

J. REUBEN CLARK LAW SCHOOL CENTER FOR LAW AND  
RELIGIOUS STUDIES

THE FOUNDATIONS FOR RELIGIOUS FREEDOM  
DRAFT FOR EDITING

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I. J. REUBEN CLARK LAW SCHOOL INTERNATIONAL CENTER FOR LAW AND RELIGIOUS STUDIES: THE FOUNDATIONS FOR RELIGIOUS FREEDOM—SCRIPTURAL REFERENCES.

A. From The Grand Council In Heaven.

The Lord established the groundwork for the exercise of religious freedom in that Grand Council in Heaven before the foundation of the earth and the placement of mankind thereon. Scriptural references in support of this fact follow:

"Now the Lord had shown unto me, Abraham, the intelligences that were organized before the world was; and among all these were many of the noble and great ones;

"And God saw these souls that they were good, and he stood in the midst of them, and he said: These I will make my rulers; for he stood among those that were spirits, and he saw that they were good; and he said unto me: Abraham, thou art one of them; thou wast chosen before thou wast born.

"And there stood one among them that was like unto God, and he said unto those that were with him: We will go down, for there is space there, and we will take of these materials, and we will make an earth whereon these may dwell;

"And we will prove them herewith, to see if they will do all things whatsoever the Lord their God shall command them;

"And they who keep their first estate shall be added upon; and they who keep not their first estate shall not have glory in the same kingdom with those who keep their first estate; and they who keep their second estate shall have glory added upon their heads for ever and ever.

"And the Lord said: Whom shall I send? And one answered like unto the Son of Man: Here am I, send me. And another answered and said: Here am I, send me. And the Lord said: I will send the first.

"And the second was angry, and kept not his first estate; and at that day, many followed after him," Abr. 3:22-28.

"And there was war in heaven: Michael and his angels fought against the dragon; and the dragon fought and his angels,

“And prevailed not; neither was their place found any more in heaven.

“And the great dragon was cast out, that old serpent, called the Devil, and Satan, which deceiveth the whole world: he was cast out into the earth, and his angels were cast out with him,” Rev. 12:7-9.

“Wherefore, because that Satan rebelled against me, and sought to destroy the agency of man, which I, the Lord God, had given him, and also, that I should give unto him my own power; by the power of my Only Begotten, I caused that he should be cast down,” Moses 4:3.

“And it came to pass that...a third part of the hosts of heaven turned he away from me because of their agency;

“And they were thrust down and thus came the devil and his angels;

“And it must needs be that the devil should tempt the children of men, or they would not be agents unto themselves; for if they should never have bitter they could never know the sweet,” D&C 29:36, 37, 39.

“For it must needs be, that there is an opposition in all things. If not righteousness could not be brought to pass, neither wickedness, neither holiness nor misery, neither good nor bad...,” 2 Nephi 2:11.

“I, the Lord God make you free, therefore ye are free indeed; and the law also maketh you free,” D&C 98:8.

“And now remember...ye are free; ye are permitted to act for yourselves; for behold, God hath given you knowledge and he hath made you free,” Hel. 14:30.

“And...priests were ordained after the order of his Son....

“And this is the manner after which they were ordained-- being called and prepared from the foundation of the world according to the foreknowledge of God, on account of their exceeding faith and good works; in the first place being left to choose good or evil; therefore they having chosen good, and exercising exceedingly great faith, are called with a holy calling, yea, with that holy calling which was prepared with, and according to, a preparatory redemption for such,” Alma 13:2, 3.

"Wherefore, men are free according to the flesh; and all things are given them which are expedient unto man. And they are free to choose liberty and eternal life, through the great Mediator of all men, or to choose captivity and death, according to the captivity and power of the devil; for he seeketh that all men might be miserable like unto himself," 2 Ne. 2:27.

#### B. From The Creation Until The Advent Of Jesus Christ:

From the creation of the earth on which we live and the placement of our first parents thereon, until the advent of Jesus Christ in the Meridian of Time, Jehovah, the God of the Old Testament, individually and through his prophets, declared principles of freedom designed to govern and bless mankind. Scriptural references with respect thereto follow:

To man in the Garden of Eden, speaking of that which he may eat, the Lord said: "...Of every tree of the garden thou mayest freely eat: But of the tree of the knowledge of good and evil , thou shalt not eat of it: for in the day that thou eatest thereof thou shalt surely die," Gen. 2:16, 17.

And then he added: "...{N}evertheless, thou mayest choose for thyself, for it is given unto thee; but, remember that I forbid it, for in the day thou eatest thereof thou shalt surely die," Moses 3:17.

"And the Lord spake unto Adam, saying: Inasmuch as thy children are conceived in sin, even so when they begin to grow up, sin conceiveth in their hearts, and they taste the bitter, that they may know the prize of the good.

"And it is given unto them to know good from evil; wherefore they are agents unto themselves, and I have given you another law and commandment," Moses 6:55, 56.

"But unto Cain and to his offering he had not respect. And Cain was very wroth, and his countenance fell.

"And the Lord said unto Cain, Why art thou wroth? And why is thy countenance fallen?

"If thou doest well, shalt thou not be accepted? and if thou doest not well, sin lieth at the door. And unto thee shall be his desire, and thou shalt rule over him," Gen. 4:5-7.

"And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof...; and ye shall return every man unto his possessions, and ye shall return every man unto his family," Lev. 25:10.

"And if it seem evil unto you to serve the Lord, choose you this day whom ye will serve; whether the gods which your fathers served that were on the other side of the flood, or the Gods of the Amorites, in whose land ye dwell: but as for me and my house, we will serve the Lord," Joshua 24:15.

"And Elijah came unto all the people, and said, How long halt ye between two opinions? If the Lord be God, follow him; but if Baal, then follow him. And the people answered him not a word," 1 Kings 18:21.

"So shall I keep thy law continually for ever and ever.

"And I will walk at liberty: for I seek thy precepts," Psm. 119:44, 45.

"Then shall they call upon me, but I will not answer; they will seek me early, but they shall not find me:

"For that they hated knowledge, and did not choose the fear of the Lord:

"They would none of my counsel: they despised all my reproof.

"Therefore shall they eat of the fruit of their own way, and be filled with their own devices.

"For the turning away of the simple shall slay them, and the prosperity of fools shall destroy them.

"But whoso hearkeneth unto me shall dwell safely, and shall be quiet from fear and evil," Prov. 1:28-33.

"I counsel you to keep the king's commandment, and that in regard of the oath of God," Eccl. 8:2.

"...O my people, they which lead thee cause thee to err, and destroy the way of thy paths," Isa. 3:12.

"Is not the path that I have chosen? to loose the bands of wickedness, to undo the heavy burden, and to let the oppressed go free, and that ye break every yoke," Isa. 58:6.

The history of the Jewish people during Old Testament times was characterized by lengthy periods of captivity and deprivation of religious freedom. Their captors included the Egyptians, Babylonians, Assyrians, Greeks, Romans, etc. Although the burdens and the deprivation of their freedoms were sometimes tempered by the rise to prominence of righteous and extraordinarily capable men and women among their numbers, the limitations on their freedom to choose and act were most often onerous. Examples of the righteous and highly capable individuals mentioned include: Joseph who was sold into Egypt (Gen. 37-50); Moses (Genesis-Deuteronomy); Esther and Mordecai (Book of Esther); Daniel (Book of Daniel), etc.

C. From The Advent Of Jesus Christ Through His Ministry And That Of His Apostles:

With the advent of Christ, His ministry on earth and the ministry of His apostles following His trial and crucifixion, during which He voluntarily abdicated His freedom, principles of religious freedom were taught and are now recorded in the New Testament. They include the following:

"Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets," Matt. 1:12.

"And {Herod} sent and beheaded John in prison," Matt. 14:10

"The Spirit of the Lord is upon me, because he hath anointed me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are bruised,

"To preach the acceptable year of the Lord," Luke 4:18, 19.

"If the Son therefore shall make you free, ye shall be free indeed,"  
John 8:36.

Stephen recounts the history of, and testifies of the apostasy in, Israel, following which the high priest and the rulers were cut to the heart and gnashed on him and stoned him to death. They laid their clothes at the feet of a young man whose name was Saul, "And Saul was consenting unto his death..." Acts 8:1.

"Now about that time Herod the king stretched forth his hands to vex certain of the church.

"And he killed James the brother of John with the sword.

" And because he saw it pleased the Jews, he proceeded further to take Peter also....

"And when he had apprehended him, he put him in prison, and delivered him to four quaternions of soldiers to keep him; intending after Easter to bring him forth to the people.

"Peter therefore was kept in prison: but prayer was made without ceasing of the church unto God for him," Acts 12:1-5,

"And when Gallio was the deputy of Achaia, the Jews made insurrection with one accord against Paul, and brought him to the judgment seat,

"Saying, This fellow persuadeth men to worship God contrary to the law.

"And when Paul was now about to open his mouth, Gallio said unto the Jews, If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you:

"But if it be a question of words and names, and of your law, look ye to it; for I will be no judge of such matters.

"And he drave them from the judgment seat.

"Then all the Greeks took Sosthenes, the chief ruler of the synagogue, and beat him before the judgment seat. And Gallio cared for none of those things," Acts 18:12-17.

"...Paul said unto the centurion that stood by, Is it lawful for you to scourge a man that is a Roman, and uncondemned?

"When the centurion heard that, he went and told the chief captain, saying, take heed what thou doest: for this man is a Roman.

"Then the chief captain came, and said unto him, Tell me art thou a Roman? He said, Yea. "And the chief captain answered, With a great sum obtained I this freedom. And Paul said, But I was free born," Acts 22:25-28.

"For the creature was made subject to vanity, not willingly, but by reason of him who hath subjected the same in hope,

"Because the creature itself also shall be delivered from the bondage of corruption into the glorious liberty of the children of God," Rom. 8:20, 21."

"The wife is bound by the law as long as her husband liveth; but if her husband be dead, she is at liberty to be married to whom she will; only in the Lord," 1 Cor. 7:39.

"But take heed lest by any means this liberty of yours become a stumblingblock to them that are weak," 1 Cor. 8:9.

"Let no man seek his own, but every man another's wealth {good}.

"Whatsoever is sold in the shambles {market}, that eat, asking no question for conscience sake:

"For the earth is the Lord's, and the fullness thereof.

"If any of them that believe not bid you to feast, and ye be disposed to go; whatsoever is set before you, eat, asking no question for conscience sake: for the earth is the Lord's and the fullness thereof:

"Conscience I say, not thine own, but of the other: for why is my liberty judged of another man's conscience?

"For if I by grace be a partaker, why am I evil spoken of for that for which I give thanks?

"Whether therefore ye eat, or drink, or whatsoever ye do, do all to the glory of God.

"Give none offense, neither to the Jews, nor to the Gentiles, nor to the church of God:

"Even as I please all men in all things, not seeking mine own profit, but the profit of many, that they may be saved," 1 Cor. 10:24-33.

"Now the Lord is that Spirit: and where the Spirit of the Lord is, there is liberty," 2 Cor. 3:17.

"Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage.

"For, brethren ye have been called unto liberty; only use not liberty for an occasion to the flesh, but by love serve one another," Gal 5:1, 13.

"And let us consider one another to provoke unto love and to good works:

"Not forsaking the assembling of ourselves together, as the manner of some is; but exhorting one another: and so much the more, as ye see the day approaching.

"For if we sin willfully after that we have received the knowledge of the truth, there remaineth no more sacrifice for sins,

"But a certain fearful looking for of judgment and fiery indignation, which shall devour the adversaries," Heb. 10:24-27.

"Know ye that our brother Timothy is set at liberty; with whom, if he come shortly, I will see you.

"Salute all them that have the rule over you, and all the saints. They of Italy salute you," Heb. 13:23,24.

"Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work,

"To speak evil of no man, to be no brawlers, but gentle, shewing all meekness unto all men," Titus 3:1,2.

"But whoso looketh into the perfect law of liberty, and continueth therein, he being not a forgetful hearer, but a doer of the work, this man shall be blessed in his deed," James 1:25.

"Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward.

"For this is thankworthy, if a man for conscience toward God endure grief, suffering wrongfully.

"For what glory is it, if when ye be buffeted for your faults, ye shall take it patiently? But when ye do well, and suffer for it, ye take it patiently, this is acceptable with God," 1 Peter 2:18-20.

"For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of darkness of this world, against spiritual wickedness in high places," Eph. 6:12.

"I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving thanks, be made for all men; "For kings, for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty," 1 Tim. 2:1, 2.

#### D. Book Of Mormon References:

During most of the centuries which encompassed the events recorded in the Old Testament and the New Testament and which were unfolding in the Holy Land and its environs, the Lord was establishing a civilization on what was to become the New World or the American Continent. He revealed His will to His prophets and there taught principles of religious freedom as He had done in the Holy Land. Those principles are recorded in the Book of Mormon, from which the following scriptural references are extracted:

"Wherefore, I, Lehi, prophesy according to the workings of the Spirit which is in me, that there shall none come into this land save they shall be brought by the hand of the Lord.

"Wherefore, this land is consecrated unto him whom he shall bring. And if it so be that they shall serve him according to the commandments which he hath given, it shall be a land of liberty unto them; wherefore, they shall never be brought down into captivity; if so, it shall be because of iniquity; for if iniquity shall abound cursed shall be the land for their sakes, but unto the righteous it shall be blessed forever," 2 Ne. 1: 6, 7.

"For it must needs be that there is an opposition in all things. If not so, my first born in the wilderness, righteousness could not be brought to pass, neither wickedness, neither holiness nor misery, neither good nor bad. Wherefore, all things must be a compound in one; wherefore, if it should be one body it must needs remain as dead, having no life neither death, nor corruption nor incorruption, happiness nor misery, neither sense nor insensibility," 2 Ne. 2:11.

"Therefore, cheer up your hearts, and remember that ye are free to act for yourselves—to choose the way of everlasting death or the way of eternal life.

"Wherefore, my beloved brethren, reconcile yourselves to the will of God, and not to the will of the devil and the flesh; and remember, after ye are reconciled unto God, that it is only in and through the grace of God that ye are saved," 2 Ne. 2:23, 24.

"And the Messiah cometh in the fullness of time, that he may redeem the children of men from the fall. And because that they are redeemed from the fall they have become free forever, knowing good from evil; to act for themselves and not to be acted upon, save it be by the punishment of the law at the great and last day, according to the commandments which God hath given.

"Wherefore, men are free according to the flesh; and all things are given them which are expedient unto man. And they are free to choose liberty and eternal life, through the great Mediator of all men, or to choose captivity and death, according to the captivity and power of the devil; for he seeketh that all men might be miserable like unto himself," 2 Ne. 2:26, 27.

"And this land shall be a land of liberty unto the Gentiles, and there shall be no kings upon the land, who shall raise up unto the Gentiles.

"And I will fortify this land against all other nations," 2 Ne. 10:11.

The Prophet Nephi teaches the people that after three generations, and many of the fourth, shall have passed away, a speedy destruction would come upon them, "...for, for the reward of their pride and their foolishness they shall reap destruction; for because they yield to the devil and choose works of darkness rather than light, therefore they must go down to hell," 2 Ne. 26:10.

After many years had passed, a man by the name of Sherem, an Anti-Christ, came among the people of Nephi, declaring unto them that there should be no Christ and seeking to overthrow the doctrine of Christ. He

confronts Jacob, the brother of Nephi, and they freely debate this matter before the people. (See Jacob, Chapter 7.)

King Benjamin, as well as many others, teaches the people that if they choose to keep the commandments which the Lord gives them, rather than to follow the devil and his minions, "...ye should prosper in the land; and he never doth vary from that which he hath said; therefore, if ye do keep his commandments he doth bless you and prosper you," Mosiah 2:22.

"But, O my people, beware lest there shall arise contentions among you, and ye list to obey the evil spirit, which was spoken of by my father Mosiah.

"For behold, there is a wo pronounced upon him who listeth to obey that spirit; for if he listeth to obey him, and remaineth and dieth in his sins, the same drinketh damnation to his own soul; for he receiveth for his wages an everlasting punishment, having transgressed the law of God according to his own knowledge," Mosiah 2:32, 33.

"And under {Christ's} head ye are made free, and there is no other head whereby ye can be made free. There is no other name given whereby salvation cometh; therefore, I would that ye should take upon you the name of Christ, all you that have entered into the covenant with God that ye should be obedient unto the end of your lives," Mosiah 5:8.

In Chapters 23 and 24 of the Book of Mosiah, Alma, who was the son of King Mosiah and a righteous man, the people of the Lord request that Alma become their king, because he is beloved by his people. Reminding them that they had been oppressed by a wicked king by the name of Noah, he tells them: "Behold, it is not expedient that we should have a king; for, thus saith the Lord: Ye shall not esteem one flesh above another, or one man shall not think himself above another; therefore, I say unto you it is not expedient that ye should have a king," Mosiah 23:7.

Alma adds: "And now as ye have been delivered by the power of God out of these bonds; yea, even out of the hands of King Noah and his people, and also from the bonds of iniquity, even so I desire that ye should stand

fast in this liberty wherewith ye have been made free, and that ye trust no man to be a king over you," Mosiah 23:13.

Mosiah proposes that judges be chosen by the voice of the people and that they, the people, be judged "according to the laws which have been given you by our fathers, which are correct, and which were given by the hand of the Lord," and further declares: "Now it is not common that the voice of the people desireth anything contrary to that which is right; but it is common for the lesser part of the people to desire that which is not right; therefore, this shall ye observe and make it your law—to do your business by the voice of the people." (See Mosiah 29:25, 26.)

Mosiah, addressing the inequality which had previously existed among the people, further declared:

"And now I desire that this inequality should be no more in this land, especially among this my people; but I desire that this land be a land of liberty, and every man may enjoy his rights and privileges alike, so long as the Lord sees fit that we may live and inherit the land...."

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The people, having relinquished their desires for a king, "Therefore, it came to pass that they assembled themselves in bodies throughout the land, to cast in their voices concerning who should be their judges, to judge them according to the law which had been given them; and they were exceedingly rejoiced because of the liberty which had been granted unto them." (See Mosiah 29:32, 39.)

"And in one year were thousands and tens of thousands of souls sent to the eternal world, that they might reap their rewards according to their works, whether they were good or whether they were bad, to reap eternal happiness or eternal misery, according to the spirit which they listeth to obey, whether it be a good spirit or a bad one," Alma 3:26.

"Wherefore, {God} gave commandments unto men, they having transgressed the first commandments as to things which were temporal, and becoming as Gods, knowing good from evil, placing themselves in a place to act, or being placed in a state to act according to their wills and pleasures, whether to do evil or to do good—

"Therefore God gave unto them commandments, after having made known unto them the plan of redemption, that they should not do evil...", Alma 12:31, 32.

Many were ordained high priests under the holy order of the priesthood, "on account of their exceeding faith and repentance, and their righteousness before God, they choosing to repent and work righteousness rather than to perish. (See Alma 13:10.)

Ammon, a Nephite missionary, teaches the gospel to Lamoni, a Lamanite king with jurisdiction over the land of Ishmael and who grants religious freedom to the people in that land and in all the land round about, to wit:

"But he {King Lamoni} caused that there should be *synagogues built in the land of Ishmael; and he caused that his people, or the people who were under his reign, should assemble themselves together.*

"And he did rejoice over them, and he did teach them many things. And he did also declare unto them that they were a people who were under him, and that they were a free people, that they were free from the oppressions of the king, his father; for that his father had granted unto him that he might reign over the people who were in the land of Ishmael, and all the land round about.

"And he also declared unto them that they might have the liberty of worshiping the Lord their God according to their desires, in whatsoever place they were in, if it were in the land which was under the reign of King Lamoni. And Ammon did preach unto the people of King Lamoni...." (See Alma 21:20-23).

In the meantime, Lamoni's father and all his household are converted and the king sends a proclamation among all his people that they should not lay their hands on Ammon or any of his brethren who should go forth preaching the word of God, in whatsoever place they should be, in any part of the land.

"Yea, he sent a decree a decree among them, that they should not lay their hands on them to bind them, or to cast them in prison; neither should they spit upon them, nor smite them, nor cast them out of their synagogues, nor scourge them; neither should they cast stones at them,

but that they should have free access to their houses, and also their temples, and their sanctuaries.

"And thus they might go forth and preach the word according to their desires, for the king had been converted unto the Lord, and all his household....

"And now...{Aaron and Ammon and their brethren} went forth from city to city, and from one house of worship to another, establishing churches, and consecrating priests and teachers throughout the land among the Lamanites, to preach and teach the word of God among them; and thus they began to have great success." (See Alma 23:1-4; see also Chapters 21-23 in general.)

"I ought not to harrow up in my desires, the firm decree of a just God, for I know that he granteth unto men according to their desire, whether it be unto death or unto life; yea, I know that he alloteth unto men, yea, decreeth unto them decrees which are unalterable, according to their wills, whether they be unto salvation or unto destruction," Alma 29:4.

"But it came to pass in the latter end of the seventeenth year, there came a man {Korihor} into the land of Zarahemla, and he was Anti-Christ, for he began to preach unto the people against the prophecies which had been spoken by the prophets, concerning the coming of Christ.

"Now there was no law against a man's belief; for it was strictly contrary to the commands of God that there should be a law which should bring men on to unequal grounds.

"For thus saith the scripture: Choose ye this day whom ye will serve.

"Now if a man desired to serve God, it was his privilege; or rather, if he believed in God it was his privilege to serve him; but if he did not believe in him there was no law to punish him." (See Alma 30:6-9, et seq.)

"These are they that are redeemed of the Lord; yea, these are they that are taken out, that are delivered from that endless night of darkness; and thus they stand or fall; for behold, they are their own judges, whether to do good or evil.

"Now the decrees of God are unalterable; therefore, the way is prepared that whosoever will may walk therein and be saved," Alma 41:7, 8.

Zoramites and other Nephite dissenters become Lamanites and come against the Nephites in war:

"And now the design of the Nephites was to support their lands, and their houses, and their wives, and their children, that they might preserve them from the hands of their enemies; and also that they might preserve their rights and their privileges, yea, and also their liberty, that they might worship God according to their desires," Alma 43:9.

The Lamanites, led by a man called Zarahemnah, came in fierce anger to war against the Nephites: "And again, the Lord had said that: Ye shall defend you families even unto bloodshed. Therefore, for this cause were the Nephites contending with the Lamanites, to defend themselves, and their families, and their lands, and their country, and their rights, and their religion," Alma 43:47.

"And it came to pass that they turned upon the Lamanites, and they cried with one voice unto the Lord their God for their liberty and for their freedom from bondage," Id. 43:49.

"And now Zarahemnah, I command you, in the name of that all-powerful God, who has strengthened our arms that we have gained power over you, by our faith, by our religion, and by our rights of worship, and by our church, and by the sacred support which we owe our wives and our children, by that liberty which binds us to our lands and our country; yea, and also by the maintenance of the sacred word of God, to which we owe all our happiness; and by all that is most dear to us—

"Yea, and this is not all; I command you by all the desires which you have for life, that ye deliver up your weapons of war unto us, and we will seek not your blood, but we will spare your lives, if ye will go your way and come not again to war against us," Alma 44: 5, 6.

"And now it came to pass that when Moroni had said these words...he went forth and gathered together all the people who were desirous to maintain their liberty, to stand against Amalickiah and those who had dissented, who were called Amalickiahites," Alma 46:28.

Amalickiah incites the Lamanites against the Nephites: "For he was determined, because of the greatness of the number of his people, to overpower the Nephites and to bring them into bondage." (See Alma 48:4.)

Moroni, who was a strong and a mighty man and "who did joy in the liberty and the freedom of his country, and his brethren from bondage and slavery," prepared his people to defend the cause of the Christians. Of him it was said: "Yea, and he was a man who was firm in the faith of Christ, and he had sworn with an oath to defend his people, his rights, and his country, and his religion, even to the loss of his blood." (See Alma 48:11, 13.)

"Behold, it came to pass that the son of Nephihah was appointed to fill the judgment-seat, in the stead of his father; yea, he was appointed chief judge and governor over the people, with an oath and sacred ordinance to judge righteously, and to keep the peace and the freedom of the people, and to grant unto them their sacred privileges to worship the Lord their God, yea, to support and maintain the cause of God all his days, and to bring the wicked to justice according to their crime," Alma 50:39.

Now the name of the chief judge was Pahoran. At the commencement of his reign, there were some who desired that a few points of law should be altered and that Paharon be dethroned—they called themselves "king-men." Those who desired that he should remain chief judge were called "freemen." "T}he freemen had sworn or covenanted to maintain their rights and the privileges of their religion by a free government." The matter was settled by voice of the people in favor of the freemen. (See Alma 51:6, and Chapter 51 in general.)

Helaman takes charge of 2,000 young men ("Sons of the People of Ammon" were they called) who covenant to fight for the liberty of the Nephites, to wit: "And they entered into a covenant to fight for the liberty of the Nephites, yea, to protect the land unto the laying down of their lives; yea, even they covenanted that they never would give up their liberty, but they would fight in all cases to protect the Nephites and themselves from bondage." (See Alma 53:17.)

"But behold, they have received many wounds; nevertheless they stand fast in that liberty wherewith God has made them free; and they are strict to remember the Lord their God from day to day; yea, they do observe to keep his statutes and his judgments, and his commandments continually; and their faith is strong in the prophecies concerning that which is to come," Alma 58:40.

Now the chief captains doubted because of the success of the Lamanites over them. "And it came to pass that Moroni was angry with the government, because of their indifference concerning the freedom of their country." (See Alma 59:13.)

Moroni, in complaining to Pahoran of the government's neglect of the armies, declares: "Behold, I am Moroni, your chief captain, I seek not for power, but to pull it down. I seek not for honor of the world, but for the glory of my God, and the freedom and welfare of my country. And thus I close my epistle." (See Alma 60:36.)

Pahoran responds to Moroni:

"And now, in your epistle you have censured me, but it mattereth not; I am not angry, but do rejoice in the greatness of your heart. I, Pahoran, do not seek for power, save only to retain my judgment- seat that I may preserve the rights and the liberty of my people. My soul standeth fast in that liberty in the which God hath made us free....{C}onduct the war in that part of the land, according to the Spirit of God, which is also the spirit of freedom which is in them." (See Alma 61:9, 15.)

Paanchi, as he was about to flatter away a part of the people to rise up in rebellion against their brethren, was taken and tried, to wit:

"And it came to pass as he was about to do this, behold, he was taken, and was tried according to the voice of the people, and condemned unto death; for he had raised up in rebellion and sought to destroy the liberty of the people," Hel. 1:8.

"And now remember, remember, my brethren, that whosoever perisheth, perisheth unto himself; and whosoever doeth iniquity, doeth it unto himself; for behold, ye are free; ye are permitted to act for yourselves; for behold God hath given unto you a knowledge and he hath made you free.

"He hath given unto you that ye might know good from evil, and he hath given unto you that ye might choose life or death; and ye can do good and be restored unto that which is good, or have that which is good restored unto you; or ye can do evil, and have that which is evil restored unto you," Hel. 14:30, 31.

A band of robbers, who called themselves "The Gadianton Robbers," rose up in rebellion against the Nephites and Lamanites who were in league with the Nephites, seeking to take away their properties, ravage their women and their children and deprive them of their freedoms. Two references follow which depict this challenge:

"Therefore, all the Lamanites who had become converted unto the Lord did unite with their brethren, the Nephites, and were compelled, for the safety of their lives and their women and their children, to take up arms against those Gadianton Robbers, yea, and also to maintain their rights, and the privileges of their church and of their worship, and their freedom and their liberty," 3 Ne. 2:12.

Giddianhi, the Gadianton leader, writes to Lachoneus, the governor of the land, saying: "Lachoneus, most noble and chief governor of the land, behold, I write this epistle unto you, and do give unto you exceedingly great praise because of your firmness, and also the firmness of your people, in maintaining that which ye suppose to be your right and liberty; yea, ye do stand well, as if ye were supported by the hand of God, in the defense of your liberty, and your property, and your country, or that which ye do call so. "And it seemeth a pity unto me, most noble Lachoneus, that ye should be so foolish and vain as to suppose that ye can stand against so many brave men who are at my command, who do now at this time stand in their arms, and do await with great anxiety for the word—Go down upon the Nephites and destroy them," 3 Ne. 3:2, 3.

Satan leads the people in open conspiracy and rebellion against a government which is rent with dissensions: "Therefore they did

combine against the people of the Lord, and enter into a covenant to destroy them, and to deliver those who were guilty of murder from the grasp of justice, which was about to be administered according to the law.

"And they did set at defiance the law and the rights of their country; and they did covenant one with another to destroy the governor, and to establish a king over the land, that the land should no more be at liberty but should be subject unto kings." (See 3 Ne. 6:29, 30.

"Behold, this is a choice land, and whatsoever nation shall possess it shall be free from bondage, and from captivity, and from all other nations under heaven, if they will but serve the God of the land, who is Jesus Christ, who hath been manifested by the things which we have written," Ether 2:12.

At various times during the history of the Nephites, and others, including an earlier generation of people called the Jaredites, as set forth in the Book of Mormon, the people were wrought upon by oath bound secret combinations formed by those dissenters sought the destruction of nations and to take away the freedom of the people, including the freedom to practice their religion. One such occasion, among many, is described in the Book of Ether, Chapter 8, to which reference is made here.

The final reference set forth in the Book of Mormon to agency in particular and to religious liberty in general is set forth in the following paragraphs taken from the Book of Moroni:

"For behold, my brethren, it is given unto you to judge, that ye may know good from evil; and the way to judge is plain, that ye may know with a perfect knowledge, as the daylight is from the dark night.

"For behold, the Spirit of Christ is given to every man, that he may know good from evil; wherefore, I show you the way to judge; for every-thing which inviteth to do good, and to persuade to believe in Christ, is sent forth by the power and gift of Christ; wherefore, ye may know with a perfect knowledge it is of God.

"But whatsoever thing persuadeth men to do evil, and believe not in Christ, and deny him, and serve not God, then ye may know with a perfect

knowledge it is of the devil; for after this manner doth the devil work, for he persuadeth no man to do good, no, not one; neither do his angels; neither do they who subject themselves unto him.

"And now, my brethren, seeing that ye know the light by which ye may judge, which light is the light of Christ, see that ye do not judge wrongfully; for with that same judgment which ye judge ye shall be judged.

"Wherefore, I beseech of you, brethren, that ye should search diligently in the light of Christ that ye may know good from evil; and if ye will lay hold upon every good thing, and condemn it not, ye certainly will be a child of Christ," Moroni 7:15-19.

#### E. Doctrine & Covenants And Other Publications Memorializing Revelations Received In The Dispensation Of The Fullness Of Times:

On the heels of all that had occurred from the time of the Creation to and including the Reformation, the Lord restored His Church, The Church of Jesus Christ of Latter Day Saints, in this, The Dispensation of the Fullness of Times. He did it through His Prophet, Joseph Smith, Jr., on April 6, 1830, in the United States of America, a land of freedom which He had established through men and women raised-up for that purpose. He has, in doing so, revealed His will through his servants in the form of revelations which have been recorded and published in The Doctrine and Covenants and other official Church publications, which include a reaffirmation by Him of principles of religious freedom, excerpts of which are set forth below:

" We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God," The Articles of Faith, 9.

"We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may," Articles of Faith, 11.

"We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law," Articles of Faith, 12.

"Behold, here is wisdom, and let every man choose for himself until I come. Even so. Amen," D&C 37:4.

"Wherefore, hear my voice and follow me, and you shall be a free people, and ye shall have no laws but my laws when I come, for I am your lawgiver, and what can stay my hand.

"But, verily I say unto you, teach one another according to the office wherewith I have appointed you;

"And let every man esteem his brother as himself, and practice virtue and holiness before me," D&C 38:22-24.

"And many shall be converted, insomuch that ye shall obtain power to organize yourselves according to the laws of man;

"That your enemies may not have power over you; that you may be preserved in all things; that you may be able to keep my laws; that every bond may be broken wherewith the enemy seeketh to destroy my people," D&C 44: 4, 5.

"Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land.

"For the power is in them, wherewith they are agents unto themselves. And inasmuch as men do good they shall in nowise lose their reward," D&C 58:21, 28.

"Behold, the land of Zion—I hold in mine own hands;

"Nevertheless, I, the Lord, render unto Caesar the things which are Caesar's," D&C 63:25, 26.

"Abide in the liberty wherewith ye are made free; entangle not yourselves in sin, but let your hands be clean, until the Lord comes," D&C 88:86.

"All truth is independent in that sphere in which God has placed it, to act for itself, as all intelligence also; otherwise there is no existence," D&C 93:30.

"And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.

"Therefore, I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land;

"And as pertaining to law of man, whatsoever is more or less than this, cometh of evil.

"I, the Lord God, make you free, therefore ye are free indeed; and the law also maketh you free," D&C 98:5-8.

"And again I say unto you, those who have been scattered by their enemies, it is my will that they should continue to importune for redress, and redemption, by those who are placed as rulers and are in authority over you—

"According to the laws and constitution of the people, which I have suffered to be established, and should be maintained for the rights and protection of all flesh, according to just and holy principles;

"That every man may act in doctrine and principles pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment.

"Therefore, it is not right that any man should be in bondage one to another.

"And for this purpose have I established the constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood," D&C 101:76-80.

"For the earth is full, and there is enough and to spare; yea, I prepared all things, and have given unto the children of men to be agents unto themselves," D&C 104:17.

"We believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them, both in making laws and administering them for the good and safety of society.

"We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free

exercise of conscience, the right and control of property, and the protection of life.

"We believe that all governments necessarily require civil officers and magistrates to enforce the laws of the same; and that such as will administer the law in equity and justice should be sought for and upheld by the voice of the people if a republic, or the will of the sovereign.

"We believe that religion is instituted of God; and that men are amenable to him, and to him only, for the exercise of it, unless their religious opinions prompt them to infringe upon the rights and liberties of others; but we do not believe that human law has a right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms for public or private devotion; that the civil magistrate should restrain crime, but never control conscience; should punish guilt, but never suppress the freedom of the soul.

"We believe that all men are bound to sustain and uphold the respective governments in which they reside, while protected in their inherent and inalienable rights by the laws of such governments; and that sedition and rebellion are unbecoming every citizen thus protected, and should be punished accordingly; and that all governments have a right to enact such laws as in their own judgments are best calculated to secure the public interest; at the same time, however, holding sacred the freedom of conscience," D&C 134:1-5.

See also, the following excerpts from this Section 134:

1. "[D]ivine laws given of heaven, prescribing rules on spiritual concerns, for faith and worship, both to answered by man to his Maker," should be held inviolate. (v. 6.)
2. "...{G}overnments have a right, and are bound to enact laws for the protection of all citizens in the free exercise of their religious belief; but we do not believe that they have a right in justice to deprive citizens of this privilege, or proscribe them in their opinions, so long as a regard and reverence are shown to the laws and such religious opinions do not justify sedition nor conspiracy." (v. 7.);
3. "We do not believe it just to mingle religious influence with civil government, whereby one religious society is fostered and

another proscribed in its spiritual privileges, and the individual rights of its members, as citizens, denied." (v.9.);

4. "We believe that all religious societies have a right to deal with their members for disorderly conduct, according to the rules and regulations of such societies, provided that such dealings be for fellowship and good standing....They can {however} only excommunicate them from their society, and withdraw from them their fellowship." (v. 10.)It is suggested that the entire Section 134 , the contents of which are, by this reference incorporated herein, be studied and considered.

## II. HISTORICAL AND LEGAL BASIS FOR RELIGIOUS FREEDOM—PRE-CHRISTIAN ERA THROUGH THE MERIDIAN OF TIME, THE DARK AGES AND THE INQUISITIONS.

### A. Introduction:

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance....In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion, and does not persecute believers in other faiths.

In this section, historical background, constitutional and statutory enactments, and other official pronouncements dealing with religious freedom will be outlined and cited.

### B. Religious Freedom During The Pre Christian Era:

Lucifer failed in the preexistence to destroy agency and force salvation upon all people. In other words, compulsion as a way of worship was proposed, rejected, and died in the premortal life. When the Lord placed Adam and Eve upon the earth, he vested in them civil power, by which they governed themselves and their children and revealed unto them his own pure religion, through which they could worship their creator and, if faithful, become like him.

There was no separation of church and state. All governmental powers, whether civil or religious, centered in one Supreme Head and were administered among men by his legal administrators who were sent and duly commissioned by him. In other words he instituted a theocracy among men. (See McConkie, A New Witness for the Articles of Faith, pp. 657-658.)

The Lord revealed to Adam, the first man, the fullness of the gospel, or the higher law, in its purity.

The Law of Moses, who was one of the Lord's legal administrators, "is the name assigned to the whole collection of written laws given through Moses to the house of Israel, as a replacement of the higher law which they had failed to obey..." Bible Dictionary, Law of Moses, p. 722.

"And God spake all these words, saying,

"I am the Lord thy God which hath brought thee out of the land of Egypt, out of the house of bondage. "Thou shalt have no other gods before me.

"Thou shalt not make unto thee any graven image, or any Likeness of any thing that is in heaven above, or that is in the earth beneath or that is in the water under the earth:

"Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

"And shewing mercy unto thousands of them that love me and keep my commandments," Exod. 20:1-6.

"Theocracy as a way of government and worship began to fail with the Babylonian captivity {and even before, as when the children of Israel worshiped the golden calf while Moses was on Mt. Sinai communicating with the Lord}. Although there were brief moments of blazing glory when the Jews returned to Palestine to rebuild the temple and serve Jehovah in Jerusalem, the day of direct heavenly rule was soon past. {Illustrative of this is the period during which Jeroboam made Israel sin by mandating the worship of Baal.} When our Lord made flesh his tabernacle, the Jews in Palestine served Rome and those dispersed in the nations were subject to Egyptian or Grecian or other rulers. Nevertheless {notwithstanding their

loss, to a large extent, of their freedom} they remained a distinct and a peculiar people even after they were scattered in all nations following the destruction of Jerusalem by Titus in A.D. 70.” (See McConkie, supra., pp. 661-62.)

There were, however, during the years of captivity and loss of political independence, brief periods of return, in a limited way, to a semblance of the glory days of the children of Israel. For example, “Cyrus the Great established the Achaemenid Empire ca. 550 BC, and initiated a general policy of permitting religious freedom throughout the empire, documenting this on the Cyrus Cylinder,” Cyrus Cylinder, livius.org; Richard A. Taylor; E. Ray Clendenen (15 October 2004). B&H Publishing Group. pp. 31-32. ISBN 978080540d1219. <http://books?id=hII6mqKrH9kC>.

“Freedom of religious worship was established in the Buddhist Maurya Empire of ancient India by Asoka the Great in the 3rd century BC, which was encapsulated in the Edicts of Asoka,” Freedom of religion – Wikipedia, the free encyclopedia, History.

“Religious freedom and the right to worship freely were practices that had been appreciated and promoted by most ancient Indian dynasties....

“Ancient Jews fleeing from persecution in their homeland 2,500 years ago settled in India and never faced anti-Semitism. Freedom of religion edicts have been found written during Asoka the Great’s reign in the 3rd century BC. Freedom to practice, preach and propagate any religion is a constitutional right in Modern India...,” Freedom of religion – Wikipedia, the free encyclopedia, India.

### C. The Meridian Of Time—Religious Freedom During The Era Of Jesus Christ And The Apostles:

With the advent of Greece and Rome as world powers, the control of religious thought began to wane in the Western world. It still continued as a way of life in Asia and among the Islamic peoples. To this day, the law in some nations enforces the death penalty upon Mohammedans who become Christians. But Greek philosophers and Roman political necessities began to turn the tide against

forced worship. The Greek thinkers began to unshackle the minds of men. Rome, unable to impose a sole religion upon the diverse nations under her iron hand, adopted the policy of accepting and worshiping all the gods of all nations of her empire—with one exception. The God of the Christians was excluded. All gods were acceptable except God the Lord. This included even the deifying and worship of the emperor.

“As to the so-called barbaric and uncivilized tribes of Britain, Scandinavia, Germany, and Western Europe, all these had their own national religions, which included many good ethical principles and also an outpouring of sacrifice and slaughter that was hellish in design and origin. All of this was government dictated,” McConkie, *supra.*, p. 662.

“The people of Israel, while yet in fact Jehovah-worshippers, flourished, but soon became intolerant, counting themselves sure of an exalted station, and looking upon all who were not of the covenant race as unworthy. Christ, in His ministry among them, saw with compassionate sorrow the spiritual and intellectual bondage of the times, and declared unto them the saving word: ‘The truth shall make you free.’ At this some self-righteous aggressors became angry, and boastfully answered: ‘We be Abraham’s seed and were never in bondage to any man: how sayest thou, ye shall be made free?’ Then the Master reproved them for their bigotry: ‘I know that ye are Abraham’s seed; but ye seek to kill me, because my word hath no place in you.’” (See Talmage, *The Articles of Faith*, p. 361. They did kill Him—they crucified Him on Calvary because of their intolerance—because of his threat to their religious traditions and their refusal to grant Him the religious freedom which they themselves had so jealously guarded for so many years. And the Romans, to whom the Jews were subservient, failed to intervene in his behalf.

These were the circumstances at the onset of the Christian era and into the ministry of Christ and the apostles. For their part, the apostles, faced with a challenge relating to the continuing relevancy of the Law of Moses which the Jews continued to espouse and the question of whether the gospel should be taken to the gentiles, were met with severe opposition from the Jews who persecuted them as they had persecuted their Lord and Savior himself. Even their proselytes, and for a time some of

the apostles themselves, took issue with including the gentiles as a covenant people and affording them any exceptions to strict compliance with the Law of Moses. These issues were finally resolved by revelation from the Lord, with respect to whom it was declared that “He is no respecter of persons,” as He had taught the Nephites on the American continent when he said, through his prophet Nephi: “{A}nd he inviteth them all to come unto him and partake of his goodness; and he denieth none that come unto him, black and white, bond and free, male and female; and he remembereth the heathen; and all are alike unto God, both Jew and Gentile.” (2 Ne. 26:33.) And thus was the principle of religious freedom taught unto the children of Israel and unto the Nephites.

As for the Greeks, the Apostle Paul, while on his missionary visit to Athens, noted numerous magnificent shrines and temples which lined the city’s streets, for Athens was a city saturated with idolatry, and that the cautious Greeks had even erected an altar dedicated to the Unknown God, lest they should offend some god that had been inadvertently overlooked. Luke records that while Paul awaited the arrival of his companions, “his spirit was stirred in him, when he saw the city wholly given to idolatry,” Luke 17:17. Moved by that spirit, Paul attempted to teach the Athenians the truths of the gospel both in the Jewish synagogue and in the marketplace. Later he was taken before the famed council of the Areopagus, on Mars Hill, where he delivered a powerful sermon on the subject of the Unknown God. But, though the Athenians were willing to listen to his new philosophy, as indeed they were to anything novel or extraordinary, when Paul spoke of the resurrection they mocked him. (See Acts 17:32.) Paul even told the learned men of Athens of their ignorance, of their status as children of God, and of their eventual resurrection after death. (See Life and Teachings of Jesus and the Apostles, Student Manual, p. 229.)

The Romans, for their part, although they persecuted and killed the Saints and subjected the apostles to martyrdom, ultimately adopted Christianity as the official religion of the empire; however, by this time the pure doctrine taught by Christ and the apostles had been altered by the doctrines of men, and apostasy from the Church established by Christ during his ministry had begun to run rampant both in the Church and from

the Church. This included the disappearance of any semblance of religious freedom.

We conclude this sub-section "C" by quoting from Talmage, *The Articles of Faith, Religious Intolerance and Intolerance is Unscriptural*, pp. 361-63:

"...There is little cause for wonder that in the fact that the early Christians, zealous for the new faith into which they had been baptized, and newly converted from idolatry and pagan superstitions, should consider themselves superior to the rest of humanity still sitting in darkness and ignorance. Even John, traditionally known as the apostle of love, but surnamed by the Christ, he and his brother James, Boanerges, or Sons of Thunder, was intolerant and resentful towards those who followed not his path; and more than once had to be rebuked by his Master....{W}hile travelling with their Lord through Samaria, the apostles James and John were incensed by the Samaritans lack of respect toward the master, and craved permission to call fire from heaven to consume the unbelievers; but their revengeful desire was promptly rebuked by the Lord, who said: 'Ye know not what manner of spirit ye are of. For the Son of Man is not come to destroy men's lives, but to save them.'

"Intolerance is Unscriptural—The teachings of our Lord breathe the spirit of forbearance and love even to enemies. He tolerated, though he could not approve, the practices of the heathen in their idolatry, the Samaritans with their degenerate customs of worship, the luxury loving Sadducees, and the law bound Pharisees. Hatred was not countenanced even toward foes. His instructions were: 'Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you; that ye may be the children of your father which is in heaven: for he maketh the sun to rise on the evil and on the good, and he sendeth rain on the just and on the unjust.' The Twelve were commanded to salute with their blessing every house at which they applied for hospitality. True, if the people rejected them and their message, retribution was to follow; but this visitation of cursing was to be reserved as a divine prerogative. In the Parable of the Tares, Christ taught the same lesson of forbearance; the hasty servants wanted to pluck out the weeds straightway, but were forbidden lest they root up the wheat also, and were assured that a separation would be effected in the time of harvest.

“In spite of the prevailing spirit of toleration and love pervading the teachings of the Savior and the apostles, attempts have been made to draw from the scriptures justification for intolerance and persecution. Paul’s stinging words addressed to the Galatians have been given a meaning wholly foreign to the spirit that prompted them. Warning the saints of false teachers, he said: ‘As we said before, so say I now again, if any man preach any gospel unto you than that ye have received, let him be accursed.’ On the strength of this forceful admonition combined with denunciation, some have sought to justify persecution on account of differences in religion; but such misconstruction must be charged to shallow reading and even prejudice. Was it not—is it not—rational to say that any man or coterie of men, any sect, denomination or church that would preach its own conceptions as the authentic Gospel of Jesus Christ, is guilty of blasphemy and deserving of the curse of God? Paul leaves us not in doubt as to the character of the Gospel he so forcefully defended, as his later words show: ‘But I certify you, brethren, that the gospel which was preached of me is not after man. For I neither received it of man, neither was I taught it, but by the revelation of Jesus Christ.’ Let it be remembered that vengeance and recompense belong to the Lord....”

#### D. Religious Freedom In The Face Of Apostasy From The Church Established By Christ And During The Dark Ages And The Inquisitions.

“The issue of the relation between religion and the state took clearer form in the West as Christianity came to the fore. Jesus himself became a victim of religious intolerance when, according to the New Testament, he was arrested for his religious teachings and turned over to Rome as a would-be Messiah by the high priest of Judaism and his supporters. Christians were first persecuted as a distinct group from the Jews when Nero blamed them for the great fire of Rome in 68 C.E. In the early second century, the Emperor Trajan officially proscribed the Christian religion, and Christians suffered varying degrees of persecution. Over the next two hundred years Christians experienced repression when certain emperors insisted on their adherence to Roman state religious traditions, which many Christians suffered martyrdom to avoid,” Freedom of Religion, New World Encyclopedia.

For the true believers in Christ, freedom of worship was one of the great cornerstones on which they built their house of faith. Emblazoned on the banners of their souls were the immortal words of their Founder: “Ye shall know the truth and the truth shall make you free.” (John 8:32.) They stood fast “in the liberty wherewith Christ hath made us, free, and be not entangled again with the yoke of bondage.” (Gal. 5:1.)

“But scarcely more than a hundred years after the King of Freedom proclaimed liberty to the captives and the opening of the prison doors of the mind to sin-enslaved souls, the liberty that was in Christ died an agonizing death. The world won a temporary victory in the war we wage against evil. Apostasy became universal; darkness covered the earth, and gross darkness the minds of the people. Men lost the knowledge of God and his saving laws and created a new and fallen religion that still bore the name of the ancient faith.

“By the time of the emperor Constantine, who reigned from 306 to 337, this fallen faith without saving power had sufficient numerical strength and political power to give it preeminence over the even more perverse pagan ways of a spiritually decadent empire. In that day, as a historian of world renown has written, we see ‘its relation to the temporal power, and its social and political position and import, undergo an entire and permanent change.’ Indeed ‘the reign of Constantine the Great marks the transition of the Christian religion from under persecution by the secular government to union with the same; the beginning of the state-church system....

“As this union of church and state extended its influence, ‘the lines of orthodoxy were more and more strictly drawn; freedom of inquiry was restricted; and all departure from the church-state system was met not only, as formerly, with spiritual weapons, but also with civil punishments. So early as the fourth century the dominant party, the orthodox as well as the heterodox, with help of the imperial authority practiced deposition, confiscation, and banishment upon its opponents. It was but one step thence to the penalties of torture and death, which were ordained in the middle age, and even so late as the seventeenth century, by church-state authority, both Protestant and Roman Catholic, and continue in many countries to this day, against religious dissenters of every kind as enemies

to the prevailing order of things. Absolute freedom of religion and worship is in fact logically impossible in the state-church system. It requires the separation of the spiritual and temporal powers.” (McConkie, *A New Witness For the Articles of Faith*, Ch. 66, pp. 663, 664.)

McConkie continues in Chapter 67, pp. 668-70: “Just as surely as the blessed Christ will usher in the Millennium of peace and freedom, so an accursed Constantine gave to the world a Black Millennium, a millennium of blood and horror in which men believed the approved creeds of the day or died amid flaming fagots. For more than a thousand years, from the fore part of the fourth century to the end of the fifteenth, the world lay in darkness. It was a dark and abysmal night; the stench of spiritual death poisoned the nostrils of men; and the jaws of hell gaped wide open to welcome the sensual sinners who loved darkness rather than light because their deeds were evil. In our more enlightened day, it is difficult to conceive of the depth to which government and religion and mortality, both private and public, sank in what men universally describe as the dark ages.

“The lesson relative to freedom of worship, to be learned from all of this is summed up by Philip Schaff in these words: ‘An inevitable consequence of the union of church and state was restriction of religious freedom in faith and worship, and the civil punishment of departure from the doctrine and discipline of the established church....After the Nicene age all departures from reigning state-church were not only abhorred and excommunicated as religious errors, but were treated also as crimes against the Christian state, and hence were punished with civil penalties; at first with deposition, banishment, confiscation, after Theodosius, even death.’” This persecution of heretics was a natural consequence of the union of religious and civil duties and rights, the confusion of the civil and the ecclesiastical, the judicial and the moral, which came to pass since Constantine....

“It was not till the eighteenth century that a radical revolution of views was accomplished in regard to religious toleration; and the progress of toleration and free worship has gone hand in hand with with the gradual loosening of the state-church basis and with the clearer separation of civil and religious rights and of the temporal and spiritual power.” (See *History of the Christian Church*, 3:138-40, for Schaff quotation.)

These legal enactments, edicts, official declarations and actions by secular and ecclesiastical leaders emerged during the historical period under consideration in this sub-section:

a) In the early fourth century, Constantine I issued the Edict of Milan in which he declared, "It has pleased us to remove all conditions whatsoever...concerning the Christians and now any one of those who wishes to observe Christian religion may do so freely and openly, without molestation....We have also conceded to other religions the right of open and free observance of their worship for the sake of the peace of our times." A decade later, however, Constantine intervened in behalf of the "orthodox" party in the Arian controversy and commanded Christians not to associate with Jews and declaring that the state would now be the final arbiter in distinguishing proper doctrine from heresy. In 392 C.E. he declared orthodox (Catholic) Christianity to be the official state religion. Christians thereafter began using the power of the state to persecute other Christians and to pressure pagans to convert to Christianity. (See New World Encyclopedia, Supra.)

b) During the reign of Theodosius I, Augustine of Hippo, after arguing successfully that the state should intervene militarily on behalf of the Roman Catholic Church against the Donatist schism in North Africa, declared: "Whosoever, therefore, refuses to obey the laws of the emperors which are enacted against the truth of God, wins for himself a great reward; but whosoever refuses to obey the laws of the emperor which are enacted in behalf of truth, wins for himself a great condemnation." (A treatise Concerning the Correction of the Donatists.)

c) In 494 C.E., after Christianity had replaced the Roman gods as a state religion, Pope Gelasius I issued his oft cited "Two Swords Letter," insisting that in spiritual matters, the church, not the state, was supreme, to wit: "There are two powers, august Emperor, by which this world is chiefly ruled, namely, the sacred authority of the priests and the royal power. Of these that of the priests is more

weighty, since they have to render an account for even the kings of men in the divine judgment. You are also aware, dear son, that while you are permitted honorably to rule over humankind, yet in things divine you bow your head humbly before the leaders of the clergy and await from their hands the means of your salvation.”

d) Over the next thousand years, in the West church and state vied for power and supremacy in both spiritual and temporal affairs. In the meantime, Islam emerged as a force in much of the former Eastern Roman Empire. Islam made no distinction between religion and temporal state; however, until the modern era, on the question of religious freedom, both Jews and Christians were permitted to practice their religion in Muslim lands. The Qur’an, 2:256, declared: “Let there be no compulsion in religion. Truth stands out clear from Error; whoever rejects Evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.”

“Yet other passages in the Qur’an indicated that pagans could be enslaved or even killed if they did not accept Islam. In practice, however, religions such as Hinduism and Buddhism usually found a degree of tolerance from Islamic governments. To be sure, Christians in large numbers nevertheless suffered as Islamic armies marched on what had formerly been the Christian Empire in the East, and many were persuaded to convert to Islam by the sword. Nor can it be denied that thousands of Muslims and even many Eastern Christians were slaughtered by European Christians during the Crusades.

“Jews fared better under Islamic governments than under European Christian ones. A succession of Christian kings expelled Jews from their lands. Jews were forbidden to own property and engage in certain professions. Preachers often blamed them for the Crucifixion and strongly discouraged Christians from associating with them. The first Crusade, though not directed against the Jews, nonetheless resulted in the massacre of many Jews by crusading Christians, thirsty for infidel blood. At other

times, some Christian preachers overtly aroused anti-Jewish mobs to violence.

“The Inquisition, originally established by papal bull in 1184, had targeted Christian heretics such as the Cathars before it turned its sights on Jews. Punishment, which was carried out by the secular government rather than the church courts, ranged from confiscation of property to prison, banishment, and, of course, public execution. Torture was not considered punishment, but a permissible tool of church investigators. Targets of the Inquisition included Cathars of Southern France, the Waldensians, the Hussites, the Knights Templar, Spiritual Franciscans, witches (the most famous being Joan of Arc), Jews, Muslims, freethinkers, and Protestants,” New World Encyclopedia, *supra*.

“Bohemia (present-day Czech Republic) enjoyed religious freedom between 1436 and 1520, and became one of the most liberal countries in the Christian world during that period of time. The so-called Basel Compacts of 1436 declared the freedom of religion between Catholics and Utraquists. In 1609 Emperor Rudolf II granted Bohemia greater religious liberty with his Letter of Majesty. The privileged position of the Catholic Church in the Czech kingdom was firmly established after the Battle of White Mountain in 1620. Gradually freedom of religion in Bohemian lands came to an end and Protestants fled or were expelled from the country. A devout Catholic, Emperor Ferdinand II forcibly converted Austrian and Bohemian Protestants.

“Poland has a long tradition of religious freedom. The right to worship freely was a basic right given to all inhabitants of the Commonwealth throughout the 15th and early 16th century, however, complete religious freedom was officially recognized in Poland in 1573 during the Warsaw Confederation. Poland kept religious freedom laws during an era of religious persecution which was an everyday occurrence in the rest of Europe.

“The General Charter of Jewish Liberties known as the Statute of Kalisz was issued by the Duke of Greater Poland Boleslaus the Pious on 8 September 1264 in Kalisz. The statute served as the basis for the legal position of Jews in Poland and led to creation of the Yiddish-speaking autonomous Jewish nation until 1795. The statute granted exclusive jurisdiction of Jewish courts over Jewish matters and established a separate

tribunal for matters involving Christians and Jews. Additionally it guaranteed personal liberties and safety for Jews including freedom of religion, travel and trade. The statute was ratified by subsequent Polish Kings: Casimir III of Poland in 1334, Casimir IV of Poland in 1453 and Sigismund I of Poland in 1539. The Commonwealth set a precedent by allowing Jews to become ennobled,” Freedom of religion – Wikipedia, the free encyclopedia, supra.

### III. HISTORICAL AND LEGAL BASIS FOR RELIGIOUS FREEDOM—THE PROTESTANT REFORMATION THROUGH COLONIAL AMERICA, THE AMERICAN REVOLUTION, AND THE ENSHRINMENT OF CONSTITUTIONAL GOVERNMENT

#### A. The Historical Setting And The Evolution Of Freedom Of Thought And Action:

“Christian Protestantism may be viewed as the product of late medieval ‘protests’ against various elements of the Roman Catholic church. Though there were always persons within Catholicism pressing for reforms, the beginning of the Protestant Reformation is usually dated to 1517 when Martin Luther (1483-1546), an Augustinian monk in Wittenberg, Germany, published his ninety-five theses against papal indulgences. The theses challenged the authority of the pope and by extension of the Roman Catholic church. Protestants since that time are generally considered to be those Christians who are neither Roman Catholics nor Eastern (or Russian) Orthodox.

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“Perhaps the greatest legacy of the Reformation was the increased attention to freedom, one’s own freedom more than that of others. This concern eventually grew into religious toleration and the desire for greater political self-determination. The ending of the single, ‘universal’ church and the proliferation of new churches and sects had echoes in the political arena, most notably in the independence of the United States of America. A great many factors contributed to the establishment of the United States, but the political and religious heritage of the Protestant reformers was certainly among them...,” Encyclopedia of Mormonism/edited by Daniel H. Ludlow, v. 3, pp. 1170-71.

We quote from Professor W. Cole Durham, Director of the International Center for Law and Religious Studies:

“...For much of human history, it was assumed that religious truth required state implementation of religious beliefs and that political stability required presupposed religious and political homogeneity. As a matter of logic it was thought that if a particular set of religious beliefs are true, their truth provides a natural rationale for implementing them. Moreover, the assumption was that society could not be stable without an established homogeneous religion that could serve as a kind of social glue and ultimate motivation for loyalty and obedience to the regime. The impression was reinforced by the religious wars that had ravaged Europe until that time.

“At least at the level of theory, the writings of John Locke in his Letter Concerning Toleration represented a dramatic departure on both fronts. In this respect Locke is probably best known for his powerful arguments that the machinery of state coercion is ineffective in the religious domain: the state can force no person to heaven. The most it can do is cultivate outward hypocrisy. But in many respects, a second incite buried toward the end of Locke’s letter is even more significant for modern regimes of religious liberty. In the passage in question Locke states:

“‘Now if that church, which agrees in religion with the prince, be esteemed the chief support of any civil government, and that for no reason...than because the prince is kind and the laws are favorable to it; how much greater will be the security of government, where all good subjects, of whatsoever church they be, without any distinction on account of religion, enjoying the same favor of the prince, and the same benefit of the laws, shall become the common support and guard of it; and where none will have any occasion to fear the severity of the laws, but those that do injuries to their neighbors, and offend against the civil peace.’

“This incite has laid the foundation for religious liberty in contemporary regimes. Contrary to what might initially be thought (and what had been thought for centuries), Locke contended that respect for freedom of choice in matters of religion (and more generally with respect to comprehensive world views) is a source of both legitimacy and stability for political regimes...,” Perspectives On Religious Liberty: A Comparative Framework, W. Cole Durham, Jr., pp. 7, 8.

On June 23, 2011, Gary B. Doxey, an Associate Director of the International Center for Law and Religious Studies at Brigham Young University and Chairman of the Center's Development Committee, presented a timely paper/discussion at the Center entitled "Religious Freedom: Historical Perspectives." We quote at length from Professor Doxey, to wit:

"According to the traditional American narrative of the history of religious freedom, the kernel of modern religious liberty began to take shape in Reformation Europe. Courageous thinkers and people of faith rejected the mandatory creeds of a corrupt Christian hierarchy, began to diversify and multiply in their doctrinal variations, and pointed the way toward modern pluralism.

"For centuries prior to the Reformation, Christians who had insisted on religious views different from those of the ruler were considered traitors and a danger to social order who should be tried and executed. It was no different with the advent of the Reformation. It was simply that now vast numbers of adherents to new religious ideas were considered to be in a state of rebellion to their rulers....

"Religious conflict spread throughout western Europe. Doctrinal differences extant in European principalities underscored political differences. Rulers all through Germany and the Low Countries who chafed at Roman or Imperial rule welcomed a theology that subordinated the church to the state. Henry VIII in England shared that motivation, though his theology remained strikingly Catholic for one so willing to rebel against Rome. The point is that from the beginning of the Reformation, the conflict was not merely a question of true doctrine versus heresy. It was perhaps even more a matter of politics. The desire for political independence and freedom from unwanted foreign rule was closely linked to the desire to be free to believe new religious doctrines.

"Almost from the beginning of the Reformation, Catholics and Protestants, backed by self-interested rulers as well as pious ones, marshaled themselves against each other in prolonged wars of attrition. Lasting more than a century {1530-1648}, these wars were one of the great calamities of all time. Though this century enjoyed periods of peace, underlying tensions boiled to the surface numerous times....

"Exhausted by the costly wars and persecutions of the 16th and 17th centuries, European rulers finally had to face up to the fact that not all

would share a single belief. A détente-like form of religious tolerance seemed the only practical way forward. This practical tolerance should not be confused with intellectual respect for multiple beliefs. Much prejudice continued, but the people were finally getting tired of the violence.

“One of the main solutions the leaders resorted to was to divide the territories between Catholic and Protestant regions and expel the remaining of the minority religion to more friendly regions. This is how, for example, the Netherlands was reconfigured. The southwestern provinces that Spain controlled eventually became almost totally Catholic (the future Belgium) and the northeastern ones became officially reformed (the country of the Netherlands). At the start of the conflict, Catholics and Protestants were spread throughout the region. By the end, they were segregated both religiously and politically.

“At the same time as practical accommodations of divergent beliefs began to crop up among the people, legal principles enshrining a degree of toleration appeared in the treaties {Peace of Augsburg (1555), Union of Utrecht (1579), Peace of Westphalia (1648)} that ended the religious wars. These treaties are among the earliest legal documents that acknowledge something resembling religious freedom in Western Europe.

“The most celebrated of these treaties was the Peace of Westphalia in 1648, which ended the devastating Thirty Years War. It was actually a group of treaties negotiated among the competing princes of the dominions that had mostly been a part of the Holy Roman Empire. The Peace of Westphalia signaled the triumph of temporal authority over church rule by allowing rulers to select the religion that would be followed in their own realm, whether Catholic, Protestant, Reformed Protestant, or a combination, and allow the populous to decide for themselves whether to live under that regime or move to another principality. The rule became known as *cuius regio, eius religio* (‘whose region, his religion’).

“Though far from true religious freedom, it was a solid step away from the thousand-year-old European belief that political solidarity required uniformity of Christian doctrine and an important step toward recognizing the political legitimacy of differing views. Not surprisingly, many historians view these treaties, and particularly the Peace of Westphalia, as a clear break with the medieval past and the beginning of the modern era.

“Conventional history calls the 18th century the ‘Age of Enlightenment.’ It was a time of advances in science and philosophy that still reverberate today

“With regard to religious freedom, the idea of tolerance gained momentum, wider acceptance, and an intellectual voice during the Age of Enlightenment. Perhaps most notably, John Locke’s writings {as aforesaid} on toleration pointed out that society would become more stable if government respected diverse beliefs rather than suppressed them in favor of a single unified official religion.

“Though these ideas were largely ignored by European despots, they took root in the fertile soil of the English colonies of the New World. These ideas certainly influenced in profound ways the late-colonial elites of America, such as Thomas Jefferson and James Madison.

“Of more practical significance, perhaps, was the impact of living conditions in America on a much wider group of Americans than just the elites. America was a most remarkable part of the world in the 18th century, unlike any country in Europe. It was home to a population whose diversity of belief was unprecedented in history.

“Many early settlers had actually come to America as refugees fleeing religious persecution. Puritans went to New England. Catholics sought haven in Maryland. Pennsylvania was for the Quakers and later the German Mennonites. Georgia welcomed dissenters of many types, including Jews. Rhode Island was settled by religious dissenters from Massachusetts. New York, Delaware, and New Jersey, too diverse to be identified with one group or another, became havens for pluralism.

“To be sure, many settlers in colonial America had other motives for coming to this land, but there is no doubt that the memory of religious persecution factored into the collective conscience of Americans. Whether fact or fiction, today we still nourish the image of our colonial forefathers as arriving on America’s shores to escape religious persecution. The idea that they were seeking, and were here able to find, religious freedom is a part of American mythology.

“The early American experience demonstrated that colonial government was not particularly tolerant of independents and separatists. Old prejudices were slow to give way. Governments in New England were at first very unfriendly toward Quakers and independent thinkers like Roger Williams and Anne Hutchinson. In many parts of the colonies, Catholics

were suspected of being part of a great papal cabal conspiring to take over free English government. Anglicans in Virginia persecuted the minority Baptists.

“But things changed dramatically over time. By virtue of demography, geography, economic opportunity, and other practical realities, colonial America became a land of de facto religious pluralism even before religious freedom became the law.

“One part of the equation was the impact of revivalism in the Great Awakening. Itinerant preachers called the people to camp meetings and elicited emotional experiences with religion that were less about specific established churches and more about personal status before God. One of the reasons that they were itinerants is that the established churches did not allow some of these new preachers to preach at the pulpit. In fact some local laws outlawed itinerant preaching for the very purpose of suppressing new doctrines and methods.

“Baptists and Methodists, who were very much in the minority in early colonial times, rapidly gained ground in the 18th century. Soon vast numbers of otherwise unchurched Americans were enthusiastically embracing a personal Christian religion—but not religion of the established Church of England or Congregational variety. The Great Awakening brought home a heightened sense that man could and should rebel against unjust established authority and stand independently in his own convictions. Many scholars view its influence as foundational to the later bid for independence from Britain...”

The majority of Americans at the time of the Revolution were religiously fervent but not church-goers. One in eight was formally a member of a church. Adherents to diverse minority faiths, whose numbers were fueled by immigration and revival, outnumbered in the aggregate the members of traditional established churches.

“Degrees of religious establishment existed in various forms in some of the colonies and even after independence in a few states. However the trajectory and momentum of the American condition worked forcefully in a different direction. The Great Awakening, the unprecedented religious diversity of the American populous, the distance and spread of settlement, the ready ability of Americans to pull up stakes and move to new communities, and the weakness and distance of formal ecclesiastical authority deflated any attempt to unify Americans under established

religion. The influence of Enlightenment thought on late-colonial elites proved compelling to the discussion of new forms of government and the possibility of independence. All these influences, and not least the War of independence itself, engendered an irreversible break with the European past and the emergence of a new American ideal for freedom.

“The culminating chapter of the American religious freedom narrative is that religious freedom was formulated into a firm legal concept in revolutionary America.

“The War for independence cut short any possibility that a European-style established church would gain traction among Americans. Through the wisdom and advocacy of enlightened founders such as Madison and Jefferson, freedom of religion became part of our constitutional heritage in the First Amendment with its two clauses, the prohibition of established churches and freedom to exercise one’s faith unmolested by government....

“{S}ince their promulgation in the United States Constitution , ideas about religious freedom have spread throughout the world. Religious freedom has now become one of the United States’ most important intellectual exports. It is part of the fabric of international human rights instruments and many of the world’s constitutions, though with varying degrees of adherence to original concepts. This is not to say that modern religious freedom is wholly American in origin or application.”

#### B. Constitutional And Statutory Provisions, Declarations And Pronouncements, And Enshrinement Of Constitutional Government:

The need for reformation became clearly evident. Some of the earlier and most noteworthy constitutional and statutory provisions, and official declarations and pronouncements, emerged during the historical period under consideration in this sub-section B, to wit:

1. The Diet of Worms in 1551 when Martin Luther risked his life rather than taking the opportunity to recant his views. Said he, “Unless I am convinced by proofs from Scriptures or by plain and clear reasons and arguments, I can and will not retract, for it is neither safe nor wise to do

anything against conscience. Here I stand. I can do no other. God help me.”

2. A seesaw battle between Catholics and Protestants, in both Europe and England, resulted in Mary I of England returning that country briefly to Catholicism in 1553; however, her half-sister, Elizabeth I restored the Church of England in 1558;

3. In the Holy Roman Empire, Charles V agreed to tolerate Lutheranism in 1555 at the Peace of Augsburg;

4. In 1558, the Transylvanian Diet of Turda declared free practice of both Catholic and Lutheran religions, but prohibited Calvinism. Ten years later, in 1568, the Diet extended the freedom to all religions, declaring that ‘It is not allowed to anybody to intimidate anybody with captivity or expulsion for his teaching.’ The Diet of Turda is considered by mostly Hungarian historians as the first legal guarantee of religious freedom in the Christian Europe.

5. In France peace was negotiated between Protestants and Catholics at the Treaty of St. Germain in 1570; however, it was not until 1598 when Prince Henry IV came to the throne that religious tolerance was formalized in the Edict of Nantes. It would remain in force for over 80 years until its revocation in 1685 by Louis XIV. Intolerance continued until the French Revolution when state religion was abolished and all church property confiscated.

6. In 1573 the Warsaw Confederation formalized the freedom of religion in the newly formed Polish-Lithuanian Commonwealth.

7. “However, intolerance of dissident forms of Protestantism continued, as evidenced by the exodus of the Pilgrims who sought refuge, first in Holland, and ultimately in America, founding the Plymouth Colony in Massachusetts in 1620. William Penn, the founder of Philadelphia was involved in a case which had a profound effect upon future American law and that of England. A jury refused to convict William Penn of preaching a Quaker sermon, which was illegal. Even though the jury was imprisoned for their acquittal, they stood by their decision and helped

establish freedom of religion. The Puritans in England, on the other hand, would soon demonstrate a more intolerant brand of Protestantism during the reign of Oliver Cromwell in the mid seventeenth century,” New World Encyclopedia, supra.

8. The Peace of Westphalia, signed in 1648, was a turning point in the history of religious freedom in the West. It provided that: “There shall be a Christian and Universal peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty the Holy Roman Emperor, and his most Christian Majesty {of France}; as also, as between all and each of the Allies....That this peace and Amity be observ’d and cultivated with such a Sincerity and Zeal, that each Party shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the Roman Empire, and the Kingdom of France flourish, by entertaining a good and faithful Neighbourhood.”

9. In England, meanwhile, the bloody warfare between Catholics and Protestants drew the attention of John Locke who wrote essays and letters on the subject of toleration. His works played a significant role in the “Glorious Revolution of 1668” and later the American Revolution. Illustrative of his writings is this: “The care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. And such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force. Confiscation of estate, imprisonment, torments, nothing of that nature can have any such efficacy as to make men change the inward judgment that they have framed of things.”

Freedom of religion in colonial America followed this course:

Most of the early colonies, which were in part founded as a result of religious persecution, were generally not tolerant of dissident forms of worship with Maryland being the only exception. For example, Roger Williams found it necessary to found a new colony in Rhode Island to escape persecution in the theoretically dominated colony of Massachusetts. The Puritans of the

Massachusetts Bay Colony were the most active of the New England persecutors of Quakers, and the persecuting spirit was shared by the Plymouth Colony and the colonies along the Connecticut River. In 1660 one of the notable victims of the religious intolerance was English Quaker Mary Dyer who was hanged in Boston, Massachusetts for repeatedly defying a Puritan law banning Quakers from the colony. As one of the four executed Quakers known as the Boston martyrs, the hanging of Dyer on the Boston gallows marked the beginning of the end of the Puritan theocracy and New England independence from English rule, and in 1661 King Charles II explicitly forbade Massachusetts from executing anyone for professing Quakerism.

“Another notable example of religious persecution by Puritans in Massachusetts was the Salem witch trials in 1692 and 1693. Thirty-one witchcraft trials were held, convicting twenty-nine people of the capital felony of witchcraft. Nineteen of the accused, fourteen women and five men, were hanged. One man who refused to enter a plea was crushed to death under heavy stones in an attempt to force him to do so. \

“Freedom of religion was first applied as a principle of government in the founding of the colony of Maryland, founded by the Catholic Lord Baltimore, in 1634. Fifteen years later (1649), the first enactment of religious liberty, the Maryland Toleration Act, drafted by Lord Baltimore, provided: ‘No person or persons...shall from henceforth be any waies troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof.’ The Maryland Toleration Act was repealed with the assistance of Protestant assemblymen and a new law barring Catholics from openly practicing their religion was passed. In 1657, Lord Baltimore regained control after making a deal with the colony’s Protestants, and in 1668 the Act was again passed by the colonial assembly. This time, it would last more than thirty years, until, 1692, when after Maryland’s Protestant Revolution of 1689, freedom of religion was again rescinded. In addition in 1774, an Act was passed ‘to prevent the growth of Popery in this Province,’ preventing Catholics from holding political office. Full religious toleration would not be restored in Maryland until the American Revolution, when Maryland’s Charles Carroll of Carrollton signed the American Declaration of Independence,” Freedom of Religion in the United States – Wikipedia, the free encyclopedia.

### C. Conditions Right For Restoration Of Christ's Church:

“Freedom of worship was conceived in Italy during the Renaissance; it gestated in Germany and Western Europe during the Protestant Reformation; but it was born in America after the Constitution of the United States became the supreme law of the land. The establishment of freedom of worship heaps no credit upon the original colonizers. They neither wanted it nor sought it. It was forced upon them by political necessity. Political necessity? Nay, but by divine providence, all in preparation for the restoration of the gospel in the dispensation of the fullness of times. Jesus told the Nephites that the Lord would set up in America ‘a free people by the power of the Father.’ (3 Nephi 21:4).” See McConkie, *A New Witness for the Articles of Faith*, p. 168, *supra*.

It is the position of the Church of Jesus Christ of Latter Day Saints that Jesus did in fact “set up in America a free people by the power of the Father.” By divine providence, the restoration of the gospel through the Prophet Joseph Smith in the Dispensation of the Fullness of Times, following the American Revolution, was in fulfillment of that which Jesus said he would do.

Joseph Smith, who was the first prophet of that Dispensation, “while reproving certain of his brethren for their intolerance toward the cherished beliefs of other men, taught that even idolaters ought to be protected in their worship; that, while it would be a strict duty of any Christian to direct his efforts toward enlightening such benighted minds, he would not be justified in forcibly depriving even the heathen of their liberty in worship. In the sight of God, idolatry is most heinous; yet he is tolerant of those who, knowing Him not, yield to their inherited instinct for worship by rendering homage even to stocks and stones. Deadly as is the sin of idolatrous worship on the part of him to whom light has come, it may represent in the savage the sincerest adoration of which he is capable. The voice of the Lord has declared that the heathen who have known no law shall have part in the first resurrection,” Talmage, *The Articles of Faith*, pp. 265, 266, *supra*.

## IV. HISTORICAL AND LEGAL BASIS FOR RELIGIOUS FREEDOM: POST-AMERICAN REVOLUTION; ESTABLISHMENT OF CONSTITUTIONAL GOVERNMENT;

## RESTORATION OF THE CHURCH OF JESUS OF LATTER DAY SAINTS; AND WORLD-WIDE SPREAD OF DEMOCRACY.

### A. Establishment Of Constitutional Government:

We now launch into an outline of some of the most relevant historical events, constitutional and statutory provisions, and official proclamations which followed the American Revolution and the subsequent Restoration of the Church of Jesus Christ in this the Dispensation of the Fullness of Times:

The United States of America was established on the foundational principles of the Declaration of Independence written by Thomas Jefferson in 1776 and which provides: “We hold these truths to be self evident: That all men are created equal; that they are endowed by their Creator with certain Inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”

In another of Jefferson’s works, first drafted in 1777, but not adopted as law by the Virginia legislature until 1786 as the Virginia Statute for Religious Freedom, he proclaimed: “{N}o man shall be compelled to support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or beliefs; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.” (See Freedom of religion - Wikipedia, the free encyclopedia, supra.)

On September 17, 1787, the Constitution of the United States was ratified by unanimous consent of all of the states present. Article IV, Section 2 provides: “Privileges of citizens of states. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.” Article VI, Section 3, provides that “...{N}o religious test shall ever be required as a qualification to any office or public trust under the United States.”

On December 15, 1791, Amendment 1 to the Constitution was ratified. It provides: “Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

On July 9, 1868, Amendment 14 to the Constitution was ratified. It provides: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

In the United States, therefore, religious civil liberties are guaranteed by the First Amendment. The “Establishment Clause,” stating that “Congress shall make no law respecting an establishment of religion,” is generally read to prohibit the Federal Government from establishing a national church or religion or excessively involving itself in religion, particularly to the benefit of one religion over another. The “Free Exercise” clause which states that Congress cannot “prohibit the free exercise” of religious practices, however, is sometimes interpreted by the courts to be less than absolute in cases which involve practices which negatively impact on the health, safety and general welfare of the people.

As above stated, Article VI, Section 3, of the Constitution, provides that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” As of 2007, however, seven states have language included in their constitutions that requires state office-holders to have particular religious beliefs. These states include Massachusetts, Maryland, North Carolina, Pennsylvania and Tennessee. “Some of these beliefs (or oaths) were historically required of jurors and witnesses in court. Even though they are still on the books, these provisions have been rendered unenforceable by U.S. Supreme Court decisions.” (See Freedom of religion in the United States – Wikipedia, the free encyclopedia, supra.)

“The most famous of the express prohibitions against governmental action are contained in the first eight of the ten amendments to the Constitution that make up the Bill of Rights. By themselves, these provisions had been interpreted to apply only to the federal government, but the Fourteenth Amendment has now been held by the U.S. Supreme Court to make most of those Bill of Rights

guarantees binding on state governments as well....Because the Bill of Rights and the structural provisions of the Constitution protect individual rights against government intrusions, Latter Day Saints and other religious groups have been its distinct and identifiable beneficiaries,” Encyclopedia of Mormonism, Constitutional Law, v. 2, p. 315.

“Professor Doxey, in his “Religious Freedom: Historical Perspectives,” as aforesaid, makes this timely observation: “The culminating chapter of the American religious freedom narrative is that religious freedom was formulated into a firm legal concept in revolutionary America.

“The War for Independence cut short any possibility that a European-style established church would gain traction among Americans. Through the wisdom and advocacy of enlightened founders such as Madison and Jefferson, freedom of religion became part of our constitutional heritage in the First Amendment with its two clauses, the prohibition against established churches and freedom to exercise one’s faith unmolested by government.”

In the meantime, in 1789, the following Declaration of the Rights of Man and of Citizens, Article 10, was adopted in Revolutionary France: “No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.”

While affirming the right to religious freedom, The French adopted a more militantly secularist path. Not only would the state reject the establishment of any particular religion, it would take a vigilant stand against religion involving itself in the political arena. The American tradition, on the other hand, tended to accept religious involvement in public debate and allowed clergymen of various faiths to serve in public office.

Constitutional government became the norm throughout the world over the next century, usually with guarantees of religious freedom. Unlike the American model, however, many European and colonial governments supported a state church, while minority religions and new sects still faced disadvantages and sometimes persecution.

## B. The Advent Of Communism And Nazism; And World War II:

The advent of Soviet Communism presented a new threat to religious freedom, as Marxism-Leninism took a militantly materialistic and atheistic stand. Seeing religion as a tool of capitalist oppression, Soviet Communists had no compunction in destroying churches, mosques, and temples, turning them into museums of atheism, and even summarily executing clergymen and other believers by the thousands.

During World War II, fascist governments also brutally repressed religions that refused to cooperate with their nationalistic aims. Nazism added a particularly virulent brand of racism to the mix, and Hitler succeeded in murdering the majority of European Jews before finally facing military defeat.

### C. The United Nations, The World-Wide Spread Of Democracy, And The Law Of Religious Freedom:

“After World War II, a new hope emerged with the creation of the United Nations as a bastion of international law. Its {1948} Universal Declaration of Human Rights included the seminal language mentioned in its Article 18, which also became the basis of important other documents in international law. It reads: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.’

“The communists, led by the Soviet Union, begrudgingly accepted the declaration, perhaps with the cynical attitude that it was only as powerful as the paper it was written on. The Muslim world, however, has taken more formal exception to Article 18, objecting that the Qur’an outlaws both ‘blasphemy’ (thus limiting the expression of religious ideas) and ‘apostasy’ (thus forbidding Muslims from changing their religion),” Freedom of religion, New World Encyclopedia, p. 9.

In the meantime, shortly prior to, during and following World War II, the concept and recognition of religious freedom was gaining its adherents. “Ecumenical concern for religious freedom and liberty is older than the World Council of Churches. The Oxford Conference of Churches on ‘Church State and

Community' in 1937 first elaborated the understanding of the notion of religious freedom and liberty and named several freedoms that were necessary for the church to fulfill its obligations to society. These, inter alia, were: the right of public and private worship, preaching and teaching; freedom from imposition by the State of religious ceremonies and forms of worship; freedom to determine the nature of its government and the qualifications of its ministers and members; freedom of the individual to join the church; the right to control over the education of ministers and the right to provide religious instruction to youth; freedom of Christian service and missionary activity, both at home and abroad; freedom to cooperate with other churches; and freedom to use public facilities available to all citizens or associations as will make it possible to accomplish these ends. This early understanding of religious freedom is all encompassing. It comes out of the colonial context of which the missionary enterprise was an integral part. Subsequently, however, nearer to the period of the drafting of the Universal Declaration, the understanding of the right to religious liberty was set in the wider context of universal human rights which were the essential basis of a new just and peaceful world order.

“The first Assembly of the WCC (Amsterdam, 1948), meeting soon after the second World War, took cognizance of the work done by the Life and Work Movement and issued a Declaration of Religious Liberty that articulated a broad consensus among WCC member churches and was closer to the provisions of Article 18 of the Universal Declaration, with a focus on the rights of the individual rather than the rights of the Church. It provided: ‘Every person has the right to determine his own faith and creed. Every person has the right to express his religious beliefs in worship, teaching and practice, and to proclaim the implications of his beliefs for relationships in a social or political community. Every person has the right to associate with others and to organize with them for religious purposes. Every religious organization formed or maintained by action in accordance with the rights of individual persons, has the right to determine its policies and practices for the accomplishment of its chosen purposes.’” (See Presentation by Peter Weiderud, Director, CCIA, at the EKD Working Group on Religious Freedom, Hanover, 18 December, 2003, World Council of Churches, Religious Freedom and Liberty in the Emerging Context.)

In 1944, a joint committee of the Federal Council of Churches of Christ in America and the Foreign Missions Conference of North America, formulated a

“Statement on Religious Liberty.” It provided: “Religious liberty shall be interpreted to include freedom to worship according to conscience and to bring up children in the faith of their parents; freedom for the individual to change his religion; freedom to preach, educate, publish and carry on missionary activities; and freedom to organize with others, and to acquire and hold property, for these purposes.”

Following the adoption of the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948, the United Nations and other organizations issued these human rights instruments with reference to religious freedom and belief:

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948). Article 2: This article defines genocide as any act “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”
2. On November 4, 1950, the European Convention for the Protection of Human Rights and Freedoms was enacted. It was entered into force September 3, 1953, and was amended by Protocol No. 3 entered into force September 21, 1970, and Protocol 5, entered into force December 21, 1971. Article 9 reads as follows: “
  - a) Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.
  - b) Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Article 9 is virtually identical to Article 18 of the International Covenant on Civil and Political Rights (1966) and closely parallels Article 12 of the American Convention on Human Rights (1969), both hereinafter cited in this paper. (See Perspectives

on Religious Liberty: A Comparative Framework, W. Cole Durham, Jr., Brigham Young University, p. 26.) Professor Durham states that “The first thing to note about Article 9 is that it applies to everyone. This is one of the most fundamental achievements of the law of religious freedom in this century, and in that sense represents a relatively recent universalization of religious freedom claims.”

3. Convention Relating to the Status of Refugees (1951). Article 4: Refers to refugees being accorded the same rights as nationals “with respect to freedom to practice their religion and freedom as regards the religious education of their children.”
4. Convention relating to the Status of Stateless Persons (1954). Articles 3 & 4 Contain the same language, with respect to religion or belief, as found in the Charter of the United Nations and the Convention on the Status of Refugees.
5. Convention against Discrimination in Education (1960). Articles 1, 2, 5: These articles state that the establishment or maintenance of separate educational institutions for religious reasons is not discriminatory, if it is in keeping with the wishes of parents or legal guardians, and providing that these institutions conform to educational standards developed by competent authorities, and are directed to the full development of the human personality and to strengthening respect for human rights and fundamental freedom.
6. International Convention on the Elimination of All Forms of Racial Discrimination (1965). Article 5: This article declares that full compliance with this convention includes the right to freedom of religion or belief for all racial and ethnic groups, along with other fundamental rights and freedoms.
7. International Covenant on Civil and Political Rights (Covenant on Civil and Political Rights) (1966). Articles 18, 26: Article 18 is part of this legal treaty....Article 26 guarantees everyone the right to education for the full development of human personality and respect for human rights by promoting understanding, tolerance and friendship among nations, racial and religious groups.

