Is Religious Freedom Under Threat in America?

A Conversation Featured in
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About the Religious Freedom Project

The Religious Freedom Project at Georgetown University’s Berkley Center for Religion, Peace, and World Affairs, began in January 2011 with the generous support of the John Templeton Foundation. The three-year project has assembled a team of leading international scholars led by Berkley Center Senior Fellow Tom Farr and Associate Director Tim Shah to explore different understandings of religious liberty and its importance for democracy, economic and social development, international diplomacy, and the struggle against religious extremism.
Is Religious Freedom Under Threat in America?

A federal judge rejected a ballot initiative on same-sex marriage partly because of its religious arguments. Religious groups may be required to offer insurance that covers drugs that can induce abortions. Churches are prevented from using school space on weekends. Companies have pulled their ads from a TV show that portrays Muslims as benign. Are these just bubbles in the American melting pot, or signs that religious freedom is under threat?

The following essays were published in the New York Times “Room for Debate,” on December 22, 2011.

Debaters

Religion in the Public Square ................................................................. 4
Tim Shah and Tom Farr, Georgetown University

Liberty is Elusive for Sikh Americans ................................................... 6
Rajdeep Singh, Sikh Coalition

As American as Religious Persecution ................................................. 8
Noah Feldman, Harvard Law School

A Campaign Against Patriotic Muslims ................................................ 10
Salam al-Marayati, Muslim Public Affairs Council

Human Rights vs. Religious Freedom ................................................... 12
Helen M. Alvaré, George Mason University

A Risk Even for the Majority ................................................................. 14
Winnifred Fallers Sullivan, SUNY Buffalo

Falling Short of Our Ideals ................................................................. 16
Michael W. McConnell, Stanford Law School

Federal Law, At Least, Is On Our Side ................................................. 18
Hamza Yusuf, Zaytuna College
Is religious freedom under threat in America today? Yes and no. Compared to Eritrea, where the government habitually forces Pentecostals into unventilated shipping containers until they renounce their beliefs, American religious freedom is in very good shape. But comparative evils abroad are a poor reason to be complacent about liberty at home. Today, in fact, multiple threats warrant special vigilance.

For example, the Obama administration wants to expand the power of courts to decide whether a congregation’s reasons for hiring and firing a minister are legally sound. And it appears that new federal health care regulations will compel almost all religious civil society institutions — including hospitals, colleges and refugee assistance agencies — to provide health plans that cover sterilization as well as drugs that sometimes cause abortions, even if doing so violates the organizations’ deepest religious beliefs. The alternative? Close down. Or renounce their beliefs.

A less remarked but equally insidious effort threatens to banish certain religious arguments from our political discourse. The stakes here are much higher than the prospect of being faced with Scrooge-like humbug if one says “Merry Christmas” at the mall.

Barack Obama, a former law professor, has argued that “Whatever its source, any effort to confine religious people and their ideas to an innocuous spirituality or a merely ceremonial role in public life is a threat to religious liberty and to American democracy.”

Religious motivation is fine; just don’t make your religious views the basis for public policy. But democracy “demands” no such thing. Democracy is a system that adjudicates contending claims. Some prevail over others; all are subject to the Constitution.

In fact, “religion-specific values”
have driven the most consequential American political debates for over 200 years. Some make claims about objective moral truths: for example, in the Declaration of Independence (“all men are created equal,” “endowed by their Creator with certain unalienable rights”), abolitionism, women’s suffrage, civil rights laws and discussions of the nature and value of marriage. Others make more particular claims: for example, calling for temperance, withdrawal from Vietnam or a higher minimum wage. In the American system, all religious claims are free to contend. Without them, America would be a very different place.

Which makes the effort to separate the religious and political threads in the American tapestry all the more dangerous. In 2010, the U.S. District Court Judge Vaughn Walker invalidated a California ballot initiative for which millions of religiously motivated blacks and Latinos, among others, had voted on the same day they cast ballots for Barack Obama. The measure was Proposition 8, defining marriage as between a man and a woman. The presence of religious arguments in the campaign led Judge Walker to assert that the “moral and religious views” underpinning the vote were not “rational,” rendering the measure unconstitutional.

Walker’s ruling, like Obama’s assertion, represents a results-oriented effort to expel religious arguments from democratic deliberation. This has been a tempting device for partisans of all stripes. To silence religiously motivated civil rights advocates like Martin Luther King Jr., Jerry Falwell once asserted that “Preachers are not called to be politicians, but soul winners.” Whatever its source, any effort to confine religious people and their ideas to an innocuous spirituality or a merely ceremonial role in public life is a threat to religious liberty and to American democracy.

