

BY FREDERICK CLARKSON

Religious Freedom is a Progressive Value



Thomas Jefferson Memorial in Washington, D.C. Photo: DaKohlmeyer via Flickr, CC BY-NC 2.0.

To read press coverage about it, one might think that religious freedom is a concern only for religious and political conservatives, and not one of the most liberatory ideas in history. One would also think religious freedom and civil rights are at odds with one another.¹ Indeed, U.S. history is filled with examples of such competing claims, as resistance to everything from African American Civil Rights to marriage equality have been cast as matters of religious freedom. But stepping back from the heat of our political moment, there is a different, more fully accurate, story to be told, one I think that as progressives we need to know and be able to tell.

Religious freedom is a powerful idea—the stuff from which revolutions are sometimes made. It includes the right of individual conscience—to believe or not believe as we choose, without undue influence from government or powerful re-

ligious institutions, and to practice our beliefs free from the same constraints. It's no surprise that the first part of the First Amendment guarantees freedom of belief. The right to believe differently from the rich and powerful is a prerequisite for free speech and a free press.² Grounding our politics, journalism, and scholarship in a clear understanding of what it means and where it came from could serve as both an inoculation and an answer to the distorted, self-serving claims of the Christian Right.

It was religious freedom that allowed for Quakers, evangelicals, and Unitarians to lead the way in opposition to slavery in the 19th Century. Religious freedom also allowed Catholics and mainline Protestants to guide society in creating child labor laws early in the 20th Century, and later made it possible for religious groups and leaders to help forge wide and evolving coalitions to advance African American Civil Rights

and women's equality, to oppose the Vietnam War, and eventually fight for LGBTQ civil and religious rights.

Such coalitions aren't always easy. When North Carolina Disciples of Christ minister Rev. Dr. William J. Barber II, a leader in the progressive Moral Mondays movement, was asked about squaring religious freedom and marriage equality, he looked to the lessons of history and the wisdom of his own religious tradition. Working within a coalition that had long included LGBTQ advocates, Barber noted that the Christian Right was trying to “divide our ranks by casting doubt either among the LGBTQ community or among the African American community about whether our moral movement truly represented them.”

In the last century the NAACP had faced a similar challenge over the question of restrictions on interracial marriage. They ultimately opposed the bans, he wrote, as a matter of uphold-

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ing “the moral and constitutional principle of equal protection under the law.” Faced with yet another fear-based tactic today, Barber wrote, “our movement’s position had to be the same.” He found his response in the First Amendment, which guarantees the right of churches, synagogues, and mosques to discern for themselves “what God says about marriage,” free from governmental attempts to enforce its preferred religious doctrines.³

The Revolutionary War-era Virginians who created our approach to religious freedom understood religious freedom to be synonymous with the idea of the right of individual conscience. James Madison wrote that when the Virginia Convention of 1776 issued the Virginia Declaration of Rights (three weeks before the Declaration of Independence), the delegates removed any language about religious “toleration” and declared instead “the freedom of conscience to be a natural and absolute right.”⁴ Madison was joined in supporting the rights of conscience by evangelical Presbyterians and Baptists who also insisted on a separation of church and state for fear that mixing would corrupt both.

Invoking the words of the Founders may seem hokey or sound archaic to some. But they knew that the freedom they were seeking to establish was fragile, and likely to be opposed in the future. Understanding the through line that connects the struggles for religious freedom at the founding of the country to today’s helps us fight to defend the principle from redefinition and cooptation.

Such an understanding helped the United States Commission on Civil Rights in 2016 when it issued a major report on issues involving religious exemptions from the law. “Religious liberty was never intended to give one religion dominion over other religions or a veto power over the civil rights and civil liberties of others,” said Commission Chair Martin R. Castro, who also further denounced the use of religious liberty as a “code word” for “Christian supremacy.”⁵

The Commission found that overly broad religious exemptions from federal labor and civil rights laws undermine the purposes of these laws and urged

that courts, legislatures, or executive agencies narrowly tailor any exemptions to address the need without diminishing the efficacy of the law.⁶

