Religious Freedom and the Rights of Religious Minorities in the United States

by

The Reverend N. J. L'Heureux, Jr.

Executive Director, Queens Federation of Churches

Moderator, Committee on Religious Liberty,
National Council of the Churches of Christ in the USA

Prepared for the
World Council of Churches
Commission of the Churches on International Affairs
Consultation on Religious Freedom and the Rights of Religious Minorities
November 27 to December 2, 2011
Istanbul, Turkey

Table of Contents

Religious Freedom and the Rights of Religious Minorities in the United States

by
The Reverend N. J. L'Heureux, Jr.
Executive Director, Queens Federation of Churches
Moderator, Committee on Religious Liberty,
National Council of the Churches of Christ in the USA

History of Religious Freedom in the United States

America was settled by immigrants, followed by waves of other immigrants.

The earliest settlers to the colonies which became the United States of America left their homelands in search of freedom to worship and practice their religious faith as they believed God was leading them. This has been memorialized in America's schools by describing religious freedom as the motive for colonial settlement. Unfortunately that tells only half the story. While most of those who settled on the North American shores in the seventeenth century were, in fact, interested in religious freedom, they were not so willing to share that freedom with others whose beliefs were different. Religious factionalism and discrimination thrived among most of those early settlers with respect to anyone who believed differently than they did.

The outcasts were invited to leave the settlement, or worse. Those who chose to leave found they could set up a new settlement some distance away and be equally inhospitable to those of different beliefs. And, it should be known, that these were differences of belief and practice among Christians!

One notable exception in the early years involved the folks in Flushing, Queens, now part of the City of New York. Quakers had been driven from New England, sailed across Long Island Sound, landed on the eastern end of Long Island and were migrating westward toward New Amsterdam. In 1657, Peter Stuyvesant, the governor of New Amsterdam, ordered that the Quakers not be admitted to his territory. The settlers in Flushing had been granted a "patent" (charter) in 1645 from the Dutch West Indies Company in which they were promised religious liberty. In a rebuke to the Governor, at a town meeting on December 27, 1657, they announced that they could not comply with Stuyvesant's demand as that would

require them to usurp the role of God who is the sole judge of a man's heart. The Flushing Remonstrance, as the official letter to Stuyvesant became known, stands as the first time American settlers spoke for the religious freedom of someone other than themselves. The Remonstrance ends with these words:

> Therefore if any of these said persons come in love unto us, we cannot in conscience lay violent hands upon them, but give them free egress and regress unto our Town, and houses, as God shall persuade our consciences, for we are bound by the law of God and man to do good unto all men and evil to no man. And this is according to the patent and charter of our Town, given unto us in the name of the States General, which we are not willing to infringe, and violate, but shall hold to our patent and shall remain, your humble subjects, the inhabitants of Flushing.

Those who signed the letter were individually harassed, intimidated, and forced to recant and, in the case of those who refused to recant, jailed by order of Governor Stuyvesant. It remained for John Bowne, who was jailed in 1662 for permitting Quaker worship in his home in Flushing, to appeal successfully to the Board of Directors of the Dutch West India Company in Amsterdam, thereby ending Stuyvesant's order the following year.

Religious Demographics

Recent surveys of religious membership patterns and behaviors in the United States have yielded these statistics with respect to the overall population of the nation:

- 83% identify themselves with a religious denomination or faith group.
- 40% report that they attend a worship service at least weekly.
- 58% report that they pray at least weekly.
- 51% identify themselves with a "Protestant" Christian denomination.
- 25% identify themselves as Roman Catholic Christians.
- 2% identify themselves as Jewish.
- 1% identify themselves as Muslim.
- 4% identify themselves with other faiths.
- 15% identify themselves as having "no religion."

As a matter of policy, the United States government does not undertake a census of religious affiliation or belief. Religion is not an item included on any government-issues identification card. Indeed, there is no required national identification card in the United States; the driver's license issued by individual

States is the most common form of identification.

Constitutional Protection for Religion

When the United States Constitution was drafted in 1787 and put before the people of the 13 colonies for ratification, there was a public cry for a "Bill of Rights" as an addendum. Ratification was secured, most probably, on the promise that the first Congress would adopt such protections. The Constitution, as adopted, included in Article VI (paragraph 3) a prohibition on a religious test for national office:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

In 1791, prodded especially by James Madison, Congress produced twelve amendments to the Constitution and put them before the new States for ratification. The first two were rejected. They were not "Rights" like the others and would have amended specific sections of the Constitution dealing with the number of representatives as a ratio of population and prohibiting Congress from raising its pay in any current session. The remaining ten became the first ten amendments to the U.S. Constitution and are known collectively as the "Bill of Rights."