8. International Covenant on Economic, Social and Cultural Rights (1966). Article 13: This article ensures the religious and moral education of children in conformity with the wishes of parents or legal guardians, and uses the phrase “full development of human personality and respect for human rights” found in other human rights instruments.
9. Convention on the Elimination of All Forms of Discrimination Against Women (1979). Article 16: This article deals with women’s rights in the context of family relations. Several Muslim states have reservations to this article due to perceived conflicts with national law and shari’a law. The Committee on the Elimination of Discrimination Against Women (CEDAW) has refuted reservations to Article 16, and has several recommendations regarding conflicts between obligations to the Convention and traditional religious or cultural practices. The Committee calls on States to eradicate such religious? based practices as forced marriage, dowry deaths, and female circumcision.
10. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). Articles 1, 8: This 1981 Declaration is later described in this paper.
11. Convention on the Rights of the Child (1989). Article 14: This article identifies the rights of the child to freedom of religion or belief. It differs from article 5 of the 1981 UN Declaration in that it respects the rights and duties of parents or legal guardian, but places an emphasis on providing direction in a manner consistent with the “evolving” capacity of the child, and calls on states to limit practices of religions or beliefs that may be injurious to the child, as elaborated in Article 18, paragraph 3 of the Covenant on Civil and Political Rights. A child is defined as anyone below the age of 18 years.
12. General Comment Number 22 on Article 18 (1993). Paragraphs 1, 11: As guidance for States Parties who have signed and ratified the treaty and are obligated to submit periodic reports on implementation, the Human Rights Committee has written an eleven paragraph comment on the meaning of Article 18 of the covenant on Civil and Political Rights.

13. Draft Declaration on the Rights of Indigenous Peoples (1994). Articles 12, 13: These articles claim the rights of indigenous peoples to restitution of religious and spiritual property taken without their consent, to manifest, practice, develop and teach their spiritual and religious traditions, and to ensure that indigenous sacred sites, including burial sites, be preserved. (See University of Minnesota Human Rights Library Study Guide: Freedom of Religion or Belief, pp. 5-7.)

14. The Council of Europe in 1950 signed its human rights instrument entitled European Convention for the Protection of Human Rights and Fundamental Freedoms. In Article 9 of this Protocol is repeated Article 18 of the 1948 Universal Declaration of Human Rights in which they declared their respect of the rights of parents to educate children in their own religious and philosophical convictions; and in 1989, thirty-five participating states released a Concluding Document, Principles 16 and 17 of which are re-written versions of Article 18 of the Covenant on Civil and Political Rights and the 1981 UN Declaration. These principles call for dialogue and consultation between OSCE and members of religious faiths and institutions. (Ibid., p. 7)

The Roman Catholic Church, which had long supported repressive state churches in Europe and Latin America, took a decidedly progressive turn when the Second Vatican Council in 1965 declared: "The right to religious freedom has its foundation in the very dignity of the human person. In all his activity a man is bound to follow his conscience in order that he may come to God....It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters of religion.' Today there are no exclusively Catholic state churches outside the Vatican itself, and religious freedom for Protestant groups in majority Catholic countries is much improved, especially in Latin America," Freedom of religion – New World Encyclopedia, supra.

In 1966 the United Nations passed The International Covenant on Civil and Political Rights, as aforesaid. Article 18 of this Covenant includes four paragraphs related to the issue of religious freedom. They provide: "1. Everyone shall have

the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his {her} choice, and freedom either individually or in community with others and in public or private, to manifest his {her} religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his {her} freedom to have or to adopt a religion or belief of his {her} choice. 3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.”

In 1969, the Organization of American States (OAS), in its American Convention on Human Rights, adopted the four paragraphs of Article 12 of the Covenant on Civil and Political Rights. (See University of Minnesota, Freedom of Religion and Belief, *supra.*, p. 7.

American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), which provides, *inter alia*:

## CHAPTER 1 – GENERAL OBLIGATIONS

### Article 1. Obligation to Respect Rights.

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

For the purposes of this Convention, “person” means every human being.

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#### Article 12. Freedom of Conscience and Religion.

Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.

No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Articles 13 through 16 provide for Freedom of Thought and Expression, Right of Reply, Right of Assembly, and Freedom of Association. Article 22 provides for Freedom of Movement and Residence

On August 11, 1978, by joint resolution of the Congress of the United States, the American Indian Religious Freedom Act was passed. It provides in relevant part:

“...{B}e it Resolved by the Senate and the House of Representatives of the United States of America in Congress Assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects and the freedom to worship through ceremonials and traditional rites.

The President shall direct that various Federal departments, agencies, and other instrumentalities responsible for the administering relevant laws to evaluate their policies and procedures in consultation with Native traditional

religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to Congress the results of this evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action. “

“Due to the criticism of the AIRFA and its inability to enforce the provisions it outlined in 1978, on June 10, 1994 the House of Representatives, Committee on Natural Resources and Subcommittee on Native American Affairs met to bring about H.R. 4155 in order to provide for the management of federal lands in a way that doesn't frustrate the traditional religions and religious purposes of Native Americans. Also, H.R. 4230 was set forth to amend the American Indian Religious Freedom Act to provide for the traditional use of peyote as sacrament in religious ceremonies.” (See American Indian Religious Freedom Act – Wikipedia, the free encyclopedia, pp. 1-3, 6.)

Spain's Religious Liberty Law, enacted by the Parliament of Spain in 1980, “Declares that no faith shall be the official State religion, and that rights deriving from freedom of worship and religion shall not be to the detriment of the rights of others. Grants religious legal status, and creates, in the Ministry of Justice, an Advisory Committee on Freedom of Worship,” University of Minnesota Human Rights Library, Study Guide: Freedom of Religion or Belief, p. 15.

In 1981, the African Union (formerly ORGANIZATION OF AFRICAN UNITY, OAU) enacted its African Charter on Human and Peoples' Rights. Article 8 provides: “{F}reedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.” In the same year, THE ARAB LEAGUE issued its Universal Islamic Declaration on Human Rights. Articles 12 and 13 outline the right to freedom of religion with the limits of Shari'a Law. In 1994 The Arab League issued its Charter on Human Rights. Articles 26 and 27 address freedom of religion and belief. The Arab League was established in 1945. It has 22 members: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.” (See University of Minnesota, Human Rights Library, Study Guide: Freedom of Religion and Belief, supra., p. 7.)

“Some of the articles of the Covenant on Civil and Political Rights Regarding Fundamental Freedoms have become international conventions, which are legally binding treaties. In contrast, however, because of the complexity of the topic and the political issues involved, Article 18 of the Covenant on Civil and Political Rights has not been elaborated and codified in the same way that more detailed treaties have codified prohibitions against torture, discrimination against women, and race discrimination. After twenty years of debate, intense struggle and hard work, the General Assembly in 1981 adopted without a vote the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.” (Ibid, p. 2.)

The 1981 Declaration provides:

#### Article 1

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### Article 2

No one shall be subject to discrimination by any State institution, group of persons, or person on grounds of religion or other beliefs.

For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

### Article 3

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

### Article 4

All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

### Article 5

The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full

consciousness that his energy and talents should be devoted to the service of his fellow men.

In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

## Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

To establish and maintain appropriate charitable or humanitarian institutions;

To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

To write, issue and disseminate relevant publications in these areas;

To teach a religion or belief in places suitable for these purposes;

To solicit and receive voluntary financial and other contributions from individuals and institutions;

To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

## Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

## Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

“While the 1981 Declaration was adopted as a non-binding human rights instrument, several states had reservations. Romania, Poland, Bulgaria, Czechoslovakia and the then U.S.S.R. said that the 1981 UN Declaration did not take sufficient account of atheistic beliefs. Romania, Syria, Czechoslovakia, and the U.S.S.R. made a general reservation regarding provisions not in accordance with their national legislation. Iraq entered a collective reservation on behalf of the Organization of the Islamic Conference as to the applicability of any provision or wording in the Declaration which might be contrary to Shari’a (Islamic) law or to legislation or acts based on Islamic law, and Syria and Iran endorsed this reservation.

“Many international treaties have a mechanism to monitor their implementation. As part of the Covenant on Civil and Political Rights, Article 18 is legally-binding and is monitored by the Human Rights Committee. As of 2002, there were 149 States Parties to this Covenant. Under an Optional Protocol, 102 States Parties recognize the authority of the Human Rights Committee to consider confidential communications from individuals claiming to be victims of violations of any rights proclaimed under the treaty.

“The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is a non-binding declaration, and does not, therefore, have a treaty mechanism. Instead, in what is called an extra-conventional mechanism, the UN Commission on Human Rights appointed a Special Rapporteur (an independent expert) for the 1981 U.N. Declaration. The

Special Rapporteur is mandated to report annually to the Commission on the status of freedom of religion or belief worldwide,” Ibid. pp. 4, 5.

People’s Republic of China: Document 19 (1982) “Issued by the Central Committee of the Chinese Communist Party. Defines the position of the Party regarding religion, discusses religion as a historical phenomenon, and states that Communists are atheists and must propagate atheism,” University of Minnesota Human Rights Library, Study Guide: Freedom of Religion or Belief, p. 15.

The Cairo Declaration on Human Rights in Islam (1990). “Adopted by the Foreign Ministers of the 55 state Organization of the Islamic Conference (OIC), formed in 1972. Membership is restricted to states in which Islam is the official state religion or Muslims form the majority population. There are 25 articles to the Cairo Declaration on Human Rights in Islam on topics such as freedom of movement, work, education, burial, usury, property, environment, equality before the law, and freedom of expression. Article 24 declares that ‘All the rights and freedoms stipulated in this Declaration are subject to Islamic Shari’a,’ and Article 25 states that ‘The Islamic Shari’a is the only source of reference for the explanation or clarification of any of the articles of this Declaration.’” (Id.)

Israel: Fundamental Agreement Between the Holy See and the State of Israel (1993). “Signed by the State of Israel and the Holy See. This agreement established full diplomatic relations between the State of Israel and the Holy See, including an exchange of Ambassadors. The Holy See, recalling its Declaration on Religious Freedom (*Dignitatis Humanae*), affirms its commitment to uphold the right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights.” (Id.)

In the meantime, in 1989 when glasnost had made it possible for East-West dialogue to make more meaningful pronouncements on fundamental human rights issues, the Vienna Follow-up Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, enunciated certain principles of religious liberty, Principles 16 and 17 of which are quoted in full:

16. In order to ensure the freedom of the individual to profess and practice religion or belief the participating states will, inter alia,

- a) take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief in the recognition, exercise, and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and ensure the effective equality between believers and non-believers;
- b) foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non believers;
- c) grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries;
- d) respect the right of religious communities to establish and maintain freely accessible places of worship or assembly, organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, solicit and receive voluntary financial and other contributions;
- e) engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;
- f) respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others;
- g) in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;
- h) allow the training of religious personnel in appropriate institutions;

- i) respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;
- j) allow religious faiths, institutions and organizations to produce and import and disseminate religious publications and materials;
- k) favorably consider the interest of religious communities in participating in public dialogue, inter alia, through mass media.

17. The participating States recognize that the exercise of the above mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and are consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective implementation of the freedom of thought, conscience, religion or belief. (See Perspectives on Religious Liberty: A Comparative Framework, W. Cole Durham, Jr., Brigham University, supra., pp.37, 38.)

The International Religious Freedom Act of 1998, passed by the United States House of Representatives May 14, 1998, by the Senate October 9, 1998, and signed into law October 27, 1998, “was passed to promote religious freedom as a foreign policy of the United States, and to advocate on the behalf of the individuals viewed as persecuted in foreign countries on the account of religion. The United States through its constitution and various international agreements, has an obligation to support religious freedom around the world by skirmishing religious intolerance in countries that put sanctions on the religious rights of the people....Three cooperative entities have been maintained by this act to monitor religious persecution. 1. An Ambassador-at-Large for International Religious Freedom within the Department of State, 2. A bipartisan United States Commission on International Religious Freedom, and 3. A Special Adviser on International Religious Freedom within the National Security Council. While the original bill imposed mandatory sanctions on the countries supporting religious persecution, the amended act offers the president a waiver provision if he feels that it would further the goal of the bill or promote the interests of U.S. national

security not to impose measures on a designated country,” International Religious Freedom Act of 1998 – Wikipedia, the free encyclopedia.

“Many human rights organizations have urged the United States to be still more vigorous in imposing sanctions on countries that do not permit or tolerate religious freedom. Some critics charge that the United States policy on religious freedom is largely directed towards the rights of Christians, particularly the ability for Christian missionaries to evangelize, in other countries.

“State religions vary on this issue. For example, in some Islamic states converting from Islam is a capital offense, as is proselytizing among Muslims. On the other hand, the official Church of England, for example, allows other faiths to preach freely and there is no legal penalty for converting from the state religion. Other European societies provide a preferred status for state-approved religions, putting smaller or less approved groups at a disadvantage.

“The UN Human Rights Commission has specifically affirmed that smaller and newer religions, and not just well established ones, are covered by Article 18. Indeed it is these groups that often face the greatest threat of persecution by an intolerant majority,” Freedom of Religion – New World Encyclopedia, P. 11.

The Charter of Fundamental Rights of the European Union was established On December 7, 2000. It includes, inter alia, the following Articles which relate to religious freedom:

## Article 10

### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right.

## Article 11

### Freedom of expression and information

1. 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be observed.

## Article 12

### Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at union level contribute to expressing the political will of the citizens of the Union.

\*\*\*

## Article 20

### Equality before the law

Everyone is equal before the law.

## Article 21

### Non-Discrimination

7. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

8. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

## Article 22

### Cultural, religious and linguistic diversity

1. The Union shall respect cultural, religious and linguistic diversity.

\*\*\*

## Article 45

### Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

\*\*\*

## Article 52

### Scope and interpretation of rights and principles

\*\*\*

1. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

2. In so far as this Charter recognizes fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

D. Towards A Better Understanding Of The Story Of Religious Freedom:

“...{T}o better understand the story of religious freedom...{w}e have to understand more fully the political and social context of what happened. We have to review common interpretations for accuracy and detail. For instance, we cannot accept at face value the idea that the Reformation brought about religious toleration, for the direct result was quite the opposite—it ushered in war and destruction on a scale unknown in history. What the Reformation did, rather, was to tee up a question about religious toleration that society was eventually compelled to answer....Nor can we take as factual...the traditional assessment that religious wars ended with the Peace of Westphalia or that Enlightenment ideals about religious tolerance gained wide currency. While a small number of intellectual elites may have high minded notions of tolerance, the fact is that many Europeans and even Americans still don't 'get it' and continue to hate and persecute each otherk over matters of belief. Indeed, some of the most horrific violence and persecution in the name of religion have taken place since the Enlightenment...,”See Doxey, Religious Freedom: Historical Perspectives, supra.)

However, progress has been made, if not totally in practice, at least in principle. For that one should heap praise on those who have caused it to happen, and the Almighty for inspiring them to do so. In the United States Constitution are found the fundamental principles which have triggered much of this progress.

“Latter Day Saints, and others both at home and abroad, have both contributed to, and benefited from, laws and American constitutional law. The Constitution of the United States of America made the RESTORATION of the gospel possible because it limits governmental power, protects individual rights, and sets a moral tone tolerating controversial religious views and rights of expression and assembly. LDS belief in the divine origin of the Constitution contributes to respect for the document.

“The majority of the main events associated with the restoration of the Church occurred in the United States. Its message was controversial and

provocative, and without the protection of the United States Constitution, the Church likely would not have survived. President Wilford Woodruff taught that at that time the United States of America was the only place where the Lord could have established his Church and kingdom (JD 25:211)....” See Encyclopedia of Mormonism, supra. P. 315.

## V. HISTORICAL AND LEGAL BASIS FOR RELIGIOUS FREEDOM: CURRENT TRENDS IN THE UNITED STATES AND ABROAD.

### F. Introduction:

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance; the concept is generally recognized also to include the freedom to change religion or not to follow any religion. The freedom to leave or discontinue membership in a religion or religious group—in religious terms called ‘apostasy’—is also a fundamental part of religious freedom, covered by “Article 18 of the Universal Declaration of Human Rights. Freedom of religion is considered by many people and nations to be a fundamental human right. In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion, and does not persecute believers in other faiths.” (See Freedom of religion – Wikipedia, the free encyclopedia.)

“Ultimately, America’s answer to the intolerant man is diversity, the very diversity which our heritage of religious freedom has inspired.” (Robert F. Kennedy)

“A little bit of agitation gives motivation to the soul, and what really makes the species prosper is not peace so much as freedom.” (Jean Jacques Rousseau)

Unfortunately, the appreciation of that freedom and that diversity are, as will be demonstrated in this section, lacking in important and populous parts of the world, which naturally will lead even to greater intolerance than has heretofore been enjoyed. Even the United States is not immune.

G. The Pew Research Center's Forum On Religion & Public Life Produced A Report Entitled "Rising Restrictions On Religion."

The report is dated August 2011. To view this report on your mobile device, download a free QR code app and scan this code: [http://pewforum.org/Government/Rising-Restrictions-on Religion.aspx](http://pewforum.org/Government/Rising-Restrictions-on-Religion.aspx). The primary researcher was Brian J. Grimm, Senior Researcher and Director of Cross-National Data, Pew Forum on Religion and Public Life. Mr. Grimm appeared and summarized the Report at the 18<sup>th</sup> Annual International Law and Religion Symposium held at Brigham Young University in Provo, Utah, October 2-5, 2011. The theme of the Symposium was "Religious Freedom in a Pluralistic Age: Trends, Challenges and Practices. That which follows in this Subsection B is taken directly from that Report.

## Executive Summary

Restrictions on religious beliefs and practices rose between mid-2006 and mid-2009 in 23 of the world's 198 countries (12%), decreased in 12 countries (6%) and remained essentially unchanged in 163 countries (82%), according to a new study by the Pew Research Center's Forum on Religion & Public Life.

Because several countries with increasing restrictions on religion are very populous, however, the increases affected a much larger share of people than of states. More than 2.2 billion people – nearly a third (32%) of the world's total population of 6.9 billion – live in countries where either government restrictions on religion or social hostilities involving religion rose substantially over the three-year period studied. Only about 1% of the world's population lives in countries where government restrictions or social hostilities declined.

Among the world's 25 most populous countries – which account for about 75% of the world's total population – restrictions on religion substantially increased in eight countries and did not substantially decrease in any. In China, Nigeria, Russia, Thailand, the United Kingdom and Vietnam, the increases were due primarily to rising levels of social hostilities involving religion. In Egypt and France, the increases were mainly the result of government restrictions. The rest of the 25 most populous countries, including the United States, did not experience substantial changes in either social hostilities or government-imposed restrictions.

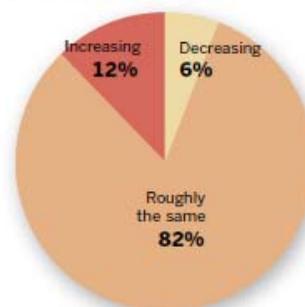
This is the second time the Pew Forum has measured restrictions on religion around the globe. Like the baseline report, the new study scores 198 countries and territories on two indexes:

- The Government Restrictions Index measures government laws, policies and actions that restrict religious beliefs or practices. This includes efforts by governments to ban particular

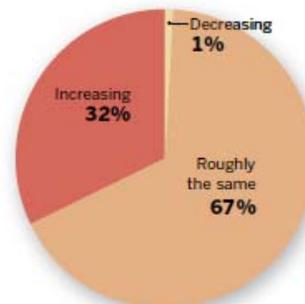
### Changes in Global Restrictions on Religion

*Only about one-in-eight countries have increasing government restrictions or social hostilities, but they contain almost a third of the world's population.*

Percentage of **countries** where government restrictions or social hostilities are ...



Percentage of **global population** living where government restrictions or social hostilities are ...



Percentages may not add to 100 due to rounding.

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August 2011

### Countries Where Government Restrictions Rose, Ranked by Total Population

Countries with substantial increase from mid-2006 to mid-2009

	2010 POPULATION IN MILLIONS
Egypt	84.5
France	62.6
Algeria	35.4
Uganda	33.8
Malaysia	27.9
Yemen	24.3
Syria	22.5
Somalia	9.4
Serbia	7.6
Tajikistan	7.1
Hong Kong	7.1
Libya	6.5
Kyrgyzstan	5.6
Qatar	1.5

### Countries Where Government Restrictions Declined, Ranked by Total Population

Countries with substantial decrease from mid-2006 to mid-2009

	2010 POPULATION IN MILLIONS
Greece	11.2
Togo	6.8
Nicaragua	5.8
Republic of Macedonia	2.0
Guinea Bissau	1.6
Timor-Leste	1.2
Equatorial Guinea	0.7
Nauru	<0.1

Source: Total Population, U.N. estimates. Circles are sized proportionally to each country's population.

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faiths, prohibit conversions, limit preaching or give preferential treatment to one or more religious groups.

- The Social Hostilities Index measures acts of religious hostility by private individuals, organizations and social groups. This includes mob or sectarian violence, harassment over attire for religious reasons and other religion-related intimidation or abuse.

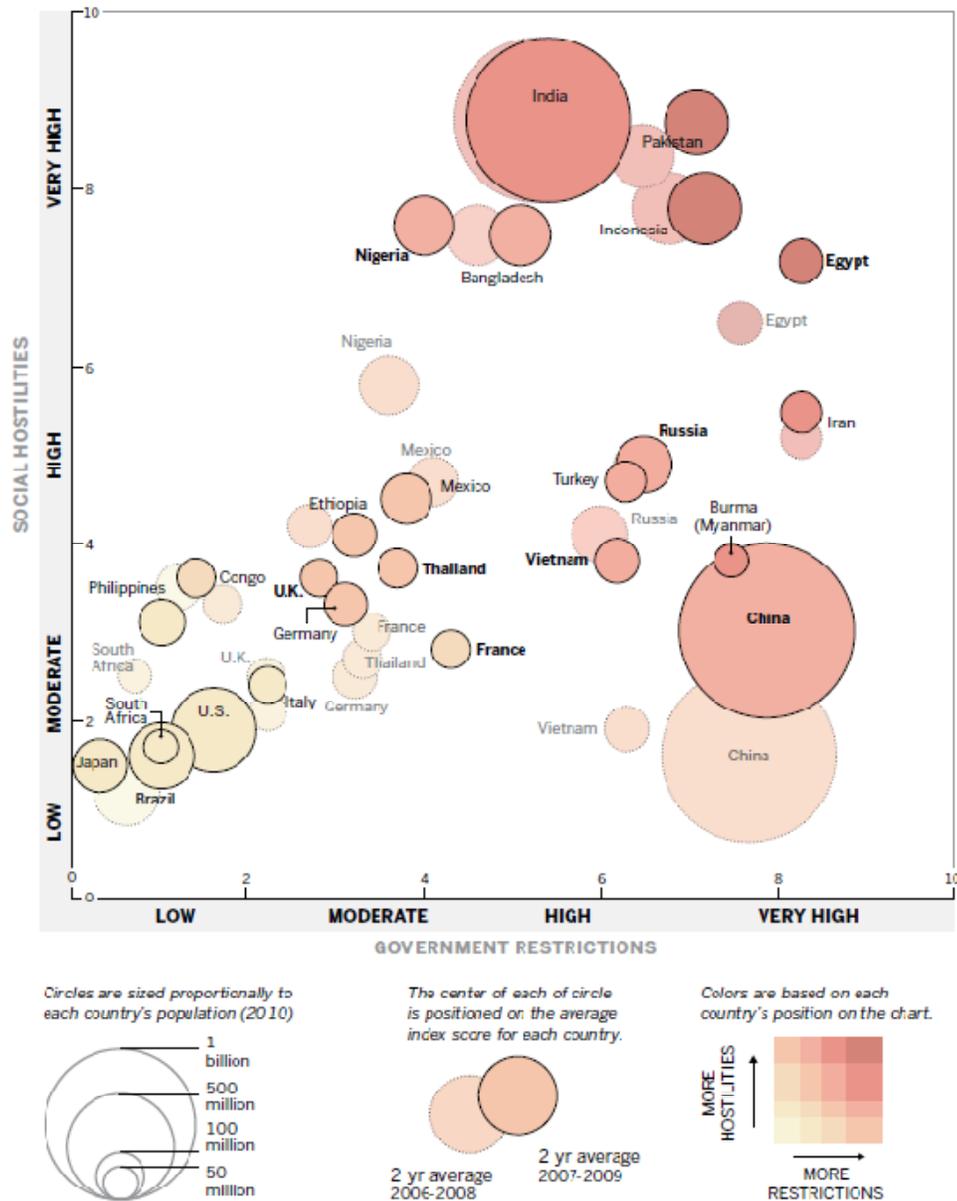
Among the five geographic regions covered in the study, the Middle East-North Africa region had the largest proportion of countries in which government restrictions on religion increased, with nearly a third of the region's countries (30%) imposing greater restrictions. Egypt, in particular, ranked very high (in the top 5% of all countries, as of mid-2009) on both government restrictions and social hostilities involving religion. Egypt was one of just two countries in the world – Indonesia was the other – that had very high scores on both measures as of mid-2009.

Europe had the largest proportion of countries in which social hostilities related to religion were on the rise from mid-2006 to mid-2009. Indeed, five of the 10 countries in the world that had a substantial increase in social hostilities were in Europe: Bulgaria, Denmark, Russia, Sweden and the United Kingdom. The study also finds that social hostilities involving religion have been rising in Asia, particularly in China, Thailand and Vietnam.

Overall, 14 countries had a substantial increase in government restrictions on religion, while eight had a substantial decline. In terms of social hostilities involving religion, 10 countries had a substantial increase, while five had a substantial decline. No country rose or declined substantially in both categories over the three-year period. Just one country, Kyrgyzstan, showed a substantial increase in one category (government restrictions) along with a decrease in the other category (social hostilities); consequently, it is treated as having no overall change.

### Changes in Restrictions Among the 25 Most Populous Countries

Among the world's most populous countries, government restrictions or social hostilities substantially increased in eight countries – China, Egypt, France, Nigeria, Russia, Thailand, Vietnam and the United Kingdom – and did not substantially decrease in any. Countries in the upper right have the most restrictions and hostilities. Countries in the lower left have the least.



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## Countries Where Social Hostilities Rose, Ranked by Total Population

Countries with substantial increase from mid-2006 to mid-2009

	2010 POPULATION IN MILLIONS
China	1331.1
Nigeria	158.3
Russia	140.4
Vietnam	89.0
Thailand	68.1
United Kingdom	61.9
Sweden	9.3
Bulgaria	7.5
Denmark	5.5
Mongolia	2.7

## Countries Where Social Hostilities Declined, Ranked by Total Population

Countries with substantial decrease from mid-2006 to mid-2009

	2010 POPULATION IN MILLIONS
Tanzania	45.0
Chad	11.5
Kyrgyzstan	5.6
Lebanon	4.3
Liberia	4.1

Source: Total Population, U.N. estimates. Circles are sized proportionally to each country's population.

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In general, most of the countries that had substantial increases in government restrictions or social hostilities involving religion already had high or very high levels of restrictions or hostilities. By contrast, nearly half of the countries that had substantial decreases in restrictions or hostilities already scored low. This suggests that there may be a gradual polarization taking place in which countries that are relatively high in religious restrictions are getting higher while those that are relatively low are getting lower.

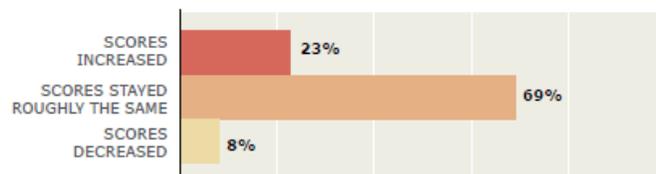
Specifically, among the 62 countries with high or very high scores on either or both indexes as of mid-2008, restrictions or hostilities increased substantially in 14 countries (23%) and decreased substantially in five (8%). Among the 42 countries that started out with moderate scores on either or both indexes, increases occurred in seven countries (17%) and decreases in two (5%). In contrast, among the 94 countries that started out with low scores on both indexes, the level of government restrictions and/or social hostilities involving religion decreased in five countries (5%) and increased in two (2%). (See graphic on facing page.)

During the three-year period covered by the study, the extent of violence and abuse related to religion increased in more places than it decreased. The number of countries in which governments used at least some measure of force against religious groups or individuals rose from 91 (46%) in the period ending in mid-2008 to 101 (51%) in the period ending in mid-2009. This violence was wide-ranging, including individuals being killed, physically abused, imprisoned, detained or displaced from their homes, as well as damage to or destruction of personal or religious properties.

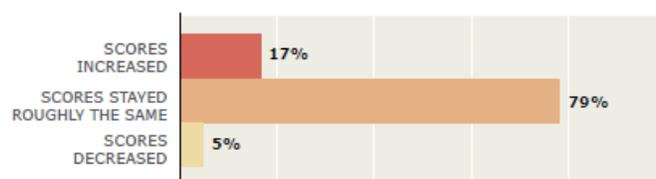
In nearly three-quarters of all countries, private citizens or groups committed crimes, malicious acts or violence motivated by religious hatred or bias. Such acts occurred in 142 countries (72%) in the period ending in mid-2009, about the same as in the previous reporting period (141 countries or 71%). The number of countries that experienced mob violence related to religion rose from 38 (19%) as of mid-2008 to 52 (26%) as of mid-2009.

### Countries with High Restrictions or Hostilities Are Getting Higher

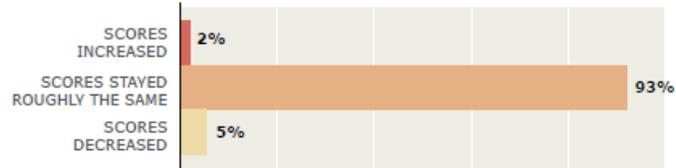
Among the 62 countries that previously had *high* or *very high* scores on either or both indexes ...



And among the 42 countries that previously had *moderate* scores on either or both indexes ...



While among the 94 countries that previously had *low* scores on both indexes ...



The chart shows the percentage of countries with low, moderate or high/very high government restrictions or social hostilities as of mid-2008 that had a substantial change in restrictions or hostilities as of mid-2009. Changes are reported here only if they were at least 1.5 standard deviations above or below the mean amount of change among all 198 countries on each index. The changes also had to be in the same direction over the periods studied.

Percentages may not add to 100 due to rounding.

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## Harassment and Anti-Blasphemy Laws

Adherents of the world's two largest religious groups, Christians and Muslims, who together comprise more than half of the global population, were harassed in the largest number of countries.<sup>1</sup> Over the three-year period studied, incidents of either government or social harassment were reported against Christians in 130 countries (66%) and against Muslims in 117 countries (59%). Buddhists and Hindus – who together account for roughly one-fifth of the world's population and who are more geographically concentrated than Christians or Muslims – faced harassment in fewer places; harassment was reported against Buddhists in 16 countries (8%) and against Hindus in 27 countries (14%).

In proportion to their numbers, some smaller religious groups faced especially widespread harassment.

Although Jews comprise less than 1% of the world's population, government or social harassment of Jews was reported in 75 countries (38%). Incidents of harassment involving members of other world religions – including Sikhs, ancient faiths such as Zoroastrianism, newer faith groups such as Baha'is and Rastafarians, and localized groups that practice tribal or folk religions – were reported in 84 countries (42%). (For more details, see page 63.)

In addition, the study finds that restrictions on religion are particularly common in countries that prohibit blasphemy, apostasy or defamation of religion. While such laws are sometimes promoted as a way to protect religion, in practice they often serve to punish religious minorities whose beliefs are deemed unorthodox or heretical. (For more details, see page 67.)

### Number of Countries Where Religious Groups Were Harassed

Christians	130
Muslims	117
Others*	84
Jews	75
Hindus	27
Buddhists	16

\*Others includes Sikhs, members of ancient faiths such as Zoroastrianism, newer faiths such as Baha'i and groups that practice tribal or folk religions.

Covers time period from mid-2006 to mid-2009. This measure does not assess the severity of the harassment.

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<sup>1</sup> As of 2010, Muslims made up nearly a quarter (23.4%) of the world's population, according to the Pew Forum's January 2011 report *The Future of the Global Muslim Population*, <http://pewforum.org/The-Future-of-the-Global-Muslim-Population.aspx>. The Pew Forum is currently compiling population data on other world religions and intends to publish a series of reports on the demography of religion in 2011-2012. In the meantime, the population figures used in this section are from the World Religion Database at Boston University, which estimates that Christians comprise about a third (32.9%) of the world's population.

## About the Report

These are among the key findings of *Rising Restrictions on Religion*, the Pew Forum's second report on global restrictions on religion. The 198 countries and self-administering territories covered by the study contain more than 99.5% of the world's population. Each country was scored on a total of 33 measures phrased as questions about government restrictions or social hostilities involving religion. (For the full question wording, see the Summary of Results.) The Government Restrictions Index is comprised of 20 questions; there are 13 questions on the Social Hostilities Index.

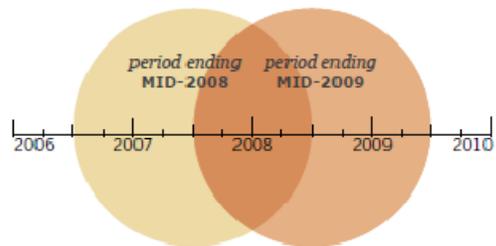
To answer the questions that make up the indexes, Pew Forum researchers combed through 18 widely cited, publicly available sources of information, including reports by the U.S. State Department, the U.S. Commission on International Religious Freedom, the U.N. Special Rapporteur on Freedom of Religion or Belief, the Council of the European Union, the United Kingdom's Foreign & Commonwealth Office, Human Rights Watch, the International Crisis Group, the Hudson Institute, Freedom House and Amnesty International. (For the complete list of sources, see page 80 of the Methodology.) Many of the examples cited in this report were drawn from the State Department's annual International Religious Freedom reports.

The researchers involved in this process recorded only concrete reports about specific government laws, policies and actions, as well as incidents of religious violence or intolerance by social groups; they did not rely on the commentaries or opinions of the sources. (For a more detailed explanation of the coding and data verification procedures, see the Methodology.) The goal was to devise a battery of quantifiable, objective measures that could be analyzed individually as well as combined into two comprehensive indexes, the Government Restrictions Index and the Social Hostilities Index.

The Forum's baseline report on global restrictions on religion calculated each country's average scores on the Government Restrictions Index and Social Hostilities Index for the two-

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### Time Periods Covered in the Report



*The study covers a total of three years, from mid-2006 to mid-2009. It assesses changes over time by comparing each country's average scores for the two-year period from July 1, 2006, to June 30, 2008, with its average scores for the overlapping two-year period from July 1, 2007, to June 30, 2009.*

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year period from mid-2006 to mid-2008. This report assesses changes over time by comparing each country's original scores with its average scores for the overlapping two-year period from mid-2007 to mid-2009.<sup>2</sup> Comparing rolling averages for overlapping time periods reduces the impact of year-to-year fluctuations and helps identify consistent trends.

This report focuses on changes in countries' scores on the indexes that are deemed to be "substantial." (The report refers to a change in a country's score as substantial only if it is at least 1.5 standard deviations above or below the mean amount of change among all 198 countries on each index. The change also had to be in the same direction over the two periods studied, meaning that it had to rise or fall both in the period from mid-2006 to mid-2008 and in the overlapping period from mid-2007 to mid-2009. See the Methodology for more details.)

### Situation as of Mid-2009

The Pew Forum characterizes each country's place on the Government Restrictions Index and the Social Hostilities Index by percentile. Countries with scores in the top 5% are characterized as "very high." The next highest 15% of scores are categorized as "high," and the following 20% are characterized as "moderate." The bottom 60% of scores are characterized as "low."

As of mid-2009, government restrictions on religion were high or very high in 42 countries, about one-in-five worldwide. The 10 countries that had very high government restrictions as of mid-2009 were Egypt, Iran, Saudi Arabia, Uzbekistan, China, Maldives, Malaysia, Burma (Myanmar), Eritrea and Indonesia. Government restrictions were in the moderate

#### Countries with Very High\* Government Restrictions on Religion

Egypt	▲
Iran	
Saudi Arabia	
Uzbekistan	
China	
Maldives	
Malaysia	▲
Burma (Myanmar)	
Eritrea	
Indonesia	

#### Countries with Very High\* Social Hostilities Involving Religion

Iraq	
India	
Pakistan	
Afghanistan	
Somalia	
Indonesia	
Nigeria	▲
Bangladesh	
Israel	
Egypt	

\* Very High refers to countries in the top 5% of scores on the Government Restrictions Index or the Social Hostilities Index as of mid-2009.

▲ Denotes a substantial increase from mid-2006 to mid-2009, defined as an increase of at least 1.5 standard deviations above the mean amount of change among all 198 countries on each index. The change also had to be in the same direction over the periods studied. (See Methodology for more details.)

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<sup>2</sup> Answers to Questions 1 and 2 in the Government Restrictions Index were recoded for the period from mid-2006 to mid-2008 to match the coding conventions used for the period from mid-2007 to mid-2009. After the recoding, two fewer countries scored in the high or very high category for the period ending in mid-2008. As a result, this report lists 62 countries as having high or very high restrictions as of mid-2008 rather than the 64 countries listed in the 2009 baseline report, *Global Restrictions on Religion*, <http://pewforum.org/Government/Global-Restrictions-on-Religion.aspx>.

range in 39 countries. A much larger number of countries – 117 – had low levels of government restrictions. But because many of the more restrictive countries (including China and India) are very populous, more than half of the world’s population (59%) was living with high or very high government restrictions as of mid-2009. (For a complete list of all countries in each category, see page 41.)

As of mid-2009, social hostilities involving religion were high or very high in 40 countries, about one-in-five worldwide. The 10 countries that had very high hostilities as of mid-2009 were Iraq, India, Pakistan, Afghanistan, Somalia, Indonesia, Nigeria, Bangladesh, Israel and Egypt. Social hostilities were in the moderate range in 43 countries. A much larger number of countries – 115 – had low levels of social hostilities. But because many of the countries with high or very high social hostilities (including India, Indonesia, Pakistan, Bangladesh and Nigeria) are very populous, nearly half of the world’s population (48%) was living with high or very high social hostilities involving religion as of mid-2009. (For a complete list of all countries in each category, see page 59.)

Government restrictions or social hostilities were high or very high in about one-third of the countries as of mid-2009. But because some of the most restrictive countries are very populous, nearly 70 percent of the world’s 6.9 billion people were living in countries where governments imposed high restrictions on religion or where there were high levels of religious hostilities in society.

### Changes in Government Restrictions

Comparing the Pew Forum’s first set of scores (for the two-year period from mid-2006 to mid-2008) with the second set of scores (for the two-year period from mid-2007 to mid-2009), the study finds that 14 countries had a substantial increase in government restrictions and eight had a substantial decline.

Six of the 14 countries where government restrictions rose substantially were in the Middle East-North Africa region: Algeria, Egypt, Libya, Qatar, Syria and Yemen. In Egypt, for example, the government maintained a longstanding ban on the Muslim Brotherhood, an influential Islamic organization, and discriminated against Christians in various

### Substantial Changes in Government Restrictions

#### RISING ▲

Algeria

Egypt

France

Hong Kong

Kyrgyzstan

Libya

Malaysia

Qatar

Serbia

Somalia

Syria

Tajikistan

Uganda

Yemen

#### DECLINING ▼

Equatorial

Guinea

Greece

Guinea Bissau

Nauru

Nicaragua

Republic of

Macedonia

Timor-Leste

Togo

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ways, including in public-sector hiring. In Yemen, government officials reportedly sought to intimidate Baha'is and converts to Christianity, including arresting people for promoting Christianity and distributing Bibles.

Most of the countries with substantial decreases in government restrictions (seven of the eight countries) had low levels of restrictions to begin with. The exception was Greece, which started out with high government restrictions but moved to the moderate level by mid-2009. While the government of Greece continued to restrict proselytizing, for example, there were fewer reported cases where the police detained people for proselytizing.

### Changes in Social Hostilities

Ten countries had substantial increases in social hostilities involving religion and five had a substantial decline.

As noted above, the level of social hostilities involving religion rose substantially in five European nations: Bulgaria, Denmark, Russia, Sweden and the United Kingdom. Much of the tension in Europe focused on the region's rapidly growing Muslim population, but in some cases it also reflected rising anti-Semitism and antagonism toward Christian minorities, such as Jehovah's Witnesses.<sup>3</sup>

Social hostilities also rose in several Asian countries, including China, Mongolia, Thailand and Vietnam. In China, for example, an August 2008 terrorist attack attributed by Chinese authorities to a militant Muslim separatist group, known as the East Turkestan Islamic Movement, caused more than a dozen casualties in Xinjiang Province, and riots in Tibet in March 2008 pitted ethnic Tibetans (mainly Buddhists) against ethnic Han Chinese.

Three of the five countries where social hostilities declined are in sub-Saharan Africa: Chad, Liberia and Tanzania. But social hostilities involving religion rose in Nigeria, the region's most populous country, where there were a number of violent clashes between Christians and Muslims.

<sup>3</sup> For background on Europe's growing Muslim population, see the Pew Forum's January 2011 report *The Future of the Global Muslim Population*, <http://pewforum.org/The-Future-of-the-Global-Muslim-Population.aspx>.

### Substantial Changes in Social Hostilities

RISING ▲	DECLINING ▼
Bulgaria	Chad
China	Kyrgyzstan
Denmark	Lebanon
Mongolia	Liberia
Nigeria	Tanzania
Russia	
Sweden	
Thailand	
United Kingdom	
Vietnam	

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## Government Restrictions or Social Hostilities

Looking at the countries that had a substantial increase in either government restrictions or social hostilities, most (14 out of 23, or 61%) previously had high or very high levels of restrictions or hostilities. By contrast, among the countries that had substantial declines in either government restrictions or social hostilities, most (seven out of 12, or 58%) previously had low or moderate levels of restrictions or hostilities. And of the countries that stayed roughly the same, most (120 out of 163, or 74%) previously had low or moderate levels of restrictions or hostilities. Once again, this suggests that there may be a gradual polarization taking place in which restrictions are rising predominantly in countries that already have high or very high restrictions or hostilities, and are declining or staying the same predominately in countries that already have low or moderate restrictions or hostilities.

### Change in Government Restrictions or Social Hostilities

*From period ending in mid-2008 to period ending in mid-2009, number of countries in which government restrictions or social hostilities ...*

	Prior Maximum Level of Restrictions or Hostilities (as of mid-2008)				TOTAL COUNTRIES
	LOW	MOD-ERATE	HIGH	VERY HIGH	
▲ Increased substantially	2	7	10	4	23
• Stayed roughly the same	87	33	28	15	163
▼ Decreased substantially	5	2	5	0	12

To determine each country's level of restrictions or hostilities as of mid-2008, countries were categorized by the maximum score they received on either the Government Restrictions Index or the Social Hostilities Index. For example, if a country had a low score on the GRI and a moderate score on the SHI, it was categorized as moderate for this analysis. Likewise, if a country had a low score on the SHI and a very high score on the GRI, it was categorized as very high. Kyrgyzstan is excluded from the total number of countries because it increased substantially in one category (government restrictions) and decreased substantially in the other category (social hostilities); consequently, it is treated as having no overall change.

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## Other Findings

Other key findings from the study include:

- Among the five geographic regions covered in this report, the Middle East-North Africa had the highest government and social restrictions on religion, while the Americas were the least restrictive region on both measures. The Middle East-North Africa region also had the greatest number of countries where government restrictions on religion increased from mid-2006 to mid-2009, with about a third of the region's countries (30%) imposing greater restrictions. In contrast, no country in the Americas registered a substantial increase on either index.
- Prior to the recent uprising in Egypt, government restrictions on religion were already very high there. By mid-2009, Egypt also had joined the 5% of countries with the most intense social hostilities involving religion. However, the increase in social hostilities in Egypt fell just short of being a substantial increase, as defined in this study.
- Government restrictions on religion increased substantially in two European countries, France and Serbia. In France, members of Parliament began discussing whether women should be allowed to wear the burqa, and President Nicolas Sarkozy said the head-to-toe covering was “not welcome” in French society. The French government also put pressure on religious groups it considers to be cults, including Scientologists. For example, the lead prosecutor in a fraud case involving the Church of Scientology sought to have the group declared a “criminal enterprise.” In Serbia, meanwhile, the government refused to legally register Jehovah's Witnesses and several other minority religious groups. There also were reports that some government officials referred to minority religious groups as “sects” or other pejorative terms.
- Government restrictions also increased substantially in Malaysia, which, like Egypt, already had very high restrictions to begin with. Although the country's constitution recognizes freedom of religion, Malaysia restricts the observance of Islamic beliefs and practices that do not conform to Sunni Islam. Indeed, the Malaysian government monitors more than 50 Muslim groups that it considers unorthodox, including the Ahmadiyya movement.
- In China, there was no change in the level of government restrictions on religion, which remained very high. But social hostilities involving religion, which had been relatively low, increased substantially from mid-2006 to mid-2009. During that time period protests erupted among the predominantly Buddhist population in Tibet and among Uighur Muslims in Xinjiang Province over what they saw as cultural and economic domination by ethnic Han Chinese.

- In some other Asian countries, social hostilities also involved ethnic and religious minorities, such as Malay Muslim separatists in southern Thailand, who were involved in several violent clashes with the majority Buddhist population.
- Social hostilities involving religion in the United States remained at a moderate level. In recent years, the U.S. annually has had at least 1,300 hate crimes involving religious bias, according to FBI reports. (Most of the recent controversies over the construction of mosques and Islamic centers in New York City and other communities across the country took place after the period covered in this report.)
- Religion-related terrorist groups were active in 74 countries around the world in the period ending in mid-2009. The groups carried out acts of violence in half of the 74 countries. (In the other half, their activities were limited to recruitment and fundraising.) In Russia, for example, more than 1,100 casualties resulted from religion-related terrorist attacks during the two-year period ending in mid-2009. This was more than double the number of casualties recorded in the previous reporting period. This includes people who were killed, wounded, displaced from their homes, kidnapped or had their property destroyed in religion-related terrorist attacks.

### C. Dangerous Trends In Religious Freedom Spare No Group:

Michael, De Groote, in an article published in the Deseret News on April 19, 2011, and in which he quoted at length from John Graz of the Seventh Day Adventist Church, said:

“People across the world are suffering from persecution.

“‘And why are they suffering?’ John Graz said. ‘Are they dangerous for their country? Are they bad people? No, most of the time they are good people. But they are suffering, they are discriminated against, they are excluded only because of their religion.’

“Graz is the public affairs and religious liberty director of the Seventh Day Adventist Church and is secretary general for the International Religious Liberty Association. He carries the message of religious freedom across the world – speaking in conferences and with politicians, religious leaders and scholars. He spoke recently at BYU at the 22nd annual conference of the LDS International Society about the global challenges and trends affecting religious freedom.

“Religious intolerance does not spare any group – Muslims, Christians and other religious groups, Graz said. Even people who belong to majority religions in their countries experience problems.

“A 2009 study by the Pew Research Center’s Forum on Religion & Public Life, found that 70 percent of the world’s population live in countries where they have no religious freedom or a lot of restrictions. The same study found that religious freedom is protected in a majority of countries. ‘This is good news,’ Graz said. ‘But we can lose it. We need to send a strong message that we love religious freedom. We want to keep it.’

“But religious freedom is being more frequently challenged across the world.

“‘This is not good news,’ Graz said.

“The United Nations Universal Declaration of Human Rights includes freedom of religion as a basic fundamental right. In Article 18 it says, ‘Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.’

“But even though such a statement puts advocates of religious freedom in a strong moral position, Graz is seeing a shift. ‘It would be impossible today at the United Nations to have such an article accepted by a majority.’

“Why?

“The ‘freedom to change his religion’ would not be allowed. ‘You would have at once, 55 to 60 countries say, No! We cannot accept that,’ Graz said.

“There are three trends that challenge religious freedom, according to Graz

“1. Governments want to control religion more.

“This is the direct approach. Governments are passing more laws that discriminate. For example, Graz referred to the Pakistan blasphemy laws. On the face of them, laws like this are promoted to protect religion, but they end up, Graz said, being used most often by strong and secure religious majorities to persecute religious minorities.

“2. Governments are partnering with religion against minority religions.

“The outward goal looks like governments and religion working in unity to build up the nation – but the quid pro quo for the religion is a little help from the government to stop religious dissenters and pesky competition against religious minorities. And if minority religions are left out of the partnership, they are seen as with more suspicion.

“3. Religions see proselytism as an attack.

“Proselytism is seen as dangerous for religious peace. Graz said Christian leaders see religious freedom as a cover for proselytism. But those very same churches will also proselytize. ‘They want to marginalize part of Christianity because they feel threatened,’ Grad said.

“There is an increased sensitivity about what people are saying about their religions. The different religions all feel like they are being attacked. Islam feels it is under attack, Graz said, so it proposed a U.N. resolution on defamation of religion. Western Christianity feels under attack, so, for example, the Swiss vote to ban Muslim minarets.

“Graz told the gathering of religious liberty experts at BYU there were things that can be done to reverse the trends. ‘Be responsible in our writing and speaking,’ Graz said: Think before we do something. Ask what will be the outcome.

“He recommended entering interreligious dialogue. ‘You need to meet people from other religions, including Muslims, Jews and Hindus. We need to be proactive. We can’t promote religious freedom if we have no contact with religious leaders.”

“Around the world he said religious people should get involved in the community – particularly if they are members of a minority religion. ‘The way they will look at you will be different than if you are isolated in your corner,’ Graz said.

“People are afraid about religion. When they see people who are dedicated to their religion, they are afraid they may become fanatics which will lead to religious war again,’ Graz said.

“From time to time courageous people –heroes of freedom – stood for religious freedom and sometimes they gave their life,’ Graz said. ‘And we should never, never forget them.’”(EMAIL:mdegroote@desnews.com; TWITTER:twitter.com/degroote)

#### D. International Religious Freedom:

The following Associated Press editorial appeared on the Deseret News Editorial page on March 20, 2011:

“In Cairo earlier this month, Christians and Muslims stood together in Tahrir Square to call for regime change in Egypt. Just days later, however, deadly strife between Christians and Muslims on the outskirts of Cairo left at least a dozen killed, hundreds injured and a Coptic church in ashes.

“Earlier this year in Pakistan, a provincial governor and a cabinet minister were assassinated for their vocal opposition to the country’s blasphemy laws and the brutal vigilante enforcement of those laws.

“Around the world, sectarian conflict and violence – too often condoned tacitly by government authorities – appears to be increasing. And too often this strife is taking place in countries that depend significantly on U.S. assistance of one form or another.

“Morocco is a good example. Last year the Moroccan government summarily deported hundreds of Christian humanitarian workers without due process because of their religious beliefs. Nonetheless, Morocco continues to receive nearly \$700 million from the U.S. Millennium

Challenge Corporation, a government-sponsored foreign development effort to support good governance.

“In 1998, President Bill Clinton signed into law the International Religious Freedom Act (IRFA) passed unanimously by both the House of Representatives and the Senate.

“IRFA attempted to enshrine within U.S. foreign policy the principle of religious freedom as a metric for diplomacy and aid. It did so by creating an ambassador-at-large to advise the president and the Secretary of State, as well as a bi-partisan international religious freedom commission.

“IRFA derived from fundamental American values. But it also captured an important international security logic. That logic was the realization that countries that discriminated against religious minorities, either actively or tacitly, become breeding grounds for extremism. Such policies embolden extremists in opposite ways: some (as in Pakistan) find protection for private harassment behind state sponsored orthodoxy while some (as in Bahrain) resent the privileged sect to the point of seeking to undermine the regime.

“Given the global rise of sectarian conflict and the critical role that fundamental commitments to religious liberty will play in the stability of emerging democracies, it concerns us that President Barak Obama and Secretary of State Hillary Clinton have been so diffident about religious freedom.

“And it is not just their silence that concerns us. Their behavior demonstrates little interest in fulfilling the purposes of IRFA. According to Tina Ramirez, Director of Government Relations at the Becker Fund for Religious Liberty, the State Department has neglected to meet its obligations under IRFA to authorize stand-alone sanctions against countries noted particularly for violating rights of religious freedom.

“This is just one of many examples where the intent of IRFA is being ignored. The position of ambassador at large for religious freedom, for example, has been significantly downgraded. That position – once a direct report to the secretary and the president – will now report to the assistant secretary for Democracy, Human Rights, and Labor.

“And there has been no urgency to fill this downgraded position. It took 18 months for President Obama to nominate someone for the post. Although that nominee, Dr. Susan Johnson Cook, appeared before the Senate Foreign Relations Committee during the last Congress, she was not

confirmed. Our sources tell us that committee members let the nomination lapse because they were underwhelmed by her qualifications and responses.\

“Dr. Cook has been re-nominated and may soon appear again before the Foreign Relations Committee. Committee members, including Utah Senator Mike Lee, should use those hearings to thoroughly vet Dr. Cook’s qualifications as an effective advocate for reestablishing religious freedom as a pillar of U.S. foreign policy. Does she have international experience with issues of religious conflict? Does she bring the foreign policy expertise sufficient to be taken seriously by the diplomatic and foreign policy community?”

“Beyond the vetting of a nominee, the Foreign Policy Committee must use its oversight capacity to examine how faithfully the Obama Administration is enforcing the IRFA’s intent to make freedom of religion a central objective of our foreign policy. Our principles and our security are at stake.”

#### D. Some Specific Recent Trends:

In the New World Encyclopedia, “Freedom of Religion,” at pages 10 and 11, are recorded the following observations with respect to some specific recent trends on the issue of religious freedom around the world:

“With the demise of the Soviet Union, a wave of religious freedom also swept over Eastern Europe. Churches, monasteries, and synagogues that had been used for the state’s secular purposes were turned over to their rightful owners, and millions of believers at last felt free to worship as their consciences led them. An upsurge of interest in ‘new religions’ (new to Russia, that is, including Protestant missionary groups) soon emerged, followed by a backlash from Orthodox churches, which influenced the state to crack down on ‘foreign’ groups in some parts of eastern Europe and Russia.

“In East Asia, the nations of China, Laos, North Korea, and Vietnam remain under officially communist regimes that continue to repress religious freedom for those groups suspected of possible disloyalty to the state. These include Catholics loyal to the pope, Muslims, Tibetan

Buddhists, Protestants, and the Falun Gong movement in China; Protestants in Laos, and the Hao Hoa and Cao Dai new religious movements as well as some Christians in Vietnam. North Korea has succeeded in virtually eliminating publicly expressed religion except for a small number of official places of worship operated mainly for the benefit of tourists.

“Europe, with its history of warfare and fratricide among religions since the time of the Reformation, continues to struggle with the question of how to treat new sects and minority religions. Solutions range from laws allowing total ‘liquidation’ of sects in France, to banning religious leaders from entering several countries, to government commissions finding that the new groups do not, after all, pose a real threat. The question of dealing with the ‘sects’ is liable to play a significant role in the evolution of a unified European identity, as will the question of favoring certain churches over others—such as the Catholic and Lutheran churches in Germany or the Orthodox Church in Eastern Europe.

“The United States, meanwhile, faces battles over refining the finer points of religious freedom, questions such as whether it is constitutional to include ‘Under God’ in the Pledge of Allegiance and whether or how the Ten Commandments may be displayed on government property.

“Muslim countries continue to take exception to international standards regarding religious freedom. Imprisonment, confiscation of property, and even executions still take place for the crimes of blasphemy and apostasy in several Muslim nations. The genocide of Christian and native-religious tribal groups in southern Sudan resulted at least partly from a government policy to Islamize the region. In some countries, minority religions are left unprotected from fanatics who take literally the teaching that ‘infidels’ may be killed and their daughters forced to become second or third wives of Muslim men. Fundamentalist movements such as the Taliban and al Qaeda threaten to impose even stricter Islamic regimes with harsh punishments against infidels and apostates. On the other hand, Muslim believers in places such as India are sometimes left unprotected from Hindu mobs, Uighur Muslims face widespread repression in China, and Muslims in Western nations and Israel face discriminations as a result of the backlash against terrorist attacks.

“As a nation formally dedicated to religious freedom and proud of its history in promoting this basic principle of human rights, the United States formally considers religious freedom in its foreign relations. The Inter-

national Religious Freedom Act of 1998 established the United States Commission on International Religious Freedom, which investigates {or should investigate} the records of over two hundred other nations with respect to religious freedom, and makes recommendations to submit nations with egregious records to ongoing scrutiny and possible economic sanctions.

“Many human rights organizations have urged the United States to be still more vigorous in imposing sanctions on countries that do not permit or tolerate religious freedom. Some critics charge that the United States policy on religious freedom is largely directed towards the rights of Christians, particularly the ability for Christian missionaries to evangelize in other countries.”

#### E. Contemporary Ideas Of Religious Freedom As A Human Right:

The contemporary idea of religious freedom as a human right remains a contested issue. Some of the major areas of debate, to which reference is made in Freedom of Religion – Wikipedia, the free encyclopedia, are incorporated below.

##### Atheist argument

Atheist organizations such as the Freedom From Religion Foundation, which bills itself as the largest association of freethinkers (atheists, agnostics and skeptics) in the United States, [34] argue that "Freedom From Religion" is a right in the United States that is guaranteed by the U.S. constitution. Critics of atheism respond, "The Constitution guarantees freedom of religion, not freedom from religion." [35]

##### Liberal secular

Adam Smith, in his book *The Wealth of Nations*, (using an argument first put forward by his friend and contemporary David Hume) states that in the long run it is in the best interests of society as a whole and the civil magistrate (government) in particular to allow people to freely choose their own religion as it helps prevent civil unrest and reduces intolerance. So long as there are enough

different religions and/or religious sects operating freely in a society then they are all compelled to moderate their more controversial and violent teachings, so as to be more appealing to more people and so have an easier time attracting new converts. It is this free competition amongst religious sects for converts that ensures stability and tranquility in the long run.

Adam Smith argued in favour of freedom of religion.

Smith also points out that laws that prevent religious freedom and seek to preserve the power to believe in a particular religion will, in the long run, only serve to weaken and corrupt that religion as its leaders and preachers become complacent, disconnected and unpracticed in their ability to seek and win over new converts. [36]

“The interested and active zeal of religious teachers can be dangerous and troublesome only where there is either but one sect tolerated in the society, or where the whole of a large society is divided into two or three great sects; the teachers of each acting by concert, and under a regular discipline and subordination. But that zeal must be altogether innocent, where the society is divided into two or three hundred, or, perhaps, into many thousand small sects, of which no one could be considerable enough to disturb the public tranquility. The teachers of each sect, seeing themselves surrounded on all sides with more adversaries than friends, would be obliged to learn that candor and moderation which are so seldom to be found among the teachers of those great sects.” [37]

## Hinduism

Hinduism is one of the more open-minded religions when it comes to religious freedom. [38] It respects the right of everyone to reach God in their own way. Hindus believe in different paths to God and religion as a philosophy and hence respect all religions as equal. One of the famous Hindu sayings about religion is: "Truth is one; sages call it by different names." [38]

## Christianity

According to the Catholic Church in *Dignitatis Humanae*, "the human person has a right to religious freedom," which is described as "immunity from coercion in civil society." [39] This principle of religious freedom "leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion." [39] In addition, this right "is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right." [39]

Previous to this Vatican II message, Pope Pius IX had written in his *Syllabus of Errors*: "[It is an error to say that] Every man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true" (15); "[It is an error to say that] In the present day it is no longer expedient that the Catholic religion should be held as the only religion of the State, to the exclusion of all other forms of worship" (77); "[It is an error to say that] Hence it has been wisely decided by law, in some Catholic countries, that persons coming to reside therein shall enjoy the public exercise of their own peculiar worship" (78).

Some Orthodox Christians, especially those living in democratic countries, support religious freedom for all, as evidenced by the position of the Ecumenical Patriarchate. Many Protestant Christian churches, including some Baptists, Churches of Christ, Seventh-day Adventist Church and main line churches have a commitment to religious freedoms. The Church of Jesus Christ of Latter-day Saints also affirms religious freedom. [40]

However others, such as African scholar Makau Mutua, have argued that Christian insistence on the propagation of their faith to native cultures as an element of religious freedom has resulted in a corresponding denial of religious freedom to native traditions and led to their destruction. As he states in the book produced by the Oslo Coalition on Freedom of Religion or Belief — "Imperial religions have necessarily violated individual conscience and the communal expressions of Africans and their communities by subverting African religions." [41][42]

Joel Spring writes about the Christianization of the Roman Empire: "Christianity added a new impetus to the expansion of empire. Increasing the arrogance of the imperial project, Christians insisted that the Gospels of the Church were the only valid source of religious beliefs. By the 5th century, Christianity was thought of as co-extensive with the *Imperium Romanum*. This

meant that to be human, as opposed to being a natural slave, was to be "civilized" and Christian. Historian Anthony Pagden argues, just as the *civitas* had now become coterminous with Christianity, so to be human—to be, that is, one who was "civil," and who was able to interpret correctly the law of nature—one had now also to be Christian.

"After the fifteenth century, most European colonialists rationalized the spread of empire with the belief that they were saving a barbaric and pagan world by spreading Christian civilization." [43] In the Portuguese and Spanish colonization of the Americas the policy of Indian Reductions and Jesuit Reductions resulted in forced conversions of indigenous peoples of the Americas from their long practiced spiritual and religious traditions and theological beliefs. The actual population of indigenous peoples, congregations of neophytes and the untouched, plummeted from unintended consequences of missionary Christianity's contacts. [44]

[edit] Islam

Quran 2:190–194, referring to the war against Pagans during the Battle of Badr in Medina, indicates that Muslims are only allowed to fight against those who intend to harm them (right of self-defense) and that if their enemies surrender, they must also stop because God does not like those who transgress limits.

In Bukhari: V9 N316, Jabir ibn 'Abdullah narrated that a Bedouin accepted Islam and then when he got a fever he demanded that Muhammad cancel his pledge (allow him to renounce Islam). Muhammad refused to do so. The Bedouin man repeated his demand once, but Muhammad once again refused. Then, he (the Bedouin) left Medina. Muhammad said, "Medina is like a pair of bellows (furnace): it expels its impurities and brightens and clears its good." In this narration, there was no evidence demonstrating that Muhammad ordered the execution of the Bedouin for wanting to renounce Islam.

In addition, Quran 5:3, which is believed to be God's final revelation to Muhammad, states that Muslims are to fear God and not those who reject Islam, and Quran 53:38–39 states that one is accountable only for one's own actions.

Therefore, it postulates that in Islam, in the matters of practicing a religion, it does not relate to a worldly punishment, but rather these actions are accountable to God in the after life. Thus, this supports the argument against the execution of apostates in Islam.

However, on the other hand, some Muslims support the practice of executing apostates who leave Islam, as in Bukhari:V4 B52 N260; "The Prophet said, "If a Muslim discards his religion, kill him."

In Iran, the constitution recognizes four religions whose status is formally protected: Zoroastrianism, Judaism, Christianity, and Islam. [45] The constitution, however, also sets the groundwork for the institutionalized persecution of Bahá'ís, [46] who have been subjected to arrests, beatings, executions, confiscation and destruction of property, and the denial of civil rights and liberties, and the denial of access to higher education. [45] There is no freedom of conscience in Iran, as converting from Islam to any other religion is forbidden.

In Egypt, a 16 December 2006 judgment of the Supreme Administrative Council created a clear demarcation between recognized religions — Islam, Christianity and Judaism — and all other religious beliefs; [47][48] no other religious affiliation is officially admissible. [49] The ruling leaves members of other religious communities, including Bahá'ís, without the ability to obtain the necessary government documents to have rights in their country, essentially denying them of all rights of citizenship. [49] They cannot obtain ID cards, birth certificates, death certificates, marriage or divorce certificates, and passports; they also cannot be employed, educated, treated in public hospitals or vote, among other things. [49] See Egyptian identification card controversy.

### Changing religion

Among the most contentious areas of religious freedom is the right of an individual to change or abandon his or her own religion (apostasy), and the right to evangelize individuals seeking to convince others to make such a change.

Other debates have centered around restricting certain kinds of missionary activity by religions. Many Islamic states, and others such as China, severely restrict missionary activities of other religions. Greece, among European

countries, has generally looked unfavorably on missionary activities of denominations other than the majority church and proselytizing is constitutionally prohibited. [50]

A different kind of critique of the freedom to propagate religion has come from non-Abrahamic traditions such as the African and Indian. African scholar Makau Mutua criticizes religious evangelism on the ground of cultural annihilation by what he calls "proselytizing universalist faiths":

The (human) rights regime incorrectly assumes a level playing field by requiring that African religions compete in the marketplace of ideas. The rights corpus not only forcibly imposes on African religions the obligation to compete—a task for which as non proselytizing, noncompetitive creeds they are not historically fashioned—but also protects the evangelizing religions in their march towards universalization. ... it seems inconceivable that the human rights regime would have intended to protect the right of certain religions to destroy others.[51][page needed]

Some Indian scholars [52] have similarly argued that the right to propagate religion is not culturally or religiously neutral.

In Sri Lanka there have been debates regarding a bill on religious freedom that seeks to protect indigenous religious traditions from certain kinds of missionary activities. Debates have also occurred in various states of India regarding similar laws, particularly those that restrict conversions using force, fraud or allurement.

In 2008 Christian Solidarity Worldwide, a Christian human rights non-governmental organization which specializes in religious freedom, launched an in-depth report on the human rights abuses faced by individuals who leave Islam for another religion. The report is the product of a year-long research project in six different countries. It calls on Muslim nations, the international community, the UN and the international media to resolutely address the serious violations of human rights suffered by apostates. [53]

Apostasy

In Islam Legal opinion on apostasy by the Fatwa committee at Al-Azhar University in Cairo, the highest Islamic institution in the world, concerning the case of a man who converted to Christianity: "Since he left Islam, he will be invited to express his regret. If he does not regret, he will be killed pertaining to rights and obligations of the Islamic law."

In Islam, apostasy is called "ridda" ("turning back") and is considered to be a profound insult to God. A person born of Muslim parents that rejects Islam is called a "murtad fitri" (natural apostate), and a person that converted to Islam and later rejects the religion is called a "murtad milli" (apostate from the community) . [54]

In Islamic law (Sharia), the consensus view is that a male apostate must be put to death unless he suffers from a mental disorder or is converted under duress, for example, due to an imminent danger of being killed. A female apostate must be either executed, according to Shafi'i, Maliki, and Hanbali schools of Sunni Islamic jurisprudence (fiqh), or imprisoned until she reverts to Islam as advocated by the Sunni Hanafi school and by Shi'a scholars. [55]

Ideally, the one performing the execution of an apostate must be an imam. [55] At the same time, all schools of Islamic jurisprudence agree that any Muslim can kill an apostate without punishment. [56]

### Secular law

Religious practice may also conflict with secular law creating debates on religious freedom. For instance, even though polygamy is permitted in Islam it is prohibited in secular law in many countries. Does prohibiting polygamy then curtail the religious freedom of Muslims? The US and India, both constitutionally secular nations, have taken two different views of this. In India polygamy is permitted, but only for Muslims, under Muslim Personal Law. In the USA polygamy is prohibited for all. This was a major source of conflict between the early LDS Church and the United States until the Church amended its position on polygamy. Similar issues have also arisen in the context of the religious use of psychedelic substances by Native American tribes in the United States as well as other Native practices.

### International law

In international law the freedom of religion and belief is protected by the International Covenant on Civil and Political Rights (ICCPR). This protection extends to specifically non-religious beliefs, such as humanism. However, minority or disfavored religions still receive the spiritual injustice of persecution in many parts of the world. [45][57]

### Children's rights

The law in Germany provides the term of “religious majority” (Religionsmündigkeit) with a minimum age for minors to follow their own religious beliefs even if their parents don't share those or don't approve. Children 14 and older have the unrestricted right to enter or exit any religious community. Children 12 and older cannot be compelled to change to a different belief. Children 10 and older have to be heard before their parents change their religious upbringing to a different belief. [58] There are similar laws in Austria [59] and in Switzerland. [60]

### Modern concerns

Where individuals and non governments are concerned, religious toleration is generally taken to refer to an attitude of acceptance towards other people's religions. [citation needed] Such toleration does not require that one view other religions as equally true; rather, the assumption is that each citizen will grant that others have the right to hold and practice their own beliefs. [citation needed] Against this backdrop, proselytism can be a contentious issue, as it could be regarded as an offense against the validity of others' religious beliefs, including irreligious belief. [citation needed]

### Contemporary World Overviews—Freedom of Religion by Country

See 2009 and 2011 reports produced by Pew Research Center's Forum on Religion and Public Life, *supra*

## International Religious Freedom Day

27 October is International Religious Freedom Day, in commemoration of the execution of the Boston Martyrs for their Religious convictions, 1658-1661. {citation needed}. The US proclaim 16 January Religious Freedom Day. {65}

### F. Recent Events Breathe New Hope Into The Quest To Preserve And Enlarge The Principle And Practice Of Religious Freedom:

“The State of Religious Liberty in the United States” was the topic of a United States House of Representatives hearing on October 26, 2011. The hearing sponsor was the Subcommittee on the Constitution of the House Committee on the Judiciary. The hearing includes testimony by Bishop William C. Lori (Bishop of Bridgeport, CT, and Chair of the U.S. Conference of Catholic Bishops’ Committee on Religious Liberty), Reverend Barry W. Linn (Executive Director of Americans United for Separation of Church and State), and Colby M. May (Senior Counsel and Director of the Washington office of the American Center for Law and Justice). The Chair of the Subcommittee, Trent Franks, gives various comments on religious liberty at the commencement of the hearing as well. The appendix includes statements from other leaders as well (Sikh, Hindu, Jewish, etc.). The online link to the webcast and full PDF is here:

[http://judiciary.house.gov/hearings/hear\\_10262011\\_2.html](http://judiciary.house.gov/hearings/hear_10262011_2.html). The transcript of the hearing occupies 188 pages which are not all included in this paper, but the content of which is included herein by reference.

Roman Catholic bishops, on November 14, 2011, vowed to defend their religious liberty in the face of growing acceptance of gay marriage and what they called attempts by secularists to marginalize faith. Bishops hope to persuade federal lawmakers to retain the Defense of Marriage Act, which passed in 1996, and launched a new website called Marriageuniqueforareason.org. President Barak Obama had said his administration would no longer defend the law, calling it “counter to the Constitution.” Bishops said it was wrong to define their religious convictions as discrimination. “The church has nothing against compromise, but we can’t compromise principle,” said Archbishop Anthony Dolan.

“A study released November 21, 2011, by the Pew Forum on Religion and Public Life notes a dramatic increase in religious advocacy groups over the past forty years. ‘The number of organizations engaged in religious lobbying or religion-related advocacy in Washington, D.C., has increased roughly fivefold in the past four decades, from fewer than 40 in 1970 to more than 200 today.’ Such groups ‘collectively employ at least 1,000 people in the Greater Washington area and spend at least \$390 million a year on efforts to influence national public policy. As a whole, religious advocacy organizations work on about 300 policy issues.’ These policy issues are no longer restricted merely to domestic affairs: roughly as many groups work only on international issues as work only on domestic issues, and nearly two-thirds of the groups work on both.” (See 2012-01-12 ICLRS Newsletter.)

On January 11, 2012, the United States Supreme Court decided against the Obama administration, in the case of *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*. Many have called this case, which was decided by unanimous decision of the Court, the most important ruling on religious freedom in decades. The case pitted the rights of religious organizations to choose their own ministers against the government’s interest in preventing discrimination in the workplace. Hannah C. Smith, Senior Counsel at the Becket Fund for Religious Liberty, which was co-counsel at the Supreme Court for “*Hosanna-Tabor*,” has quoted the Court and made these observations about the decision: “The Court (in the Chief Justice’s unanimous opinion) declared that both the Free Exercise and Establishment Clauses of the First Amendment provide ‘special solicitude to the rights of religious organizations’ and ‘bar the government from interfering with the decision of a religious group to fire one of its ministers.’ The protection extends not just to priests and rabbis, but to any leader or teacher who ‘personifies’ the beliefs of the religious community.

“In a ringing rebuke of the Obama administration’s cramped view of a church’s freedom, all nine justices—including Obama appointees—rejected its arguments as ‘extreme,’ ‘remarkable’ and ‘untenable.’ The Court rejected the government’s two-pronged argument that church’s should enjoy no more freedom in choosing their than any other social group, and, even if they do, that freedom should be

limited only to cases where the employee performed exclusively religious functions, rather than a mix of religious and secular ones.

“The Court’s rebuke echoes beyond this case to the Obama administration’s tone deafness towards religious liberty in other areas. One example is the administration’s new rule in August mandating abortion-causing drugs for all employer-provided health insurance plans. The rule will force some religious organizations to choose between honoring their pro-life convictions or providing their own employees with health insurance, which must now include free ‘preventative services’ that encompass Plan B (‘the morning after pill’) and ella (‘the week after pill’).

“...{T}he Obama administration...has effectively judged that any religious conviction against abortion, contraception and sterilization is not really central to the mission of these religious schools and therefore should yield to the government’s contrary policy priorities. One implication of Hosanna-Tabor is that the government has no right or competence to judge such matters. Instead, such judgment belongs only to the religious organizations themselves. The Constitution requires no less.”

BY THE UNITED STATES OF AMERICA, A PROCLAMATION:

“For nearly four centuries, men and women have immigrated to America’s shores in pursuit of religious freedom. Hailing from diverse backgrounds and faiths, countless settlers have shared a simple aspiration – to practice their beliefs free from prejudice and persecution. In 1786 the Virginia General Assembly took a bold step toward preserving this fundamental liberty by passing the Virginia Statute for Religious Freedom, which brought to life the ideal of religious tolerance from the texts of the Enlightenment in the laws of state. On Religious Freedom Day, we celebrate this historic milestone, reflect upon the statute’s declaration that ‘Almighty God hath created the mind free,’ and reaffirm that the American people will remain forever unshackled in matters of faith.

“Drafted by Thomas Jefferson, the Virginia statute formed the basis for the First Amendment, which has preserved religious freedom for both believers and non-believers for over 220 years. As our nation has grown, so

has its diversity of faiths, cultures, and traditions; today, the individuals of rich and varied beliefs call America home and seek to follow their consciences in peace. Our long history of religious tolerance and pluralism has strengthened our country, helped create a vibrant civil society, and remained true to the principles enshrined in our founding documents.

“Our nation is committed to religious liberty not only for all Americans, but also for individuals around the world. Internationally, we bear witness to those who live in fear of violence and discrimination because of their beliefs. My administration continues to stand with all who are denied the ability to choose, express, or live their faith freely, and we remain committed to protecting this universal human right and the vital role it plays in ensuring peace and stability for all nations.

“Today, as we reflect on the many ways religious freedom enriches our country and our lives, let us lend our voice to all people striving to exercise their innate right to a free mind.

“NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2012, as Religious Freedom Day. I call on all Americans to commemorate this day with the events and activities that teach us about this critical foundation of our nation’s liberty, and show us how we can protect it for future generations at home and around the world.

“IN WITNESS WHEREOF, I have hereinto set my hand this thirteenth day of January , in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.”

BARACK OBAMA

In the face of the foregoing Proclamation, the current Administration and other organizations have been charged with intentionally diminishing the religious rights of individuals and organizations in the United States. For example: On January 27, 2012, the Sixth Circuit Court of Appeals ruled that a university that expelled a Christian graduate student from its counseling program because she refused to affirm homosexual relationships may have violated her Constitutional rights.

In January, 2009, Julea Ward began a counseling practicum where she would meet with actual clients. However, one of her new clients wanted counseling in regards to his homosexual relationship—a lifestyle Ward knew she couldn't validate as a Christian who believes same sex relationships are wrong. Shortly before the client arrived, Ward contacted her supervisor and asked to transfer him because of a values conflict—an acceptable option within the profession—and her supervisor agreed. A few days later Ward was called in for a review and was told that unless she could “see the error of her ways” and change her “belief system,” she would have to leave the program, despite being just a few classes away from graduating, according to court documents.

After she was dismissed from the program, Ward filed a lawsuit, but the state courts agreed with the university. “...The Sixth Circuit Court reversed, stating that there needs to be additional proceedings before a decision can be reached.”

In a Washington Post editorial by Michael Gerson of the Washington Post, commenting on the Obama administration's final decision that Catholic universities, hospitals and charities will be compelled to pay for health insurance that covers sterilization, contraceptives and abortionfacients, stated:

“The implications of Obama's power grab go further than contraception and will provoke opposition beyond Catholicism. Christian colleges and universities of various denominations will resist providing insurance coverage for abortion facients. And the astounding ambition of this federal precedent will soon be apparent to every religious institution. Obama is claiming the executive authority to determine which missions of believers are religious and which are not—and then to aggressively regulate institutions the government declares to be secular. It is a view of religious liberty so narrow and privatized that it barely covers the space between a believers ears.

“Obama's decision also reflects a certain view of liberalism. Classic liberalism was concerned with the freedom to hold and practice beliefs at odds with a public consensus. Modern liberalism uses the power of the state to impose liberal values on institutions it regards as backward. It is difference between pluralism and anticlericalism.

“The administration's ultimate motivation is uncertain. Has it adopted a radical secularism out of conviction, or is it cynically

appealing to radical secularists? In either case, the war on religion is formally declared. “

Franco Ordonez of McClatchy Newspapers, on or about February 17, 2012, added these comments:

“Religious leaders of different faiths stoked the national debate over Contraception Thursday, converging on Capitol Hill and charging the Obama administration with attempting to violate their religious freedoms. “Leaders from the Catholic, Jewish, Baptist and Lutheran faiths joined in opposition to a proposed federal mandate that would require church affiliated employers to cover birth control in their health plans. The leaders took part in a highly politicized oversight hearing led by one of President Barak Obama’s chief critics, Rep. Darrell Issa, R-Calif. But for those leaders, the issue was deeply serious and personal, touching on one the basic tenets of the nation’s democracy and raising questions about government’s place in the faith community. “I don’t there should be any compromise when it comes to our rights to religious freedom,’ said William Thierfelder, president of Belmont Abbey College in Charlotte, N.C. ‘I came here to ask for your help. This is an issue worth dying for.’

“Theirfelder said it is the belief of his Roman Catholic liberal arts college, and that of many religious organizations, that contraception, sterilization and abortion are against God’s law. He said they believe it’s a sin for the college to facilitate access to these services.

“The Department of Health and Human Services issued a final rule Jan. 20 that required all women to be able to receive access to free preventative care services. “The proposal includes a religious exemption for churches and other groups whose main purpose is spreading religious beliefs.”

In the meantime, two BYU law professors have rallied with a letter against the Obama Compromise, to wit:

“Two BYU law professors joined more than 100 prominent scholars who have signed a letter protesting the Obama administration’s decision to require employers to subsidize free contraception, sterilization and abortion-inducing drugs.

“Professors Cole Durham and Lynn Wardle, both of BYU’s J. Reuben Clark Law School, added their names to the letter’s primary authors, who include Catholic University’s President John Garvey, Harvard Law professor

Mary Ann Glendon and Princeton Law professor Robert P. George. George is a member of the Deseret News Editorial Board.

“This so-called ‘accommodation’ changes nothing of moral substance and fails to remove the assault on religious liberty and the rights of conscience which give rise to the controversy,’ the letter states. ‘It is certainly no compromise.’

“The simple fact is that the Obama administration is compelling religious people and institutions who are employers to purchase a health insurance contract that provides abortion-inducing drugs, contraception and sterilization,’ the letter continues. ‘This is a grave violation of religious of religious freedom and cannot stand. It is an insult to the intelligence of Catholics, Protestants, Eastern Orthodox Christians, Jews, Muslims, and other people of faith and conscience to imagine that they will accept an assault on their religious liberty if only it is covered-up by a cheap accounting trick.’ “The letter came after the administration’s effort to diffuse the controversy last weekend met mixed reviews.”

#### G. Conclusion:

“Freedom of speech, freedom of action within boundaries that do not infringe upon the liberty of others are...divine gifts ‘essential to human dignity and human happiness.

“Liberty may be either helpful or fatal according to the use made of it...’ Liberty is an atmosphere of the higher life....Liberty?---it is respect...Men must be made capable and worthy of {liberty}, otherwise public life becomes impossible.’

“True liberty in individuals consists in the enjoying of every right that will contribute to one’s peace and happiness, so long as the exercise of such a privilege does not interfere with the same privilege in others. It consists not in doing what one likes to do, but in doing what one ought to do. It is the right of each individual to be master of his own time and actions consistent with fairness and justice to his fellow men and with harmony with the laws of God...It is freedom of choice, a divine gift, and essential virtue in a peaceful society. “In these days of uncertainty and unrest, liberty-loving people’s greatest responsibility and paramount duty is to preserve and proclaim the freedom of the individual, his relationship to

Deity, and...the necessity of obedience to the principles of the gospel of Jesus Christ—only thus will mankind find peace and happiness.

“If we would make the world better, let us foster a keener appreciation of...freedom and liberty,” Teachings of Presidents of the Church, DAVID O. MCKAY, Chapter 22, pp. 211, 212.

## VI. RELIGIOUS FREEDOM AS VIEWED BY: REPRESENTATIVES OF CHURCHES AND SECULAR LEADERS, AND SCHOLARS IN GENERAL.

### A. Religious Human Rights In Global Perspective, Legal Perspectives:

In 1996 a collection of papers dealing with the subject of religious liberty entitled “Religious Human Rights In Global Perspective, Legal Perspectives,” was published by Martinus Nijhoff Publishers and edited by Johan D. van der Vyver, I.T. Cohen, Professor of International Law and Human Rights, Fellow, The Carter Center, Emory University, and John Witte, Jr., Director, Law and Religion Program, Jonas Robitscher Professor of Law, Emory University. The Preface was written by former U.S. President, Jimmy Carter, and the Introduction by Johan van der Vyver, Emory University. Included in the collection were the following papers:

“Perspectives on religious Liberty: A Comparative Framework” by W. Cole Durham, Jr., Brigham Young University, pp. 1-44.

“Studying ‘Religious Human Rights’: Methodological Foundations” by David Little, United States Institute of Peace, pp. 45-78.

“Religious Human Rights Under the United Nations” by Natan Lerner, Tel Aviv University, pp. 79-134.

“The Role of Secular Non-Governmental Organizations in the Cultivation and Understanding of Religious Human Rights” by Michael Roan, Project Tandem, Inc., pp. 135-160.

“The Cultivation and Protection of Religious Human Rights: The Role of the Media” by James Finn, Freedom Review and Puebla Institute” pp. 161-190.

“The Impact of Religious Rules on Public Life in Germany” by Martin Heckel, Eberhard-Karls-Universität, Tübingen, pp. 191-204.

“Religious Liberty in the United Kingdom” by Peter Cumper, The Nottingham Trent University, pp. 204-242.

“The Main Problems of Religious Freedom in Eastern Europe” by Tamas Foldesi, Eotvos Lorand University, Budapest, pp 243-262.

“Religious Human Rights in Post-Communist Balkan Countries” by Paul Mojzes, Rosemead College, pp 263-284.

“Religious Rights in Russia at a Time of Tumultuous Transition: A Historical Theory” by Harold J. Berman, Emory University, pp. 285-304.

“Adjudicating Rights of Conscience Under the European Convention on Human Rights” by T. Jeremy Gunn, National Committee for Public Education and Religious Liberty, pp. 305-330.

“Religious Human Rights and the Principle of Legal Pluralism in the Middle East” by Said Amir Arjomand, State University of New York at Stony Brook, pp. 331-348.

“Religious Human Rights in the State of Israel” by Asher Maoz, Tel Aviv University, pp. 349-390.

“Africa’s Search for Religious Human Rights Through Returning to Wells of Living Water” by John S. Pobee, World Council of Churches, Geneva, pp. 391-416.

“Limitations on Religious Rights: Problematizing Religious Freedom in the African Context” by Makau wa Mutua, Harvard University, pp. 417-440; and “Religious Human Rights in South Africa” by Lourens M. du Plessis, University of Stellenbosch, pp. 441-466.