Religious freedom advocates of the colonial era faced powerful entrenched interests who actively suppressed religious deviance and dissent that might upset their privileges. In the Virginia colony attendance was required at the Sunday services of the Church of England, and failure to attend was the most prosecuted crime in the colony for many years. Members of these Anglican church vestries were also empowered to report religious crimes like heresy and blasphemy to local grand juries. Unsurprisingly, the wealthy planters and business owners who comprised the Anglican vestries were able to limit access to this pipeline to political power. Dissenters from these theocratic dictates were dealt with harshly.⁷ In the years running up to the Revolution, Baptists and other religious dissidents in Virginia were victims of vigilante violence. “Men on horseback would often ride through crowds gathered to witness a baptism,” historian John Ragosta reports. “Preachers were horsewhipped and dunked in rivers and ponds in a rude parody of their baptism ritual... Black attendees at meetings—whether free or slave—were subject to particularly savage beatings.”⁸

This was the context in which Jefferson drafted the Virginia Statute for Religious Freedom in 1777, which took nearly a decade to become law. The statute effectively disestablished the Anglican Church as the state church of Virginia, curtailing its extraordinary powers and privileges. It also decreed that citizens are free to believe as they will and that this “shall in no wise diminish, enlarge, or affect their civil capacities.” The statute was the first in history to self-impose complete religious freedom and equality, and historians as well as Supreme Court justices widely regard it as the root of how the framers of the Constitution (and later the First Amendment) approached matters of religion and government.⁹

The principle of religious equality under the law was a profoundly progressive stance against the advantages enjoyed and enforced by the ruling political and economic elites of the 18th Century.

Then, for example, as John Ragosta writes in *Religious Freedom: Jefferson’s Legacy, America’s Creed*, “Marriages had to be consecrated by an Anglican minister, making children of dissenters who failed to marry within the Church of England (or pay the local Anglican priest for his cooperation) subject to claims of bastardy, with potentially serious legal consequences.”¹⁰

Such abuses may seem like a relic of the past, but in recent years some Christians have tried to outlaw the religious marriages of others. In 2012 Christian Right advocates in North Carolina sought to build on existing laws limiting marriages to heterosexual couples by amending the state constitution, using language that would effectively criminalize the performance of marriage ceremonies without a license. This meant that clergy from varied religious traditions, from Judaism to Christianity to Buddhism, would be breaking the law if they solemnized religious marriage ceremonies for same-sex couples. And the motive was explicitly religious. State Senator Wesley Meredith, for example, cited the Bible in explaining, “We need to regulate marriage because I believe that marriage is between a man and woman.”¹¹

This issue was part of the 2014 case *General Synod of the United Church of Christ vs. Resinger*, wherein a federal judge declared that laws that deny same-sex couples the right to marry in the state, prohibit recognition of legal same-sex marriages from elsewhere in the United States, “or threatens clergy or other officiants who solemnize the union of same-sex couples with civil or criminal penalties” were unconstitutional.¹² It was an historic victory for a progressive version of religious liberty but one soundly rooted in the history of religious freedom. Clergy could now perform same-sex marriage ceremonies “without fear of prosecution,” said Heather Kimmel, an attorney for the UCC.¹³

Jefferson and his contemporaries saw religious freedom as the key to disentangling ancient, mutually reinforcing relationships between the economic and political interests of aristocrats and the institutional imperatives of the church: what Jefferson called an unholy alliance

of “kings, nobles, and priests”—meaning clergy of any religion—that divided people in order to rule them. He later wrote that his Virginia Statute for Religious Freedom was “intended to put down the aristocracy of the clergy and restored to the citizens the freedom of the mind.”¹⁴

A quarter-millennium later, we are still struggling to defend religious freedom against erosion and assaults by powerful religious institutions and their agents inside and outside of government. Aspiring clerical aristocrats debase the idea of religious freedom when they use it as tool to seek exemptions from the generally applicable laws of the United States—particularly those that prohibit discrimination.

Religious freedom and civil rights are complementary values and legal principles necessary to sustain and advance equality for all. Like Rev. Barber, we must not fall for the ancient tactic of allowing the kings, nobles, and priests of our time to divide and set us against one another.

We have come a long way since the revolutionaries who founded our country introduced one of the most powerfully democratic ideas in the history of the world. The struggle for religious freedom may never be complete, but it remains among our highest aspirations. And yet the kinds of forces that struggled both for and against religious freedom in the 18th Century are similar to those camps today. We are the rightful heirs of the constitutional legacy of religious freedom; the way is clear for us to find our voices and reclaim our role. ☞

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