These rights were seen as protection for the people from usurpation by the new Federal government and they were not construed at that time as applying to actions by the individual State governments which retained sovereignty. The First Amendment deals with religious liberty, among other rights:

> 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.

At the time of founding, several States did have various forms of official religious "establishments" which were not affected by the First Amendment, as the Bill of Rights applied only to the Federal government. Most State establishments provided for some tax support for the favored Christian denomination, but did not otherwise disenfranchise one of a different denomination. Within four decades, the State establishments of religion were repealed by the individual States.

In the five years (1865-1870) following the Civil War, three amendments to the Constitution were adopted: Abolition of slavery (13th); Privileges and

Immunities Clause, guaranteeing Due Process and Equal Production (14th); and Protection of voting rights regardless of "race, color, or previous condition of servitude" (15th). The Fourteenth Amendment has been cited by the U.S. Supreme Court over the years to extend the rights guaranteed by the Bill of Rights, one at a time, to individuals with respect to the laws and actions of the several States.

There is a long, strong and robust history permitting freedom of speech, press, and assembly in the United States. Religious freedom has been protected, but with less energy by the Courts. Many of the conflicts around religious freedom which are manifest elsewhere in the world, however, have not arisen or have been dealt with effectively because of these other elements of the First Amendment.

Record of the Judiciary in Defense of Religious Liberty

Under the jurisprudence of the U.S. Supreme Court, the Free Exercise Clause, in *Sherbert v. Verner* [374 U.S. 398 (1963)], has been held to require that any government action which would limit the free exercise of religion would have to be justified by a "compelling state interest" (a high-priority government interest generally implicating public health and safety) which could not be served by any less restrictive means, a judicial test known as "strict scrutiny." The anti-Establishment Clause has been held to forbid tax aid to any religion and any government action which would prefer one religious group over another or religion over "non-religion." In *Lemon v. Kurtzman* [403 U.S. 602 (1971)], it was also held to prohibit any government action which had the intent or effect of advancing or inhibiting religion, or which creates "excessive entanglement" of government with religious institutions.

In *Engel v. Vitale* [370 U.S. 421 (1962)], the U.S. Supreme Court determined that it is unconstitutional for state officials to compose an official school prayer and require its recitation in public schools. The following year, in *Abington Township School District v. Schempp* (consolidated with *Murray v. Curlett*) [374 U.S. 203 (1963)], the Court declared school-sponsored, devotional Bible reading in public schools in the United States to be unconstitutional. Both practices had been common in many jurisdictions prior to the decisions and some saw this as the Court's taking God out of the schools. The decisions basically said the government could not write or prescribe and use its coercive power to mandate participation in

devotional exercises. The Court did, however, stress the permissibility *and* importance for teaching *about* religion and religious history as part of a good education.

Notwithstanding the Court's *dicta* regarding the *teaching about* religion in the public schools, educators in many places undertook to eliminate virtually all references to religion from textbooks and the curriculum. For example, textbook references to the Civil Right Movement of the 1950s and 1960s – led by the Rev. Dr. Martin Luther King, Jr., and Black Churches, and joined in by many White congregations, both Christian and Jewish – make little or no reference to the overwhelming religious constituency for equal rights.

Together with the earlier desegregation of public schools ordered by the Court in *Brown v. Board of Education of Topeka* [347 U.S. 483 (1954)], the so-called "Culture Wars" were joined. Religious fundamentalists, particularly in the South where *de jure* segregation had sway, made common cause with political conservatives and some libertarians seeing government (at least the Federal government) as overreaching and intrusive. The Civil Rights movement which followed the *Brown* decision brought national legislation prohibiting discrimination in public accommodation, employment and education. It also gave strength to the 15th Amendment with respect to voting rights.