Tim Shah is the associate director and Tom Farr is the director of the Religious Freedom Project at the Berkley Center for Religion, Peace and World Affairs at Georgetown University.

Liberty is Elusive for Sikh Americans

RAJDEEP SINGH • SIKH COALITION

For religious minorities in the United States, the promise of religious freedom remains unfulfilled. Sikh Americans, in particular, continue to face relentless challenges in the post-9/11 environment. Worse still, American law affords inadequate protection to Sikhs against religious discrimination and, in some cases, reflects deep-seated stereotypes about American identity.

The Sikh religion was founded in South Asia over five centuries ago and is currently the fifth-largest world religion, with approximately 25 million adherents throughout the world. Sikhs are distinguished by visible religious articles, including uncut hair, which Sikh males are required to keep covered with a turban and which Sikh females have the option of covering with a turban. Although the Sikh turban signifies a commitment to upholding freedom, justice and dignity for all people, it is often ignorantly associated with foreign terrorists, some of whom also wear turbans and many of whom have received copious publicity in our mainstream media.

Consequently, Sikhs in the United States are stereotyped because of their appearance and subjected to hate crimes, workplace discrimination, school bullying, racial profiling, and other deprivations of civil rights.

“Until Sikhs and the Sikh identity are considered an integral part of the American fabric by opinion-shapers and decision-makers in all spheres of American life, Sikhs will continue to encounter existential threats to their religious freedom.”
Many of these challenges are compounded by loopholes in federal law that make Sikhs especially vulnerable to discrimination. For example, according to some interpretations of Title VII of the Civil Rights Act of 1964, employers may lawfully segregate Sikhs from customers in the name of corporate image policies, reflecting biases about what American workers should look like. According to U.S. military regulations, religiously observant individuals with uncut hair (including Muslims, Sikhs and Jews) may not presumptively serve in the U.S. armed forces, even if their neatly-groomed hair does not pose a safety risk. In many states, if a state legislature passes a law prohibiting all headcoverings in driver’s license photos, Sikhs may have no legal recourse under the First Amendment and would be forced to choose between their religious observance and the ability to obtain a valid identification photograph, without which travel and economic transactions become exceedingly difficult.

Until Sikhs and the Sikh identity are considered an integral part of the American fabric by opinion-shapers and decision-makers in all spheres of American life, Sikhs will continue to encounter existential threats to their religious freedom.

Rajdeep Singh is the director of law and policy for the Sikh Coalition.
As American as Religious Persecution

NOAH FELDMAN • HARVARD UNIVERSITY

Religious liberty has two parts: freedom to worship and freedom from discrimination on the basis of religion. On the first front, the United States is doing great – and has been since the 1700s, well before we even had the First Amendment. Religious dissenters, dissidents and schismatics have long seen the United States as their Canaan, Mecca or Valhalla. Large spaces and the need for immigrants gave birth to the American tradition of laissez faire in religion, and a principled commitment to toleration has firmed up this commitment derived at first from self-interest.

When it comes to treating religious minorities equally, the American record is much more mixed – and remains so. First, Baptists and Quakers were forced to pay taxes to provide for ministers whose teaching they didn’t support. Mormons were persecuted from Illinois to Missouri to their new Zion in Utah, their prophet lynched and their faith essentially outlawed until the church abandoned plural marriage. When the Great Famine brought Catholics from Ireland, Protestants alleged that Catholicism and democracy were incompatible because Catholics were incapable of free choice. In the Philadelphia Bible riots of 1844, several Catholics were killed and a church was burned.

Today official hatred of Catholics, Mormons and Jews has faded. Now Islam is subjected to the canard that

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its values are incompatible with democracy. Proposed legislation in Oklahoma and Tennessee purports to ban Islamic law from the courts — a measure that the American separation of church and state makes completely unnecessary.

It would be nice to say these proposed laws are un-American. But they are sadly reminiscent of our history of targeting vulnerable religious minorities out of bigotry and political expediency. We can only look forward to a day when anti-Islamic sentiment seems as archaic as these other old hatreds do today.

Noah Feldman, a contributing writer to The New York Times Magazine, is a professor of law at Harvard University.
A Campaign Against Patriotic Muslims

SALAM AL-MARAYATI • MUSLIM PUBLIC AFFAIRS COUNCIL

Yes, religious freedom for the Muslim American is under threat. Fear-mongering toward America’s Muslims and their faith is very clear. The Center for American Progress issued a report this year concluding that anti-Islam groups are financed by a $43 million industry. This garrison of Muslim-haters views Islam as either a theological or political threat in the United States, and their work is reminiscent of the pre-Nazi propaganda produced by Wilhelm Marr that regarded Judaism as a threat to Germany.