“Religious Human Rights in Latin America” by Paul E. Sigmund, Princeton University, pp. 467-482.

“Religious Human Rights in Central America” by Stanley Muschett Ibarra, Universidad Santa Maria la Antigua, Panama, pp. 483-496.

“The American Constitutional Experiment in Religious Human Rights: The Perennial Search for Principles” by John Witte, Jr., Emory University, and M. Christian Green, University of Chicago, pp. 497-558.

“A Draft Model Law on Freedom of Religion, With Commentary” by Dinah Shelton, Santa Clara University, and Alexandre Kiss, International Institute of Human Rights, Strasbourg, pp. 559-592.

“The Tensions and the Ideals” by John T. Noonan, Jr., United States Court of Appeals, pp. 593-606.

This collection is sold and distributed in the U.S.A. and Canada by Kluwer Law International, 675 Massachusetts Avenue, Cambridge, MA 02139, U.S.A., and in all other countries by Kluwer Law International, P.O. Box 85889, 2508 CN The Hague, The Netherlands.

#### B. Facilitating Freedom Of Religion Or Belief: A Deskbook:

In 2004, The Oslo Coalition on Freedom of Religion or Belief, in celebration of the 20<sup>th</sup> anniversary of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based of Religion or Belief, caused to be published by Martinus Nijhoff Publishers, a book entitled

“Facilitating Freedom of Religion Or Belief: A Deskbook.” Editors were Taree Lindholm, W. Cole Durham, Jr., and Bahia G.Tahzib-Lie. Associate Editors were Elizabeth A. Sewell and Lena Larsen. The book was dedicated To Defenders of Freedom of Religion or Belief and To Victims of Intolerance. Hermann Hesse, Siddhartha, wrote this thought provoking vignette following the title page: “Is it not true, my friend, that the river has very many voices? Has it not the voice of a king, of a warrior, of a bull, of a nightbird, of a pregnant woman and a sighing man, and a thousand other voices?” “It is so,” nodded Vasudeva, “the voices of all living creatures are in its voice.” This Deskbook features papers to which these references are made, to wit:

#### Part I: Origins and Grounds of Freedom of Religion or Belief:

“Historical Analysis of Freedom of Religion or Belief as a Technique for Resolving Religious Conflict” by Malcolm D. Evans, pp. 1-18.

“Philosophical and Religious Justifications of Freedom of Religion or Belief” by Tore Lindholm, pp. 19-62.

Part II: Freedom of Religion or Belief: International Norms and Institutions:

“The Nature and Minimum Standards of Freedom of Religion or Belief” by Natan Lerner, pp. 63-84.

“The Relationship of Freedom of Religion or Belief Norms to Other Human Rights” by Johan D. van der Vyver, pp. 85-124.

“Freedom of Religion or Belief under International Human Law and International Criminal Law” by David Llewellyn and H. Victor Conde, pp. 125-146.

“Permissible Restrictions on Freedom of Religion or Belief” by Manfred Nowak and Tanja Vospernik, pp. 147-172.

“The United States Commission on Human Rights and Freedom of Religion or Belief” by Theo van Boven, pp. 173-188.

“The Human Rights Committee on Freedom of Religion or Belief” by Martin Scheinin, pp. 189-202.

“UNESCO’s Facilitation of Freedom of Religion or Belief” by Doudou Diene, pp. 203-208.

“The Protection of Religious Freedom in the System of the Council of Europe” by Javier Martinez-Torron and Rafael Navarro-Valls, pp. 209-238.

“Advancements in Standard Setting: Religious Liberty and OSCE Commitments” by Urban Gibson and Karen S. Lord, pp. 239-254.

“Implementing Freedom of Religion in the OSCE: Experiences from the Norwegian Chairmanship” by Janne Haaland Matlary, pp. 255-272.

### Part III: Freedom of Religion or Belief and the State:

“Conscientious Objection” by Jose de Sousa e Brito” pp. 273-290.

“The Right to Autonomy in Religious Affairs” by Roland Minnerath, pp. 291-320.

“Facilitating Freedom of Religion or Belief through Religious Association Laws” by W. Cole Durham, Jr., pp. 321-406.

“Protecting Freedom of Religion or Belief in Restricted or Institutional Settings” by Lee Boothby, pp. 407-424.

“Freedom of Religion and Belief and Discretionary State Approval of Religious activity” by Roman Podoprigora, pp. 425-440.

“The Place of Religion in Public Life: The Lay Approach” by Jean Bauberot, pp. 441-454.

### Part IV: Women, Parents and Children:

“Dissenting Women, Religion or Belief, and the State: Contemporary Challenges that Require Attention” by Bahia G. Tahzib-Lie, pp. 455-496.

“Between Laicist State Ideology and Modern Public Religion: The Head-Cover Controversy in Contemporary Turkey” by Ozlem Denli, pp. 497-512.

“Burdens on the Right of Women to Assert Their Freedom of Religion or Belief” by Juliet Sheen, pp. 513-522.

“Hinduism and Women: Uses and Abuses of Religious Freedom” by Ursula King, pp. 523-544.

“Religion Confronting Women’s Human Rights: The Case of Roman Catholicism” by Kari Elizabeth Borresen, pp. 545-560.

“The Right to be the Same, The Right to be Different: Children and Religion” by Geraldine Van Bueren, pp. 561-570.

Part V: Changing Beliefs and the Tensions of Tolerance:

“Why the Cults: New Religious Movements and Freedom of Religion or Belief” by Eileen Barker, pp. 571-594.

“The Sect Issue in the European Francophone Sphere” by Willy Fautre, Alain Garay, and Yves Nidegger, pp. 595-618.

“The Right to Engage in Religious Persuasion” by Ted Sthnke, pp. 619-650.

“Proselytism and Cultural Integrity” by Maku Mutua, pp. 651-668.

“Apostasy and Right to Change Religion or Belief” by Nazila Ghanea, pp. 669-688.

Part VI: Contexts For Facilitating Freedom Of Religion Or Belief:

“Developing Shared Values and Common Citizenship in a Secular and Pluralistic Society: How Religious Communities Can Contribute” by Archbishop Anastasios, pp. 689-698.

“Humanism and Freedom From Religion” by Rajaji Ramanadha Babu Gogineni and Lars Gule, pp. 699-720.

“The United States and the Promotion of Freedom of Religion and Belief” by T. Jeremy Gunn, pp. 721-746.

“The Role of Religion and Religious Freedom in Contemporary Conflict Situations” by Rudiger Noll, pp. 747-760.

“Freedom of Religion and Dialogue” by Leonard Swidler, pp. 761-776.

“The Emergence of Interfaith Dialogue: The Norwegian Experience” by Inge Eidsvag, Tore Lindholm, and Barbro Sveen, pp. 777-790.

“Promoting Tolerance through Religious Education” by Ingvill Thorson Plesner, pp. 791-812.

“Religious tolerance, Freedom of Religion or Belief, and Education: Results of the 2001 UN Conference” by Jolanta Ambrosewicz-Jacobs, pp. 813-818.

“Facilitating Freedom of Religion or Belief through NGO’s” by Elizabeth A. Sewell, pp. 819-842.

“Conclusion and Agenda for the Future” by Editors with Michael M. Roan, pp. 843-852.

“Epilogue” by the President of the International Advisory Council, the Oslo Coalition on Freedom of Religion or Belief, Bishop Gunnar Stalsett, pp. 853-854.

About the “Contributors,” pp. 855-870.

“Appendices”—Including Major International Provisions on Freedom of Religion or Belief and List of NGO’s, pp. 871-946.

C. Contemporary View Of Religious Freedom: As Seen By Representatives Of Churches, And By Secular Leaders And Scholars in General:

Presentation by PETER WEIDERUD, Director, CCIA, at the EKD Working Group on Religious Freedom, Hanover, 18 December, 2003, and entitled “Religious Freedom and Liberty in the Emerging Context,” is germane to the issues at hand. This presentation can be accessed through the internet by entering Religious Freedom and Liberty in the Emerging Context by Peter Weiderud or by this website:

<http://oikoument.org/en/resources/documents/wcc-commissions/international-affairs...>

He commences his paper with this introduction: “Ecumenical concern for religious freedom and liberty is older than the World Council of Churches. The Oxford Conference on “Church State and Community” in 1937 first elaborated the understanding of the notion of religious freedom and liberty and named several freedoms that were necessary for the church to fulfill its obligations to society. These inter-alia were: the right of public and private worship, preaching and teaching; freedom from imposition by the State of religious ceremonies and forms of worship; freedom to determine the nature of its government and the qualifications of its ministers and members; freedom of the individual to join the church; the right to control over the education of ministers and the right to provide religious instruction to others; freedom of Christian service and missionary

activity, both at home and abroad; freedom to cooperate with other churches; and freedom to use public facilities available to all citizens or associations as will make it possible to accomplish these ends.

“This early understanding of religious freedom is all encompassing. It comes out of the colonial context of which the missionary enterprise was an integral part. Subsequently, however, nearer to the period of the drafting of the Universal Declaration, the understanding of the right to religious liberty was set in the wider context of universal human rights which were the essential basis of a new just and peaceful world order.”

Mr. Weiderud concludes his paper by addressing the “Role of religion in conflict and inter-religious dialogue.”

On February 10, 2010, HIS EMINENCE FRANCIS CARDINAL GEORGE, OMI, who was at the time President of the U.S. Conference of Catholic Bishops and Archbishop of Chicago, addressed the faculty and student body at Brigham Young University. The topic of his presentation was “Catholics and Latter—Day Saints: Partners in the Defense of Religious Freedom. He concluded his remarks with these moving and inspirational words:

“Dear Sisters and brothers, years ago Mother Teresa of Calcutta, the saint who spent her life caring for the sick and the extremely destitute, was bringing supplies to a Palestinian orphanage in the Gaza region of the Holy Land. At one point her vehicle came up to a check point, and a young Israeli soldier asked the diminutive nun whether she or her assistants were carrying any weapons. Mother Teresa replied, ‘yes, my prayer books.’

“Perhaps in the struggle to defend religious liberty for our churches and for all Americans, our greatest weapon is neither the voting booth nor the legal brief but the prayers that we and our worshipping communities lift up to Almighty God week after week on behalf of our nation.

“My prayer for all of us here today is that we may become a true blessing for the world. I thank you for your kind attention.”

The full text of Cardinal George’s remarks can be accessed through “speeches.byu.edu, Francis E. George.”

JOHN GRAZ is the Public Affairs and Religious Liberty Director for the Seventh-day Adventist world church and secretary general for the International Religious Liberty Association (IRLA). He carries the message of religious freedom across the world—speaking in conferences and with

politicians, religious leaders and scholars. He spoke, on April 4, 2011, at BYU at the 22<sup>nd</sup> annual conference of the LDS International Society about the global challenges and trends affecting religious freedom. A copy of his speech will be made available by calling (801) 422-3377.

Mr. Graz concluded his speech with the following:

“...Many global trends today are not in favor of continued religious freedom. There is a great battle to come and we must be ready to defend religious freedom for all. We must defend the principle of church-state separation. We must work to create respect between religious. We have to explain to governments that religious discrimination is not good politics. In his article, *The Politics of Persecuted Religious Minorities*, Philip Jenkins writes. ‘The more {minorities} are excluded, the more they will devote their loyalties and efforts to the religious subculture, and the more they will be seen as clannish, separatists, or subversive.’

“Don’t give up. Be the voice of the voiceless. Be the voice of the millions persecuted for their faith. We need to promote, defend, and protect religious freedom for all people everywhere. Religious freedom is the gift of the Creator to humanity.”

In an article in the Salt Lake City Deseret News by Michael De Groot dated April 19, 2011, the author quotes Mr. Graz as saying: “Dangerous trends in religious freedom spare no group....There are three trends that challenge religious freedom. 1. Governments want to control religion more....2. Governments are partnering with religion against minority religions....3. Religions see proselytism as an attack....It took centuries of misunderstanding, tensions and war to have religious freedom. From time to time, courageous people—heroes of freedom—stood for religious freedom and sometime they gave their life. And we should never, never forget them.”

On October 25, 2011, BYU welcomed SENATOR JOE LIBERMAN to campus where he spoke to students in the Marriott Center in a forum address titled “Faith and the Public Square.” In a Brigham Young University News Release relating to Senator Lieberman’s speech, the editorial representative quoted the Senator and stated:

“Sen. Lieberman expressed a special connection to the Mormon faith and Brigham Young University because of the core principles that the university stands for.

“Throughout my life I have been blessed to experience the bond that exists between people of faith whose faiths are different,” he said. “People of faith share a lot, beginning with our gratitude for what we’ve been given.”

“Sen. Lieberman, an observant Jew, follows religious customs that have frequently intersected with his political life. Some have been initially puzzled or angry that he refused invitations to certain events because they happened during the Jewish Sabbath, but he said that when they found out that he was saying no because of his religious convictions, they accepted it and even respected him for his dedication.

“I was different from most of them in those practices,” Sen. Lieberman said, but because of the spirit of religious tolerance that exists in America, “those differences did not get in the way of them respecting my beliefs and supporting my career, and in some sense even feeling that interfaith bond because though we were different faiths, we were joined in classically American style by a shared belief in God.”

“The intersection of faith and political life, particularly during a campaign for public office, is especially relevant now with Mitt Romney and Jon Huntsman, both members of the Church of Jesus Christ of Latter Day Saints, up for the GOP nomination.

“The questions go back to the founders of our country who wrote the Declaration {of Independence} and later the Constitution, and the words of our founders are relevant because they remind us from the beginning of America that we have been a nation that has defined itself not so much by our geographic borders as by our national values, and one of those values was and is a belief shared by most Americans that there is a God.”

“Sen. Lieberman acknowledged that this idea may be controversial because while we have that belief, we respect the right of others who don’t share that belief. The founding fathers included those provisions in the Declaration of Independence and the Constitution.

“America has been from the beginning a faith-based initiative and anybody who tries to separate faith from the public square is doing something unnatural and ultimately bad for our country.”

“Regarding Romney, Sen. Lieberman expressed confidence that the American people would not judge a candidate on how ‘different’ his religion is from theirs, but as they did with John F. Kennedy, Jimmy Carter,

and Sen. Lieberman himself, they would look at his personal qualities, his leadership, and his experience and qualifications as determining factors in their voting.”

Reference is here made to the testimony of BISHOP WILLIAM C. LORI, REVEREND BARRY W. LYNN, and COLBY M. MAY given at the United States House of Representatives hearing on “The State of Religious Liberty in the United States” which was conducted on October 26, 2011, as aforesaid.

Bishop Lori appeared representing the United States Conference of Catholic Bishops. He addressed three topics: First. Reflections on the Catholic vision of religious freedom for all, as rooted in the inherent dignity of every human person, and this vision’s deep resonance with the American experiment. Second. Identification of certain threats to religious liberty that have emerged with particular urgency in America today. And third, to urge the hearing officers to action in support of particular legislative measures that would secure religious liberty against these threats.

Reverend Lynn is an ordained minister of the United Church of Christ and an attorney. The theme of his presentation appeared to be couched generally in these terms, and we quote: “What I, and Americans United, see as the most imminent and egregious threats to religious freedom today are those that are suffered by members of minority faiths and non-believers in this country. It is these Americans who are being denied the basic rights that many of us practicing a majority faith take for granted every day. Of course, the religious majority in one community in this country may be the religious minority in another, making it even more important for all faiths to fight for the rights of the less popular religions in our nation. In my day to day work, I see that adherents to less popular faiths and non-believers are increasingly being denied the right to gather and to engage in personal religious expression granted to other faiths. They face religious coercion and overt religious employment discrimination.”

Colby M. May, Esq., is Director and Senior Counsel at the Washington Office of the American Center for Law and Justice. Mr. May, in his introductory comments, made reference to what appeared to be his

theme: “This nation’s founders cherished religious liberty. In fact, the Founding Fathers built this nation with the assurance that an American would be free to practice the religion of his or her choice without the fear of government interference. But although the liberty to practice one’s religion is greater in this country than in any country in the world, conflicts between religious liberty and other interests do exist. In this conflict, many of our fundamental religious liberties are sustained through the efforts of Congress and state legislatures. Others must be defended daily in the court across our nation.”

As noted, *supra.*, the full text of these presentations can be accessed through [http://judiciary.house.gov/hearings/hear\\_10262011\\_2.html](http://judiciary.house.gov/hearings/hear_10262011_2.html).

D. Contemporary View Of Religious Freedom: As Seen By Scholars And Professionals Who Are Members Of the Church Of Jesus Christ Of Latter Day Saints.

Reference is made to the collection of speeches, papers and other presentations included in “Religious Human Rights In Global Perspective: Legal Perspectives, edited by Johan D. van der Vyver and John Witte, Jr., p. 103, *supra.* The first presenter was W. COLE DURHAM, JR., professor at BYU’s J. Reuben Clark Law School and currently founding director of the International Center for Law and Religious Studies at Brigham Young University. His paper, which consists of 44 typewritten pages and is, by this reference, incorporated herein, is entitled “Perspectives on Religious Liberty: A Comparative Framework.” We quote from Professor Durham’s work the introductory and concluding paragraphs:

“The right to religious freedom is the oldest of the internationally recognized human rights. As early as the Peace of Westphalia in 1648, the right to religious liberty was afforded international protection. By the late 18<sup>th</sup> Century, religious liberty was afforded protection in a number of path-breaking statutes, and over the two centuries that followed, particularly in the period following World War II, it has found its way into most of the world’s constitutions. In our increasingly secular world, it has tended to take a back seat to concern for more tangible encroachments on human dignity, such as torture, disappearances, and the like. As John Noonan has suggested, it has become the ‘neglected stepchild of the human rights

movement.’ One could just as easily speak of it , in light of its age, as the ‘neglected grandparent’ of human rights. Whatever the metaphor, recent events in the former Yugoslavia, Ireland, and Lebanon are a constant reminder that religious tensions can erupt as critical social problems, and the wave of new constitutions in Russia, Eastern Central Europe and other parts of the world has helped refocus attention on the importance of this fundamental freedom.

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“While institutions of religious liberty take on differences of coloring and detail in light of local traditions and culture, there is sufficient historical experience with religious liberty to be able to identify certain principles that deserve universal acknowledgment. At a minimum, these include not only the religious liberty principles enunciated in the major international human rights conventions but also those spelled out in the Vienna Concluding Document and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief. Practical steps should be taken to identify constitutional and statutory provisions that do not measure up to these principles as a minimum international standard. Steps should also be taken to endorse these principles more broadly. Securing the normal recognition and actual achievement of all of these principles would constitute major progress in the field of religious liberty.”

On April 3, 2001, PROFESSOR DURHAM addressed the faculty and students at Brigham Young University in a speech entitled “The Doctrine of Religious Freedom.” The full text of his remarks follows:

# *The Doctrine of Religious Freedom*

W. COLE DURHAM, JR.

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*W. Cole Durham, Jr., was a professor at BYU's J. Reuben Clark Law School when this devotional address was given on 3 April 2001.*

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I would be remiss on this occasion if I did not express gratitude for the opportunities I have had during one of the great transformative epochs in human history--the decade after the collapse of communism--to visit almost every post-communist country and to work with leaders in their homelands on implementing the ideals of religious freedom. I am grateful beyond measure for blessings that have been given and keys that have been exercised to allow me to participate in the high adventure of opening the doors of nations.

Several years ago a close friend and Church leader gave me a blessing promising that I would be able to invoke the witness of the Holy Ghost when I spoke with others about religious freedom. In fulfillment of that blessing, I have seen the influence of the Spirit change the hearts and minds and, indeed, the entire outlook of many of the governmental leaders with whom I have met, the "gatekeepers" who stand at the doors of nations. I pray that the Spirit will be with me again today as I have the chance to bear witness of this great principle among my own people.

## **The Doctrine of Religious Freedom**

The title of my address--"The Doctrine of Religious Freedom"--is intended to remind us that religious freedom is not merely an important constitutional and human right.<sup>1</sup> There can be no doubt that it is a "first" freedom.<sup>2</sup> But for us it is even more: it is a matter of doctrine. Our 11th article of faith reads:

*We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.*

Moreover, this is not merely doctrinal for us--it is a core doctrine. Yet, as I will explain, it is a paradoxical doctrine. And it is a doctrine of prophecy.

## **Religious Freedom Is a Core Doctrine**

That religious freedom is a core doctrine has been reemphasized to my mind by the following remarkable statement from Elder Bruce R. McConkie:

*Freedom of worship is one of the basic doctrines of the gospel. Indeed, in one manner of speaking it is the most basic of all doctrines, even taking precedence over the nature and kind of being that God is, or the atoning sacrifice of the Son of God, or the vesting of priesthood and keys and saving power in the one true church. By this we mean that if there were no freedom of worship, there would be no God, no redemption, and no salvation in the kingdom of God.<sup>3</sup>*

Note two things about this statement. First, Elder McConkie does not say this is the most *important* doctrine. He said that "it is the most basic of all doctrines." It is the most basic because none of the other doctrines could become operative or have any meaning or authenticity if we did not have the option to choose them freely. The exercise of this right is in fact an attribute of divinity.<sup>4</sup> The atoning sacrifice of Christ would be meaningless if we could not avail ourselves of its power to save and exalt through freely chosen acts of faith, repentance, and covenanting. Part of the reason the Messiah is "the Lamb slain from the foundation of the world"<sup>5</sup> is that at the key moment in the premortal existence, He recommended the Father's plan of freedom, knowing its cost. He knew the price that He personally would pay to atone for all our abuses of freedom. He also knew that despite His payment of that price, countless numbers of His beloved brothers and sisters--individuals He loves with a depth and intensity that passes our understanding--would be lost forever because of their own decision "to choose captivity and death."<sup>6</sup>

This brings me to the second point about Elder McConkie's statement. Note that he did not say that it made no difference *how* we exercise this freedom; to the contrary, everything depends on learning to follow the divine pattern set by the Master of worship in every thought and deed and with all our "heart, . . . might, mind, and strength."<sup>7</sup>

### **The Paradox of Religious Freedom**

Paradoxically, following the pattern set by the Master includes learning to respect the beliefs and choices made by others, even while standing firm in witnessing and teaching doctrinal truths. Indeed, following the pattern means standing for the rights and freedoms of others, even at the cost of our own lives--and surely also even at the lesser cost of inconvenience or discomfort.

This paradoxical nature of the doctrine of religious freedom needs to be emphasized and understood more deeply. Most of our doctrines are teachings that we affirm and agree to follow. In contrast, although religious freedom is basic and foundational for the system of gospel truth, it demands that we respect the views of those who adhere to other systems of belief. What is paradoxical is that our belief in religious freedom obligates us to tolerate and respect beliefs with which we disagree--though it does not require us to accept, endorse, or support them.

Part of the paradox is explained by the fact, attested by all the modern prophets, that the gospel embraces all truth.<sup>8</sup> But more is involved in the doctrine of religious freedom than an admonition to accept truth wherever we find it.<sup>9</sup> It is a recognition of the realities of human dignity and conscience and of the obligation to respect agency at the precious core of the human spirit. This doctrine has had great practical meaning for our leaders.<sup>10</sup> Just a year before his martyrdom, Joseph Smith declared:

*The Saints can testify whether I am willing to lay down my life for my brethren. If it has been demonstrated that I have been willing to die for a "Mormon," I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.*

*It is a love of liberty which inspires my soul--civil and religious liberty to the whole of the human race.*<sup>11</sup>

Forgetting the paradox of religious freedom has been a cause of incalculable suffering during human history. Too often, groups who have pleaded for tolerance while they were a persecuted minority have turned into persecutors as soon as they acquired political power. Joseph Smith was very conscious of this tragic tendency toward unrighteous dominion and repudiated it.<sup>12</sup> We as members of The Church of Jesus Christ of Latter-day Saints should not be guilty of insensitivity in this area. Having so often suffered from religious intolerance in the past, we should go the extra mile in assuring that others are not exposed to similar pain.<sup>13</sup> What those who forget this paradox do not understand is that the mere possession of truth does not carry with it a right to impose that truth on others. God possesses all truth, yet He has left us our freedom.

In the end, the paradox of religious freedom is linked to many of the deepest truths of the gospel, which share a similar paradoxical structure. "Whosoever will lose his life for my sake shall find it."<sup>14</sup> "I, the Lord, will forgive whom I will forgive, but of you it is required to forgive all men."<sup>15</sup> What ultimately lies behind this paradox is the second great

commandment: "Thou shalt love thy neighbour as thyself."<sup>16</sup> Love lies at the heart of the paradox and at the core of religious freedom.

*Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you;*

*That ye may be the children of your Father which is in heaven: for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.*<sup>17</sup>

Stated differently, what makes the doctrine of religious freedom paradoxical is that the right to enjoy religious freedom for ourselves carries with it a reciprocal obligation to respect the religious freedom of others. In the words of the Golden Rule, Do unto others as you would have them do unto you.<sup>18</sup> Or as the Lord said at the Last Supper, "As I have loved you, . . . love one another."<sup>19</sup>

### **Religious Freedom and Prophecy**

Religious freedom is not only a matter of doctrine; it is a focus of prophecy. You are all familiar with the great description of the last days found in Isaiah 2:

*And it shall come to pass in the last days, that the mountain of the Lord's house shall be established in the top of the mountains, and shall be exalted above the hills; and all nations shall flow unto it.*

*And many people shall go and say, Come ye, and let us go up to the mountain of the Lord, to the house of the God of Jacob; and he will teach us of his ways, and we will walk in his paths: for out of Zion shall go forth the law, and the word of the Lord from Jerusalem. . . .*

*O house of Jacob, come ye, and let us walk in the light of the Lord.*<sup>20</sup>

For me, Isaiah's great vision of the last days has taken on greater meaning ever since I read a commentary on this passage by President Harold B. Lee,<sup>21</sup> in which he pointed to an interpretation of the phrase "out of Zion shall go forth the law" that is found in the dedicatory prayer of the Idaho Falls Temple. The relevant portion of that prayer reads as follows:

*We pray that kings and rulers and the peoples of all nations under heaven may be persuaded of the blessings enjoyed by the people of this land [the United States] by reason of their freedom under thy guidance and be constrained to adopt similar governmental systems, thus to fulfil the ancient prophecy of Isaiah that "out of Zion shall go forth the law and the word of the Lord from Jerusalem."*<sup>22</sup>

The Idaho Falls Temple was dedicated on September 23, 1945, immediately following the end of World War II. With that in mind, it is worth reflecting on developments that have occurred since 1945 that bear on the fulfillment of this prophecy.

First, virtually all currently enforceable international human rights treaties have been adopted since 1945. Moreover, the entire approach to international human rights law has changed. It is now taken for granted that it is legitimate for one sovereign nation to be concerned about the human rights practices of other nations.<sup>23</sup>

At the national level, with only a handful of exceptions, all the countries on earth have adopted their current constitutions since 1945.<sup>24</sup> In short, we are witnessing a remarkable historical process in the field of international law and comparative constitutional law that is the subject of prophecy. This to my mind is one of the many ways that we see the tracings of the Spirit of Christ in history.

### **The Significance of Religious Freedom for Church Growth**

Let me now give you a graphic sense for the implications that global religious freedom has for the growth of The Church of Jesus Christ of Latter-day Saints. Look first at a map of the globe that attempts to plot the status of religious freedom

GET MAP  
around the world. [A map was shown to the audience.] The information in this map is based primarily on the latest annual report on religious freedom provided by the U.S. State Department.<sup>25</sup> The countries shown in gray are countries that have either no constitutional protection of religious freedom or that do not respect this ideal in practice. Some states protect religious freedom to some extent but have significant qualifications that make it difficult to found a new religious community in the country. Restrictions on proselytizing are particularly problematic. As the map shows, most of the world now has normal-to-strong protection of religious freedom. No country has a perfect record, but the situation is markedly better than it was even 10 years ago.

GET MAP  
Now look at the map showing the presence of the Church of Jesus Christ worldwide. [A second map was shown.] Darker gray shows the countries where the Church has not yet achieved formal recognition. As you can see, this band of the world includes China and most Islamic nations. Not surprisingly, since the Church always follows the policy of going "in the front door" and entering a country only when it is legal for it to do so,<sup>26</sup> there is a high correlation between low religious freedom and lack of formal presence of the Church of Jesus Christ.

GET MAP  
The third map shows that religious freedom also has considerable significance for general patterns of Church growth. [Another map was shown.] One of the things that is striking from the map is that concentrations are higher in what the scriptures refer to as the "promised land" of the Americas and certain "islands of the sea." Second, one is beginning to see the impact of growth in parts of Africa and the former socialist bloc, where we lacked significant presence until recently. Finally, what the map shows is that Church population remains very thin virtually everywhere. Aside from the United Kingdom, Portugal, and South Korea, there are no countries in these three vast continents of Europe, Africa, or Asia that have as much as one Latter-day Saint per 1,000 in its population. Even in the Americas population exceeds 3 percent only in Chile. Utah remains the only place where the Church is in the majority. The point is that we remain a tiny minority virtually everywhere--so religious freedom protections continue to be of tremendous significance to the Church and its members.

### Global Challenges to Implementing Religious Freedom

With this background, let me turn now to some of the global challenges to implementing religious freedom. We live in a world that is peopled with an odd mixture of Sherems<sup>27</sup> and Korihors.<sup>28</sup> Sherem, as you remember, is the Book of Mormon figure who criticized prophets and revelations concerning Christ on the basis of fundamentalist or supposedly "orthodox" interpretations of religious texts. At the other pole stands Korihor, the secular anti-Christ who prefigured in his thought the great masters of suspicion of the 19th and 20th centuries--Darwin, Marx, Nietzsche, and Freud.

Both secularism and fundamentalism or orthodoxy in other traditions can pose profound problems for religious freedom. Further problems emanate from nationalism, ethnicity, and efforts to exploit these for the retention of political power. The arrest of Slobodan Milosevic this past weekend reminds us of the terrible ways a power-hungry leader can use these forces, often manipulating religion in the process to cause terrible devastation.<sup>29</sup> Finally, fears associated with stereotypical images of "dangerous sects"--often fanned by virulent anticult forces<sup>30</sup>--are leading to infringements of religious freedom both in areas of Western Europe and in many other parts of the world.

The Church has outgrown the "dangerous sect" label, but just barely, and we are constantly at risk that overbroad reactions to supposedly "dangerous" religions will create problems for us as well. Even if this were not the case, however, our own experience with religious persecution should encourage us to stand firm for the rights of the currently less fortunate groups.

Time is limited, but let me give a few concrete examples of how religious freedom is protected in practice.

### Technical Legal Assistance

A year ago in January I stopped for three days in Romania because I had a few extra days between two other conferences in Europe. I was aware that very problematic legislation was pending that, among other things, would have made it virtually impossible for the Church of Jesus Christ and many other religious groups to find places of worship in that country. On the first day of my visit I stopped in to see the head of religious affairs, who I had met at a conference a few months earlier. By coincidence, or something more, I was in his office when he received a call indicating that the ruling coalition in Romania would consider whether to withdraw the proposed law from Parliament three days later. Armed with

that alert, it was possible to help mobilize response from many groups and government leaders both within and outside of Romania, with the result that the legislation was withdrawn. With a kind of clarity that is seldom so clear-cut, I knew that my three days in Romania had been blessed, and blessed with success.

More typical of efforts working on legislation has been the experience of the past few weeks working on legislation in Kazakhstan and Kyrgyzstan through the Organization for Security and Cooperation in Europe (OSCE). Through this international organization I have been privileged to help provide technical advice to these central Asian republics as they grapple with the difficult problem of dealing with Muslim extremists coming into their countries from other parts of the Muslim world. Their initial reaction has been to clamp down on any transborder activity, restrict missionary work, and make it more difficult for religious groups to be registered so that they can operate legally in the country. OSCE efforts will help contribute to better laws for these countries and may help set patterns that can be utilized elsewhere in the Muslim world.

### **The Influence of Academic Conferences and Consultations**

Academic conferences provide an important setting for contributing to religious freedom. Let me describe a few incidents that have grown out of this type of activity. Each fall for the past several years we have held an international conference at BYU dealing with religious freedom. The minister of justice from Peru attended one of these two or three years ago. At the time the Church had just learned that it had exhausted missionary quotas for the year in Peru. A Church official working with visas mentioned this to the minister of justice during a break at the conference. He was quite surprised that such a quota existed at all and indicated he would check into the matter when he returned home. Within a few weeks there were no more missionary quotas in Peru.

The people who come to BYU for our annual conference are often deeply moved by what they experience here. One of my favorite statements comes from another friend who is currently the head of religious affairs in Albania. He had the opportunity last fall, the day before our academic conference started, to attend the Sunday morning session of general conference in the new Conference Center. Some of you who stood in lines to get into conference this past weekend can appreciate what he saw. This is what he said about the experience:

*I have been in [my position as head of religious affairs] for a year, and I have seen a lot. But now I am totally convinced that religion should be an essential part of people's lives. In my country, people line up for bread; today I saw thousands of your people standing in line . . . to worship.*

This kind of impression changes perspectives on the importance of religious freedom. I returned a month ago from a conference that same man had organized in Albania aimed at pointing the way toward a good law on religious associations that can bless the lives of people in that poor and struggling country for years to come. These stories indicate only a few of the many approaches that can help promote religious freedom.

### **Implications**

In the end, what ultimately carries the day is that religious freedom is a true principle. It is a principle of justice. The just and honorable people of this earth recognize its validity. A nation that fails to respect it cannot claim to be just. We must do all in our power to make it a common heritage of all mankind. As the maps shown earlier suggest, the gospel flourishes best under conditions of liberty. God Himself respects this principle. Were it otherwise, He would not be just. His kingdom must be freely chosen. It will not be imposed on anyone anymore than worship in the temple is imposed on nonbelievers. The celestial kingdom is, among other things, a type of worship that will be imposed only on those who have chosen it. But choosing the Lord's kingdom has implications; you cannot arrive in Zion without having chosen to get there. You cannot ascend the mountain of the Lord's house without leaving other things behind. Part of the paradox of freedom is that the Lord allows people not to return to Him. Allowing freedom reflects the nature of a just God, but it cannot compromise divine truth. Just as mercy cannot rob justice, so justice cannot rob truth.

With this in mind, let me conclude by saying a few things about what the doctrine of religious freedom should mean for each of us. I am convinced that many in your generation will have opportunities to make important contributions to the cause of religious freedom. **Hannah Smith**, a law student, and **Elizabeth Clark**, the associate director of the BYU International Center for Law and Religion Studies, each played crucial roles in a recent visit to France to help oppose

I believe that President Hinckley has also sensed their concerns. I don't know if you have paid attention to this, but in virtually every conference for the past few years he has emphasized the importance of being tolerant, of being civil, and of being good neighbors. I cannot repeat his numerous statements on this theme.<sup>34</sup> I can only say that he has been an exemplary advocate of religious freedom. I was immeasurably proud when he greeted the arrival of the Southern Baptist Convention and its plans to "evangelize the Mormons" with counsel that we should be as courteous to them as we would hope others would be to our missionaries.<sup>35</sup> Again and again he has reminded us of our obligation to be true to the hard side of religious freedom: respecting the beliefs of others.

Let me conclude with a statement that some of you here may have heard President Hinckley give at his devotional on November 4, 1997. In that address he stated:

◦ *I hope that [Brigham Young University] will give to you a great sense of tolerance and respect for others not of your faith. The true gospel of Jesus Christ never led to bigotry. It never led to self-righteousness. It never led to arrogance. The true gospel of Jesus Christ leads to brotherhood, to friendship, to appreciation of others, to respect and kindness and love.*<sup>36</sup>

◦ After teaching this principle he told a remarkable story. He had been visited the week before by Shimon Peres, a former prime minister of Israel and one of the elder statesmen of the world. Mr. Peres told him the following story about a Jewish rabbi, which appropriately enough had been told to the prime minister by a Muslim. President Hinckley recounted the story as follows:

*A Jewish rabbi . . . was conversing with two of his friends. The rabbi asked one of the men, "How do you know when the night is over and the day has begun?"*

*His friend replied, "When you look into the distance and can distinguish a sheep from a goat, then you know the night is over and the day has begun."*

*The second was asked the same question. He replied, "When you look into the distance and can distinguish an olive tree from a fig tree, that is how you know."*

*They then asked the rabbi how he could tell when the night is over and the day has begun. He thought for a time and then said, "When you look into the distance and see the face of a woman and you can say, 'She is my sister.' And when you look into the distance and see the face of a man and can say, 'He is my brother.' Then you will know the light has come."*<sup>37</sup>

I am reminded of the first line of a hymn by my great-grandfather, Thomas Durham: "Stars of morning, shout for joy; Sing redemption's mystery."<sup>38</sup>

The morning is coming. You are the stars of morning. We are the stars of morning. We are witnessing the Church coming "forth out of obscurity and out of darkness."<sup>39</sup> Part of "redemption's mystery" is our paradoxical--and yet ultimately not paradoxical--obligation to respect and love and protect the rights of others not of our faith.

May we sing this mystery well. May we be true children of our Father in Heaven, never forgetting--and never forgetting to live--the song learned in Primary: "As I have loved you, Love one another."<sup>40</sup> In the name of Jesus Christ, amen.

## Notes

1. Religious liberty is protected by a vast array of constitutions, treaties, and other international human rights instruments. See, e.g., U.S. Constitution, amendment 1; *Universal Declaration of Human Rights*, adopted and proclaimed by U.N. General Assembly Resolution 217A (III) (1948), art. 18; *International Covenant on Civil and Political Rights*, adopted and opened for signature by U.N. General Assembly Resolution 2200A (XXI) (1966), art. 18.

2. See Franklin Delano Roosevelt, "The Four Freedoms," address to 77th Congress, 6 January 1941; available online at <<http://www.libertynet.org/~edcivic/fdr.html>>.

3. Bruce R. McConkie, *A New Witness for the Articles of Faith* (Salt Lake City: Deseret Book, 1985), 655; emphasis added.

4. The members of the Godhead Themselves worship each other freely as a natural, yet free response to the glory of The beings. For example, the Father can be seen as worshipping the Son—not a worship of subordination, but surely worship in the sense of love and respect—when He declared, "This is my beloved Son." See 2 Peter 1:17: "For he received from God the Father honour and glory, when there came such a voice to him from the excellent glory, This is my beloved Son, in whom I am well pleased." The members of the Godhead bear witness of each other. See 3 Nephi 11:32: "I bear record of the Father, and the Father beareth record of me, and the Holy Ghost beareth record of the Father and me."

If C. S. Lewis is correct in pointing out that praise is a natural and willing response to "the worthiest object of all," then it is reasonable to assume that an attitude of worship and praise characterizes the reciprocal relations of members of the Godhead (*Reflections on the Psalms* [New York: Harcourt, Brace and World, 1958], 96). As Lewis says, "All enjoyment spontaneously overflows into praise. . . . I think we delight to praise what we enjoy because the praise not merely expresses but completes the enjoyment; it is its appointed consummation" (*Reflections*, 94, 95; see also entire chapter, "A Word About Praising," 90–98).

5. Revelation 13:8.

6. 2 Nephi 2:27.

7. D&C 59:5.

8. There are countless statements supporting this proposition. Only a few of the more notable ones are listed here. Joseph Smith wrote:

*The first and fundamental principle of our holy religion is, that we believe that we have a right to embrace all, and every item of truth, without limitation or without being circumscribed or prohibited by the creeds or superstitious notions of men.* [Letter to Isaac Galland, written from Liberty Jail, 22 March 1839, in Dean C. Jessee, comp. and ed., *The Personal Writings of Joseph Smith* (Salt Lake City: Deseret Book, 1984), 420]

Brigham Young taught:

*"Mormonism," so-called, embraces every principle pertaining to life and salvation, for time and eternity. No matter who has it. If the infidel has got truth it belongs to "Mormonism." The truth and sound doctrine possessed by the sectarian world, and they have a great deal, all belong to this church. . . . There is no truth but what belongs to the gospel.* [JD 11:375]

*I want to say to my friends that we believe in all good. If you can find a truth in heaven, earth or hell, it belongs to our doctrine. We believe it; it is ours; we claim it.* [JD 13:335]

Further, he stated:

*For me, the plan of salvation must . . . circumscribe the knowledge that is upon the face of the earth, or it is not from God. Such a plan incorporates every system of true doctrine on the earth, whether it be ecclesiastical, moral, philosophical, or civil: it incorporates all good laws that have been made from the days of Adam until now; it swallows up the laws of nations, for it exceeds them all in knowledge and purity; it circumscribes the doctrines of the day, and takes from the right and the left, and brings all truth together in one system, and leaves the chaff to be scattered hither and thither.* [JD 7:148]

A wonderful passage from John Taylor is worth quoting at length:

*We wish to comprehend and embrace all truth and seek for and obtain everything that is calculated to exalt, ennoble and dignify the human family; and wherever we find truth, no matter where, or from what source it may come, it becomes part*

and parcel of our religious creed, if you please, or our political creed, or our moral creed, or our philosophy, as the case may be, or whatever you may please to term it.

**We are open for the reception of all truth, of whatever nature it may be, and are desirous to obtain and possess it, to search after it as we would for hidden treasures; and to use all the knowledge God gives to us to possess ourselves of all the intelligence that he has given to others; and to ask at his hands to reveal unto us his will, in regard to things that are the best calculated to promote the happiness and well-being of human society.** *If there are any good principles, any moral philosophy that we have not yet attained to we are desirous to learn them. If there is anything in the scientific world that we do not yet comprehend we desire to become acquainted with it. If there is any branch of philosophy calculated to promote the well-being of humanity, that we have not yet grasped, we wish to possess ourselves of it. If there is anything pertaining to the rule and government of nations, or politics . . . that we are not acquainted with, we desire to possess it. If there are any religious ideas, any theological truths, any principles pertaining to God, that we have not learned, we ask mankind, and we pray God, our heavenly Father, to enlighten our minds that we may comprehend, realize, embrace and live up to them as part of our religious faith. Thus our ideas and thoughts would extend as far as the wide world spreads, embracing everything pertaining to light, life, or existence pertaining to this world or the world that is to come.* [John Taylor, *JD* 14:337; emphasis added]

Wilford Woodruff stated, "If any man has got a truth that we have not got, let us have it. Truth is what we are after. . . . If we have not the truth, that is what we are after, we want it" (*JD* 17:194).

Joseph F. Smith proclaimed:

*We believe in all truth, no matter to what subject it may refer. No sect or religious denomination in the world possesses a single principle of truth that we do not accept or that we will reject. We are willing to receive all truth, from whatever source it may come; for truth will stand, truth will endure.* [*GD*, 1]

Coming down to the present, President Howard W. Hunter stated:

*As members of the Church of Jesus Christ, we seek to bring all truth together. We seek to enlarge the circle of love and understanding among all the people of the earth. Thus we strive to establish peace and happiness, not only within Christianity but among all mankind.* ["The Gospel--A Global Faith," *Ensign*, November 1991, 18]

Note the interesting linkage here between the notion of embracing all truth and enlarging the circle of love and understanding.

Finally, President Gordon B. Hinckley has restated the theme as follows:

*I love to learn. I relish any opportunity to acquire knowledge. Indeed, I believe in and have vigorously supported, throughout my life, the pursuit of education--for myself and for others. . . .*

*The learning process is endless. We must read, we must observe, we must assimilate, and we must ponder that to which we expose our minds. I believe in the evolution of the mind, the heart, and the soul of humanity. I believe in improvement. I believe in growth. . . .*

*. . . It therefore behooves us, and is our charge, to grow constantly toward eternity in what must be a ceaseless quest for truth. And as we search for truth, let us look for the good, the beautiful, and the positive.* [*Standing for Something* (New York: Times Books, 2000), 59, 62, 64]

9. Clearly that is part of our obligation, but it is not all. The light of Christ "lighteth every man that cometh into the world" (John 1:9; D&C 93:2), and we should be responsive to that light wherever it shines. In seeking wisdom "out of the best books" (D&C 88:118), my experience has been that although others may not have the fullness of the gospel with the authority and keys that have come with the Restoration, they often understand those portions that they have been given in greater depth. We can benefit immensely from their knowledge. For example, a modern physicist may not understand the fullness of the gospel, but as to the truths of the fundamental structure of matter, he no doubt knows more than most of us,

and to the extent his knowledge corresponds to reality, he has knowledge of truths that are embraced by our religion. The same is true in other domains of knowledge. In this regard it is worth remembering Brigham Young's statement:

*Our religion measures, weighs, and circumscribes all the wisdom in the world--all that God has ever revealed to man. God has revealed all the truth that is now in the possession of the world, whether it be scientific or religious. [JD 8:162]*

10. When Nauvoo was founded, the Prophet Joseph Smith stated that he designed its charter "for the salvation of the Church, and on principles so broad, that every honest man might dwell secure under its protective influence *without distinction of sect or party*" (HC 4:249; emphasis added). In this same spirit, the city council of Nauvoo passed one of the early "anti-hate crime" ordinances in American history. Section 1 of the ordinance read as follows:

*Be it ordained by the City Council of the City of Nauvoo, that the Catholics, Presbyterians, Methodists, Baptists, Latter-day Saints, Quakers, Episcopalians, Universalists, Unitarians, Mohammedans, and all other religious sects and denominations whatever, shall have free toleration, and equal privileges, in this city; and should any person be guilty of ridiculing, and abusing or otherwise depreciating another in consequence of his religion, or of disturbing or interrupting any religious meeting within the limits of this city, he shall, on conviction thereof before the Mayor or Municipal Court, be considered a disturber of the public peace, and fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of said Mayor or Court. [HC 4:306]*

Significantly, Brigham Young clearly taught that even during the Millennium there will be just and honorable people of other faiths who will be protected in their rights to freedom of religion (see JD 2:309).

11. HC 5:498.

12. See D&C 121:37. For an example of Joseph Smith's critical view of the tendency of the persecuted to assume the role of oppressors, see his comments on intolerance in Massachusetts (HC 2:464–65).

13. For an excellent discussion of this principle, see John K. Carmack, *Tolerance: Principles, Practices, Obstacles, Limits* (Salt Lake City: Bookcraft, 1993).

14. Matthew 16:25; see also 10:39; Mark 8:35; Luke 9:24; 17:33.

15. D&C 64:10.

16. Matthew 22:39.

17. Matthew 5:44–45.

18. See Matthew 7:12: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets." A version of this great teaching of the Master is found in virtually every major religious tradition. See, e.g., *The Analects of Confucius* 15:23 ("What you do not want done to yourself, do not do to others"--Confucianism); *Mahabharata* 5:1517 ("This is the sum of duty: do naught unto others which would cause you pain if done to you"--Hinduism); Talmud, Shabbat 31a ("What is hateful to you, do not do to your fellow man"--Judaism); *Udanavarga* 5:18 ("Hurt not others in ways that you yourself would find hurtful"--Buddhism); *Dadistan-i Dinik* 94:5 ("That nature only is good when it shall not do unto another whatever is not good for its own self"--Zoroastrianism); *Forty Hadith of an-Nawawi* 13 ("Not one of you is a believer until he loves for his brother what he loves for himself"--Islamism); *Tablets of Bahá'u'lláh* 71:26 ("Blessed is he who preferreth his brother before himself"--Baháism); *Sutrakritanga* 1.11.33 ("A man should wander about treating all creatures as he himself would be treated"--Jainism); Guru Arjan Dev 259, *Guru Granth Sahib* ("Don't create enmity with anyone as God is within everyone"--Sikhism).

19. John 13:34.

20. Isaiah 2:2–5; emphasis added.

21. Harold B. Lee, "The Way to Eternal Life," *Ensign*, November 1971, 15; quoted in Jay M. Todd, "A Standard of Freedom for This Dispensation," *Ensign*, September 1987, 16.
22. George Albert Smith, "Dedicatory Prayer for the Idaho Falls Temple," *Improvement Era*, October 1945, 564; quoted by Harold B. Lee in Todd, "A Standard," 16; emphasis added.
23. See Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), 148–65. Moreover, a number of regional international treaties have been adopted. Most notable of these is the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights, which monitors compliance with this convention, is now the most significant constitutional court in the world. It has approximately 800,000,000 people within its jurisdiction, including all the former socialist bloc countries with the exception of those in Central Asia, and its pronouncements on human rights issues are now given effect throughout this vast region. See P. van Dijk and G. J. H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer Law, 1998), 1–2, 31–36; see also [http://press.coe.int/press2/press.asp?B=30,0,0,0,0&M=http://press.coe.int/cp/2001/226a\(2001\).htm](http://press.coe.int/press2/press.asp?B=30,0,0,0,0&M=http://press.coe.int/cp/2001/226a(2001).htm) (Council of Europe press release). For a brief overview of the current status of the court, see [http://www.echr.coe.int/BilingualDocuments/infodoc.stats\(2001\).bil.htm](http://www.echr.coe.int/BilingualDocuments/infodoc.stats(2001).bil.htm).
24. To the best of my knowledge, the only exceptions are the following 10 countries, which adopted their constitutions prior to World War II: the United States in 1788, Norway in 1814, Liberia in 1847, Luxembourg in 1868, Switzerland in 1874, Tonga in 1875, Australia in 1901, Liechtenstein in 1921, Lebanon in 1926, and Ireland in 1937. The only other exceptions are the United Kingdom, Bhutan, Israel, and Libya, which do not have written constitutions.
25. U.S. State Department, *2000 Annual Report on International Religious Freedom* (5 September 2000) (available online at [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_index.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_index.html)). The differentiation between "normal" and "strong" protection is subjective, based on personal perceptions and interactions with comparative constitutional law experts.
26. "Wherever we go, we go in the front door. Our representatives honor the laws of the nations to which they go and teach the people to be good citizens" ("President Hinckley Addresses World Affairs Council," *Ensign*, August 1999, 75). Similar statements have been regularly made by other Church leaders as well. See, e.g., Spencer W. Kimball, quoted in Martin B. Hickman, *David Matthew Kennedy: Banker, Statesman, Churchman* (Salt Lake City: Deseret Book, 1987), 342; also see Dallin H. Oaks and Lance B. Wickman, "The Missionary Work of The Church of Jesus Christ of Latter-day Saints," in John Witte, Jr., and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, New York: Orbis Books, 1999), 270.
27. Jacob 7.
28. Alma 30.
29. See "Siege Ends as Milosevic Surrenders," *Deseret News*, 1 April 2001, A1.
30. W. Cole Durham, Jr., "The United States' Experience with New Religious Movements," *European Journal for Church and State Research* (1998), 5:215; see also <http://www.cesnur.org>.
31. "Kazakhstan Recognizes Church," *Church News*, 17 February 2001, 5.
32. See Bruce D. Porter, "Building the Kingdom" *Ensign*, May 2001, 80–81. Elder Porter provided a vital reminder that although
- sometimes, perhaps, we may be inclined to see the building of the kingdom as something that takes place beyond the horizon, far away from our own branch or ward. In truth, the Church advances both by outward expansion and by inward refinement. . . .*

*We do not have to be called to serve far from home, nor do we have to hold a prominent place in the Church or in the world to build up the Lord's kingdom. [Porter, "Building the Kingdom," 80]*

33. Because of what I regard as one of the great decisions in the history of our state supreme court, *Society of Separationists v. Whitehead*, it ultimately became unnecessary to pursue the constitutional amendment in question (870 P.2d 916 [Utah 1993]).

34. See, e.g., Gordon B. Hinckley, "A Time of New Beginnings," *Ensign*, May 2000, 87–88; "The Work Moves Forward," *Ensign*, May 1999, 4–5; and "We Bear Witness of Him," *Ensign*, May 1998, 4–6. One statement that seemed particularly impressive to me is the following:

*In many communities where our people are in the majority, accusations are heard that we are intolerant, that we display an attitude of self-righteousness, and that we are uncooperative in advancing causes which are for the common good. . . . It has been reported that some parents, out of a desire to protect their children, have told them that they should not associate in school with those not of their faith.*

*It seems anomalous that some would keep their sons and daughters from so doing while they are in the elementary schools, and yet make great sacrifice when they grow older to send them into the mission field.*

*Let us not forget that we believe in being benevolent and in doing good to all men. I am convinced that we can teach our children effectively enough that we need not fear that they will lose their faith while being friendly and considerate with those who do not subscribe to the doctrine of this Church. Let us reach out to those in our community who are not of our faith. Let us be good neighbors, kind and generous and gracious. Let us be involved in good community causes. There may be situations, there will be situations, where, with serious moral issues involved, we cannot bend on matters of principle. But in such instances we can politely disagree without being disagreeable. We can acknowledge the sincerity of those whose positions we cannot accept. We can speak of principles rather than personalities. In those causes which enhance the environment of the community, and which are designed for the blessing of all of its citizens, let us step forward and be helpful. An attitude of self-righteousness is unbecoming a Latter-day Saint. [TGBH, 661–62]*

35. See, e.g., "We Are a Biblical Church, Atlanta Members Told," *Church News*, 23 May 1998, 5, quoting President Gordon B. Hinckley as saying:

*I don't know how many will be there [at the Southern Baptist Convention]. I have heard everything from 12,000 to 18,000. I hope there are 20,000 of them. I hope they have a wonderful time. I hope that our people are hospitable toward them and will reach out the hand of fellowship and show love for them.*

36. Gordon B. Hinckley, "The BYU Experience," *BYU 1997–98 Speeches* (Provo: BYU, 1998), 63.

37. Hinckley, "BYU Experience," 64.

38. "Stars of Morning, Shout for Joy," *Hymns*, 1948, no. 164.

39. D&C 1:30.

40. "Love One Another," *Hymns*, 1985, no. 308. I am indebted to Elder Bruce D. Porter for highlighting this image to beautifully teach this concept in his recent general conference address. See Porter, "Building the Kingdom," 80.

The LDS International Society held its 22<sup>nd</sup> Annual Conference at the Brigham Young University David M. Kennedy Center for International Studies on April 2, 2011. The theme of the conference was “The Erosion of Religious Liberties: Impact on the International Church.” Speakers included MICHAEL K. YOUNG, then president and chancellor of the University of Utah, and former chairman of the United States Commission on International Freedom, who addressed the topic, “Erosion of Religious Freedom: Impact on Churches”; HANNAH CLAYSON SMITH, senior counsel, The Becket Fund for Religious Liberty, whose topic was, “Religious Liberty Initiatives: Preserving the ‘First Freedom’ at Home and Abroad”; JOHN M SMITH, counsel for the Raytheon Company, whose topic was “Religious Liberty in Ukraine”; and, although not a member of the Church of Jesus Christ of Latter Day Saints, JOHN GRAZ, secretary general, International Religious Liberty Association, whose topic was, “Global Challenges Facing Religious Freedom.” (See pp. 110, supra.) Also included was a Corporate Social Responsibility Panel consisting of GREGORY G CLARK, attorney, Kirton & McConkie, Moderator, with panel members: W. COLE DURHAM JR., founder and director, International Center for Law and Religious Studies, BYU”; ROBERT T SMITH, managing director, International Center for Law and Religious Studies, BYU; and PAUL C. GODFREY, professor of strategy, Marriott School of Management, BYU. The topic with respect to which the panel spoke was, “Corporate Social Responsibility: Marshalling the Business Community in defense of Religious Freedoms.” THE COMPLETE TEXT OF THESE PRESENTATIONS IS INCLUDED IN APPENDIX “A.”

The Religious Freedom – LDS Newsroom Blog dated May 25, 2011, entitled “The Case of Religious Freedom,” reports that earlier in the month in Rome, Harvard professor MARY ANN GLENDON made a bold case for religious freedom, saying it ‘goes to the very heart of what it means to be human.’

“Professor Glendon was speaking at an international conference titled ‘Universal Rights in a World of Diversity: The Case for Religious Freedom.’ It is a ‘universal right’ precisely because religious freedom is so central to being human and to sustaining free and just societies.

“Religion has provided for humankind hope, purpose, aspiration and compassion. Freedom of religion secures the inalienable human right to

choose and live according to one's deepest and most centrally held beliefs and values. In that way, religious freedom is not just tolerance of others' beliefs (or nonbelief). In fact, it is the moral basis of a free society where competing beliefs are respected and allowed to flourish. It engenders a social cohesion and civility by recognizing that any individual, association or faith group, no matter how large and important, is only as safe and secure in its rights as any other individual, association or faith group, no matter how small and insignificant.

"Elder Dallin H. Oaks, an apostle of the Church of Jesus of Latter Day Saints, calls religious freedom a 'vital human right.'

"But challenges to religious freedom are real and increasingly frequent. In many countries, Glendon says, religious freedom is being 'trumpeted by a range of other claims and interests.' Even in democratic countries, religious believers are experiencing 'marginalization and even outright discrimination.'

"These are the consequences, Glendon says, when 'influence figures...portray religion as a source of social division and treat religious freedom as a second-class right.' She counters with a growing body of empirical evidence that strongly suggests otherwise:

'Some studies indicate that violence tends to be greater in societies Where religious practice is suppressed and that promotion of religious freedom actually advances the cause of peace by reducing interreligious conflict.'

"Recent research in the social sciences also suggests that there is a significant positive correlation between levels of religious freedom and measures of other economic, social and political goods, while conversely, the denial of religious liberty correlates with the denial of such goods.'

One study concludes that the presence of religious freedom in a country mathematically correlates with the longevity of democracy and with the presence of civil and political liberty, women's advancement, press freedom, literacy, lower infant mortality and economic freedom.'

"An international study by the Pew Forum on Religion and Public Life found nearly 70 percent of the world's 6.8 billion people 'with heavy

restrictions on religion.’ In the United States, religious freedom issues are complex and often unsettling. This can be especially true in trying to resolve, as Elder Oaks observed, ‘what equal rights demand and what equal rights protect.’

“In an increasingly pluralistic American society and global community, the ‘problem of fostering habits of respect and tolerance for the religions of others remains acute,’ says Professor Glendon. It is that very plurality that makes religious freedom and its defense so critical.’

MICHAEL K. YOUNG, addressed the closing plenary session of the 16<sup>th</sup> Annual International Law and Religion Symposium in Provo, Utah, on 6 October 2009. Mr. Young was, at the time, president of the University of Utah. He is a graduate of Harvard Law School and was clerk to Supreme Court Justice William Rehnquist. Before coming to the University of Utah, he was Dean of the George Washington Law School, Director of Columbia University’s Japanese Legal Studies Center, and U.S. Ambassador for Trade and Environmental Affairs. Among many other positions, he also served as the chairman of the U.S. Commission on International Religious Freedom.

“Addressing the Symposium’s theme, President Young asked, ‘Can these various centers of dialogue—academy, governments, quasi-government organizations, NGO’s, faith-based organizations—come together in a way that creates a true, agreed-upon international agreement that is effective?’ From his long experience in the matter, President Young noted several requirements for such a result, including development, internally within the organizations and externally among them, of the capacity to be consistent in truly protecting principles of religious liberty for one’s own group and for all others, even when it might not be crystal clear that so doing is in one’s own interests. ‘The dialogue here {at the Symposium}, ‘ concluded President Young ‘is an important beginning.’ In a response from the audience, President Young noted ‘a small ray of light for a brighter future’ in the fact that the level of violent conflict in the world has dramatically decreased during the past 30 years, dropping ‘almost 90 percent’ over what it was in 1970. There are hopeful signs, he said, and ‘this conference is one of them.’”

On February 12, 2010, The J. Reuben Clark Law Society awarded WILLIAM F. ATKIN, Associate General Counsel for the Church, its Franklin S. Richards Award for Pro Bono Service. The next day, during the Law Society's final session, Brother Atkin provided a philosophical overview of how the Church's Office of Legal Counsel approaches the wide range of issues it routinely confronts, to wit:

"The Office of Legal Counsel takes care of the legal affairs of the Church," he said. "We want the Church to be legal wherever we are so that the enemies of the kingdom cannot attack us because we've done something incorrectly.

"Brother Atkin outlined several "trends that are here and coming in the next 5-10 years that have the possibility of impacting the Church adversely." Secularism is one of the issues that's squarely on the Office of General Counsel's radar.

"When governments become neutral towards religion, we see less and less protection of religion and religious activities," he said. "Secularism in the world is neutral at its best towards religions and hostile at worst. We're seeing more and more that it is hostile, not just neutral, towards religion."

In the United States, secularism could result in changing how the tax code treats nonprofit religious organizations.

"We think there's going to be a tightening now of what kind of entities get tax-exempt status," Brother Atkin said. "Maybe churches are no longer going to be viewed as such a positive influence in society—therefore (maybe) they're not going to be granted tax-exempt status."

Abroad, secularism is manifesting itself in a wave of anti-discrimination measures in Europe that could, for example, prevent the Church from requiring its employees to adhere to a basic level of personal worthiness and moral conduct.

"We're seeing more and more, particularly in Western Europe, the countries who are very secular are pushing anti-discrimination and not permitting any religious exclusions," he said.

Brother Atkin said that, from a legal standpoint, additional issues the Church views as potential obstacles during the coming decade include: an increase of audits in Church financial records as governments search for more revenue during a global economic downturn, immigration restrictions that could severely hamper the number of visas available to the Church for

full-time missionaries, threats to the privacy of the Church's data and record private, security issues related to terrorism and the threat of cyber attack to Church systems.

PROFESSOR ELIZABETH A. CLARK, Associate Director of the International Center for Law and Religious Studies and the Center's regional advisor for Central and Eastern Europe, presented the final lecture in the first International Religious Freedom Discussion Series on Thursday, 1 December 2011 at the J. Reuben Clark Law School.

"In Professor Clark's lecture, 'Recent Legislative Trends Affecting Religious Freedom in Eastern Europe and Central Asia,' she addressed continuing and even increasing restrictions on religious freedom, including increased registration requirements, requirement of "religious expertise" by state bodies, and limitations on proselytizing, distribution of religious materials, and foreign-led organizations. Professor Clark discussed recent legislation in Kazakhstan, Kyrgyzstan, and Armenia, as well as legislative proposals from Russia and Ukraine. She began with a comment from a high-level Russian official responding to recent attempts to draft amendments to the Russian religion law: 'Whenever we try to improve things, we manage to make them worse.'"

"In many ways the religious landscape in countries formerly controlled by the Soviet Union is indeed worsening. Laws drafted and passed between 2009 and October 2011 in Turkmenistan, Kyrgyzstan, Tajikistan, Ukraine, Armenia, Georgia, Russia, and perhaps most alarmingly Kazakhstan have been increasingly restrictive on religions, especially small or new religious organizations. New requirements make it difficult if not impossible for new groups to find legitimacy and safety in many of these areas, and in other former Soviet countries such as Hungary.

"Professor Clark traced many of these troubling developments as they are influenced by fear of extremism and attempts of governments and traditional religions to consolidate power. Such forces are to a small extent counterbalanced by religious diversity (in Ukraine, for example), and by pressures for change from the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), and by judgments of the European Court of Human Rights."

ADD OTHER REFERENCES HERE, LIKE "CONFIDENTIAL WHITE PAPER."

VII. RELIGIOUS FREEDOM AS REVEALED TO AND VIEWED BY PROPHETS, APOSTLES AND OTHER GENERAL AUTHORITIES OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS IN THE DISPENSATION OF THE FULLNESS OF TIMES.

In the advent of "The Dispensation of the Fullness of Times," the restoration of the Church of Jesus Christ of Latter Day Saints, and the subsequent governance of that Church were, and continue to be, under the direction of the Lord and Savior Jesus Christ. This process is facilitated and accomplished through revelation, sometimes referred to as inspiration, from the Lord to His Prophets and Apostles.

That which follows in this Section VII is based on revelations by the Lord to His said Prophets, Apostles, and General Authorities of His Church, on the subject of religious freedom/liberty. In each case the recipient of that which was revealed shall be identified and the content set forth.

A. JOSEPH SMITH, JR., the Prophet of the restoration (1805-1844).

"Be It ordained by the City Council of the City of Nauvoo, that the Catholics, Presbyterians, Methodists, Baptists, Latter Day saints, Quakers, Episcopalians, Universalists, Unitarians, Mohammedans, and all other religious sects and denominations whatever, shall have free toleration, and equal privileges in this city." (Joseph Smith, Nauvoo City Ordinance, 1841.)

Articles of Faith 1:11: "We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.

"We deem it a just principle, and it is one the force of which we believe ought to be considered by every individual, that all men are created equal, and that all have the privilege of thinking for themselves upon all matters relating to conscience. Consequently, then, we are not disposed, had we the power, to deprive any one of exercising that free independence of mind which heaven has so graciously bestowed upon the human family one of its choicest gifts.

"I have the most liberal sentiments, and feelings of charity towards all sects, parties and denominations; and the rights and liberties of

conscience, I hold most sacred and dear, and despise no man for differing with me in matters of opinion.

“The Saints can testify whether I am willing to lay down my life for my brethren. If it has been demonstrated that I have been willing to die for a ‘Mormon,’ I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-Day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.

“It is a love of liberty which inspires my soul—civil and religious liberty to the whole of the human race. Love of liberty was diffused into my soul by my grandfathers while they dabbled me on their knees....

“If I esteem mankind to be in error, shall I bear them down? No. I will lift them up, and in their own way too, if I cannot persuade them my way is better; and I will not seek to compel any man to believe as I do, only by the force of reasoning, for truth will cut its own way.

“We ought always to be aware of those prejudices which sometimes so strangely present themselves, and are so congenial to human nature, against our friends, neighbors, and brethren of the world, who choose to differ from us in opinion and in matters of faith. Our religion is between us and our God. Their religion is between them and their God.

“When we see virtuous qualities in men, we should always acknowledge them, let their understanding be what it may in relation to creeds and doctrine; for all men are, or ought to be free, possessing unalienable rights, and the high and noble qualifications of the laws of nature and of self-preservation, to think and act and say as they please, while they maintain a due respect to the rights and privileges of all other creatures, infringing upon none. This doctrine I do heartily subscribe to and practice.

“All persons are entitled to their agency, for God has so ordained it. He has constituted mankind moral agents, and given them power to choose good or evil; to seek after that which is good, by pursuing the pathway of holiness in this life, which brings peace of mind, and joy in the Holy Ghost here, and a fullness of joy and happiness at His right hand hereafter; or to pursue an evil course, going in sin and rebellion against God, thereby bringing condemnation to their souls in this world, and an eternal loss in

the world to come. Since the God of heaven has left these things optional with every individual, we do not wish to deprive them of it. We only wish to act the part of a faithful watchman, agreeable to the word of the Lord to Ezekiel the prophet (Ezekiel Chap. 33, verses 2,3,4,5), and leave it for others to do as seemeth them good.

“It is one of the first principles of my life, and one that I have cultivated from my childhood, having been taught it by my father, to allow every one the liberty of conscience....In my feelings I am always ready to die for the protection of the weak and oppressed in their just rights.

“Meddle not with any man for his religion: all governments ought to permit every man to enjoy his religion unmolested. No man is authorized to take away life in consequence of difference of religion, which all laws and governments ought to tolerate and protect, right or wrong.

“We will...cultivate peace and friendship with all, mind our own business, and come off with flying colors, respected, because, in respecting others, we respect ourselves.

“Although I never feel to force my doctrine upon any person, I rejoice to see prejudice give way to truth, and the traditions of men dispersed by the true principles of the Gospel of Jesus Christ.” (See TEACHINGS OF PRESIDENTS OF THE CHURCH, JOSEPH SMITH, pp. 344-346, Published by the Church of Jesus Christ of Latter Day Saints, Salt Lake City, Utah, 2007 by Intellectual Reserve, Inc., All rights reserved, and references cited therein.)

B. BRIGHAM YOUNG, the second president of the Church (1801-1877) .

“The Almighty moved upon Columbus to launch forth upon the Trackless deep to discover the American Continent; he moved upon the signers of the Declaration of Independence; and he moved upon Washington to fight and conquer, in the same way as he moved upon ancient and modern prophets, each being inspired to accomplish the particular work he was called to perform in the times, seasons, and dispensations of the Almighty. God’s purpose, in raising up these men and inspiring them with daring sufficient to surmount every opposing power, to prepare the way for the formation of a true Republican government.”(JD 7:13.)

“The seeds of sin which are in them are sufficient to accomplish their destruction. Every government of the world has the seeds of its own destruction in itself.

“I hope and trust and pray that the government of our country may Remain, because it is so good; but if they cut off this, and cast out that, and institute another thing, they may destroy all the good it contains. This, I hope they will not do; they cannot do it. I expect to see the day when the Elders of Israel will protect and sustain civil and religious liberty and every constitutional right bequeathed to us by our fathers, and spread those rights abroad in connection with the Gospel for the salvation of all nations.” (Supra. 11:262-63.)

C. JOHN TAYLOR, the third president of the Church (1808-1887.

“There are two things I have always said I would do, and I mean to Carry them out....One is to vote for whom I please and the other to worship God as I please. There is a principle of freedom planted in the Human mind that has always existed there, and no man nor any power has yet been able to obliterate it.” (The Gospel Kingdom by John Taylor, p. 323.)

“There are certain principles that are inherent in man, that belong to Man, and that were enunciated in an early day, before the United States Government was formed, and they are principles that rightfully belong to all men everywhere. They are described in the Declaration of Independence as unalienable rights, one of which is that men have the right to live; another is that they have the right to pursue happiness; and another is that they have the right to be free and no man has the authority to deprive them of those God-given rights, and none but tyrants would do it. These principles, I say, are unalienable in man; they belong to him; they existed before any constitutions were framed or any laws made. Men have in various ages striven to strip their fellow men of these rights, and dispossess them of them. And hence the wars, the bloodsheds, and carnage that have spread over the earth. We are therefore not indebted to the United States for these rights. We were free as men born into the world, having the right to do as we please, to act as we please, so long as we do not transgress constitutional law nor violate the rights of others.”

(John Taylor, G. Homer Durham, Gospel Kingdom: Selections from the Writings and Discourses of John Taylor, 1943,)

D. WILFORD WOODRUFF, the fourth president of the Church (1807-1898)

“We believe in giving to all men freedom, freedom in spirit and Action; we believe in religionists of every creed and faith enjoying the liberty to worship God according to the dictates of their own consciences, which right is guaranteed unto them by God himself; and the man or set of men that would deprive their fellows of this God-given right, assumes a responsibility that they must answer for before the bar of God. If I had the power and control of the whole world I would never think of depriving any man, woman or child of this natural, this inherent right, whether their religious views were true or false.” (The Discourses of Wilford Woodruff, p.189.)

E. LORENZO SNOW, the fifth president of the Church (1814-1901).

“We can trace the providences of the Almighty in raising up certain individuals to establish religious organizations, and we see in these things the workings of the Spirit of God for the general interest of the human family. We look upon George Washington, the father of our country, as an inspired instrument of the Almighty; We can see the all-inspiring Spirit working upon him. And upon his co-workers in resisting oppression, and in establishing the thirteen colonies as a confederacy; and then again the workings of the same Spirit upon those men who established the Constitution of the United States.” (Journal of Discourses, vol. 14, p. 304.)

F. JOSEPH F. SMITH, the sixth president of the Church (1838-1918).

“God in his boundless wisdom and gracious mercy has provided means and has shown the way to the children of men whereby, even in the realms of freedom and the exercise of their own judgment, they may individually go to God in faith and prayer, and find out what should guide and direct their human judgment and wisdom; and I do not want the Latter Day Saints to forget that this is their privilege. I would rather that they should seek God for a counselor and guide, than to follow the wild

harangues of political leaders, or leaders of any other cult.” (Gospel Doctrine by Joseph F. Smith, p. 48.)

G. HEBER J. GRANT, the seventh president of the Church (1856-1945).

“I know that any ruler who claims to be the representative of the Almighty God who would take away the liberties of his fellowmen, is not a representative from God. You can draw your own conclusions whom he does represent.” (Conference Report, April 1918, p. 24.)

H. GEORGE ALBERT SMITH, the eighth president of the Church (1870-1951).

“The Constitution was so framed that everyone might worship according to the dictates of his own conscience, and we see the result of it in the wonderful blessings that have been poured out upon this most favored of all lands.” (Sharing the Gospel with Others, p. 168.)

I. DAVID O. MCKAY, the ninth president of the Church (1873-1970).

“Man’s agency is an eternal principle of progress, and any form of government that curtails or inhibits its free exercise is wrong. Satan’s plan in the beginning was one of coercion and it was rejected because he sought to destroy the agency of man which God had given him.” (Conference Report, April 1940, p. 118.)

J. JOSEPH FIELDING SMITH, tenth president of the Church (1876-1972).

“It is the right of every soul to have equal and unrestricted justice before the law, equal rights to worship according to the dictates of conscience and to labor according to his individual inclinations, independently of coercion or compulsion.” (Doctrines of Salvation by Joseph Fielding Smith, p. 325.)

“With the provision of the Constitution, that there should be no religious test, and that every man should have the right to worship according to the dictates of conscience, the fullness of religious liberty was born. This principle, we may see from a study of the past, has been of gradual growth and development since the days of the emancipation of the people from religious tyranny at the time of the Protestant revolution. It took several centuries for the seed to develop and bring forth the fully developed fruit which it did when the government of the United States was formed. In this way the Lord prepared the way for the restoration of the Gospel with all its keys and powers in a humble way in the Dispensation of the Fullness of Times. It would be wrong to say that it was impossible for the Lord to establish his work had not religious freedom come and be guaranteed as we find in our Constitution. But it is a fact, nevertheless, that he, in his infinite wisdom, prepared the way commencing several hundred years ago and working through brave and humble men, many of whom became martyrs to the cause of truth, when darkness ruled supreme over the face of the earth.” (“Adopting the Constitution of the United States,” Joseph Fielding Smith, Progress of Man, 1936.)`

K. HAROLD B. LEE, eleventh president of the Church, (1899-1973).

“The kingdom of God must be a continuing revolution against the norms of the society that fall below the standards that are set for us in the Gospel of Jesus Christ. In the field of public life, it must be a continuing revolution against proposals that contradict the fundamental principles that are laid down in the Constitution of the United States, which was written by men whom God raised up for this very purpose.” ( Improvement Era, Dec. 1970, p. 104.)

L. SPENCER W. KIMBALL, twelfth president of the Church (1895-1985).

“It is a real travesty today when we hear the voices of the atheist, the Godless and the anti-Christ who would deny us the right of public expression of our worship of the Master.” (The Teachings of Spencer W. Kimball, p. 411.)

M. EZRA TAFT BENSON , thirteenth president of the Church (1899-1994).

“The Lord recognized that truth will only prosper where religious freedom exists. Religious freedom cannot be fully enjoyed without a full measure of political freedom. So before the gospel was restored, wise and inspired men in North Central and South America were raised up who proclaimed the sovereign truth that all men—not just the privileged, the rich or the rulers—but all men have divine rights. Among these rights are life, liberty (which includes our freedom to worship), and the right to property.” ( The Teachings of Ezra Taft Benson, p. 661.)

N. HOWARD W. HUNTER, fourteenth president of the Church (1907-1995).

“The Lord tells us...clearly and powerfully: ‘There is a law, irrevocably decreed in heaven before the foundations of this world, upon which all blessings are predicated—and when we obtain any blessings from God, it is by obedience to that law upon which it is predicated.’ (D&C 130:20-21.)

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“...{W}hat is true with an individual is also true with a nation. You can absolutely rely on this—a nation cannot violate basic principles with impunity, that is, without paying the awful price, any more than an individual can violate basic principles with impunity.

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President McKay continually teaches us that {the} right of free agency is our most precious heritage. It is our greatest gift in this world and is to be valued even more than life itself.

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“...Under {today’s get ‘something for nothing’} climate, people gradually become blind to what has happened and to the vital freedoms which they have lost....

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“I sincerely hope that the net effect of this message this morning is that each of us, each of you, will be ever more determined to live righteously. Why? Because righteousness and freedom are inseparable, just as responsibility and freedom are inseparable.

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“God will preserve our country and protect it from all enemies, within and without, if we will worship the God of this land, who is Jesus Christ. The real issue is righteousness. We must not pray, as did Augustine, ‘O God, make me clean, but not yet.’” (Elder Howard W. Hunter, “The Law of the Harvest,” BYU Devotional, March 8, 1966, pp. 6, 7, 8, 10, 11, and 12.)

O. GORDON B. HINCKLEY, fifteenth president of the Church (1910-2008).

“The Constitution under which we live, and which has not only blessed but has become a model for other constitutions, is our God-inspired national safeguard ensuring freedom and liberty, justice and equality before the law.

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“{The Constitution is the keystone of our nation. It is the guarantee of our liberty. That original document, with the Bill of Rights, constitutes the charter of our freedom. Through all of the years that have followed we have had some ambitious men who have sought to subvert the great principles of the Constitution, but somehow we have endured one crisis after another. We have been involved in terrible wars during this, the bloodiest of all centuries in the history of man. All of this is part of the miracle that is America, the struggle, the travail, the bitterness, the jealousies, the cynicism, and the criticism. But beyond and above it all is the wonder of a nation that for more than two centuries has remained free and independent and strong, the envy of the world, the hope of the world, the protection of free men everywhere, the manifestation of the power of the Almighty.” (“Keep the Faith with America,” commencement address given at Weber State University, Ogden, Utah on 6 May 1999.)

“Evoking images of the Mayflower pilgrims and of George Washington at Valley Forge, Hinckley said the United States was founded on ‘an unequivocal trust in the power of the Almighty to guide and defend us.’

“Revered as a prophet by members of the Mormon Church, Hinckley decried the disappearance of family prayer and attempts to remove reference to deity from society.

“At times seeming to suppress tears, Hinckley recalled his visits to the American military cemetery in France, where his brother is buried.

“As I have stood before the cross that marks his grave, I have thanked God for the cause for which he died, for the great and eternal concepts of human dignity, liberty and freedom to worship, speak and assemble.

“Those concepts were handed down by God to the framers of the U.S. Constitution,’ Hinckley said.

“I pray that America may always be worthy of {God’s} blessing. There is no place for arrogance among us. There is no place for conceit or egotism. As we look to God, we will grow in strength.” (Salt Lake Tabernacle, American Legion’s 78th National Convention, Sunday, September 1, 1996.)

“I believe in America. I am grateful for the Constitution under which this nation lives and moves and has its being. I am profoundly grateful that somehow for more than two centuries of time we have existed as a nation and grown to become the strongest and most free in the entire world. I am grateful for those men whom the God in heaven raised up and inspired and who pledged their lives, their fortunes, and their honor to establish this nation and its government. I believe in America—one nation under God, indivisible, with liberty and justice for all. We are, of course, not without fault. We have more than our share of crime and of every other evil to be found on the earth. I fear that we have become an arrogant people, but when all is said and done, there is no other nation quite like this one.” (Bonneville International Corporation Management Seminar, February 10, 1991: quoted in Teachings of Gordon B. Hinckley, p. 13.)

“I should like to say a few words about America....No land is without its beauty, no people without their virtues, and I hope that you who come from elsewhere will pardon my saying a few words concerning my own native land, America. I know that she has problems. We have heard so much of them for so long. But surely this is a good land, a choice land, a chosen land. To me it is a miracle, a creation of the Almighty....I was stirred in my heart by the words of our late, great President Harold B. Lee, who, speaking to a group such as this, said: ‘This nation, founded on principles laid down by men whom God raised up, will never fail....I have faith in America. You and I must have faith in America if we understand the gospel of Jesus Christ.’ (Deseret News, 27 October 1973.)

“I doubt not that we shall have days of trial....But I am certain that if we will emphasize the greater good and turn our time and talents from vituperative criticism, from constantly looking for evil, and lift our sights to what may be done to build strength and goodness in our nation, America will continue to go forward with the blessing of the Almighty and stand as an ensign of strength and peace and generosity to all the world.” (“Let not Your Heart Be Troubled,” BYU Speeches of the Year, October 29, 1974, pp. 267-68.)

P. THOMAS S. MONSON, sixteenth and currently acting president of the Church (1927-\_\_\_\_\_).

Thomas S. Monson, president of the Church of Jesus Christ of Latter Day Saints, is listed among the most admired people in the world according to a Gallup/USA Today poll. The survey, taken in mid-December {2011}, asked Americans whom they most admired. President Monson was listed in the top 10 along with religious leaders Reverend Billy Graham and Pope Benedict XVI. While presidents of the Church have been mentioned in past surveys, this is the first time a Church president was listed in the top 10. That which follows are statements by President Monson on the topic of religious freedom.

“I recently read in the Wall Street Journal an article by Jonothan Sacks, Britain’s chief rabbi. Among other things, he writes: ‘In virtually every Western society in the 1960’s there was a moral revolution, an abandonment of its entire traditional ethic of self restraint. All you need, sang the Beatles, is love. The Judeo-Christian moral code was jettisoned. In its place came {the adage}: {Do} whatever works for you. The Ten Commandments were rewritten as the Ten Creative Suggestions.’

“Rabbi Sacks goes on to lament: ‘You have been spending our moral capital with the same reckless abandon that we have been spending our financial capital....

“There are large parts of {the world} where religion is a thing of the past and here is no counter-voice to the culture of buy it, spend it, wear it, flaunt it, because you’re worth it. The message is morality is passé, conscience is for wimps, and the single overriding command is Thou shalt not be found out.’

“My brothers and sisters, this—unfortunately—describes much of the world around us. Do we wing our hands in despair and wonder how we’ll ever survive in such a world? No. Indeed, we have in our lives the gospel of Jesus Christ, and we know that morality is not passé, that our conscience is there to guide us, and that we are responsible for our actions.

“Although the world has changed, the laws of God remain constant. They have not changed; they will not change. The Ten Commandments are just that—commandments. They are not suggestions. They are every bit as requisite today as they were when God gave them to the children of Israel. If we but listen, we hear the echo of God’s voice, speaking to us here and now. Thou shalt....

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“Our code of conduct is definitive. It is not negotiable. It is found not only in the Ten Commandments, but also in the Sermon on the Mount, given to us by the Savior when He walked upon the earth. It is found throughout His teachings. It is found in the words of modern revelation.

“Our Father in Heaven is the same yesterday, today and forever. The Prophet Mormon tells us that God is ‘unchangeable from all eternity to all eternity.’ In this world where nearly everything seems to be changing, His constancy is something on which we can rely, an anchor to which we can hold fast and be safe, lest we be swept away into uncharted waters.

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“As the winds of change swirl around us and the moral fiber of society continues to disintegrate before our very eyes, may we remember the Lord’s precious promise to those who trust in Him: ‘Fear thou not; for I am with thee: be not dismayed; for I am thy God: I will strengthen thee; yea, I will help thee; yea, I will uphold thee with the right hand of my righteousness.’ (Thomas S. Monson, “Stand in Holy Places,” October 2011 General Conference, <http://lds.org/general-conference/print/2011/10/stand-in-holy-places?lang=eng&clang=eng>, pp.1,2,5.)

Q. Other Quotations From Prophets, Apostles And General Authorities:

MARION G. ROMNEY (1897-1988), Member of Quorum of twelve Apostles, 1960-1972; Second Counselor in First Presidency, 1972-1982; First Counselor in First Presidency, 1982-1988.

“{The Lord} has told us that in preparation for the restoration of the gospel, he himself established the Constitution of the United States, and has plainly told us why he established it. I hope I can get this point over to you. He said he established the Constitution to preserve to men their free agency, because the whole gospel of Jesus Christ presupposes man’s untrammelled exercise of free agency. Man is in the earth to be tested. The issue as to whether he succeeds or fails will be determined by how he uses his agency. His whole future, through all eternity, is at stake. Abridge man’s agency and the whole purpose of his mortality is thwarted. Without it, the Lord says, there is no existence. (See D&C 93:30.) The Lord so valued our agency that he designed and dictated ‘the laws and constitution’ required to guaranty it. This he explained in the revelation in which he instructed the Prophet Joseph Smith to appeal for help. {See D&C 101:77—78, 80; and 94:4—10, quoted by President Romney at this point to teach ‘Just and holy principles’ and encourage the reader to ‘Sustain Constitutional law.}

“These scriptures declare the Constitution to be a divine document. They tell us that ‘according to just and holy principles,’ the Constitution and the law of the land which supports the ‘principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before’ God; that, ‘as pertaining to {the} law of man whatsoever is more or less than this, cometh of evil.’ They remind us that the Lord has made us free and that laws that are constitutional will also make us free.” (Marion G. Romney, “Is Socialism the United Order, pp. 9-11? [http://.latter day conservative.com/articles/is-socialism-the-united-order/](http://.latterdayconservative.com/articles/is-socialism-the-united-order/))

EZRA TAFT BENSON, *supra*.