In *Employment Division of Oregon v. Smith* [494 U.S. 872 (1990)], a seminal decision signed by five of the nine Justices, the U.S. Supreme Court determined that religious free exercise would be entitled to "strict scrutiny" review only if the law or regulation at issue otherwise permitted discretionary exception or in the case of a "hybrid" claim invoking a "free exercise" argument along with another Constitutional right. Laws of "general applicability" (those without discretionary exception) should not yield to free exercise claims regardless of the relative significance or insignificance of the particular law, the Court said. The case involved two Native Americans, Alfred Smith and Galen Black, who were fired from jobs as drug counselors and denied unemployment compensation after having used sacramental Peyote in a religious ceremony. Writing for the majority, Justice Antonin Scalia asserted:

> Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," *Braunfeld v. Brown*, 366 U.S., at 606, and precisely because we value and protect that religious divergence, we cannot afford the luxury of

> deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. [494 U.S. 872]

The notion that the Constitutionally protected right of the "free exercise" of religion constituted a "luxury" that "we cannot afford" in an increasingly diverse society set off a firestorm of outrage and protest.

The U.S. Congress (by a unanimous voice vote in the House of Representatives and a vote of 97-3 in the Senate) responded to an extraordinary coalition of religious and civil rights groups, both liberal and conservative, and in 1993 enacted the Religious Freedom Restoration Act (RFRA, 42 U.S.C. §2000bb) which ordered that Courts use the "strict scrutiny" tests when evaluating religious free exercise claims. The U.S. Supreme Court, in a 1997 decision, *City of Boerne v. Flores* [521 U.S. 507 (1997)], held RFRA to be unconstitutional as applied to the States, asserting that Congress lacked the authority to bind States and municipalities so broadly, but let RFRA stand with respect to Federal law which was, of course, adopted by Congress itself. In 2000, by unanimous voice votes in both chambers, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA, 42 U.S.C. §2000cc), applying to the States and municipalities the requirement of meeting a strict scrutiny test whenever there are processes for individualized exception (as in zoning and historic preservation matters) or where Federal funds are used (as in prisons and many other institutions). The constitutionality of RLUIPA, while challenged in many lower courts, has been affirmed by all of the U.S. Circuit Courts of Appeals (intermediate appellate courts in the U.S.). The U.S. Supreme Court has not questioned the law's constitutionality in the few cases which it has reviewed.

In matters of individual religious liberty – the rights to believe, affiliate, disaffiliate or disbelieve – the individual is generally well protected.

At the height of World War II, on Flag Day, June 14, 1943, the U.S. Supreme Court announced its decision in *West Virginia State Board of Education v. Barnette*, [319 U.S. 624 (1943)]. Overturning an earlier decision, the Court held that the Free Speech Clause of the First Amendment to the United States Constitution protected students from being forced to salute the American flag and say the Pledge of Allegiance in school. The case involved Jehovah's Witnesses who, for religious reasons, refused to submit to the required patriotic ritual practiced in virtually all

schools in the United States. Only three years earlier, in *Minersville School District v. Gobitis*, [310 U.S. 586 (1940)], the Court had ruled that public schools *could* compel students – in this case, also Jehovah's Witnesses – to salute the American Flag and recite the Pledge of Allegiance despite the students' religious objections to these practices. The *Gobitis* decision led to increased persecution of Witnesses in the United States and many children were beaten by their classmates. In only three years it was overturned by the *Barnett* decision.

Soon after the city council of Hialeah, Florida, learned that the Church of Lukumi Babalu Aye, which practiced Santería, was planning on locating there, the council passed an ordinance that forbade the "unnecessar[y]" killing of "an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." Santería is a religion practiced in the Americas by the descendants of Africans; many of its rituals involve animal sacrifice. In *Church of Lukumi Babalu Aye v. City of Hialeah*, [508 U.S. 520 (1993)], the U.S. Supreme Court held that ordinance to be unconstitutional as an intentional act of religious discrimination.

Notwithstanding the earlier *Smith* decision in 1990, which allowed restrictions on the sacramental use of Peyote in Native American religions, the U.S. Supreme Court in 2006 held in *Gonzales v. O Centro Espirita Beneficente União do Vegetal* [546 U.S. 418 (2006)], that the Federal Government's seizure of an imported sacramental tea, containing a Schedule I (controlled) substance, from a New Mexican branch of the Brazilian church União do Vegetal (UDV) was illegal. The ruling was based not on the Constitution's First Amendment rights, but on the statutory right granted in the Religious Freedom Restoration Act.

