Adams versus Jefferson and the Federalists versus the Anti-Federalists. We complain these days about the incivility in the political process, but those debates were as nasty as anything we see today. Nevertheless, consider, for example, the question of Obamacare, which has affected a whole range of activities. The reason we are arguing about whether the government can mandate that health insurance cover contraception is that the government has taken over an area of life in a more dramatic way than in the past.

In the past, interpretations of the First Amendment and arguments over jurisprudential doctrine were important, but they had more limited applications than what we see today. The scope of government regulation has transformed questions about how we protect religious expression. If religious freedom goes beyond worship—if it is more than a private kind of faith—then the implications are extraordinary in our dramatically different world. The first question is how individuals and families live out their faiths—how one responds to the transcendent. The second question concerns how that affects community, shaping how individuals live, work, and play with each other. After that, we get to questions about broader society.

When people feel confident that the dictates of their faith will be respected, they are more willing to cooperate with other citizens despite disagreements, and they are much less likely to see government and politics as a scorched-earth affair. If you believe that your fundamental liberties are being threatened by the state, then you will likely have a very different attitude toward politics. I have seen this in my own church: some people are very concerned about the future and perceived threats to their faith, and they voice those concerns in ways that worry me.

Managing divergent views of the transcendent is going to be an extraordinary challenge for us in the years ahead.

These issues weren't nearly so complicated in America's early years. It's not that we were a Christian country. People held a wide variety of attitudes, including a number of early leaders who ranged from deists to free thinkers; and we certainly did not create a Christian government. But the world view was widely shared. Thomas Jefferson, despite his deistic views, asked if the liberties of a nation can be secure if we have removed the only firm basis for the conviction that our liberties are gifts of God. These underlying shared beliefs made navigating the issue of religious liberty a bit easier.

America today is totally different. We have a much wider range of spiritual beliefs and attitudes, as well as beliefs about the appropriateness of bringing those convictions into the public realm and political process. In addition, the range of cultural attitudes beyond religion concerning the appropriateness of different behaviors—homosexuality, for example—has widened as well. As a result, the political climate is more charged and difficult.

The First Amendment was an attempt to reduce this kind of conflict within society. The Founders came from Europe, which had spent centuries in religious warfare, centuries using different forms of religious coercion, and centuries of one group fighting for freedom and then imposing its views on others. Americans certainly did not want that in their new world.

The challenge today is similar, and we must search for a balance. We must protect the freedom to respond to the transcendent individually and at the same time not impose that vision on others. And we must do so while the public sphere is constantly expanding. The government doesn't just run the courthouse anymore—it now runs the airport, the hospital, the school, and more. And if it doesn't run something, it funds it. For example, the welfare state includes government-run programs, government funding for private charitable groups, and government-provided

volunteers for private charitable groups. Government touches almost everything.

The challenge is to come up with rules that allow us to live our faith while not imposing it on others. We want not only to increase liberty—an extraordinarily important objective—but also to reduce the potential for social conflict over these issues. Society itself benefits if people perceive that the most meaningful aspects of their lives are not being challenged.

The First Amendment does not presume that religion and theological arguments are superior to other judgments, but it does recognize that those who hold religious convictions view themselves as subject to a higher power (i.e., another sovereign). Bringing two sovereigns—government and God—into conflict is likely to create problems not only for the individual but also for the state. Today, it seems that many who don't hold religious beliefs underestimate this potential for conflict.

After all, if one views religion as a form of nonsense, then being forced to listen to a prayer is an irritating waste of time. Forcing people to act against their conscience creates disjunctions that are important to recognize. And if you try to suppress faith, that conflict increases. The resulting problems flow not only to the individual but also to the community and into the political order. When these disputes become part of the political order, we all lose something. We live in a time when a seemingly small dispute—such as whether a wedding venue allows same-sex marriages—suddenly becomes a political issue with legislation and court cases. Today, some people think that you have to give up the external aspects of your faith as a price of citizenship. None of this is healthy for those involved or for the political order.

This was certainly not the vision of the Founders. Whatever their theological views, they recognized that faith is important and its application goes beyond the individual. People of faith need to be allowed to live by conviction in more than just their own home and their place of worship. This challenge is extraordinary

because our history warns of the dangers of religious conflict; our history teaches us the importance of maintaining social peace and establishing rules of engagement whereby we can live together in a very diverse society while having radically different visions of the transcendent. If we don't meet this challenge, we may drive one set of citizens toward viewing the political order as illegitimate. And that is in no one's interest.