“Our governmental system like ancient Israel and biblical Christianity recognized man as a special creature of God, a special creation of God. He is not as some theorists reason, a product of chance or merely an educated animal. His paternal origin comes from God. Thus man inherently possesses God implanted attributes and potential: reason, free agency, judgment, compassion, initiative, and a personal striving for perfection.

“From what source does man derive his rights? There can be only two possible origins of man’s rights; rights are either God given as part of

the divine plan or they are created by government as part of the political plan. Reason, necessity, tradition and religious convictions all lead the founding fathers of this republic to accept the divine origin of these rights. If we accept the premise that human rights are granted by government, then we must be willing to accept the corollary that they can be denied by government. I for one shall never accept that premise. As the French political economist, Frederick Bastiat phrased it so succinctly. 'Life, liberty and property do not exist because men have mad laws. On the contrary, it was the fact that life, liberty and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty and property existed beforehand that caused man to make laws in the first place.

"Since God created man with certain inalienable rights and man in turn created government to help secure and safeguard those rights, it follows that man is superior to government and should remain master over it, not the other way around. Even the non-believer can appreciate the logic of this relationship. Thus we see that the principle of supremacy of the individual over government is rooted in religious precept. This is why the founders of our nations were so influenced by the writings of John Locke, which declared that man was naturally in a state of perfect freedom, that he had a right to preservation and property, and that the source of all this was God.

"The founding fathers recognized that no people can maintain freedom unless their political institutions are founded on faith in God and belief in the existence of moral law. They realized that to survive, this new nation needed a reliance on the protection of God. In the Declaration of Independence we find their appeal to the supreme judge of the world and to the laws of nature and nature's God. The document includes their acclamation of a firm reliance on the protection of divine providence. The implication of this moral basis to our political economic system is that God is the dispenser of man's rights not government. The inalienable right of free choice is implanted in the human breast. Man is born to choose for himself. This is why man cannot be driven indefinitely or led by despotic leaders to intellectual, physical or economic bondage. Fear and despotism may rule for a generation, two or three, but in time the human spirit rebels. The spirit of liberty manifests itself and the tyrannical hand of despotism is overthrown. May it ever be so.

“Once a man awakens to the truth of this divine identity he demands his rights, the right to property, the right to make his own decisions, the right to plan his own welfare, the right to improve himself materially, intellectually and spiritually...” (Ezra Taft Benson, “Freedom and Free Enterprise, 1977, [http://www.latterdayconservative.com/ezra-taft-benson/freedom-and-free-enterprise/.](http://www.latterdayconservative.com/ezra-taft-benson/freedom-and-free-enterprise/))

FIRST PRESIDENCY STATEMENT (1979).

“As the ruling principle of conduct in the lives of many millions of our citizens, religion should have an honorable place in the public life of our nation, and the name of Almighty God should have sacred use in its public expressions.” (Selected Beliefs and Statements on Religious Freedom of The Church of Jesus Christ of Latter-Day Saints. See <http://www.mormonnewsroom.org/article/beliefs-statements-religious-freedom.>)

NEAL A. MAXWELL (1926-1004), Member of Quorum of Twelve Apostles, 1981-2004.

“It was G.K. Chesterton who wisely reminded us of the important dimensions of real democracy: its regard for others. In our passion for the fruits and seeming decisiveness of numerical democracy, we need Chesterton’s reminder not to neglect the opinions of a man even if he is our groom. Chesterton notes, too, that tradition tells not to neglect a man’s opinion, even if he is our father. Both true democracy and true religion are other-regarding. And other-regarding begins when we first encounter others—in our families.” (A House of Generosity and Truth, Neal A. Maxwell, “That My Family Should Partake,” Deseret Book Company, 1974.)

JAMES E. FAUST (1920-2007), Member of Quorum of Twelve Apostles 1978-1995; Member of First Presidency of Church, 1995-2007.

“EVERY AMERICAN HAS been taught that ‘freedom of religion’ is the ‘first freedom’ guaranteed by the Bill of Rights. The First Amendment to the Constitution recognizes the ‘free exercise of religion’ as the pre-eminent

position among Constitutional rights as intended by the Founding Fathers. Most Americans, however, have seen these principles being eroded.

“The twin religious clauses of the Bill of Rights—‘Congress shall make No laws respecting an establishment of religion nor prohibit the free exercise thereof’—are the golden threads which in the past have permitted those who believe in God to publicly affirm that there is a higher power that ‘rules in the affairs of men.’...

“In my opinion, the establishment and free exercise clauses should be read together to harmonize the importance of religious liberty with freedom from government regulation. Rather, today in our nation the establishment clause is being used to restrict religious institutions from playing a role in civic issues, and the recent interpolations of the free exercise clause in my opinion denies to some individuals their religious liberty....

“The basic concept of Anglo-Saxon-American jurisprudence has held, as affirmed by the Constitution, that God is the source of all of our basic rights and that the principal function of government is only to secure those rights. May I quote from the Declaration of Independence: ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights....That to secure these rights governments are instituted among man.’

“In contrast, the new secular religion of which I speak finds its source of right by invoking the power of the state. It seems to have little purpose, few common values for morality except self-interest.” (“The Impact of World War II on Utah,” World War II Commemoration, Ogden, Utah, 13 Aug. 1995, 1999 Deseret Book Company, Printed from Gospelink.com.)

RUSSELL M. NELSON (1924-\_\_\_\_), member of Quorum of Twelve Apostles, 1984-\_\_\_\_; thoracic surgeon.

Elder Nelson addressed a group of young adults from Boston, Massachusetts, 10 June, 2010. His comments touched on a wide range of topics but prominently featured religious freedom and the need to protect the family. Excerpts from his remarks, as reported in Church Publications, follow:

“Opposing forces are competing for our allegiance: right versus wrong, good versus evil. They are not always easily discerned.”

“These forces are, in fact, conflicting religious systems of belief. They are theistic (godly) forces and atheistic (ungodly or satanic) forces. These were cited recently by Elder Clayton Christensen in an editorial calling for theistic balance on the U.S. Supreme Court.”

“Theistic forces, be they Islamic, Jewish, Catholic, Protestant, or Mormon, are based on the fact that there is an absolute right and wrong. Theistic forces inculcate an ethic to revere the righteous judgments of a loving God, and to obey civil and divine law voluntarily. Theistic forces instill a conscience to do what is right, and obey laws that otherwise might be unenforceable.”

“Unfortunately, good culture alone is not strong enough to cause good culture to endure in perpetuity. Additional strength is needed from the power of theistic conviction. For this reason, a policy to separate completely church and state could become completely counterproductive. Theistic forces would be erased and atheistic forces would be allowed to flourish unopposed in the public square. The theistic and noble concept of ‘freedom of religion,’ could be twisted and turned to become an atheistic ‘freedom from religion.’ Such an unbalanced policy could sweep theistic forces for social success and leave the field wide open to atheistic ideology, secularism, suffering huge losses for all.”

“Without the acknowledgement of God and God’s law in one’s life, momentary pleasures will be continually contaminated by gnawing guilt.”

“Even the definition of marriage is now a topic of heated debate. That is only the tip of a larger iceberg. Below this tip is the weightier matter of free exercise of religion. Contention is raging over two main issues: (1) Can marriage survive as the bedrock of our cultural heritage? and (2) Can our precious freedom of religion be preserved?”

“If civil law were altered to recognize so-called ‘same-gender’ marriage, you as believers in God, and keepers of His commandments, would then be regarded as exceptions to the rule. Your conscientious convictions would then be regarded as discriminatory. If you were a Christian school teacher, you could be charged with bigotry for upholding the Lord’s law of chastity. In truth, dear brothers and sisters, if you lose marriage, you also lose freedom of religion. Atheistic moral bedlam and religious repression go hand in hand. At stake is our ability to transmit to the next generation the life-giving and inseparable culture of marriage and the free exercise of religion.” (“Apostle Talks About Religious Freedom to

Boston Youth,” LDS Newsroom Blog. See <http://newsroom.lds.org/blog/apostle-talk-religious-freedom-to-boston-youth>.)

DALLIN H. OAKS (1932-\_\_\_\_), member of Quorum of Twelve Apostles, 1984-\_\_\_\_; president of BYU, 1971-1980.

“Religious values and political realities are so interlinked in the origin and perpetuation of this nation that we cannot lose the influence of Christianity in the public square without seriously jeopardizing our freedoms. I maintain that this is a political fact, well qualified for argument in the public square by religious people whose freedom to believe and act must always be protected by what is properly called our ‘First Freedom,’ the free exercise of religion.” (Selected Beliefs and Statements on Religious Freedom of The Church of Jesus Christ of Latter-Day Saints, Dallin H. Oaks, 2009; See <http://www.mormonnewsroom.org/article/beliefs-statements-religious-freedom>.)

VIII. COMPLETE TEXT OF PAPERS PRESENTED BY PROPHETS, APOSTLES AND MEMBER OF FIRST QUORUM OF THE SEVENTY ON THE SUBJECT OF RELIGIOUS FREEDOM ARE INCLUDED IN APPENDIX “B.” IDENTITY OF EACH PRESENTER(S) AND TOPIC(S) FOLLOW:

JAMES E. TALMAGE (1862-1933). Born in Hungerford, Berkshire, England; member of Quorum of twelve Apostles, 1911-1933.; “ Vitality of Mormonism” (1919), Freedom to Worship God; 1919 Deseret Book Company; Printed from Gospelink.com.

JOHN A. WIDTSOE (1872-1952). Born in Froya, Sor-Trondelag, Norway; member of Quorum of Twelve Apostles , 1921-1952; “Understandable Religion” (1944), The Kingdom of God, Chapter 19; Deseret Book Company, 1944.

MATTHEW COWLEY (1897-1953). Born in Preston, Idaho; member of Quorum of Twelve Apostles, 1945-1953; “Matthew Cowley Speaks” (1954), Address Delivered at the Dedication of the Tahitian Chapel; Deseret Book Company, 1954.

J. REUBEN CLARK, JR. (1871-1961). Born in Grantsville, Utah; ordained an Apostle 1934; member of Quorum of Twelve Apostles, seven days in 1945 and five days in 1951; second counselor in First Presidency, 1933-1934 and 1951-1959; first counselor in First Presidency, 1934-1951, and 1959-1961; “Some Fundamental Principles of Our Constitution,” an Address Delivered by J. Reuben Clark, Jr., to the 67th Annual Congress of the National Society of the Sons of the American Revolution, July 1957.

HUGH B. BROWN (1883-1975). Born in Granger, Utah; member of Quorum of twelve Apostles, 1958-1961 and 1979-1975; third counselor and subsequently second counselor in First Presidency, 1961-1963; first counselor in First Presidency, 1963-1970; “Eternal Quest” (1956), from Section IV Faith in Our Country—a section of that paper entitled The Constitution of United States—“A Heavenly Banner,” printed in The Relief Society Magazine, Deseret Book Company, 1956.

MARK E. PETERSEN (1900-1984). Born in Salt Lake City, Utah; member of Quorum of Twelve Apostles, 1944-1984; “Way to Peace” (1969) from A Covenant Nation, Deseret Book Company, 1969, and “Great Prologue (1975) from They Were Believers, Deseret Book Company, 1975.

JAMES E. FAUST (1920-2007). Born in Delta, Utah; member of Quorum of Twelve Apostles, 1978-1995; second counselor in First Presidency, 1995-2007; “Finding Light in a Dark World” (1995), from A New Civil Religion, Deseret Book Company, 1995.

GORDON B. HINCKLEY (1910-2008). Born in Salt Lake City, Utah; member of Quorum of Twelve Apostles, 1961-1981; second counselor in First Presidency, 1981-1985; first counselor in First Presidency, 1985-1995; President of the Church, 1995-2008; “Freedom Festival Speech 1997, Freedom Festival, BYU Marriott Center, Provo, Utah 1997. (See <http://www.latterdayconservative.com/gordon=b-hinckley/freedom-festival-speech-1997/>.)

RUSSELL M. NELSON (1926-\_\_\_\_). Born in Brigham City, Utah; member of Quorum of Twelve Apostles, 1984-\_\_\_\_; Russell M. Nelson, “Hope in Our Hearts” (Salt Lake City, Utah 2009), from *The Family: The Hope for the Future of Nations*, 2009 Russell M. Nelson.

DALLIN H. OAKS (1932-\_\_\_\_). Born in Provo, Utah; member of Quorum of Twelve Apostles, 1984-\_\_\_\_: (1) “Religious Values and Public Policy,” from an address given 29 February 1992 to the Brigham Young University Management Society, Washington, D.C. (See: *Ensign* Oct. 1992; <http://lds.org/ensign/1992/10/religious-values-and-public-policy?lang=eng>.); (2) “Religious Freedom,” transcript of Elder Dallin H. Oaks speech given at BYU Idaho on 13 October 2009. (See <http://newsroom.lds.org/desnewsroom/eng/news-releases-stories/religious-freedom>.); (3) “Fundamentals of Our Constitutions”—Elder Dallin H. Oaks, Utah’s Constitution Celebration, Tabernacle, Salt Lake City, Utah, September 17, 2010. (See <http://Newsroom.lds.org/article/fundamentals-of-our-constitutions-elder-Dallin-h-oaks>.); (4) “Transcript of Elder Dallin H. Oaks Speech Given at Chapman University School of Law” on 4 February 2011. (See <http://Newsroom.lds.org/article/elder.oaks-religious-freedom-Chapman-University>.); “Truth and Tolerance,” Elder Dallin H. Oaks, CES Fireside, September 11, 2011.

M. RUSSELL BALLARD (1928-\_\_\_\_). Born in Salt Lake City, Utah; member of Quorum of Twelve Apostles, 1985-\_\_\_\_; “Religion in a Free Society,” from a talk given 5 July 1992 at the Freedom Festival in Provo, Utah. (See: *Ensign* Oct. 1992; <http://lds.org/ensign/1992/10/religion-in-a-free-society?lang=eng>.)

QUENTIN L. COOK (1940-\_\_\_\_). Born in Logan, Utah; member of Quorum of Twelve Apostles, 2007-\_\_\_\_; “The Restoration of Morality and Religious Freedom,” BYU-Idaho Commencement, Friday, December 16, 2011. (See

<http://www.mormonnewsroom.org/article/the-resstoration-of-morality-and-religious-freedom.>)

D.TODD CHRISTOFFERSON (1945-\_\_\_\_). Born in American Fork, Utah; member of Quorum of Twelve Apostles, 2008-\_\_\_\_. “Law and Becoming,” Ninth Annual J. Reuben Clark Law Society Fireside Originating from the Conference Center Theater, February 4, 2011. (@2011 Intellectual Reserve, Inc. Publication, distribution or reproduction for other than incidental, noncommercial Church or home purposes requires permission of the Intellectual Property Office of the Church of Jesus Christ of Latter Day Saints.)

LANCE B. WICKMAN (1940-\_\_\_\_). Born in Seattle, Washington; member of Second Quorum of the Seventy, 1994-2000, and First Quorum of the Seventy, 2000-2010; currently emeritus member of the Seventy; General Counsel of the Church, 1994-\_\_\_\_). “From Plaza to Postage Stamp: The Threatened Demise of Religion in Public Square,” remarks to J. Reuben Clark Law Society February 11, 2010.

## IX. CONCLUSION:

“Human rights know no borders. More than fifty years after the adoption of the Universal Declaration of Human Rights, we have only just begun to understand the true impact of recognizing the universality of human rights—‘human rights for all.’ This means that the struggle for freedom of religion or belief for every individual is every government’s responsibility,” Thorbjorn Jagland, Norwegian Minister of Foreign Affairs, March 2000-October 2001, *Facilitating Freedom of Religion or Belief: A Deskbook*, p. xiii.

“Within the scope of the mandate on freedom of religion or belief, it has been noted for several years that manifestations of intolerance and discrimination based on religion or belief persist in countries that are in various stages of development and that have various political, social, and cultural systems—despite the multitude of established norms and the diversity of mechanisms in place to counteract them,” *Facilitating Freedom of Religion or Belief*, *ibid.*, Abdelfattah Amor, United Nations Special Rapporteur on Freedom of Religion or Belief, p. xvi.

“The challenge of freedom of religion or belief is as old as history, yet as current as today’s headlines. It occupies some of humankind’s most ancient narratives: Cain slew Abel following a dispute about the proper form of sacrifice; Antigone buried Polyneices in a classic encounter of conscience with state power; Prince Siddhartha Gautama had to turn from the allures of his father’s court to follow the path of asceticism and ultimately enlightenment; early in Islamic history exiled Muslims fleeing from persecution by the Quraysh tribe were given freedom to practice their religion under the protection of the Christian Emperor of Abyssinia. But the challenge is more general. It arises wherever differences of fundamental beliefs create tensions in families or in communities which seems to be inescapable.

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“Beyond all the tasks that demand action, there is a need for each generation to rekindle the fundamental vision of freedom of religion or belief. Sometimes the spark comes in reaction to oppression; sometimes in gratitude for the experience of freedom and respect; sometimes in the process of defending rights that are imperiled. Whatever the source of the spark, the resulting flame needs to be sustained and facilitated in the countless ways suggested in this volume. If we succeed in nurturing this flame, even in imperfect measure, we contribute to what the American founder, James Madison, once called ‘the luster of our country.’ He was writing at a time when the idea of religious freedom was young, fragile, and very much at risk, not only in his own country, but everywhere. The world has come far in intervening centuries, though not far enough. Today the challenge is to work for this luster in all our countries, and thereby to enhance the luster of our world,” *Facilitating Freedom of Religion or Belief*, *ibid.*, The Editors, with Nazila Ghanea, pp. xxvii, lxxiv.

# *The Doctrine of Religious Freedom*

W. COLE DURHAM, JR.

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*W. Cole Durham, Jr., was a professor at BYU's J. Reuben Clark Law School when this devotional address was given on 3 April 2001.*

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I would be remiss on this occasion if I did not express gratitude for the opportunities I have had during one of the great transformative epochs in human history--the decade after the collapse of communism--to visit almost every post-communist country and to work with leaders in their homelands on implementing the ideals of religious freedom. I am grateful beyond measure for blessings that have been given and keys that have been exercised to allow me to participate in the high adventure of opening the doors of nations.

Several years ago a close friend and Church leader gave me a blessing promising that I would be able to invoke the witness of the Holy Ghost when I spoke with others about religious freedom. In fulfillment of that blessing, I have seen the influence of the Spirit change the hearts and minds and, indeed, the entire outlook of many of the governmental leaders with whom I have met, the "gatekeepers" who stand at the doors of nations. I pray that the Spirit will be with me again today as I have the chance to bear witness of this great principle among my own people.

## **The Doctrine of Religious Freedom**

The title of my address--"The Doctrine of Religious Freedom"--is intended to remind us that religious freedom is not merely an important constitutional and human right.<sup>1</sup> There can be no doubt that it is a "first" freedom.<sup>2</sup> But for us it is even more: it is a matter of doctrine. Our 11th article of faith reads:

*We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.*

Moreover, this is not merely doctrinal for us--it is a core doctrine. Yet, as I will explain, it is a paradoxical doctrine. And it is a doctrine of prophecy.

## **Religious Freedom Is a Core Doctrine**

That religious freedom is a core doctrine has been reemphasized to my mind by the following remarkable statement from Elder Bruce R. McConkie:

*Freedom of worship is one of the basic doctrines of the gospel. Indeed, in one manner of speaking it is the most basic of all doctrines, even taking precedence over the nature and kind of being that God is, or the atoning sacrifice of the Son of God, or the vesting of priesthood and keys and saving power in the one true church. By this we mean that if there were no freedom of worship, there would be no God, no redemption, and no salvation in the kingdom of God.<sup>3</sup>*

Note two things about this statement. First, Elder McConkie does not say this is the most *important* doctrine. He said that "it is the most basic of all doctrines." It is the most basic because none of the other doctrines could become operative or have any meaning or authenticity if we did not have the option to choose them freely. The exercise of this right is in fact an attribute of divinity.<sup>4</sup> The atoning sacrifice of Christ would be meaningless if we could not avail ourselves of its power to save and exalt through freely chosen acts of faith, repentance, and covenanting. Part of the reason the Messiah is "the Lamb slain from the foundation of the world"<sup>5</sup> is that at the key moment in the premortal existence, He recommended the Father's plan of freedom, knowing its cost. He knew the price that He personally would pay to atone for all our abuses of freedom. He also knew that despite His payment of that price, countless numbers of His beloved brothers and sisters--individuals He loves with a depth and intensity that passes our understanding--would be lost forever because of their own decision "to choose captivity and death."<sup>6</sup>

This brings me to the second point about Elder McConkie's statement. Note that he did not say that it made no difference *how* we exercise this freedom; to the contrary, everything depends on learning to follow the divine pattern set by the Master of worship in every thought and deed and with all our "heart, . . . might, mind, and strength."<sup>7</sup>

### **The Paradox of Religious Freedom**

Paradoxically, following the pattern set by the Master includes learning to respect the beliefs and choices made by others, even while standing firm in witnessing and teaching doctrinal truths. Indeed, following the pattern means standing for the rights and freedoms of others, even at the cost of our own lives--and surely also even at the lesser cost of inconvenience or discomfort.

This paradoxical nature of the doctrine of religious freedom needs to be emphasized and understood more deeply. Most of our doctrines are teachings that we affirm and agree to follow. In contrast, although religious freedom is basic and foundational for the system of gospel truth, it demands that we respect the views of those who adhere to other systems of belief. What is paradoxical is that our belief in religious freedom obligates us to tolerate and respect beliefs with which we disagree--though it does not require us to accept, endorse, or support them.

Part of the paradox is explained by the fact, attested by all the modern prophets, that the gospel embraces all truth.<sup>8</sup> But more is involved in the doctrine of religious freedom than an admonition to accept truth wherever we find it.<sup>9</sup> It is a recognition of the realities of human dignity and conscience and of the obligation to respect agency at the precious core of the human spirit. This doctrine has had great practical meaning for our leaders.<sup>10</sup> Just a year before his martyrdom, Joseph Smith declared:

*The Saints can testify whether I am willing to lay down my life for my brethren. If it has been demonstrated that I have been willing to die for a "Mormon." I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.*

*It is a love of liberty which inspires my soul--civil and religious liberty to the whole of the human race.*<sup>11</sup>

Forgetting the paradox of religious freedom has been a cause of incalculable suffering during human history. Too often, groups who have pleaded for tolerance while they were a persecuted minority have turned into persecutors as soon as they acquired political power. Joseph Smith was very conscious of this tragic tendency toward unrighteous dominion and repudiated it.<sup>12</sup> We as members of The Church of Jesus Christ of Latter-day Saints should not be guilty of insensitivity in this area. Having so often suffered from religious intolerance in the past, we should go the extra mile in assuring that others are not exposed to similar pain.<sup>13</sup> What those who forget this paradox do not understand is that the mere possession of truth does not carry with it a right to impose that truth on others. God possesses all truth, yet He has left us our freedom.

In the end, the paradox of religious freedom is linked to many of the deepest truths of the gospel, which share a similar paradoxical structure. "Whosoever will lose his life for my sake shall find it."<sup>14</sup> "I, the Lord, will forgive whom I will forgive, but of you it is required to forgive all men."<sup>15</sup> What ultimately lies behind this paradox is the second great

commandment: "Thou shalt love thy neighbour as thyself."<sup>16</sup> Love lies at the heart of the paradox and at the core of religious freedom.

*Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you;*

*That ye may be the children of your Father which is in heaven: for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.*<sup>17</sup>

Stated differently, what makes the doctrine of religious freedom paradoxical is that the right to enjoy religious freedom for ourselves carries with it a reciprocal obligation to respect the religious freedom of others. In the words of the Golden Rule, Do unto others as you would have them do unto you.<sup>18</sup> Or as the Lord said at the Last Supper, "As I have loved you, . . . love one another."<sup>19</sup>

### **Religious Freedom and Prophecy**

Religious freedom is not only a matter of doctrine; it is a focus of prophecy. You are all familiar with the great description of the last days found in Isaiah 2:

*And it shall come to pass in the last days, that the mountain of the Lord's house shall be established in the top of the mountains, and shall be exalted above the hills; and all nations shall flow unto it.*

*And many people shall go and say, Come ye, and let us go up to the mountain of the Lord, to the house of the God of Jacob; and he will teach us of his ways, and we will walk in his paths: for out of Zion shall go forth the law, and the word of the Lord from Jerusalem. . . .*

*O house of Jacob, come ye, and let us walk in the light of the Lord.*<sup>20</sup>

For me, Isaiah's great vision of the last days has taken on greater meaning ever since I read a commentary on this passage by President Harold B. Lee,<sup>21</sup> in which he pointed to an interpretation of the phrase "out of Zion shall go forth the law" that is found in the dedicatory prayer of the Idaho Falls Temple. The relevant portion of that prayer reads as follows:

*We pray that kings and rulers and the peoples of all nations under heaven may be persuaded of the blessings enjoyed by the people of this land [the United States] by reason of their freedom under thy guidance and be constrained to adopt similar governmental systems, thus to fulfil the ancient prophecy of Isaiah that "out of Zion shall go forth the law and the word of the Lord from Jerusalem."*<sup>22</sup>

The Idaho Falls Temple was dedicated on September 23, 1945, immediately following the end of World War II. With that in mind, it is worth reflecting on developments that have occurred since 1945 that bear on the fulfillment of this prophecy.

First, virtually all currently enforceable international human rights treaties have been adopted since 1945. Moreover, the entire approach to international human rights law has changed. It is now taken for granted that it is legitimate for one sovereign nation to be concerned about the human rights practices of other nations.<sup>23</sup>

At the national level, with only a handful of exceptions, all the countries on earth have adopted their current constitutions since 1945.<sup>24</sup> In short, we are witnessing a remarkable historical process in the field of international law and comparative constitutional law that is the subject of prophecy. This to my mind is one of the many ways that we see the tracings of the Spirit of Christ in history.

### **The Significance of Religious Freedom for Church Growth**

Let me now give you a graphic sense for the implications that global religious freedom has for the growth of The Church of Jesus Christ of Latter-day Saints. Look first at a map of the globe that attempts to plot the status of religious freedom

around the world. ~~[A map was shown to the audience.]~~ The information in this map is based primarily on the latest annual report on religious freedom provided by the U.S. State Department.<sup>25</sup> The countries shown in gray are countries that have either no constitutional protection of religious freedom or that do not respect this ideal in practice. Some states protect religious freedom to some extent but have significant qualifications that make it difficult to found a new religious community in the country. Restrictions on proselyting are particularly problematic. As the map shows, most of the world now has normal-to-strong protection of religious freedom. No country has a perfect record, but the situation is markedly better than it was even 10 years ago.

Now look at the map showing the presence of the Church of Jesus Christ worldwide. [A second map was shown.] Darker gray shows the countries where the Church has not yet achieved formal recognition. As you can see, this band of the world includes China and most Islamic nations. Not surprisingly, since the Church always follows the policy of going "in the front door" and entering a country only when it is legal for it to do so,<sup>26</sup> there is a high correlation between low religious freedom and lack of formal presence of the Church of Jesus Christ.

The third map shows that religious freedom also has considerable significance for general patterns of Church growth. [Another map was shown.] One of the things that is striking from the map is that concentrations are higher in what the scriptures refer to as the "promised land" of the Americas and certain "islands of the sea." Second, one is beginning to see the impact of growth in parts of Africa and the former socialist bloc, where we lacked significant presence until recently. Finally, what the map shows is that Church population remains very thin virtually everywhere. Aside from the United Kingdom, Portugal, and South Korea, there are no countries in these three vast continents of Europe, Africa, or Asia that have as much as one Latter-day Saint per 1,000 in its population. Even in the Americas population exceeds 3 percent only in Chile. Utah remains the only place where the Church is in the majority. The point is that we remain a tiny minority virtually everywhere--so religious freedom protections continue to be of tremendous significance to the Church and its members.

### **Global Challenges to Implementing Religious Freedom**

With this background, let me turn now to some of the global challenges to implementing religious freedom. We live in a world that is peopled with an odd mixture of Sherems<sup>27</sup> and Korihors.<sup>28</sup> Sherem, as you remember, is the Book of Mormon figure who criticized prophets and revelations concerning Christ on the basis of fundamentalist or supposedly "orthodox" interpretations of religious texts. At the other pole stands Korihor, the secular anti-Christ who prefigured in his thought the great masters of suspicion of the 19th and 20th centuries--Darwin, Marx, Nietzsche, and Freud.

Both secularism and fundamentalism or orthodoxy in other traditions can pose profound problems for religious freedom. Further problems emanate from nationalism, ethnicity, and efforts to exploit these for the retention of political power. The arrest of Slobodan Milosevic this past weekend reminds us of the terrible ways a power-hungry leader can use these forces, often manipulating religion in the process to cause terrible devastation.<sup>29</sup> Finally, fears associated with stereotypical images of "dangerous sects"--often fanned by virulent anticult forces<sup>30</sup>--are leading to infringements of religious freedom both in areas of Western Europe and in many other parts of the world.

The Church has outgrown the "dangerous sect" label, but just barely, and we are constantly at risk that overbroad reactions to supposedly "dangerous" religions will create problems for us as well. Even if this were not the case, however, our own experience with religious persecution should encourage us to stand firm for the rights of the currently less fortunate groups.

Time is limited, but let me give a few concrete examples of how religious freedom is protected in practice.

### **Technical Legal Assistance**

A year ago in January I stopped for three days in Romania because I had a few extra days between two other conferences in Europe. I was aware that very problematic legislation was pending that, among other things, would have made it virtually impossible for the Church of Jesus Christ and many other religious groups to find places of worship in that country. On the first day of my visit I stopped in to see the head of religious affairs, who I had met at a conference a few months earlier. By coincidence, or something more, I was in his office when he received a call indicating that the ruling coalition in Romania would consider whether to withdraw the proposed law from Parliament three days later. Armed with

that alert, it was possible to help mobilize response from many groups and government leaders both within and outside of Romania, with the result that the legislation was withdrawn. With a kind of clarity that is seldom so clear-cut, I knew that my three days in Romania had been blessed, and blessed with success.

More typical of efforts working on legislation has been the experience of the past few weeks working on legislation in Kazakhstan and Kyrgyzstan through the Organization for Security and Cooperation in Europe (OSCE). Through this international organization I have been privileged to help provide technical advice to these central Asian republics as they grapple with the difficult problem of dealing with Muslim extremists coming into their countries from other parts of the Muslim world. Their initial reaction has been to clamp down on any transborder activity, restrict missionary work, and make it more difficult for religious groups to be registered so that they can operate legally in the country. OSCE efforts will help contribute to better laws for these countries and may help set patterns that can be utilized elsewhere in the Muslim world.

### **The Influence of Academic Conferences and Consultations**

Academic conferences provide an important setting for contributing to religious freedom. Let me describe a few incidents that have grown out of this type of activity. Each fall for the past several years we have held an international conference at BYU dealing with religious freedom. The minister of justice from Peru attended one of these two or three years ago. At the time the Church had just learned that it had exhausted missionary quotas for the year in Peru. A Church official working with visas mentioned this to the minister of justice during a break at the conference. He was quite surprised that such a quota existed at all and indicated he would check into the matter when he returned home. Within a few weeks there were no more missionary quotas in Peru.

The people who come to BYU for our annual conference are often deeply moved by what they experience here. One of my favorite statements comes from another friend who is currently the head of religious affairs in Albania. He had the opportunity last fall, the day before our academic conference started, to attend the Sunday morning session of general conference in the new Conference Center. Some of you who stood in lines to get into conference this past weekend can appreciate what he saw. This is what he said about the experience:

*I have been in [my position as head of religious affairs] for a year, and I have seen a lot. But now I am totally convinced that religion should be an essential part of people's lives. In my country, people line up for bread; today I saw thousands of your people standing in line . . . to worship.*

This kind of impression changes perspectives on the importance of religious freedom. I returned a month ago from a conference that same man had organized in Albania aimed at pointing the way toward a good law on religious associations that can bless the lives of people in that poor and struggling country for years to come. These stories indicate only a few of the many approaches that can help promote religious freedom.

### **Implications**

In the end, what ultimately carries the day is that religious freedom is a true principle. It is a principle of justice. The just and honorable people of this earth recognize its validity. A nation that fails to respect it cannot claim to be just. We must do all in our power to make it a common heritage of all mankind. As the maps shown earlier suggest, the gospel flourishes best under conditions of liberty. God Himself respects this principle. Were it otherwise, He would not be just. His kingdom must be freely chosen. It will not be imposed on anyone anymore than worship in the temple is imposed on nonbelievers. The celestial kingdom is, among other things, a type of worship that will be imposed only on those who have chosen it. But choosing the Lord's kingdom has implications; you cannot arrive in Zion without having chosen to get there. You cannot ascend the mountain of the Lord's house without leaving other things behind. Part of the paradox of freedom is that the Lord allows people not to return to Him. Allowing freedom reflects the nature of a just God, but it cannot compromise divine truth. Just as mercy cannot rob justice, so justice cannot rob truth.

With this in mind, let me conclude by saying a few things about what the doctrine of religious freedom should mean for each of us. I am convinced that many in your generation will have opportunities to make important contributions to the cause of religious freedom. Hannah Smith, a law student, and Elizabeth Clark, the associate director of the BYU International Center for Law and Religion Studies, each played crucial roles in a recent visit to France to help oppose

problematic anticult legislation there. Hannah's husband, John, also a law student, is helping to organize a conference on religious freedom in Ukraine. Others could be mentioned. In time there will be more and more such individuals with knowledge, experience, expertise, and contacts who will be able to help monitor religious freedom developments worldwide and provide assistance and positive contributions when called upon to do so.

Another young Latter-day Saint lawyer played a crucial role last year in helping to set up a conference on religious freedom with the constitutional court of Azerbaijan. His work had taken him to Azerbaijan at the time. He recognized the opportunity and checked with appropriate authorities. A way was found to organize the conference. I want to underscore the fact that this brother checked with appropriate authorities. Matters of religious freedom often raise a variety of sensitive issues, and it is important before working on these matters to follow the guidance of those holding the keys for the work. There are a number of unfortunate incidents in Church history where well-intended Church members exerted "zeal without knowledge," and set Church progress back by years.

The story of the founding of the Church in Kazakhstan suggests another role that some adventurous Church families will play. About three years ago a major law firm approached the Law School looking for a business lawyer willing to go to its office in Almaty, Kazakhstan. One of our graduates who had been in practice for several years responded. He and his family have now been in Kazakhstan about three years. Two other expatriate families have moved in. As recently reported in the *Church News*,<sup>31</sup> the Church is now organized in Kazakhstan. These founding families are praying for someone to come with greater fluency in Russian, or with other gifts, so that they can teach and train new Church members more effectively.

During conference over the past weekend, you heard several talks about the need for couples. Let me tell you a secret. You don't have to wait until you are 65. I have been convinced as long as I have been teaching at the Law School that one of the great waves of missionary work we will see in our lifetime is that performed by families who, like Ammon, decide to go out to the frontiers of the kingdom, dedicated to serving those they find there and hoping to build the kingdom in these locations. This activity will not be for everyone, and there is much to be done on the home front.<sup>32</sup> But some of you will feel this call and will see unparalleled growth in the Church as a result of your faithfulness and witness.

Consider one other example that suggests another kind of role we all can play. I have a nonmember friend who has played a very important role in a country sensitive enough that I will not name it. He tells me that over the past few years, through a chain of coincidences, he has found himself being befriended by Church members at almost every turn. When he first came to the U.S., the librarian at his university was a Latter-day Saint who helped him immeasurably. Later he studied at another university, where he met additional Latter-day Saints. I heard of him through yet another organization and invited him to our BYU conference. He has subsequently met some Church members in his own country. He was ultimately retained to help secure legal recognition for the Church. In connection with rendering this service, he was asked what he would charge. The lawyer who asked him told me that at the time he was silent for several minutes. Then he said, "I really don't know what to do. I have been benefited so much by friends in your Church that I don't know whether I should charge at all." In the end he was persuaded to take some compensation, but I'm sure it was much less than his help was worth.

This leads me to a final set of comments about how we should implement the doctrine of religious freedom in our lives. Most of you will not in fact be engaged in legal defense of religious freedom in various parts of the world. For you, what will be most important is the paradoxical part of this doctrine--not the part that underlies all our doctrine and protects our rights to worship but the reciprocal part in which you show tolerance and respect and love for others.

A few years ago, precisely as much of my work in Eastern Europe was heating up, I became involved in an effort to revise provisions of the Utah Constitution dealing with religious freedom.<sup>33</sup> During the political process I had numerous opportunities to speak around the state. Two things concerned me. First was the number of Church members who felt it was part of their duty as Church members to impose their views on other members of our community. Too many of them, it seemed to me, had forgotten the vital lesson at the core of the paradox of the doctrine of religious freedom: the mere possession of truth does not carry with it a right to impose that truth on others. Second, I heard countless nonmember parents talking about pain their children had suffered because of either intentional or more often unintentional exclusion of their children in our communities.

I believe that President Hinckley has also sensed their concerns. I don't know if you have paid attention to this, but in virtually every conference for the past few years he has emphasized the importance of being tolerant, of being civil, and of being good neighbors. I cannot repeat his numerous statements on this theme.<sup>34</sup> I can only say that he has been an exemplary advocate of religious freedom. I was immeasurably proud when he greeted the arrival of the Southern Baptist Convention and its plans to "evangelize the Mormons" with counsel that we should be as courteous to them as we would hope others would be to our missionaries.<sup>35</sup> Again and again he has reminded us of our obligation to be true to the hard side of religious freedom: respecting the beliefs of others.

Let me conclude with a statement that some of you here may have heard President Hinckley give at his devotional on November 4, 1997. In that address he stated:

\* *I hope that [Brigham Young University] will give to you a great sense of tolerance and respect for others not of your faith. The true gospel of Jesus Christ never led to bigotry. It never led to self-righteousness. It never led to arrogance. The true gospel of Jesus Christ leads to brotherhood, to friendship, to appreciation of others, to respect and kindness and love.*<sup>36</sup>

\* After teaching this principle he told a remarkable story. He had been visited the week before by Shimon Peres, a former prime minister of Israel and one of the elder statesmen of the world. Mr. Peres told him the following story about a Jewish rabbi, which appropriately enough had been told to the prime minister by a Muslim. President Hinckley recounted the story as follows:

*A Jewish rabbi . . . was conversing with two of his friends. The rabbi asked one of the men, "How do you know when the night is over and the day has begun?"*

*His friend replied, "When you look into the distance and can distinguish a sheep from a goat, then you know the night is over and the day has begun."*

*The second was asked the same question. He replied, "When you look into the distance and can distinguish an olive tree from a fig tree, that is how you know."*

*They then asked the rabbi how he could tell when the night is over and the day has begun. He thought for a time and then said, "When you look into the distance and see the face of a woman and you can say, 'She is my sister.' And when you look into the distance and see the face of a man and can say, 'He is my brother.' Then you will know the light has come."*<sup>37</sup>

I am reminded of the first line of a hymn by my great-grandfather, Thomas Durham: "Stars of morning, shout for joy; Sing redemption's mystery."<sup>38</sup>

The morning is coming. You are the stars of morning. We are the stars of morning. We are witnessing the Church coming "forth out of obscurity and out of darkness."<sup>39</sup> Part of "redemption's mystery" is our paradoxical--and yet ultimately not paradoxical--obligation to respect and love and protect the rights of others not of our faith.

May we sing this mystery well. May we be true children of our Father in Heaven, never forgetting--and never forgetting to live--the song learned in Primary: "As I have loved you, Love one another."<sup>40</sup> In the name of Jesus Christ, amen.

## Notes

1. Religious liberty is protected by a vast array of constitutions, treaties, and other international human rights instruments. See, e.g., U.S. Constitution, amendment 1; *Universal Declaration of Human Rights*, adopted and proclaimed by U.N. General Assembly Resolution 217A (III) (1948), art. 18; *International Covenant on Civil and Political Rights*, adopted and opened for signature by U.N. General Assembly Resolution 2200A (XXI) (1966), art. 18.

2. See Franklin Delano Roosevelt, "The Four Freedoms," address to 77th Congress, 6 January 1941; available online at <<http://www.libertynet.org/~edcivic/fdr.html>>.

3. Bruce R. McConkie, *A New Witness for the Articles of Faith* (Salt Lake City: Deseret Book, 1985), 655; emphasis added.

4. The members of the Godhead Themselves worship each other freely as a natural, yet free response to the glory of The beings. For example, the Father can be seen as worshiping the Son--not a worship of subordination, but surely worship in the sense of love and respect--when He declared, "This is my beloved Son." See 2 Peter 1:17: "For he received from God the Father honour and glory, when there came such a voice to him from the excellent glory, This is my beloved Son, in whom I am well pleased." The members of the Godhead bear witness of each other. See 3 Nephi 11:32: "I bear record of the Father, and the Father beareth record of me, and the Holy Ghost beareth record of the Father and me."

If C. S. Lewis is correct in pointing out that praise is a natural and willing response to "the worthiest object of all," then it is reasonable to assume that an attitude of worship and praise characterizes the reciprocal relations of members of the Godhead (*Reflections on the Psalms* [New York: Harcourt, Brace and World, 1958], 96). As Lewis says, "All enjoyment spontaneously overflows into praise. . . . I think we delight to praise what we enjoy because the praise not merely expresses but completes the enjoyment; it is its appointed consummation" (*Reflections*, 94, 95; see also entire chapter, "A Word About Praising," 90–98).

5. Revelation 13:8.

6. 2 Nephi 2:27.

7. D&C 59:5.

8. There are countless statements supporting this proposition. Only a few of the more notable ones are listed here. Joseph Smith wrote:

*The first and fundamental principle of our holy religion is, that we believe that we have a right to embrace all, and every item of truth, without limitation or without being circumscribed or prohibited by the creeds or superstitious notions of men.* [Letter to Isaac Galland, written from Liberty Jail, 22 March 1839, in Dean C. Jessee, comp. and ed., *The Personal Writings of Joseph Smith* (Salt Lake City: Deseret Book, 1984), 420]

Brigham Young taught:

*"Mormonism," so-called, embraces every principle pertaining to life and salvation, for time and eternity. No matter who has it. If the infidel has got truth it belongs to "Mormonism." The truth and sound doctrine possessed by the sectarian world, and they have a great deal, all belong to this church. . . . There is no truth but what belongs to the gospel. [JD 11:375]*

*I want to say to my friends that we believe in all good. If you can find a truth in heaven, earth or hell, it belongs to our doctrine. We believe it; it is ours; we claim it. [JD 13:335]*

Further, he stated:

*For me, the plan of salvation must . . . circumscribe the knowledge that is upon the face of the earth, or it is not from God. Such a plan incorporates every system of true doctrine on the earth, whether it be ecclesiastical, moral, philosophical, or civil: it incorporates all good laws that have been made from the days of Adam until now; it swallows up the laws of nations, for it exceeds them all in knowledge and purity; it circumscribes the doctrines of the day, and takes from the right and the left, and brings all truth together in one system, and leaves the chaff to be scattered hither and thither. [JD 7:148]*

A wonderful passage from John Taylor is worth quoting at length:

*We wish to comprehend and embrace all truth and seek for and obtain everything that is calculated to exalt, ennoble and dignify the human family; and wherever we find truth, no matter where, or from what source it may come, it becomes part*

*and parcel of our religious creed, if you please, or our political creed, or our moral creed, or our philosophy, as the case may be, or whatever you may please to term it.*

**We are open for the reception of all truth, of whatever nature it may be, and are desirous to obtain and possess it, to search after it as we would for hidden treasures; and to use all the knowledge God gives to us to possess ourselves of all the intelligence that he has given to others; and to ask at his hands to reveal unto us his will, in regard to things that are the best calculated to promote the happiness and well-being of human society. If there are any good principles, any moral philosophy that we have not yet attained to we are desirous to learn them. If there is anything in the scientific world that we do not yet comprehend we desire to become acquainted with it. If there is any branch of philosophy calculated to promote the well-being of humanity, that we have not yet grasped, we wish to possess ourselves of it. If there is anything pertaining to the rule and government of nations, or politics . . . that we are not acquainted with, we desire to possess it. If there are any religious ideas, any theological truths, any principles pertaining to God, that we have not learned, we ask mankind, and we pray God, our heavenly Father, to enlighten our minds that we may comprehend, realize, embrace and live up to them as part of our religious faith. Thus our ideas and thoughts would extend as far as the wide world spreads, embracing everything pertaining to light, life, or existence pertaining to this world or the world that is to come.** [John Taylor, *JD* 14:337; emphasis added]

Wilford Woodruff stated, "If any man has got a truth that we have not got, let us have it. Truth is what we are after. . . . If we have not the truth, that is what we are after, we want it" (*JD* 17:194).

Joseph F. Smith proclaimed:

*We believe in all truth, no matter to what subject it may refer. No sect or religious denomination in the world possesses a single principle of truth that we do not accept or that we will reject. We are willing to receive all truth, from whatever source it may come; for truth will stand, truth will endure.* [*GD*, 1]

Coming down to the present, President Howard W. Hunter stated:

*As members of the Church of Jesus Christ, we seek to bring all truth together. We seek to enlarge the circle of love and understanding among all the people of the earth. Thus we strive to establish peace and happiness, not only within Christianity but among all mankind.* ["The Gospel--A Global Faith," *Ensign*, November 1991, 18]

Note the interesting linkage here between the notion of embracing all truth and enlarging the circle of love and understanding.

Finally, President Gordon B. Hinckley has restated the theme as follows:

*I love to learn. I relish any opportunity to acquire knowledge. Indeed, I believe in and have vigorously supported, throughout my life, the pursuit of education--for myself and for others. . . .*

*The learning process is endless. We must read, we must observe, we must assimilate, and we must ponder that to which we expose our minds. I believe in the evolution of the mind, the heart, and the soul of humanity. I believe in improvement. I believe in growth. . . .*

*. . . It therefore behooves us, and is our charge, to grow constantly toward eternity in what must be a ceaseless quest for truth. And as we search for truth, let us look for the good, the beautiful, and the positive.* [*Standing for Something* (New York: Times Books, 2000), 59, 62, 64]

9. Clearly that is part of our obligation, but it is not all. The light of Christ "lighteth every man that cometh into the world" (John 1:9; D&C 93:2), and we should be responsive to that light wherever it shines. In seeking wisdom "out of the best books" (D&C 88:118), my experience has been that although others may not have the fullness of the gospel with the authority and keys that have come with the Restoration, they often understand those portions that they have been given in greater depth. We can benefit immensely from their knowledge. For example, a modern physicist may not understand the fullness of the gospel, but as to the truths of the fundamental structure of matter, he no doubt knows more than most of us,

and to the extent his knowledge corresponds to reality, he has knowledge of truths that are embraced by our religion. The same is true in other domains of knowledge. In this regard it is worth remembering Brigham Young's statement:

*Our religion measures, weighs, and circumscribes all the wisdom in the world--all that God has ever revealed to man. God has revealed all the truth that is now in the possession of the world, whether it be scientific or religious. [JD 8:162]*

10. When Nauvoo was founded, the Prophet Joseph Smith stated that he designed its charter "for the salvation of the Church, and on principles so broad, that every honest man might dwell secure under its protective influence *without distinction of sect or party*" (HC 4:249; emphasis added). In this same spirit, the city council of Nauvoo passed one of the early "anti-hate crime" ordinances in American history. Section 1 of the ordinance read as follows:

*Be it ordained by the City Council of the City of Nauvoo, that the Catholics, Presbyterians, Methodists, Baptists, Latter-day Saints, Quakers, Episcopalians, Universalists, Unitarians, Mohammedans, and all other religious sects and denominations whatever, shall have free toleration, and equal privileges, in this city; and should any person be guilty of ridiculing, and abusing or otherwise depreciating another in consequence of his religion, or of disturbing or interrupting any religious meeting within the limits of this city, he shall, on conviction thereof before the Mayor or Municipal Court, be considered a disturber of the public peace, and fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of said Mayor or Court. [HC 4:306]*

Significantly, Brigham Young clearly taught that even during the Millennium there will be just and honorable people of other faiths who will be protected in their rights to freedom of religion (see JD 2:309).

11. HC 5:498.

12. See D&C 121:37. For an example of Joseph Smith's critical view of the tendency of the persecuted to assume the role of oppressors, see his comments on intolerance in Massachusetts (HC 2:464–65).

13. For an excellent discussion of this principle, see John K. Carmack, *Tolerance: Principles, Practices, Obstacles, Limits* (Salt Lake City: Bookcraft, 1993).

14. Matthew 16:25; see also 10:39; Mark 8:35; Luke 9:24; 17:33.

15. D&C 64:10.

16. Matthew 22:39.

17. Matthew 5:44–45.

18. See Matthew 7:12: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets." A version of this great teaching of the Master is found in virtually every major religious tradition. See, e.g., *The Analects of Confucius* 15:23 ("What you do not want done to yourself, do not do to others"--Confucianism); *Mahabharata* 5:1517 ("This is the sum of duty: do naught unto others which would cause you pain if done to you"--Hinduism); Talmud, Shabbat 31a ("What is hateful to you, do not do to your fellow man"--Judaism); *Udanavarga* 5:18 ("Hurt not others in ways that you yourself would find hurtful"--Buddhism); *Dadistan-i Dinik* 94:5 ("That nature only is good when it shall not do unto another whatever is not good for its own self"--Zoroastrianism); *Forty Hadith of an-Nawawi* 13 ("Not one of you is a believer until he loves for his brother what he loves for himself"--Islamism); *Tablets of Bahá'u'lláh* 71:26 ("Blessed is he who preferreth his brother before himself"--Bahaism); *Sutrakritanga* 1.11.33 ("A man should wander about treating all creatures as he himself would be treated"--Jainism); Guru Arjan Dev 259, *Guru Granth Sahib* ("Don't create enmity with anyone as God is within everyone"--Sikhism).

19. John 13:34.

20. Isaiah 2:2–5; emphasis added.

21. Harold B. Lee, "The Way to Eternal Life," *Ensign*, November 1971, 15; quoted in Jay M. Todd, "A Standard of Freedom for This Dispensation," *Ensign*, September 1987, 16.
22. George Albert Smith, "Dedicatory Prayer for the Idaho Falls Temple," *Improvement Era*, October 1945, 564; quoted by Harold B. Lee in Todd, "A Standard," 16; emphasis added.
23. See Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), 148–65. Moreover, a number of regional international treaties have been adopted. Most notable of these is the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights, which monitors compliance with this convention, is now the most significant constitutional court in the world. It has approximately 800,000,000 people within its jurisdiction, including all the former socialist bloc countries with the exception of those in Central Asia, and its pronouncements on human rights issues are now given effect throughout this vast region. See P. van Dijk and G. J. H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer Law, 1998), 1–2, 31–36; see also <[http://press.coe.int/press2/press.asp?B=30,0,0,0,0&M=http://press.coe.int/cp/2001/226a\(2001\).htm](http://press.coe.int/press2/press.asp?B=30,0,0,0,0&M=http://press.coe.int/cp/2001/226a(2001).htm)> (Council of Europe press release). For a brief overview of the current status of the court, see <[http://www.echr.coe.int/BilingualDocuments/infodoc.stats\(2001\).bil.htm](http://www.echr.coe.int/BilingualDocuments/infodoc.stats(2001).bil.htm)>.
24. To the best of my knowledge, the only exceptions are the following 10 countries, which adopted their constitutions prior to World War II: the United States in 1788, Norway in 1814, Liberia in 1847, Luxembourg in 1868, Switzerland in 1874, Tonga in 1875, Australia in 1901, Liechtenstein in 1921, Lebanon in 1926, and Ireland in 1937. The only other exceptions are the United Kingdom, Bhutan, Israel, and Libya, which do not have written constitutions.
25. U.S. State Department, *2000 Annual Report on International Religious Freedom* (5 September 2000) (available online at <[http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_index.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_index.html)>). The differentiation between "normal" and "strong" protection is subjective, based on personal perceptions and interactions with comparative constitutional law experts.
26. "Wherever we go, we go in the front door. Our representatives honor the laws of the nations to which they go and teach the people to be good citizens" ("President Hinckley Addresses World Affairs Council," *Ensign*, August 1999, 75). Similar statements have been regularly made by other Church leaders as well. See, e.g., Spencer W. Kimball, quoted in Martin B. Hickman, *David Matthew Kennedy: Banker, Statesman, Churchman* (Salt Lake City: Deseret Book, 1987), 342; also see Dallin H. Oaks and Lance B. Wickman, "The Missionary Work of The Church of Jesus Christ of Latter-day Saints," in John Witte, Jr., and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, New York: Orbis Books, 1999), 270.
27. Jacob 7.
28. Alma 30.
29. See "Siege Ends as Milosevic Surrenders," *Deseret News*, 1 April 2001, A1.
30. W. Cole Durham, Jr., "The United States' Experience with New Religious Movements," *European Journal for Church and State Research* (1998), 5:215; see also <<http://www.cesnur.org>>.
31. "Kazakhstan Recognizes Church," *Church News*, 17 February 2001, 5.
32. See Bruce D. Porter, "Building the Kingdom" *Ensign*, May 2001, 80–81. Elder Porter provided a vital reminder that although

*sometimes, perhaps, we may be inclined to see the building of the kingdom as something that takes place beyond the horizon, far away from our own branch or ward. In truth, the Church advances both by outward expansion and by inward refinement. . . .*

*We do not have to be called to serve far from home, nor do we have to hold a prominent place in the Church or in the world to build up the Lord's kingdom.* [Porter, "Building the Kingdom," 80]

33. Because of what I regard as one of the great decisions in the history of our state supreme court, *Society of Separationists v. Whitehead*, it ultimately became unnecessary to pursue the constitutional amendment in question (870 P.2d 916 [Utah 1993]).

34. See, e.g., Gordon B. Hinckley, "A Time of New Beginnings," *Ensign*, May 2000, 87–88; "The Work Moves Forward," *Ensign*, May 1999, 4–5; and "We Bear Witness of Him," *Ensign*, May 1998, 4–6. One statement that seemed particularly impressive to me is the following:

*In many communities where our people are in the majority, accusations are heard that we are intolerant, that we display an attitude of self-righteousness, and that we are uncooperative in advancing causes which are for the common good. . . . It has been reported that some parents, out of a desire to protect their children, have told them that they should not associate in school with those not of their faith.*

*It seems anomalous that some would keep their sons and daughters from so doing while they are in the elementary schools, and yet make great sacrifice when they grow older to send them into the mission field.*

*Let us not forget that we believe in being benevolent and in doing good to all men. I am convinced that we can teach our children effectively enough that we need not fear that they will lose their faith while being friendly and considerate with those who do not subscribe to the doctrine of this Church. Let us reach out to those in our community who are not of our faith. Let us be good neighbors, kind and generous and gracious. Let us be involved in good community causes. There may be situations, there will be situations, where, with serious moral issues involved, we cannot bend on matters of principle. But in such instances we can politely disagree without being disagreeable. We can acknowledge the sincerity of those whose positions we cannot accept. We can speak of principles rather than personalities. In those causes which enhance the environment of the community, and which are designed for the blessing of all of its citizens, let us step forward and be helpful. An attitude of self-righteousness is unbecoming a Latter-day Saint.* [TGBH, 661–62]

35. See, e.g., "We Are a Biblical Church, Atlanta Members Told," *Church News*, 23 May 1998, 5, quoting President Gordon B. Hinckley as saying:

*I don't know how many will be there [at the Southern Baptist Convention]. I have heard everything from 12,000 to 18,000. I hope there are 20,000 of them. I hope they have a wonderful time. I hope that our people are hospitable toward them and will reach out the hand of fellowship and show love for them.*

36. Gordon B. Hinckley, "The BYU Experience," *BYU 1997–98 Speeches* (Provo: BYU, 1998), 63.

37. Hinckley, "BYU Experience," 64.

38. "Stars of Morning, Shout for Joy," *Hymns*, 1948, no. 164.

39. D&C 1:30.

40. "Love One Another," *Hymns*, 1985, no. 308. I am indebted to Elder Bruce D. Porter for highlighting this image to beautifully teach this concept in his recent general conference address. See Porter, "Building the Kingdom," 80.

# Erosion of Religious Freedom: Impact on Churches

Michael K. Young, president and chancellor, University of Utah



## Introduction by William F. Atkin

One of the hardest assignments I have experienced is being asked to introduce someone whom everyone already knows quite well, and that task has fallen to me today. In some ways it is easy, because all of you know Mike Young and his background. In other ways it is difficult for the same reason. I am going to have two opportunities today to talk about President Young. First, as I introduce him as our keynote speaker and then following his keynote speech, I will have the opportunity to present him with the International Society's Distinguished Service Award.

There are a number of accomplishments we attain in our lives—I call them externalities or “gold stars” on our foreheads. These are the things we have done that others can see. If you are interested in President Young's many gold stars, I refer you to the Internet. His accomplishments are broad, deep, and impressive.

I do not know if you have had the experience of somebody saying to you: “Oh, you are LDS? Well, I know a Mormon.” At this point, you catch your breath and say to yourself: “Okay, it's coming. Is their Mormon acquaintance going to be a faithful Latter-day Saint with whom they have enjoyed a positive experience or is it going to be a member of the Church who has created problems in their lives?”

In the case of Mike Young, as a young professional, our paths had never crossed even though we were contemporaries at BYU. When I joined the law firm of Baker & McKenzie, one of my good friends in the law firm was John McKenzie. When he found out I was a Latter-day Saint, he asked me if I knew Cole Durham. I did not know Cole. He then asked me if I knew Mike Young. I did not know Mike. John had gone to Harvard Law School with Cole and Mike, and he was very complimentary of both of them. And so, although I knew of him, I did not know Mike until a few years later.

Mike has an impressive professional pedigree; he has done almost everything to which law students and young attorneys aspire. He graduated *summa cum laude* with honors from BYU, went to Harvard Law School and was an editor on the *Harvard Law Review*, clerked for Judge William Rehnquist on the U.S. Supreme Court, was an ambassador level under-secretary and a legal advisor at the U.S. State Department during the Reagan presidency, taught law at Columbia University Law School, was dean of George Washington Law School, and is now president of the University of Utah.

However, I do not want to focus on his professional accomplishments, as impressive as they are, but rather I want to talk about Mike as an individual, a friend, and a dedicated father.

One of the first things I noticed and have always appreciated about Mike, as impressive as his accomplishments are, he is a regular guy. He is the kind of guy you can just be a friend with. He is outgoing, personally engaging, and a loyal friend.

He was asked at one time to contribute to a book some individuals were putting together here at BYU focused on the topic of “finding God at BYU.” Mike's response when he was asked if he would contribute an essay was “I did not know God was lost and lost at BYU of all places.” His joking aside, he did contribute a meaningful essay on his religious and spiritual journey as an undergraduate at BYU.

Where do you go to find out who a person really is as opposed to what their *curriculum vitae* says? The best source is usually their family. Not to make Mike nervous, but after calling his daughter-in-law and his son, this is what I learned about Mike. When Mike was clerking for Justice Rehnquist at the U.S. Supreme Court, a wonderful legal experience but a very challenging and time-intensive activity, Mike said that one night he went home and with his oldest son, Stewart, then just a young boy, they started romping around the living room, rolling and wrestling and just having fun. At the time, he realized that this was much more important than anything he was doing at the Supreme Court.

Mike's life has been consistent with giving emphasis to the importance of his family. Stewart told me when his dad was a stake president in New York, there was not a lot of one-on-one time with his father, since he was so busy both at work and in his church assignments. However, he said every once in a while his dad would drag him to late-night stake presidency meetings. I do not know where Mike parked Stewart during the meetings, but afterwards he would take him for ice cream and then take him home and tuck him in bed. This is how Mike found time to be with his young children. Stewart also told me when he and his sisters were on missions, every week Mike would write eight- to ten-page, single-spaced letters to his missionary children. If you have been or are missionary parents, you know how much effort it takes to correspond weekly with your missionaries. This is even more impressive since Stewart said Mike's letters were not breezy news from home, but rather in-depth discussions about the gospel and its meaning. But, the ultimate authority on Mike Young is his grandson, James. So I talked to James. James said he loves to go to grandpa's because grandpa, in the mornings, cooks really good pancakes.

Now, with those family testimonials, I hope you have a better feel for President Mike Young as a person, as a friend, as a father, and as a grandfather.



I read something in the paper not too long ago that was looking at trend data for what people are doing with respect to churches in the U.S.: what they believe and how they feel. The conclusion of the article essentially was that within a couple of generations we will very likely have no churches in America. You can imagine that was a very startling realization, and there was some reason they were identifying that.

The first observation was not that young people were essentially unspiritual or uninterested in spiritual things or things that relate to the spirit but just the opposite—young people were interested in spiritual matters but not interested in organized religion. This fact is already reflected in a very significant decline in the participation of young people in organized religion. As the article described this trend, they were spiritual but “un-churched.”

The second observation made was the spiritual path being pursued by young Americans was more like meditation; they are not looking to religion for ultimate truths but were seeking truths that were true to them. Their conclusions: your truth is fine, my truth is fine, and his truth is fine. Everyone's truth may be different, but they are all equally acceptable. This has created a very significant movement away from organized religions—particularly religions that seemed to have some foundational set of beliefs that are unalterable. And, looking at these trends, the likelihood is Americans are moving in directions that would ultimately undermine the stability, the presence, and the need for churches. That is really unsettling.

I think most of you are familiar with Elder Oaks and the wonderful talk he gave at BYU—Idaho. One of the things he said was a writer for the *Christian Science Monitor* had predicted the coming century will be “very secular and religiously antagonistic,” with “intolerance of Christianity [rising] to levels many of us have not believed possible in our lifetimes.”<sup>1</sup> So, those sets of concerns, coupled with an opportunity through a Church assignment I had, have turned my interest to the United States.

### Why Focus on the U.S.?

I would like to talk about the U.S. today for a number of reasons. First of all, the U.S. is just as important as any other country in the world. I have talked for many years about the importance of religious liberties to people and how foundationally important it is as they ask these important questions in their life: Who am I? Where am I from? Why am I here? How should I behave? What should I teach my children? How should I treat my fellow man? Where do I go? Those are the kinds of really important questions that motivate literally billions of people around the world, but they motivate and engage Americans every bit as much.

Historically, when I was serving on the U.S. Commission on International Religious Freedom, we were often asked: “Well why are you not looking at the U.S.?” Part of the reason was that in an era of limited resources and time, you looked at the most horrific abuses, and we did not have those in the United States. In the U.S., we were not arresting people and torturing and killing people for their religious beliefs. We were not discriminating generally speaking against them in terms of jobs and other sorts of things. And so there was no reason to look there.

As time has gone along, what is happening in the U.S. has begun to interest me for many reasons. This is the heart of our Church. This

is where the headquarters of the Church is located. We need that view in America to see the Church develop and progress in the way it can serve not only the members here but indeed the members worldwide.

It is as important to Americans as it is anybody else. But I think, importantly, it is also a profound foundational right. A new book was recently published that does some statistical work suggesting the relationship between religious liberties and other, not only civil rights, but economic development, income disparities, rights for men and women, economic rights, lack of conflict.<sup>2</sup> All of those things are highly correlated in statistically significant ways with the presence of freedom of religion in a country. It becomes important in that regard and with things like the gross domestic product, employment rights, and so forth.

From my perspective, one of the things I learned serving on the U.S. commission is that at the end of the day no country is likely to have more religious liberties than the U.S. does. We are a bellwether; we are a model. Our capacity to argue on behalf of religious liberty around the world and to make this part of our foreign policy has a kind a credibility that allows us to talk intelligently about this and persuasively about this because of our own behavior. And to the extent liberty begins to erode here in the U.S., it will inevitably have significant ripple effects around the world. Looking at what happens in the U.S., in my judgment, becomes significant and important.

### Are We at Risk?

The question is: “Are we at risk in the U.S.?” As a country essentially founded on religious principles, founded by many people who were themselves escaping religious persecution, is religious liberty at risk here? This presentation will have a little bit of “lawyerly dimensions” to it for which I apologize in advance to the non-lawyers attending the conference today. I am trying to repent from being a lawyer, but you know it still bubbles up from time to time.

We do have events I think the lawyers in the audience worry about: *Smith v. Division of Employment* in the early 1990s. This is a significant case that fundamentally took away a lot of the special judicial protection we have understood historically for two hundred years to be afforded to religion. Essentially, the *Smith* case concluded that any law of general applicability that is neutral on its face can apply to religion as well as to everything else. Now there were exceptions, but that was one of those epical events.

What worries me more is the gradual erosion. Major events such as the *Smith* case certainly come along from time to time and one needs to be attentive, and, indeed, I think people generally are attentive to those major erosions. What worries me more is a very profound sense I have that there is a sort of gradual erosion of religious freedoms in the United States. I think of the old story of the pot of water with the frogs in it and if you drop a frog in a boiling pot of water, it jumps out. But if you put it in the pot and slowly bring it to a boil, it will simply stay there and boil to death. That is what I worry about: the water is gradually warming up and up and up.

Let me give you another example. I want to be very clear, because I do not want this example to be misunderstood, and I will explain why in a minute. How many of you have had the chance to visit the Holocaust Museum in Washington? The most unsettling part of the Holocaust Museum to me is the initial portion that describes

chronologically the gradual introduction of the Nuremberg laws. In the beginning, these laws were on their face quite benign—not so bad. You know, I might have disagreed, but I might have been willing to vote in favor of these first laws. And then, the second law was a little worse but it is just a little amendment to this first law. And the third law, well it is just a little bit further and a little bit further and a little bit further until you are putting people on trains and sending them to gas chambers. It was unsettling in a profound way to see the initial lack of concern among the lawyers about the gradual erosion of the rights of Jewish people and how such apathy ultimately resulted in “laws” ordering the extermination of more than six million people.

Maybe Hitler started out that way, but the lawyers did not start out that way. They started out in a very different way saying, “Well, we have got a little bit of a social problem here and we just need to tinker with it a little.” That tinkering occurred again and again and again and again. Now, please do not misunderstand this example. I am not saying the people who are behind these incursions on religious liberties here in the U.S. are anything like or similar to the Nazis. Please do not misunderstand that example. The point is laws can accrete in very subtle ways over time and create very serious problems you would never have anticipated or agreed with or participated in or been willing to credit or understand at the beginning—this is a reality and not a historically unprecedented reality. It is very important for us to understand and that unsettles me quite a bit.

Since the time of the founding of our country, in almost two centuries we really did have a fundamental confidence in and appreciation for religion. Look at what Alexis de Tocqueville wrote in the nineteenth century:

Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions . . . I do not know whether all Americans have a sincere faith in their religion . . . but I am certain that they hold it to be indispensable to the maintenance of republican institutions. . . . The Americans combine the notions of Christianity and of liberty so intimately in their minds, that it is impossible to make them conceive the one without the other.<sup>3</sup>

So the understanding that religion should be free and is necessary to a republic is important foundationally for this country. Even if we were sometimes inconsistent in our application of that principle, there was a general adherence to it and very little erosion.

### **Arguments Undermining Religious Liberty**

Today one senses the consensus that has guided us for so many years may be eroding in fundamental ways. The notion of whether religion is unique, good, important, or even necessary in a just society is up for question in our society. And the debate of what role, if any, religion should have in the public square is increasingly under challenge. Let me give you a few examples of that increasing challenge. For me, the arguments tend to coalesce around three broad arguments. I do not think for the most part, and I am going to say for the most part because there is a little footnote to this statement, I do not think these people are necessarily ill-intentioned. I do not think they are out there saying let us see if we can suppress a religion today. Again, that is not what is going on.

### *Religion is not Special*

Let me give you the first set of arguments asserting that religion is actually not special. These arguments do not deny the goodness of religion, but they claim religions do not hold a monopoly on virtuous conduct, and that is absolutely true. They go on to say, therefore, all good and moral organizations should be recognized and treated equal. That is to say religions have no special place. Religions are just one of a number of good organizations like the Humane Society and Mothers Against Drunk Driving, which are all good organizations. The idea is that essentially they are all equivalent. There is a moral equivalency and an institutional equivalency between all these, and religions really deserve no more protection than those organizations deserve, no less but no more.

Now what does that mean? It says if you are going to build a house of worship somewhere, why should that receive a special zoning exception or any other particular land use requirement waiver or exemption any more than any other charitable relief house or any other kind of organization that does good in society. That is an increasingly profound and important argument that you hear again and again at the local level, at the state level, and even at the national level. This argument asserts that religious claims for special treatment should be evaluated on their merits just as everybody else’s plans should be. If we are not willing to give an exemption for union members, for teachers, for members of any charitable organization or any organization that is itself designed to accomplish some social good, why should we give an exemption to people of a religious organization or the religious organization? Religion is like everything else. It is sort of a hobby, an interest group that people have, a particular faith and endeavor, but somebody else may choose to want to make the highway safe for bicycles and these two interest groups are really pretty much equivalent—so religious organizations are not entitled to any more protection than say the Sierra Club.

Now the logical corollary of this argument is that religions have to compete with other political and economic values in every instance that they come in competition with each other. So requirements that a church employee must adhere to standards of that church must compete with equal employment and non-discrimination laws. Tax exemptions have to compete with arguments of tax equality and tax fairness. Land use restrictions have to be pitted against the desire of a church to build a chapel. And that list goes on and on and on.

In each individual case, the social value might be seen to be very great and the incursion on the right to worship relatively small, and time after time religion loses. And it may be indeed in that particular case, the harm to religion may be minimal. But the gradual accumulation of these adverse decisions ultimately, profoundly, and unalterably destroys the right to freedom of religion just as if we had repealed the First Amendment in the first place. The accretion of harm, while barely perceptible at the moment, ultimately undermines freedom of religion in a way that would have been impossible had you simply posed the ultimate question of the importance of religion and that had been front and center in the decision in the first place.

From this perspective, religion is simply another example of a do-good organization that is fulfilling some social purpose where people are guiding themselves by whatever light they choose to guide

themselves. Every time the issue of freedom of religion gets pitted against that social value, and every time the interest group in interest of that social value is likely to be more powerful than the religious group, time after time you would see accretion beginning to occur.

We see this somewhat in the *Smith* case. The *Smith* case basically said that any law of general applicability applied equally to religion as well. We see an interesting variation of that even more recently in the case called *Martinez v. Hastings Law School*. That case involved a chapter of the Christian Legal Society on the campus of Hastings Law School in California. The law school had a non-discrimination policy that included sexual preference as well as ethnicity, religion, etc. The organization received a certain number of small benefits from the school. This lawsuit was lodged because the Christian Legal Society did not permit people to assume leadership positions unless they were willing to adhere to the tenants of the Christian Legal Society, which was largely evangelical based and, therefore, it was not comfortable with the notion of gay rights. At least some range of those who were avowedly practicing homosexuals were not permitted to run for offices in this particular organization.

The Supreme Court held if the institution received a public benefit, which it did in modest ways, but a public benefit nonetheless, the school *may* require adherence to its discrimination policy. It did not answer the questions as to whether it *must* require that, although there is a footnote in the case that at least leaves that possibility open. Let me give you some immediate problems ruling raises. What do we do with the Latter-day Saint Student Association if schools required it to take a pledge of non-discrimination? And if it takes a pledge of non-discrimination based not merely on the way it treats people but on what those people believe? It has not happened yet; it may not happen. But you can see we are not a far distance from something like that. If you look at this progression of cases, small cases, small movements, they are potentially significant. The court did not say the school must require adherence or they must have such a policy. At least that question was raised, and I think Justice Kennedy, who is the swing vote in these rulings, seems to be inclined to be in a position where he says in essence, if it is for the public good at the end of the day they may require and they must require in certain circumstances those non-discrimination policies.

If such an exemption is not required by the First Amendment then we are subject to the local whims of state legislatures and of local governments, all of which are passing laws and many that are being debated around the point of whether there is a religious exemption or employment requirement. But I can give you the even more extreme example of which the court just granted *certiorari* just a few weeks ago in a case that involves what is called the ministerial exemption.<sup>4</sup> The ministerial exemption really permits people from its church to pick their clergy regardless of any requirements relating to state and federal laws. The ministerial exemption has been bedrock in U.S. jurisprudence for hundreds of years. All of the U.S. Circuit Courts of Appeal acknowledge that.

In this new case, the real question raised for review by the lower courts was the degree to which a particular job was either secular or sectarian. One lower court decided it was sufficiently sectarian that the local employment laws would apply, and another court concluded

it was not sufficiently secular so the local laws would apply, and yet another court concluded it was sufficiently sectarian so the ministerial exemption prevailed. The court took *certiorari* in those cases. Normally speaking, the court may simply decide the two lower courts got the balance right. That would be an odd thing for the Supreme Court to decide. The court does not usually do that; it usually decides the fundamental question and the ministerial exemption has never been decided by the Supreme Court before. So you can imagine at present what it would be like if you had to apply all the employment laws as you are picking bishops, stake presidents, and all the leaders we call out of the lay in our Church. These are unsettling and potentially far-reaching cases if in fact they take what is now a relatively short step from that perspective.

Other examples of this trend include a photographer in New Mexico, who was fined for his unwillingness to take pictures of a gay wedding. Health and Human Services is now revising its standards for the conscience exemptions for doctors who are uncomfortable performing abortions, because it goes against their religious beliefs. Licensing and accrediting agencies, especially in the field of psychology, are increasingly requiring all lifestyles be taught as equally acceptable and equally appropriate and equally personally sound. Now it may in the end be true, but at the end of the day they are requiring that not as a matter of scientific research but as a matter of accrediting, and for you to be an accredited psychologist coming out of these programs you may have to adhere to standards in terms of counseling of that sort. The head of the Equal Employment Opportunity Commission recently argued that sexual orientation liberty could become the type of right that should prevail over competing religious belief liberty. I think we are seeing or beginning to see these kinds of arguments prevail: religion is a nice thing, and we are amused you believe it, and good for you if it causes you to do good charitable work. That is terrific, but it is no different than being a member of a union, being a member of PETA, no different than being a member of the Sierra Club. As a religious organization, you are going to get all the rights they are entitled to but no more.

#### *Religion is a Private Affair*

The second argument I can see prevailing, which argument is gaining a great deal of currency in popular mind, is that religion is a good thing, but it is essentially a private affair and should be entirely excluded from the public square. That is the argument advanced by many of the opponents of Proposition 8 in California.

As one scholar wrote, "Religious participation in the political process can produce dangerous results." He asserts that fervent beliefs (you are all immune from fervent beliefs, I hope) fueled by suppressed fear are easily transformed into movements of intolerance, repression, hate, and persecution. There are, in short, in his view, substantial reasons for exercising caution with respect to religious involvement in the public square.<sup>5</sup>

Another opponent of Proposition 8 put it slightly differently but with the same intent. He said, in essence, that while he thought religious folks were good people; they should get out of politics and go back to their primary work of helping the victims of Katrina. Now this is interesting, because it suggests that religions and religious-motivated dialogue and religious-moved people not only do not

deserve special treatment, but they should be disadvantaged in the public square. They normally should not have a favored place in our constitutional order, but they should not even be afforded the free speech protections every other citizen in our nation is guaranteed.

The first time I heard this set of arguments, it was jaw-dropping. I thought nobody could seriously make those arguments, much less take those arguments seriously. In fact, for textualists, in the Constitution it is a theory hard to ignore—the First Amendment. I mean it is sort of there. And even Justice Scalia, bless his heart, has an enormous difficulty. He has managed to read the First Amendment out of the Constitution. I did not think the vast bulk of people could do that, but low and behold, the judge did. In this case, which is now under appeal, the district court judge in essence said at the end of the day they were not entitled to argue in favor of this. If this was the basis, then they would not be entitled to use that as a basis or justification for this law.

What are the implications of this? Well, if we are subject to all discrimination laws and not permitted to argue against them based on some religious set of tenets, then we might be in a position where the state really is not allowed to give us those protections to which we historically had been entitled. This sounds a little farfetched. How could this possibly happen? Well, a judge has already done that. But let me extend that just a bit further as we think about it. How then does the government force us to do that if we are not permitted to talk about it in the public square? How do they do that? Well, one way they do it is through the interstate commerce laws, but more importantly, you have to remember all religions not just thrive but survive based on the bestowal of a number of benefits: the right to register, that gives you the right to own or transmit land, and the right to publish and to distribute information. These are rights often in jeopardy in a foreign country. As Cole Durham will tell you so brilliantly, these are often where the rubber hits the road. It is not just that they are rounding people up and arresting them, but they are not allowing them to register, they are not allowing them to publish materials, they are not allowing them to witness, and they are not allowing them to proselytize. In short, they are not allowing them to do those things that are so essential to so many religions. And in the process, by not allowing them to do that, it fundamentally undermines their ability to function.

Think about our Church. What if we have an incapacity to register, if we were not tax exempt so our activities were all taxed, not just our commercial activities but every activity we engaged in, or if your charitable donations to the Church were no longer tax exempt? In the latter case, I think you would still pay your tithes and offerings to the Church, but it would cost you a lot more to do so. If such were the case, the Church would not only be equivalent to the Sierra Club and other such organizations with respect to tax exemption, it would be significantly and demonstrably disadvantaged. And that is where this argument leads. It necessarily leads to the notion that you thought you were equivalent to the Sierra Club, but you are not. You are actually more dangerous than the Sierra Club, and your dialogue is sufficiently irrational that we are not going to let you even participate in public dialogue. You might think this does not make any sense. How can they do that? Well, they have already done that. This is the *Reynolds* case, which we all know dealt with polygamy, but it also the case of *Bob Jones University*. Bob Jones University was a religiously based institution that had a princi-

ple that forbids blacks and whites from dating. The Internal Revenue Service essentially said this principle so fundamentally violated public policy the IRS withdrew Bob Jones University's tax exempt status. And that is in our lifetime.

Let me give you another example. There are two cases that have recently decided to challenge the constitutionality of the Defense of Marriage Act (DOMA), the federal law that protects traditional marriage. DOMA does not require states to recognize a marriage between two people of the same gender that is performed in another state. It also has some federal implications in that the federal government does not recognize same-gender marriages for pension purposes, tax exempt purposes, and so forth.

A judge in Massachusetts has declared DOMA was unconstitutional on two grounds. One argument used by the judge is the Tenth Amendment, which says marriage itself is left entirely up to the states. That is a pretty silly argument, particularly given that DOMA deals with federal benefits, but setting that aside, the other argument is that DOMA violates equal protection. Now you can understand that argument if in fact you say gays are a particularly protected class, because then the level of scrutiny for protected classes goes way up—courts will give strict scrutiny to any laws that might discriminate against a group in a protected class. Nothing ever survives strict scrutiny.

Okay, so that is the way the judge could have decided. What was interesting is the judge did not do that. The judge ruled DOMA is unconstitutional because it violates the equal protection clause. He reached that conclusion not on the basis that gays are a suspect classification but rather on the basis there is no rational basis for DOMA, no rational basis at all. In essence, the judge concluded Congress was essentially out of its mind when it passed DOMA and did so without any rational basis. Admittedly, Congress is often out of its mind and that is fair enough, but on this particular seventeen-year-old law, the judge concluded Congress had no rational basis when it enacted DOMA. It is presumed Congress always has a rational basis—it may be a margin of rationality to be sure, but it always has a rational basis, nothing ever fails that test. But this judge concluded DOMA failed the rationality test.

Again, you might think the Massachusetts court's decision is pretty extraordinary except about six months later, just a few months ago, the Department of Justice and the Office of the Attorney General said the U.S. government's Executive Branch will no longer defend DOMA. Historically, there are only two reasons why the Executive Branch cannot defend the law. One reason is that the law is an unconstitutional incursion on executive power, and the second reason is that there is no reasonable constitutional argument in its favor. Essentially, the Department of Justice is now agreeing with the judge that there is no rational basis, no reasonable argument for that particular law. These are small moves, but again, moves with potential significance.

### *Religion is a Bad Influence*

Let me give you the third argument that religion has a negative impact on society. There are a few examples where one would see this trend manifest itself. There would be no place for the Ten Commandments in parks or buildings or public places, because this is a public manifestation of those beliefs that must be kept in the closet and cannot be out in the public square. It would be unconstitutional for the government to proclaim a national day of prayer. It would be impermissible

for people of faith to advocate religious doctrine or beliefs in their campaign for supporting any law, including Proposition 8.

This is an area in which there is growing sentiment against religion. The arguments in this category complain that religion has a negative impact in society. This argument moves from a neutral view of religion to an aggressive attitude against religion and religious believers that says to keep religious believers in the closet if we can, keep them quiet, keep them in their homes where they can talk about religion all they want, but do not let them out in public, because they might scare the women and cattle with their religious nonsense.

The argument is that religious bodies are like corporate entities, usually motivated by money, power, and prestige, and as such, they are prone to just the same socially harmful behavior and misconduct and need similar regulation. Let me read what one observer wrote:

Religious organizations really are no different than large corporations. The whole range of destructive behavior can be seen in both: fraud, extortion, misappropriation of funds, lying, deceit, covering up scandals like child abuse or doctoring financial records for the sake of the organization's image, and the list goes on. If religious actors are not deterred and punished for bad acts, they wreak great wrongs.<sup>6</sup>

According to this argument, religious organizations essentially endanger social justice, diversity, and harmony. They threaten secularism, pluralism, diversity, and social equality, so goes the argument. As another put it:

Religious participation in the political process can produce dangerous results: fervent beliefs fueled by suppressed fear are easily transformed into movements of intolerance, repression, hate, and persecution. There are, in short, substantial reasons for exercising caution with respect to religious involvement in the public square.<sup>7</sup>

We have not ourselves been immune from this kind of criticism. One observer states that religious entities often create an environment "that is propitious for those who would abuse children and disabled adults, or who would cover up such abuse to protect power, image, and wealth."<sup>8</sup> This argument has also been directed against the Church: "The [Latter-day Saint] system is constructed so that abuse stays internal, victims have no escape route, and perpetrators can have a field day."<sup>9</sup> And they go on to say religious beliefs are antiquated, out of touch with modern-day science.

As one famous atheist wrote: "Religion is about turning untested belief into unshakable truth through the power of institutions and the passage of time."<sup>10</sup> In that context, religion should be particularly disadvantaged, because it is capable of causing particular harm.

You can see these three arguments gradually move little by little from the position that religions and religious believers are no longer protected to the point where their enemies actually get affirmative engagement on the part of the political system to control and repress religion. You can already see the manifestations of this in very practical ways.

Is there an alarm sounding? No evidence of that. In fact, to some extent the opposite is true. If you look at the polling data, the majority of Americans believe religion is important and essential and believe

it in large numbers. But they are not particularly worried about the degree of religious freedom; they think it is just about right.

To the extent they are worried, they are more worried about establishment clause issues. They are more worried that perhaps government is doing too much to promote or sustain religion, as manifested in issues such as public prayer at school, displays of Ten Commandments and similar things, all of which the public believes should be discouraged. The perception is not that there is some problem arising in this gradual way in the U.S. but rather that everything is fine, or to the extent there is a problem it is to the other side that government may be favoring religion.

### What to Do?

Let me conclude with just a few thoughts. What do we do about this? I think others in this room are going to have much better insights and ideas, and I am very much looking forward to the panel that is going to follow, because I think the brilliance they will bring to this will far exceed any ideas I have. But let me just make a few suggestions that occurred to me as I think about this.

First of all, I think we need to be attentive to the gradual erosion of religious freedom in the United States. This sounds very simple, but it is more complicated than it seems. I think a lot of the time even we sit back and rely on the Church and its institutional structures, such as the Church's Office of General Counsel and the terrific work that goes on out of Cole Durham's shop. We think they are going to spot this stuff, and we are okay. We just do not have to worry about it. The truth of the matter is a tremendous amount of this is occurring at the local level where we really do not have the kind of information, the work, or the capacity as an institution to do very much about it. And I think we need to be more attentive than that to watch local zoning decisions, to watch what city councils are doing with respect to employment laws, and all sorts of other protections and prohibitions that might be imposed. And I think this is something that is ultimately incumbent upon every member, because there is no way institutionally that it can be observed and combated.

However, that does lead to the second dimension: I think we need allies. I think this is an area in which we need not only to align with other faith-based organizations who share the same concerns with us, but I think we need to reach out even more broadly. I am always struck by the extent to which freedom of religion is so profoundly connected to other civil liberties, and I think we need to link into those organizations that protect and are concerned about those and help weave into their thought process and their dialogue the notion of freedom of religion and how central and important that is. Conversely, we would need to carry our half of the burden, which is we need to be better champions of civil rights more broadly and human rights more broadly. Those kinds of alliances can be very important. We should be among the most passionate civil libertarians in the world. And as we do so, I think we get allies in this fight. These allies, if we could help them better understand that religion is not the threat, will be the savior that the fight needs for a particularly profound set of reasons. And in turn we understand the other kinds of collateral civil liberties that need to surround it, and we will champion those. These are the important alliances that need to be made.

