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Spirituality · Community · Justice

Social Progress, Religion, & Law

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This month is the 454th anniversary of a significant event from the *Unitarian* half of our Unitarian Universalist heritage. In 1568, John Sigismund Zápolya of Hungary (1540-1571), history's *only* Unitarian king, passed the Edict of Torda, a **landmark act of religious tolerance and freedom of conscience.** Sigismund was born in 1540, little more than two decades after Martin Luther published his "Ninety-five Theses." So the general time period under discussion here is the early decades of the Protestant Reformation, a time of tremendous religious upheaval.

In 1568, at a time when many ruling authorities were persecuting or even executing religious dissenters, Sigismund used his power to expand freedom of religion within his sphere of influence:

- *Congregations* were freed to hire a "preacher whose teaching they approve" instead of having a minister chosen for them by the state or an external religious authority.
- *Ministers* were freed to to preach sermons based on their own best understanding of the truth, instead of having predetermined sermon content and external limitations on their topics.
- *Individuals* were freed to to choose the religion they preferred.

And in the words of the Edict, **"No one shall be reviled for [their] religion by anyone."**

These basic religious liberties may seem like common sense today, but let me give you a point of comparison of how high the stakes often were at this time. In 1531 (during the period between Luther's *Theses* in 1517 and the Edict of Torda in 1568), another of our Unitarian forebears, Michael Servetus, published a book with the not very subtle title, *On the Errors of the Trinity*. When John Calvin (another of those leading Protestant Reformers) read Servetus's book, one option would have been to choose the path Sigismund helped blaze a few decades later, the path of religious tolerance, of willingness "to agree to disagree." Instead, Calvin had Servetus burned at the stake for heresy.

Now, to be fair, I should add that the Edict of Torda was by no means the full-throated celebration of religious pluralism we might desire today. With the Edict of Torda, **tolerance was explicitly extended to only *four* religious groups: Lutherans, Calvinists, Catholics, and Unitarians.** But for the mid-1500s, only a few decades into the Scientific Revolution (1543 - 1687), construction of a societal "big tent" large enough to include all four of those different flavors of religion *was* dramatic progress. In contrast, the standard practice in many other places of that time was to entrench the single dominant state-sponsored religion, while actively discriminating against or suppressing all other religions.

To finish telling this part of the story, I need to bring in one other important person from our UU history—Francis Dávid (c. 1520 - 1588). Dávid was the court preacher for the Unitarian King Sigismund. Dávid initially converted Sigismund to Unitarianism, and later drafted the Edict of Torda.

Tragically, three years after passed the Edict, Sigismund was killed in a hunting accident at the young age of thirty. The consequent change in leadership gives us one more historical example of how much it can matter who is in charge. Sigismund's successor, Stephen Báthory, was a theologically-conservative Catholic. Whereas Sigismund was a religious *progressive,* and thus open to religion evolving in response to new insights, perspectives, and experiences, the new King Bathory sought conformity to religious ideals of the past. He not only removed all Unitarians from positions of power; he also had Francis Dávid convicted on two charges: promoting innovations in religion and preaching that Christians should *follow Jesus's ethics*

instead of worshiping Jesus. Dávid was imprisoned and died in prison later that same year at the age of either 58 or 59. As with Servetus before him, Dávid is a martyr for Unitarianism, freedom of conscience, and religious liberty.

Thus far, we've considered a few historical case studies from the 1500s for insights about how to approach religious pluralism. On one end of the spectrum, we considered the theocratic, supremacist approaches of Báthory and Calvin, within which there is room only for one's group's ideas of what counts as the alleged "one true religion." On the other end are Sigismund, Servetus, and Dávid, who each tried to enlarge religion's tent sufficient to make room for greater religious diversity. I hope you agree that this anniversary of the Edict of Torda is an auspicious opportunity to reflect on the state of religious freedom today.

As part of my own reflections, I've been reading a book published recently by an imprint of our own Unitarian Universalist Assertion, Skinner House Books, titled *Faith on Trial: Religion and the Law in the United States,* written by my colleague The Rev. Mark Caggiano, who practiced law prior to becoming a UU minister. Caggiano is currently serving a UU congregation in Chestnut Hill, Massachusetts.