Religious Association, Corporate Life, and Tax Exemption

Religion – and minority religions especially – has had less robust protection with respect to their corporate life. The problems arise, not by reason of abridging the right to organize or of tax exemption, but with respect to property use and the construction or expansion of places of worship. RLUIPA was enacted to protect those rights and, at the end of the day, has helped, albeit imperfectly. The issue is not the result of Federal action, but of invidious bias at the local level with local officials often choosing to affirm local bigotry.

In the United States, virtually any group of citizens is permitted to form an

association for any lawful purpose. The corporate form of organization to limit the personal liability of officers and directors is extended to nonprofit (NGO) as well as for-profit, commercial enterprises. Provided that no individual will *own* or derive *profit* for personal use from the organization, it may apply to the Internal Revenue Service for recognition of its nonprofit status and exemption from the payment of income tax at the Federal, State and Local levels. Depending on the purpose of the organization, it will be categorized under one of 28 subsections of §501(c) of the Internal Revenue Code.

Religious organizations, along with educational and charitable organizations, are classified under I.R.C. §501(c)(3). Religious organizations are alone among the many nonprofits under the Internal Revenue Code in two respects: 1) churches (meaning worshiping congregations), associations of churches and their "integrated auxiliaries" are tax exempt *per se*, without even applying for recognition of exemption if they would meet the qualifications in the law and 2) religious organizations are exempt from making an annual, informational financial report to the Internal Revenue Service (Form 990) which is required of all other nonprofit organizations. To be classified under the religious exemption, the I.R.S. uses a list of 14 characteristics of religious organizations, but notes that all need not be present in any particular church.

All organizations exempt under I.R.C. §501(c)(3) are entitled to receive contributions which the contributor may deduct from his/her income in calculating the taxes due to Federal, State or local governments. The nonprofit organization's income from investment (interest, dividends), rentals, fund-raising events, etc., are all exempt from corporate income tax. If the organization is engaged in a trade or business which is unrelated to its charitable or religious purposes *and which it regularly carries on*, it will be subject to the Unrelated Business Income Tax (UBIT) on that particular business activity. One day sale of items or an occasional church dinner is not regularly carried on business and, therefore, will provide tax exempt income although an individual is only permitted to deduct from personal income tax contributions as they exceed the value of any service or product received.

Since 1954, all nonprofit organizations, including religious, are prohibited by law from participating in political campaigns for elective office by either endorsing or opposing any candidate. Also, any nonprofit organizations, including religious,

are prohibited from engaging *substantially* in "lobbying" – attempting to influence legislation or administrative rule making. Lobbying that consumes more than 20% of an organization's operation is considered to be *substantial*.

Racial and Religious Discrimination in the United States

The United States has struggled throughout its history with issues of bigotry and discrimination – racial, ethnic, and religious. Notwithstanding laws prohibiting overt action taken against protected classes of people (which include, as well, national origin, gender, age, and in some jurisdictions, sexual orientation), negative attitudes and animus do manifest themselves to the disadvantage of the target. Mostly, these are the acts of individuals which can be (and often are) prosecuted in criminal and civil courts. If racial or religious bias is an element of a crime (vandalism, battery, murder, etc.), "enhanced" penalties may be applied by reason of its being designated a "Hate Crime." Movements energized by fear and bigotry have been and are currently present in the United States and do have the capacity, in some cases, to manipulate the levers of government power to the detriment of minority rights.

Historically, the enslavement of Blacks through the Colonial period and until the Civil War constituted the darkest period of our national existence. Notwithstanding the Reconstruction Amendments to the Constitution (13th, 14th and 15th, as discussed above), discrimination in the form of segregation, high rates of incarceration of Black males resulted in their being "leased" by the prison authorities to work for private employers in conditions eerily similar to slavery. More generally, discrimination in employment has continued to be a blot on our national conscience.

The 19th Century saw successive waves of immigration from predominately Roman Catholic countries in Western Europe. The clash with the dominant Protestant majority – and especially with respect to religious exercises in the public schools, mainly prayer and Bible reading – resulted in the decision by Roman Catholic leaders to open their own schools. This precipitated an effort in the Congress to amend the Constitution to prohibit any government funding to flow to the religious schools. The proposed amendment, known as the "Blaine Amendment" after its principal sponsor James G. Blaine of Maine, Speaker of the U.S. House of

Representatives, passed overwhelmingly in the House but failed to obtain the required 2/3 majority in the Senate. Subsequently, however, the essence of the Blaine Amendment was adopted into the Constitutions of all but 11 of the state in the Union and remains in many of those State Constitutions today.