Third, we need to do this very much for the right reason. Not just simply to save the world for Latter-day Saint missionaries—as laudable and important as that is, but we know how critical free will is and how essential it is to the gospel. Elder McConkie has described it as the most basic doctrine of the Church,<sup>11</sup> as Cole Durham described it a decade ago in his brilliant oration here at a BYU Devotional.<sup>12</sup> Religious liberty is not necessarily the most important principle, but it is foundational. As Elder McConkie goes on to say “if there [were] no freedom of worship, there would be no God, no redemption, and no salvation in the Kingdom of God.<sup>13</sup> We have a profound moral obligation to protect this, not only on our behalf but on behalf of so many others around the world for whom it is such a passion. I was in Europe recently. When seeing the great art and visiting the great cathedrals and museums in Europe, you cannot do so without being struck at how profoundly important religion is to so many people around the world. Protecting their capacity to live that passion and to feel that passion seems to me an enormously noble and worthy goal. We need to think about its application in that context.

We need to not be defensive about this. What we are doing is actually not a rear guard action but is a wonderful progressive and important thing to do for the world. And the positive arguments in favor of this are positive for all. Not only religious believers but for those who do not believe. If you look at the correlation between this right and so many other goods it provides in society, it is incredibly profound. From that perspective, we ought warmly engage and welcome our critics. The thing I love about our critics is they take us seriously. The thing that drives me nuts is when somebody says: “Oh, that is very nice. I am glad you believe that,” or “That is a cute thing you believe.” I would rather someone really come at me, hammer and tongs: “How could you possibly believe that? That will destroy civilization as we know it.” That person is taking me seriously. Those are the people we ought to embrace. Those are the people we ought to work with. Those are the people we ought to love and work together with. It is our critics who understand how important this is and are the ones who are most concerned and engaged. Those ought to be our best friends, because those are precisely the ones who are taking this every bit as seriously as we do.

Finally, I think we need to be vigilant and go back to where I started. This erosion to our religious freedom is happening frequently, consistently, and often at a level and at a pace that is just hard to discern where the tipping point is but also happening so often at the local level. If we are engaged and committed and work to that end, I think our capacity to stem this tide, to raise the alarm, and to do what we need to do for our Church but also for people everywhere is important.

I conclude as I suppose I always do about this, we need to trust in the Lord. If we care, if we try, if we do it for the right reasons, if we are charitable and Christian in the way we do and why we do it and what we do it and how we do it, I believe we are on the Lord’s errand. I believe He will use us in places where He needs us to be. I believe He is not going to let this Church and the center of religion fail on this earth, and we are on His errand. I appreciate the opportunity to talk a little bit about what I know with the International Society, but I do think we all have opportunities to look in both directions across the seas and a little closer to home as well.

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# Corporate Social Responsibility Panel

Moderator: Gregory G. Clark, attorney, Kirton & McConkie



Panel Members: W. Cole Durham, Jr., founder and director, International Center for Law and Religious Studies, BYU; Robert T. Smith, managing director, International Center for Law and Religious Studies, BYU; Paul C. Godfrey, professor of strategy, Marriott School of Management, BYU

## Introduction by Michael Jensen

I have been asked just briefly to introduce this panel chair. I have this honor as a member of the international society. It's been a pleasure to associate with the board members and most importantly with you. Greg Clark is the chair of this next panel. I've known Greg for many years. After having a distinguished legal

career with major international multinational organizations Greg joined the office of general counsel and has served as an area legal counsel in different parts of the world, particularly Latin America and the Caribbean. So Greg is a colleague well known and well loved.

## Greg Clark

The topic we've been asked to speak on is "Corporate Social Responsibility: Marshaling the Business Community in Defense of Religious Freedoms." I will just take a second to give you a brief case study. As it was discussed, I worked for an international oil and gas company; I lived in Qatar for seven years and served as the branch president of this fledgling branch in Qatar alongside two U.S. ambassadors as we worked toward trying to seek legal recognition for the Church in Qatar. Our efforts were puny in comparison to what others were doing. And notwithstanding the combined efforts of the religious community, which included efforts of the Catholic, Anglican, Greek Orthodox, and others in addition to the Latter-Day Saints, the efforts of government and church officials, including U.S. ambassadors, British ambassadors, and the Vatican, it took more than fifteen years before there was any significant or notable progress in Qatar on the issue of religious freedom. My conclusion after having watched that process up front and then from a distance is that additional support is needed beyond what can happen at the present with a young government and what can happen at the ecclesiastical level. More support is needed if there is going to be an acceleration of the freedoms to be granted. It was President Michael Young that suggested to Bill Atkin, Cole Durham, and others that we ought to look to see how the business community can somehow be marshaled to assist in religious freedom initiatives. And with that assignment, we collectively looked, explored, pondered, and prayed and we've come across what may be a key for unlocking certain doors—doors that have heretofore been locked. It's called "Corporate Social Responsibility" and that's the focus of the panel discussion today.

It may be a key to help our Church and other churches to marshal the efforts of the business community behind religious freedom initiatives. But you ought to ask, how could that work? How is that possible? Well, first of all, here's a classic definition: Corporate Social Responsibility (CSR) is the decision-making and implementation process that guides all company activities in the protection and promotion of international human rights. Let me pause—remember

the Universal Declaration of Human Rights? That's code for this—the Universal Declaration of Human Rights (or other instruments that certainly declare those same sort of human rights). Article 18 of the Universal Declaration of Human Rights has to do with religious freedom. CSR guides all company activities in the protection and promotion of international human rights including that bundled human right of religious freedom, labor and environmental standards, and compliance with legal requirements within its operations and its relations to the societies and communities where it operates. Now the issue is how companies can be marshaled within the business community in support of religious freedom. Part of corporate social responsibility is to protect and promote international human rights. Perhaps the mother of all CSR organizations is the World Economic Forum, which has its own corporate social responsibility. Some regard the UN Global Compact as the mother of all CSR initiatives. It was launched in 2000 as a voluntary, not obligatory, initiative where people sign on—sometimes for political purposes that they're a member of the UN Global Compact. As of 28 January 2011, over six thousand business participants, over two thousand non-business participants, and over two thousand companies have been expelled from their participation or membership of the UN Global Compact for their failure to timely report their progress under the guiding principles.

The first two of the ten principles under the UN Global Compact, deal with human rights. The first principle is that businesses should support and respect the protection of internationally proclaimed human rights, for example, the Universal Declaration of Human Rights Article 18 principle number two: Make sure they are not complicit in human rights abuses. The key is, where do we see clear linkage between corporate social responsibility, human rights, and freedom of religion? Has anyone made that connection? And the answer is yes. In the Australian Human Rights Commission report of 2008, they made that clear linkage. It says:

In addition to the human rights standards which Australian companies are legally obliged to comply with under domestic laws, there is a broader range of human rights that are relevant



to corporate activity depending on the specific activities carried out by the corporation.

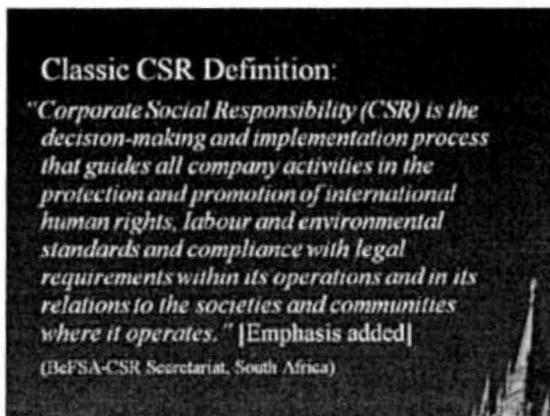
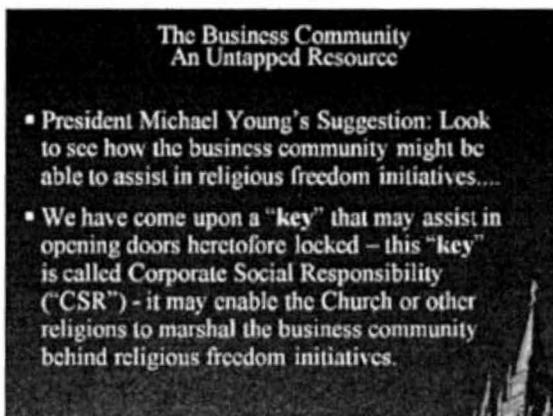
Then you see a bundle of other human rights that companies should pay attention to as part of their CSR responsibilities, and listed among them is the right of freedom of thought, conscience, and religion.

Another link, and this is a recent one, happened a couple of months ago at the initiative of Cole, Robert, and I calling a member of the board of the UN Global Compact. It turns out one of the members of the UN Global Compact board happens to be a friend of the Church. His name is Guillermo Carey. He is owner and managing partner of Carey Allende, a law firm in Chile. As we spoke with him about our belief that more companies would be inclined to want to promote the linkage between corporate social responsibility promoting human rights—including the human right of religious freedom—if the UN Global Compact web site itself made that linkage, he agreed with us. As a matter of fact, he said: “I think it’s an oversight that it’s not already there. Let me take care of that.” Several weeks later, we received an e-mail from his secretary saying: “We are pleased to inform you the UN Global Compact web site has been amended and here’s the link.” Working with his colleagues, the other board members, they agreed they would insert language to make the link between corporate social responsibility, human rights, and the human right of religious freedom by “making reasonable accommodation of all employees’ religious observance and practices.” That’s huge for the UN Global Compact to also make the link between corporate social responsibility and

the protection of human rights, including the human right of religious freedom. Now we’re not done with our good friend Guillermo Carey. We’ve suggested he include other language we’ve proposed: whereas the company should make an effort to work with governments to ensure even outside the workplace their employees have the opportunity to exercise their religion. I spoke with him a couple of days ago, and he said he can’t get the other board members on board yet with this additional language. They’re fine including language in the workplace but they’re very jittery about trying to go beyond the workplace.

What we are doing with this concept of corporate social responsibility—apart from just talking about it in a strategic sort of abstract way—is actually working with the Office of General Counsel and the Area Presidency in South Africa with regard to exploring and analyzing the possibility of marshalling the business community in support of the religious charter that has recently been passed in South Africa but has yet to become law. It’s just a charter. One of the members of the executive committee of the commission who drafted the charter is recommending to his colleagues on the commission that a sub-committee be formed to explore CSR opportunities in support of their religious charter. The Area Presidency in the Africa Southeast Area is in favor of trying to marshal CSR support in favor of the charter if that can be done—time will tell. Maybe next year we can report back if we are successful or not on that.

The other panelists will touch on the challenges and the scope of other CSR initiatives.



## United Nations Global Compact (UNGC)

- Launched in July 2000 as the world's largest voluntary corporate CSR initiative
- Supported by six UN Agencies
- As of January 28, 2011
  - Business Participants: 6,078
  - Non-Business Participants: 2,502
  - Expelled Companies since 2008: 2,048

## A Look at United Nations Global Compact

### Principles on Human Rights:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: Make sure they are not complicit in human rights abuses.

## Key Linkage

### CSR – Human Rights – Religious Freedom

1. Australian Human Rights Commission, in their [report](#), clearly linked religious freedom as part of the bundle of human rights that warrant CSR support.
2. UNGC's web site [provides](#) to make linkage to workers' religious rights in the workplace.

<http://www.unglobalcompact.org/aboutthecompact/principles/principle1.html>

## A Current Initiative to Marshal CSR Support for Religious Freedoms

We are analyzing ability to marshal CSR support in favor of the South African Charter for Religious Rights and Freedoms, to assist it to become law.

- The Executive Committee of Commission is discussing the recommendation of one of its members to form a subcommittee to study CSR opportunities.
- Area Presidency welcomes CSR initiatives to support the Charter.

### Introduction by Greg Clark

Robert Smith has served as the managing director of the International Center for Law and Religious Studies at BYU since 2006. In this role, Robert oversees the Annual International Law and Religion Symposium and numerous international conferences. He serves as the center's regional advisor for the U.S. and teaches a course on the taxation of religious organizations at the J. Reuben Clark Law School. He has also co-authored numerous articles on religious freedom and other legal topics, and he is a speaker at international conferences on religious topics. Before joining the

law school, he served as an executive vice-president and general counsel to Case Data Corporation. His earlier law practice was with large firms in Chicago, Washington, D.C., and Salt Lake City. Robert received a BA degree in accounting from BYU and is a *magna cum laude* graduate from the University of Notre Dame, where he earned an MBA degree. He is also a *magna cum laude* graduate of the J. Reuben Clark Law School, where he was named to the Order of the Coif and served as editor-in-chief of the *BYU Law Review*.

### Robert Smith

My role is to explore the history of this CSR initiative. In doing so, I am inspired by one of my prior law firm colleagues from when I practiced tax law. Whenever we would start a discussion and somebody would explain his or her latest tax idea at our meetings, the head of our tax department, and probably the smartest guy at our firm, would stop the discussion and say: "I am not understanding; I need you to go back to the beginning and start with the foundation." So I am going to start with some foundations and, hopefully, that will put CSR in context.

Most of you, if you have ever studied business, or even if you haven't, are familiar with stories of great industrialists who had interests that went beyond profits. I was thinking this morning about some I recall vividly. I think of Henry Ford, who not only invented the

Model-T but also had great humanitarian aspirations. He attempted to create institutions that furthered health care and education, and he paid his workers more than the prevailing wage, all with the idea that if he created a greater environment for people to learn and grow, he would have better employees, their standard of living would increase, and these improvements would ultimately insure everyone's benefit—including his business. He even created a quasi-utopian society called "Fordlandia" in Brazil, an entire town he envisioned that would produce rubber for his tires while living virtuous principles.

Other industrialists included Milton Hershey. You may think of the candy bar, but he had a company town and was very involved with schools and orphanages and helped the community much beyond the simple idea of earning a profit. Henry Heinz of Heinz Ketchup fame had similar ambitions.

These are just a few examples of industrialists who had the idea of using their businesses to improve society. They didn't call it "corporate social responsibility" at the time, but the same impulses are what motivated them—CSR really isn't a new idea.

I was also thinking that besides the ideas of philanthropy and social responsibility that motivated industrialists, there are others whose particular social interests actually stimulated the business they started. It wasn't just that they earned a lot of money and then began to think about social responsibility, but their social responsibility led to their business.

For example, this morning we heard from John Graz, a Seventh-day Adventist. You are all probably familiar with Kellogg's, the cereal company. John Harvey Kellogg was a Seventh-day Adventist who wanted to invent a breakfast food compatible with his religious scruples. Seventh-day Adventists encourage a vegetarian diet, and he wanted to invent a breakfast meal that wasn't bacon and eggs, thus, he created cereals. C.W. Post, also an Adventist, had similar motivations. Those two companies continue, but they grew out of social responsibility needs that went beyond simply earning money.

We could talk about Rockefeller, Andrew Carnegie, or ZCMI and its interest in defending the economic welfare among members of the Church in Utah. These are examples of corporate social responsibility in the past.

The impulses motivating social responsibility didn't simply die with these past efforts but have continued and in modern times have taken on different manifestations. One is philanthropy as a social responsibility. For example, McDonald's has the Ronald McDonald House Foundation that is used to help promote certain charitable activities. Many corporations have philanthropic foundations they strive to support.

Another justification for corporate social responsibility is risk management. This idea suggests that by promoting socially valuable activities a business will avoid liability by, for example, making decisions that reduce risks to employees or the environment.

What is new and more cutting edge is the idea of incorporating CSR ideals into the strategic business plans of an enterprise. Rather than simply giving out funds from the company or practicing social responsibility as a component of risk management, modern CSR proponents believe social responsibility practices increase company profits as well. Think of BP and its efforts to transform the meaning of its moniker from "British Petroleum" to "Beyond Petroleum." This was part of an effort to get credit for its environmental work in a way that would help induce sales. Of course, this effort was hurt by their ill-fated, deep-water well in the Gulf last year. The modern idea is that beyond philanthropy or risk management, we should be integrating social responsibility into the fiber of the corporation, so all business decisions have an impact in positive ways by this desire to think about others and the business' impact on society.

Beyond the social responsibility efforts of corporations in business to make a profit, there have been innumerable efforts by non-profit entities attempting to do social good. Indeed, for many, if not most of these enterprises, social responsibility is their *raison d'être*, their reason for existence. You could name hundreds of these enterprises but we heard a quote this morning from Alexis de Tocqueville. Of course, he famously observed the efforts of Americans to create

associations of every kind from education to other kinds of socially beneficial enterprises and to pursue every type of socially positive enterprise imaginable.

And then, lastly, government. Governments have become more involved in projects to promote social good over time. Some regret this phenomenon, as the size of government grows, but the truth is governments have been increasing the scope and field of their activities and now do more than merely provide for the common defense but also for the general welfare in many different ways.

In the discussion above, giving the background for CSR, religion has typically been ignored. On this point, I am reminded of a book written a few years ago by Madeleine Albright, former Secretary of State, titled *The Mighty and the Almighty*. She described her training as a diplomat and indicated in that training religion was completely ignored. Not only was religion not considered a topic for polite company, but she was taught diplomats should negotiate from the perspective of the interests of other countries—what they needed in a temporal, self-interested sense—and everyone assumed religion was an unnecessary part of that discussion. In her book, she argues religion is central to much of human behavior and need. By ignoring religion in diplomacy, we have often missed the underlying motivations of many people. She argues there needs to be much more active diplomatic effort by the U.S. to account for the important attribute of religion.

While corporate social responsibility has largely ignored religion as a social good in the past, our purpose is to explore whether it can and should be emphasized today. In the 1970s, the phrase "corporate social responsibility" came into being with the notion that business enterprises had an obligation to society beyond mere profit making. These CSR efforts have been tentative and have been largely non-obligatory—over time we are all aware they have increased. For example, the advertising of corporations is increasingly concerned about the impact of corporate activities on the environment or other areas of social importance.

As CSR efforts have matured, they have been described or defined as follows: voluntary, goal oriented, encourage a positive impact on society, and embrace responsibility. The advocacy of responsibility is a pleasing thing to hear. Most of the time in law we talk of "rights," but the CSR effort is an attempt to take responsibility and to proactively promote the public interest as part of corporate decision making. Thus, CSR advocates speak of a triple bottom line: people, planet, and profits. We have already mentioned these objectives can be accomplished by philanthropic endeavors, by risk management, and by creating a strategic plan that embraces shared values.

There have been efforts to try and measure social responsibility efforts, but this is obviously very difficult; there aren't readily available certification programs for corporate social responsibility. However, the UK, Denmark, and South Africa are all experimenting with requirements for publicly traded corporations to report on their social responsibility efforts. Under this initiative, companies are not obliged to do any social responsibility activities but are required to report on what they do. Because public disclosure motivates action, this is an important initiative.

Critics on the right, such as Milton Friedman, have argued the corporate purpose is to maximize profits for shareholders, and busi-

ness corporations are not responsible to society as a whole. At the same time, critics on the left, like Robert Reich, former Secretary of Labor, have argued government should set the corporate social responsibility agenda through regulations and other legal requirements that would require businesses to conduct themselves in ways deemed socially beneficial.

Most recently, some initiatives have tried to hue to what they call a “golden middle ground” between legislative compulsion and total corporative freedom. These recent efforts promote social responsibility through reference to standards. These standards are in the realm of “soft law.” They are not obligatory, but over time it is hoped the existence of measurable standards will encourage CSR activities to grow in greater significance, because the expectation of other people will grow.

Greg already mentioned the UN’s efforts to promote corporate social responsibility through the UN Global Compact, a very important work that has ten principles and deals with human rights. A little more recently, there has been a parallel effort by the UN to appoint a special representative on human rights and businesses enterprises. His office recently produced a report that also sets forth important corporate social responsibility standards.

Perhaps most significantly, I would like to make you aware of a CSR standard produced by the International Organization for Standardization (ISO) located in Geneva, Switzerland. Anyone who has worked in business has likely come across the ISO. It produces many standards that have to do with manufacturing and other business activities. These standards are widely accepted, and many are incorporated into the laws of states, and they have become very influential.

In November, the ISO produced a standard on “social responsibility.” ISO 26000 is over one hundred pages long and is very detailed. It attempts to cover the entire field. Not only does it apply to businesses, but it also applies to nonprofit organizations and governments. For this reason, it is not called “corporate social responsibility” but simply “social responsibility.” Further, its provisions are broad in scope. Not only does this standard deal with human rights, it also deals with many of the other issues important to social responsibility, such as labor practices, environmental concerns, fair operating practices, and other kinds of community involvement issues. More importantly, it mentions human rights first, and we would argue that is as it should be.

The reference to human rights in the ISO standard is not internally defined. Rather, human rights are defined by reference to the so-called International Bill of Rights, which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Those important documents, particularly the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, explicitly include religious freedom values. Under this definition, religious freedom has been explicitly incorporated into the notion of human rights protected by this new social responsibility standard.

Now, if you were to take a poll of the executive officers of corporations who have agreed to abide by these social responsibility standards, my guess is they would not realize they have agreed to promote religious freedom. They have made this commitment so the initiative we are discussing today is the possibility that corporate executives

can be made more aware of their religious freedom commitment and be given the incentive to take that obligation seriously. To this end, I will briefly mention some helpful language in the ISO standard that suggests that corporations should do more than simply refuse to discriminate against their own employees based on religion, even though that would be a minimum requirement. The ISO standard on social responsibility says:

Organizations have a responsibility to respect all human rights, regardless of whether the state is unable or unwilling to fulfill its duty to protect. To respect human rights means to not infringe the right of others, this responsibility entails taking positive steps to ensure the organization avoids passively accepting or actively participating in the infringement of rights.

ISO 26000 goes on to say these expectations go beyond mere respect so enterprises “may want to contribute to the fulfillment of human rights.” Now, we don’t have time to go through all the details of the standard but the standard clearly indicates corporations can take upon themselves the responsibility to influence the behavior of others; they can provide meaningful guidance both within their organization and without; and they can even take special efforts to fulfill human rights where there is a failure of the democratic or judicial system, political instability, or other failure of the state. Thus, the standard indicates business leaders can contribute to social responsibility by interacting with government leaders and advocate for the betterment of these human rights, which we note includes religious freedom. The standard further places special emphasis on protecting vulnerable groups, and it explicitly includes religious groups as potentially in need of protection by businesses as part of this effort to promote social responsibility. In this regard, the standard explicitly allows these rights to include the freedom to adopt and practice a religion and the freedom to hold beliefs. The standard suggests that to protect these rights enterprises may need to take proactive steps to protect those beliefs.

In summary, this recently promulgated ISO standard explicitly incorporates religious freedom as one of its values and gives encouragement to corporations to go outside their own enterprise to protect those rights for others. While my time is up, this standard is an important new development which may provide an opportunity to help enterprise leaders become more aware of the obligation that they have taken voluntarily to help promote religious freedom and see what we can do to promote it.

### Introduction by Greg Clark

Paul Godfrey is a professor of strategic management at the Marriott School of Management at Brigham Young University. Paul has taught teaching strategic management strategy of limitation and business judgment for MBA and undergraduate students at BYU since 1994. His primary area of research and interest is in the relationship between corporate social responsibility, which we affectionately refer to as CSR, and

corporate financial performance. His work has appeared in the *Academy of Management Review*, the *Strategic Management* journal, the *Journal of Business Ethics*, and the *Journal of Management Inquiry*. Paul currently serves as an associate academic director of the Ballard Center for Economic Self-Reliance at the Marriott School and is turning his research attention increasingly to economic development and Third World and poverty alleviation.

### Paul Godfrey

How many of you are business people? I wasn't sure as I came here to a law conference whether I was on a pilgrimage to a holy land or a pilgrim in an unholy land, but I see there are a few fellow travelers here. My approach will be a little bit different, given my business background. First, a bit of history: I was contacted by Greg Clark almost a year ago asking how we could get all these businesses that have signed up on the Global Compact to actively support freedom of religion. He asked how many of these leaders would understand they had obligated themselves to the principle of freedom of religion. My response to him was that most of those six thousand CEOs, probably 5,994 of them, would respond with: We did what?

The typical business view would be that, given the competitive markets in which firms operate and given the diversity facing multinational or national corporations, the outlook would treat religion as a potentially toxic issue, one where there is very little to be gained by openly advancing the freedom of religion but huge potential problems and backlash by doing so. However, upon deeper reflection, I would now give Greg a different response. First, the logic of the market would say a business that promotes religious freedom might actually have advantages in the markets in which it competes, and that business would be wise to support religious freedom. I think one of the ways to get business people interested in the freedom of religion is simply not, as Adam Smith said "to appeal to their goodness or beneficence" but rather to their self interest or their greed and to show them why supporting religious freedom may create advantages for their business.

There are several ways to do this. The first is to think about faith inside the business and what the impact on religious freedom within the firm is likely to be. Certainly the area that comes to mind first would be human resources. Because religion is something people believe in, that makes it a people issue inside the firm. In the 1950s or maybe by the 1970s, our workforce looked very homogenous, sort of like a picture of brown gingerbread men—although you could replace those little brown gingerbread men with little white gingerbread men. For the typical American and Western corporation, that's the way it looked. Now fast-forward forty years and you have something that looks a lot more like a collection of gingerbread men of all different colors and backgrounds. The issues for religious freedom have to do with diversity in the workplace in general and particularly surrounding the question: How does a firm deal with people with different codes of conscience and codes of conduct? This presents a challenge for business and learning how to deal with this challenge would be the sort of hook to get executives interested. The notion is that by

supporting religious freedom you create a lot fewer headaches for yourself and your firm.

The classic and the first example would be to think about the number of businesses that find advantage in having their employees uniformed. From coal miners to McDonald's (one of the world's largest retail franchises), to airlines, shipping companies, and others, these kinds of companies all find advantage in having a clearly identified uniform as a marker for their employees. What does it look like when freedom of religion becomes guaranteed? There are a number of cases in Europe that have been adjudicated around the issue "can people wear religious clothing to work?" What about problems of enforcing things like uniform codes in religiously diverse environments? What does that do for the business image? For motivation? I'm saying this is a powerful issue and a powerful hook that raises business peoples' attention, because the issue of what a work force looks like when people can wear religiously significant clothing as a part of their daily uniform has real and non-trivial implications for the management of that firm. This represents one issue that I think businesses have to take seriously and consider.

Think more about the role of faith in motivation and commitment. What does it mean to bring your faith to work? This question might have some real implications about if and how we talk about our beliefs at work, particularly for Latter-day Saints. Can we do anything close to proselytizing in the work place? Coming back to faith as a source of motivation and commitment, a lot of people are recognizing that when you don't ask people to check their beliefs at the door you engender motivation and commitment to the firm. Motivation and commitment translate into greater productivity and lower turnover. That entails challenges for the business in terms of how to manage diverse religious practices.

For example, think of an international manufacturing firm open in some parts of the world where you could literally have—out of seven days—several days that would be a weekend. You'd have at least three days for religious observance: Friday (Islam), Saturday (Judaism or Seventh-day Adventists), or Sunday (mainstream Christians). Is that a constraint for business or is that a tremendous opportunity for business to build motivation and commitment among employees by honoring their days of worship?

There are expatriate issues as well. What does it mean for companies that are trying to get high-powered executive talent to go work in different parts of the world? Might those people either be induced or dissuaded from taking on those assignments based upon whether or not they can practice their beliefs in that country? And again, the trend

in multinational corporations is away from expat executives and employees toward a truly local workforce. What that often means is that the expatriates you *do* have in a country tend to be the most valuable human resources, because they're the link between the in-country operations and the home-country operations. These are people you want to keep happy. Expat issues are real in terms of some of the human resource challenges for business.

The last issue of faith *in* the business would be the role of faith in culture and shared values. Faith is values-based and values-driven, and it projects and proclaims a certain set of values irrespective of what your particular creed is. What does that look like in a religiously diverse firm? Are there opportunities for businesses to find unity out of diversity, to find common values that unite people from different religious traditions, and incorporate those into the fundamental and core operating values of the business, and, therefore, create advantages in terms of human resource motivation and commitment? I notice this working at BYU where you deal with people where one faith dominates. One of the things people do here is tell common stories, and you'll see common religiously grounded metaphors everybody understands. Bringing a new product to market may be like parting the red sea; getting everybody on board you may describe your leadership style as "Nephi-esque." Did he get his brethren to respond through shock and awe or with gentle persuasion?

In terms of the faith *of* the business, marketing comes to mind first. It's interesting to see how the Adam and Eve story plays out as a common language for people with a Christian-based background to think about a product as being "forbidden fruit." So think about the ability, again, out of religious plurality and out of religious diversity, to find a common set of values and a common language to talk about how we do business. Where would firms find competitive advantages dealing in environments that featured religious freedom?

Well, certainly selling unique or customized products would be one area. I'm a subscriber to *Sports Illustrated* fifty-one weeks a year, and one of the features I really love about that magazine is they have a little clip called "Sign Of The Apocalypse" with some interesting factoid about the world of sports. I was doing some research in Navajo lands a couple of years ago, and I saw what I thought was a sign of the apocalypse while reading a publication called *Indian Gaming*, which is about how to run a casino on Native American lands. A casino in New York, run by the Iroquois, but I'm not sure, proudly proclaimed they had now become kosher. You think about the Iroquois Nation attracting Jewish bar mitzvah and bat mitzvah guests to its casino, again based upon this principle of customer segmentation.

That becomes a real possibility when you have a religiously diverse environment where people can openly practice their beliefs. Familiar to all of us would be the ability to sell green Jell-O as a customer segmentation among a large and active Latter-day Saint population. Are there product opportunities? I found some others. If you want to appeal to Christians, you might think of something like "testaments," a faith-promoting breath mint. On a much more serious basis, when you think about Sharia law and you think about Islamic prohibitions against interest and the development of an Islamic banking culture, you see a whole different business model that might be available to businesses in pluralistic environments. Thinking again of our own

LDS culture, I found this little item for sale on the Internet. Ammon at the waters of Sebus, of course, and I was wondering if I could complete the picture and make it a bit more real. I did in fact find some cut off arms you could then sell as a matched set for your children so they would get the true effect of Ammon and his valuable work.

The implications of the Grim and Finke data might be relevant to business and argue that they should care about religious freedom if, for example, religious freedom lowers the level of conflict and also lowers the level of military spending in countries with religious freedom. If you work for Halliburton, you may like war. If you work for the average business, war is not particularly conducive to capitalism. It puts a lot of assets at risk and makes it hard to generate positive cash flows. Societies with lower levels of conflict will then see higher levels of foreign direct investment, domestic investment, and business activity.

If you think about businesses or military spending being lower in religiously diverse and religiously free countries, what that means is societies that choose more butter than guns leave more discretionary income for individuals to spend on capitalist products. As a general rule, businesses would be very in favor of anything that will help reduce the level of conflict and put more money in the hands of consumers.

Consider greater opportunities for women. Grim and Finke find almost unilaterally that one of the great correlations is between religious freedom and empowerment of women—consider Rosie the Riveter from WWII or empowered women operating small micro business in many countries. What about my favorite empowered woman, Mother Teresa? What of all the good work that can be done and all of the intellectual, emotional, social skill that businesses can harness in societies where women are empowered. Again, another appeal to the bottom line: If a business has better access to women as customers and as employees, they will be stronger and more competitive.

Finally, Grim and Finke identify better health and health care issues. Countries that feature religious freedom have greater numbers of physicians practicing medicine in their countries. They have lower infant mortality rates and they have lower rates of childhood malnutrition. I don't want to sound too business-like, but every child born represents a potential customer at some point in their life. If one-fifth of them are dying before they reach age five, that's not a particularly productive market I want to enter. These would all be reasons why businesses would care about supporting religious freedom.

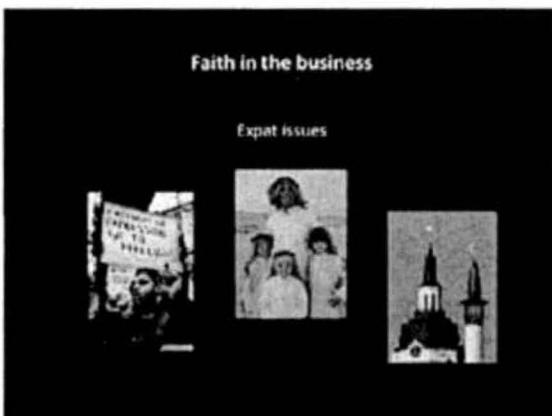
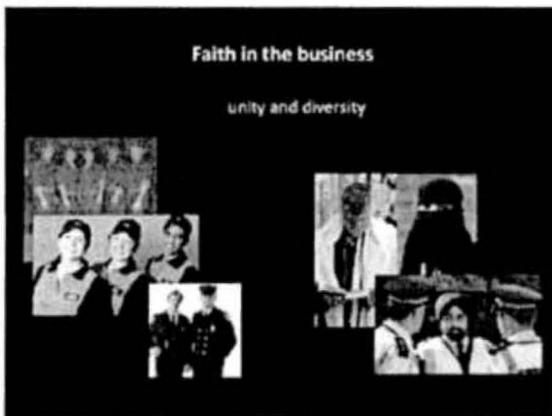
Finally, let me talk about faith *in* the market. I saw a poster of Jack Bower, from the series *24*. The motivational subtitle there is "reputation." It says, "In high school, Jack Bower was voted 'most likely to kill the foreign kid' and 'best eyes.'" Reputation matters in business. The standard economic logic tells us that what keeps businesses honest given the perplexities and complexities of the legal system is the fear of reputation loss that individuals and firms would face by being dishonest. I don't have enough time to explain in detail, but there are a number of problems with reputation where it simply fails to control people's behavior when no one is watching. If you have people of character, people who intrinsically follow a set of beliefs and values because that's who they are, and not because they're afraid of what will happen to them, I think character beats reputation. The key point here is that every religious tradition concerns itself with the development of character—

every single one. Countries where religious people can freely practice and proselytize may be more likely to have people driven by character rather than reputation.

An example of that to conclude is a story about Jon Huntsman. He talked about it last year on the radio. It seems that several years ago he had arranged to sell one of his business units to a large U.S. oil company and (for those of you who are lawyers you will understand), they had agreed upon a price of \$54 million, which was then the market value of Huntsman's assets. Given the time between the agreement and the execution of the deal (it took some six months for all the legal wrangling to occur) the value of Huntsman's assets had increased to approximately \$200 million dollars. At that point, coming together for

the final closing, the CEO of the oil company said "Well, Mr. Huntsman, I guess we have to renegotiate, and we owe you \$200 million." At which point Jon said, "No, you owe me \$54 million." Chagrined and surprised, the executive said "What?" And Jon said, "Yes, I shook my hand to sell you the business for \$54 million, and that's the price." That's the value of character. I think that comes solely because of who Jon Huntsman is and what he believes, and not any threats of sanction or of reputation loss that might happen to him.

In conclusion, I think there are a number of reasons why solid, thorough-going, greedy capitalists ought to firmly get behind the notion of religious freedom and support endeavors to sustain and enhance religious freedom throughout the world.



**Faith in the business**

Common mental maps and languages

**Faith in the marketplace**

Customer segmentation

**Faith in the marketplace**

Product opportunities

**Faith in the community**

Lower levels of conflict, military spending

**Faith in the community**

Greater opportunities for women

**Faith in the community**

Better health, health care

**Faith in the market**

Character beats reputation

**Faith in the market**

Character reduces transaction costs

### Introduction by Greg Clark

Cole Durham is the Gates University Professor of Law at Brigham Young University. Cole serves as a member of the Advisory Council of Experts on Freedom of Religion or Belief in the Organization for Securing Cooperation in Europe and is vice-president of the International Consortium for Law and Religion in Milan, Italy. He graduated *magna cum laude* in philosophy from Harvard in 1972 and subsequently attended Harvard Law School, where he served as the managing editor of the *Harvard International Law Journal* and note editor of the *Harvard Law Review*.

Cole currently serves on the board of the DePaul Center for Church Studies, the JM Dawson Institute for Church/State Studies, the Oslo Coalition on Freedom of Religion or Belief, the International Center for Non-Profit Law, the International Association of Law Schools, and as the "Jefe Supremo" of the International Center for Law and Religion Studies Center for BYU. He has published widely on comparative church-state law themes and has also testified in the U.S. Congress and at the state level and in various foreign countries on religious freedom issues.

### Cole Durham

My role is to try and put this in a larger context. Greg understated his significance in picking up on the religious freedom implications to corporate social responsibility. I think this is an example of new contexts we are not used to seeing for working on religious freedom issues. I want to say a few words about religious freedom "soft law" in general and linking in with social responsibility.

Although covered well earlier in the day, let me say first, by way of background, a few things about the importance of religious freedom. We all understand this principle is one of our Articles of Faith. We also know the significance of religious freedom from experiencing it historically in the cauldron of our own persecution. We recognize religious freedom is one of the primordial principles of agency, the great forerunner principle, and authentic religion cannot be practiced without it.

Not only is religious freedom a foundational principle, it is historically foundational. People don't realize it's the grandparent of most other human rights. Other rights emerged as additional support for or expansion of religious freedom claims. It is also philosophically foundational, because it protects comprehensive belief systems and world views in which our other ideas are rooted and from which they derive their meaning. Religious freedom is institutionally foundational because it protects and fosters the institutions that engender the vision, the motivation, and the moral support that translate religious and moral ideals into personal and communal practice. One of the things touched on at a number of points this morning is we now have a growing volume of empirical research on the significance of religious freedom principles. Religious freedom is necessary for religious institutions to flourish. Religion builds social capital in countless ways and then becomes a source of social vision, altruism, and moral striving.

This is just one page from the book *Price of Freedom Denied* from Cambridge University Press that was referred to earlier today by Brian Grim and Roger Finke. I highly recommend it, because it gathers in one book a lot of the latest empirical research that indicates the high correlation between religious freedom, other human rights, and countless other social goods. We tend to forget that by protecting critical religious institutions, religious freedom contributes all kinds of social capitals to society, which benefit many other areas of social life as evidenced by high correlations with many other social goods. These statistics were referred to by several of the speakers earlier, but

this shows a little more graphically that 32 percent of the countries on earth have high or very high constraints on religious freedom, and since this includes India and China among other populous countries, 70 percent of people on earth live in those countries.

It is significant that the erosion of religious freedom is not merely a foreign phenomenon, but our society risks losing its sense for the priority of conscience. Protecting freedom of conscience is coming to be seen as an unjustifiable exception to general and neutral laws, as illustrated by the *Smith* case, rather than as a crucial, constitutional requirement that should be a feature of all law. We are losing, or face the risk of losing, a number of key institutional bastions because important institutions of our society are being captured by those who place sexual liberation ahead of freedom of conscience. There's a kind of new equalitarianism, a refocus, or reemphasis on equality norms that have the effect of enhancing the protection of sexual interest groups to the detriment of longstanding equal protection of religious believers.

I was at a conference in London two or three weeks ago in which one of the presenters made the point that, originally, equality was designed to assure religious communities, whatever their beliefs, would be protected and included in the community. What is happening now is those equality norms are being reinterpreted so religious people are, in effect, excluded from the community. They don't count or their views don't count.

The classic recent case was about a foster couple in England. In this case, a Christian couple was denied the right to serve as foster parents because they had Christian beliefs and, for that reason, they might be insensitive to a gay person in their services as foster parents. This is a kind of twisting of equalitarian norms. While courts are a continuing battleground, there are other areas of concern, including, for example, accreditation institutions. This is perhaps less obvious, but if you think about it, and this was again referred to this morning, accreditation bodies have great power to compel conformity with those newly defined equalitarian norms. In the health care field, I think of obstetrical and gynecological accreditation groups. In counseling programs and in legal academia, and in many other areas we are seeing accreditation rules that will impact whether religious groups or religious believers can be protected in their conscientious obligations. These are some key threats we are seeing, which run with the current of our general social morass.

Unless we think everything is bad—I am not someone who is in general an alarmist—this graph shows the latest tally on the *Smith*'s case for those of you who are interested and follow such things. This is the case that held that any generally applicable, neutral law can override religious liberty claims. The interesting thing is that only three states have expressly followed that decision. There are about six more you can't tell, because they might be applying federal law rather than state law. Fifteen states have adopted state religious freedom restoration act legislation. Eleven other states have high courts that have heightened scrutiny of religious liberty claims under their state constitutions. There are about eleven states that are undecided, but many of those who have precedents from the pre-*Smith* era, favor heightened protection of religious freedom. The point of this is that we shouldn't be totally depressed. There are a lot of good things happening in the religious freedom area.

I want to say a few words about buttressing religious freedom in "soft law" situations. By way of contrast, by "hard law" I mean things like constitutions, statutes, treaties—things that are binding and enforceable as law. "Soft law" on the other hand, refers to things like UN Declarations. The Universal Declaration of Human Rights is a declaration that is not a treaty. It has been reduced to treaty language in the international covenant on civil and political rights, but it's a declaration. Many people think the Universal Declaration of Human Rights has become customary law binding on nations so soft law can harden into hard law. There are all kinds of processes going on in the UN and elsewhere where normative processes like corporate social responsibility, the things Greg has just been describing to us, start out as volunteer associations articulating norms and then commitments to those norms. When people begin to take those commitments seriously and hold people accountable, over time those norms become law.

Let me give you some examples. Many of you remember the Danish cartoon incident that emphasized the significance of religious sensitivities. Coupled with the alarming increase in violence and discrimination based on religion or belief this incident eventually led to the proliferation of hate speech legislation. While the cartoon incident wasn't the only cause, insulting speech has contributed to "Islamophobia" that has led to a series of defamation of religion resolutions in the UN. These soft law efforts have encouraged states to adopt hard law in this area. Hate speech legislation sounded good on the surface, but as John Graz discussed earlier today, in practice, this legislation is problematic, because it often jeopardizes the freedom of religion of others. Legitimate speech about religion, such as missionary work, could be caught in the net of defamation of religion legislation.

Overtime, there has been a lot of work going on to stop the excesses of the hate speech legislation. About a week ago, the UN Human Rights Council in Geneva adopted a new consensus resolution that seeks to address violence, discrimination, and incitement through religious hatred without reference to defamation of religion. This is a huge breakthrough, because most of us had thought the Organization of Islamic Conference would never give up on this issue and would not be willing to adjust its position. John Graz tells me there may be some back peddling by the OIC, and they might try to do the defamation of religion resolution, too. Our center and many other NGOs have been involved with some very effective lobbying on this issue. There has

been a shift that could have ripple effects into the Muslim world. That's an example of another soft law evolution. Another soft law process I have been involved in concerns the book *Developing Guidelines for Review of Legislation* pertaining to religion or belief. This is a document generated under the auspices of the Office of Democratic Institutions and Human Rights in the Organization for Security Cooperation in Europe (OSCE). What is significant about this document is we developed the guidelines for registration of religious organizations and a variety of other things that frequently come up in religion legislation. Since then we've had opportunities as we work all over the OSCE countries, which is everything from Vancouver to Vladivostok moving east, so it's basically the Northern hemisphere. That work has had a significant impact on the actual legislation adopted in many countries.

Another recent example involves codes of missionary conduct drafted by a number of organizations. Ari Swensen, who I saw here early this morning, has been involved with this effort. The World Council of Churches, for example, denounces as improper, the presentation of one's church or confession as the true faith. You can imagine there are some other religions who disagree with that particular view. It is interesting that there have been about twenty of these voluntary missionary codes. I have worked on one. Ari Swensen is a member of the Oslo Coalition Board, and he has been actively involved in this. Matt Richards, Ari, and Rainer Bless have written an essay for *Religious and Human Rights*, a Dutch journal on these codes. These missionary codes of conduct represent another kind of soft law kind of evolution.

I give you those examples, because I think they are of interest to this group and because what we are talking about with CSR is, in effect, a soft law approach to creating binding commitments. You can think of international law itself as a kind of soft law by comparison to the usual law we think of in a national regime. Despite the fact it is "softer," it is becoming, as others expressed this morning, more and more effective over time.

Let me describe the impact of soft law. As I mentioned, soft law can harden into hard law, either through the emergency of customary international law or through its impact on national level legislation. Many of the advances in the field of religious freedom in recent years have involved transforming soft law into hard law or developing more detailed soft law. This has occurred through processes at the OSCE, the Council of Europe, and various other international organizations. This is because religious freedom issues arise against the background of concrete situations. These soft law efforts can, if one attends to them, have positive effects on what is actually done in shaping the normative universe in which we live. In some cases, soft law may actually be a more efficient way to reach policy outcomes.

There is a whole literature on this topic in international relations, which answers questions like: What are the strategies for soft law? When does it work better? When should we use hard law to kill off bad soft law? Obviously soft law can evolve in problematic directions, and that is one of the problems in the area of family law.

The reality is this is an inevitable process. There is a tendency, when you are a law student, to think there are laws and there are cases, and this is the ontology of the universe. The reality is these things are constantly in flux. They are being reinterpreted; the groups

that are being affected by them are thinking about them and renegotiating them. Soft law is a reflection of this constant social process. Leon Fuller, one of my professors at Harvard, used to talk about the interactional law as interactional expectancies and soft law is part of where those expectancies are changed. In actuality, soft law is a primary pathway of normative change that provides tools that can be used, and are being used, by forces eroding protection of freedom of conscience. The fundamental point I want to make is that we need to think about these soft law processes. We should spend the rest of the time talking about CSR *per se*, but it strikes me this is an interesting area to think about.

The impetus for looking at CSR came from a suggestion that Mike Young made to some of us, Mike was thinking about his experience with the capital market strategy he described earlier, which is clearly a business-side strategy. I have to say as a caveat to any wisdom I may have in this area, as my wife would be the first to point out, I know nothing about business. So you have to take my thoughts with a little bit of a grimace. This is why we have some other very good people who know more about the real business world. But this CSR strategy sounds promising, because the commercial sector often carries greater weight in shaping intergovernmental relations than the human rights sector. I am sure this is true in a lot of embassies, I am not a Foreign Service officer, but my sense is that people desire the

commercial *attaché* posts. Those have an impact. Business people often have contacts that may be influential in government circles.

There is a lot happening in the domain of corporate social responsibility, and the question is: Are there ways contributions to religious freedom can be made in this field? I think it is fairly easy to make the link. I am also convinced there will be resistance of the kind Mike Young talked about this morning, when he suggested the idea of limiting capital markets to companies facilitating human rights abuses. You can imagine the capital markets went crazy. So this issue would have to be handled, as in so many cases, with soft law based on wisdom and judgment. There may be openings for religious freedom in the area of CSR, and the reason we wanted to raise the issue with this group is to think about these openings, to think of what is realistic and what isn't. As we came up to the stand, John Smith, who will be talking in one of the next sessions, said "You know, this is a great idea. We ought to have a packet." He just had a CSR initiative come across his desk, and it had a human rights paragraph that easily could have had a religious freedom paragraph. That is the kind of thing that can be worked on, and what is not obvious is that little hooks like this give people who care about valid principles the ability to move implementation of religious freedom forward.

**Religious Freedom, Soft Law, and Corporate Social Responsibility: New Contexts for Buttressing Protections**

Prof. W. Cole Durham, Jr.  
International Center for Law and Religion Studies  
J. Reuben Clark Law School  
Brigham Young University

**The Importance of Religious Freedom**

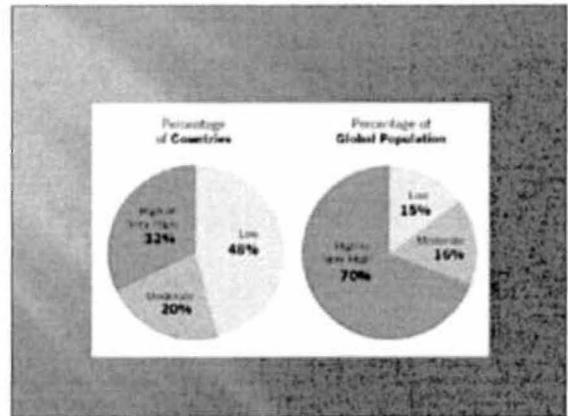
- i. **Religious Liberty of Faith**
  - We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, when, or what they may.
- ii. **Religious Experiences**
  - The cauldron of persecution
- iii. **Religious Doctrine**
  - The primordial principle of agency
- iv. **The Great Forerunner Principle**
  - Authentically, religion cannot be practiced without it

**Religious Freedom is Foundational**

- i. **Conceptually Foundational**
  - Grandparent of other rights
  - Other rights emerged as additional support for or expansion of religious freedom claims
- ii. **Conceptually Foundational**
  - Protects comprehensive belief systems and worldviews in which our other ideas are rooted and from which they derive their meaning
- iii. **Institutionally Foundational**
  - It protects and fosters the institutions that engender the vision, the motivation and moral support that translate religious and moral ideals into personal and communal practice

**Empirical Validation of Religious Freedom Principles**

- i. Religious Freedom is necessary for religious institutions to flourish
- ii. Religion builds social capital in countless ways
- iii. Religion is a source of social vision, altruism, and moral striving



### Erosion of Religious Freedom is Not Merely a Foreign Phenomenon

- 1. Our society risks losing its sense for the priority of conscience
- 2. Protecting freedom of conscience is coming to be seen as
  - a. an unjustifiable exception to general and neutral laws, rather than as
  - b. a special and/or differential requirement that should be a feature of all law

### Loss of Key Institutional Bastions

- 1. Important institutions of our society are being captured by those who place sexual liberation ahead of freedom of conscience
- 2. The New Egalitarianism
  - a. Red-cased equality norms have the effect of enhancing the protection of sexual minority groups to the detriment of long-standing equal protection of religious believers
- 3. Courts
- 4. Accreditation institutions
  - a. Health care—especially obstetrics and gynecology
  - b. Counseling
  - c. Legal Academia
- 5. General Social Moors



### Boltoning Religious Freedom in "Soft Law" Domains

- 1. Hard Law/Soft Law Distinction
- 2. Hard Law:
  - a. Constitutions
  - b. Statutes
  - c. Treaties
  - d. Binding and Enforceable Law
- 3. Soft Law:
  - a. U.N. Declarations
  - b. Universal Declaration of Human Rights
  - c. Declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
  - d. Other

### The Challenge of Protecting Religious Sensitivities

- 1. Danish Cartoons
- 2. Alarming increase in violence and discrimination based on religion or belief
- 3. Proliferation of hate speech targeting religious groups
- 4. Insulting speech contributing to Islamophobia

### Defamation of Religion

- 1. Muslim Backlash
- 2. U.N. Resolutions on Defamation of Religion
- 3. These sounded good on the surface, but in practice injured religious freedom for others
- 4. All too often, legitimate speech about religion (e.g., missionary work) could be caught in the net of "defamation of religion" legislation

## Groundbreaking Consensus Reached

- 1. March 24, 2011
- 2. UN Human Rights Council in Geneva adopted a new consensus resolution that seeks to address violence, discrimination and incitement to religious hatred without reference to "defamation of religion"
- 3. Should put divisive debates on "defamation of religion" in the past
- 4. Some Muslims may continue to push the "defamation of religion" agenda

## OSCE

- 1. *Guideline for Review of Legislation Pertaining to Religion or Belief*
- 2. Impact on National Legislation
- 3. Impact on European Court of Human Rights

## Codes of Missionary Conduct

- 1. A number of organizations have drafted codes of missionary conduct in recent years
- 2. World Council of Churches denounces as "improper," a "scandal" and "counterwitness" to "present one's church or confession as 'the true faith'"
- 3. Others take more balanced view
- 4. Matt Richards, Are Svendsen, and Rainer Bless have written an essay on this for *Religion and Human Rights*
- 5. Recognizing and addressing emerging soft law

## International Law as Soft Law

- 1. By comparison to law of national states, international law, including international human rights law, has soft law characteristics
  - Enforcement shortfalls
- 2. Nonetheless, international law is increasingly effective

## Soft Law Impacts

- 1. Soft Law can "harden" into Hard Law
  - Emergence of Customary Law
  - Impact on national level legislation
- 2. Many of the advances in the field of religious freedom in recent years have involved transforming soft law into hard law or developing soft law
- 3. Soft Law may be a more efficient way to reach policy outcomes
- 4. Soft Law may evolve in problematic directions

## Inevitability of Soft Law

- 1. Soft Law as the reflection of constant social processes of normative evolution
- 2. Evolution of interactional expectancies
- 3. Soft law evolution is a primary pathway of normative change
- 4. It provides tools that can be used, and are being used by forces eroding protection of conscience
- 5. We ignore soft law evolution at our peril

## Impetus for Looking at Corporate Social Responsibility (CSR)

- 1. Commercial sector often carries greater weight in shaping intergovernmental relations than human rights sector
- 2. Business people often have contacts that may be influential in government circles
- 3. Much is happening in the domain of Corporate Social Responsibility
- 4. Are there ways that contributions to religious freedom can be made in this field?

# Religious Liberty Initiatives: Preserving the “First Freedom” at Home and Abroad

Hannah Clayson Smith, senior counsel, The Becket Fund for Religious Liberty



## Introduction of John and Hannah Clayson Smith by Paul Rytting

I am honored to introduce our concluding session for the day. We have our own famous “Mr. and Mrs. Smith,” John and Hannah Clayson Smith. Hannah works part-time as senior counsel for the Beckett Fund for Religious Liberty, a nonprofit public interest law firm based in Washington, D.C. She specializes in religious liberties of all people and all faiths, and, since joining the Beckett Fund in 2008, she has litigated a wide variety of religious liberty cases on the Appellate, Federal Circuit, and U.S. Supreme Court levels. Before joining the Beckett Fund, she was a law clerk to two U.S. Supreme Court Justices, Justice Clarence Thomas and Justice Samuel Alito. She clerked with her husband John for the then-Justice Alito on the U.S. Court of Appeals in the Third Circuit. Between clerkships she was an associate in private practice in Washington, D.C., representing clients before state and federal courts and the U.S. Supreme Court in civil, criminal, and Constitutional cases. She received a BA degree from the Woodrow Wilson School of Public and International Affairs at Princeton University, a JD from J. Reuben Clark Law School at BYU, where she was executive editor of the *BYU Law Review* and was elected Order of the Coif. During law school, she served as a research assistant to Cole Durham at the emerging International Center for Law and Religion Studies. Cole tells me when Hannah left the international center, he had to hire three full-time employees to do the same work Hannah was doing. She and her husband co-founded a monthly discussion series entitled “The Spirit of the Law” for BYU law professors and law students. The law faculty awarded Hannah the J. Reuben Clark Award for academic excellence, integrity, and service. She currently serves as a member of the J. Reuben Clark Law Society Board and is a member of the *Deseret News* Editorial Advisory Board. She was at the *Deseret News* Editorial Advisory Board meetings earlier today, and we are glad she could join us. She served a mission in France and Switzerland, has served as a Relief Society president, Young Women’s president, and a gospel doctrine teacher. She is currently serving as a stake seminary teacher.

John is in-house counsel focusing on cyber-security issues with Raytheon Corporation. He has worked as an associate on the White House Counsel serving as the lead lawyer to President George W. Bush for Homeland Security matters. Before his tenure at the White House, he clerked with Hannah for Justice Alito at the U.S. Court of Appeals Third Circuit before Judge Alito became a justice of the U.S. Supreme Court. John also practiced at the Washington, D.C., law firm of Covington & Burling LLP. John completed his undergraduate studies at Princeton University, where his thesis was “Post-Soviet Transition,” and he was elected senior class president. John also received his law degree at J. Reuben Clark Law School at BYU, where he authored articles on religious liberty and helped organize international conferences on that subject as a research assistant to Professor Cole Durham. He served a decade each as a bishopric counselor and a reservist in the U.S. Army and the Utah National Guard. He currently serves as a ward mission leader. John served a mission in Russia and Ukraine, where he and his companions were the first missionaries in Ukraine’s western provinces, establishing the Church in several major cities. John has traveled to the former Soviet Union a dozen times for various efforts related to freedom of the rule of law. He has been there as a scholar, soldier, lawyer, lecturer, election monitor, missionary, and as a humanitarian aid worker. Probably the crowning event of his Soviet endeavors occurred last August when he returned to Ukraine for the dedication of the Kiev Temple, where he served as the interpreter for President Thomas S. Monson during the dedicatory services.

We have every reason to believe that somehow, some way in the midst of completing law school and clerkships that there was a courtship and that there was a marriage. John and Hannah are the parents of three children, and the Smith family current resides in Dallas, Texas. We would like to turn the remaining time over to John and Hannah Clayson Smith.

I have enjoyed being at my husband’s side over the years in a lot of interesting things that you just heard about in our introductions. We have a special love for BYU, and it was a privilege to work with Cole Durham during our time in law school. He taught us everything we know about defending religious liberty, and it is an honor to be counted among his students.

For those unfamiliar with the Becket Fund for Religious Liberty,<sup>1</sup> allow me to tell you a little bit about who we are. The remainder of my

talk will be “a view from the trenches” of our current cases that defend this vitally important freedom.

The Becket Fund is a public interest law firm based in Washington, D.C., that protects the free expression of all religious faiths. We have a fifteen-year record of defending religious liberty for all people, including Buddhists, Christians, Hindus, Jews, Native Americans, Sikhs, Muslims, and Zoroastrians. The Becket Fund works in the courts of law, courts of public opinion, and in the academy. We



do work both domestically and internationally. The Becket Fund was founded by a devout Catholic, and the people who work there represent a spectrum of religions. It is a wonderful place to work with colleagues of many different faiths.

I want to quote to you from an address given by Elder Dallin H. Oaks exactly two months ago at Chapman University in California:

It is imperative that those of us who believe in God and in the reality of right and wrong unite more effectively to protect our religious freedoms, to preach and practice our faith in God and the principles of right and wrong He has established. All that is necessary for unity and a broad coalition along the lines I am suggesting is a common belief that there is right and wrong in human behavior that has been established by a Supreme Being. All who believe in that should unite more effectively to preserve and to strengthen the freedom to advocate and practice our religious beliefs whatever they are. We must walk together for a ways on the same path in order to secure our freedom to pursue our separate ways when that is necessary according to our own belief.<sup>2</sup>

I believe that the work that we do at the Becket Fund answers that eloquent call.

I was asked to speak today about the various initiatives we work on at the Becket Fund. I'll provide an overview of trends and issues and several pending cases we are engaged in to illustrate some of the current assaults on religious liberty in this country and abroad.

First, I want to give you some domestic trends. As we began 2011, we saw a lot of commentary about important developments for religious liberty over the past decade. Some of these, particularly here at home in the U.S., include: 1) a partnership and development of social programs between government and faith-based institutions begun under President George W. Bush and continued by President Obama, 2) the rise in anti-Muslim sentiment in America post 9/11, 3) the fight over marriage for same-sex partners, 4) the rise of secularist organizations like Secular Coalition for America and the Freedom from Religion Foundation, which attempt to undermine the religious pillars of our culture and society.

Looking ahead, there are several trends to watch for in the coming year, including: 1) battles over policies prohibiting discrimination on the basis of sexual orientation and the extent to which religious organizations are exempt from such policies, and 2) the continued debate over conscience clause issues in the health care arena, especially with the passage of the new health care law. How much room is there for people of faith to conscientiously object to some of the new mandates? I turn now to some of the current cases.

### *Religious Autonomy*

The first theme I want to address is religious autonomy for churches. One of the most exciting recent developments happened just last week, as the Supreme Court agreed to hear a case next term involving the ministerial exception.<sup>3</sup> On the side of the religious organization at issue, the Becket Fund is counsel in the case, with Professor Doug Laycock of the University of Virginia as lead counsel. The ministerial exception is a doctrine that is derived from the First Amendment that prohibits courts from reviewing firing and hiring decisions from reli-

gious institutions involving their ministerial employees. The question is who counts as a ministerial employee.

In that case, a Lutheran church in Michigan operates a religious school. The school's purpose is to provide a Christ-centered education based on biblical principles. The church dismissed a teacher (who had the title of a commissioned minister within the Lutheran church) for insubordination and disruptive conduct in violation of the church's teachings. The teacher sued and asked the court to reinstate her. The Michigan federal district court ruled in the church's favor.<sup>4</sup> It held that the teacher's claim could not proceed, because she was a licensed minister and led students in prayer, worship, and religious studies, which the court found was enough for her to fall under the ministerial exception. Not so, said the U.S. Court of Appeals for the Sixth Circuit when it reversed and held the teacher could pursue the claim.<sup>5</sup> Because she spent more minutes of the day on secular subjects than on religious ones, the ministerial exception did not apply. The test they used was focused on time: How many minutes of the day did the teacher spend teaching math or teaching reading?

We filed a petition for *certiorari* asking the U.S. Supreme Court to review the case with the scope of the ministerial exception at issue. This will be a landmark case. It is the first time the Supreme Court has heard arguments in a ministerial exception case. It will likely be of great significance to any religious organization that hires and fires people based on religious preferences. On a similar note last September, The Church of Jesus Christ of Latter-day Saints had a case before the European Court of Human Rights involving a public affairs director for the Church in Europe. That employee committed adultery, lost his temple recommend, and was fired. In the ensuing legal battle, the court held for the Church.<sup>6</sup> While this case was obviously decided in a different legal system than ours, we are optimistic the Supreme Court will recognize this fundamental right derived from the First Amendment of churches to decide who to hire and who to fire.

Another issue under the theme of religious autonomy relates to religious hiring preferences by faith-based organizations competing for federal grant awards. I mentioned before the relationship between the federal government and faith-based organizations in social welfare programs. The Justice Department is now "debating whether to reinterpret federal law so as to allow discrimination, when awarding federal grants, against faith-based organizations who engage in . . . religious hiring preferences."<sup>7</sup> During the Bush administration, the Department of Justice's Office of Legal Counsel (OLC) analyzed this issue. It determined the protection of religious exercise in the federal Religious Freedom Restoration Act (RFRA) is "reasonably construed to apply to religious organizations that accept federal grants"<sup>8</sup> and "because requiring a religious organization to abandon its religious practice in order to receive a federal grant is a substantial burden on religious exercise, the government may not force a religious organization to abide by the non-discrimination rules as a condition of receiving a grant."<sup>9</sup> After President Obama was elected, various groups urged his administration to rescind this opinion and narrow the scope of RFRA's protection. This is an ongoing matter and one that would have a great impact on religious organizations who engage in preferential hiring, who want to engage in social welfare programs, and who want to receive federal grants to help them do so.

### *Conscientious Objection*

The second category of cases I'd like to discuss is conscientious objection. Our country has a long history of conscientious objection, including the refusal of eighteenth-century Quakers to bear arms,<sup>10</sup> and the conscientious objection of twentieth-century Jehovah's Witnesses to pledge allegiance to the American flag.<sup>11</sup> We have long recognized the government should not force people to choose between their livelihood and their religion.

We're working on several cases in this category: 1) an Amish group in the Northeast threatened by state prosecution for violating fire codes by not installing battery-operated smoke detectors, because of their religious belief against using batteries; 2) in the Sixth Circuit, an MA student who was kicked out of her counseling program right before graduation because she objected on religious grounds to counseling homosexuals couples in a way that approved of their conduct.

Perhaps the greatest potential area for concern in this category is in health care, particularly as our country deals with the new health-care legislation. We represent a family-owned pharmacy called "Ralph's Thriftway" and two pharmacists who refuse to dispense Plan B contraceptives, also known as the "abortion pill," because it can destroy a fertilized egg, and they believe life begins at the moment of fertilization.<sup>12</sup> The outcome of this case could force these two pharmacists out of their professions solely because of their religious beliefs.

Let me give you some background. In 2006, the Washington state board of pharmacy unanimously supported a rule protecting conscience for pharmacy workers. The board voted to allow pharmacists with religious objections to refrain from dispensing Plan B and instead to refer people to other nearby dispensers—a very reasonable position. The board recognized the sincerely held religious beliefs of the pharmacists and essentially said to the pharmacists, "If you don't want to dispense this, then as long as you give customers adequate notice where they can find this contraception at another nearby pharmacy, it's okay." Things soon turned ugly, and the board reversed course. The board admitted it found no evidence that anyone in the state had been unable to obtain medication due to the religious objection of a pharmacist. Notwithstanding that lack of evidence, the board issued a regulation requiring the pharmacists to stock and dispense medication even when doing so violated their conscience. The two pharmacists sued to prevent the new regulation from forcing them out of their profession. They argued that forcing pharmacists to dispense Plan B contrary to their religiously held belief violated their constitutional right to the free exercise of their religion. The case is now poised for trial November 2011 and will set an important precedent.

Of course, this case has broader implications beyond pharmacists. It could potentially extend to all health-care workers who object to performing abortions, who object to performing in vitro fertilization for same-sex couples, who object to providing sterilization, who object to providing similarly morally troubling procedures. This is a very significant issue.

The second case under this category of conscientious objection deals with a religious university's right to refuse to provide contraceptive and abortion coverage in its employee insurance plan to remain true to that university's religious teachings.<sup>13</sup> Some background in this case: Belmont Abby College is a small Roman

Catholic liberal arts college in North Carolina. In December 2007, it removed coverage for abortion, contraception, and voluntary sterilization from its insurance plan after learning that coverage had been included accidentally in its plan. Several faculty members filed complaints of gender discrimination with the EEOC. In March 2009, the EEOC initially concluded there was no evidence of such discrimination. Just weeks later, the EEOC (presumably at the direction of the incoming Obama Administration) rescinded that decision. Several months later, the EEOC issued a contrary decision. It reasoned that "by denying prescription contraceptive drugs, Belmont Abby College is discriminating based on gender because only females take oral contraceptives. By denying coverage, men are not affected, only women."<sup>14</sup> The Becket Fund stepped up to defend Belmont Abby's cause, joining their legal team, and exposing the EEOC's actions in the press. We announced that because the EEOC's position is a direct assault on the principle of conscientious objection, we will resist it vigorously. The ball is now in the EEOC's court, whether it will sue the college or not.

### *Defamation of Religion*

Generally speaking, the "defamation of religion" agenda is an attempt, mostly by Islamic countries, to enshrine in international human rights organizations blasphemy laws. Such laws are commonly found in Pakistan, Saudi Arabia, and Iran to shield these Islamic states in their often violent attempts to silence religious minorities in their countries. Last week in the *National Review*, Nina Shea wrote about the anti-blasphemy measures in the UN.<sup>15</sup> I will attempt to summarize the efforts in the UN and how these anti-blasphemy laws play out in Islamic countries around the world.

Initiatives to oppose the so-called "defamation of religion" in UN human rights bodies followed the 1989 *fatwa* by Ayatollah Khomeini calling on Muslims to kill Salman Rushdie for his book the *Satanic Verses*.<sup>16</sup> The Organization of the Islamic Conference (OIC) is an organization of about fifty-six Muslim member states that seeks to impose on the UN the principle that "Western law should be subject to Muslim initiatives against apostasy and blasphemy."<sup>17</sup> It introduced annual UN resolutions on the issue. In 2005 and 2006, the resolution sponsors were emboldened by the incident involving the cartoons of Mohammed in Danish publications. Pakistan crafted the resolution carefully to appeal to Western liberal and multicultural sensibilities: "Unrestricted and disrespectful freedom of opinion creates hatred and is contrary to the spirit of peaceful dialogue and promotion of multiculturalism."<sup>18</sup>

Western states began to resist these resolutions in 2001 and, by 2007, support within the UN Human Rights Council had greatly eroded. By 2010, the council passed the resolution by only a narrow margin, and this year the OIC didn't even introduce the resolution. The shift among the West is largely thanks to the Bush Administration's lead in defending free speech. That lead has been joined by a large coalition including the EU, the U.S. Commission on International Religious Freedom, members of the U.S. Congress, and NGOs like the Becket Fund that lobbied vigorously against the defamation of religion resolution.<sup>19</sup> This year, instead of the usual defamation resolution, the UN Human Rights Council adopted one denouncing religious discrimination and violence but did not call for restrictions on free speech.<sup>20</sup> The change largely

occurred at the urging of the Obama Administration, which advocated “more speech” as the antidote for offensive expression.<sup>21</sup>

Notwithstanding the victory at the UN level, we continue to see blasphemy laws in individual Muslim countries applied to persecute members of minority religious faiths or those who defend them. Let me give you a couple of examples. In Indonesia, the world’s most populous Muslim country, the government uses its forty-five-year-old blasphemy law—that was recently upheld against constitutional attack despite the strenuous efforts of Cole Durham and various NGOs around the world—to outlaw outright religious groups that are not among the six officially sanctioned faiths in that country: Islam, Buddhism, Hinduism, Catholicism, Protestantism, and Confucianism.<sup>22</sup> That law had also been used to justify violent attacks against minority religious groups. In Pakistan last month, the National Minister of Minorities, Shahbaz Bhatti, was murdered because he opposed his country’s blasphemy laws.<sup>23</sup> This followed the assassination for the same reason of another high government official, Salman Taseer, governor of Punjab, and a Christian mother of five whom Taseer had defended against charges of blasphemy and who was sentenced to death.<sup>24</sup> Similarly, a Pakistani youth has been arrested on blasphemy charges for statements he made in a school exam paper.<sup>25</sup> Police have refused to disclose what he wrote, arguing that repeating his statement would itself be blasphemy.<sup>26</sup> Islamic blasphemy laws and other defamation-of-religion initiatives remain a major human rights issue around the world.

#### *Religion in the Public Square*

The fourth theme I want to cover is religion in the public square, specifically the Pledge of Allegiance cases. The Becket Fund defended the constitutionality of the words “under God” in the Pledge of Allegiance case in the U.S. Court of Appeals for the Ninth Circuit. Michael Newdow is an atheist activist who campaigned to have the two words removed. We represented the school children and their parents arguing the phrase “under God” in the Pledge of Allegiance affirms a foundational premise in the American tradition of law and rights—namely, that human rights are not bestowed by the state but are rather derived from a source beyond the state’s discretion. “Under God” does not unconstitutionally advance religion but rather reflects the deeply rooted political philosophy of the Founding Fathers who believed these rights derived from a source greater than a government made of men.

The pledge was also defended by the Justice Department’s lawyers but on different grounds. They defended the pledge on the usual grounds of ceremonial deism, a concept that has been developed in the Supreme Court case law on the subject. Ceremonial deism holds the words “under God” have been repeated so frequently in a ceremonial way they have lost all religious meaning.

After considering the case for almost two and a half years, the Ninth Circuit reversed itself and kept the words “under God” in the Pledge of Allegiance.<sup>27</sup> In its reasoning, the Ninth Circuit showed it was persuaded by our political philosophy argument, rather than the ceremonial deism argument.<sup>28</sup> We fully anticipated Newdow would take the case to the Supreme Court, but he did not meet the deadline for filing his petition, so the case is closed. We are happy to say the Pledge is now safely intact in the states within the Ninth Circuit. Though that

was a major victory, Newdow has vowed to continue his fight to rid our country of the words “under God” in the Pledge of Allegiance. He has said he will find whatever judge will hear his case and will continue to travel around the country in his quest. The Becket Fund will be there to fight back.

#### *Religious Discrimination*

Finally, the fifth theme is discrimination against religious groups. The primary example I want to address here are state Blaine Amendments. Between 1870 and 1900, forty-one states adopted Blaine Amendments to prevent public funds from going to any “sectarian institution.”<sup>29</sup> At the time, “sectarian” was code for Catholic. The Blaine Amendments were largely a result of anti-Catholic nativism that was sweeping the country at the time. But Blaine Amendments are now used by states to forbid programs that otherwise comply with the federal Establishment Clause. More specifically, the federal Establishment Clause as interpreted in the last half century permits religion-neutral support of programs with a predominantly secular purpose, provided they do not improperly advance religion. The Blaine Amendments, which are state constitutional amendments, often operate as a second wave of attack, because they can forbid what the federal Establishment Clause permits. So in actual terms, the Blaine Amendments operate to impose a *per se* bar against funding to all religious organizations. We see the results in a wide variety of cases involving religious organizations, in funding to faith-based organizations, in contracts between a government and religious organizations, and in religious school choice cases. There is an effort at the Becket Fund to challenge these state Blaine Amendments through the courts and through legislative repeal.

#### **Conclusion**

I hope from this overview today you have seen the attacks on religious liberty are serious and widespread. More importantly, we have many friends in this battle to uphold religious liberty in this country and abroad. I will close with a quote from Cardinal Francis George, then-president of the U.S. Conference of Catholic Bishops, when he spoke at BYU last year. He delivered a message very similar to Elder Oaks’s that I quoted at the beginning of my talk.

In the coming years inter-religious coalitions formed to defend the rights of conscience for individuals and for religious institutions should become a vital bulwark against the tide of forces at work in our government and in our society to reduce religion to a purely private reality. At stake is whether or not the religious voice will maintain its right to be heard in the public square.<sup>30</sup>

#### **NOTES**

1. See <http://www.becketfund.org>.
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3. See *Hosanna-Tabor Church v. EEOC, et al.* (Docket no. 10–553, granted 28 March 2011).
4. See *EEOC v. Hosanna-Tabor Evangelical Lutheran Church and School*, 582 F. Supp. 2d 881 (E.D. Mich. 2008).
5. See *EEOC v. Hosanna-Tabor Evangelical Lutheran Church and School*, 597 F.3d 769 (6th Cir. 2010).
6. See *Obst v. Germany*, European Ct of Human Rights, no. 425/03, 23 Sept. 2010.

7. Gaubatz, Derek L. "Will the Obama Administration Reinterpret Federal Law Re: Religious Discrimination When Awarding Federal Grants?" (11 Feb. 2011) available at <http://www.fed-soc.org/publications/detail/will-the-obama-administration-re-interpret-federal-law-re-religious-discrimination-when-awarding-federal-grants>.
8. *Ibid.*
9. *Ibid.*
10. See Kevin Seamus Hasson, *The Right To Be Wrong*, 45–67 (Encounter 2005).
11. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
12. See generally *Stormans, Inc. v. Selecky*, 524 F.Supp.2d 1245 (W.D. Wash. 2007) and *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009).
13. See *Belmont Abbey College, North Carolina (2009)*, The Becket Fund for Religious Liberty, available at <http://www.becketfund.org/belmont-abbey-college-north-carolina-2009>.
14. *Ibid.*
15. See Nina Shea, "An Anti-Blasphemy Measure Laid to Rest," *National Review Online* (31 Mar. 2011), available at <http://www.nationalreview.com/articles/print/263450>.
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
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22. See Peter Gelling, "Law Banning Blasphemy is Upheld in Indonesia," *New York Times*, 19 Apr. 2010, available at <http://www.nytimes.com/2010/04/20/world/asia/20indo.html>.
23. See Nina Shea, "An Anti-Blasphemy Measure Laid to Rest," *National Review Online* (31 Mar. 2011), available at <http://www.nationalreview.com/articles/print/263450>.
24. *Ibid.*
25. See Howard M. Friedman, "Pakistani Student Charged With Blasphemy For Remarks on Exam Paper," available at <http://religionclause.blogspot.com/2011/02/pakistani-student-charged-with.html>
26. *Ibid.*
27. See *Newdow v. Rio Linda Union School Dist.*, 597 F.3d 1007 (9th Cir. 2010).
28. See Ken Blackwell, "Living Under God," *The American Spectator* (18 Mar. 2010), available at <http://spectator.org/archives/2010/03/18/living-under-god>.
29. See generally Meir Katz, "The State of Blaine: A Closer Look at the Blaine Amendments and Their Modern Application," (original in possession of author).
30. Cardinal Francis George, "Catholics and Latter-day Saints: Partners in the Defense of Religious Freedom," (23 Feb. 2010) available at <http://www.usccb.org/seia/catholics-latter-day-saints.pdf>.

# Religious Liberty in Ukraine: A Progress Report

John M. Smith, counsel, Raytheon Company



I have found good things happen when I follow Hannah's lead. I hope for your sakes that is true this afternoon. I want to applaud this society's commitment and interest in international affairs. I think our community has a rare combination of experiences and commitments to peoples abroad that enable us to be a force for positive change and a defense of sacred institutions.

Given the topic of religious liberty, I had some difficulty deciding which of two approaches to take today. For the last several years, since working at the White House as the president's Homeland Security lawyer, I have been thinking about the relationship between national security and religious liberty. The last panel commented that, in the study of diplomacy, for so long, religion and its impact was ignored, to the peril of diplomats. You could say something similar about national security thinking before the 11 September attacks—the relationship between religion and national security has been underappreciated. I think religious liberty, both at home and abroad, is vital to America's national security. Think about the countries that pose an existential or at least serious security threat to the U.S; they are countries that do not have religious liberty: Iran, North Korea, China, and Russia to some extent.

I remember my very first week in the White House Situation Room after becoming the White House Homeland Security lawyer, receiving a briefing from the head of an intelligence agency about bad guys coming at us. It was a sobering moment. We will not be able to appropriately defend against this threat unless we understand both its relationship to religion and the interplay of national security and religious liberty.

However, given a seminal event for the Church that occurred last August (2010)—namely the dedication of the first Latter-day Saint temple in the former Soviet Union, in Kyiv, Ukraine—I decided to go in that direction today. An important space to watch in the development of religious liberty is its status in certain strategic countries. One strategic country I know something about is Ukraine—strategic for geographic, political, and religious reasons. President Thomas S. Monson, at the Kyiv Temple dedication, described it as “a day of freedom.” I will focus on these four questions: 1) What progress has religious liberty made in Ukraine? 2) How have certain religious liberty initiatives supported that progress? 3) What lies ahead in Ukraine? and 4) What does that mean for the Church in Ukraine?

## What Progress has Religious Liberty made in Ukraine?

The short answer is that, since the end of the Soviet period, with essentially no religious liberty, Ukraine has made significant progress. Starting about a year ago, Ukraine faces a crossroads with its election of a new president with a markedly different approach to governing, and that progress is in jeopardy.

In the modern era, religious liberty for Ukraine only began two decades ago. In 1991, the Soviet Union disintegrated, Ukraine declared its independence, and the main statute that still governs religion and religious organizations was enacted. This confluence burst the dam, and overt religious interest, expression, and propagation flooded Ukraine.

By historical standards for Ukraine, this main statute was permissive. It still contained significant restrictions: religious liberty could be restricted to protect public order, safety, health, life, and morals—all flexible terms. For a few years, the euphoria even included openness to religions not traditional in Ukraine. While the traditional churches of Ukraine revived, new religious organization poured across the border. This resurrected Ukraine's unusual history of religious pluralism with a richer diversity than ever before. In these last two decades, no single church can monopolize the religious space or force others out.

Also in 1991, the Church had its initial registration approved, allowing it to conduct basic missionary activity in Ukraine. A pair of Latter-day Saint Apostles in Kyiv dedicated Ukraine for the proclaiming of the Restored Gospel of Jesus Christ. The dedicatory prayer included a prophecy about “the spires of temples will be seen across this great land.”

After a few years of that initial flood, by the mid 1990s, resistance organized against these new religious groups entering Ukraine. Controversial issues then that persist today include whether/when a given religious group could receive the requisite state approval to form a legal entity, a process with the misleadingly simple name of “registration.” A second issue is property ownership for churches: land, buildings, artifacts, literature, etc. And a third issue: the extent to which missionaries, particularly foreign missionaries, would be allowed in Ukraine; and once inside, what could they do and where could they go?

In 1993, responding to the backlash, parliament made a few restrictive changes to this main statute. One important change purported to confine the movement of foreign missionaries once they arrived in Ukraine. The practical effect of this new restriction was to require a religious organization to repeat the registration process in every province (Ukraine has twenty-five provinces) where it wanted missionaries; registering once at the national level was insufficient.

In 1996, parliament adopted a new constitution for the newly independent country. It included Article 35, which guaranteed religious liberty but within limits. The constitution committed to international human rights treaties and made it supreme over any inconsistent Ukrainian statutes. Thus, the constitution may render



illegal some restrictions in the pre-existing statutes or bureaucratic practices governing religion. So the constitution's language was good, and the legal framework promising. However, a major difficulty in advocating for religious liberty in Ukraine, as is common in former Soviet states, is that private entities generally cannot, without the risk of severe political consequences, challenge illegal government action in court, to hold local officials accountable to national or international commitments. As a practical matter, statutory text and how local officials choose to interpret and apply it is often the extent of "the law."

Despite this resistance against new religious groups, and the tension between good legal principles and difficulties in implementation, the Church, along with a number of other "new" religious organizations, did grow steadily. In 1996, the Church received approval for its national-level registration and expanded into western Ukraine, giving it a nationwide presence for the first time. In 1998, the Kyiv Ukraine Temple was announced, and four years later, President Gordon B. Hinckley visited Ukraine (a first time for a Church president), and he chose the temple site. Two years later, in 2004, the first stake in the former Soviet Union was formed in Kyiv.

There were still a number of hurdles—legal, political, social—that stood between the state of affairs in 2004 and the actual realization of a temple. Some found it hard to see how we would get from there to here. Then in late 2004, the Orange Revolution swept Ukraine. This popular and peaceful political uprising forced Ukraine to hold its first free and fair presidential elections, which led to significant reforms and the expansion of freedoms. I think it is significant that religious liberty was a central theme in those Orange demonstrations, which swelled to almost a million people in the capital of Ukraine. To illustrate, here is an excerpt from an eyewitness and Latter-day Saint friend in Kyiv (edited from her contemporary e-mail):

Today is the fourteenth day of the revolution in Ukraine. The meetings in downtown began with thousands, but since the second day there have been hundreds of thousands. It was without any disorder or aggression; everyone shows love and respect to each other. Every morning, people gathered in downtown and this great meeting they begin with a prayer. Priests of different confessions stand on a stage side by side and they pray in turn to the Lord about a better future for our country. After that, all the people sing the hymn of Ukraine. All the time, new people are coming. People would like to have freedom, to live in a country where justice and law are prevailing, to work and to trust the government and trust the president. We recognize now that even we are sources of real power. We love our people. We hope our Heavenly Father sees them in their belief in Him. We see them turn their hearts to God, we have a great hope. And we think now in Ukraine is the time for cleansing before the building of the Kyiv Temple. These events are just necessary here because the Lord wants here to have His home.

After the Orange leader's inauguration in 2005, there were tangible improvements in the rule of law and democratic freedoms, including in the area religion. In his first weeks, President Yushenko announced the abolition of the state agency that regulates religious organizations (though it later reformed). The Church finally received the necessary

permits for the temple, and the groundbreaking ceremony occurred in 2007.

That brings us to the present phase, which began in 2010 with the election of a different president, Yanukovich, the same politician who was on the verge of stealing the election in 2004 until the Orange revolution stopped him. So the pendulum has now swung back the other way, and Yanukovich's presidency has prompted considerable concern about liberty generally, including for religion. His policies have done little to assuage those concerns and have stoked them in recent months. Last summer, the new administration violated the policy of state neutrality among churches that had generally been observed for the last two decades. This new president has clearly favored the Moscow-based Orthodox Church, and has made no personal outreach to Ukraine's main multid denominational association of religious organizations, despite repeated requests. Last fall, President Yanukovich enacted structural changes in the government, such as a brand new national registration service to control religious organizations and other nonprofits. Though it's too soon to say, the changes appear ominous for religious liberty.

Most significantly, this winter, the administration has proposed revisions to the main statute governing religious liberty and organizations, which would upset about fifteen years of stability in the legal framework governing this area. Among other things, the changes would appear to increase regulation of religious activity, complicate gaining legal status for religious organizations, and ease the government's options to take away that status. One particularly troubling revision would prohibit offending the feelings of others regarding their religion or belief. That new language would be in the statute's section on inviting foreign missionaries. So it is easy to imagine how that tool might be used as a hammer, and upon whom the hammer might fall. The parliament, friendly to the current administration, will probably first consider enacting the draft revisions later this year.

#### **How have Religious Liberty Initiatives supported such Progress in Ukraine?**

Several initiatives have supported progress in many ways. I will dwell on the initiative I know best—the efforts of Professor Cole Durham's International Center for Law and Religion Studies (ICLRS). Two regular activities of the center include:

1. Invite key Ukrainian officials and scholars to the annual global academic conferences on religious liberty held at BYU Law School. Participants have interacted with government officials, academics, and other experts from around the world, allowing them to compare Ukrainian issues, laws, and policies with international standards and experiences. During such conferences, they are also exposed to the Church headquarters in Utah.
2. Partner with leading Ukrainian academics on religious liberty issues. For almost two decades, this partnership has co-hosted conferences in Ukraine for government officials and scholars from around the former Soviet Union and Europe.

#### *What are the Key Impacts of this Activity from the Center?*

A) Access to decision makers and opinion leaders. The center has been in a position to comment meaningfully on draft legislation

and to provide helpful analysis that compares Ukrainian proposals to international and European standards.