Caggiano's book is a fairly accessible introduction to the history of religion and law in this country. If we had to choose one short passage of similar impact today to the Edict of Torda, it would be the first sixteen words of the First Amendment to the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (6). This *Establishment* Clause is intended to prevent what happened in places like Calvin's Geneva or Báthory's Hungary from happening in the United States. The United States is not a theocracy. We don't kill people or imprison them for having the wrong religious beliefs or at least we don't anymore. There are examples of U.S. citizens being imprisoned at the state level for violating blasphemy laws in this country as late as 1838. The last person that happened to was Abner Kneeland, a Universalist turned atheist, who was imprisoned in Massachusetts—of all places—for blasphemy (162-166). He was released after sixty days. In a future sermon, I'll tell you that story in more detail.

For now, suffice it to say that it's a good thing we have an Establishment Clause in the First Amendment. The U.S. government is prohibited from establishing an official

state religion publicly funded through taxpayer dollars, and from favoring one religion over another--at least in theory. In practice, the Supreme Court is a bit confused at the present. But I'll get to that a bit later.

The *Free Exercise* Clause ("Congress shall make no law…prohibiting the free exercise [of religion]") prevents the government from interfering with actions deriving from religious beliefs and practices to the extent possible. It's easier, however, to give people freedom of religious *belief* than it is to give people freedom of religious *action*. For instance, I might proclaim that it is my sincere religious belief that I should have one free flight per year to anywhere in the world, or that I should be able to walk around anywhere in the Pentagon. Legally, I can *believe* either of those things in my heart, mind, and spirit as fervently as I may, but legal problems will arise if I try to *act* on those beliefs (149).

There's so much more to say about the interplay of religion and law, but for our purposes, I'll limit myself to five quick case studies. As we move through them, I invite you to consider on what basis you might form your opinion regarding the boundaries and limits of religious liberty if you were a Supreme Court Justice. And how might we do better here in the 21st century than our forebears did in the 16th century—without going too far? As the saying goes, "There's a thin line between being set free and being cast adrift."

To clarify the important distinction between freedom of religious beliefs and freedom of religious acts, consider the practice of **snake handling.** Unlike my joking examples earlier, there really are citizens of this country who apparently really do sincerely believe that the only way they can fully practice their religion is by handling snakes and drinking poison, a conviction which stems directly from the Bible. Mark 16:17-18 reads: "And these signs will accompany those who believe: by using my name they will cast out demons; they will speak in new tongues; they will pick up snakes in their hands, and if they drink any deadly thing, it will not hurt them; they will lay their hands on the sick, and they will recover." For more details, I recommend the book, *Salvation on Sand Mountain.*

Handling poisonous snakes, even during a religious service, is illegal in most states today, although the Supreme Court has not yet ruled on snake handling.

The American Civil Liberties Union has generally been on the side of the snake handlers, finding that the risk of harming oneself and even dying—which has happened numerous times to religious snake handlers and poison drinkers—is not a sufficient reason to restrict adults from practicing their First Amendment right to free exercise of religion (Wikipedia)

The ACLU's perspective here is a classically liberal one: "Your right to swing your fist ends when it hits my face." In this analogy, you are free to risk punching your own face (so to speak) by handling snakes or drinking poison, as long as your free exercise of religion doesn't risk harm to others. That being said, the argument could be made that society has a compelling interest to stop dangerous religious activity that could encourage others to take similar religious risks.

Extending this logical trajectory one step further, we reach the territory of religious suicide cults such as Jim Jones' People's Temple, or the Heaven's Gate cult of Marshall Applewhite that developed around the Hale–Bopp Comet. Many of us would have wished society could have intervened to stop these people from practicing what in that moment might have seemed like their sincere religious belief.

What do you think? **How far should individuals be able to go in risking even fatal harm to themselves—when it involves their sincere religious belief?**

And how should we treat Indigenous People who have a sincere belief that using the psychoactive plant **peyote** is an essential part of their religious practice? In 1990, the Supreme Court ruled in *Employment Division, Department of Human Resources of Oregon v. Smith*, that someone could both be fired for using peyote, and denied state unemployment benefits—even when the drug was used in a traditional religious ritual (205-207). This is an interesting case today, when more than three decades later we are witnessing a growing cultural acceptance of psychedelic drugs. That case might well be decided differently today for a variety of reasons, including a growing deference among Supreme Court Justices for religious liberty arguments.

Let me turn up the heat for a moment once more before we move on. One could make the argument that for many Indigenous People, the ***land*** on which this country sits is an inextricable part of their religious practice, and lands that are traditionally sacred in particular deserve to be protected*,* an argument which, to date, the courts

have not found persuasive. (Religion News). Do you agree? If an Indigenous group sincerely believes that their religion requires significant areas of land be transferred back to Indigenous control, where do we draw the line in order to balance the Free Exercise Clause with the legitimate needs of other citizens?