The Anti-Cult Movement

A movement began to take shape in the United States in the late 1960s directed against new religious movements. Ted Patrick pioneered a technique called "deprogramming" to reverse what he claimed to be brainwashing and mind control by small, new religious movements which he labeled as "cults." The term "cult" has taken on a pejorative tone in the U.S. whereas the term "sect" is used to describe such movements in academically neutral terms.

With easy access to media and the support of some politicians, Patrick and his Citizens Freedom Foundation were given an open forum to foment widespread fear of several of the new religious movements – notably Children of God, Hare Krishna, the Unification Church, and the Church of Scientology, among others. Having created fear in the minds of a population of parents whose adult offspring elected to join one of these movements, Patrick had a growing cohort of potential customers for his services as a "deprogrammer."

The National Council of the Churches of Christ in the USA was the first to speak out against these criminal acts in a resolution adopted February 26, 1974:

> In this country, kidnaping a young person for ransom is a federal crime of utmost seriousness, but kidnaping such a person in order to change his or her religious beliefs and commitments has not thus far actuated federal authorities to invoke the statute. Grand juries have refused to indict and petit juries to convict persons charged with such acts, apparently because done at the behest of parents or other relatives and ostensibly for the good of the victim.
>
> The Governing Board of the NCC believes that religious liberty is one of the most precious rights of humankind, which is grossly violated by forcible abduction and protracted efforts to change a person's religious commitments by duress. Kidnaping for ransom is heinous indeed, but kidnaping to compel religious deconversion is equally criminal. It violates not only the letter and spirit of state and federal statutes but the world standard of the Universal Declaration of Human Rights, which states: 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.

Patrick authored a book, *Let Our Children Go!*, (E.P. Dutton, 1976) in which he denounced in categorical terms the alleged dangers of new religious movements

and celebrated his methods of deprogramming which began with the forcible kidnaping and captivity of the "cult" adherent. Patrick recounted proudly in the book some of the brutality incident to the kidnaping of his victims and their imprisonment over the next many days during which a tag-team of deprogrammers subjected the target to nonstop badgering for the purpose of producing a renunciation of the individual's faith. It was not until 1980 that Patrick himself was prosecuted and convicted for just one of his many acts of kidnaping and false imprisonment. He was sentenced to only one year in prison and fined $5,000.

The deprogramming script began by inducing shame for the target's having left the family's traditional faith and the assurance that his parents still loved him very much. The parents, of course, were not present for these days of captivity. The deprogrammers would then ridicule the beliefs of the new religious movement and accuse its leader of all kinds of bad faith and deceit. The script then moved in for the final point: The target's choice to follow this "cult" was not made of his own free will. Rather, because of the alleged dishonesty and cunning of the leader, the target had been deceived, brainwashed and subjected to mind-control. In short, the goal was to remove all responsibility from the target for his/her decision to affiliate with the religious group in the first place.

In 1978, the Citizens Freedom Foundation morphed into the Cult Awareness Network which, for nearly two decades, masqueraded as an educational organization while serving effectively as an employment agency for a growing number of kidnapers and deprogrammers. It passed along calls from parents rendered distraught by CAN's propaganda to a network of "volunteers" who would put the parents in touch with deprogrammers available for hire. As law enforcement began to realize that kidnaping is a criminal act, the client parents were often required to be present at the capture in the expectation that the target would be unwilling to accuse his own parents and thereby thwart prosecution. CAN's financial records disclosed that a "contribution" to CAN was customarily received from a kidnaper/deprogrammer after each deprogramming.

A civil lawsuit resulted from the failed deprogramming of 18-year-old Jason Scott, a member of a Christian Pentecostal Church in the State of Washington, in 1991. Rick Ross (the deprogrammer hired by Scott's mother), two accomplices and the Cult Awareness Network were found liable at trial and ordered to pay $875,000

in compensatory damages and a total of $4-million in punitive damages ($2.5-million against Ross, $1-million against CAN, and $250,000 against each of Ross's two accomplices). When the 1995 trial verdict was affirmed by the U.S. Court of Appeals for the 9th Circuit, CAN and Ross each filed for bankruptcy protection. The assets of the Cult Awareness Network including, eventually, its records, were sold at auction to persons affiliated with the Church of Scientology. They reopened the "New Cult Awareness Network" with the purpose of providing neutral information on new religious movements and helping to put concerned parents in direct touch with the offspring of their concern and with leadership of the movement as a means of lowering the temperature and facilitating reunion.