B) Ukrainian officials' understanding of the Church can be improved by firsthand experiences. One example: I remember the visit of a leading Ukrainian official to Utah years ago. He took a tour of Temple Square and was extremely proud that it was conducted by a Ukrainian sister missionary from his native city. He was thrilled that his rising country was now represented at this prominent international location. Hearing the emphasis on families, he volunteered that Ukraine should have such a temple. After watching a film about the Mormon pioneers, he identified something his people had in common with Mormons: suffering and surviving because of who they are. This official's visit was a turning point in the availability of visas for missionaries. The Church has not had serious visa problems in Ukraine since.

C) Building human expertise and networks. I had seen in Ukraine, in the last two decades, how ICLRS, along with other constructive organizations and conferences, has fostered the development of the largest network of religious liberty advocates and experts in Ukraine. The first such conference I attended was in Kyiv the mid-1990s, as an interpreter for Professor Durham. The group was small, and the level of discussion basic, as expected for a country emerging from generations of official atheism and academic isolation. Fast forward to last August when I presented at another such conference in Kyiv. A real civil-society network had matured. This 2010 group included advocates for religious liberty that were young, sophisticated, bold, liberty-oriented, English-speaking, cosmopolitan, and connected to international sources of expertise and financial support. They shared their findings and analysis on the web, providing an unprecedented level of transparency for these issues in Ukraine.

#### **What Lies ahead for Religious Liberty in Ukraine?**

The fate of the proposed revisions to the main statute governing religion will signal what lies ahead in the near term. Because there is very little case law, and Ukrainian courts cannot compel government officials to respect the law on individual liberties generally, what the statute contains and how officials interpret it will practically determine how religion is governed. In the near term, if the statute is indeed revised and the changes requested by the administration and/or new changes made parliament, I expect the results to impact religious liberty negatively. This administration's trajectory has not been progressive. I would be surprised if these revisions pass this year, but I expect momentum to carry the debate into 2012. Since 1993, there have been several attempts to modify this statute substantively, but they have all failed. Whatever happens in this round, I am encouraged by the influence the rising community of Ukraine's religious liberty advocates will now have on the national debate. They are focused, vocal, and know what to do. And they have the momentum of two decades of substantial progress in religious liberty behind them.

#### **What Does Progress for Religious Liberty in Ukraine mean for the Church?**

For the Church in Ukraine, in just twenty years Church membership has grown from zero to over 11,000; congregations have gone

from zero to sixty-four. There are three missions, one stake, multiple districts, and now one temple.

What does it mean for the Church in the region? Partly due to Ukraine's progress in religious liberty, and particularly relative to other countries in that region, Ukraine has emerged as a nucleus of Church strength and leadership in Eastern Europe. The Kyiv Temple is already one of the busiest in the world, operating at 82 percent capacity. It is the capstone of a great territorial expansion of Church growth in the last generation. The former Soviet Union was the Church's final frontier in the historically Christian world, and now the Kyiv Temple is an outpost on that frontier. That temple district encompasses nine countries, nine time zones, and a population roughly that of the United States. To illustrate how far out on the frontier the Kyiv Temple is, consider the location of the next closest temples from Kyiv: west is Germany, north is Finland, east is South Korea, and south is South Africa. Connect those four dots and think about how many human beings, how much land is encompassed.

One final observation on what this progress means. It means the words of the prophets, both ancient and modern, are being fulfilled. When Hannah and I were in our first weeks at BYU law school, Professor Durham explained his understanding of the forces now in motion regarding religious liberty. In fall 1945, as World War II concluded and the Iron Curtain isolated the Soviet states from the Free World, then-Church President George Albert Smith, at the dedication of the Idaho Falls Temple, invoked Isaiah's prophecy about the last days. President Smith prayed that:

Kings and rulers and peoples of all nations under heaven may be persuaded of the blessing enjoyed by the people of this land [the U.S.] by reason of their freedom under Thy guidance and be constrained to adopt similar governmental systems, thus to fulfill the ancient prophecy of Isaiah, that out of Zion shall go forth the law and the word of the Lord from Jerusalem.

A week later in General Conference, President Smith spoke of eventually sharing the gospel in Russia, whose Soviet empire then included Ukraine. He foresaw that land "as one of the most fruitful lands for teaching the gospel of Jesus Christ" and prophesied its people would soon "desire to know" of the Lord's work. Now in Ukraine, we have seen those prophecies fulfilled, at least in part, and we have witnessed that miracle.

#### **Conclusion**

In closing, at a time of setbacks in religious liberty around the globe, Ukraine's progress in religious liberties has generally been a good news story for nearly two decades. That outcome was not inevitable or even likely, and it is not permanent, as this last year has shown. There is strong evidence that religious liberty initiatives like those of ICLRS have provided crucial support in determinative moments to keep progress possible. Now a generation of native Ukrainian advocates for religious liberties, including a number of Ukrainian Latter-day Saints, is rising to meet the challenges that are already here.

## “The Case of Religious Freedom”

25 MAY 2011 — POSTED by VALE EDWARDS

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Earlier this month in Rome, Harvard professor Mary Ann Glendon made a bold case for religious freedom, saying it “goes to the very heart of what it means to be human.”

Professor Glendon was speaking at an international conference titled “Universal Rights in a World of Diversity: The Case for Religious Freedom.” It is a “universal right” precisely because religious freedom is so central to being human and to sustaining free and just societies.

Religion has provided for humankind hope, purpose, aspiration and compassion. Freedom of religion secures the inalienable human right to choose and live according to one’s deepest and most centrally held beliefs and values. In that way, religious freedom is not just tolerance of others’ beliefs (or nonbelief). In fact, it is the moral basis of a free society where competing beliefs are respected and allowed to flourish. It engenders a social cohesion and civility by recognizing that any individual, association or faith group, no matter how large and important, is only as safe and secure in its rights as any other individual, association or faith group, no matter how small and insignificant.

Elder Dallin H. Oaks, an apostle for The Church of Jesus Christ of Latter-day Saints,

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## About

This blog is managed and written by staff of the Public Affairs Department of The Church of Jesus Christ of Latter-day Saints. The information here is reliable and accurate but should not necessarily be viewed as official statements from the Church. The purpose of

calls religious freedom a “[vital human right](#).”

But challenges to religious freedom are real and increasingly frequent. In many countries, Glendon says, religious freedom is being “trumped by a range of other claims and interests.” Even in democratic countries, religious believers are experiencing “marginalization and even outright discrimination.”

These are the consequences, Glendon says, when “influential figures ... portray religion as a source of social division and treat religious freedom as a second-class right.” She counters with the growing body of empirical evidence that strongly suggests otherwise:

- “Some studies indicate that violence actually tends to be greater in societies where religious practice is suppressed and that promotion of religious freedom actually advances the cause of peace by reducing interreligious conflict.”
- “Recent research in the social sciences also suggests that there is a significant positive correlation between levels of religious freedom and measures of other economic, social and political goods, while, conversely, the denial of religious liberty correlates with the denial of such goods.”
- “One study concludes that ‘the presence of religious freedom in a country mathematically correlates with the longevity of democracy’ and with the presence of civil and political liberty, women’s advancement, press freedom, literacy, lower infant mortality and economic freedom.”

An [international study](#) by the Pew Forum on Religion & Public Life found that nearly 70 percent of the world’s 6.8 billion people “live in countries with heavy restrictions on religion.” In the United States, religious freedom issues are complex and often unsettling. This can be especially true in trying to resolve, as Elder Oaks observed, “what equal rights demand and what religious rights protect.”

In an increasingly pluralistic American society and global community, the “problem of fostering habits of respect and tolerance for the religions of others remains acute,” says [Professor Glendon](#). It is that very plurality that makes religious freedom and its defense so critical.

Like 353

## Protecting Religious Freedom

06 APRIL 2011 -- POSTED by NATE NIELSON

Like 67

this blog is to provide journalists, bloggers, and the public with additional context and information regarding public issues involving the Church. For official news releases and statements from the Church, visit [Newsroom.lds.org](http://Newsroom.lds.org)



Religious freedom experts gathered together on the campus of Brigham Young University for the 22nd annual conference of the LDS International Society. The theme was "The Erosion of Religious Liberties: Impact on the International Church." As a matter of basic human dignity and social good, these experts defended religious freedom against gradually encroaching erosions.

Michael K. Young, president of the University of Utah and former chairman of the United States Commission on International Religious Freedom, concentrated his remarks on the state of religious freedom in the United States, calling it a "bellwether" for the rest of the world. The extent of religious freedom erosion in the United States, he argued, significantly impacts the development of this issue in other countries. He warned about the subtle deterioration of religion's once foundational place in society. An accumulation of "adverse" court decisions along with worsening social attitudes toward religion have produced gradual erosions that are "more worrying" than obvious, abrupt changes.

Among the issues at play here are conscientious objection in the workplace, freedom of religious organizations to hire according to religious standards, freedom of association among campus clubs, and rigid licensing and accrediting requirements that dismiss individual conscience. He emphasized that these incremental changes are not generally brought about by people with harmful intentions. Nevertheless, the old consensus that religion serves as a salutary institution in society is beginning to erode in fundamental ways. He described the progression of this erosion by using three different arguments of critics: (1) religion is not special, but just one of a number of good organizations; (2) while a good thing, religion is entirely a private affair; and (3) religion has a negative impact on society. Religion went from being advantaged by the First Amendment of the U.S. Constitution to being viewed as an institution that should be disadvantaged, even viewed with suspicion.

What can religious freedom advocates do to help remedy this situation? Young recommends the following: (1) Be attentive to the gradual erosion. (2) Develop allies among organizations and individuals who support civil rights generally. Credibility and trust come from supporting the rights of everyone, not just your own. (3) Do it for the right reason, not just to protect Mormon missionary work. He added: "We have a profound moral obligation to protect religious freedom, not only on our behalf, but on behalf of so many others around the world." (4) Don't be defensive about it. (5) Warmly engage and welcome the reasonable criticism of our critics. (6) Work at the

local level. (7) Trust in the Lord.

John Graz, secretary general of the International Religious Liberty Association, passionately asserted that religious freedom is a basic human right, not merely something that must grovel before governments and the law for approval. It is already established in international law. Advocates of religious freedom should never reach the point where religious freedom is viewed as a luxury, he emphasized. It must always be defended as a firmly established principle. Each year his organization produces the Religious Freedom World Report. Among its latest findings are (1) religious freedom is still protected in a majority of countries; (2) religious freedom is more frequently challenged, however; and (3) religious intolerance does not spare any group. He noted that the world has changed in the past 20 years. Trends for the 21st century include (1) governments wanting to control religion; (2) the formation of new alliances between church and state; (3) proselytism being viewed as a factor of destabilization; and (4) religions feeling attacked. He encouraged religious freedom advocates to: (1) Be responsible in our writing and speaking. "We have to be wise" in expressing ourselves, "even though we have rights." (2) Favor interreligious dialogues. (3) Be positively active in the community. (4) Promote and protect religious freedom for all.

In a panel on the topic of promoting corporate social responsibility among the business community, Mormon scholars put forward religious freedom as a positive social good. Gregory G. Clark, attorney at Kirton & McConkie, emphasized that a growing consciousness to include religious freedom in the array of other rights already promoted and protected by corporate social responsibility is slowly taking hold in the business community. W. Cole Durham, director of the International Center for Law and Religion Studies at BYU, spoke of religious freedom as "the grandparent of other rights." He focused on the influence of what he called "soft law," in comparison to national laws, in shaping the legal and social norms of our world. The standards and practices of corporate social responsibility reside in this sphere of influence. He argued that the commercial sector often carries greater weight than the human rights sector in shaping intergovernmental relations. Robert T. Smith, managing director of the International Center for Law and Religion Studies at BYU, provided a history of corporate social responsibility. He described the process of how corporations insert social goods into the fiber of their business and the challenge of including religious freedom in the equation of corporate interests. Paul C. Godfrey, professor at BYU's Marriott School of Management, suggested that "thorough-going, greedy capitalists" should support the notion of religious freedom because it promotes all sorts of social goods that create an environment conducive to business.

In the final panel, Hannah Clayson Smith, senior counsel at the Becket Fund for Religious Liberty, presented a list of domestic trends that have been unfolding in the past decade and reviewed the relevant court cases involved. John M. Smith, counsel at Raytheon Company, spoke about the interplay between religious freedom and national security. Drawing from his personal experience and study, he then elaborated on the state of religious freedom in Ukraine and its recent history.

Like 67

## Apostle Talks Religious Freedom to Boston Youth

17 JUNE 2010 — POSTED by DOUG ANDERSEN

Elder Russell M. Nelson of the Quorum of Twelve Apostles addressed a group of young adults from Boston, Massachusetts, 10 June 2010. His comments touched on a wide range of topics but prominently featured religious freedom and the need to protect the family.

Excerpts from his remarks:

- "Opposing forces are competing for our allegiance: right versus wrong, good versus evil. They are not always easily discerned."
- "These forces are, in fact, conflicting religious systems of belief. They are theistic (godly) forces and atheistic (ungodly or satanic) forces. These were cited recently by Elder Clayton Christensen in an editorial calling for theistic balance on the U.S. supreme court."
- "Theistic forces, be they Islamic, Jewish, Catholic, Protestant, or Mormon, are based on the fact that there is an absolute right and wrong. Theistic forces inculcate an ethic to revere the righteous judgments of a loving God, and to obey civil and divine law voluntarily. Theistic forces instill a conscience to do what is right, and obey laws that otherwise might be unenforceable."
- "Unfortunately, good culture alone is not strong enough to cause good culture to endure in perpetuity. Additional strength is needed from the power of theistic conviction. For this reason, a policy to separate completely church and state could become completely counterproductive. Theistic forces would be erased and atheistic forces would be allowed to flourish unopposed in the public square. The theistic and noble concept of "freedom of religion," could be twisted and turned to become an atheistic "freedom from religion." Such an unbalanced policy could sweep out theistic forces for societal success and leave the field wide open to atheistic ideology, secularism, suffering huge losses for all."
- "Without the acknowledgment of God and God's law in one's life, momentary pleasures will be continually contaminated by gnawing guilt."
- "Even the definition of marriage is now a topic of heated debate. That is only the tip of a larger iceberg. Below this tip is the weightier matter of free exercise of religion. Contention is raging over two main issues: (1) Can marriage survive as the bedrock of our cultural heritage? and (2) Can our precious freedom of religion be preserved?"
- "If civil law were altered to recognize so-called "same-gender" marriage, you as believers in God, and keepers of His commandments, would then be regarded as exceptions to the rule. Your conscientious convictions would then be regarded as discriminatory. If you were a Christian school teacher, you could be charged with bigotry for upholding the Lord's law of chastity. In truth dear brothers and sisters, if you lose marriage, you also lose freedom of religion. Atheistic moral bedlam and religious repression go hand in hand. At stake is our ability to transmit to the next generation the life-giving and inseparable culture of marriage and the free exercise of religion."

Elder Nelson was an accomplished heart surgeon and medical researcher prior to his call to the apostleship. He is a widely published speaker and writer and listed in Who's Who in the World and Who's Who in Religion.

Like 1

## Religious Expression: A Fundamental Right

03 MARCH 2010 — POSTED by LYMAN KIRKLAND

Like 2

At the *On Faith* blog this week, the question posed to the panel of On Faith religious leaders and experts addressed proselytism overseas:

*What is the real problem with proselytism overseas by U.S. religious groups? Isn't sharing one's faith part of religious freedom? When does it cross the line into manipulation and coercion?*

Representing The Church of Jesus Christ of Latter-day Saints, On Faith panelist Michael Otterson explained that freedom of expression, including sharing one's faith with others, is a fundamental human right:

*Everyone is and should be entitled to speak his or her mind on such matters, and everyone else has the right to listen, or not, as they choose. Because of the central importance of these rights, no person or government is justified in interfering with them.*

Read the full *On Faith* blog post [here](#).

Like 2

## Religion and Political Participation

20 NOVEMBER 2009 — POSTED by NATE NIELSON

Like 1

"What role should religious leaders have -- or not have -- in government policymaking?" That was the question posed this week at [On Faith](#), an online forum featuring a wide spectrum of religious experts who discuss important issues regarding the intersection of religion and public life. As a long-time member of the panel, Michael Otterson, managing director of the Church's Public Affairs Department, addressed some of the broader philosophical aspects of the religious freedom debate. He explains why political participation in our democratic system is a right that belongs to everyone, including those representing churches and religious organizations. You can read the entire column [here](#). Excerpts:

*Laws are a reflection of the particular social, economic, cultural, and even religious mores of a people living under a single jurisdiction. These values, and the myriad complex factors they entail, all contribute to the legislative process. Likewise, each constituent part of society has opportunity for expression. Why should churches or their leaders be singled out as unfit participants?*

*Anyone interested in the success of the political process should step back and carefully ponder the consequences of excluding religion from the public square. Do we really want to relegate religious organizations to second-class status? And who gets to decide whose participation is valid and whose is not?*

Like 1

# Global Challenges Facing Religious Freedom

John Graz, secretary general, International Religious Liberty Association



## Introduction by W. Cole Durham, Jr.

It is my privilege this morning to introduce to you John Graz. I've known John for many years. I first met him fifteen years ago at a conference in London. John is one of the greatest workers on religious freedom issues on earth. He is the current director of the general conference of Seventh-day Adventists in their public affairs and religious liberty department; he's headed that since 1995. To do a little bit of comparative ecclesiology, that is sort of a combination of two positions in The Church of Jesus Christ of Latter-day Saints. First, chairman of the Public Affairs Committee—that is Elder L. Tom Perry right now—and, chairman of the Public Affairs Department. John, in effect, combines those two posts for the Seventh-day Adventist Church. In addition to that position, he is the secretary general of the International Religious Liberty Association (IRLA) and secretary of the Conference of Secretaries of the Christian World Communions, which represents about two billion Christians on earth. He has

received the Medal of Honor and National Merit from Romania, which is a very high honor conferred by that government, for his work in religious freedom. He was also a winner of the First Freedom Foundation national award just this past year. One of the things I've found so impressive in his work (and I think John will talk a little about this) as I've worked closely with him in the IRLA, a non-denominational organization committed to religious freedom energized by John and his predecessors, is that they set organizations in each country that draw different religious communities together. Country after country they have set up significant chapters and groups working for religious freedom. I know from the work I do that it is extraordinarily helpful to know there are people working with those particular religious groups in different communities. It is a great privilege for me to introduce John and welcome him at this time.

In August 2008, I was in Mexico for a religious freedom tour with Roberto Herrera, the IRLA secretary general for the Inter-American Region. We visited five cities, and in each of them we participated in a Festival of Religious Freedom. In Oaxaca, we met a group of native Indians representing twenty-four families. They had been forced to leave their village in 2004 because of their religious beliefs.

The authorities were trying to solve their problem but had not reached an agreement with the village's leaders. The only way for these families to go home and get their houses and properties back was to give up their religion and join the majority religion. Mexico is not North Korea; however, in spite of the protection of religious freedom, some pockets of the Mexican territory are still dominated by religious intolerance. In Chiapas, a few years ago, a thousand people were killed due to religious clashes. Many lost everything they had.

While on this tour, I learned that about fifty Christians were killed in the state of Orissa in India. Thousands had to flee to the forest to save their lives. A number of churches and houses were burned. I was shocked to read the reports of cruelty by the fanatical Hindus. Old people were butchered and women were raped. And why? Because of their religion. They were not criminals, not bandits, but some were treated as if they were worse than that.

The year 2011 was just beginning in Alexandria, Egypt, and Coptic Christians were celebrating the New Year in the Al-Quiddissin Church when a bomb exploded. Twenty-one people died and about seventy were injured. Thirty days later, on Sunday, 30 January, at 3:00 P.M., eleven

Coptic Christians were massacred in their homes, including infants as young as three years old.

In March 2010, fifty churches were burned in Ethiopia and four thousand Christians were displaced. Churches are also burned periodically in some parts of Indonesia.

In Pakistan, according to the criminal code, defiling the Quran merits imprisonment for life, and defamation of the prophet merits death. Members of religious minorities are from time to time accused of blasphemy by their enemies. Asia Bibi is a Christian woman convicted of blasphemy; radical Muslims wanted her executed. The governor of Punjab, Salman Taseer, defended her. He was assassinated by one of his body guards on 4 January. About two months later, Shabaz Bhatti, a Christian and Pakistan's Minister for Minority Affairs, was assassinated as well; his crime was opposition to the blasphemy law.

According to the *Religious Freedom World Report 2008–09*,<sup>1</sup> thirty-eight countries have no religious freedom, fifty-three have restrictions, and 118 provide a great deal of religious freedom.

The report documents some important aspects of international religious liberty. First, religious freedom is still protected in a majority of countries. This is the good news. We can be encouraged that 124 countries provide a great deal of religious freedom. Second, religious freedom is being challenged more frequently. A total of forty-eight countries have serious restrictions for people of faith. And lastly, religious intolerance does not spare any group. Intolerance affects Muslims, Christians, Hindus, and other religious minorities.



## Threats to Religious Freedom

The *World Report 2008–09* identifies some basic challenges or threats to religious freedom.

### *Religious Extremism*

There is a growing threat from extremist Muslims who want to impose Sharia law. More and more extremist Hindus and Buddhists want to prohibit conversions. Even in the West, particularly in the U.S., extremist Christian views can be problematic; for instance, extremist Christians sometimes attack medical centers which practice abortion.

### *Nationalism*

National identity often has a religious dimension. Being faithful to the majority religion is presented as a sign of loyalty to country and to national culture and identity. Having or choosing another religion makes it more likely you will be accused of betraying your country and subsequently be marginalized.

### *Intolerant Secularism*

In a number of countries, secularism is actually the guarantee of religious freedom for all and a protector of human rights. But that is not always the case where secularism is supported by activists who are hostile to religion. For them, a good religion is a dying religion. France has given some examples of anti-religious secularism in such a way that *laicity* takes on the wrappings of an anti-religion ideology.

### *The Need for Security*

Religious activists or religious minorities can easily be seen by authorities as potential terrorists. Believers can be conservative or can defend what they believe is fundamental or essential in their religion without threatening human rights and public order. There are many non-violent religious conservatives.

### *Religions under Siege*

How are religions interacting in the world today? In his controversial book,<sup>2</sup> *The Clash of Civilization and the Remaking of the World Order*, Samuel P. Huntington, writes: "In the modern world, religion is a central, perhaps the central, force that motivates and mobilizes people."

Forty years ago, religion did not play as important a role in world affairs, whereas today religion greatly affects politics and international relations. Religious forces can destabilize a country and create a major problem for peace. Religious leaders are playing a growing role in secular society. The riots in England a few years ago, and later in France, led civil authorities to ask religious leaders for help in calming the violence. In particular, Muslim Imams were encouraged to speak out in the media for calm.

While religion and religious leaders are playing a growing role today, we must be cautious because most religions feel threatened in one way or another. In spite of an increase in dialogue and interfaith meetings, in many places there is a growing tension between religions.

I visited Ambon in Eastern Indonesia in December 2003. In that part of the country, Christians and Muslims had been killing each other prolifically. It was interesting to see that people on both sides believed that Americans would likely come and drop bombs to protect the Christians.

Many see the wars in Iraq and Afghanistan as Christian invasions. Many Muslims believe Islam is under attack. I saw the same reaction in India from the fundamentalist Hindus and in Sri Lanka from the nationalist Buddhists. Threats, real or imagined, are empowering extreme and violent "protective" measures.

Inside the Christian world, the same sense of invasion is felt by the Orthodox Church in Eastern Europe and Russia and by some Catholics in Latin America, where traditional religion feels it is under attack from Protestants or new religious movements. But this feeling is not limited to the Christian world. The Christian family also feels under attack when it comes to immigration of non-Christians into traditional Christian countries and Christian emigration from the Middle East.

In an article entitled "Relations with Islam," by Daniel Williams and Alan Cooperman,<sup>3</sup> we read: "Many people in the Vatican view Christianity as under siege in parts of the world. They say that Christian populations are shrinking in countries in the Middle East in part because of long-term discrimination and repression by Muslim majorities."

Whatever the cause, one does see more and more mosques in traditional Christian countries and fewer and fewer churches in Muslim countries. It is impossible to build a Christian church in Saudi Arabia, but Saudi Arabia finances construction of many mosques and schools in Europe, including in Rome itself.

Huntington writes: "In the long run, however, Mohammed wins out. Christianity spreads primarily by conversion, Islam by conversion and reproduction."<sup>4</sup> This is, of course, only partially true. In fact, we should at least add the factor of immigration to conversion and reproduction.

Religious minorities feel under attack in secularized Europe, and the secular humanists are convinced they are being attacked by the religious revival. Paradoxically, the Western concept of church-state separation is leaving Christianity the least defended religion in the world. It is important that examples of separationism not veer toward an anti-religious bias, and care should be taken so religions do not make inroads by use of intimidation or other non-democratic means.

Islam is the religion of the majority in forty-four countries. In twenty-two countries, Islam is the official religion, and ten countries are Islamic states according to their constitution.<sup>5</sup> At least four countries have Buddhism as the state religion; however, most of the traditional Christian countries are now secular. Christianity does not have a geopolitical visibility. This makes a big difference in the international dynamic. As an example, the UN adopted without any question the idea that anti-Semitism and Islamophobia are a violation of human rights and should be sanctioned. It was more difficult for the nations represented to accept that Christian phobia is also a violation of human rights.

## Christianity, Religion of the Persecuted

In his article, "Church of Martyrs," Anthony Browne writes: "Rising nationalism and fundamentalism around the world have meant that Christianity is going back to its roots as the religion of the persecuted."<sup>6</sup>

Just think about the thousands of Christians who have been killed in the Moluccas, Eastern Indonesia; the five million Christians

who live as an underclass in Pakistan; and the Christians under the oppression of the Sharia law in twelve states of Nigeria. What about those who are living in Eritrea and in the northern part of Ethiopia?

In many parts of the world, where they are a minority, Christians are seen as pro-American and promoting pro-Western culture, and as potential spies. The blasphemy law in Pakistan is aimed essentially at Christians and establishes systematic religious discrimination in promoting a culture of intolerance. In some states in India, anti-conversion legislation has been passed and some pastors have been beaten and others killed to terrorize the Christian community.

According to Paul Marshall, senior fellow at the Center for Religious Freedom in Washington, D.C., 200 million Christians face violence because of their faith and 350 million face legally sanctioned discrimination in terms of access to jobs and housing.<sup>7</sup> Today, almost all religions feel threatened; but we can say Christianity, even though it is not without resources, is probably the least-defended religion on a geopolitical level.

Where now? The concept of “clash of civilizations” is a little simplistic when it comes to reality, but it stimulates our understanding of the current situation. A global religious war is very difficult to imagine unless religious and nationalist extremists take control of the world. Religious extremists already have enough power and influence in several countries to change politics and sharply increase the level of discrimination for religious minorities.

### The New Scapegoats

We seem to be heading for a time of greater tension between religions. While we may have religious wars in parts of the world such as India and Nigeria, persecution will be the most likely byproduct of that tension. In periods of crisis, people need a scapegoat, and they will find it. Religion has become the number one vehicle of hope and identity, and each dashing of hope—each challenge to unity—will more easily lead to religious scapegoating.

Christians are becoming the scapegoats in the Middle East and Asia. They are a minority and have links with the West, especially with America, which is seen as a Christian nation in a way the U.S. fundamentalists barely aspire to.

Muslims can be the scapegoats in America and Europe because of their links, real or imagined, with terrorism. There are numerous examples of innocent Muslims being arrested and detained on terrorism issues.

Evangelicals are almost the perfect scapegoat. They are a minority everywhere. Their links with America are strong, even if they are not necessarily pro-American. They are involved in proselyting everywhere, and they have conversions everywhere. Most of the media are against them. They don't usually have a strong centralized organization. They don't have the support of any country, and their activism creates hostile reactions among the Christian family.

In Asia and the Middle East, evangelicals are accused by mainline Christians of threatening the status quo and provoking anti-Christian violence. Orthodox Patriarch Emmanuel Delly said about the activities of evangelicals in Iraq: “I am not against the evangelicals, if they go to an atheist country to promote Christ, we would help them ourselves.”<sup>8</sup> Why? The answer is: “Even if a Muslim comes to me and said, ‘I want to be a Christian,’ I would not accept. I would tell him to go back and

try to be a good Muslim and God will accept you.” He added: “Trying to convert Muslims to Christianity is not acceptable.”<sup>9</sup>

In various Orthodox countries, evangelicals are accused of destabilizing the traditional religion. In Latin America, evangelicals and Pentecostals have drawn ire from politically entrenched Catholic majorities. If evangelicals keep on growing and evangelizing everywhere in the world, we can easily imagine a tacit agreement between traditional religions against this perceived threat. For the same reasons, the Latter-Day Saints and the Seventh-day Adventists could also become a target.

Jehovah's Witnesses are in a perfect position to fill the role of a scapegoat. They are non-violent, not involved in politics, do not accept support or alliance with any kind of organization, and are non-ecumenical, yet they proselytize everywhere and refuse to enroll in the army. Who cares about them? They were among the first to be arrested by the Nazi regime of the last century, and they were almost wiped out in Europe. Few, if any, cared. They have been persecuted in many countries for refusing to salute the flag or go into the army. They have been listed as a sect in France and fined 45 million euros (58 million dollars) for taxes on the sale of their books. It is unfair, but who cares?

What can we do? Many global trends today are not in favor of continued religious freedom. There is a great battle to come and we must be ready to defend religious freedom for all. We must defend the principle of church-state separation. We must work to create respect between religions. We have to explain to governments that religious discrimination is not good politics. In his article, “The Politics of Persecuted Religious Minorities,” Philip Jenkins writes: “The more [minorities] are excluded, the more they will devote their loyalties and efforts to the religious subculture, and the more they will be seen as clannish, separatists, or subversive.”<sup>10</sup>

Don't give up. Be the voice of the voiceless. Be the voice of the millions persecuted for their faith. We need to promote, defend, and protect religious freedom for all people everywhere. Religious freedom is the gift of the Creator to humanity.

### NOTES

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## Pew Forum – December 2009

- 1. On 198 countries, 64 had global restrictions.
- 1. They represented 70% of the world population.

## The IRLA World Report

Nations of the world are classified into 5 categories:

- Category 1: Religious freedom exists for all
- Category 2: No major problems
- Category 3: Some problems
- Category 4: Problems with repressive legislation
- Category 5: Religious freedom does not exist

## Countries in the World Report 2009

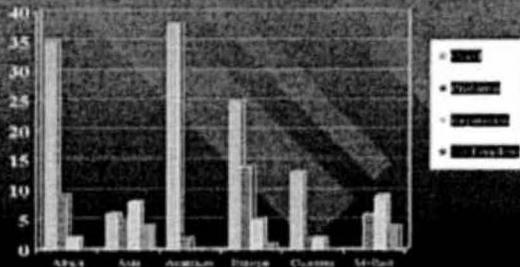
A total of 203 countries are listed:

- 118 provide a great deal of religious freedom to their citizens
- 53 allow religious freedom, but in several aspects of life there remain threats to religious minorities
- 23 place restrictions on religious freedom
- 9 totally deny religious freedom to their citizens

## Sensitive Areas



## Ranking of Religious Freedom by Regions



Region	Great deal	Some	Problems	No freedom
Africa	35	10	5	0
Asia	6	8	5	0
Americas	38	10	0	0
Europe	25	14	5	0
Oceania	14	5	0	0
Middle East	5	10	5	0

## Three Lessons

#1 Religious freedom is still protected in a majority of countries. This is the good news.

171 countries provide a great deal of religious freedom.

## Three Lessons

#2 Religious freedom is more frequently challenged. This is not good news.

29 countries have serious restrictions.

## Three Lessons

#3 Religious intolerance does *not* spare any group. Intolerance affects Muslims, Christians, and other religious groups.

The Muslims in India, the Hindus in Afghanistan...

### Persecution has a Face



### Persecution: Chiapas, Mexico



### Persecution has a Face




### Religious Freedom is Challenged

### Origin of Persecution

1. Governments pass laws and regulations
2. Alliance between governments and religions
3. Private and social groups

### Laws and Regulations

1. Governments pass laws and regulations
  - China
  - Vietnam
  - North Korea
  - Eritrea
  - Pakistan

### The Blasphemy Law

- According to the Criminal Penal Code:

Defiling the Quran merits imprisonment for life.  
 Defaming Muhammad merits death with or without a fine. If a charge is laid under § 295 C, the trial must take place in a Court of Session with a Muslim judge presiding.

### The Blasphemy Law

*Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both (§ 298).*

## The Blasphemy Law

- According to the Criminal Penal Code:

Defiling the Quran merits imprisonment for life. Defaming Muhammad merits death, with or without a fine. If a charge is laid under § 295 C, the trial must take place in a Court of Session with a Muslim judge presiding.

## Consequences of the Blasphemy Law

- Salman Taseer, Governor of Punjab, had been criticized by radical factions in Pakistan when he opposed the death sentence imposed on Asia Bibi, a Christian woman convicted under Pakistan's blasphemy laws for allegedly making derogatory remarks about the Prophet Muhammad.

Becker: Road to Sahagaya Freedom, January 8, 2011

## Assassination of Punjab Governor

- Governor Salman Taseer was assassinated in Islamabad January 4.
- He was shot nine times by one of his bodyguards, because he opposed Pakistan's Blasphemy Laws.

## The Price of Freedom

- "Governor Taseer was killed for defending the religious freedom of those he disagreed with," said [The Christian Science Monitor](#). "Those who love freedom should honor his sacrifice by fighting blasphemy laws in Pakistan and elsewhere."

## Assassination of Shabaz Bhatti

- March 2, 2011, Shabaz Bhatti, Pakistan's Minister for Minority Affairs, was gunned down outside his mother's home in Islamabad.
- The Pakistani Taliban and Al Qaeda have claimed responsibility for the killing, citing Bhatti's long-running efforts to reform the country's blasphemy laws.

## Alliance with the Government

### 2. Alliance: Government and Religion

Saudi Arabia; Iran; Afghanistan ...

### 3. Private and social groups

Nigeria; Bangladesh; India; Egypt; Indonesia; Ethiopia, Iraq ...

## Egypt: New Year's Tragedy

- At least 21 people were killed and 70 injured in the suspected suicide attack, which happened during a New Year's Eve service at the al Qiddisin Church.

## 30 days later

- On Sunday, the January 30, 2011 at 3:00 pm Egyptian time another massacre of Coptic Christians took place in the village of Sharana, Province of Al Minya.
- A total of 11 indigenous Coptic Christians, were assassinated inside their houses, including infants as young as 3 years old.

## Ethiopia, March 2011

- At least one Christian has been killed and more than 4,000 Christians have reportedly been displaced ... More than 50 churches were burned.
- "The atrocity is still going on and more people are suffering," the source said.
- The attacks occurred after a Christian was accused of desecrating a copy of the Kuran by tearing it up.

By Brian Hall, Pastor, Christian Today, Tuesday, March 8, 2011, 11:18 (GMT)  
Coupam

## Ethiopia and Eritrea

- "In this unfortunate situation 7 church buildings were burnt down. Tithes in kind and offerings in kind were also burnt down in their storage facilities, members' homes were also burnt down, crop fields were also burnt down. Many families had to flee to the jungles for their safety." E-mail from Ethiopia
- Eritrea: 1,500 to 3,000 Christians are languishing in Eritrea's notorious prison where they are tortured.

## Indonesia

"Violent incidents took place in West Java in early February. Radical Muslim groups attacked first a moderate Muslim group and then burnt down churches in Central and West Java, after a court convicted a Christian man of blasphemy."

Letter to John Gray, March 14

## 3. The Trends for the 21<sup>st</sup> Century

The world has changed!

## 20 Years Ago

- Church-State separation
- Human rights
- Religious minorities

## Today

- Social conservatism
- Alliance between Church and State seems acceptable for the good of the country
- State control of churches
- Minorities are suspicious

## 20 Years Ago

- The U.S. was the only superpower
- The Soviet Union was collapsing
- Europe was trying to build a Union
- Western values were dominant at the United Nations

## Today

- The supremacy of the U.S. is challenged
- New powers are emerging: China, India, Russia, Europe, Brazil.
- Western values of human rights, religious freedom, church-state separation are no longer dominant.
- Islam and Buddhism are supported by a number of countries.
- Western countries don't defend persecuted Christians.

## The West Ignores Persecuted Christians

- In the U.K. Cardinal Keith O'Brien accused the Foreign Secretary of doubling overseas aid to Pakistan to more than £445 million without demanding religious freedom for Christians and other religious minorities, such as Shia Muslims.

The Telegraph, By [John L. Heilbrunn](#), Scottish Political Editor  
10:54AM GMT 15 Mar 2011

## Persecution: Getting Worse!

- Cardinal Keith O'Brien was speaking ahead of the launch of a report into Christian persecution, which suggests it is getting worse in 22 of 34 'problem' countries identified.
- He claimed that three-quarters of all religious persecution in the world is now directed at Christians, resulting in a collapse in the number of followers in some Middle East countries.

## The Trends for the 21st Century

- Governments want to control religion
- Church and State form new Alliances
- Proselytism seen as a factor of destabilization
- Religions feel attacked

## Some Examples

- └ Islam feels attacked
- └ Reaction: UN Resolution on Defamation of Religions
- └ "Western Christianity" feels attacked
- └ Reaction: Swiss voted banning Minarets

## Consequences

- The OIC is now pushing for an international treaty to control religious speech.
- Critiquing a given religion (or sexual orientation in the Western world) is likely to be penalized in more and more countries.

## Defamation of Religion

- To protect religious sensibilities, the Organization of the Islamic Conference (OIC) sponsored a resolution at the UN Human Rights Council which promotes limiting religious speech – the resolution passed.
- Their purpose is to encourage governments to pass legislation that bans speech they find offensive.

## Increasing Religious Sensitivity

- National and traditional religions need the help of the state to neutralize their competitors and their dissidents.
- Proselytism and evangelism are seen as an attack on these religions.
- Religious freedom, as the Universal Declaration of Human Rights defines it, is seen as dangerous for religious peace.

## Peace and Harmony

- Countries need to build national unity and avoid civil unrest and division.
- Religion is a factor of unity and stability, but it may become a factor of conflict.
- The state needs to find allies in the religious world.
- Historical and traditional churches and religions benefit from this alliance.

## What can we do?

1. Be responsible in our writing and speaking
2. Favor inter-religious dialogues
3. Be positively active in the community
4. Promote and protect religious freedom for all

## Where Are we Going?

- Are we going back to the politics of scapegoats?
- Will dissidents and minorities be targeted?
- Will they be accused of destabilizing the establishment?

## Potential Scapegoats

1. Christians in Middle East and Asia
2. Muslims in America
3. Evangelicals everywhere
4. Religious minorities everywhere

## The More Minorities are Excluded ...

"The more minorities are excluded, the more they will devote their loyalties and efforts to religious subculture, and the more they will be seen as clannish, separatists or subversive."

Philip Jenkins

## Don't Give up

1. Don't give up. Be the voice of the voiceless.
2. Be the voice of millions who are persecuted for their religion.
3. Be a sign of the kingdom of God on earth.
4. We need your commitment and your help to promote religious freedom for all people everywhere.

# The Family: The Hope for the Future of Nations

Russell M. Nelson, *Hope in Our Hearts* (Salt Lake City 2009)

## The Family: The Hope for the Future of Nations

As do you, I care deeply about the family. Not only do I care deeply about the worth of the family to God and to all of God's children, but I have experienced the strength that comes into the lives of a man and woman who cherish each other as husband and wife and who love their children.

My deceased wife, Dantzel, and I were blessed with nine daughters and a son. Our great joys of family life are real; our sorrows have been heart-wrenching. I know what it is to lose a daughter from cancer and to walk from her funeral carrying her two young sons in my arms. I have also felt the joy when our son-in-law married a wonderful woman who once again completed their family circle.

I know what it is to see a daughter suffer through a divorce. I have seen the pain and upheaval that ensued, and have also been grateful for the remarkable man she later married, who has again completed that family circle.

After fifty-nine years of marriage, my dear wife, Dantzel, died of a sudden rhythm shift of the heart. Ironically, my professional life as a heart surgeon included intensive research in the very malady that claimed her life. Even so, I could not resuscitate her. I know about a widower's silent loneliness.

I also know what it is to be blessed again by my Heavenly Father in marrying a second time, also to a woman of compassion and generosity of spirit, who has once again completed my family circle. Nothing, absolutely nothing, compares with the companionship between a husband and a wife. And nothing, absolutely nothing, can provide the joy and growth that come from happy children who make a family circle. Throughout my life, I have answered to many titles, including doctor, captain, professor, and elder. But the titles I revere most are those of husband, father, and grandfather.

On all sides, the family is under attack. Many wonder if the institution is no longer needed. Our response is certain: If there is any hope for the future of nations, that hope resides in the family. Our children are our wealth; our children are our strength; our children are indeed our future!

You are likely well aware of the ominous statistics. In the past fifty years, the birthrate has dropped in nearly every nation of the world. In the nations of Europe the birthrate has dropped from the replacement rate of 2.1 children per woman to the present rate of 1.5.<sup>1</sup> Nations that cannot maintain their populations could even disappear, along with their culture and heritage.

Data from the United States show similar worrisome trends. In 1960, minor children formed half of the population; now they constitute only 30 percent.<sup>2</sup> Predictions are that by the year 2025, single-person households will outnumber families with children.<sup>3</sup>

What would happen to the future of nations if the next generation failed to appear in significant numbers? The answer is alarming! Yes, we would be poorer economically, but even poorer spiritually.

Spiritual concerns are of great importance. Spiritually, we need children as much as they need us. They are our spiritual wealth. Children teach us the joy of building goodness that will outlive our own. They teach us the joy of loving someone more than self. That love lifts us to give from the abundance of our own lives to help a child. I know what it is to see my dear sister, Enid, donate a kidney for her daughter, Sally, otherwise doomed to an early demise. Now, sixteen years later, they are emotionally closer and stronger, physically and spiritually.

In the twilight of life—in the declining years that can be so difficult—those individuals who made an earlier self-centered choice not to have children will be alone and unloved. They missed the point of the Psalmist who said: “As arrows are in the hand of a mighty man; so are children of the youth. Happy is the man that hath his quiver full of them” (Psalm 127:4–5).

Future happiness and even the future of nations are linked to children. Families with children need to be re-enthroned as the fundamental unit of society. We simply must value children more than we do! Without a new generation to replace the old, there is no wealth; without families, there is no future.

Children come from the union of a man and a woman. The happiest and most secure children come from happy and secure marriages of fathers and mothers. History and contemporary studies have shown that marriage of a husband and a wife, with both contributing their distinctive natural traits to the family, provides the ideal context within which to rear productive, compassionate, and moral individuals.<sup>4</sup>

In 2006, the parliament of France courageously rejected same-gender marriage precisely so that children would not “suffer as a result of situations imposed on them by adults. The interest of the child must outweigh the exercise of freedom by adults . . . whatever life choices are made by the parents.”<sup>5</sup>

Any attempt to broaden the definition of marriage to encompass a contractual relationship between adults outside of the traditional family weakens the institution of marriage as God Himself defined it, and undermines the separate, divinely decreed responsibilities of man and woman for procreation, protection, and rearing of children.

Marriage is not simply a contract between individuals; it affects all of society. For that reason, governments have long recognized the family as the fundamental unit of society and have endorsed and encouraged traditional marriage through legal recognitions, protections, and benefits.

Individuals and groups who would overthrow the traditional concept of marriage and family would first mutate and then mutilate these long-established, time-tested social norms. The consequences of such changes would have far-reaching implications. If youth were to harbor the belief that the traditional family is but one choice of lifestyle among others, many of them will make choices that will reap only emptiness and despair, both for themselves and for society at large.

Furthermore, those who seek to undermine traditional marriage and family would effectively limit the rights of those who do uphold the sanctity of these institutions. This consequence leads to another major concern—the eventual erosion of religious liberty, including the liberty to defend, promote, and practice traditional family values.<sup>6</sup> Religious liberty is essential if we are to raise up righteous children. Morally responsible families will not marginalize religious liberty, they will nurture and protect it.

Caring people everywhere can help with persuasive statements and continuing efforts to defend marriage and promote the interests of children in traditional families. While competing voices battle for approval, our message must be clear. We can learn from Paul, who said: “There are . . . so many kinds of voices in the world, and none of them is without signification” (1 Corinthians 14:10).

“For if the trumpet give an uncertain sound, who shall prepare himself to the battle?” (1 Corinthians 14:8).

Our message is certain! Children are the hope for the future of our nations!

## Notes

*From a talk given at the World Congress on Families V, Amsterdam, The Netherlands, August 2009.*

1. *United Nations World Population Prospects: 2006 revision*—Table A.15n.
2. David P. Goldman, “Demographics & Depression,” *First Things*, May 2009, 24.
3. *Ibid.*
4. This conclusion reflects what the *New York Times* has called a “powerful consensus among social scientists that ‘from a child’s point of view . . . the most supportive household is one with two biological parents in a low-conflict marriage.’” Hardin, *2-Parent Families Rise After Change in Welfare Laws*, quoted in *What Next for the Marriage Movement?* (New York: Institute for American Values), posted to MarriageMovement.org, 12 Dec. 2004.
5. *Report of the Mission of Inquiry on the Family and the Rights of Children*, a study commission appointed by the National Assembly of France, January 25, 2006, 46 (English translation of commission report).

6. In countries where same-gender marriage is adopted with no religious exemptions, all religions could eventually be required to perform homosexual marriages or to accept homosexual priests—even when that violates their most basic doctrines.

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# Religious Values and Public Policy

ELDER DALLIN H. OAKS

*Of the Quorum of the Twelve*



From an address given 29 February 1992 to the Brigham Young University Management Society, Washington, D.C.

## Religious Values and Public Policy

Last April my Church duties took me to Albania. Elder Hans B. Ringger and I were some of the first Western visitors to that newly opened country. We conferred with government officials about the reception our church's missionaries would receive in Albania, which had banned all churches in 1967. They told us the government regretted its actions against religion, and that it now welcomed churches back to Albania. One explained, "We need the help of churches to rebuild the moral base of our country, which was destroyed by communism." During the past months I have heard this same reaction during discussions with government and other leaders in Bulgaria, Romania, Russia, and Ukraine.

In contrast, consider what we hear about religion from some prominent persons in the United States. Some question the legitimacy of religious-based values in public policy debates. Some question the appropriateness of churches or religious leaders taking any public position on political issues.

Provoked by that contrast, I will use this occasion to speak about the role of religion-based values and religious leaders in public policy debates.

## Questions of Right and Wrong

Fundamental to the role of religion in public policy is this most important question: Are there moral absolutes? Speaking to our BYU students earlier this year, President Rex E. Lee said:

"I cannot think of anything more important than for each of you to build a firm, personal testimony that there are in this life some absolutes, things that never change, regardless of time, place, or circumstances. They are eternal truths, eternal principles and, as Paul tells us, they are and will be the same yesterday, today, and forever."<sup>1</sup>

Unfortunately, other educators deny the existence of God or deem God irrelevant to the human condition. Persons who accept this view deny the existence of moral absolutes. They maintain that right and wrong are relative concepts, and morality is merely a matter of personal choice or expediency. For example, a university professor reported that her students lacked what she called "moral common sense." She said they believed that "there was no such thing as right or wrong,

just good or bad arguments.”<sup>2</sup> In that view, even the most fundamental moral questions have at least two sides, and every assertion of right or wrong is open to debate.

I believe that these contrasting approaches underlie the whole discussion of religious values in public policy. Many differences of opinion over the role of religion in public life simply mirror a difference of opinion over whether there are moral absolutes. But this underlying difference is rarely made explicit. It is as if those who assume that all values are relative have established their assumption by law or tradition and have rendered illegitimate the fundamental belief of those who hold that some values are absolute.

One of the consequences of shifting from *moral absolutes* to *moral relativism* in public policy is that this produces a corresponding shift of emphasis from *responsibilities* to *rights*. Responsibilities originate in moral absolutes. In contrast, rights find their origin in legal principles, which are easily manipulated by moral relativism. Sooner or later the substance of rights must depend on either the voluntary fulfillment of responsibilities or the legal enforcement of duties. When our laws or our public leaders question the existence of absolute moral values, they undercut the basis for the voluntary fulfillment of responsibilities, which is economical, and compel our society to rely more and more on the legal enforcement of rights, which is expensive.

Some moral absolutes or convictions must be at the foundation of any system of law. This does not mean that all laws are so based. Many laws and administrative actions are simply a matter of wisdom or expediency. But many laws and administrative actions are based upon the moral standards of our society. If most of us believe that it is wrong to kill or steal or lie, our laws will include punishment for those acts. If most of us believe that it is right to care for the poor and needy, our laws will accomplish or facilitate those activities. Society continually legislates morality. The only question is whose morality and what legislation.

In the United States, the moral absolutes are the ones derived from what we refer to as the Judeo-Christian tradition, as set forth in the Bible—Old Testament and New Testament.

Despite ample evidence of majority adherence to moral absolutes, some still question the legitimacy of a moral foundation for our laws and public policy. To avoid any suggestion of adopting or contradicting any particular religious absolute, some secularists argue that our laws must be entirely neutral, with no discernable relation to any particular religious tradition. Such proposed neutrality is unrealistic, unless we are willing to cut away the entire idea that there are moral absolutes.

Of course, not all moral absolutes are based on traditional religion. A substantial segment of society has subscribed to the environmental movement, which Robert Nisbet, a distinguished American sociologist, has characterized as a “national religion,” with a “universalized social, economic, and political agenda.”<sup>3</sup> So far as I am aware, there has been no responsible public challenge to the legitimacy of laws based on the environmentalists’ set of values. I don’t think there should be. My point is that religious values are just as legitimate as those based on any other comprehensive set of beliefs.

## Religion and the Public Sector

Let us apply these thoughts to the role of religions, churches, and church leaders in the public sector.

Some reject the infusion of religious-based values in public policy by urging that much of the violence and social divisiveness of the modern world is attributable to religious controversies. But

all should remember that the most horrible moral atrocities of the twentieth century in terms of death and human misery have been committed by regimes that are unambiguously secular, not religious.

Even though we cannot reject religious values in law-making on the basis of their bad record by comparison with other values, there are examples of hostility to religious values in the public sector. For example, less than a decade ago, the United States Department of Justice challenged a federal judge's right to sit on a case involving the Equal Rights Amendment on the ground that his religious views would prejudice him. The judge was Marion Callister. The religious views were LDS. In that same decade, the American Civil Liberties Union took the position that any pro-life abortion law was illegitimate because it must necessarily be founded on religious belief.<sup>4</sup>

A few years ago some Protestant and Jewish clergymen challenged a federally financed program to promote abstinence from sexual activity among teenage youngsters. The grant recipients included BYU and some Catholic charities in Virginia and Michigan. The ACLU attorney who filed this challenge declared that "the 'chastity law' is unconstitutional because it violates the requirement for separation of church and state" because taxpayer dollars "are going to religious institutions, which use the funds to teach religious doctrines opposing teen-age sex and abortion."<sup>5</sup> In the meantime, the "value" judgments that permit public schools to distribute birth control devices to teenagers supposedly violate no constitutional prohibition because the doctrine that *opposes* chastity is secular.

During this same period, Professor Henry Steele Commager criticized the Moral Majority and the Roman Catholic Church for "inject[ing] religion into politics more wantonly than at any time since the Know-Nothing crusade of the 1850's." Writing in a *New York Times* column, this distinguished scholar asserted that "what the Framers [of the U. S. Constitution] had in mind was more than separating church and state: it was separating religion from politics." While conceding that no one could question the right to preach "morality and religion," Commager argued that churchmen of all denominations crossed an impermissible line "when they connect morality with a particular brand of religious faith and this, in turn, with political policies."<sup>6</sup>

Apparently, churchmen can preach morality and religion as long as they do not suggest that their particular brand of religion has any connection with morality or that the resulting morality has any connection with political policies. Stated otherwise, religious preaching is okay so long as it has no practical impact on the listeners' day-to-day behavior, especially any behavior that has anything to do with political activity or public policy.

As we know, the idea that there is an absolute right and wrong comes from religion, and the absolute values that have influenced law and public policy are most commonly rooted in religion. In contrast, the values that generally prevail in today's academic community are relative values.

I have read serious academic arguments to the effect that religious people can participate in public debate only if they conceal the religious origin of their values by translating them into secular dialect. In a nation committed to pluralism, this kind of hostility to religion should be legally illegitimate and morally unacceptable. It is also irrational and unworkable, for reasons explained by BYU law professor Frederick Mark Gedicks:

"Secularism has not *solved* the problem posed by religion in public life so much as it has *buried* it. By placing religion on the far side of the boundary marking the limit of the real world, secularism prevents public life from taking religion seriously. Secularism does not teach us to live with those

who are religious; rather, it demands that we ignore them and their views. Such a 'solution' can remain stable only so long as those who are ignored acquiesce in their social situation."<sup>7</sup>

Fortunately, the Supreme Court has never held that citizens could not join together to translate their moral beliefs into laws or public policies even when those beliefs are derived from religious doctrine. Indeed, there are many sophisticated and articulate spokesmen for the proposition that the separation of church and state never intended to exclude religiously grounded values from the public square. For example, I offer the words of Richard John Neuhaus:

"In a democracy that is free and robust, an opinion is no more disqualified for being 'religious' than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb. There is no legal or constitutional question about the admission of religion to the public square; there is only a question about the free and equal participation of citizens in our public business. Religion is not a reified 'thing' that threatens to intrude upon our common life. Religion in public is but the public opinion of those citizens who are religious.

"As with individual citizens, so also with the associations that citizens form to advance their opinions. Religious institutions may understand themselves to be brought into being by God, but for the purposes of this democratic polity they are free associations of citizens. As such, they are guaranteed the same access to the public square as are the citizens who comprise them."<sup>8</sup>

No person with values based on religious beliefs should apologize for taking those values into the public square. Religious persons need to be skillful in how they do so, but they need not yield to an adversary's assumption that the whole effort is illegitimate. We should remind others of the important instances in which the efforts of churches and clergy in the political arena have influenced American public policies in great historical controversies whose outcome is virtually unquestioned today. The slavery controversy was seen as a great moral issue and became the major political issue of the nineteenth century because of the preaching of clergy and the political action of churches. A century later, churches played an indispensable role in the civil rights movement, and, a decade later, clergymen and churches of various denominations were an influential part of the antiwar movement that contributed to the end of the war in Vietnam.

Many sincere religious people believe there should be no limitations on religious arguments on political issues so long as the speaker genuinely believes those issues can be resolved as a matter of right or wrong.

I believe that questions of right and wrong, whether based on religious principles or any other source of values, are legitimate in any debate over laws or public policy. Is there anything more important to debate than what is right or wrong? And those arguments should be open across the entire political spectrum. There is no logical way to contend that religious arguments or lobbying are legitimate on the question of abstinence from nuclear war by nations but not on the question of abstinence from sexual relations by teenagers.

## Church Participation in Political Debate

What limitations should churches and their leaders observe when they choose to participate in public debate on political issues?

I emphasize at the outset that I am discussing limits to guide all churches across a broad spectrum of circumstances. I am not seeking to define or defend a Mormon position. As a matter of prudence, our church has confined its own political participation within a far smaller range than

is required by the law or the Constitution. Other churches have chosen to assert the full latitude of their constitutional privileges and, in the opinion of some, have even exceeded them.

Where should we draw the line between what is and is not permissible for church and church-leader participation in public policy making?

At one extreme, we hear shrill complaints about political participation by any persons whose political views are attributable to religious beliefs or the teachings of their church. The words "blind obedience" are usually included in such complaints. Complaints there are, but I am not aware of any serious or rational position that would ban religious believers from participation in the political process. The serious challenges concern the participation of churches and church leaders.

Perhaps the root fear of those who object to official church participation in political debates is power: They fear that believers will choose to follow the directions or counsel of their religious leaders. Those who have this fear should remember the celebrated maxim of Jefferson: "Error of opinion may be tolerated where reason is left free to combat it."<sup>9</sup> Some may believe that reason is not free when religious leaders have spoken, but I doubt that any religious leader in twentieth-century America has such a grip on followers that they cannot make a reasoned choice in the privacy of the voting booth. In fact, I have a hard time believing that the teachings of religions or churches deprive their adherents of any more autonomy in exerting the rights of citizenship than the teachings and practices of labor unions, civil rights groups, environmental organizations, political parties, or any other membership group in our society.

I submit that religious leaders should have at least as many privileges as any other leaders, and that churches should stand on at least as strong a footing as any other corporation when they enter the public square to participate in public policy debates. The precious constitutional right of petition does not exclude any individual or any group. The same is true of freedom of speech and the press. When religion has a special constitutional right to its free exercise, religious leaders and churches should have *more* freedom than other persons and organizations, not less.

If churches and church leaders should have full rights to participate in public policy debates, should there be any limits on such participation?

Of course there are limits that apply specially to churches and church officials, as manifest in the United States Constitution's prohibition against Congress's making any law respecting an establishment of religion. Some linkages between churches and governments are obviously illegitimate. It would clearly violate this prohibition if a church or church official were to exercise government power or dictate government policies or direct the action of government officials independent of legal procedures or political processes.

Fundamentally, I submit that there is no persuasive objection in law or principle to a church or church leader taking a position on any legislative matter, if it or he or she chooses to do so.

Now, relative to church participation in public debate, when churches or church leaders choose to enter the public sector to engage in debate on a matter of public policy, they should be admitted to the debate and they should expect to participate in it on the same basis as all other participants. In other words, if churches or church leaders choose to oppose or favor a particular piece of legislation, their opinions should be received on the same basis as the opinions offered by other knowledgeable organizations or persons, and they should be considered on their merits.

By the same token, churches and church leaders should expect the same broad latitude of discussion of their views that conventionally applies to everyone else's participation in public policy debates. A church can claim access to higher authority on moral questions, but its opinions on the application of those moral questions to specific legislation will inevitably be challenged by and measured against secular-based legislative or political judgments. As James E. Wood observed, "While denunciations of injustice, racism, sexism, and nationalism may be clearly rooted in one's religious faith, their political applications to legislative remedy and public policy are by no means always clear."<sup>10</sup>

Finally, if church leaders were also to exhibit openness and tolerance of opposing views, they would help to overcome the suspicion and resentment sometimes directed toward church or church-leader participation in public debate.

In summary, I have pointed out that many U.S. laws are based on the absolute moral values most Americans affirm, and I have suggested that it cannot be otherwise. I have contended that religious-based values are just as legitimate a basis for political action as any other values. And I have argued that churches and church leaders should be able to participate in public policy debates on the same basis as other persons and organizations, favoring or opposing specific legislative proposals or candidates if they choose to do so.

Politicians sometimes seek to use religion for political purposes, and they sometimes even seek to manipulate churches or church leaders. Ultimately this is always self-defeating. Whenever a church (or a church leader) becomes a pawn or servant of government or a political leader, it loses its status and the credibility it needs to perform its religious mission.

Churches or their leaders can also be the aggressors in the pursuit of intimacy with government. The probable results of this excess have been ably described as "the seduction of the churches to political arrogance and political innocence or even the politicizing of moral absolutes."<sup>11</sup>

The relationship in the world between church and state and between church leaders and politicians should be respectful and distant, as befits two parties who need one another but share the realization that a relationship too close can deprive a pluralistic government of its legitimacy and a divine church of its spiritual mission. Despite that desirable distance, government need not be hostile to religion or pretend to ignore God.

## Notes

1. Rex E. Lee, "Things That Change and Things That Don't," BYU Winter Devotional, 14 Jan. 1992.
2. Professor Christina Hoff Sommers of Clark University, as quoted in *Insight*, 23 Dec. 1991, p. 18.
3. Quoted by Allan Carlson in "The 'Green' Alternative and the Death Watch for Industrial Society," *Persuasion at Work*, Sept. 1984, p. 1.
4. Both of these examples are cited by Russell Kirk in "We Cannot Separate Christian Morals and the Rule of Law," *Imprimis*, 4 Apr. 1983.
5. Quoted in Robert Pear, "Treating the Nation's Epidemic of Teen-Age Pregnancy," *New York Times*, 3 June 1984, p. E-5.
6. Henry Steele Commager, "Public Morality, Not Religion," *New York Times*, 16 Sept. 1984, Section 4, p. 23, col. 2.

7. Frederick Mark Gedicks, "The Religious, the Secular, and the Antithetical," *Capital U. L. Rev.* 20 (1991): 191, note 9. 113, 139.

8. Richard John Neuhaus, "A New Order of Religious Freedom," *First Things*, Feb. 1992, p. 13. Also see Richard John Neuhaus, *The Naked Public Square*, 1984.

9. Thomas Jefferson, First Inaugural Address, quoted in Bartlett's *Familiar Quotations*, 13th ed., 1955, p. 374.

10. Reported in James E. Wood, Jr., "Church Lobbying and Public Policy," *Journal of Church and State* 28 (1986):183.

11. Ibid.



## Religious Freedom

13 October 2009 | *Transcript of Elder Dallin H. Oaks speech given at BYU-Idaho on 13 October 2009.*

My dear young friends, I am pleased to speak to this BYU-Idaho audience. I am conscious that I am also speaking to many in other places. In this time of the Internet, what we say in one place is instantly put before a wider audience, including many to whom we do not intend to speak. That complicates my task, so I ask your understanding as I speak to a very diverse audience.

In choosing my subject I have relied on an old military maxim that when there is a battle underway, persons who desire to join the fray should "march to the sound of the guns."<sup>[i]</sup> So it is that I invite you to march with me as I speak about religious freedom under the United States Constitution. There is a battle over the meaning of that freedom. The contest is of eternal importance, and it is your generation that must understand the issues and make the efforts to prevail.

### I.

An 1833 revelation to the Prophet Joseph Smith declared that the Lord established the United States Constitution by wise men whom he raised up for that very purpose (Doctrine and Covenants 101:80). The Lord also declared that this constitution "should be maintained for the rights and protection of *all flesh*" (Doctrine and Covenants 101:77; emphasis added).

In 1833, when almost all people in the world were still ruled by kings or tyrants, few could see how the infant United States Constitution could be divinely designed "for the rights and protection of all flesh." Today, 176 years after that revelation, almost every nation in the world has adopted a written constitution, and the United States Constitution profoundly influenced all of them. Truly, this nation's most important export is its constitution, whose great principles stand as a model "for the rights and protection of all flesh." On the vital human right of religious freedom, however, many constitutions fall short of the protections that are needed, so we are grateful that the United States government seeks to encourage religious freedom all over the world.<sup>[ii]</sup>

### II.

To illustrate the importance of basic human rights in other countries, I refer to some recent history in Mongolia, which shows that the religious freedom we have taken for granted in the United States must be won by dangerous sacrifice in some other nations.

Following the perestroika movement in the Soviet Union, popular demonstrations in Mongolia forced the Communist government to resign in March 1990. Other political parties were legalized, but the first Mongolian elections gave the Communists a majority in the new parliament, and the old repressive attitudes persisted in all government departments. The full functioning of a democratic process and the full enjoyment of the people's needed freedoms do not occur without a struggle. In Mongolia, the freedoms of speech, press and religion — a principal feature of the inspired United States Constitution — remained unfulfilled.

In that precarious environment, a 42-year-old married woman, Oyun Altangerel, a department head in the state library, courageously took some actions that would prove historic. Acting against official pressure, she organized a "Democratic Association Branch Council." This 12-member group, the first of its kind, spoke out for democracy and proposed that state employees have the freedoms of worship, belief and expression, including the right to belong to a political party of their choice.

When Oyun and others were fired from their state employment, Oyun began a hunger strike in the state library. Within three hours she was joined by 20 others, mostly women, and their hunger strike, which continued for five days, became a public demonstration that took their grievances to the people of Mongolia. This demonstration, backed by major democratic movement leaders, encouraged other government employees to organize similar democratic councils. These dangerous actions expanded into a national anti-government movement that voiced powerful support for the basic human freedoms of speech, press and religion. Eventually the government accepted the demands, and in the adoption of a democratic constitution two years later Mongolia took a major step toward a free society.

For Latter-day Saints, this birth of constitutional freedom in Mongolia has special interest. Less than two years after the historic hunger strike, we sent our first missionaries to Mongolia. In 1992 these couples began their meetings in the state library, where Oyun was working. The following year, she showed her courage again by being baptized into this newly arrived Christian church. Her only child, a 22-year-old son, was baptized two years later. Today, the Mongolian members of our Church number 9,000, reportedly the largest group of Christians in the country. A few months ago we organized our first stake in Mongolia. Called as the stake president was Sister Oyun's son, Odgerel. He had studied for a year at BYU-Hawaii, and his wife, Ariuna, a former missionary in Utah, graduated there.<sup>[iii]</sup>

## III.

One of the great fundamentals of our inspired constitution, relied on by Oyun of Mongolia and countless others struggling for freedom in many countries in the world, is the principle that the people are the source of government power. This principle of popular sovereignty was first written and applied on the American continent over 200 years ago. A group of colonies won independence from a king, and their representatives had the unique opportunity of establishing a new government. They did this by creating the first written constitution that has survived to govern a modern nation. The United States Constitution declared the source of government power, delegated that power to a government, and regulated its exercise.

Along with many other religious people, we affirm that God is the ultimate source of power and that, under Him, it is the people's inherent right to decide their form of government. Sovereign power is not inherent in a state or nation just because its leaders have the power that comes from force of arms. And sovereign power does not come from the divine right of a king, who grants his subjects such power as he pleases or is forced to concede, as in Magna Carta. As the preamble to our constitution states: "We the People of the United States . . . do ordain and establish this Constitution."

This principle of sovereignty in the people explains the meaning of God's revelation that He established the Constitution of the United States "that every man may act . . . according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment" (Doctrine and Covenants 101:78). In other words, the most desirable condition for the effective exercise of God-given moral agency is a condition of maximum freedom and responsibility — the opposite of slavery or political oppression. With freedom we can be accountable for our own actions and cannot blame our conditions on our bondage to another. This is the condition the Lord praised in the Book of Mormon, where the people — not a king — established the laws and were governed by them (see Mosiah 29:23–26). This popular sovereignty necessarily implies popular *responsibility*. Instead of blaming their troubles on a king or tyrant, all citizens are responsible to share the burdens of governing, "that every man might bear his part" (Mosiah 29:34).

## IV.

"For the rights and protection of all flesh" the United States Constitution includes in its First Amendment the guarantees of free exercise of religion and free speech and press. Without these great fundamentals of the Constitution, America could not have served as the host nation for the restoration of the gospel, which began just three decades after the Bill of Rights was ratified.

The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The prohibition against "an establishment of religion" was intended to separate churches and government, to prevent a national church of the kind still found in Europe. In the interest of time I will say no more about the establishment of religion, but only concentrate on the direction that the United States shall have no law "prohibiting the free exercise" of religion.

The guarantee of the free exercise of religion, which I will call religious freedom, is the first expression in the First Amendment to the United States Constitution. As noted by many, this "pre-eminent place" identifies freedom of religion as "a cornerstone of American democracy."<sup>[iv]</sup> The American colonies were originally settled by people who, for the most part, had come to this continent to be able to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation's Bill of Rights. So it is that our national law formally declares: "The right to freedom of religion undergirds the very origin and existence of the United States."<sup>[v]</sup>

The free "exercise" of religion obviously involves both the right to choose religious beliefs and affiliations and the right to "exercise" or practice those beliefs. But in a nation with citizens of many different religious beliefs, the right of some to act upon their religious principles must be qualified by the government's responsibility to protect the health and safety of all. Otherwise, for example, the government could not protect its citizens' person or property from neighbors whose intentions include taking human life or stealing in circumstances rationalized on the basis of their religious beliefs.

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. Here are just a few examples of current controversial public issues that involve this conflict: laws governing marriage and adoption; laws regulating the activities of church-related organizations like BYU-Idaho in furtherance of their religious missions — activities such as who they will serve or employ; and laws prohibiting discrimination in employment or work conditions against persons with unpopular religious beliefs or practices.

The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when government action is claimed to violate someone's free exercise of religion. As would be expected, most of the battles over the extent of religious freedom have involved government efforts to impose upon the practices of small groups like Mormons. Not surprisingly, government officials sometimes seem more tolerant toward the religious practices of large groups of voters.

Unpopular minority religions are especially dependent upon a constitutional guarantee of free exercise of religion. We are fortunate to have such a guarantee in the United States, but many nations do not. The importance of that guarantee in the United States should make us ever diligent to defend it. And it is in need of being defended. During my lifetime I have seen a significant deterioration in the respect accorded to religion in our public life, and I believe that the vitality of religious freedom is in danger of being weakened accordingly.

Religious *belief* is obviously protected against government action. The *practice* of that belief must have some limits, as I suggested earlier. But unless the guarantee of free exercise of religion gives a religious actor greater protection against government prohibitions than are already guaranteed to all actors by other provisions of the constitution (like freedom of speech), what is the special value of *religious* freedom? Surely the First Amendment guarantee of free exercise of *religion* was intended to grant more freedom to religious action than to other kinds of action. Treating actions based on religious belief the same as actions based on other systems of belief should not be enough to satisfy the special place of religion in the United States Constitution.

V.

Religious freedom has always been at risk. It was repression of religious belief and practice that drove the Pilgrim fathers and other dissenters to the shores of this continent. Even today, leaders in all too many nations use state power to repress religious believers.

The greatest infringements of religious freedom occur when the exercise of religion collides with other powerful forces in society. Among the most threatening collisions in the United States today are (1) the rising strength of those who seek to silence religious voices in public debates, and (2) perceived conflicts between religious freedom and the popular appeal of newly alleged civil rights.

As I address this audience of young adults, I invite your careful attention to what I say on these subjects, because I am describing conditions you will face and challenges you must confront.

### Silencing Religious Voices in the Public Square

A writer for *The Christian Science Monitor* predicts that the coming century will be “very secular and religiously antagonistic,” with intolerance of Christianity “ris[ing] to levels many of us have not believed possible in our lifetimes.”<sup>[vi]</sup> Other wise observers have noted the ever-growing, relentless attack on the Christian religion by forces who reject the existence or authority of God.<sup>[vii]</sup> The extent and nature of religious devotion in this nation is changing. The tide of public opinion in favor of religion is receding, and this probably portends public pressures for laws that will impinge on religious freedom.

Atheism has always been hostile to religion, such as in its arguments that freedom *of or for* religion should include freedom *from* religion. Atheism’s threat rises as its proponents grow in numbers and aggressiveness. “By some counts,” a recent article in *The Economist* declares, “there are at least 500 [million] declared non-believers in the world — enough to make atheism the fourth-biggest religion.”<sup>[viii]</sup> And atheism’s spokesmen *are* aggressive, as recent publications show.<sup>[ix]</sup> As noted by John A. Howard of the Howard Center for Family, Religion, and Society, these voices “have developed great skills in demonizing those who disagree with them, turning their opponents into objects of fear, hatred and scorn.”<sup>[x]</sup>

Such forces — atheists and others — would intimidate persons with religious-based points of view from influencing or making the laws of their state or nation. Noted author and legal commentator Hugh Hewitt described the current circumstance this way:

“There is a growing anti-religious bigotry in the United States. . . .

“For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as somehow threatening.”<sup>[xi]</sup>

For example, a prominent gay-rights spokesman gave this explanation for his objection to our Church’s position on California’s Proposition 8:

“I’m not intending it to harm the religion. I think they do wonderful things. Nicest people. . . . My single goal is to get them out of the same-sex marriage business and back to helping hurricane victims.”<sup>[xii]</sup>

Aside from the obvious fact that this objection would deny free speech as well as religious freedom to members of our Church and its coalition partners, there are other reasons why the public square must be open to religious ideas and religious persons. As Richard John Neuhaus said many years ago, “In a democracy that is free and robust, an opinion is no more disqualified for being ‘religious’ than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb.”<sup>[xiii]</sup>

### Religious Freedom Diluted by Other “Civil Rights”

A second threat to religious freedom is from those who perceive it to be in conflict with the newly alleged “civil right” of same-gender couples to enjoy the privileges of marriage.

We have endured a wave of media-reported charges that the Mormons are trying to “deny” people or “strip” people of their “rights.” After a significant majority of California voters (seven million — over 52 percent) approved Proposition 8’s limiting marriage to a man and a woman, some opponents characterized the vote as denying people their civil rights. In fact, the Proposition 8 battle was not about civil rights, but about what equal rights demand and what religious rights protect. At no time did anyone question or jeopardize the civil right of Proposition 8 opponents to vote or speak their views.

The real issue in the Proposition 8 debate — an issue that will not go away in years to come and for whose resolution it is critical that we protect everyone’s freedom of speech and the equally important freedom to stand for religious beliefs — is whether the opponents of Proposition 8 should be allowed to change the vital institution of marriage itself.

The marriage union of a man and a woman has been the teaching of the Judeo-Christian scriptures and the core legal definition and practice of marriage in Western culture for thousands of years. Those who seek to change the foundation of marriage should not be allowed to pretend that those who defend the ancient order are trampling on civil rights. The supporters of Proposition 8 were exercising their constitutional right to defend the institution of marriage — an institution of transcendent importance that they, along with countless others of many persuasions, feel conscientiously obliged to protect.

Religious freedom needs defending against the claims of newly asserted human rights. The so-called “Yogyakarta Principles,” published by an international human rights group, call for governments to assure that all persons have the right to practice their religious beliefs regardless of sexual orientation or identity.<sup>[xiv]</sup> This apparently proposes that governments require church practices and their doctrines to ignore gender differences. Any such effort to have governments invade religion to override religious doctrines or practices should be resisted by all believers. At the same time, all who conduct such resistance should frame their advocacy and their personal relations so that they are never seen as being doctrinaire opponents of the very real civil rights (such as free speech) of their adversaries or any other disadvantaged group.

#### VI.

And now, in conclusion, I offer five points of counsel on how Latter-day Saints should conduct themselves to enhance religious freedom in this period of turmoil and challenge.

*First*, we must speak with love, always showing patience, understanding and compassion toward our adversaries. We are under command to love our neighbor (Luke 10:27), to forgive all men (Doctrine and Covenants 64:10), to do good to them who despitefully use us (Matthew 5:44) and to conduct our teaching in mildness and meekness (Doctrine and Covenants 38:41).

Even as we seek to speak with love, we must not be surprised when our positions are ridiculed and we are persecuted and reviled. As the Savior said, “so persecuted they the prophets which were before you” (Matthew 5:12). And modern revelation commands us not to revile against revilers (Doctrine and Covenants 19:30).

*Second*, we must not be deterred or coerced into silence by the kinds of intimidation I have described. We must insist on our constitutional right and duty to exercise our religion, to vote our consciences on public issues and to participate in elections and debates in the public square and the halls of justice. These are the rights of all citizens and they are also the rights of religious leaders. While our church rarely speaks on public issues, it does so by exception on what the First Presidency defines as significant moral issues, which could surely include laws affecting the fundamental legal/cultural/moral environment of our communities and nations.

We must also insist on this companion condition of democratic government: when churches and their members or any other group act or speak out on public issues, win or lose, they have a right to expect freedom from retaliation.

Along with many others, we were disappointed with what we experienced in the aftermath of California’s adoption of Proposition 8, including vandalism of church facilities and harassment of church members by firings and boycotts of member businesses and by retaliation against donors. Mormons were the targets of most of this, but it also hit other churches in the pro-8 coalition and other persons who could be identified as supporters. Fortunately, some recognized such retaliation for what it was. A full-page ad in the *New York Times* branded this “violence and intimidation” against religious organizations and individual believers “simply because they supported Proposition 8 [as] an outrage that must stop.”<sup>[xv]</sup> The fact that this ad was signed by some leaders who had no history of friendship for our faith only added to its force.

It is important to note that while this aggressive intimidation in connection with the Proposition 8 election was primarily directed at religious persons and symbols, it was not anti-religious as such. These incidents were expressions of outrage against those who disagreed with the gay-rights position and had prevailed in a public contest. As such, these incidents of “violence and intimidation” are not so much anti-religious as anti-democratic. In their effect they are like the well-known and widely condemned voter-intimidation of blacks in the South that produced corrective federal civil-rights legislation.

*Third*, we must insist on our freedom to preach the doctrines of our faith. Why do I make this obvious point? Religious people who share our moral convictions feel some intimidation. Fortunately, our leaders do not refrain from stating and explaining our position that homosexual behavior is sinful. Last summer Elder M. Russell Ballard spoke these words to a BYU audience:

“We follow Jesus Christ by living the law of chastity. God gave this commandment, and He has never revoked or changed it. This law is clear and simple. No one is to engage in sexual relationships outside the bounds the Lord has set. This applies to homosexual behavior of any kind and to heterosexual relationships outside marriage. It is a sin to violate the law of chastity.

“We follow Jesus Christ by adhering to God’s law of marriage, which is marriage between one man and one woman. This commandment has been in place from the very beginning.”<sup>[xvi]</sup>

We will continue to teach what our Heavenly Father has commanded us to teach, and trust that the precious free exercise of religion remains strong enough to guarantee our right to exercise this most basic freedom.

*Fourth*, as advocates of the obvious truth that persons with religious positions or motivations have the right to express their religious views in public, we must nevertheless be wise in our political participation. Preachers have been prime movers in the civil rights movement from the earliest advocates of abolition, but even the civil rights of religionists must be exercised legally and wisely.

As Latter-day Saints, we should never be reticent to declare and act upon the sure foundations of our faith. The call of conscience — whether religious or otherwise — requires no secular justification. At the same time, religious persons will often be most persuasive in political discourse by framing arguments and positions in ways that are respectful of those who do not share their religious beliefs and that contribute to the reasoned discussion and compromise that is essential in a pluralistic society.<sup>[xvii]</sup>

*Fifth* and finally, Latter-day Saints must be careful never to support or act upon the idea that a person must subscribe to some particular set of religious beliefs in order to qualify for a public office. The framers of our constitution included a provision that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States” (Article VI). That constitutional principle forbids a religious test as a *legal* requirement, but it of course leaves citizens free to cast their votes on the basis of any preference they choose. But wise religious leaders and members will never advocate religious tests for public office.

Fragile freedoms are best preserved when not employed beyond their intended purpose. If a candidate is seen to be rejected at the ballot box primarily because of religious belief or affiliation, the precious free exercise of religion is weakened at its foundation, especially when this reason for rejection has been advocated by other religionists. Such advocacy suggests that if religionists prevail in electing their preferred candidate this will lead to the use of government power in support of their religious beliefs and practices. The religion of a candidate should not be an issue in a political campaign.

### **Conclusion**

It was the Christian principles of human worth and dignity that made possible the formation of the United States Constitution over 200 years ago, and only those principles in the hearts of a majority of our diverse population can sustain that constitution today. Our constitution’s revolutionary concepts of sovereignty in the people and significant guarantees of personal rights were, as John A. Howard has written,

“generated by a people for whom Christianity had been for a century and a half the compelling feature of their lives. It was Jesus who first stated that all men are created equal [and] that every person . . . is valued and loved by God.”<sup>[xviii]</sup>

Professor Dinesh D’Souza reminds us:

“The attempt to ground respect for equality on a purely secular basis ignores the vital contribution by Christianity to its spread. It is folly to believe that it could survive without the continuing aid of religious belief.”<sup>[xix]</sup>

Religious values and political realities are so interlinked in the origin and perpetuation of this nation that we cannot lose the influence of Christianity in the public square without seriously jeopardizing our freedoms. I maintain that this is a political fact, well qualified for argument in the public square by religious people whose freedom to believe and act must always be protected by what is properly called our “First Freedom,” the free exercise of religion.

My dear brothers and sisters, I testify to the truth of these principles I have expressed today. I testify of Jesus Christ, our Savior, who is the author and finisher of our faith and whose revelations to a prophet of God in these modern times have affirmed the foundation of the United States constitution, which as we have said, was given by God to His children for the rights and protection of all flesh. May God bless us to understand it, to sustain it, and to spread its influence throughout the world, I pray, in the name of Jesus Christ, amen.

### **Notes**

<sup>[i]</sup> Robert Debs Heini Jr., *Dictionary of Military and Naval Quotations* (U.S. Naval Institute Press, 1978), 141.

<sup>[ii]</sup> Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States, 17 May 1999, 6–7, 30–65. The International Religious Freedom Act, adopted in 1998, 22 USC 6401 et seq., established an office of international religious affairs in the U.S. State Department headed by an Ambassador at Large and the U.S. Commission for International Religious Freedom. Both of these bodies submit annual reports that assess the status of religious freedom under international standards worldwide and help encourage better implementation of commitments countries around the world have made to respect this fundamental right.

<sup>[iii]</sup> The information about events in Mongolia was obtained from correspondence with President Odgerel and from Mary N. Cook, former senior missionary and wife of Richard E. Cook, the first mission president in Mongolia.

<sup>[iv]</sup> Final Report of the Advisory Committee, 6.

<sup>[v]</sup> 22 USC 6401(a).

<sup>[vi]</sup> Michael Spencer, “The Coming Evangelical Collapse,” *The Christian Science Monitor*, 10 Mar. 2009.

[vii] E.g., John A. Howard, "Liberty: America's Creative Power," Howard Center, 22 June 2009, 6.

[viii] "In God's Name: A Special Report on Religion and Public Life," *The Economist*, 3 Nov. 2007, 10.

[ix] E.g., *The Six Ways of Atheism*, which was advertised "to absolutely disprove the existence of God, logically and simply," was sent free to leading universities and public libraries in all major English-speaking countries in the world. Press release, 26 May 2009.

[x] Howard, "Liberty: America's Creative Power," 6.

[xi] Hugh Hewitt, *A Mormon in the White House?* (Washington DC: Regnery, 2007), 242–43.

[xii] Karl Vick, "Gay Groups Targeting Mormons," *Salt Lake Tribune*, 30 May 2009, A8 (*Washington Post* story).

[xiii] "A New Order of Religious Freedom," *First Things*, Feb. 1992, 2; also see Neuhaus, *The Naked Public Square* (Grand Rapids, Mich.: Eerdmans, 1983).

[xiv] The Yogyakarta Principles, Principle 21 (Yogyakarta, Indonesia, 2006).

[xv] "No Mob Veto," *New York Times*, 5 Dec. 2008.

[xvi] M. Russell Ballard, "Engaging Without Being Defensive," BYU Commencement Address, 13 August 2009.

[xvii] Among the advocates of this position are Kevin Seamus Hasson, *The Right to be Wrong* (San Francisco: Encounter Books, 2005); Douglas Laycock, Anthony Picarello Jr. and Robin Fretwell Wilson, *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Rowman and Littlefield, 2008); and Michael J. Perry, "Liberal Democracy and Religious Morality," 48 *DePaul Law Rev.* 1, 20–41 (1998). For examples of this kind of advocacy, see *What's the Harm?* ed. Lynn D. Wardle (University Press of America, 2008); and Monte Neil Stewart, "Marriage Facts," 31 *Harv. J. of Law & Pub. Policy* 313 (2008).

[xviii] John A. Howard, *Christianity: Lifeblood of America's Free Society (1620–1945)* (Monitou Springs, Ohio: Summit Press, 2008), 57.

[xix] "How Christianity Shaped the West," Hillsdale College, Nov. 2008, Vol. 37, No. 11, p. 5.

**Style guide note:** When reporting about The Church of Jesus Christ of Latter-day Saints, please use the complete name of the Church in the first reference. For more information on the use of the name of the Church, go to our online [style guide](#).

# “Fundamentals of Our Constitutions” - Elder Dallin H. Oaks

Utah's Constitution Day Celebration

Tabernacle, Salt Lake City, Utah

September 17, 2010

“Fundamentals of Our Constitutions”

Elder Dallin H. Oaks

## Introduction

I feel very privileged to be invited to speak to this great audience on Constitution Day. I appreciate the University of Utah Hinckley Institute's invitation and its sponsorship of this and other community events over the last 45 years.

I will speak about the written constitutions of the United States and its 50 states. As I give examples of various issues under these constitutions — matters on which respected public officials have taken controversial positions — please remember that I am not referring to the persons who hold the various offices under those constitutions. I am speaking of the “institution” of constitutional government. The principles I describe apply regardless of who holds the offices and regardless of party affiliation. Our loyalty is to the institution. If we oppose persons who hold particular offices or the policies they pursue, we are free to vote against them or work against their policies. But we should not carry our opposition to the point of opposing their offices, or we weaken the institution of constitutional government.