Recently, a reality TV show called “All-American Muslim” was aired on TLC, and it became a controversy because it did not include a terrorist. Advertisers are being pressured to pull their support because the show was “offensive.” In other words, Islam cannot be defined by the mainstream in America. It must be defined through the lens of extremism. Popular books about Islam in bookstores are “The Trouble With Islam Today” and “Why I Am Not a Muslim.” Law enforcement officials are being trained by anti-Muslim bigots so that profiling of Muslims is the norm. Hate against Muslim children in elementary and secondary schools is on the rise.

There is an inquisition mentality toward America’s Muslims. Muslims have to prove their patriotism to the United States, a very unpatriotic approach.
have included questions about candidates’ views toward Islam, and many of them indicated they would not consider a Muslim for any appointment. Only Mitt Romney stated that Muslims are God-loving and America-loving people, perhaps because his Mormon background gave him a clear understanding of religious persecution.

I love my faith and I love my country. The fact that some readers still question which country I am referring to indicates a serious level of distrust toward Muslim Americans.

Salam Al-Marayati is the president of the Muslim Public Affairs Council.
Skepticism about the good of religious liberty is growing. Recently, the federal government stopped working with experienced, highly regarded agencies whose religious conscience prevented their providing abortions or contraception; federal employees said they awarded grants instead to lesser-ranked providers. Under proposed federal health care mandates, almost no religious employers would be exempt from providing insurance that covers contraception, including forms that function as early abortifacients; only organizations that primarily serve and hire co-believers qualify for the exemption. Commentators accurately quipped that the ministries of Jesus Christ and Mother Teresa would not qualify. The rhetoric accompanying these moves is hyperbolic: Representative Nancy Pelosi accused Catholic institutions of a willingness to let women “die on the floor.” Others equate granting religious freedom with denying human rights. This is a strange claim for two reasons. First, most people understand the right to search for the meaning of life, for the transcendent, and for the norms governing our co-existence, as essential.

“A closer look at the claimed ‘human rights’ pitted against religious freedom reveals a curious pattern: they are not really human rights claims at all, but rather an insistence upon sexual expression often without regard for the well-being of the children or even the adults involved.”
It played a pivotal role in our founding, and continues to form an essential part of the “good life” for Americans individually, and via the groups they form to serve the vulnerable.

Second, a closer look at the claimed “human rights” pitted against religious freedom reveals a curious pattern: they are not really human rights claims at all, but rather an insistence upon sexual expression often without regard for the well-being of the children or even the adults involved. This describes laws recognizing same-sex unions and laws mandating abortion services and/or more and cheaper contraception. Emerging data indicates, however, that: 99 percent of women who have had sex have used birth control; nonmarital births and abortions have skyrocketed since the onset of huge federal contraception programs; and children’s stable connection with parents of both sexes contributes to the flourishing of both.

Perhaps after 200 years we are complacent about religious freedom. Perhaps we don’t understand the relationship between religious freedom and our peaceful, prosperous, generous society. Perhaps we have not paid attention to how diverse religious persons and institutions model American aspirations, and contribute to our decentralized economy and society. No matter the reason, the current pressure on religious freedom should cease.
A Risk Even for the Majority

WINNIFRED FALLERS SULLIVAN • SUNY BUFFALO

Asking whether religious freedom is under threat implies that we know what religious freedom is. Religious freedom has multiple histories and is understood differently in different times and places. For example, for some today, religious freedom connotes the possibility of an individual to believe or not as she chooses and to act consistently with that belief within the bounds of law. For others, religious freedom implies the right of religious communities to a degree of autonomy or self-governance. A few would argue that religious freedom demands withdrawal and separation from a larger society so as to enable a common way of life. Still others would say that the priority today should be religious coexistence, rather than freedom; that freedom is a misguided goal, whether for individuals or communities, the appropriate goal being to live with difference and without conflict. And of course, to enforce any version of religious freedom also requires a determination as to what counts as religion.

In the U.S. today, religion is highly diverse and vital. While they espouse a variety of views as to what such freedom entails, most Americans understand themselves to enjoy a degree of religious freedom unprecedented in the world. That understanding is rooted in the texts and myths of American exceptionalism, including those of the Constitution and the narratives of the settlement of North America, as well as the stories told by particular religious communities to a degree of autonomy or self-governance. A few would argue that religious freedom demands withdrawal and separation from a larger society so as to enable a common way of life. Still others would say that the priority today should be religious coexistence, rather than freedom; that freedom is a misguided goal, whether for individuals or communities, the appropriate goal being to live with difference and without conflict. And of course, to enforce any version of religious freedom also requires a determination as to what counts as religion.