While this drama was playing out, Rick Ross was busy enlisting the Federal Bureau of Alcohol, Tobacco and Firearms leading to the deadly 1993 attack on the Branch Davidians, an Adventist sect, at Mount Carmel, its longtime community outside of Waco, Texas. After a 50-day stand-off, the Federal Bureau of Investigation launched a lethal assault on April 19, 1993, firing more than $2-million worth of CS gas into the residence building. CS gas is a substance intended for outdoor crowd control and is highly toxic and flammable when used in an enclosed area. After six hours of this assault, including the firing of pyrotechnic shells, a holocaust ensued killing all 25 children and 50 adults; only nine adults survived the fire.

Ross had been hired by an individual who, along with his wife and daughter, had been a member of the Davidians. When he voluntarily left in 1991, his wife and teenage daughter chose to remain. Ross was hired to extract them, but they remained and were among the casualties of the FBI's final assault.

As a result of the new-found recognition that kidnaping as actually a crime, the deprogrammers renamed themselves as "Exit Counselors" and have adopted an hourly-rate schedule as a form of payment. Their services would attract few takers but for their constant proclamation of distorted, misleading, and false information about their growing list of "destructive cults." The American Family Foundation, the anti-cult think tank founded in 1979, in an effort to increase the marketability of these predatory services, expanded its definition of cult to include economic and political "cults." The American Family Foundation was renamed as the International Cultic Studies Association in 2004, and has been a significant source

of activism against minority religions internationally.

Contemporary Religious Bigotry Since 9/11

The anti-immigrant agenda of right-wing politics has exacerbated a latent bigotry against persons of different ethnic and racial identities.

Since September 11, 2001, the terrorist attacks on the World Trade Center in New York and the Pentagon in Washington have provided fodder for the most virulent form of religious bigotry in the recent history of the United States, this time against Muslims. "Profiling" of persons of Middle Eastern descent, on the assumption that they be Muslim, has been headlined. The enactment of laws in a few States intended to deny rights to unregistered immigrants have been used, as well, against legal residents based on race and ethnicity.

The New York City Police Department has a program, apparently in cooperation with the Central Intelligence Agency, to infiltrate houses of worship in search of conspiracies to commit terrorism. While aimed chiefly at mosques, NYPD even sent agents in recent weeks into United Methodist and Presbyterian churches in Manhattan which provided sanctuary and comfort to the Occupy Wall Street protesters who had been driven out in the middle of the night from the park near Wall Street where the demonstrations had been centered.

The Center for American Progress recently published a detailed report (August 2011) under the title *Fear, Inc. – The Roots of the Islamophobia Network in America*, [http://www.americanprogress.org/issues/2011/08/pdf/islamophobia.pdf] in which the Center identifies the funders, creators and purveyors of hatred toward Muslims. These include a handful of "experts" whose writings and speeches are cited by each other and others in the network to create the illusion of truth in their dishonest pursuit.

In the past ten years, motivated by this hate network, three states have enacted, and nearly a score of others are considering, so-called anti-Shariah laws designed to prohibit use by the State courts of any tenet of Shariah (and, in many cases, also "foreign" law). Clearly, no secular criminal law would or could be affected by a religious law, Shariah or otherwise. Only in domestic law – marriage, child custody, or estate distribution – would there be any likely purpose for religious law to be considered by civil court. This is not at all uncommon with respect to Jewish

law in matters involving Kosher food and divorce, for example. Why should it be an issue for Islamic religious law?

The abuse of Arabic terms used in the Holy Qu'ran, such as "Shariah" and "jihad" – not to mention "Allah," the name for God in Arabic – have been deliberately misdefined by the fundamentalist and political extremists. Given the American public's lack of understanding of Arabic (and, unfortunately, foreign culture generally), they have become easy prey for those who would give these words a nefarious meaning. Shariah is simply Islamic religious law (conceptually not unlike the "canon law" of many Christian churches) and jihad is one's spiritual struggle between good and evil.