Some of the things said by various persons in recent public discourse cause me to urge that we be more careful in the way we throw around the idea that something is unconstitutional. A constitution should not be used as a weapon to end debate. A public policy or a proposed law that is unwise is not necessarily unconstitutional. Even if it is a stupid proposal, it is not necessarily unconstitutional. A constitution gives the people and their elected leaders the opportunity to make many decisions that are unwise or even reckless. When that happens — when the government or one of its officials engages in some kind of action that we consider to be wrong — we should engage in vigorous public debate about it. But we should not use up a constitution by attempting to strike down every ill-conceived act of government or to discredit every unwise official. A constitution is the ultimate weapon, and we preserve that weapon best by using it sparingly and carefully. If we call some action unconstitutional, we should be prepared to explain what provision or principle of a constitution it violates. In this way, a constitution can be used to stimulate discussion and to seek unity.

We should, of course, always be vigilant to insist that our governments and their executives, lawmakers and judges stay within the limits prescribed by our constitutions. That is part of the rule of law, and all of the blessings enjoyed under our constitutions are dependent upon it. President J. Reuben Clark, an honored authority on the Constitution, declared that “our allegiance run[s] to the Constitution and to the principles which it embodies, and not to individuals. All that we say about the Constitution and our reliance upon it depends upon the rule of law and not of the men or women who hold the offices under it.”<sup>[1]</sup>

There is need for public praise of our constitutions and their principles. A rising generation of influential opinion makers seems to place a lesser value on the United States Constitution. An example of that was related to me by a recent law graduate. In a panel discussion at the Harvard Law School, a professor of constitutional law criticized the United States Constitution in harsh terms. Another faculty panelist speculated that if his colleague's criticisms were valid we might as well just take our written constitution and “roll it and smoke it.” That kind of disdain for our national constitution is more than concerning.

The United States Constitution is the oldest written national constitution still in use. It has served Americans well, enhancing freedom and prosperity during the changing conditions of more than 200 years. Frequently copied, it has become the United States' most important export. After two centuries, every nation in the world except six have adopted written constitutions,<sup>[2]</sup> and the United States Constitution was a model for all of them. Consequently, if we abandon or weaken its fundamental principles, we betray our own national ideals and we also weaken our global neighbors.

Now I will proceed to discuss four major fundamentals of the United States Constitution. In an earlier setting, under Church sponsorship, I referred to these fundamentals as the divinely inspired principles in the Constitution,<sup>[3]</sup> and I here affirm my belief that they are. But in this setting of a community program I will only refer to these as the great fundamental principles of our Constitution.

As I speak of these great fundamentals, I wish to take the long view. I do not wish to be understood as endorsing or condemning specific actions or proposals on current issues. I know that some will apply what I say — one way or another — to issues currently being reported in the media. But I do not seek to be heard for the short term. Drawing on over 50 years of observing a multitude of controversies over the application of constitutions, I am trying to describe fundamental principles that will be meaningful for decades to come. I leave to my listeners the task of agreeing or disagreeing with my description of the great fundamentals and — if they wish — trying to apply them to the very complex issues of this day and the different issues of the days to come.

### **I. Popular Sovereignty**

I mention first what is probably the most important of the great fundamentals of the United States Constitution—the principle of popular sovereignty: The people are the source of government power; it is they who consented to a constitution that delegates certain powers to the government. I stress this fundamental by emphasizing what are not the sources of sovereign power. Sovereignty is not inherent in a state or nation just because it has the power that comes from force of arms. Sovereignty does not come from the divine right of a king, who grants his subjects such power as he pleases or is forced to concede, as in the Magna Carta. And sovereignty does not rest in an aristocracy of self-appointed wise men who think that their high birth or prestigious education gives them the right to prescribe what is best for everyone else. Sovereignty is in the people as a whole, and their sovereignty is supreme, subject only to a few crucial limitations that I will discuss in a moment.

Sovereignty in the people necessarily implies responsibility in the people. Instead of blaming their troubles on a king, on a cabal of military leaders, or on some distant group of wise men, citizens who are sovereign must share a measure of the burdens and responsibilities of governing. I will say more of this later.

The delegates to the Constitutional Convention did not originate the idea of popular sovereignty, since they lived in a century when persuasive philosophers had argued that political power originated in a social contract. But the United States Constitution provided the first national implementation of that principle.

After two centuries in which Americans may have taken popular sovereignty for granted, it is helpful to be reminded of the difficulties in that pioneering effort. A direct democracy was impractical for a country of four million people and about a half million square miles. As a result, the delegates had to design the structure of a constitutional, representative democracy, what they called “a Republican Form of Government.”<sup>[4]</sup> They also had to decide how minority rights could be protected when the government was, by definition, directed by a majority of the sovereign people. Part of that effort was to resolve whether a constitution adopted by popular sovereignty could be amended, and if so how.

The government of the United States had to be ultimately responsible to the will of the sovereign people, but it also had to be stable. Without stability against an aroused majority, government could not give individuals or minorities protection against overreaching by the ruling majority, a reality most evident when an outraged public calls for immediate punishment of one accused but not yet shown guilty of a crime. Government policies should not be tossed about with temporary swings in public opinion. The Constitution had to give government the power to withstand the cries of a majority of the sovereign people in the short run, but it had to be subject to their direction in the long run. The delegates to the Constitutional Convention achieved the required balance among popular sovereignty, stability, and protection of minorities through a power of amendment that was ultimately available but deliberately slow. It required the action of very large majorities — two-thirds in the Senate and the approval of three-fourths of the states.

### **II. Division of Powers in a Federal System**

Another great fundamental of the United States Constitution is its federal system, which divides government powers between the nation and the various states. This principle of federalism is at the heart of our Constitution. Unlike the next two fundamentals I will discuss, which were adaptations of earlier developments in English law, this division of sovereignty between two government levels was unprecedented in theory or practice. In a day when it is fashionable to assume that the national government has the power and means to right every perceived injustice, we should remember that the United States Constitution limits the national government to the exercise of powers expressly granted to it. The Tenth Amendment provides:

“The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people.”

This principle of limited national powers, with all residuary powers reserved to the people or to the state and local governments, which are most responsive to the people, is one of the great fundamentals of the United States Constitution.

In my lifetime I have seen much neglect of this fundamental constitutional principle. For example, the power to make laws on personal relationships is one of those powers not granted to the federal government and therefore reserved to the states. Thus, the ordinary laws governing marriage and family rights and duties are state laws, subject to the power of national law to govern the extent to which the law of one state is binding on others. The dominance of state law in these personal matters would have been changed by the Equal Rights Amendment (E.R.A.) proposed about 30 years ago. The dominance of state law will also be changed if, after full review, federal courts decree that a state law on marriage is invalid under the United States Constitution. Whatever the merits of current controversies over the laws of marriage and child adoption and the like, let us not forget that if the decisions of federal courts can override the actions of state lawmakers on this subject, we have suffered a significant constitutional reallocation of lawmaking power from the lawmaking branch to the judicial branch and from the states to the federal government.

### **III. Bill of Rights**

A bill of rights, the third great fundamental of the United States Constitution, came by amendment, but I think almost all Americans look upon these first ten amendments as an essential part of the original Constitution.

The idea of a bill of rights was not new. Almost 600 years earlier, King John had been compelled to sign the Magna Carta, which contained a written guarantee of some rights for certain of his subjects. Later, the Magna Carta was relied upon by the English Parliament in guaranteeing additional rights against royal power in the English Bill of Rights of 1689. In the century that followed, many of the charters used in the establishment of the American colonies included some written guarantees of citizen liberties and privileges. And in the rush of constitution-making that followed the Continental Congress’s 1776 invitation, almost all of the 13 colonies developed these

guarantees further. The delegates to the Constitutional Convention were familiar with this history and made brilliant application of its principles in framing a Bill of Rights suited to the needs of the people of a new nation.

There are several supremely important guarantees in the Bill of Rights, including the freedoms of speech and press. I have chosen only one to discuss in detail.

The Bill of Rights begins with what many believe to be the most important guarantee in the United States Constitution. The First Amendment reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The prohibition against “an establishment of religion” was intended to separate churches and government, to prevent a national church of the kind found in Europe. In the interest of time I will say no more about the establishment of religion, but only concentrate on the direction that the United States shall have no law prohibiting the free exercise of religion. For nearly a century this guarantee of religious freedom has been understood as a limitation on state as well as federal power.

The guarantee of the free exercise of religion, which I will call religious freedom, is one of the supremely important founding principles in the United States Constitution, and it is reflected in the constitutions of all of our 50 states. It is the first expression in the First Amendment to the United States Constitution. As noted by many, this “pre-eminent place” identifies freedom of religion as “a cornerstone of American democracy.”<sup>[5]</sup> I maintain that in our nation’s founding and in our constitutional order, religious freedom, and the freedoms of speech and press associated with it in the First Amendment, are the motivating and dominating civil liberties and civil rights.

The American colonies were originally settled by people who, for the most part, had come to this continent to be able to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation’s Bill of Rights. So it is that our national law formally declares: “The right to freedom of religion undergirds the very origin and existence of the United States.”<sup>[6]</sup>

This principle was affirmed impressively 22 years ago when a group of prominent citizens assembled at Williamsburg, Virginia, and signed what was called the Williamsburg Charter. I was privileged to sign that charter in behalf of The Church of Jesus Christ of Latter-day Saints. Its stated purpose was to celebrate and reaffirm religious liberty as the foremost freedom in the First Amendment to the United States Constitution.

The Williamsburg Charter states:

“The First Amendment Religious Liberty provisions have both a logical and historical priority in the Bill of Rights. . . . In sum, as much if not more than any other single provision in the entire Constitution, the Religious Liberty provisions hold the key to American distinctiveness and American destiny.”<sup>[7]</sup>

The free “exercise” of religion obviously involves both the right to choose religious beliefs and affiliations and the right to “exercise” or practice those beliefs. But in a nation with citizens of many different religious beliefs the right of some to act upon their religious principles must be qualified by the government’s responsibility to protect the health and safety of all. Otherwise, for example, the government could not protect its citizens’ person or property from neighbors whose religious principles compelled or justified stealing or taking human life.

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when government action is claimed to violate someone’s free exercise of religion. As would be expected, many of the battles over the extent of religious freedom have involved government efforts to impose upon the practices of small groups like Jehovah’s Witnesses and Mormons. Recent experiences suggest adding Muslims to the category of threatened religious minorities.

Unpopular minority religions are especially dependent upon a constitutional guarantee of free exercise of religion. We are fortunate to have such a guarantee in the United States, but many nations do not. The importance of that guarantee should make us ever diligent to defend it. And it is in need of being defended. During my lifetime I have seen a significant deterioration in the respect accorded to religion in our public life, and I believe that the vitality of religious freedom is in danger of being weakened accordingly.

A recent book illustrates this danger. In *Freedom From Religion*, published by the Oxford University Press, a law professor makes this three-step argument:

1. In many nations “society is at risk from religious extremism.”<sup>[8]</sup>
2. “A follower is far more likely to act on the words of a religious authority figure than other speakers.”<sup>[9]</sup>
3. Therefore, “in some cases, society and government should view religious speech as inherently less protected than secular political speech because of its extraordinary ability to influence the listener.”<sup>[10]</sup>

He concludes:

“[W]e must begin to consider the possibility that religious speech can no longer hide behind the shield of freedom of expression. . . .<sup>[11]</sup>

“Contemporary religious extremism leaves decision-makers and the public alike with no choice but to re-contour constitutionally granted rights as they pertain to religion and speech.”<sup>[12]</sup>

I hope that those who might be persuaded by these arguments will consider how easy it would be over time to manipulate the definition of “religious extremism” to suppress any unpopular religion.

Religious belief and preaching must be protected against government action, even while the practice of that belief must have some limits, as I suggested earlier. But unless the guarantee of free exercise of religion gives a religious actor greater protection against government prohibitions than are already guaranteed to all actors by other provisions of the Constitution (like freedom of speech), what is the special value of religious freedom? Surely the First Amendment guarantee of free exercise of religion was intended to grant more freedom to religious preaching and action than to other kinds of speech and action. Treating actions based on religious belief the same as actions based on other systems of belief should not be enough to satisfy the special place of religion in the United States Constitution.

#### IV. Separation of Powers

The fourth great fundamental of the United States Constitution and of our state constitutions is the principle of separation of powers. This principle puts our national government on a significantly different foundation than the parliamentary systems of most western governments. The idea of separation of powers came out of the English experience, when parliament wrested certain powers from the king in the conflicts of the 1600s, thus achieving some separation of legislative and executive authority. But the United States Constitution carried this separation much further.

The concept of separating the executive, legislative, and judicial functions was established in the American colonies in the 1700s. A commentary on the Massachusetts Constitution of 1778, of which John Adams was a principal author, explained the basic principle.

“The legislative, judicial, and executive powers are to be lodged in different hands, that each branch is to be independent, and further, to be so balanced, and be able to exert such checks upon the others, as will preserve it from dependence on, or a union with them.”<sup>[13]</sup>

Thus, we often refer to the principle of separation of powers in terms of the checks and balances each branch exercises upon the others.

If the idea of checks and balances is to work properly, each branch of government must preserve its independence from the others. Moreover, the powers of each of these three branches must be exercised in a good faith effort to serve the interests of the public, rather than to dominate the others or to enhance the personal position of a particular official. Politics, revenge or personal gain must never be the primary driving force in the application of checks and balances.

For checks and balances to work properly, and for the fundamental principle of separation of powers to be honored and perform its proper function, each branch of government must fulfill its duties fully, and each must refrain from attempting to exercise the functions of the others. For example, Congress should perform its duty of making the laws and specifying the principles—even politically difficult principles—and not dodge this responsibility by delegating this function to regulations made by the executive branch. The courts must limit themselves to interpreting the Constitution and the laws and not stray into the legislative function of law-making. In contrast, we are all aware that in our day the actions of courts on major issues of public policy receive great attention in the media, and are frequently represented and understood as the actions of those who make laws rather than those who merely interpret them.

These are, of course, very broad assertions, and in practice these ideas are complex and controversial. I will attempt to express my thoughts about them without getting into too much technical legal jargon. If my remarks seem to deal excessively with the judicial branch and the conduct of judges, you will understand that I choose to elaborate on that subject because the judicial branch is the one with which I have had my greatest experience.

#### V. The Judicial Branch’s Role in Separation of Powers

There are two different views of the role of the judicial branch of government in our constitutional system. One maintains that the genius of the American system is its expectation that the courts will resolve very difficult and important questions that the legislative and executive branches of government have been unable to resolve. For example, it was the Supreme Court of the United States that compelled this nation to resolve the problem of racially segregated public schools, after many decades in which the nation’s elected lawmakers were unwilling to recognize this injustice or unable to resolve it. Other examples could be given. The important thing is that many believe the courts have a legitimate function in lawmaking when the problem is large and urgent enough and the legislative and executive branches have shown by inaction or ineffective action that they are unable to perform their functions to resolve it.

The opposite point of view argues that the courts should stay entirely out of the domain of legislative lawmaking, leaving this function to the popularly elected legislative bodies and the elected chief executives who presumably reflect the will of the people. A generation ago a prominent legal scholar described this position:

“Outside of a few important, well-defined personal liberties set forth in the document, the Constitution allows the people to make public policy through their elected representatives. When the Court ventures into policymaking in the guise of constitutional interpretation, it oversteps the role assigned to it under the Constitution.”<sup>[14]</sup>

The differences in these approaches will not be resolved. Both will be followed in their time, with the ebb and flow of judicial appointments, politics, and legal thought. But it is important to note that we currently have widespread public dissatisfaction on this subject. The 2006 Georgetown Conference on Judicial Independence considered a Princeton survey finding that 62% of Americans say the courts in their state are legislating from the bench rather than interpreting the law. This reveals a widespread public feeling that the courts are revising the moral and cultural life of the nation by making policy determinations that should be made by lawmakers in the elected branches.

#### Judicial Independence

What concerns us most about this widespread public dissatisfaction is that if not attended to it will threaten the independence the judicial branch must have to perform its function in our system of separation of powers. In the last few years, retired Justice Sandra Day O’Connor has performed a great service by leading a series of conferences at Georgetown University on the state of the judiciary. They focused on this question of judicial independence.

As I have cheered these efforts from the sidelines, I have thought of how our system contrasts with that of the now defunct Soviet Union. During my years as president of BYU (1971–80), I hosted the chief justice of the Supreme Court of the Soviet Union, who was touring the United States in that Cold War period. In a private one-on-one discussion, I asked him how the Soviet system really worked in a highly visible criminal case, such as where a person was charged with an offense like treason or other crimes against the state. He explained that on those kinds of cases they had what they called “telephone justice.” Judges conducted the trial and heard the evidence and then went back to their chambers and had a phone call from a government or party official who told them how to decide the case.

I am grateful that, whatever difficulties we have in our system of justice — and there are many — we are still far away from what he called “telephone justice.” What stands between us and that corruption of the judicial system — what stands between us and the destruction of a vital check and balance in our system of separation of powers — is the independence of our state and federal judges.

I speak of state as well as federal judges because in most citizen encounters with the law state judges are by far the most important representatives of the judicial branch. I thought of that as I listened to our Utah Chief Justice, Christine M. Durham, speak to a group of lawyers last month.<sup>[15]</sup> She told them that in a recent year there were 384,000 cases filed in the federal courts, but the state courts had over 47 million. This is about 123 state court cases for every single case filed in the federal courts. She reminded her audience that “state courts are closer to everyday life where the legal meanings of such elemental concepts as birth and death and family take shape.” It is in the state courts where family law issues are adjudicated, where foreclosures take place, and where injured persons come to recover damages. When we speak of the importance of judicial independence, we must not neglect the important role of state courts as a co-equal branch of government.

Chief Justice Durham cited three troubling recent developments that put the judicial independence of state courts at risk. One of these she called “the politicization of state judiciaries.” This is the subject Justice O’Connor’s various conferences have pursued so persuasively with various recommendations, including judicial selection and tenure, judicial salaries, and limits on judicial campaign contributions.

As I give my strong endorsement of judicial independence, I am conscious that many in this audience will have observed or personally experienced court decisions with which they disagreed. I have also had that experience. In endorsing judicial independence, I do not approve every court decision it makes possible. What I advocate are the conditions necessary to preserve the institution of judicial independence, which is essential to the principle of separation of powers. We must defend judicial independence. We must not tolerate existing laws or support new laws that would make judges the servants of the legislative or executive branches or of any private interest.

At the same time, we must acknowledge that there are limits. Judicial independence does not mean that judges are free to decide controversies or cases according to their personal preferences.

Our constitutions and the acts of our legislative bodies are the paramount and most obvious examples of restraints upon judicial independence. In interpreting these and in applying the common law on subjects where there are no legislative enactments, judges are constrained by the precedents of prior judicial opinions. Less obvious, and subordinate to these restraints, are those elusive but very real community and personal standards of right and wrong that comprise what we might call the moral framework that defines what is workable or appropriate for persons living in an organized society. In total, these constraints should prevent a judge from having his or her personal interests take command of the decision-making process to augment personal power, property, prominence or prestige.

#### Judicial Activism

Unfortunately, the constraints I have described do not always hold judges within the limits imposed by our constitutional order. The label many put on judicial decisions that break free of these limits is judicial activism. It could just as well be called judicial arrogance. It has a variety of causes, including misinterpretation of the law and excessive reliance on personal predilections in the decision of cases. But neither of these should override the framework of the law, especially in those cases where the judicial branch should make no decision, but leave the matter to popularly elected lawmakers.

In criticizing judicial activism, I am not agreeing with those critics who define judicial activism as a circumstance where a judge makes the law rather than merely interprets it. That is an over-simplified definition. Our system of law clearly contemplates that judges will make law as well as interpret it. Appellate courts inevitably make law as they interpret legislative enactments that are ambiguous or contradictory. Judges make law by giving meaning to legislative language that is deliberately vague, such as laws using words like “fair” or “reasonable” or “obscene.” Appellate courts make law gradually on a case-by-base basis as they define and apply the common law, which consists of the decisions of courts on subjects not treated by the legislature. None of these lawmaking functions of judges is subject to criticism as judicial activism, because if the popularly elected lawmakers don’t like these judicial actions, they can change them by legislation.

In my opinion, the judicial lawmaking that has been legitimately criticized as judicial activism concerns the interpretation of state and federal constitutions. This kind of judicial action is not reversible by the popularly elected lawmakers, and cannot even be changed by the sovereign people except in those unusual circumstances in which a constitutional amendment is feasible. If such judicial action sets aside laws enacted or approved by a direct vote of the people, it offends two fundamentals: separation of powers and popular sovereignty.

Constitutional adjudication is the kind of activity that requires the highest exercise of the judicial talent and should cause the greatest soul-searching on the part of judges. On the one hand, the compelling traditions of common law adjudication show that the law — even constitutional law — can grow gradually to meet the problems and challenges of a new day. On the other hand, the overriding requirements of stability in the law forbid judges from using their office to enact their own personal preferences and moral framework in the way they could justifiably do as legislators. The question that should always be asked in constitutional adjudication is, “Is this a matter that the sovereign people in our democracy ought to decide through their popularly elected lawmakers, or is it a matter that our constitution clearly assigns to judges not directly accountable to the popular will?”

In the end, the only complete remedy for judicial activism is judicial restraint. Only judges can make judicial restraint a reality. The rarest kind of power in our troubled world is a power recognized but unexercised. Yet that is what the people have a right to expect from the judicial branch, which must define the limits of all government

branches, including its own. I maintain that the same branch of government that has defined the power and forged the tools of judicial activism should decline to exercise them.

#### VI. Citizen Responsibilities

I conclude with some suggestions about our responsibilities as citizens. We have a great Constitution whose fundamental principles many believe to be divinely inspired. Therefore what? I will suggest five responsibilities that I believe are appropriate for all citizens—whatever their religious or philosophical persuasion.

##### 1. Understand the Constitution

All citizens should be familiar with its great fundamentals: the sovereignty of the people, the structure of federalism that divides powers between the state and the federal government, the individual guarantees in the Bill of Rights, and the principle of separation of powers among the various branches of government. We should take alarm at and consider how to oppose any action that would infringe these fundamentals.

##### 2. Support the Law

All citizens should give law-abiding support to their national, state, and local governments. My religious faith expresses this principle in an official declaration of belief:

“We believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them. . . .

“We believe that all men are bound to sustain and uphold the respective governments in which they reside” (D&C 134:1, 5).

##### 3. Practice Civic Virtue

Those who enjoy the blessings of liberty under our national and state constitutions should promote morality, and they should practice what the Founding Fathers called “civic virtue.” John Adams, the second president of the United States, declared, “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”<sup>[16]</sup>

James Madison argued in the Federalist Papers that “republican government presupposes the exercise of these qualities [of virtue] in a higher degree than any other form.”<sup>[17]</sup>

Citizens should also be practitioners of civic virtue in their conduct toward our states and our nation. They should obey the laws. They should be ever willing to fulfill the duties of citizenship. This includes compulsory duties like military service and the numerous voluntary actions they must take if they are to preserve the principle of limited government through citizen self-reliance. For example, since U.S. citizens value the right of trial by jury, they must be willing to serve on juries, even those involving unsavory subject matter.

Then there is the matter of voting. I have been alarmed at the steady decline of voter turnout in many parts of the United States, including Utah. Voting is a fundamental right and responsibility that must not be taken for granted. Political participation can be inconvenient. It requires sacrifices of time and resources, but it is essential to our democratic society. Without substantial voter turnout, the people abrogate the great fundamental of popular sovereignty.

It is also part of civic virtue to be moral in our conduct toward all people. We believe with the author of Proverbs that “righteousness exalteth a nation: but sin is a reproach to any people” (Proverbs 14:34). The personal righteousness of citizens will strengthen a nation more than the force of its arms.

##### 4. Maintain Civility in Political Discourse

If representative government is to function effectively under our constitutions, we must have civility in political discourse. We currently have an excess of ugliness and contentiousness in our communications on many political issues. I don’t need to give examples; we have all been exposed to it, and some of us have occasionally been part of it. We all bear some responsibility for the current political polarization and the stalemates that have resulted from it. We ought to tone it down. Meaningful debate and discussion about policies, programs, and procedures is essential to a democratic society. But contentiousness for the sake of division is bad for democracy. It is bad for law observance. It is bad for neighborly relations. And it is particularly destructive as an example for the rising generation, who, if not taught better, will perpetuate and magnify its ugliness and divisiveness for generations to come.

A year ago our Church published a statement called “The Mormon Ethic of Civility.” I quote from that statement:

“The Church views with concern the politics of fear and rhetorical extremism that renders civil discussion impossible. . . . Our democratic system [should] facilitate kinder and more reasoned exchanges among fellow Americans than we are now seeing.”<sup>[18]</sup>

Our President, Thomas S. Monson, has said, “When a spirit of goodwill prompts our thinking and when unified effort goes to work on a common problem, the results can be most gratifying.”<sup>[19]</sup>

##### 5. Promote Patriotism

Finally, the single word that best describes a fulfillment of the responsibilities of citizenship is patriotism. Citizens should be patriotic. My favorite prescription for patriotism is that of Adlai Stevenson, the Illinois governor who was twice the Democratic candidate for President:

“What do we mean by patriotism in the context of our times? . . . A patriotism that puts country ahead of self; a patriotism which is not short, frenzied outbursts of emotion, but the tranquil and steady dedication of a lifetime.”<sup>[20]</sup>

#### Conclusion

I close with a poetic prayer. It is familiar to most Americans because we sing it in one of our loveliest hymns. It expresses gratitude to God for liberty, and it voices a prayer for continued blessings:

Our fathers' God, to thee,

Author of liberty,

To thee we sing;

Long may our land be bright

With freedom's holy light.

Protect us by thy might,

Great God, our King!<sup>[21]</sup>

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[1] J. Reuben Clark: Selected Papers on Religion, Education, and Youth, ed. David H. Yarn, Jr., Provo, Utah: Brigham Young University Press, 1984, p. 43.

[2] See A. E. Dick Howard, "Making It Work," *Wilson Quarterly*, Spring 1987, pp. 122, 126.

[3] See "The Divinely Inspired Constitution," *Ensign*, February 1992, 68-74.

[4] U.S. Constitution, Art. IV, Sec. 4.

[5] Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States, May 17, 1999, p. 6.

[6] 22 USC 6401(a).

[7] The Williamsburg Charter, pp. 11-12. The text of the Williamsburg Charter is reproduced in the appendix (pp. 127-45) of *Articles of Peace, the Religious Liberty Clauses and the American Public Philosophy* (James Davison Hunter and Os Guinness, eds., Brookings Books, Washington, D.C., 1990).

[8] Amos N. Guiora, *Freedom From Religion* (Oxford University Press, 2009), p. 27.

[9] *Ibid.*, at p. 30.

[10] *Ibid.*, at p. 31.

[11] *Ibid.*, at p. 31.

[12] *Ibid.*, at p. 39.

[13] Quoted in Gerhard Casper, "Constitutionalism," *Occasional Papers from the Law School, The University of Chicago*, no. 22 (1987).

[14] Michael W. McConnell, "Four Faces of Conservative Legal Thought," *University of Chicago Law School Record*, Spring 1988, 12, 13.

[15] "State Courts and Justice for All," *BYU J. Reuben Clark Law School Founders Day Dinner*, Salt Lake City, Utah, August 26, 2010.

[16] John Adams, *The Works of John Adams, Second President of the United States*, ed. C. F. Adams (Boston: Little, Brown, and Co., 1854), Vol. IX, p. 229, October 11, 1798.

[17] *Federalist No. 55*, February 13, 1788.

[18] "The Mormon Ethic of Civility," October 16, 2009 (see <http://newsroom.lds.org/ldsnewsroom/eng/commentary/the-mormon-ethic-of-civility>).

[19] *Ibid.*

[20] Adlai Stevenson, speech given in New York City, 27 August 1952, quoted in John Bartlett, *Familiar Quotations*, Boston: Little Brown and Co., 1955, p. 986.

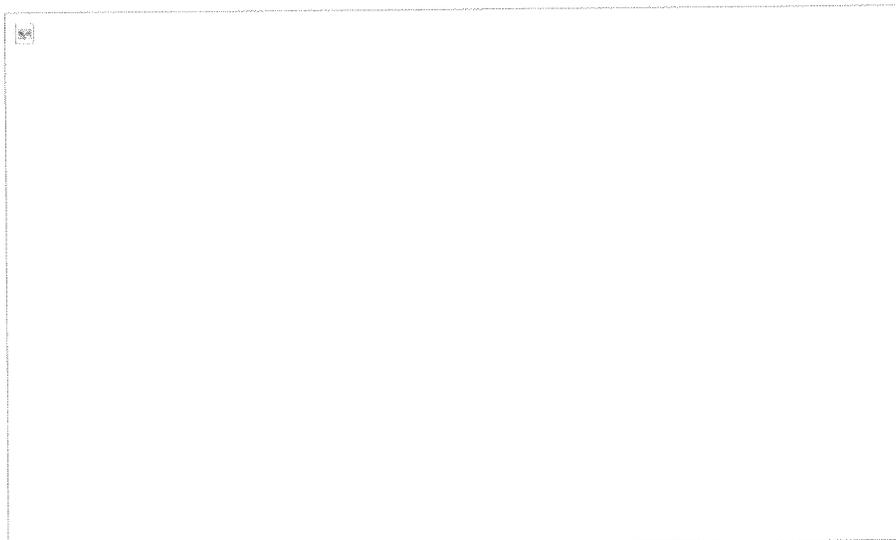
[21] Hymns, no. 339.

## Transcript of Elder Dallin H. Oaks' Speech Given at Chapman University School of Law

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04 FEBRUARY 2011 — SALT LAKE CITY



*Transcript of Elder Dallin H. Oaks speech given at Chapman University School of Law on 4 February 2011.*

### **Preserving Religious Freedom**

I am here to speak of the state of religious freedom in the United States, why it seems to be diminishing, and what can be done about it.

Although I will refer briefly to some implications of the Proposition 8 controversy and its constitutional arguments, I am not here to participate in the debate on the desirability or effects of same-sex marriage. I am here to contend for religious freedom. I am here to describe fundamental principles that I hope will be meaningful for decades to come.

I believe you will find no unique Mormon doctrine in what I say. My sources are law and secular history. I will quote the words of Catholic, Evangelical Christian, and Jewish leaders, among others. I am convinced that on this issue what all believers have in common is far more important than their differences. We must unite to strengthen our freedom to teach and exercise what we have in common, as well as our very real differences in religious doctrine.

#### I.

I begin with a truth that is increasingly challenged: Religious teachings and religious organizations are valuable and important to our free society and therefore deserving of special legal protection. I will cite a few examples.

Our nation's inimitable private sector of charitable works originated and is still furthered most significantly by religious impulses and religious organizations. I refer to such charities as schools and higher education, hospitals, and care for the poor, where religiously motivated persons contribute personal service and financial support of great value to our citizens. Our nation's incredible generosity in many forms of aid to other nations and their peoples are manifestations of our common religious faith that all peoples are children of God. Religious beliefs instill patterns of altruistic behavior.

Many of the great moral advances in Western society have been motivated by religious principles and moved through the public square by pulpit-preaching. The abolition of the slave trade in England and the Emancipation Proclamation in the United States are notable

illustrations. These revolutionary steps were not motivated and moved by secular ethics or coalitions of persons who believed in moral relativism. They were driven primarily by individuals who had a clear vision of what was morally right and what was morally wrong. In our time, the Civil Rights movement was, of course, inspired and furthered by religious leaders.

Religion also strengthens our nation in the matter of honesty and integrity. Modern science and technology have given us remarkable devices, but we are frequently reminded that their operation in our economic system and the resulting prosperity of our nation rest on the honesty of the men and women who use them. Americans' honesty is also reflected in our public servants' remarkable resistance to official corruption. These standards and practices of honesty and integrity rest, ultimately, on our ideas of right and wrong, which, for most of us, are grounded in principles of religion and the teachings of religious leaders.

Our society is not held together just by law and its enforcement, but most importantly by voluntary obedience to the unenforceable and by widespread adherence to unwritten norms of right or righteous behavior. Religious belief in right and wrong is a vital influence to advocate and persuade such voluntary compliance by a large proportion of our citizens.<sup>1</sup> Others, of course, have a moral compass not expressly grounded in religion. John Adams relied on all of these when he wisely observed that

“we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”<sup>2</sup>

Even the agnostic Oxford-educated British journalist Melanie Phillips admitted that

“one does not have to be a religious believer to grasp that the core values of Western Civilization are grounded in religion, and to be concerned that the erosion of religious observance therefore undermines those values and the 'secular ideas' they reflect.”<sup>3</sup>

My final example of the importance of religion in our country concerns the origin of the Constitution. Its formation over 200 years ago was made possible by religious principles of human worth and dignity, and only those principles in the hearts of a majority of our diverse population can sustain that Constitution today.<sup>4</sup> I submit that religious values and political realities are so inter-linked in the origin and perpetuation of this nation that we cannot lose the influence of religion in our public life without seriously jeopardizing our freedoms.

Unfortunately, the extent and nature of religious devotion in this nation is changing.<sup>5</sup> Belief in a personal God who defines right and wrong is challenged by many. “By some counts,” an article in *The Economist* declares, “there are at least 500 [million] declared non-believers in the world—enough to make atheism the fourth-biggest religion.”<sup>6</sup> Others who do not consider themselves atheists also reject the idea of a supernatural power, but affirm the existence of some impersonal force and the value of compassion and love and justice.<sup>7</sup>

Organized religion is surely on the decline. Last year's Pew Forum Study on Religion and Public Life found that the percentage of young adults affiliated with a particular religious faith is declining significantly.<sup>8</sup> Scholars Robert Putnam and David Campbell have concluded that “the prospects for religious observance in the coming decades are substantially diminished.”<sup>9</sup>

Whatever the extent of formal religious affiliation, I believe that the tide of public opinion in favor of religion is receding. A writer for the *Christian Science Monitor* predicts that the coming century will be “very secular and religiously antagonistic,” with intolerance of Christianity “ris[ing] to levels many of us have not believed possible in our lifetimes.”<sup>10</sup>

A visible measure of the decline of religion in our public life is the diminished mention of religious faith and references to God in our public discourse. One has only to compare the current rhetoric with the major addresses of our political leaders in the 18<sup>th</sup>, 19<sup>th</sup>, and the first part of the 20<sup>th</sup> centuries. Similarly, compare what Lincoln said about God and religious practices like prayer on key occasions with the edited versions of his remarks quoted in current history books.<sup>11</sup> It is easy to believe that there is an informal conspiracy of correctness to scrub out references to God and the influence of religion in the founding and preservation of our nation.

The impact of this on the rising generation is detailed in an Oxford University Press book, *Souls in Transition*. There we read:

“Most of the dynamics of emerging adult culture and life in the United States today seem to have a tendency to reduce the appeal and importance of religious faith and practice. . . . Religion for the most part is just something in the background.”<sup>12</sup>

Granted that reduced religious affiliation puts religion “in the background,” the effect of that on the religious beliefs of young adults is still in controversy. The negative view appears in the Oxford book, whose author concludes that this age group of 18 to 23

“had difficulty seeing the possible distinction between, in this case, objective moral truth and relative human invention. . . . [T]hey simply cannot, for whatever reason, believe in—or sometimes even conceive of—a given, objective truth, fact, reality, or nature of the world that is independent of their subjective self-experience.”<sup>13</sup>

On the positive side, the Pew Forum study reported that over three-quarters of young adults believe that there are absolute standards of right and wrong.<sup>14</sup> For reasons explained later, I believe this finding is very positive for the future of religious freedom.

## II.

Before reviewing the effects of the decline of religion in our public life, I will speak briefly of the free exercise of religion. The first provision in the Bill of Rights of the United States Constitution is what many believe to be its most important guarantee. It reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The prohibition against “an establishment of religion” was intended to separate churches and government, to forbid a national church of the kind found in Europe. In the interest of time I will say no more about the establishment of religion, but only concentrate on the First Amendment's direction that the United States shall have “no law [prohibiting] the free exercise [of religion].” For almost a century this guarantee of religious freedom has been understood as a limitation on state as well as federal power.

The guarantee of religious freedom is one of the supremely important founding principles in the United States Constitution, and it is reflected in the constitutions of all 50 of our states. As noted by many, the guarantee's “pre-eminent place” as the first expression in the First Amendment to the United States Constitution identifies freedom of religion as “a cornerstone of American democracy.”<sup>15</sup> The American colonies were originally settled by people who, for the most part, came to this continent for the freedom to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation's Bill of Rights.

So it is that our federal law formally declares: “The right to freedom of religion undergirds the very origin and existence of the United States.”<sup>16</sup> So it is, I maintain, that in our nation's founding and in our constitutional order religious freedom and its associated First Amendment freedoms of speech and press are the motivating and dominating civil liberties and civil rights.

## III.

Notwithstanding its special place in our Constitution, a number of trends are eroding both the protections the free exercise clause was intended to provide and the public esteem this fundamental value has had during most of our history. For some time we have been experiencing laws and official actions that impinge on religious freedom. In a few moments I will give illustrations, but first I offer some generalizations.

The free “exercise” of religion obviously involves both (1) the right to choose religious beliefs and affiliations and (2) the right to “exercise” or practice those beliefs without government restraint. However, in a nation with citizens of many different religious beliefs the right of some to act upon their religious beliefs must be qualified by the government's responsibility to further compelling government interests, such as the health and safety of all. Otherwise, for example, the government could not protect its citizens' persons or properties from neighbors whose religious principles compelled practices that threatened others' health or personal security. Government authorities have wrestled with this tension for many years, so we have considerable experience in working out the necessary accommodations.

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when a law or regulation is claimed to violate someone's free exercise of religion. As would be expected, many of these battles have involved government efforts to restrict the religious practices of small groups like Jehovah's Witnesses and Mormons. Recent experience suggests adding the example of Muslims.

Much of the controversy in recent years has focused on the extent to which state laws that are neutral and generally applicable can override the strong protections contained in the free exercise clause of the United States Constitution. As noted hereafter, in the 1990s the Supreme Court ruled that such state laws could prevail. Fortunately, in a stunning demonstration of the resilience of the guarantee of free exercise of religion, over half of the states have passed legislation or interpreted their state constitutions to preserve a higher standard for protecting religious freedom. Only a handful have followed the Supreme Court's approach that the federal free exercise protection must bow to state laws that are neutral as to religion.<sup>17</sup>

Another important current debate over religious freedom concerns whether the guarantee of free exercise of religion gives one who acts on religious grounds greater protection against government prohibitions than are already guaranteed to everyone by other provisions of the constitution, like freedom of speech. I, of course, maintain that unless *religious* freedom has a unique position we erase the significance of this separate provision in the First Amendment. Treating actions based on religious belief the same as actions based on other systems of belief is not enough to satisfy the special guarantee of religious freedom in the United States Constitution. Religion must preserve its preferred status in our pluralistic society in order to make its unique contribution—its recognition and commitment to values that transcend the secular world.

Over a quarter century ago I reviewed the history and predicted the future of church/state law in a lecture at DePaul University in Chicago.<sup>18</sup> I took sad notice of the fact that the United States Supreme Court had diminished the significance of free exercise by expanding the definition of religion to include what the Court called "religions" not based on belief in God. I wrote:

"The problem with a definition of religion that includes almost everything is that the practical effect of inclusion comes to mean almost nothing. Free exercise protections become diluted as their scope becomes more diffuse. When religion has no more right to free exercise than irreligion or any other secular philosophy, the whole newly expanded category of 'religion' is likely to diminish in significance."<sup>19</sup>

Unfortunately, the tide of thought and precedent seems contrary to this position. While I have no concern with expanding comparable protections to non-religious belief systems, as is done in international norms that protect freedom of religion *or belief*,<sup>20</sup> I object to doing so by re-interpreting the First Amendment guarantee of free exercise of *religion*.

It was apparent twenty-five years ago, and it is undeniable today, that the significance of *religious freedom* is diminishing. Five years after I gave my DePaul lecture, the United States Supreme Court issued its most important free exercise decision in many years. In *Employment Division v. Smith*,<sup>21</sup> the Court significantly narrowed the traditional protection of religion by holding that the guarantee of free exercise did not prevent government from interfering with religious activities when it did so by neutral, generally applicable laws. This ruling removed religious activities from their sanctuary—the preferred position the First Amendment had given them.

Now, over twenty years later, some are contending that a religious *message* is just another message in a world full of messages, not something to be given unique or special protection. One author takes the extreme position that religious speech should have even *less* protection. In *Freedom from Religion*, published by the Oxford University Press, a law professor makes this three-step argument:

1. In many nations "society is at risk from religious extremism."<sup>22</sup>
2. "A follower is far more likely to act on the words of a religious authority figure than other speakers."<sup>23</sup>
3. Therefore, "in some cases, society and government should view religious speech as inherently *less protected* than secular political speech because of its extraordinary ability to influence the listener."<sup>24</sup>

The professor then offers this shocking conclusion:

"[W]e must begin to consider the possibility that religious speech can no longer hide behind the shield of freedom of expression. . . ."<sup>25</sup>

"Contemporary religious extremism leaves decision-makers and the public alike with no choice but to re-contour constitutionally granted rights as they pertain to religion and speech."<sup>26</sup>

I believe most thoughtful people would reject that extreme conclusion. All should realize how easy it would be to gradually manipulate the definition of "religious extremism" to suppress any unpopular religion or any unpopular preaching based on religious doctrine. In addition, I hope most would see that it is manifestly unfair and short-sighted to threaten religious freedom by focusing on some undoubted abuses without crediting religion's many benefits. I am grateful that there are responsible voices and evidence affirming the vital importance of religious freedom, worldwide.<sup>27</sup>

When Cardinal Francis George, then President of the U.S. Conference of Catholic Bishops, spoke at Brigham Young University last year, he referred to "threats to religious freedom in America that are new to our history and to our tradition."<sup>28</sup> He gave two examples, one concerning threats to current religious-based exemptions from participating in abortions and the other "the development of gay rights and the call for same-sex 'marriage.'" He spoke of possible government punishments for churches or religious leaders whose doctrines lead them to refuse to participate in government sponsored programs.

Along with many others, I see a serious threat to the freedom of religion in the current assertion of a "civil right" of homosexuals to be free from religious preaching against their relationships. Religious leaders of various denominations affirm and preach that sexual relations should only occur between a man and a woman joined together in marriage. One would think that the preaching of such a doctrinal belief would be protected by the constitutional guarantee of the free exercise of religion, to say nothing of the guarantee of free speech. However, we are beginning to see worldwide indications that this may not be so.

Religious preaching of the wrongfulness of homosexual relations is beginning to be threatened with criminal prosecution or actually prosecuted or made the subject of civil penalties. Canada has been especially aggressive, charging numerous religious authorities and persons of faith with violating its human rights law by "impacting an individual's sense of self-worth and acceptance."<sup>29</sup> Other countries where this has occurred include Sweden, the United Kingdom, and Singapore.<sup>30</sup>

I do not know enough to comment on whether these suppressions of religious speech violate the laws of other countries, but I do know something of religious freedom in the United States, and I am alarmed at what is reported to be happening here.

In New Mexico, the state's Human Rights Commission held that a photographer who had declined on religious grounds to photograph a same-sex commitment ceremony had engaged in impermissible conduct and must pay over \$6,000 attorney's fees to the same-sex couple. A state judge upheld the order to pay.<sup>31</sup> In New Jersey, the United Methodist Church was investigated and penalized under state anti-discrimination law for denying same-sex couples access to a church-owned pavilion for their civil-union ceremonies. A federal court refused to give relief from the state penalties.<sup>32</sup> Professors at state universities in Illinois and Wisconsin were fired or disciplined for expressing personal convictions that homosexual behavior is sinful.<sup>33</sup> Candidates for masters' degrees in counseling in Georgia and Michigan universities were penalized or dismissed from programs for their religious views about the wrongfulness of homosexual relations.<sup>34</sup> A Los Angeles policeman claimed he was demoted after he spoke against the wrongfulness of homosexual conduct in the church where he is a lay pastor.<sup>35</sup> The Catholic Church's difficulties with adoption services and the Boy Scouts' challenges in various locations are too well known to require further comment.

We must also be concerned at recent official expressions that would narrow the field of activities protected by the free exercise of religion. Thus, when President Obama used the words *freedom of worship* instead of *free exercise of religion*, a writer for the Becket Fund for Religious Liberty sounded this warning:

"To anyone who closely follows prominent discussion of religious freedom in the diplomatic and political arena, this linguistic shift is troubling.

"The reason is simple. Any person of faith knows that religious exercise is about a lot more than freedom of worship. It's about the right to dress according to one's religious dictates, to preach openly, to evangelize, to engage in the public square."<sup>36</sup>

Fortunately, more recent expressions by President Obama and his state department have used the traditional references to the right to *practice* religious faith.<sup>37</sup>

Even more alarming are recent evidences of a narrowing definition of religious expression and an expanding definition of the so-called civil rights of "dignity," "autonomy," and "self-fulfillment" of persons offended by religious preaching. Thus, President Obama's head of the Equal Employment Opportunity Commission, Chai Feldblum, recently framed the issue in terms of a "sexual-orientation liberty" that is such a fundamental right that it should prevail over a competing "religious-belief liberty."<sup>38</sup> Such a radical assertion should not escape analysis. It has three elements. First, the freedom of religion—an express provision of the Bill of Rights that has been recognized as a fundamental right for over 200 years—is recast as a simple "liberty" that ranks among many other liberties. Second, Feldblum asserts that sexual orientation is now to be defined as a "sexual liberty" that has the status of a fundamental right. Finally, it is claimed that "the best framework for dealing with this conflict is to analyze religious people's claims as 'belief liberty interest' not as free exercise claims under the First Amendment." The conclusion: Religious expressions are to be overridden by the fundamental right to "sexual liberty."<sup>39</sup>

It is well to remember James Madison's warning:

"There are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."<sup>40</sup>

We are beginning to experience the expansion of rhetoric and remedies that seem likely to be used to chill or even to penalize religious expression. Like the professors in Illinois and Wisconsin and the lay clergyman in California, individuals of faith are experiencing real retribution merely because they seek to express their sincerely held religious beliefs.

All of this shows an alarming trajectory of events pointing toward constraining the freedom of religious speech by forcing it to give way to the "rights" of those offended by such speech. If that happens, we will have criminal prosecution of those whose religious doctrines or speech offend those whose public influence and political power establish them as an officially protected class.

Closely related to the danger of criminal prosecutions are the current arguments seeking to brand religious beliefs as an unacceptable basis for citizen action or even for argument in the public square. For an example of this we need go no further than the district court's opinion in the Proposition 8 case, *Perry v. Schwarzenegger*.<sup>41</sup>

A few generations ago the idea that religious organizations and religious persons would be unwelcome in the public square would have been unthinkable. Now, such arguments are prominent enough to cause serious concern. It is not difficult to see a conscious strategy to neutralize the influence of religion and churches and religious motivations on any issues that could be characterized as public policy. As noted by John A. Howard of the Howard Center for Family, Religion and Society, the proponents of banishment "have developed great skills in demonizing those who disagree with them, turning their opponents into objects of fear, hatred and scorn."<sup>42</sup> Legal commentator Hugh Hewitt described the current circumstance this way:

"There is a growing anti-religious bigotry in the United States. . . .

"For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as somehow threatening."<sup>43</sup>

The forces that would intimidate persons with religious-based points of view from influencing or making the laws of their state or nation should answer this question: How would the great movements toward social justice cited earlier have been advocated and pressed toward adoption if their religious proponents had been banned from the public square by insistence that private religious or moral positions were not a rational basis for public discourse?

We have already seen a significant deterioration in the legal position of the family, a key institution defined by religious doctrine. In his essay "The Judicial Assault on the Family," Allan W. Carlson examines the "formal influence of Christianity" on American family law,<sup>44</sup> citing many state and United States Supreme Court decisions through the 1950s affirming the fundamental nature of the family.<sup>45</sup> He then reviews a series of decisions beginning in the mid-1960s that gave what he calls "an alternate vision of family life and family law."<sup>46</sup> For example, he quotes a 1972 decision in which the Court characterized marriage as "an association of two individuals each with a separate intellectual and emotional makeup."<sup>47</sup> "Through these words," Carlson concludes, "the U.S. Supreme Court essentially enlisted in the Sexual Revolution."<sup>48</sup> Over these same years, "the federal courts also radically altered the meaning of parenthood."<sup>49</sup>

I quote Carlson again:

"The broad trend has been from a view of marriage as a social institution with binding claims of its own and with prescribed rules for men and women into a free association, easily entered and easily broken, with a focus on the needs of individuals. However, the ironical result of so expanding the 'freedom to marry' has been to enhance the authority and sway of government."<sup>50</sup>

"As the American founders understood, marriage and the autonomous family were the true bulwarks of liberty, for they were the principal rivals to the state. . . . And surely, as the American judiciary has deconstructed marriage and the family over the last 40 years, the result has been the growth of government."<sup>51</sup>

All of this has culminated in attempts to redefine marriage or to urge its complete abolition. The debate continues in the press and elsewhere.<sup>52</sup>

#### IV.

What has caused the current public and legal climate of mounting threats to religious freedom? I believe the cause is not legal but cultural and religious. I believe the diminished value being attached to religious freedom stems from the ascendancy of moral relativism.

More and more of our citizens support the idea that all authority and all rules of behavior are man-made and can be accepted or rejected as one chooses. Each person is free to decide for himself or herself what is right and wrong. Our children face the challenge of living in an increasingly godless and amoral society.

I have neither the time nor the expertise to define the various aspects of moral relativism or the extent to which they have entered the culture or consciousness of our nation and its people. I can only rely on respected observers whose descriptions feel right to me.

In his book, *Modern Times*, the British author Paul Johnson writes:

"At the beginning of the 1920s the belief began to circulate, for the first time at a popular level, that there were no longer any absolutes: of time and space, of good and evil, of knowledge, above all of value."<sup>53</sup>

On this side of the Atlantic, Gertrude Himmelfarb describes how the virtues associated with good and evil have been degraded into relative values.<sup>54</sup>

A variety of observers have described the consequences of moral relativism. All of them affirm the existence of God as the Ultimate Law-giver and the source of the absolute truth that distinguishes good from evil.

Rabbi Harold Kushner speaks of God-given "absolute standards of good and evil built into the human soul."<sup>55</sup> He writes:

"As I see it, there are two possibilities. Either you affirm the existence of a God who stands for morality and makes moral demands of us, who built a law of truthfulness into His world even as He built in a law of gravity. . . . Or else you give everyone the right to decide what is good and what is evil by his or her own lights, balancing the voice of one's conscience against the voice of temptation and need. . . ."<sup>56</sup>

Rabbi Kushner also observes that a philosophy that rejects the idea of absolute right and wrong inevitably leads to a deadening of conscience.

"Without God, it would be a world where no one was outraged by crime or cruelty, and no one was inspired to put an end to them. . . . [T]here would be no more inspiring goal for our lives than self-interest. . . . Neither room nor reason for tenderness, generosity, helpfulness."<sup>57</sup>

Dr. Timothy Keller, a much-published pastor in New York, asks:

"What happens if you eliminate anything from the Bible that offends your sensibility and crosses your will? If you pick and choose what you want to believe and reject the rest, how will you ever have a God who can contradict you? You won't! . . .

"Though we have been taught that all moral values are relative to individuals and cultures, we can't live like that. In actual practice we inevitably treat *some* principles as absolute standards by which we judge the behavior of those who don't share our values. . . . People who laugh at the claim that there is a transcendent moral order do not think that racial genocide is just impractical or self-defeating, but that it is *wrong*. . . ."<sup>58</sup>

My esteemed fellow Apostle, Elder Neal A. Maxwell, asked:

"[H]ow can a society set priorities if there are no basic standards? Are we to make our calculations using only the arithmetic of appetite?"<sup>59</sup>

He made this practical observation:

"Decrease the belief in God, and you increase the numbers of those who wish to play at being God by being 'society's supervisors.' Such 'supervisors' deny the existence of divine standards, but are very serious about imposing their own standards on society."<sup>60</sup>

Elder Maxwell also observed that we increase the power of governments when people do not believe in absolute truths and in a God who will hold them and their government leaders accountable.<sup>61</sup>

Moral relativism leads to a loss of respect for religion and even to anger against religion and the guilt that is seen to flow from it. As it diminishes religion, it encourages the proliferation of rights that claim ascendancy over the free exercise of religion.

The founders who established this nation believed in God and in the existence of moral absolutes—right and wrong—established by this Ultimate Law-giver. The Constitution they established assumed and relied on morality in the actions of its citizens. Where did that morality come from and how was it to be retained? Belief in God and the consequent reality of right and wrong was taught by religious leaders in churches and synagogues, and the founders gave us the First Amendment to preserve that foundation for the Constitution.

The preservation of religious freedom in our nation depends on the value we attach to the teachings of right and wrong in our churches, synagogues and mosques. It is faith in God—however defined—that translates these religious teachings into the moral behavior that benefits the nation. As fewer and fewer citizens believe in God and in the existence of the moral absolutes taught by religious leaders, the importance of religious freedom to the totality of our citizens is diminished. We stand to lose that freedom if many believe that religious leaders, who preach right and wrong, make no unique contribution to society and therefore should have no special legal protection.

## V. Conclusion

I have made four major points:

1. Religious teachings and religious organizations are valuable and important to our free society and therefore deserving of their special legal protection.
2. Religious freedom undergirds the origin and existence of this country and is the dominating civil liberty.
3. The guarantee of free exercise of religion is weakening in its effects and in public esteem.
4. This weakening is attributable to the ascendancy of moral relativism.

We must never see the day when the public square is not open to religious ideas and religious persons. The religious community must unite to be sure we are not coerced or deterred into silence by the kinds of intimidation or threatening rhetoric that are being experienced. Whether or not such actions are anti-religious, they are surely anti-democratic and should be condemned by all who are interested in democratic government. There should be room for all good-faith views in the public square, be they secular, religious, or a mixture of the two. When expressed sincerely and without sanctimoniousness, the religious voice adds much to the text and tenor of public debate. As Elder Quentin L. Cook has said:

"In our increasingly unrighteous world, it is essential that values based on religious belief be part of the public discourse. Moral positions informed by a religious conscience must be accorded equal access to the public square."<sup>62</sup>

Religious persons should insist on their constitutional right and duty to exercise their religion, to vote their consciences on public issues, and to participate in elections and in debates in the public square and the halls of justice. These are the rights of all citizens and they are also the rights of religious leaders and religious organizations. In this circumstance, it is imperative that those of us who believe in God and in the reality of right and wrong unite more effectively to protect our religious freedom to preach and practice our faith in God and the principles of right and wrong He has established.

This proposal that we unite more effectively does not require any examination of the doctrinal differences among Christians, Jews, and Muslims, or even an identification of the many common elements of our beliefs. All that is necessary for unity and a broad coalition along the lines I am suggesting is a common belief that there is a right and wrong in human behavior that has been established by a Supreme Being. All who believe in that fundamental should unite more effectively to preserve and strengthen the freedom to advocate and practice our religious beliefs, whatever they are. We must walk together for a ways on the same path in order to secure our freedom to pursue our separate ways when that is necessary according to our own beliefs.

I am not proposing a resurrection of the so-called “moral majority,” which was identified with a particular religious group and a particular political party. Nor am I proposing an alliance or identification with any current political movement, tea party or other. I speak for a broader principle, non-partisan and, in its own focused objective, ecumenical. I speak for what Cardinal Francis George described in his address at Brigham Young University just a year ago. His title was “Catholics and Latter-day Saints: Partners in the Defense of Religious Freedom.” He proposed

“that Catholics and Mormons stand with one another and with other defenders of conscience, and that we can and should stand as one in the defense of religious liberty. In the coming years, interreligious coalitions formed to defend the rights of conscience for individuals and for religious institutions should become a vital bulwark against the tide of forces at work in our government and society to reduce religion to a purely private reality. At stake is whether or not the religious voice will maintain its right to be heard in the public square.”<sup>63</sup>

We join in that call for religious coalitions to protect religious freedom. In doing so we recall the wisdom of Benjamin Franklin. At another critical time in our nation’s history, he declared:

“We must all hang together, or assuredly we shall all hang separately.”<sup>64</sup>

In conclusion, as an Apostle of the Lord Jesus Christ I affirm His love for all people on this earth, and I affirm the importance His followers must attach to religious freedom for all people—whatever their beliefs. I pray for the blessings of God upon our cooperative efforts to preserve that freedom.

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<sup>1</sup>See Quentin L. Cook, *Let There be Light*, ENSIGN, Nov. 2010, at 27, 29–30.

<sup>2</sup>CHARLES FRANCIS ADAMS, THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES, 228–29 (Books for Libraries Press, 1969).

<sup>3</sup>MELANIE PHILLIPS, THE WORLD TURNED UPSIDE DOWN: THE GLOBAL BATTLE OVER GOD, TRUTH, AND POWER, xiii (1st Am. ed., Encounter Books, 2010); see generally ROBERT D. PUTNAM & DAVID E. CAMPBELL, AMERICAN GRACE (2010).

<sup>4</sup>See JOHN A. HOWARD, CHRISTIANITY: LIFEBLOOD OF AMERICA’S FREE SOCIETY (1620-1945), 57 (2008); see also Dinesh D’Souza, *Created Equal: How Christianity Shaped the West*, IMPRIMIS, Nov. 2008 at 5 (available at [http://www.hillsdale.edu/hctools/ImprimisTool/archives/2008\\_11\\_Imprimis.pdf](http://www.hillsdale.edu/hctools/ImprimisTool/archives/2008_11_Imprimis.pdf)).

<sup>5</sup>See PUTNAM & CAMPBELL, *supra* note 3, at Chs. 3–4.

<sup>6</sup>John Micklethwait, *In God’s Name: A Special Report on Religion and Public Life*, THE ECONOMIST, Nov. 3, 2007, at 10.

<sup>7</sup>See, e.g., Lisa Miller, *Sam Harris Believes in God*, NEWSWEEK, Oct. 25, 2010, at 42.

<sup>8</sup>See *Religion Among the Millennials*, PEW FORUM ON RELIGION & PUBLIC LIFE (Pew Research Center), Feb. 17, 2010 at 1–3 (available at <http://pewforum.org/uploadedFiles/Topics/Demographics/Age/millennials-report.pdf>).

<sup>9</sup>Robert D. Putnam & David E. Campbell, *The Tide of Public Opinion in Favor of Religion is Receding*, DESERET NEWS, Nov. 20, 2010 at E1 (quoting L.A. TIMES syndicated art.); see also PUTNAM & CAMPBELL, *supra* note 3.

<sup>10</sup>Michael Spencer, *The Coming Evangelical Collapse*, CHRISTIAN SCIENCE MONITOR, Mar. 10, 2009 available at <http://www.csmonitor.com/Commentary/Opinion/2009/0310/p09s01-coop.html>.

<sup>11</sup>See, e.g., MATTHEW S. HOLLAND, *BONDS OF AFFECTION: CIVIC CHARITY AND THE MAKING OF AMERICA*, 252–53 n. 22 (Geo. Univ. Press, 2007).

<sup>12</sup>CHRISTIAN SMITH, *SOULS IN TRANSITION*, 84, 145 (Oxford Univ. Press, 2009); cf. PUTNAM & CAMPBELL, *supra* note 3.

<sup>13</sup>SMITH, *supra* note 12 at 46.

<sup>14</sup>PEW FORUM, *supra* note 8 at 13.

<sup>15</sup>FINAL REPORT OF THE ADVISORY COMMITTEE ON RELIGIOUS FREEDOM ABROAD TO THE SECRETARY OF STATE AND TO THE PRESIDENT OF THE UNITED STATES, May 17, 1999, at 6.

<sup>16</sup>International Religious Freedom Act of 1998, 22 U.S.C. § 6401(a).

<sup>17</sup>See WILLIAM W. BASSETT, W. COLE DURHAM, JR. & ROBERT T. SMITH, *RELIGIOUS ORGANIZATIONS AND THE LAW* 2.65–2.66 (Thomson Reuters/West, 2010 ed., forthcoming).

<sup>18</sup>Dallin H. Oaks, *Separation, Accommodation and the Future of Church and State*, 35 DEPAUL L. REV. 1, 1–22 (1985).

<sup>19</sup>*Id.* at 8. See also Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1488–1500 (1990).

<sup>20</sup>International Covenant on Civil and Political Rights, art. 18, Dec. 16, 1966, 999 U.N.T.S. 302.

<sup>21</sup>494 U.S. 872 (1990).

<sup>22</sup>AMOS N. GUIORA, *FREEDOM FROM RELIGION*, 27 (Oxford Univ. Press, 2009).

<sup>23</sup>*Id.* at 30.

<sup>24</sup>*Id.* at 31.

<sup>25</sup>*Id.* at 31.

<sup>26</sup>*Id.* at 39.

<sup>27</sup>See, e.g., Brian J. Grim, *Religious Freedom: Good for What Ails Us?* REV. FAITH & INT'L AFF., Summer 2008, at 3–7; BRIAN J. GRIM AND ROGER FINKE, *THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION IN THE TWENTY-FIRST CENTURY* (Cambridge Univ. Press, 2011).

<sup>28</sup>Cardinal Francis George, *Catholics and Latter-day Saints: Partners in the Defense of Religious Freedom*, Brigham Young Univ., (Feb. 23, 2010).

<sup>29</sup>*Homosexuality Trumps Free Speech and Religion in Canada*, NARTH (Aug. 9, 2005), <http://www.narth.com/docs/trumps.html>; Pete Vere, *Catholicism—A Hate Crime in Canada?*, CATHOLIC EXCHANGE, (June 4, 2008) <http://catholicexchange.com/2008/06/04/112780>; see *Stacey v. Campbell*, 2002 B.C.H.R.T. 35 (B.C. Human Rights Trib. 2002); see e.g., Marshall Breger, *Gay Activists vs. the First Amendment*, MOMENT, (Feb. 2010) <http://www.momentmag.com/Exclusive/currentyear/02/201002-Opinion-Breger.html>.

<sup>30</sup>See, e.g., *The Pastor Green Case*, Supreme Court of Sweden, Case no. B 1050-05 (29 Nov. 2005); *The Ake Green Case: Freedom of Religion on Trial in Sweden*, AKEGREEN.ORG, <http://www.akegreen.org/>; Heidi Blake, *Christian Preacher Arrested for Saying Homosexuality is a Sin*, THE TELEGRAPH, (May 2, 2010) <http://www.telegraph.co.uk/news/newstopping/religion/7668448/Christian-preacher-arrested-for-saying-homosexuality-is-a-sin.html>; Albert Mohler, *It's Getting Dangerous Out There—A Preacher Is Arrested in Britain*, ALBERTMOHLER.COM (May 4, 2010) <http://www.albertmohler.com/2010/05/04/its-getting-dangerous-out-there-a-preacher-is-arrested-in-britain/>; Sylvia Tan, *Police reports lodged against Singapore pastor over offensive gay and lesbian remarks*, FRIDAE.COM (Feb. 18, 2010) <http://www.fridae.com/newsfeatures/2010/02/18/9670.police-reports-lodged-against-singapore-pastor-over-offensive-gay-and-lesbian-remarks>.

<sup>31</sup>See Vere, *Catholicism*, *supra*, note 29; See also *The Cost of Being a Christian*, ALLIANCE DEFENSE FUND, <https://www.alliancedefensefund.org/Home/Detail/4333?referral=E0910B3F>; David Walker, *Photographer Loses Bid to Refuse Same-Sex Wedding Jobs*, PDNONLINE (Jan. 4, 2010) [http://www.pdnonline.com/pdn/content\\_display/features/pdn-online/e3i7d41666c039b61afca226786f0011fd9](http://www.pdnonline.com/pdn/content_display/features/pdn-online/e3i7d41666c039b61afca226786f0011fd9).

<sup>32</sup>Jill P. Capuzzo, *Group Loses Tax Break Over Gay Union Issue*, N.Y. Times, (Sep. 18, 2007) <http://www.nytimes.com/2007/09/18/nyregion/18grove.html>.

<sup>33</sup>See Jodi Heckel, *Instructor of Catholicism at UI Claims Loss of Job Violates Academic Freedom*, News Gazette (Jul. 9, 2010) <http://www.news-gazette.com/news/university-illinois/2010-07-09/instructor-catholicism-ui-claims-loss-job-violates-academic-free/>; Julie Bolcer, *Professor Sent Antigay E-mail to Student*, Advocate, (Oct. 14, 2010) [http://www.advocate.com/News/Daily\\_News/2010/10/14/Professor\\_Sent\\_Antigay\\_Email\\_to\\_Student/](http://www.advocate.com/News/Daily_News/2010/10/14/Professor_Sent_Antigay_Email_to_Student/).

<sup>34</sup>See Joshua R. Miller, *Lawsuit Claims College Ordered Student to Alter Religious Views on Homosexuality, or Be Dismissed*, FoxNews.com, (Jul. 27, 2010) <http://www.foxnews.com/us/2010/07/27/georgia-university-tells-student-lose-religion-lawsuit-claims/>; Court rules student counselors must 'affirm' gay clients, USA Today, (Jul. 28, 2010) [http://www.usatoday.com/news/education/2010-07-28-IHE-counseling-gays-ruling28\\_N.htm](http://www.usatoday.com/news/education/2010-07-28-IHE-counseling-gays-ruling28_N.htm). See also Keeton v. Anderson-Wiley, 733 F.Supp.2d 1368 (S.D. Ga. 2010); Ward v. Wilbanks, 09-CV-11237 (E.D. Mich. July 26, 2010).

<sup>35</sup>Pete Vere, *Gay Rights vs. Faithful*, WASH.TIMES, July 31, 2008.

<sup>36</sup>Ashley Samelson, *Why "Freedom of Worship" is Not Enough*, FIRST THINGS, (Feb. 22, 2010) <http://www.firstthings.com/onthesquare/2010/02why-ldquoofreedom-of-worshiprdquo-is-not-enough> added).

<sup>37</sup>See Katelyn Sabochik, *President Obama Celebrates Ramadan at White House Iftar Dinner*, 14 August 2010, The White House Blog, <http://www.whitehouse.gov/blog/2010/08/14/president-obama-celebrates-ramadan-white-house-iftar-dinner/>; Hilary Rodham Clinton, *Remarks at the release of the 2010 International Religious Freedom Report*, 17 November 2010, <http://www.state.gov/secretary/rm/2010/11/151081.htm>; *Clinton report on religious liberty applauded by panel*, 18 November 2010, The Ethics & Religious Liberty Commission of the Southern Baptist Convention, <http://erlc.com/article/clinton-report-on-religious-liberty-applauded-by-panel>.

<sup>38</sup>See Deacon Fournier, *First Amendment Outdated? Obama Nominates Homosexual Equivalency Advocate to EEOC*, CATHOLIC ONLINE, (Oct. 1, 2009) <http://www.catholic.org/politics/story.php?id=34533>.

<sup>39</sup>*Id.* See also Chai Feldblum, *Moral Conflict and Liberty: Gay Rights and Religion*, 72 BROOKLYN L.REV. 61 (2006) (also available at <http://www.becketfund.org/files/4bce5.pdf>).

<sup>40</sup>James Madison, Speech in the Virginia Ratifying Convention on Control of the Military, (June 16, 1788), in 1 HISTORY OF THE VIRGINIA FEDERAL CONVENTION OF 1788, 130 (H.B. Grigsby ed., 1890).

<sup>41</sup>704 F. Supp. 2d 921 (N.D. Cal. 2010).

<sup>42</sup>John A. Howard, *Liberty: America's Great Creative Power*, (Howard Center), June 22, 2009 at 6.

<sup>43</sup>HUGH HEWITT, AMORMON IN THE WHITE HOUSE?, 242-43 (2007).

<sup>44</sup>Allan W. Carlson, *The Judicial Assault on the Family*, in EDWARD B.MCLEAN, THE MOST DANGEROUS BRANCH, 56 (2008).

<sup>45</sup>See, e.g., DeBurgh v. DeBurgh, 39 Cal. 2d 858, 250 P.2d 598 (1957) (Traynor J.), quoted in *id.*, at 59.

<sup>46</sup>Carlson, *supra* note 44, at 60.

<sup>47</sup>Eisenstadt v. Baird, 295 U.S. 438, 453 (1972).

<sup>48</sup>Carlson, *supra* note 44, at 61.

<sup>49</sup>*Id.* at 64.

<sup>50</sup>*Id.* at 62.

<sup>51</sup>*Id.* at 66-67.

<sup>52</sup>Compare Hope Yen, *Holey Matrimony: Marriage a moth-eaten relic?*, SALT LAKE TRIB., Nov. 18, 2010, at A8, with *Marriage's Demise Exaggerated*, DESERET NEWS, Dec. 5, 2010, at G1.

<sup>53</sup>PAUL JOHNSON, MODERN TIMES: THE WORLD FROM THE TWENTIES TO THE NINETIES, (rev. ed., 1991), at 4. Declaring that secular ideology came to replace religious belief, Johnson charges moral relativism with being one of the underlying evils that made possible the catastrophic failures and tragedies of the century. *Id.* at 48, 784.

<sup>54</sup>GERTRUDE HIMMELFARB, *THE DE-MORALIZATION OF SOCIETY: FROM VICTORIAN VIRTUES TO MODERN VALUES* (1st Vintage Books ed., 1996) at 9–12.

<sup>55</sup>HAROLD KUSHNER, *WHO NEEDS GOD* (Fireside ed., 2002), at 78.

<sup>56</sup>*Id.* at 65–66.

<sup>57</sup>*Id.* at 208–09.

<sup>58</sup>TIMOTHY KELLER, *THE REASON FOR GOD: BELIEF IN AN AGE OF SKEPTICISM* (2008), at 114, 145–47.

<sup>59</sup>Neal A. Maxwell, *The Prohibitive Costs of a Value-free Society*, *ENSIGN*, Oct. 1978, at 52.

<sup>60</sup>*Id.* at 53.

<sup>61</sup>See Maxwell, *supra* note 59, at 52–53.

<sup>62</sup>Cook, *supra* note 1, at 29.

<sup>63</sup>George, *supra* note 28.

<sup>64</sup>At the signing of the Declaration of Independence, July 4, 1776.

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## TRUTH AND TOLERANCE

## TRUTH AND TOLERANCE

Elder Dallin H. Oaks

CES Fireside

September 11, 2011

My dear young brothers and sisters, Kristen and I feel privileged to be with you on this significant occasion. We meet on 9/11, the tenth anniversary of an event that has profoundly influenced our lives and thinking, and will do so for many years to come. It is forever associated with the *Twin Towers*.

I have felt impressed to speak this evening about another set of twins, the twin ideas of Truth and Tolerance. These subjects were not chosen because they are uniquely your concern as young adults, like the dating, hanging out, and marriage I described to this audience some years ago. My treatment of Truth and Tolerance will invite you to consider and to teach these twin subjects because they are vital to the rising generation, in which you are the senior members.

### I. Truth

First, truth. We believe in absolute truth, including the existence of God and the right and wrong established by His commandments. We sing:

*Tho the heavens depart and the earth's fountains burst,*

*Truth, the sum of existence, will weather the worst,*

*Eternal, unchanged, evermore*[1].

In the words of President Joseph F. Smith:

“We believe in all truth, no matter to what subject it may refer. No sect or religious denomination in the world possesses a single principle of truth that we do not accept or that we will reject. We are willing to receive all truth, from whatever source it may come; for truth will stand, truth will endure.”[2]

The existence and nature of truth is one of the fundamental questions of mortal life. Jesus told the Roman governor Pilate that He came into the world to “bear witness unto the truth.” “What is truth?” that unbeliever responded (John 18:37-38). In earlier times the Savior had declared, “I am the way, the truth, and the life” (John 14:6). In modern revelation He declared: “Truth is knowledge of things as they are, and as they were, and as they are to come” (D&C 93:24).

My young brothers and sisters, we know that the existence of God and the existence of absolute truth are fundamental to life on this earth, whether they are believed or not. We also know that evil exists and that some things are simply, seriously, and everlastingly wrong. You whom I address shun evil and seek truth. I salute you for your righteous actions and your righteous desires. As an Apostle of the Lord Jesus Christ, I seek to help you make right choices in a world that is increasingly polarized between belief and disbelief, between good and evil.

Shocking reports of large-scale thievery and lying in civilized societies in the last two months suggest a moral vacuum in which many have little sense of right and wrong. Last month's widespread rioting and pillaging in Britain and the scandalous widespread cheating by teachers on state-mandated tests in elementary and middle schools in Atlanta, Georgia have caused many to wonder whether we are losing the moral foundation western countries have received from their Judeo-Christian heritage.[3]

It is well to worry about our moral foundation. We live in a world where more and more persons of influence are teaching and acting out a belief that there is no absolute right and wrong, that all authority and all rules of behavior are man-made choices that can prevail over the commandments of God. Many even question whether there is a God.

The philosophy of moral relativism, which holds that each person is free to choose for himself what is right and wrong, is becoming the unofficial creed for many in America and other western nations. At the extreme level, evil acts that used to be localized and covered up like a boil are now legalized and paraded like a banner. Persuaded by this philosophy, many of the rising generation—youth and young adults—are caught up in self-serving pleasures, pagan painting and piercing of body parts, foul language, revealing attire, pornography, dishonesty, and degrading sexual indulgence.

On the foundation belief in right and wrong there is an alarming contrast between the older and the younger generations. According to survey data of two decades ago, 80 percent of American adults believed “there are clear guidelines about what's good and evil that apply to everyone regardless of the situation.”[4] In contrast, a more recent poll of college seniors suggests that “three-quarters of [them] believe that the difference between right and wrong is relative.”[5]

Many religious leaders teach the existence of God as the Ultimate Lawgiver, by whose action certain behavior is absolutely right and true and other behavior is absolutely wrong and untrue.[6] Bible and Book of Mormon prophets foresaw this time, when men would be “lovers of pleasures more than lovers of God” (2 Tim. 3:4) and, indeed, when men would deny God (Jude 1:4; 2 Ne. 28:5; Moroni 7:17; D&C 29:22).

In this troubled circumstance we who believe in God and the corollary truth of absolute right and wrong have the challenge of living in a godless and increasingly amoral world. In this circumstance, all of us—and especially you of the rising generation—have a duty to stand up and speak to affirm that God exists and that there are absolute truths His commandments establish. In doing so, we Latter-day Saints rely on the truth we sing in the hymn I quoted earlier:

*The pillar of truth will endure to the last,*

*And its firm-rooted bulwarks withstand the rude blast*

*And the wreck of the fell tyrant's hopes.* [7]

As I face this audience of committed young people, I know that some of you may be wondering why I am speaking about what is obvious to you, and what you might assume is obvious to others. Recall the survey data I mentioned earlier, suggesting that about three-quarters of all college seniors believe that the difference between right and wrong is relative.

I have chosen to speak about truth because teachers in schools, colleges, and universities are teaching and practicing relative morality. This is shaping the attitudes of many young Americans who are taking their places as the teachers of our children and the shapers of public attitudes through the media and popular entertainment. This philosophy of moral relativism denies what millions of believing Christians, Jews and Muslims consider fundamental, and this denial creates serious problems for all of us. What believers should do about this introduces the second of my twin subjects, "Tolerance."

## II.

Tolerance is defined as a friendly and fair attitude toward unfamiliar opinions and practices or toward the persons who hold or practice them. As modern transportation and communication have brought all of us into closer proximity to different peoples and different ideas, we have greater need for tolerance. When I was a young adult, about sixty years ago, it was only in books and magazines that most Americans were exposed to great differences in cultures, values and peoples. Now we experience such differences in television and the internet, and often in personal interactions in our neighborhoods and the marketplace.

This greater exposure to diversity both enriches our lives and complicates them. We are enriched by associations with different peoples, which remind us of the wonderful diversity of the children of God. But diversities in cultures and values also challenge us to identify what can be embraced as consistent with our gospel culture and values and what cannot. In this way diversity increases the potential for conflict and requires us to be more thoughtful about the nature of tolerance. What is tolerance, when does it apply, and when does it not apply?

This is a harder question for those who affirm the existence of God and absolute truth than for those who believe in moral relativism. The weaker one's belief in God and the fewer one's moral absolutes, the fewer the occasions when the ideas or practices of others will confront one with the challenge to be tolerant. For example, an atheist has no need to decide what kinds and occasions of profanity or blasphemy can be tolerated and what kinds should be confronted. Persons who don't believe in God or in absolute truth in moral matters can see themselves as the most tolerant of persons. For them, almost anything goes. "You do your thing and I'll do my thing" is the popular description. This belief system can tolerate almost any behavior and almost any persons. Unfortunately, some who believe in moral relativism seem to have difficulty tolerating those who insist that there is a God who should be respected and certain moral absolutes that should be observed.

### III.

I will say no more about the tolerance or intolerance of non-believers. I am speaking to an audience of Latter-day Saints who believe in God and in absolute truth. What does tolerance mean to us and to other believers, and what are our special challenges in applying it?

I begin with three absolute truths. I express them as an Apostle of the Lord Jesus Christ, but I believe that most of these ideas are shared by believers generally.

*First*, all persons are brothers and sisters under God, taught within their various religions to love and do good to one another. President Gordon B. Hinckley expressed this idea for Latter-day Saints:

“Each of us [from various religious denominations] believes in the fatherhood of God, although we may differ in our interpretations of Him. Each of us is part of a great family, the human family, sons and daughters of God, and therefore brothers and sisters. We must work harder to build mutual respect, and attitude of forbearance, with tolerance one for another regardless of the doctrines and philosophies which we may espouse.”<sup>[8]</sup>

Note that President Hinckley spoke of “mutual respect” as well as tolerance. Speaking at BYU a decade later, a Muslim scholar, Dr. Alwi Shihab, an Indonesian, elaborated that idea in these words:

“To tolerate something is to learn to live with it, even when you think it is wrong and downright evil. . . . We must go, I believe, beyond tolerance if we are to achieve harmony in our world.”

Relying on the teachings of the Quran, Dr. Shihab continued:

“We must respect this God-given dignity in every human being, even in our enemies. For the goal of all human relations—whether they are religious, social, political, or economic—ought to be cooperation and mutual respect.”<sup>[9]</sup>

Living together with mutual respect for one another’s differences is a challenge in today’s world. However—and here I express a *second* absolute truth—this living with differences is what the Gospel of Jesus Christ teaches us we must do.

The kingdom of God is like a leaven, Jesus taught (Matt. 13:33). A leaven—yeast—is hidden away in the larger mass until the whole is leavened, which means raised by its influence. Our Savior also taught that His followers will have tribulation in the world (see John 16:33), that their numbers and dominions will be small (see 1 Ne. 14:12) and that they will be hated because they are not of the world (see John 17:14). But that is our role. We are called to live with other children of God who do not share our faith or our values, and who do not have the covenant obligations we have assumed. So it was that at the conclusion of His ministry, Jesus prayed to the Father, “not that thou shouldest take them out of the world, but that thou shouldest keep them from the evil” (John 17:15). We are to be *in* the world, but not *of* the world.

Since followers of Jesus Christ are commanded to be a leaven—not to be taken out of the world, but to remain in it—we must seek tolerance from those who hate us for not being of the world. As part of this, we will sometimes need to challenge laws that would impair our freedom to practice our faiths, doing so in reliance on our constitutional rights to the free exercise of religion. As described by an attorney supporting a Lutheran school in a case now before the United States Supreme Court, the big concern is “the ability of people of all faiths to work out their relationship with God and one another without the government looking over their shoulder.”<sup>[10]</sup> That is why we need understanding and support—including your understanding and support—when we must contend for religious freedom.

We must also practice tolerance and respect toward others. As the Apostle Paul taught, Christians should “follow after the things that make for peace” (Rom. 14:19), and as much as possible “live peaceably with all men” (Rom. 12:18). Consequently, we should be alert to honor the good we should see in all people and in many opinions and practices that differ from our own. As the Book of Mormon teaches

“all things which are good cometh of God; . . . wherefore, every thing which inviteth and enticeth to do good, and to love God, and to serve him, is inspired of God. Wherefore, take heed . . . that ye do not judge . . . that which is good and of God to be of the devil” (Moroni 7:12-14).

That approach to differences will yield tolerance and also respect.

#### IV.

Our tolerance and respect for *others* and their *beliefs* does not cause us to abandon our commitment to the truths we understand and the covenants we have made. That is a *third* absolute truth. We are cast as combatants in the war between truth and error. There is no middle ground. We must stand up for truth, even while we practice tolerance and respect for beliefs and ideas different from our own and for the people who hold them.

While we must practice tolerance and respect for *others* and their *beliefs*, including their constitutional freedom to explain and advocate their positions, we are not required to respect and tolerate wrong *behavior*. Our duty to truth requires us to seek relief from some behavior that is wrong. This is easy as to extreme behaviors that most believers and non-believers recognize as wrong or unacceptable. For example, we must all deplore murder or other terrorist behavior, even when done by extremists in the name of religion. And we must all oppose violence and thievery.

As to less extreme behaviors, where even believers disagree on whether or not they are wrong, the nature and extent of what we should tolerate is much more difficult to define. Thus, a thoughtful LDS woman wrote me about her concern that “the world’s definition of ‘tolerance’ seems to be increasingly used in relation to tolerating wicked lifestyles.” She asked how the Lord would define “tolerance.”<sup>[11]</sup>

President Boyd K. Packer gave an inspired introduction to this subject. Speaking to an audience of Institute students three years ago he said:

“The word *tolerance* does not stand alone. It requires an object and a response to qualify it as a virtue. . . . Tolerance is often demanded but seldom returned. Beware of the word *tolerance*. It is a very unstable virtue.”<sup>[12]</sup>

This inspired caution reminds us that for persons who believe in absolute truth, tolerance for behavior is like a two-sided coin. Tolerance or respect is on one side of the coin, but truth is always on the other. You cannot possess or use the coin of tolerance without being conscious of both sides.

Our Savior applied this principle. When he faced the woman taken in adultery, Jesus spoke the comforting words of tolerance: “Neither do I condemn thee.” Then, as he sent her away, he spoke the commanding words of truth: “Go and sin no more” (John 8:11). We should all be edified and strengthened by this example of speaking both tolerance and truth: kindness in the communication, but firmness in the truth.

Let us consider how to apply that example to some other behaviors. Another thoughtful LDS member wrote:

“In Mosiah 18:9, Alma tells us that when we are baptized we covenant ‘to stand as “witnesses” of God at all times and in all things, and in all places that ye may be in.’ . . . What does this scripture mean for our day and how can it be applied by Latter-day Saints?

“Living in the mission field, I often hear the name of the Lord taken in vain, and I also have acquaintances who tell me that they are living with their boyfriends. I have found that observance of the Sabbath is almost obsolete. How can I keep my covenant to stand as a witness and not offend these people?”<sup>[13]</sup>

Profanity, cohabitation, and Sabbath-breaking—excellent examples to illustrate how Latter-day Saints might balance their competing duties to truth and tolerance in their own lives in these different circumstances.

I begin with our personal conduct, including the teaching of our children. In applying the sometimes competing demands of truth and tolerance in these three behaviors and many others we should not be tolerant with ourselves. We should be ruled by the demands of truth. We should be strong in keeping the commandments and our covenants, and we should repent and improve when we fall short. As President Thomas S. Monson taught us in the conference where he was sustained as our prophet:

“My young friends, be strong. . . . The face of sin today often wears the mask of tolerance. Do not be deceived; behind that façade is heartache, unhappiness, and pain. You know what is right and what is wrong, and no disguise, however appealing, can change that. The character of transgression remains the same. If your so-called friends

urge you to do anything you know to be wrong, *you* be the one to make a stand for right, even if you stand alone.”[14]

Similarly, with our children and others we have a duty to teach—such as in our Church callings—our duty to truth is paramount. Of course, teaching efforts only bear fruit through the agency of others, so they must always be done with love, patience, and persuasion.

I turn now to the obligations of truth and tolerance in our personal relations with associates who use profanity in our presence, who live with a partner out of wedlock, or who do not observe the Sabbath day appropriately? How should we react toward and communicate with them?

Our obligation to tolerance means that none of these behaviors—or others we consider deviations from the truth—should ever cause us to react with hateful communications or unkind actions. But our obligation to truth has its own set of requirements and its own set of blessings. When we “speak every man truth with his neighbour,” and when we “[speak] the truth in love,” as the Apostle Paul taught (Eph. 4:25, 15), we are acting as servants of the Lord Jesus Christ, doing His work. Angels will stand with us and He will send His Holy Spirit to guide us.

In this sensitive matter we should first consider whether or the extent to which we should communicate to our associates what we know to be true about their behavior. In most cases this decision can depend on how directly we are personally affected by it.