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Throughout American history, however, various groups and individuals have always been disadvantaged, either formally or through social exclusion, because of their religious beliefs and practices. American Indians, Mormons, Catholics, Jews, Muslims and many others have suffered, and today suffer, religious discrimination and legal disability.

Over time, religious authority has, for most Americans across the religious spectrum, increasingly shifted from religious institutions and hierarchies to individuals and local communities. That shift has provoked concern from those institutions that their religious self-understandings will be supplanted. In American history it is the more democratic understanding of religion that has generally predominated, even while such an understanding has also excluded alternative religious ways of life. Powerful economic and social forces, including the politics of fear, shape the religious lives of all Americans, including those in the majority.

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Falling Short of Our Ideals

MICHAEL W. MCCONNELL • STANFORD LAW SCHOOL

This nation was founded on the principle of freedom of religion – the right of individuals, families, churches and voluntary religious associations of all sorts to live their lives in accordance with their own understanding of God’s will. That commitment remains strong today. But our practice often has fallen short of the ideal, as Catholics, Jews, Mormons, Jehovah’s Witnesses, Muslims and others could attest.

Much of this traditional bigotry has subsided. But it has been replaced with a new brand of intolerance for religions that dissent from modern orthodoxies about sexuality, abortion, family structure or education. It is not enough that the law has changed to permit what once was forbidden — birth control, abortion, same-sex marriage and the like. Some wish to ostracize Americans who strive to adhere to the old moralities for themselves and their own private institutions.

Consider a few recent examples. Vanderbilt University is proposing to exclude Christian student groups from the use of campus facilities because these groups have insisted that their leaders share their religious faith, including beliefs about marriage. It is discrimination on the basis of religion, you see, to disqualify an atheist from leading a prayer group.

Some states have demanded
that nurses, pharmacists and doctors who sincerely believe that abortion is a wrongful killing must assist in performing abortions or prescribing abortifacients, or risk losing their professional licenses.

A wedding photographer was fined for refusing to film a lesbian ceremony.

The Obama administration has proposed rules that would compel religious organizations to purchase insurance that would cover contraceptives and abortifacients, in violation of conscience.

New York City allows thousands of different groups to use public school facilities for meetings on the weekends and after school hours, but has decided that churches are not welcome. A federal court recently upheld this exclusion, saying that although groups cannot be excluded based on the content of their speech, religious “worship” is not entitled to full speech protection.

Americans in this generation must decide again whether we agree with Washington, Jefferson and Madison that all persons, and every religious association, have the right to determine for themselves “the duty we owe to our Creator, and the manner of discharging it.”

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Federal Law, at Least, Is On Our Side

HAMZA YUSUF • ZAYTUNA COLLEGE

My friend, Cheikhna bin Mahfudh, was about to fly from Los Angeles to San Francisco recently and needed a quiet spot for his noontime Muslim prayer. Fortunately, his business class ticket gave him access to an exclusive airport lounge. Just when he was about done praying, which involves four units of standing, bowing and prostrating, and can look like yoga to the uninitiated, an employee came up to him and said, “Sir, it is not permissible to pray here!” He replied: “I was just exercising. Is that a problem?” The bemused man then said: “Oh, sorry. I thought you were praying.”

Public space is sacred in America. It has the sanctity of that small space you carve out on the grocery checkout conveyor belt, where the little bar you set down lets others know that they cross that line with consequences. We don’t like it when others don’t conform, when they deviate from the norm, and when they do, we become flustered.

The Wall Street Occupiers gained attention for using public spaces in ways that trouble others. And while once it may have been different, today religion is verboten in the public square. But is religious freedom under threat in America? In the law, it is definitely not. In fact, America now covenants more religious freedom than any other country on the planet.

The threat comes from elsewhere. The recent spate of “anti-Shariah” laws in many
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states reveals that religious bigotry is resurgent in the land of the free. And it is ignorance that feeds bigotry. Devoted Muslims pray five times a day, and three of those obligatory prayers usually fall during working hours, so it is not uncommon to find them supplicating in public places. But the fear of all things Muslim makes praying in public a suspicious activity that provokes panic, or warrants a call to 911. This too is not uncommon.

When it comes to religious freedom, the law of our land is strong, but the reality in American life should give us pause. The freedom to exercise seems alive and well, but to exercise your faith in public may be dangerous to your health.