Various hate crimes have been perpetrated against members of minority faiths. Muslims (and Sikhs, mistaken for Muslims because of their turbans) have been victimized increasingly in recent years, especially in the weeks immediately after 9/11.

Many of the more recent cases of discrimination arise in connection with the attempt to build mosques. Localities in the United States are responsible for their own zoning laws by which certain types of uses are permitted or restricted in particular areas and limits placed on a building's size and bulk. Building codes prescribe the elements of construction materials for safety based on the intended size and use of the particular structure. The issuance of a building permit depends on compliance with both the building code and the zoning code. Many structures will require special use permits and, in many jurisdictions, *any* place of worship requires a special use permit. Generally, there are specific guidelines for the issuance of a special use permit and, so long as they are met, the permit must be issued; permits may also be issued with discretion in other circumstances. In furtherance of discrimination, discretion is not infrequently abused.

Early in 2011 the zoning board in Bridgewater, New Jersey, was presented with an application to convert a former catering hall to a mosque. The zoning board rushed through a change in the underlying zoning ordinance to permit places of worship to be built in the town *only* on certain named or types of streets – which described exclusively the locations of existing churches and synagogues. Of course, the street of the proposed mosque was not on the approved list. The case is in litigation.

The Dupage County Board (a suburb of Chicago) early this year rejected several proposals from a group of Muslims desiring to build a mosque. Among the extraordinary efforts to create a presumptively nondiscriminatory reason to deny the permit, the Board considered (but ultimately rejected) a regulation prohibiting any structure from casting a shadow on a neighbor's property. They had their eyes on the dome and minaret which they have yet to approve at any height.

The Pew Research Center's Forum on Religion published a paper in September 2011, *Controversies Over Mosques and Islamic Centers Across the U.S.* [http://features.pewforum.org/muslim/assets/mosque-map-all-text%209-29-11.pdf], describing some 37 cases of mosques being denied building permits in the United States in the last few years. The Report notes:

> In many cases, the opposition has centered on neighbors' concerns about traffic, noise, parking and property values – the same objections that often greet churches and other houses of worship as well as commercial construction projects. In some communities, however, opponents of mosques also have cited fears about Islam, sharia law and terrorism.

While the preponderant number of cases involving discriminatory zoning issues affect minority religions, there have been recent cases aimed at preventing the construction of churches for new Roman Catholic and United Methodist congregations in different states. It is also worth noting, on the positive side, that there are many situations throughout the nation where churches permit a congregation of a different faith to share its space for worship at a different hour, typically a Protestant congregation offering hospitality to a Jewish or an Islamic congregation. This is often in response to an emergency, like a fire, but hospitality has also been provided for a new congregation which, eventually, will build its own place of worship.

The United States Department of Justice in 2002 created the position of Special Counsel for Religious Discrimination within the Civil Rights Division. Using the legal tools of the First Amendment, RFRA and RLUIPA, that office has worked effectively to combat local discrimination in these matters. The Department will examine cases brought to its attention and might intervene by inquiring of the local authorities as to their intents. It has brought legal action itself and it has intervened as amicus curiae (friend of the court) in lawsuits commenced by the victims of religious discrimination. Its intervention has often been successful.

In Murfeesboro, Tennessee, a mosque is now being built although the project has been the victim of violence and vandalism. Local contractors have been frightened and declined to work on the project. Contractors have had to be drawn from as far away as Knoxville, 181 miles (290 km) away.

The very public protest against the so-called Ground Zero Mosque – the Cordoba Project or Park51 – is interesting because the local government agencies in New York City offered no objection to the project and moved to facilitate its construction. Individuals and politicians from outside the area insinuated themselves into a high decibel debate, mostly for purposes of self-promotion.

The fear which has been cultivated since the attacks in 2001 has been used and directed against Muslims, generally for the self-serving benefit of certain groups for purposes of enhancing fund raising (bigotry can be lucrative!) and by politicians seeking to curry favor with a constituency.

Rather than provide useful and honest leadership, for example, Rep. Peter King of Long Island has used his position as chairman of the House Homeland Security Committee to demonize Islam in the conduct of televised hearings on "The Extent of Radicalization in the American Muslim Community and that Community's Response" (March 10, 2011) and on alleged Islamic radicalization in prisons (June 15, 2011). At the latter, Michael Downing, of the Los Angeles Police Department's Counter-terrorism Bureau, testified that the issue of radicalization in prisons was a serious one. But, he said, "Instead of providing a balanced, peaceful, contemporary perspective of one of the great and peaceful religions of the world, we are left with a hijacked, cut-and-paste version known to the counter-terrorism practitioner as 'prislam.'"