Profanity consistently used in our presence is an appropriate cause for us to communicate the fact that this is offensive to us. Profanity used out of our presence by non-believers probably would not be an occasion for us to confront the offenders.

Cohabitation we know to be a serious sin, in which Latter-day Saints must not engage, whatever the circumstances. When practiced by those around us, it can be private behavior or something we are asked to condone, sponsor, or facilitate. In the balance between truth and tolerance, tolerance can be dominant where the behavior does not involve us personally. If the cohabitation does involve us personally, we should be governed by our duty to truth. For example, it is one thing to ignore serious sins when they are private; it is quite another thing to be asked to sponsor or impliedly endorse them, such as by housing them in our own homes.

On Sabbath observance, Latter-day Saints know that we are taught to observe the Sabbath Day in a different way than many other Christians. Most of us are troubled by packed shopping centers and other commercial activities on the Sabbath. Perhaps we should explain our belief that our observance of the Sabbath, including our partaking of the sacrament, restores us spiritually and makes us better people for the rest of the week. Then, to other believers, we might express appreciation for the fact that we share common ground on what is most vital because each of us believes in God and in the existence of absolute truth, even though we differ in our definitions of those fundamentals. Beyond that, we should remember the Savior’s teaching that we should avoid contention (see 3 Ne. 11:29-30) and that our example and our preaching should “be the warning voice, every man to his neighbor, in mildness and in meekness” (D&C 38:41).

In all of this we should not presume to judge our neighbors or associates on the ultimate effect of their behaviors. That judgment is the Lord's, not ours. Even He refrained from a final mortal judgment of the woman taken in adultery (John 8:11). Tolerance requires a similar refraining in our judgment of others.

## V.

Having discussed the balancing of truth and tolerance in our personal behavior and in our relations with associates, I come to a different and more difficult circumstance. When believers enter the public square to try to influence the making or the administration of laws motivated by their beliefs, they should apply some different principles. As young adults, you may wonder why I am speaking to you about the principles we should follow when we seek government action, such as by the legislature. You might say, "That is a matter for senior Church authorities to handle." I describe these principles to you young adults because you are current members and future leaders of the Church of Jesus Christ, and you will need to decide these kinds of questions sooner than you think. You need to understand how our efforts in the public square are informed by the balance between truth and tolerance.

Whether or how we might seek to obtain laws that would compel or influence behavior that we deem desirable because of our belief in God and His commandments is too large a subject for adequate treatment in the concluding few minutes of my talk. I will, therefore, limit myself to describing four paramount principles that should govern such an effort.

*First*, when believers in Jesus Christ take their views of truth into the public square they must seek the inspiration of the Lord to be selective and wise in choosing which true principles they seek to promote by law or executive action. Generally, they should refrain from seeking laws or administrative action to facilitate beliefs that are distinctive to believers, such as the enforcement of acts of worship, even by implication. Believers can be less cautious in seeking government action that would serve principles broader than merely facilitating the practice of their beliefs, such as laws concerning public health, safety and morals.

In any event, as defenders of the faith, believers can and must seek laws that will preserve religious freedom. Along with the ascendancy of moral relativism, the United States is experiencing a disturbing reduction in overall public esteem for religion. Once an accepted part of American life, religion is now suspect in the minds of many. To them it has become something that must prove its legitimacy as a part of our public life. Some influential voices even question the extent to which our constitutions should protect the free exercise of religion, including the right to practice and preach religious principles.

This is a vital matter on which we who believe in a Supreme Being who has established absolute right and wrong in human behavior must unite to insist on our time-honored constitutional rights to exercise our religion, to vote our consciences on public issues, and to participate in elections and debates in the public square and the halls of justice. In doing so we stand with angels. We must also stand shoulder to shoulder with other believers to preserve and strengthen the freedom to advocate and practice our religious beliefs, whatever they are. For this purpose we must walk together on the same path in order to secure our freedom to pursue our separate ways when that

is necessary according to our separate beliefs. Guided by Heaven in this righteous cause, our words will be sweet and find place in the hearts of many.

*Second*, when believers seek to promote their positions in the public square, their methods and their advocacy should always be tolerant of the opinions and positions of those who do not share their beliefs. We should not add to the extremism that divides our society. As believers we must always speak with love and show patience, understanding, and compassion toward our adversaries. Christian believers are under command to love their neighbors (Luke 10:27), to forgive (Matt. 18:21-35), and to do good to those who spitefully use them (Matt. 5:44). They should always remember the Savior's teaching that we "bless them that curse [us], do good to them that hate [us], and pray for them which spitefully use [us], and persecute [us]" (Matt. 5:44). As believers we should also frame our arguments and positions in ways that contribute to the reasoned discussion and accommodation that are essential to democratic government in a pluralistic society. By this means we will contribute to the civility that is essential to preserve our civilization.

*Third*, believers should not be deterred by the familiar charge that they are trying to legislate morality. Many areas of the law are based on Judeo/Christian morality and have been for centuries. Our civilization is based on morality and cannot exist without it. As John Adams declared, "Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."<sup>[15]</sup>

*Fourth*, believers should not shrink from seeking laws to maintain public conditions or policies that assist them in practicing the requirements of their faith where those conditions or policies are also favorable to the public health, safety or morals. For example, even though religious beliefs are behind many criminal laws and some family laws, such laws have a long-standing history of appropriateness in democratic societies. But where believers are in the majority they should always be sensitive to the views of the minority.

We Latter-day Saints are sometimes accused of being self-righteous and intolerant of others, especially where we are in the majority or where others are in the majority and our beliefs cause us to oppose them. Surely Latter-day Saints do need to be more wise and skillful in explaining and pursuing our views and in exercising our influence when we have it.

That is the spirit of the two-sided coin of Truth and Tolerance. President Thomas S. Monson has provided an excellent example of the practice of these twin virtues. Throughout his life he has been exemplary in reaching out and working with the members and leaders of other faiths, in cooperative efforts on matters of common interest, and in the Christian fellowship and concern that have no denominational boundaries.<sup>[16]</sup>

Finally, the spirit of our balance of truth and tolerance is applied in these words of President Gordon B. Hinckley:

"Let us reach out to those in our community who are not of our faith. Let us be good neighbors, kind and generous and gracious. Let us be involved in good community causes. There may be situations, there will be situations, where, with serious moral issues

involved, we cannot bend on matters of principle. But in such instances we can politely disagree without being disagreeable. We can acknowledge the sincerity of those whose positions we cannot accept. We can speak of principles rather than personalities.”<sup>[17]</sup>

## VI.

I close with this assurance and this testimony.

The Bible teaches that one of the functions of a prophet is to be a “watchman” to warn Israel (Ezek. 3:17, 33:7). In revelation the Lord added this parable for modern Zion: “Set . . . a watchman upon the tower,” who will “[see] the enemy while he [is] yet afar off” and give warning to save the vineyard “from the hands of the destroyer” (D&C 101:45, 54).

I have spoken to you as one of those watchmen, on the subject the Spirit has assigned me. I assure you that my message is true. If you have doubts about this or if you have questions about how to apply these principles in your own life, I urge you to seek guidance from the same Source.

On the broader question being widely agitated by the atheists of our day, I proclaim my knowledge that God lives! His creations witness His existence and His servants hear and proclaim His voice. Modern revelation teaches that some have the gift to know that Jesus Christ is the Son of God, crucified for the sins of the world, and that it is given to others to believe on their words (D&C 40:13-14). As one who knows, I invite you to believe on my words.

I testify of Jesus Christ, the Lord of the vineyard. He is our Savior, and He reaches out to each of us with the timeless invitation to receive His peace by learning of Him and by walking in His way (D&C 19:23):

“Come unto me, all ye that labour and are heavy laden, and I will give you rest.

“Take my yoke upon you, and learn of me; for I am meek and lowly in heart: and ye shall find rest unto your souls.

“For my yoke is easy, and my burden is light” (Matthew 11:28-30).

In the name of Jesus Christ, amen.

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[1] “Oh Say, What Is Truth?” *Hymns*, 1985, no. 272, verse 4.

[2] *Gospel Doctrine*, Deseret Book, 1939, p. 1.

[3] “Is the U.S. a Nation of Liars?” *The Christian Science Monitor*, July 25, 2011, p. 20;  
“Anarchy in the U.K.,” *The Economist*, August 13, 2011, p. 14

[4] Stephen L. Carter, *The Culture of Disbelief* (Basic Books, 1993), 225.

[5] *The Wall Street Journal*, July 5, 2002, p. W11.

[6] E.g., *John Paul II: The Encyclicals in Everyday Language*, edited by Joseph G. Donders, 2005, 212-13; Rabbi Harold Kushner, *Who Needs God*, First Fireside Ed’n, 2002, 78.

[7] *Hymns*, no. 272, verse 3.

[8] *Teachings of Gordon B. Hinckley* (Deseret Book Co, 1995), 665.

[9] “Building Bridges to Harmony Through Understanding,” an address at Brigham Young University, Oct. 10, 2006, included in Alwi Shihab, *Examining Islam in the West* (Gramedia Pustaka Utama, 2004), 405-6.

[10] Eric Rassbach, Becket Fund attorney, quoted in William McGurn, “Religion and the Cult of Tolerance,” *The Wall Street Journal*, August 16, 2011, p. A11.

[11] Letter to DHO, May 14, 1998.

[12] “Be Not Afraid,” address at the Ogden Institute of Religion, Nov. 16, 2008, p. 5.

[13] Letter to DHO, December 22, 1987.

[14] “Examples of Righteousness,” *Ensign*, May 2008, 65.

[15] *The Works of John Adams*, Second President of the United States, Charles Francis Adams, editor (Boston: Little, Brown, and Co. 1854), Vol. IX, p. 229, October 11, 1798.

[16] See Heidi S. Swinton, *To the Rescue*, (Deseret Book Co, 2010), especially chapters 25, 28, and pp. 462-63.

[17] *Teachings of Gordon B. Hinckley*, Deseret Book Co., 1997, pp. 662.

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# Religion in a Free Society

ELDER M. RUSSELL BALLARD

*Of the Quorum of the Twelve*



From a talk given 5 July 1992 at the Freedom Festival in Provo, Utah.

## Religion in a Free Society

Recently a group of religious and political leaders and scholars from all around the world met in Budapest, Hungary, to discuss the practical challenges faced by the former communist nations that are moving toward some form of religious liberty. The concept of religious freedom is revolutionary for many countries, and they are struggling with many potentially divisive issues: To what extent should public schools recognize and teach religion? How much should the state regulate a church's charitable activities? Should churches be exempted from general laws? To what degree should church and state be separated? Should there be an official state church?

Do those issues sound familiar? They should. The Founding Fathers of the United States wrestled with them more than two hundred years ago, and they continue to be serious topics of discussion and debate to this very day.

The principles and philosophies upon which the U.S. constitutional law is based are not simply the result of the best efforts of a remarkable group of brilliant men. They were inspired by God, and the rights and privileges guaranteed in the Constitution are God-given, not man-derived. The freedom and independence afforded by the Constitution and Bill of Rights are divine rights—sacred, essential, and inalienable. In the 98th section of the Doctrine and Covenants, the Lord indicates that the “law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.” (D&C 98:5.)

I focus my comments on sixteen significant words found in the First Amendment to the Constitution: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”

These words are simple and direct. Their message and meaning appear to be clear. But through the years presidents, Congress, and the courts have interpreted them in so many different ways that many people today have no sense of the perspective upon which they were based.

Believe it or not, at one time the very notion of government had less to do with politics than with virtue. According to James Madison, often referred to as the father of the Constitution: “We have staked the whole future of American civilization not upon the power of the government—far from it. We have staked the future of all of our political institutions upon the capacity of each and all of

us to govern ourselves according to the Ten Commandments of God.” (Russ Walton, *Biblical Principles of Importance to Godly Christians*, New Hampshire: Plymouth Foundation, 1984, p. 361.)

George Washington agreed with his colleague James Madison. Said Washington: “Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.” (James D. Richardson, *A Compilation of the Messages and Papers of the President, 1789–1897*, U.S. Congress, 1899, vol. 1, p. 220.)

Nearly one hundred years later, Abraham Lincoln responded to a question about which side God was on during the Civil War with this profound insight: “I am not at all concerned about that, for I know that the Lord is always on the side of the right. But it is my constant anxiety and prayer that I and this nation should be on the Lord’s side.” (*Abraham Lincoln’s Stories and Speeches*, ed. J. B. McClure, Chicago: Rhodes and McClure Publishing Co., 1896, pp. 185–86.)

Madison, Washington, and Lincoln all understood that democracy cannot possibly flourish in a moral vacuum and that organized religion plays an important role in preserving and maintaining public morality. Indeed, John Adams, another of America’s Founding Fathers, insisted: “We have no government armed with power capable of contending with human passions unbridled by morality and religion.” (John Adams, *The Works of John Adams, Second President of the United States*, Charles F. Adams, 1854.)

Yet that is precisely the position we find ourselves in today. Our government is succumbing to pressure to distance itself from God and religion. Consequently, the government is discovering that it is incapable of contending with people who are increasingly “unbridled by morality and religion.” A simple constitutional prohibition of state-sponsored church has evolved into court-ordered bans against representations of the Ten Commandments on government buildings, Christmas manger scenes on public property, and prayer at public meetings. Instead of seeking the “national morality” based on “religious principle” that Washington spoke of, many are actively seeking a blind standard of legislative amorality, with a total exclusion of the mention of God in the public square.

Such a standard of religious exclusion is absolutely and unequivocally counter to the intention of those who designed our government. Do you think that mere chance placed the freedom to worship according to individual conscience among the first freedoms specified in the Bill of Rights—freedoms that are destined to flourish together or perish separately? The Founding Fathers understood this country’s spiritual heritage. They frequently declared that God’s hand was upon this nation, and that He was working through them to create what Chesterton once called “a nation with the soul of a church.” (Richard John Neuhaus, “A New Order for the Ages,” speech delivered at the Philadelphia Conference on Religious Freedom, 30 May 1991.) While they were influenced by history and their accumulated knowledge, the single most influential reference source for their work on the Constitution was the Holy Bible. Doubtless they were familiar with the Lord’s counsel to the children of Israel as they struggled to become a great nation:

“And it shall come to pass, if thou shalt hearken diligently unto the voice of the Lord thy God, to observe and to do all his commandments which I command thee this day, that the Lord thy God will set thee on high above all nations of the earth:

“And all these blessings shall come on thee, and overtake thee, if thou shalt hearken unto the voice of the Lord thy God.

“Blessed shalt thou be in the city, and blessed shalt thou be in the field.

“Blessed shall be the fruit of thy body, and the fruit of thy ground, and the fruit of thy cattle, the increase of thy kine, and the flocks of thy sheep.

“Blessed shall be thy basket and thy store.

“Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out.

“The Lord shall cause thine enemies that rise up against thee to be smitten before thy face: they shall come out against thee one way, and flee before thee seven ways.

“The Lord shall command the blessing upon thee in thy storehouses, and in all that thou settest thine hand unto; and he shall bless thee in the land which the Lord thy God giveth thee.

“The Lord shall establish thee an holy people until himself, as he hath sworn unto thee, if thou shalt keep the commandments of the Lord thy God, and walk in his ways.” (Deut. 28:1-9.)

In other words, that nation that keeps God’s commandments and walks in His ways will prosper. The framers of our Constitution knew that, and they tried to lay a solid moral foundation for a society that could be so blessed. As they did so, perhaps they thought of Roger Williams and others like him who made a heroic fight for religious freedom.

Roger Williams began his ministry in England, where his zealous work to free the church from the influence of the king brought the wrath of the government upon him. Eventually he and his young wife were forced to flee to the New World. But instead of finding himself among like-minded reformers in America, he encountered much of the same resistance and persecution until he established a new colony called Providence in Rhode Island. Here America had its first taste of true religious freedom, and the success of the Providence colony convinced many that the concept tasted good.

The Founding Fathers very likely were aware of the experiences of Roger Williams and others when they wrote in the First Amendment that the government cannot impede the free exercise of religion. They wrote that the church and the state were to be separate, independent entities, not to eliminate morality and God’s law but to make sure that the power of government could never be used to silence religious expression or to persecute religious practice. Once again quoting George Washington: “If I could have entertained the slightest apprehension that the Constitution, framed in the convention where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it.” (*Maxims of Washington*, New York: D. Appleton and Co., 1894, pp. 370-71.)

What would Washington have thought if he could have foreseen our day? Would he have signed the document?

I believe he would have been troubled to see a time when citizens are forbidden to pray in public meetings; when people claim that “you can’t legislate morality,” as if any law ever passed did not have at its heart some notion of right and wrong; when churches are called intruders when they speak out against public policy that is contrary to the commandments of God; when many people reject the correcting influence of churches if it infringes on daily living; when religion is accepted as a social organization but not as an integral part of national culture; when people bristle if representatives of churches speak in any forum except from the pulpit.

Indeed, some people now claim that the Founding Fathers’ worst fear in connection with religion has been realized; that we have, in fact, a state-sponsored religion in America today. This new religion, adopted by many, does not have an identifiable name, but it operates just like a church.

It exists in the form of doctrines and beliefs, where morality is whatever a person wants it to be, and where freedom is derived from the ideas of man and not the laws of God. Many people adhere to this concept of morality with religious zeal and fervor, and courts and legislatures tend to support it.

While you may think I am stretching the point a bit to say that amorality could be a new state-sponsored religion, I believe you would agree that we do not have to look far to find horrifying evidence of rampant immorality that is permitted if not encouraged by our laws. From the plague of pornography to the devastation caused by addiction to drugs, illicit sex, and gambling, wickedness rears its ugly head everywhere, often gaining its foothold in society by invoking the powers of constitutional privilege.

We see a sad reality of contemporary life when many of the same people who defend the right of a pornographer to distribute exploitive films and photos would deny freedom of expression to people of faith because of an alleged fear of what might happen from religious influence on government or public meetings. While much of society has allowed gambling to wash over its communities, leaving broken families and individuals in its soul-destroying wake, it reserves its harshest ridicule for those who advocate obedience to God's commandments and uniform, inspired standards of right and wrong.

As M. J. Sobran recently wrote: "A religious conviction is now a second-class conviction, expected to step deferentially to the back of the secular bus, and not to get uppity about it." (*Human Life Review*, Summer 1978, pp. 58-59.)

There are probably many reasons for the change in public attitudes toward religion. Certainly we've had too many wolves posing as shepherds, prompting a national skepticism toward any who profess to represent God. The news media, which rarely report on the good things churches are doing in the world, almost never miss an opportunity to tell people when active church members do wrong. We read about crimes that are committed by former Sunday School teachers, ministers, or missionaries. But when was the last time you read that a crime was committed by someone who hasn't stepped inside a church in forty years?

For that matter, when was the last time you saw religion or people of faith portrayed positively in any film or television program? For the most part, Hollywood's attitude toward religion is typified by the expression of cartoon character Bart Simpson, whose mealtime grace consisted of these words: "Dear God, we pay for all this stuff ourselves, so thanks for nothing." Can you imagine how embarrassed and disappointed our Founding Fathers would be to know of the blasphemous disregard many of those of the media have for God our Eternal Father. In fact, noted film critic Michael Medved accuses Hollywood of a deliberate attempt to undermine organized religion: "A war against standards leads logically and inevitably to hostility to religion, because it is religious faith that provides the ultimate basis for all standards." ("Popular Culture and the War against Standards," speech delivered at Hillsdale College, 18 Nov. 1990.)

Organized religion finds itself increasingly on the defensive. Not only are people questioning the right of the church—*any* church—to be involved in matters of public policy, but some are even beginning to wonder whether the church is entitled to exert any kind of meaningful influence on people's lives. As one churchgoer recently said on a radio talk show, "I think the world of my minister—as long as he doesn't try to tell me how to live my life."

Is it any wonder, then, that religion now finds itself under attack in legislative assemblies and in the courts? In fact, the United States Supreme Court recently discontinued the time-honored judicial standard that gave considerable legal latitude to the free exercise of religion. Allowing

people of faith to practice their religion free from the burdening effects of public policy is, according to the court, "a luxury that can no longer be afforded." While the justices acknowledged that the ruling would "place at a relative disadvantage those religious practices that are not widely engaged in," they said it was "an unavoidable consequence of a democratic government." (*Oregon Employment Division v. Smith*, 1990.)

I do not promote the religious practice that was in question in that case but I am concerned with the long-term implications of the decision. Wherever religious groups are in the minority and are not considered part of the mainline religious community, the potential for state intrusion upon their religious practices is real. With legislative bodies responding most often to the will of the majority, the free exercise of religion by minority faith groups is in peril.

The Religious Freedom Restoration Act (HR 2797) is presently before Congress. This important piece of legislation is designed to restore the protections for religious freedom that existed before this recent Supreme Court decision placed those protections in jeopardy. Because the Religious Freedom Restoration Act is necessary for the preservation of the free exercise of religion, it demands our support.

The constitutional provisions relating to government and religion were not intended to control the religious rights of people. Rather, they were intended to expand them and eliminate the fear of government intrusion. These provisions were meant to separate religion and government so that religion would be independent. The experiences of Roger Williams and other reformers provided the Founding Fathers of the U.S. with important facts to help them deal with the potential risks of a state religion corrupted by politics. Consequently, they drafted an article in the Bill of Rights to guarantee religious freedom from government as opposed to government freedom from religion.

In fact, the framers of the Constitution probably assumed that religious freedom would establish religion as a watchdog over government, and believed that free churches would inevitably stand and speak against immoral and corrupt legislation. All churches not only have the right to speak out on public moral issues, but they have the solemn obligation to do so. Religion represents society's conscience, and churches must speak out when government chooses a course that is contrary to the laws of God. To remove the influence of religion from public policy simply because some are uncomfortable with any degree of moral restraint is like the passenger on a sinking ship who removes his life jacket because it is restrictive and uncomfortable.

Today, the buzz words *family values* are being incorporated in almost every politician's thirty-second sound bite. But what does that phrase really mean? Whose values are we going to embrace: the values of politicians? The values the media tell us we should cherish? The values of special interest groups and organizations? The values of rank-and-file Americans, as determined by scientific survey? Obviously, it would not be politically expedient to say that the values that the Founding Fathers drew upon are eternal, unchanging values. But that is a fact. The values that made America great are, in reality, the commandments of God. They provide the foundation upon which the American republic was built. And if American democracy seems shaky today, it's only because that foundation has been eroded and weakened under the guise of separation of church and state.

Maybe Washington really *was* speaking of our day when he said, "If I could conceive that the general government might ever be so administered as to render the liberty of conscience insecure, no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny and every species of religious persecution." (*Maxims of Washington*, p. 371.)

Samuel Adams, who is sometimes called the father of the American Revolution, wrote: "I thank God that I have lived to see my country independent and free. She may long enjoy her independence and freedom if she will. It depends upon her virtue." (Wells, *The Life of Samuel Adams*, 3:175.)

That means it depends on us. If we would maintain the independence and freedom the Founding Fathers intended, we must work to preserve and protect the moral foundation upon which they built the U. S. government. We must stand boldly for righteousness and truth, and must defend the cause of honor, decency, and personal freedom espoused by Washington, Madison, Adams, Lincoln, and other leaders who acknowledged and loved God. Otherwise, we will find ourselves in the same predicament President Lincoln observed in 1863.

Said Lincoln: "We have grown in numbers, wealth and power as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace and multiplied and enriched and strengthened us; and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of their own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us!" (*A Proclamation "to designate and set apart a day for national prayer and humiliation."*)

Let us resolve to make our own families truly free by teaching them that God holds us all accountable. His laws are absolutes; breaking them brings misery and unhappiness; keeping them brings joy, happiness, and the blessings of heaven. Let us teach our families and others the importance of moral responsibility based on the laws of God.

The freedom we give thanks for is at stake—for ourselves and for our posterity. No nation or people that rejects God or His commandments can prosper or find happiness. History and the scriptures are filled with examples of nations that rejected God. Let us be wise and remember the source of our blessings and not be timid or apologetic in sharing this knowledge with others.

THE CHURCH OF  
JESUS CHRIST  
OF LATTER-DAY SAINTS

Newsroom HEADQUARTERS  
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NEWS RELEASE — 16 DECEMBER 2011

# Elder Quentin L. Cook: "The Restoration of Morality and Religious Freedom"

SALT LAKE CITY —

## THE RESTORATION OF MORALITY AND RELIGIOUS FREEDOM

BYU-Idaho Commencement  
Friday, December 16, 2011

Elder Quentin L. Cook

Graduates, Families and Friends,

It is a great pleasure, President Clark, to join with you; your wife, Sue; and the faculty to rejoice with you wonderful graduates on this special day. I congratulate you and your parents for attaining this singular honor. To attain a cherished goal in the presence of family and friends is a memorable experience.

One of the most significant benefits you have received in your education is the knowledge that will prepare you for the eternities — “things which have been, things which are, things which must ... come to pass” (D&C 88:79).

My purpose today is to challenge you to work with people of other faiths to improve the moral fabric of this nation and the world and to protect religious freedom. In order to do this, you need to understand and comprehend “things which have been,” with particular emphasis on certain knowledge and events which were precursors to the restoration of the gospel of Jesus Christ and still need to be protected. These are the underpinnings of our Judeo-Christian heritage and bless people worldwide.<sup>[1]</sup> If you understand these events, then as graduates of this great university, you can help protect, defend and, with your unique abilities, enhance those elements of knowledge that will bless mankind, prepare for the kingdom of God and bring you happiness and joy. Much of what you will do to improve the moral fabric and protect religious freedom will be accomplished in your families and the communities in which you live.

I will review four major “things which have been” that were precursors to the restoration of the gospel and then suggest three additional courses of action that are particularly relevant today and that will build on the great heritage that has been bestowed on each of us.

Two recent news items caused me to reflect on this topic for today. First, the British Museum and the British Broadcasting Company released a book last month titled *The History of the World in 100 Objects*.<sup>[2]</sup>

The second news item is the reportage of events surrounding the 400th anniversary of the King James translation of the Bible. A month ago today, November 16, there was a ceremony marking the 400th anniversary at Westminster Abbey.

These two news items caused me to review some of the most important events that occurred prior to the restoration of the gospel that can assist you, regardless of your academic discipline, in being a better citizen and a better Latter-day Saint.

### TYNDALE AND THE KING JAMES BIBLE

First on my list is a unique and profoundly important group of achievements which occurred during the 1500s and early 1600s. William Tyndale, a man of strong religious beliefs and a gifted linguist, translated the Hebrew and Greek versions of the Bible existing at that time into English. His translation contained “phraseology that we associate with the sacredness of the word of God.”<sup>[3]</sup> It was the language of religion, the language that captured the dramatic importance of the Old Testament and of the Savior’s eternal spiritual message, ministry and mission set forth in the New Testament. Tyndale’s vision was that the common laborer, the plowboy in England, as he described it, could read and understand

the Bible. His language became to religion what William Shakespeare's writings were to the language of literature and social discourse in the English tongue.

With the enhancement of the English language produced by Shakespeare and the eloquent translations into English by Tyndale, wise and noble scholars produced the magnificent King James Version of the Bible in 1611. This Bible speaks to our personal commitments and evokes language that speaks to the heart. The text on the title page contained the phrase "Appointed to be read in churches." It was intended to be read, meaning read aloud, in church. It was meant for the ear and not simply for the eye.<sup>[4]</sup> "The King James translation introduced 18 classic phrases into the English language and made famous some 240 more from earlier English translations."<sup>[5]</sup> Examples are: "To everything there is a season," "Beat their swords into plowshares," "A thorn in the flesh," "Suffer little children."<sup>[6]</sup>

I will never forget when Elder Ballard and I were reviewing the first draft of the new missionary guide, *Preach My Gospel*, with President Boyd K. Packer at his home. After his review, President Packer asked, "Will this prepare and assist our missionaries in understanding and appreciating the majesty of the King James Version of the Bible?" I immediately understood the very high standard he expected *Preach My Gospel* to attain. Most writings have a relatively short life span. Language matters. Truth with examples, elegance and civility endures. This great book of scripture, the King James Bible, has endured and is as important to us today as it was 400 years ago. Significantly, we share with the vast majority of citizens a love and appreciation for the Judeo-Christian values set forth in the King James Bible.

Second on my list are the English Common Law and the U.S. Constitution. At about the same time in history as the events I just described, Sir Edward Coke, spelled C-o-k-e, but usually pronounced Cook, obviously no relation, produced the consolidation of the English law in written form. His work was to law what Shakespeare's was to literature and what the King James Bible was to religion. In continental Europe, the Emperor Justinian's *Corpus Juris Civilis* was a written body of law for jurists and professors. In contrast, Coke's common law was based on precedent. It was principle-based reasoning from individual situations adapted to changing circumstances. Perhaps his most famous pronouncement is "An Englishman's home is his castle." His volumes covered every conceivable legal topic and stated what the common law was on each.

Most people consider the provisions of the common law produced by Coke as a foundation for the constitutional provisions contained in the U.S. Constitution, which has been viewed by Latter-day Saints as both inspired and as necessary to the restoration of the gospel. My intent here is *not* to provide a scholarly analysis of the Constitution. However, it is interesting that President J. Reuben Clark and Elder Dallin H. Oaks, two apostles who had previously been eminent lawyers, share a common view of our understanding that the Constitution is divinely inspired. Neither of them has seen every word of the Constitution as being inspired. Elder Oaks has said, "Our reverence for the United States Constitution is so great that we sometimes speak as if its every word and phrase had the same standing as scripture." He continues, "I have never considered it necessary to defend that possibility." President J. Reuben Clark enunciated a similar view in an address given in 1939. I concur with their assessment.

These two great leaders, between them, identified five elements of the Constitution as being particularly inspired. First is the separation of powers into three independent branches of government. Second is the Bill of Rights' guarantee of freedom of speech, press and religion. The third is the equality of all men and women before the law. The fourth is the federal system, with the division of powers between the nation as a whole and the various states. And the fifth is the principle of popular sovereignty; the people are the source of government.

I think most of us would agree with President J. Reuben Clark and Elder Dallin H. Oaks that these incredibly significant fundamental principles elegantly combined in the constitutional documents are indeed inspired and coincide with doctrinal principles in our scriptures. It does not require detailed analysis of the Constitution to see that these five basic fundamentals have been a great blessing to the United States and were necessary to the restoration of the gospel of Jesus Christ. Again, we share with the vast majority of citizens a love and appreciation for the Constitution. Many are equally concerned about efforts by some to diminish the Bill of Rights' guarantee of freedom of religion.

Third on my list, which I will review very briefly, are the scientific achievements including the Industrial Revolution, the Communication Revolution, and advancements in medicine that have greatly blessed us today. President Spencer W. Kimball acknowledged these achievements and the contribution they provide to the kingdom. He saw some of this body of scientific knowledge as a precursor to the restoration and encouraged Latter-day Saints to participate in the acquisition of this knowledge.

Daniel Walker Howe, in his Pulitzer Prize-winning history of the transformation of America between 1815 and 1848, titled his book *What Hath God Wrought*. In his introduction he focuses on Professor Samuel F. B. Morse and notes that "for thousands of years messages had been limited by the speed with which messengers could travel." "Morse, seated amidst a hushed gathering of distinguished national leaders in the chambers of the United States Supreme Court in Washington, tapped out a message" on a new device, the telegraph: "WHAT HATH GOD WROUGHT."<sup>[7]</sup> "As Morse later commented, the message 'baptized the American telegraph with the name of its author': GOD. Morse shared a 'religious sense of divine providence'<sup>[8]</sup> and saw himself as an 'instrument of providence.'<sup>[9]</sup>

Elder Gerrit W. Gong has eloquently summarized these events: "For those ... who see Heaven's hand in the affairs of men, it comes as no coincidence that the central theme of *What Hath God Wrought* is that the early nineteenth century [was] a time of a communications revolution."<sup>[10]</sup> Howe states, "During the thirty-three years that began in

1815, there would be greater strides in the improvement of communication than had taken place in all previous centuries."<sup>[11]</sup>

A second communications revolution has occurred during the lives of those of us in this BYU-Idaho Center. The most significant part of this involves the Internet. This is an area where you have great understanding.

The fourth and most essential achievement on my list was and is again for our own day a return to Judeo-Christian moral principles. This was especially necessary for the restoration of the gospel. This emphasis on morality occurred both in England and in the United States. This involved fervent religious awakenings, including those associated with the area of western New York State which became known as the "burned-over" district, because the fires of religious zeal swept across it."<sup>[12]</sup> One English writer described this return to morality as "an overpowering sense of accountability and a responsibility to God for their actions."<sup>[13]</sup>

The practice of religious beliefs had been a principal reason for the original settlements in New England, Pennsylvania and Maryland. "More material was printed in mid-18th-century America about religion than about political science, history, and law combined."<sup>[14]</sup> On the eve of the Revolutionary War, religious pamphlets "topped secular pamphlets from all 13 colonies by 4 to 1."<sup>[15]</sup>

A farmer who had fought at Concord Bridge "declared that he had never heard of Locke or Sidney, his reading having been limited to the Bible, the Catechism, Watt's Psalms and Hymns, and the Almanac."<sup>[16]</sup> It was these principles that he was defending.

In a recent op-ed in *The New York Times*, prominent writer David Brooks, in an article titled "The Great Restoration," noted that many people believe "that repairing the economic moral fabric is the essential national task right now." He continued: "America went through a similar values restoration in the 1820s. Then, too, people sensed that the country had grown soft and decadent. Then, too, Americans rebalanced. They did it quietly and away from the cameras."<sup>[17]</sup> I was deeply touched when I read this article.

#### **BE A RIGHTEOUS EXAMPLE**

How can you help bring about this restoration of morality in our day and help preserve religious freedom? First, be a righteous example. You must not be in camouflage as to who you are and what you believe. Many of you are or will be in interviews for jobs or post-graduate work. Elder J. Devn Cornish, a recently called General Authority who prior to the calling was a nationally recognized professor in the pediatric department at Emory University School of Medicine and one of the foremost pediatricians in the U.S., tells of his efforts to be admitted to Johns Hopkins Medical School. In the interview he had with the distinguished professors at the medical school, they asked him why he wanted to be a doctor. He started out by telling them that he wanted to be a pediatrician. They interrupted him and asked how he could possibly know that when he hadn't even been to medical school. He explained to them with great passion that he had the privilege of serving an LDS mission in the Guatemala-El Salvador Mission. He had seen the terrible condition of the children and the enormous need they had for medical care. This, and the promptings of the Spirit, had inspired in him a desire to attend medical school and specialize in pediatrics. He reports in looking back on the experience that many students were seeing medical school in terms of status or economics rather than simply the desire to serve and bless mankind. He was surprised as these world famous physicians extended his interview. They were interested in what he did as a missionary, his ability to speak Spanish and his interaction with and love of the people that he had served.

I think in this so called "Mormon Moment," where there is more attention being paid to the Church and its members, we will need to be the best examples we can possibly be. Collectively our example will be more important than what any single member or leader proposes. Church research has shown that those who know faithful Latter-day Saints appreciate our honesty, integrity, morality and desire to be of service to our fellowmen.

Recently, we met with a top government leader in a South American country. He had also been a physician before his election. We did not expect a particularly good meeting because some of his views are not in accord with certain principles that are very important to us. We were surprised when we were received in a warm and gracious manner. He had only known one LDS member, a fellow student in the medical school he attended. He admired this student, knew about our beliefs and was most respectful because of one example of a Latter-day Saint whose life was based on honesty, integrity and morality.

#### **BE CIVIL IN YOUR DISCOURSE**

We need to be civil in our discourse and respectful in our interactions. We live in a world where there is much turmoil. Many people are both angry and afraid. The Savior taught us to love even our enemies (see Matthew 5:44). This is especially true when we disagree. The moral basis of civility is the golden rule. It is taught in most religions and particularly by the Savior: "And as ye would that men should do to you, do ye also to them likewise" (Luke 6:31). Our faith requires that we treat our neighbors with respect.

In a general conference address I pointed out, "There are some who feel that venting their personal anger or deeply held opinions is more important than conducting themselves as Jesus Christ lived and taught. I invite each one of us ... to recognize that how we disagree is a real measure of who we are and whether we truly follow the Savior. It is

appropriate to disagree, but it is not appropriate to be disagreeable. ... If we show love and respect, even in adverse circumstances, we become more like Christ."<sup>[18]</sup>

### **BE AN ADVOCATE FOR RELIGIOUS FREEDOM AND MORALITY**

Be an advocate for religious freedom and morality. This is a time when those who feel accountable to God for their conduct feel under siege by a secular world. You understand the moral principles that are under attack and the need to defend morality. Religious freedom all over the world is also under attack. It is important for your generation to become well educated on this issue and assume responsibility for ensuring that the religious freedom you have inherited is passed on to future generations. We must work together to both protect religious freedom and restore morality. Please understand this is not an effort to coerce religious belief. As John Locke asserted, religious worship does not have value unless it is voluntary.<sup>[19]</sup>

Presidents of our Church, including George Albert Smith, Gordon B. Hinckley and Thomas S. Monson, have made it clear that all religions hold truths and that we should work together for the common good. In his inaugural press conference, President Monson emphasized this cooperation. He stated, "We have a responsibility to be active in the communities where we live ... and to work cooperatively with other churches. ... We need to eliminate the weakness of one standing alone and substitute for it the strength of people working together."<sup>[20]</sup> Our joint effort should be to protect important civic values like honesty, morality, self-restraint, respect for law and basic human rights. An important study established, "The association between religious freedoms and other civil liberties, press freedoms, and political freedoms are especially striking."<sup>[21]</sup> If we fail to diligently protect religious freedom, we risk diminishing other important freedoms that are important both to us and to society.

Our challenge is to help people without religious faith understand that the protection of moral principles grounded in religion is a great benefit to society and that religious devotion is critical to public virtue.

Many Founding Fathers, including Washington and Madison, pointed out that shared moral values espoused by different religions with competing doctrines allowed societies to be bound together.<sup>[22]</sup> In George Washington's farewell address as president of the U.S., he proclaimed that religion and morality are indispensable. He stated, "Whatever may be conceded to the influence of refined education ... , reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle." Unfortunately, religious influence has often been replaced by so-called secular religions. "For instance, humanism and atheism function as secular religions binding their adherents through common belief and ideology."<sup>[23]</sup>

Many philosophers have been at the forefront in promoting secularism and rejecting a moral view of the world based on Judeo-Christian values. In their view there is no "objective moral order" and no reason "to choose one goal over another."<sup>[24]</sup> They believe no preference should be given to moral goals.<sup>[25]</sup> A British high court recently denied a Christian family the right to foster children because children could be infected with Christian moral beliefs. The ruling demonstrates just how radically things have shifted.<sup>[26]</sup>

One of the reasons the attack on the moral or religious principles has been so successful is the reluctance of people of faith to express their views.<sup>[27]</sup>

Extraordinary effort will be required to protect religious liberty. Our doctrine confirms what both political philosophers and Founding Fathers advocated. Doctrine and Covenants 134:2 reads, "No government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience." Religious conscience is grounded in one's belief in being accountable to God for conduct. The effort of secularists or governments to coerce conduct in conflict with religious conscience leads to social disunity and is a primary reason why religious liberty is essential for civil peace.<sup>[28]</sup>

The role of religion in blessing a secular society was set forth succinctly by Alexis De Tocqueville in his classic *Democracy in America*. He stated, "The greatest advantage of religion is to inspire ... principles. There is no religion which does not place the object of man's desires above and beyond the treasure of earth, and which does not naturally raise his soul to regions far above those of the senses. Nor is there any which does not impose on man some sort of duties to his kind, and thus draws him at times from the contemplation of himself."<sup>[29]</sup>

My challenge today<sup>[30]</sup> is that you join with people of all faiths who feel accountable to God in defending religious freedom so it can be a beacon for morality. We caution you to be civil and responsible as you defend religious liberty and moral values. We ask that you do this on the Internet and in your personal interactions in the neighborhoods and communities where you live. Be an active participant, not a silent observer.

In conclusion, our reason for undertaking the objectives to be an example, to be civil in our discourse and to be an advocate for religious freedom is to serve mankind and follow the teachings of Jesus Christ. In doing so, our efforts will be blessed by heaven and will further the purposes of this life established by a loving Father in Heaven.

Again, I congratulate you on your graduation achievement and pray that the Lord's most choice blessings will be yours. In the name of Jesus Christ, amen.

NOTES

- [1] I recognize that the study of western civilization has been under attack. "Some criticize its study as narrow, limiting, arrogant and discriminatory, asserting that it has little or no value for those of non-European origins (Donald Kagan, *New York Times Book Review*, Nov. 27, 2011, 27).
- [2] Neil MacGregor, *A History of the World in 100 Objects* (2010). This was the culmination of a four-year effort by 100 curators to cull from the British Museum's massive collection 100 objects to tell the history of the world. I have to admit that as I reviewed the 100 objects, I was disappointed that it did not include the Bible.
- [3] David Rolph Seely, *The King James Bible and the Restoration*, (2011), 29.
- [4] Kent P. Jackson, *The King James Bible and the Restoration*, (2011), 118–19.
- [5] *National Geographic*, "The King James Bible, Making a Masterpiece," Dec. 2011, 49–51.
- [6] "The King James Bible, Making a Masterpiece," 50–51.
- [7] Daniel Howe, *What Hath God Wrought*, (2007) 1.
- [8] Howe, *What Hath God Wrought*, 3.
- [9] Howe, *What Hath God Wrought*, 2.
- [10] Gerrit W. Gong, presentation to the Quorum of the Twelve and other priesthood leaders, Aug. 6, 2010.
- [11] Howe, *What Hath God Wrought*, 5. (Howe states, "I provide an alternative interpretation of the early 19th Century as a time of a 'communications revolution.' This, rather than the continued growth of the market economy, impressed contemporary Americans as a startling innovation.")
- [12] Howe, *What Hath God Wrought*, 173. "Awakenings of Religion"
- [13] William Hague, *William Wilberforce, the Life of the Great Anti-Slave Trade Campaigner* (2007), 93.
- [14] Kevin Phillips, *The Cousins' Wars*, 94. See also Brigham Young University Law Review, vol. 1999, no. 2, Senator Gordon Smith, *Religious Liberty in the 21st Century*, 486–88.
- [15] *Ibid.* 94.
- [16] *Ibid.* 95.
- [17] Brooks, David, *The New York Times*, Oct. 18, 2011, A21.
- [18] Quentin L. Cook, "We Follow Jesus Christ," *Ensign*, May 2010.
- [19] Locke, J., *A Letter concerning toleration* 1689. *The Works of John Locke in Nine Volumes*, 12<sup>th</sup> ed., Rivington, London, 1824, vol. 5.
- [20] See Thomas S. Monson's statements as quoted in the LDS Newsroom commentary, "The Mormon Ethic of Civility"; <http://newsroom.lds.org/article/the-mormon-ethic-of-civility>.
- [21] Brian J. Grim and Roger Finke, *The Price of Freedom Denied* (2011) 205.
- [22] Brian W. Walsh, "George Washington thanked God for America," *USA Today*, Nov. 24, 2011; Federalist Paper, No. 51.
- [23] Margaret Somerville, "Should Religion Influence Policy?" *Edmonton Journal*, May 19, 2010. Secularists espouse a mistaken interpretation of the principle of separation of church and state. They do this to attack moral values based on religion. See also Dallin H. Oaks, "Preserving Religious Freedom," Chapman University School of Law, Feb. 4, 2011.
- [24] David D. Kirkpatrick, "The Right Hand of the Fathers," *The New York Times Magazine*, Dec. 20, 2009, 27. (Story on and quoting from Robert P. George, professor of jurisprudence at Princeton University.)
- [25] *Ibid.* R. P. George teaches that either we have moral reason and free choice or we have amorality and determinism.
- [26] Despite modern progress in some temporal fields, it needs to be made clear that secularism is morally flawed and has left millions of people unfulfilled, unhappy and often the victims of horrible atrocities by secular despots such as Stalin and Pol Pot.
- [27] "Onwards and upwards—Why is the modern view of progress so impoverished?" *The Economist Magazine*, Dec. 19, 2009–Jan. 1, 2010, 40. (See also Susan Neiman, *Evil in Modern Thought* [2002].) They fear that they will be charged

with being intolerant or judgmental and shamed by those in the “great and spacious building,” often the academics, who are mocking them. One sociologist has said that “Don’t be judgmental” has become the 11th commandment.

[28] A. Keith Thompson, *Religious Confession Privilege and the Common Law* (2011), 352.

[29] Alexis De Tocqueville, *Democracy in America* (1840) 21.

[30] Elder M. Russell Ballard, speaking at BYU-Idaho commencement April 11, 2008, challenged graduates and students to become more involved, particularly with respect to utilizing the Internet to defend the Church. Many have responded in a marvelous way.

STYLE GUIDE NOTE: When reporting about The Church of Jesus Christ of Latter-day Saints, please use the complete name of the Church in the first reference. For more information on the use of the name of the Church, go to our online [style guide](#).

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# Law and Becoming

**Elder D. Todd Christofferson  
of the Quorum of the Twelve Apostles**

**Ninth Annual J. Reuben Clark Law Society Fireside  
Originating from the Conference Center Theater  
February 4, 2011**

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Let me express first of all, the honor I feel at being invited to address you this evening. You are an audience of accomplished individuals, with demonstrated commitment to what is good and right. I appreciate your character and your good will.

It is also a great honor for me to be introduced by a man I respect as highly as Ralph Hardy. I first became acquainted with Ralph in the early 1970s when Kathy and I and our two young children at the time moved to Maryland following my graduation from law school. During my years in the Washington area, Ralph and I practiced law together and served concurrently as bishops. Ralph was kind enough to tutor me in things relating to the practice of law as well as leadership in the Church. I learned a great deal from his example that benefits me still today in my current calling and service.

Ralph's intellect and judgment are exceptional. Over the years, important political figures and many others have come to rely on his wisdom. I know from personal observation how highly Ralph is regarded among the senior leaders of the Church. His recommendations and insights are regularly sought and gratefully received. We all understand the thoughtfulness and experience behind his counsel. I am by no means alone in my conviction that Ralph's exceptional talent and devotion not only do great credit to the legal profession, but even more importantly, represent a tremendous blessing for The Church of Jesus Christ of Latter-day Saints.

Ralph, I am grateful that you would do me the honor of this introduction in your typically gracious manner, and I take this occasion to express to you publicly my deepest admiration.

I have titled my remarks this evening, "Law and Becoming." By this I mean to talk about the vital role of law in what we may become. In speaking of becoming, I am taking the long view not only of what a person may be able to make of himself or herself in the space between birth and death, but the eternal potential of men and women. And in

speaking of law, I want to reference not only matters of our codes and courts, but also the laws of God.

Through revelations granted to the Prophet Joseph and his predecessors, we learn some profound things about our relationship to God and our ultimate destiny. We learn that Jesus Christ, as the Son of God progressed “from grace to grace, until he received a fullness,”<sup>1</sup> and that we may follow in that same path. He said, “For if you keep my commandments you shall receive of his fullness, and be glorified in me as I am in the Father; therefore, I say unto you, you shall receive grace for grace.”<sup>2</sup> In explaining the natural conclusion of this pattern, Joseph Smith said, “Here, then, is eternal life—to know the only wise and true God; and you have got to learn how to be gods yourselves, and to be kings and priests to God, . . . by going from one small degree to another, and from a small capacity to a great one; from grace to grace, from exaltation to exaltation, until you attain to the resurrection of the dead, and are able to dwell in everlasting burnings, and to sit in glory, as do those who sit enthroned in everlasting power.”<sup>3</sup>

Joseph Smith also referred to God’s use of law in this process: “The first principles of man are self-existent with God. God himself, finding he was in the midst of spirits and glory, because he was more intelligent, saw proper to institute laws whereby the rest could have a privilege to advance like himself. The relationship we have with God places us in a situation to advance in knowledge. He has power to institute laws to instruct the weaker intelligences, that they may be exalted with himself, so that they might have one glory upon another.”<sup>4</sup>

I cite one more teaching from the Prophet that adds the remaining element to this equation—agency. “All persons are entitled to their agency, for God has so ordained it. He has constituted mankind moral agents, and given them power to choose good or evil; to seek after that which is good, by pursuing the pathway of holiness in this life, which brings peace of mind, and joy in the Holy Ghost here, and a fullness of joy and happiness at His right hand hereafter; or to pursue an evil course, going on in sin and rebellion against God, thereby bringing condemnation to their souls in this world, and an eternal loss in the world to come.”<sup>5</sup>

All of this declares that we have a potential made possible by God beyond anything we can fully comprehend or appreciate at present. And we recognize, of course, that none of us will achieve the ultimate end, the status of eternal life with God our Father, in a matter of days or years or without substantial help. We require the help of one another and an incalculable measure of divine grace originating in Christ and administered through the Holy Ghost. Nevertheless, our own choices will always be critical to what we become. And the capacity and power to choose are, as Joseph Smith declared, dependent on laws instituted by or under the authority of God.

Such laws link particular actions to fixed outcomes. If a given choice did not always and invariably yield the same result, we could not in the end control outcomes, and the power to choose would be meaningless. And even with law, if we are not free to act, either to follow or reject it, we likewise could not use law to progress from grace to grace. I believe that Satan's proposals in the pre-mortal world attacked both of these principles. He wanted to be vested with a power of compulsion over the souls of men and with the honor or power of God:

“And I, the Lord God, spake unto Moses, saying: That Satan, whom thou hast commanded in the name of mine Only Begotten, is the same which was from the beginning, and he came before me, saying—Behold, here am I, send me, I will be thy son, and I will redeem all mankind, that one soul shall not be lost, and surely I will do it; wherefore give me thine honor.”<sup>6</sup>

Had Satan been granted power to dictate our choices, we would have become nothing more than his puppets, eternally dependent upon him. It is my personal opinion that in demanding “Give me thine honor,” Satan was also coveting God's power to establish the law, and that it was his intention to use that power arbitrarily—to apply, revoke, and change laws in an arbitrary fashion which would destroy our power to act independently and to choose our destiny. For whatever reason, Satan was exceptionally persuasive in lobbying for his approach. Happily his plan was rejected, although echoes continue to reverberate in the world around us.

The deities of ancient Greek and Roman mythology were often arbitrary beings. While they were supposed to possess remarkable powers, they were ruled by their passions. As they fought and jockeyed for position among themselves, or simply vented feelings of lust, anger, or frustration, mere mortals were sometimes caught in the crossfire. We can be grateful, to say the least, that the true and living God is nothing like the imaginary Zeus or Jupiter.

The scripture states, “[T]here are many kingdoms; . . . And unto every kingdom is given a law; and unto every law there are certain bounds also and conditions.”<sup>7</sup> Apparently, laws with their conditions and bounds may vary in different kingdoms or spheres, as, for example, the laws of the several kingdoms that obtain in our post-mortal life. The Lord says that His Celestial Kingdom is populated by those who are “sanctified through the law which I have given unto you, even the law of Christ,”<sup>8</sup> and that those who cannot abide this celestial law must inherit a lesser kingdom whose law they are able and willing to follow.<sup>9</sup> While differing laws may apply in different parts of God's creation, the laws that do apply do not themselves vary. Such beings and creations as are subject to them can rely on them to achieve their divine potential. We are told that those who are governed by law are preserved, perfected, and sanctified by the same.<sup>10</sup>

Under the umbrella of divine law and order applicable to the “kingdom” that is our present mortal world, God delegates to us, His children, the opportunity and responsibility to establish laws and legal systems to govern human relations and conduct. Let me quote from section 134 of the Doctrine and Covenants.

“We believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them, both in making laws and administering them, for the good and safety of society.

“We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.”<sup>11</sup>

These standards, (1) that laws are to be made and administered for the “good and safety of society,” and (2) that they must secure to each individual the rights of life, property, and conscience, bespeak a legal environment in which man may progress toward his divine destiny, to become what God has ordained he may become. They establish the stability, order, and means whereby each individual may exercise moral agency. They produce a setting wherein each person, if he or she so desires, can “come unto Christ, and be perfected in him”<sup>12</sup> and all that that entails.

In the infant days of The Church of Jesus Christ of Latter-day Saints, the Lord expressed in a revelation to Joseph Smith the wisdom and benefit of organizing the Church and its work “according to the laws of man”—“That your enemies may not have power over you; that you may be preserved in all things; that you may be enabled to keep my laws.”<sup>13</sup> I read this to mean that, as a general principle, submission to the laws of man will offer very real protections, providing in effect a safe haven within which we can act to obey and serve God.

In his book *The Clash of Orthodoxies*, Robert P. George has an interesting chapter titled, “What is Law?” He examines the debates among legal thinkers and philosophers in the English-speaking world over the last century beginning with Oliver Wendell Holmes about the origins and nature of law. He cites, for example, the group whose legal realist movement flourished to some extent in the 1930s and 1940s. These scholars debunked the idea of legal objectivity—to be realistic, they maintained, we “should abandon the idea that law pre-exists and is available to guide legal decisions.”<sup>14</sup> They argued that judges’ reasoning and citation of laws as the basis of their decisions are in reality “mere legal rationalizations of decisions reached on other grounds.”<sup>15</sup>

George reviews other theories such as “legal positivism” which in some versions holds to “the idea that law ought not to embody or enforce moral judgments.”<sup>16</sup> Other proponents, however, acknowledge that the content of legal rules reflects “nothing so much as the moral judgments prevailing in any society regarding the subject matters

regulated by law.”<sup>17</sup> For George himself, “legal rules and principles function as practical reasons for citizens, as well as judges and other officials, because the citizens appreciate their moral value.”<sup>18</sup> He subscribes to the proposition, *lex iniusta non est lex* (an unjust law is not law), by which he means, if I understand him correctly, that it is essential for the laws and legal systems created by man to have a basis in natural law or morality.<sup>19</sup>

In his 1993 Encyclical Letter titled, “Veritatis Splendor,” Pope John Paul II expressed the relevant Catholic doctrine in these words:

Only by obedience to universal moral norms does man find full confirmation of his personal uniqueness and the possibility of authentic moral growth. . . . These norms in fact represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence, and hence of genuine democracy, which can come into being and develop only on the basis of the equality of all its members, who possess common rights and duties. *When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone.* It makes no difference whether one is the master of the world or the “poorest of the poor” on the face of the earth. Before the demands of morality we are all absolutely equal.<sup>20</sup>

Latter-day Saints would necessarily be included among those who believe in pre-existing and universal natural law, or as we might express it, law rooted in the pre-existing justice and order of God. I firmly agree that insofar as humanly possible, man’s laws and legal systems should be tied to God’s laws and should reflect the same ultimate purpose—to foster our becoming all that we can become here and hereafter. People instinctively appreciate the value of law that has valid moral underpinnings because it is in their nature as spiritual beings and children of God—the ultimate moral Being. The light of Christ that we sometimes call conscience lights every person who comes into this world.<sup>21</sup>

Some of you may be thinking, “This is all very grand, but where, for example, does tax law fit in?” I would answer that it probably does not, since tax codes are the work of the devil, right? But in all seriousness, even the very mundane can have a role if it is supportive of, or at least not inconsistent with overarching divine principles and purpose. The Uniform Commercial Code, for example, would seem to have little if any contribution to make in helping us achieve our divine potential, but even something so un-ethereal can have value as part of a larger legal structure that supports fundamental fairness, minimizes strife, rewards honest labor, preserves stable families, and ultimately, enshrines moral agency.

Returning again to the Doctrine and Covenants:

“We believe that all governments necessarily require civil officers and magistrates to enforce the laws of the same; and that such as will administer the law in equity and justice should be sought for and upheld by the voice of the people if a republic, or the will of the sovereign.”<sup>22</sup>

Here, more specifically, we come to many of you in the profession of law. You live in societies where the system of “civil officers and magistrates” includes judges and lawyers who occupy a vital role in administering the law “in equity and justice.” You whose first loyalty is to God can press in a variety of ways for laws and systems that track the divine model or that at least do not undermine it. Let me be clear that I am not speaking of any endeavor to impose upon society by some sort of fiat what we see as the appropriate application of divinely revealed principles. We cannot, and we make no attempt to do so. I am speaking of advocacy and persuasion. At the same time, it will not do to pretend that an individual or group may not participate in the debates and processes that shape our laws simply because their arguments are based on moral norms or because their moral vision is not shared by all citizens. Essentially all legislation is based on moral judgments—religious, secular, or otherwise, and all parties to the ongoing contest seek to have their ethical and moral concerns heard. In the end we are governed by those that prevail in the public mind. It is not an imposition of religion for religionists to take part in the discussion, and there is no justice in one side with deeply-held values seeking to silence another because it espouses different deeply-held values.

Consider the example of William Wilberforce and others of his time who sought to conform the laws of Great Britain to a higher moral standard of equity and justice. Wilberforce is rightly remembered and revered for his central role in the abolition of the slave trade that was then dominated by British ships. For some 18 years beginning in 1789, he labored as a Member of Parliament to end this evil commerce and lay the groundwork for the abolition of slavery altogether. “Wilberforce’s involvement in the abolition movement was motivated by a desire to put his Christian principles into action and to serve God in public life. . . . [He] sensed a call from God, writing in a journal entry in 1787 that ‘God Almighty has set before me two great objects, the suppression of the Slave Trade and the Reformation of Manners [moral values].’”<sup>23</sup>

Initially, Wilberforce’s bills in the House of Commons were easily defeated. Then, just as momentum began to build, the French Revolution and slave revolts in the West Indies caused a shift back to caution and delay. During the protracted campaign, “Wilberforce’s commitment never wavered, despite frustration and hostility. He was supported in his work by fellow members of the so-called Clapham Sect. . . . Holding evangelical Christian convictions, and consequently dubbed ‘the Saints,’ the group lived in large adjoining houses in Clapham.”<sup>24</sup> Finally in 1807, Wilberforce’s Abolition Bill passed the House of Lords and was presented to the House of Commons. “As tributes were made to Wilberforce, whose face streamed with tears, the bill was carried by 283 votes to 16.”<sup>25</sup>

It is significant to recognize that while Wilberforce, as a Member of Parliament, took the leading role in official circles, the active and devoted efforts of many others with no political portfolio were essential to success in the campaign to end the slave trade. The collaboration of Thomas Clarkson, a fellow graduate of Wilberforce at St. John's Cambridge was especially important. Also critical was the part played by members of the Society for Effecting the Abolition of the Slave Trade, a group made up primarily of like-minded British Quakers and Anglicans that included Clarkson and which Wilberforce joined in 1791.

“The society was highly successful in raising public awareness and support, and local chapters sprang up throughout Great Britain. Clarkson travelled the country researching and collecting first-hand testimony and statistics, while the committee promoted the campaign, pioneering techniques such as lobbying, writing pamphlets, holding public meetings, gaining press attention, organizing boycotts and even using a campaign logo: an image of a kneeling slave above the motto “Am I Not a Man and a Brother?” designed by the renowned pottery-maker Josiah Wedgwood. The committee also sought to influence slave-trading nations such as France, Spain, Portugal, Denmark, Holland and the United States, corresponding with anti-slavery activists in other countries and organizing the translation of English-language books and pamphlets. These included books by former slaves Ottobah Cugoano and Olaudah Equiano, who had published influential works on slavery and the slave trade in 1787 and 1789 respectively. They and other free blacks, collectively known as “Sons of Africa,” spoke at debating societies and wrote spirited letters to newspapers, periodicals and prominent figures, as well as public letters of support to campaign allies. . . .

“The campaign proved to be the world’s first grassroots human rights campaign, in which men and women from different social classes and backgrounds volunteered to end the injustices suffered by others.”<sup>26</sup>

William Wilberforce and his allies provide an encouraging example of success after much labor and against daunting opposition. Not every effort, however, will succeed, at least not initially. Consider a more recent example in the arena of things that bear on marriage and families and the rearing of children. The “no-fault” divorce laws that have been adopted in the United States and elsewhere were warned against decades ago by President David O. McKay and others. The disastrous consequences visited on the institution of marriage since then are clearly evident, with children being the primary victims, some of whom, given their suffering, are now reluctant to marry and rear families themselves. But whatever the setbacks in our striving to sustain family or other moral imperatives among our fellowman, surely we must, as Paul declared, fight the good fight.<sup>27</sup> Mohammed is reported to have said, “Whosoever sees a wrong and is able to put

it right with his hand, let him do so; if he can't, then with his tongue; if he can't, then in his heart, and that is the bare minimum of faith.”<sup>28</sup>

Of all the moral imperatives we seek to embrace and defend in our legal systems, in my opinion it is individual agency and accountability that must always be preeminent because agency is so basic to realizing our God-given potential. On the one hand, we should uphold those legal and political concepts that protect legitimate individual action, and on the other, we should oppose those theories and schemes that exert unjust dominion or diminish predictability and consistency in the operation law. True, there is some degree of compulsion in any law, but generally it is the kind designed to preserve space and opportunity for life, liberty and the pursuit of happiness. Other proposals, however, look to compel our acceptance or tolerance of actions that offend the moral conscience. A potential example would be the case of a doctor being forced to participate in an abortion against his or her conscientious objection on pain of forfeiting the right to practice medicine.

All man-made legal systems are imperfect and include elements of injustice. Still you can strive to make the legal system within which you live and work come as close as possible the perfectly just “legal system” of God. You can take as your guide not only the wisdom of similarly-minded men and women from the past, but also the teachings of the scriptures, prophets, and the Holy Spirit. In this as in other matters, you are invited to study out in your own mind concepts regarding the standards, direction, and even the specifics of what the law should be, how the legal system should be structured and how it should operate, and then ask God if it be right.<sup>29</sup> Surely you are entitled in your role and sphere to revelation on things that bear so directly on not only the present estate of man but his ultimate future.

God finds His glory, as Joseph Smith said, in providing laws by which other beings can come to enjoy the same perfections and glory He possesses.<sup>30</sup> Our view and motivations should be the same. Rather than seeing law as an instrument of domination, it is our mission to use it as an enabling power to help men and women achieve greater independence and ultimate potential. We do so by acting to have our earthly governmental and legal systems mirror as closely as possible the divine order.

After all I have said in praise of law and all the effort I have enjoined you to make in sustaining and defending a moral order, we must in the end acknowledge that we cannot achieve ultimate justice apart from Jesus Christ. To establish and preserve the law is a great good, but the greatest good we can do in helping others become what they can become will be to lead them to the Savior. Only His Atonement has the power to overcome all weakness and imperfection and to make right all injustice. Only He can convert offense and injury into blessings; only He can bring life again to a life unjustly cut short; only He can return a perfect body for one diseased or malformed; only he can reinstate beloved associations lost and make them permanent; only He can make right the

suffering entailed upon the innocent by ignorance and oppression; only He can erase the impact of sin on one who is wronged; only He can remove the stain and effect of sin in the sinner; only He can eliminate sorrow and wipe away all tears;<sup>31</sup> only He can provide immortality; only His grace can compensate for our inadequacy and justify us before that law which enables us to become joint heirs of eternal life with Him. Of the glorious reality of the living Christ, I bear my witness.

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<sup>1</sup> D&C 93:12-13

<sup>2</sup> D&C 93:20

<sup>3</sup> *Teachings of the Presidents of the Church: Joseph Smith* [Melchizedek Priesthood and Relief Society course of study, 2007], 221

<sup>4</sup> *Teachings*, 210

<sup>5</sup> *Teachings*, 213

<sup>6</sup> Moses 4:1

<sup>7</sup> D&C 88:37-38

<sup>8</sup> D&C 88:21

<sup>9</sup> See D&C 88:21-24

<sup>10</sup> See D&C 88:34

<sup>11</sup> D&C 134:1-2

<sup>12</sup> Moroni 10:32

<sup>13</sup> D&C 44:4-5

<sup>14</sup> Robert P. George, *The Clash of Orthodoxies* [2001], 219

<sup>15</sup> *Clash*, 219

<sup>16</sup> *Clash*, 222

<sup>17</sup> *Clash*, 223

<sup>18</sup> *Clash*, 226

<sup>19</sup> See *Clash*, 227-28

<sup>20</sup> Pope John Paul II, "Veritatis Splendor," 6 August 1993, 91

<sup>21</sup> See D&C 84:45-46; 88:7-14; 92:2

<sup>22</sup> D&C 134:3

<sup>23</sup> Wikipedia, William Wilberforce, January 31, 2011, 8:23 p.m.

<sup>24</sup> Wikipedia

<sup>25</sup> Wikipedia

<sup>26</sup> Wikipedia

<sup>27</sup> See 2 Timothy 4:7

<sup>28</sup> Qanta A. Ahmed, "Fulfilling Our Duty as Muslim-Americans," *Wall Street Journal*, January 7, 2011, A11

<sup>29</sup> See D&C 9:8

<sup>30</sup> See Moses 1:39

<sup>31</sup> See Isaiah 25:8

# **From Plaza to Postage Stamp: The Threatened Demise of Religion in Public Square**

**Elder Lance B. Wickman Remarks to J. Reuben Clark Law Society February 11, 2010**

## **Introduction**

My dear brethren and sisters, it is a great honor to have been invited to speak to you tonight as the curtain goes up on the 2010 annual meeting of the J. Reuben Clark Law Society. It has been my honor to do so on a number of other occasions. When I was invited to speak to you again this year, I was not sure whether that resulted from (a) the fact that the officers of the law society turn over every year without sufficient institutional memory or (b) an over-abundance of courtesy and generosity. For whatever reason, I am honored by this opportunity.

As I travel about in my current capacity as a General Authority of the Church and as the general counsel of the Church, I often hear this question: What is the greatest challenge faced by the Church? I suppose there are a number of candidates for an answer—a continuing rapid growth that makes retaining new converts a top priority; or perhaps finding and training local leaders. But from where I sit, the greatest challenge faced by the Church is the challenge to religious liberty that is growing world-wide. These challenges have a number of faces—from galloping secularism in some places, to the dominant sectarian or non-Christian religions in other places, to authoritarian governments that feel threatened by religion in still other places. I have chosen to address one aspect of this challenge to religious liberty that I believe confronts us here in our own country. And so I have entitled these remarks, “From Plaza to Postage Stamp—the Threatened Demise of Religion in the Public Square”

## **UK Equality Bill**

For the past year, the United Kingdom’s Labour government has been seeking to consolidate and strengthen the UK’s anti-discrimination legislation—specifically with respect to homosexuals. Labour’s so-called “Equality Bill” would have labeled—and forbidden—a church’s employment practice of requiring its employees to adhere to its moral standards. In the case of the Church, this legislation would have prohibited the application of a temple recommend standard of employment. Worthiness for a recommend is a pre-requisite to virtually all Church employment and is vitally important to the work of the Church.

At the eleventh hour a coalition of churches—including our Church—was instrumental in persuading the House of Lords, in a very close vote, to amend the Equality Bill so as to adequately circumscribe its application to churches and preserve our recommend standard. That “bullet” was dodged—but barely!

Notwithstanding, the Pope decried the bill as an unfair assault on people and organizations of faith. In substance, he said that the most fundamental rights of freedom of conscience—what we Latter-day Saints refer to as “free agency” or “moral agency”—were being forced to give way to social rights.

One British commentator endorsed the Pope in an article entitled “The Pope is Right About the Threat to Freedom”.<sup>[i]</sup> Said he:

*“There are times when human rights become human wrongs. This happens when rights become more than a defense of human dignity, which is their proper sphere, and become instead a political ideology, relentlessly trampling down everything in their path. This is happening increasingly in Britain, and it is why the Pope’s protest against the Equality Bill, whether we agree with it or not, should be taken seriously.”* He added that *“using the ideology of human rights to assault religion risks undermining the very foundation of human rights themselves.”* Sadly, the specter of such an assault is looming large in the United States as well.

### ***Christian Legal Society vs. Martinez***

*Christian Legal Society vs. Martinez* will be argued in the United States Supreme Court this Spring. In that case, the Hastings College of the Law (affiliated with the University of California) denied on-campus recognition to CLS because CLS requires voting members and officers to adhere to its “Statement of Faith”, which rejects homosexual conduct among other things. This membership standard is counter to Hastings’ non-discrimination policy, which includes sexual orientation.

CLS filed suit in federal court in San Francisco in 2004. Both the district court and the Ninth Circuit rejected its claim. The United States Supreme Court now has accepted *certiorari*. Hence, a battle is looming over the effort to acquire civil *social* rights at the expense of civil *religious* rights. *This battle represents the acceleration of a disturbing slide downward in the law regarding the place of religion in the public square.*

### **Elder Oaks’ Benchmark Address**

Elder Dallin H. Oaks chose a devotional at BYU-I last Fall as the venue to deliver an address on this very subject.<sup>[ii]</sup> That address promises to become a classic—a benchmark. Here are some excerpts from that talk:

“Speaking of the First Amendment’s guarantee of the ‘free exercise’ of religion—our sometimes-stated ‘first freedom’, [one author] said, ‘[U]nless the guarantee of free exercise of religion gives a religious actor greater protection against government prohibitions than are already guaranteed to all actors by other provisions of the constitution (like freedom of speech), what is the special value of *religious* freedom?’

“A writer for *The Christian Science Monitor* predicts that the coming century will be ‘very secular and religiously antagonistic,’ with intolerance of Christianity ‘ris[ing] to levels many of us have not believed possible in our lifetimes.’ Other wise observers have noted the ever-growing, relentless attack on the Christian religion by forces who reject the existence or authority of God. The extent and nature of religious devotion in this nation is changing. The tide of public opinion in favor of religion is receding, and this probably portends public pressures for laws that will impinge on religious freedom.”

Elder Oaks continued:

“There is a growing anti-religious bigotry in the United States. . . . For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as somehow

threatening. For example, a prominent gay-rights spokesman gave this explanation for his objection to our Church's position on California's Proposition 8: 'I'm not intending it to harm the religion. I think they do wonderful things. Nicest people. . . . My single goal is to get them out of the same-sex marriage business and back to helping hurricane victims.'"

And then he said:

"A [significant] threat to religious freedom is from those who perceive it to be in conflict with the newly alleged 'civil right' of same-gender couples to enjoy the privileges of marriage. We have endured a wave of media-reported charges that the Mormons are trying to 'deny' people or 'strip' people of their 'rights.' After a significant majority of California voters (seven million — over 52 percent) approved Proposition 8's limiting marriage to a man and a woman, some opponents characterized the vote as denying people their civil rights. In fact, the Proposition 8 battle was not about civil rights, but about what equal rights demand and what religious rights protect. At no time did anyone question or jeopardize the civil right of Proposition 8 opponents to vote or speak their views."

### **Brief Review of Landmark USSC Religious Liberty Cases**

I would like to now very briefly trace the evolution of the law of religious liberty as articulated by the United States Supreme Court over the past 60 years. It reflects a definite diminishing of the role of religion in the public square and a marked increase in skepticism toward the free exercise of religion. In reviewing briefly these decisions, it is not my purpose to either criticize or commend any decision, much less to further any political philosophy. Rather I wish only to trace the facts of the historical record.

I turn first to key United States Supreme Court interpretations of the Establishment Clause. I begin in 1947 with *Everson vs. Board of Education*.<sup>[iii]</sup> There the Supreme Court held that public funds cannot be used to reimburse parents for the cost of bus transportation to parochial schools, because doing so is a violation of the Establishment Clause. Next, came *Engle vs. Vitale* in 1962.<sup>[iv]</sup> There, an official scripted prayer in public school was held to be a violation of the Establishment Clause. Close on the heels of *Engle* came *Schemp vs. Abington Township*<sup>[v]</sup> in 1963 where the court held that requiring prayer *at all* in public school is a violation of the Establishment Clause.

*Schemp* was followed in 1968 by *Epperson vs. Arkansas*.<sup>[vi]</sup> *Epperson* was both an Establishment Clause and a Free Exercise Clause case. The court ruled that Arkansas' anti-evolution statute was unconstitutional as an interference with the free exercise of religion. It is worth noting that the Free Exercise Clause was used as *a sword* to strike at religion instead of *a shield* to protect it. The court also held per the Establishment Clause that government cannot take sides on such matters as evolution.

In 1980, the court decided *Stone vs. Graham*.<sup>[vii]</sup> It ruled that the required posting of the Ten Commandments on the wall of every public school room lacked a valid legislative purpose and thus violated the Establishment Clause. The statute was not saved by a "small print" notation on the posted statement that it fostered a legislative purpose because the Ten Commandments reflect the values of Western Civilization. Neither was it saved because of private donations to pay for the postings.

To be true to all the Supreme Court's jurisprudence in this area, mention must be made of the 1983 case of *Marsh vs. Chambers*[viii] There the practice of opening legislative sessions with prayer in Nebraska was held not to violate the Establishment Clause or the 14<sup>th</sup> Amendment, even though the same denomination had offered the prayer for 16 years. The court noted that this is a practice that has been observed in the U.S. Congress for more than 200 years and in many states for more than 100 years. It is part of the "fabric of society". Moreover, said the court, the framers made it clear that they did not intend the Establishment Clause to apply to the practice of legislative prayers.

However, *Marsh* represents only a minor detour in the steady march toward constricting the sphere of religious expression in the public square. Two years later in *Wallace vs. Jaffree*[ix] the court struck down an Alabama statute providing for a one-minute period of silent prayer or meditation as a violation of the Establishment Clause because there was no secular purpose in doing so. After *Wallace*, prayer of any kind—even silent, private prayer—was a dead letter in public schools.

The 1987 case of *Edwards vs. Aguillard* [x] returned to the controversial subject of science vs. religion. A Louisiana Statute that required the teaching of "creation science" if evolution was being taught was held to violate the Establishment Clause because it had no secular purpose. The court stated that the law endorsed religion by teaching that a "supernatural being" was the Creator.

In *County of Allegheny vs. ACLU*[xi]—a 1989 decision—the display of a Christmas crèche on the steps of the Pittsburgh Pennsylvania courthouse violated the Establishment Clause because it was on public property and displayed a sign that said "Gloria in excelsis Deo".

In 1992 in *Lee vs. Weisman*[xii], "non-sectarian" prayer by a selected clergyman at graduation exercises was ruled a violation of the Establishment Clause. The court said that the purpose of the Establishment Clause is to separate religion and government. But it must be said that collectively these cases represent not merely a "separation" but an *elimination* of religion from the public square when government is involved in any way, even if that government involvement is limited to simply providing a forum for religious expression to occur.

Now let us turn to the Free Exercise Clause. Before 1989, the standard for interpreting the Free Exercise Clause was set forth in *Sherbert vs. Verner*. [xiii] In substance, that standard was that in order for a government rule or regulation to override a religious practice, the government had to demonstrate that the rule furthered a "compelling governmental interest" by "the least restrictive means" possible. The burden rested on the *government*. The effect of this rule of interpretation was to place the free exercise of religion on a pedestal.

Then in 1990 came a sea change. *Smith vs. Employment Division*[xiv] turned the *Sherbert* rule on its head and declared that a government rule would be upheld so long as it was "neutral and generally applicable" to everyone. Further, the burden was placed on *religion* to demonstrate otherwise. The net effect of *Smith* was that free exercise was knocked from its pedestal into the street to compete with all other interests. But, cast into that street, religion is now increasingly at risk of being trampled underfoot.

All of this brings us full-circle to *Christian Legal Society vs. Martinez*.<sup>[xv]</sup> As I have previously mentioned, the question in *Martinez* is whether social and cultural interests can trump free exercise and free speech and association rights. Hastings' policy not only impairs religious freedom, it also purports to narrow still further Establishment Clause rubric. The dimensions of the public square where religious activities can be tolerated are constricting. As one commentator has said, "the Left is trying to create a right that destroys a right."

### *Perry vs. Schwarzenegger*

If these cases have left religion in the public square dazed and on the ropes, *Perry vs. Schwarzenegger*—now pending in federal district court in San Francisco—threatens to deliver the knock-out punch. *Perry* seeks a court declaration that *as a matter of law*, religious views may not be used to justify the denial of a *social* civil right. Earlier cases have chased *prayer* and *religious symbols* from the square. Now, this case would drive religious *opinions* off as well.

All here are familiar with the now-famous "Proposition 8" battle in California. In the November 2008 general election, the California electorate, by a significant vote margin, adopted an initiative measure that placed the following statement in the California Constitution: "Only marriage between a man and a woman is legal or recognized in California." This language was the same language that had been adopted by the voters in 2000 in another initiative measure—Proposition 22—as a part of the California Family Code. However, in May 2008 the California Supreme Court declared the Family Code language unconstitutional, pursuant to the equal protection provision in the California Constitution, in its decision in *In re Marriage Cases*.<sup>[xvi]</sup>

While the Proposition 22 *Marriage Cases* were matriculating through the California state courts, a group of concerned citizens banded together to form a coalition known as ProtectMarriage.com to circulate a petition that would put the Family Code marriage definition into the California Constitution. Shortly after the California Supreme Court handed down its landmark *Marriage Cases* decision in May, the California Secretary of State certified Proposition 8 for the November 2008 ballot.

After the voters adopted Proposition 8, a petition was immediately filed in the California Supreme Court by Proposition 8 opponents seeking to declare the vote invalid on procedural grounds. However, in June 2009, the California Supreme Court ruled that Proposition 8 had been validly adopted by the voters.<sup>[xvii]</sup> Proposition 8 had trumped the California's Supreme Court's decision in *Marriage Cases*.

As dramatic as these events in California had been, it has now become clear that the "drama" was only beginning. The day after the California Supreme Court announced its decision validating Proposition 8, two of the most prominent lawyers in the country—Theodore "Ted" Olson and David Boies—held a press conference in Los Angeles to announce the filing of a challenge under the *United States Constitution* to Proposition 8. *Perry vs. Schwarzenegger* was filed in federal district court on behalf of two homosexual couples—one male and one female—who allege that the passage of Proposition 8 denied them the opportunity to marry and that this denial was a violation of their rights under the Equal Protection and Due Process Clauses.

The plaintiffs in *Perry* base their claim primarily on three U.S. Supreme Court decisions—*Loving vs. Virginia*[xviii], *Romer vs. Evans*[xix], and *Lawrence vs. Texas*[xx]. Time tonight does not permit reviewing further the argument that these plaintiffs are attempting to stitch together based on these cases. Suffice it to say, that they make essentially two arguments: First, they claim that gays are a suspect class and that denying them the right to marry cannot be justified under the Fourteenth Amendment. Second, they assert that allowing voters in California to be influenced by faith-based advocates or arguments in adopting Proposition 8 is an insufficient governmental purpose—even under a lesser standard of review—to prevent gays from marrying. Stated differently, they essentially claim that the voters—from whom all authority in a democracy flows—may not consider religious views and values when deciding these alleged social and cultural civil rights.

These are serious allegations and represent an arrow directly at the heart, not only of traditional marriage, but at the place of religion and religious views in the political dialogue of this country. They are made all the more serious because of the exceptionally skilled advocates who are advancing them. Ted Olson, former U.S. Solicitor General, is one of the most accomplished and respected appellate advocates in the country. He has argued more than 50 cases in the U.S. Supreme Court. He represented Governor George W. Bush in the landmark case of *Bush vs. Gore*[xxi] which made Governor Bush President Bush. His co-counsel, David Boies, is equally respected as a trial and appellate advocate. Mr. Boies represented Vice-president Al Gore in *Bush vs. Gore*. So, we have these two preeminent legal gladiators joining forces to advance the cause of the plaintiffs in *Perry vs. Schwarzenegger*.

The named defendants in *Perry* are Governor Arnold Schwarzenegger and California Attorney General Edmund G. Brown Jr. But since both of these public officials actually *support* gay marriage and refuse to defend the voter's decision in Proposition 8, the small band of "citizen soldiers" comprising ProtectMarriage.com once more entered the fray. They were permitted to intervene. Hence, the California voters are being defended in this case, not by public officials elected for that purpose, but by some of their own.

Presiding in the case is Chief Judge Vaughn R. Walker, a highly respected jurist. Judge Walker has surprised many with his handling of the case. To begin with, he put it on a very fast track for trial, although the complaint was not actually served until last June. He ordered trial to begin—and it actually did begin—on January 11, 2010. Then he indicated, in effect, that he wanted a "show trial". He wanted the alleged benefits of so-called same gender marriage to be fully vetted through the taking of evidence in his courtroom; and that is what has happened. The plaintiffs have produced a parade of so-called "experts"—most of them academics—on a variety of issues, ranging from the alleged "political powerlessness" of homosexuals to the purported psychological burdens suffered by gays who are not allowed to marry to the comparative parenting skills of homosexual couples. There was even testimony from a San Francisco official testifying how that city and county would allegedly save money if gays are allowed to marry!

To further amplify this show trial, Judge Walker ordered that it be televised. This ruling was challenged by counsel for the coalition, and the United States Supreme Court reversed that order, stating that it amounted to an inappropriate manipulation of court rules and risked intimidation

and harassment for defense witnesses. Nonetheless, Judge Walker still videotaped the trial. Some believe he plans to broadcast it later if and when the court rules can be changed.

The judge also granted a very aggressive, invasive discovery motion by the plaintiffs. His order authorized them to obtain the internal documents of the coalition's campaign organization, even though these documents reflected mere discussions of strategy and *were not communications that were released to or communicated to the public as part of the Proposition 8 ballot campaign*. This discovery order was modified to a limited degree by the Ninth Circuit. The circuit court ruled that the internal communications of a handful of people comprising the so-called "core group of individuals" within the coalition were off limits, but everything else was required to be produced. The coalition turned over something on the order of nearly 200,000 documents, most of them emails.

The trial is presently in a hiatus. The parties are preparing their proposed findings of fact. After these are received, Judge Walker has stated that he will schedule closing argument. In all likelihood, this will occur sometime in March. As this case goes to judgment—however it may be decided by Judge Walker—and eventually into the appellate courts, it presents three significant threats:

- Marriage. It threatens to replace man-woman marriage with genderless marriage in every state, not just California.
- Political Associations and Speech. By allowing invasive discovery of non-public communications within a political ballot measure campaign, it threatens a chilling effect on such associations and speech in future electoral contests.
- Religion in the Public Square. And most significantly for my purposes tonight, it threatens to eliminate any discussion of religion in the public square when social or cultural rights are at issue.

## CONCLUSION

In January 1793, in a letter to members of New Church of Baltimore, President George Washington made the following observation which seems so very pertinent now.

"We have abundant reason to rejoice that in this Land the light of truth and reason has triumphed over the power of bigotry and superstition, and that every person may here worship God according to the dictates of his own heart. In this enlightened Age and in this Land of equal liberty, it is our boast that a man's religious tenets will not forfeit the protection of the Laws, nor deprive him of the full respect and rights of citizenship to which he is entitled." [xxii]

And finally, in light of this pungent observation by the acknowledged Father of our Country, this statement made by Elder Dallin H. Oaks in 1990 reverberates:

"For many of the Founding Fathers, and for many Americans today, religious liberty is the basic civil liberty because faith in God and his teachings and the active practice of religion are the most fundamental guiding realities of life. Thus, for many citizens, religious liberty provides the very reason that all other civil liberties are desired." [xxiii]

[Conclude With Testimony]

- [i] Jonathan Sacks, "The Pope is Right About the Threat to Freedom", *The Times*, February 3, 2010.
- [ii] Dallin H. Oaks, Speech at BYU-Idaho, October 13, 2009.
- [iii] 330 U.S. 1 (1947).
- [iv] 370 U.S. 421 (1962).
- [v] 374 U.S. 403 (1963).
- [vi] 393 U.S. 97 (1968).
- [vii] 449 U.S. 39 (1980).
- [viii] 463 U.S. 783 (1983).
- [ix] 472 U.S. 38 (1985).
- [x] 482 U.S. 578 (1987).
- [xi] 492 U.S. 573 (1989).
- [xii] 505 U.S. 577 (1992).
- [xiii] 374 U.S. 398 (1963).
- [xiv] 494 U.S. 872 (1990).
- [xv] 130 S. Ct. 795, 77 USLW 3635, 78 USLW 3011, 78 USLW 3335, 78 USLW 3340.
- [xvi] 43 Cal. 4<sup>th</sup> 757; 76 Cal. Rptr. 3<sup>d</sup> 683 (2008).
- [xvii] *Strauss vs. Horton*, [cite to come] (2009).
- [xviii] 388 U.S. 1 (1967).
- [xix] \_\_\_ U.S. \_\_\_ (1996).
- [xx] \_\_\_ U.S. \_\_\_ (2003).
- [xxi] \_\_\_ U.S. \_\_\_ (2000).
- [xxii] Quoted in Dallin H. Oaks, "Religion in Public Life", *Ensign*, July 1990.
- [xxiii] Dallin H. Oaks, Id.