Another thorny example of Free Exercise Clause conflicts is the matter of **polygamy**, another controversial religious practice that, like snake handling, has a very strong biblical, if not legal, foundation. The opening verses of 1 Kings 11read: "Solomon had seven hundred wives of royal birth and three hundred concubinesone ofmany examples of biblical leaders with multiple spouses.

Nevertheless, U.S. history is filled with examples of laws against bigamy and plural marriage, laws that were primarily discriminative against Mormons (88, 98-99). What do you think? Are these instances where consenting adults should be free to practice what their religions tell them is OK? Or is there a compelling societal interest to stopping them? Today's growing interest in polyamory might likewise eventually lead to a paradigm shift in that cultural area.

Turning to fourth example, one which might be the most highly charged free exercise issue today, consider anti-vaxxers. Surveys have found that approximately **"10% of Americans believe that getting a COVID-19 vaccine conflicts with their religious beliefs"** (NPR). What do you think? How do we balance claims about sincere religious beliefs against the demands of public health?

Since we've already focused on the Free Exercise clause, for my fifth and final example of religious law concerns, let's talk about legal conflicts arising out of the Establishment Clause. Have you seen the documentary that came out a few years ago titled **Hail Satan**? It's only about 90 minutes long, and well worth watching. It's currently streaming on both Hulu and Kanopy.

This documentary follows a religious group called The Satanic Temple, who petition public spaces which publicly exhibit only Christian symbols (such as a cross or the Ten Commandments,) requesting they also include a statue of Baphomet, an 8.5-foot-tall goat-headed humanoid figure wearing a large pentagram. The Satanic Temple legal argument is that public spaces should have either no religious symbols at all, or be open to all religious symbols, including the religion of Satanism (253). What do you

think? **Should we have a crowded public square, with symbols from all the religions? Or "naked" public square?**

Part of why I've taken the time to lay out these many case studies is to pique your interest in the current controversial state of religion and law in the U.S., and some potentially seismic legal shifts we are starting to feel in recent years—that may well increase in their impact. During the Warren Court (in the early 1950s through the 1960s), most Supreme Court cases involving religion and the law primarily benefited minority or dissenting practitioners.

We find a stark contrast in today's Supreme Court rulings. Over the past almost two decades, since 2005, the Roberts court's predominant religion-related rulings have favored the currently-dominant religion in the U.S., Christianity, and in particular, its theologically conservative wing. To quote Dr. Lee Epstein, a distinguished political science professor at Washington University in St. Louis, **"Just as the [current majority of Supreme Court justices] have weaponized free speech in service of business and conservative interests, it's using the religion clauses to privilege mostly mainstream religious organizations"** (The New York Times).

At this point, I am tempted to go into more detail about the various specific recent cases on religion and law highlighted here and during last year's anniversary of the Edict of Torda. And since yesterday was the 49th anniversary of Roe v. Wade, I hope to explore more thoroughly the competing religious values around the future of reproductive justice in this country, an issue which I have addressed in previous sermons and will focus on again at the upcoming 50th anniversary of *Roe*.

For now, it's important to just be aware of the trend toward using the First Amendment to privilege mainstream ideas, and groups currently in power, instead of protecting the political minority, and historically oppressed groups.

In the opinion of most progressive law scholars, **it is a tragic and dangerous misreading of the Constitution to attempt to enforce in the public square one group's religious *bigotry* upon others—in the name of religious *liberty,*** an intrusion which takes us down the path toward theocractic rule imposed by Calvin, Báthory and others—a constraint that our history warns us to resist repeating. As with swinging

your fist, your right to do so ends when it hits my face); such accommodations are necessary when individuals and groups interact with the general public.

For now, as we consider how best we, both individually and collectively, might consider these complex issues of religion and the law, it can be helpful to remember that what we always have the most control over is ourselves, and our own personal religious choices.

In that spirit, consider the words of Theodore Parker, one of our 19th-century Unitarian forebears, about one of the ways we can covenant to be religious UUs—in the inclusive way that Sigismund, Servetus, and Dávid chose before us:

> Be ours a religion
>
> which like sunshine goes everywhere,
>
> its temple all space,
>
> its shrine the good heart,
>
> its creed all truth,
>
> its ritual works of love.