The exacerbation of fear has become an American staple since 9/11. For example, Bruce Ivins, the civilian employee of the U.S. Army believed responsible for the deadly anthrax letters delivered in October 2001, apparently intended the panic created to lead to funding for an anthrax vaccine from which he could profit as its co-inventor and patent holder. He was right. Congress soon passed legislation providing that funding, but not until after the Senate, without debate, was stampeded into enacting the so-called USA PATRIOT Act (actually the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001") on its first day in session after the letters were

delivered to government officials.

The Administration encouraged speculation in the Press that the anthrax in the letters has been "weaponized," implicating Islamic terrorists and/or Saddam Hussain and Iraq. The anthrax attack was offered as "evidence" of Iraq's alleged program of biological weapons of mass destruction at the United Nation to elicit support for the 2003 invasion of Iraq, despite the fact that the FBI had clear evidence for over a year that the anthrax had not been weaponized and that it came from a U.S. Army laboratory. Fear is a powerful agent to render a free population submissive to destructive ends.

Conclusion

In the modern era, United States law has, for the most part, the effect of protecting the rights of persons to practice their faith peaceably. Considerable pressure is exerted by the right-wing of the political sphere, augmented by some Protestant fundamentalists, to demonize new, minority religious movements, but also including some historic faiths of immigrants, Islam in particular.

The events of September 11, 2001, have allowed some political leaders to manipulate fear to the detriment of immigrants generally and Muslims in particular (whether they be immigrant or native). It is a self-serving enterprise that permits many erosions of civil liberties. The decision of the late Administration of George W. Bush, acquiesced in by both political parties in Congress, to prosecute the war in Iraq with all of its many violations of domestic law, international law and treaties that followed in its wake was, perhaps, the prize sought from the several coordinated campaigns to heighten fear.

One can only trust, based on judicial and political recovery from past atrocities such as the internment of Japanese-Americans during World War II, that Constitutional principles are sufficiently well established in the United States to bring various civil liberties – including religious liberty – into a more appropriate balance. The historic standard whereby government is able to trump a Constitutional liberty had been for the sole purpose of protecting public health and safety, a "compelling state interest." That standard should be reaffirmed and followed scrupulously.

Additional Resources

Two significant resources online provide overview of religious jurisprudence in the United States. Each is available from the website of the Queens Federation of Churches, http://www.QueensChurches.org/links > Religious Liberty Resources.

The Law of Church and State in America by Dean M. Kelley is a 5-volume work completed in 1997 by the Rev. Dean M. Kelley, longtime Director for Religious and Civil Liberties of the National Council of the Churches of Christ in the USA. This work is structured around important functions or aspects of the religious enterprise. Volume I deals with the autonomy of religious bodies, that is, their rights to manage their own internal affairs. Volume II deals with the outreach activities of religious bodies as they relate to the external world. Volume III treats the inculcation of the faith by or on behalf of religious bodies (and a wide array of educational practices pertaining to religion in public schools). Volume IV studies the patterns of protecting the practice of the faith by the faithful in the secular world. And Volume V focuses on state shelters for religion – institutionalized provisions for "protecting" religion, such as legal exemptions (as from taxation), governmental "proprietaries" (such as chaplaincies), folk-practices of civil religion or the public cultus that become enmeshed with state action, and the perplexities of governmental efforts to define (or to avoid defining) "religion" and "church."

Religious Expression in American Public Life – A Joint Statement of Current Law is a statement to help foster an accurate understanding of current law and improve our national dialogue on these issues. While there is disagreement among the drafters about the merits of some of the court decisions and laws mentioned in the document, the drafters agree that current law protects the rights of people to express their religious convictions and practice their faiths on government property and in public life as described in the statement. In other words, while this diverse group often disagrees about how the law should address issues regarding the intersection of religion and government, it agrees in many cases on what the law is today. More broadly, the drafters also agree that religious liberty, or freedom of conscience, is a fundamental, inalienable right for all people, religious and nonreligious, and that there is a need to correct misunderstandings about this right. The joint statement, which is formatted in a Q and A style, seeks to provide accessible and useful information for Americans about this area of law.