I just spent a goodly portion of this morning mulling over and then writing the editorial for this issue. The unfortunate part of the story is that it was not this editorial. It was another version. One begun in a flurry of brain activity and pattered down on the keyboard as I proceeded. In fact, I was on the last paragraph when it happened. The words had spilled over to another page, which began with half of the last sentence I had written. I looked at those words, wondered for a second how the sentence had begun, and scrolled up to see. Nothing! The entire file had vanished. I called the in-house computer specialist, who gave it to me officially: I had lost it forever—and why had I not backed it up?

It strikes me that our religious liberty scene is proving very much like my editorial: lots of activity, many fine words written, and many great things done to protect our freedoms. And then we wake up one day to find them gone or going, and the world has shifted on its axis.

Before the great vanishing I had begun by riffing on about science. Science has neatly usurped religion for much of what passes for public consciousness. For much of history science was a matter for scientists and men of learning to mutter about in the cloisters of learning. It took a Darwin and an Einstein to bring us to our present Western secular turn of mind. We are in a new paradigm where we worship science and human progress even as we cling to cherished notions of the value of faith and religious freedom. We have created an unbearable tension for ourselves.

The contradictions are nowhere more visible than in educational institutions. Even in church-run systems, which are not so constrained by questions of a separation of church and state! I have heard recently of problems, in some church schools, of teachers aggressively teaching evolution in the science class, even as others in the religion classes teach creation and religious absolutes. The result has been an intolerable conflict that pits parents against faculty and faculty against constituency. The problem was a long time in coming, but no one much cared until "suddenly" it presented as a restriction on both academic freedom and the faith values young people/parents expected to find in a religious institution.

This apparent sudden shift of events is nowhere more evident than in the market meltdowns that have followed the great deficit debate of 2011. I came to the United States as a young (very young) teenager in the 1960s. It was obvious, even then, to anyone who cared to read the relevant, dull documents that the United States was spending way beyond its income. A few years later I read that all personal income tax receipts went to paying only the interest on the debt. But politicians still insisted that deficits didn't matter. It didn't seem to matter that putting a man on the moon and sentries at hundreds of outposts around the world came at a dollar cost expressed in "new math" hyperbole. Now we are suddenly less than AAA rated, all entitlements are under a shadow, and we use Greece and Italy as comparisons for potential meltdown. It didn't just happen. We just suddenly noticed it.

The Middle East has long been a land of dictatorships and enlightened despots (the difference being mostly in whether they are friend or foe). For my lifetime at least it has been a bubbling pot of discontent, seasoned liberally by the hurts left by colonial powers and the at-times fantastic aims of religion. Too bad that we in the West were so content to add little more than weaponry and take away little more than once-cheap oil. Now the Arab Spring has suddenly sprung, and we hope for great things. We fed this plant the wrong stuff, so we shouldn't be surprised that it grows a little out of control. There may not be as much difference as we think between a polyglot crowd of nationalists, libertarians, and Islamists and the regime that uses tanks to suppress them. And it may be worthwhile to take note of the fact that all parties are picking on religious minorities. A problem long ignored is now roaring out of control.

Religious liberty seems a safe freedom in the United States—at present. What if suddenly we found ourselves in a situation like medieval Europe, or the Latin America of the 1960s—state favoritism of religious orthodoxy and harassment of independents? It might happen, and it would not be all that sudden—just suddenly revealed. By my judgment things are actually quite tenuous here. For years there have been increasing attacks on the separation of church and state. Many mainline, politically active church organizations are openly dismissive of separationism as not in the Constitution. They seem to forget the old adage that goes
something like "saying it's so don't make it so." They are anxious for state funding, state support of their dogma, and advancement of a civil society that matches their vision of orthodoxy.

The net effect of this decades-long effort is that we could be on the edge of a First Amendment collapse. It does not yet appear so, because the main effect is diminishing the establishment clause. On the march to victory over that clause its soldiers are happy to defend free exercise—free exercise for all by default. But once the first battle is over, we will probably see a quick alliance with secularists to direct religious practice to a particular religious viewpoint.

There is a dynamic in place at the moment that I must mention and that we discount at our peril. The West is reeling from a series of crises.

The war on terror has tended to diminish the application of absolute civil liberty. It has tended to desensitize populations to the mistreatment of minorities—especially those perceived as either causing the problem or not sufficiently loyal to our values.

Economic collapse always empowers prejudice against those of different ethnicity, religion, or politics than the majority. Here in the United States religion and politics are both at a toxic level: exhibit A might be the furor at the New York Ground Zero mosque and subsequent Koran burning; exhibit B is heard on the daily radio programs that cast the opposition as unpatriotic and socialist/class haters or any number of other right-left epithets. I hope my neighborhood remains calm as the economy falters (at the moment the calm is in the manner of shuttered, foreclosed homes), but it is certain the religious tensions will be exacerbated, certain that religious expression will become itself a lightning rod for political discontent. We must be prepared and not surprised by such sudden changes—they have actually been a long time coming.

Lincoln E. Steed is editor of Liberty.
Leaving Home: New Law Forces Home-Schoolers To Fight Or Flee Sweden

BY: ALEX NEWMAN

While some have decided to stay and fight, other homeschooling families in Sweden are emigrating after losing a years-long battle with the government over the right to educate at home. Last summer Parliament passed what it calls "The New Education Act—for Knowledge, Choice, and Security." The 1,500 pages will bring vast changes to the educational system, but "choice" is certainly not among them.

For starters, the statute will lead to a crackdown on so-called independent schools, which will soon be forced to teach the same government curricula as regular state schools. Two pages of the new law, adding a new "exceptional circumstances" provision, mean the Nordic kingdom will also have a virtual ban on homeschooling starting July 1, 2011. But it won’t be easy to implement: the estimated 50 to 100 families are refusing to give in.

Exodus From Sweden

The Grüninger family—originally from Germany, where a Nazi-era law against homeschooling is still in force—moved to Sweden under the impression that home education was legal. They tried the local government school first, anyway. But it was a disaster. Anti-Christian bigotry was overwhelming. Students constantly harassed the children, making frequent reference to Adolf Hitler, too. "It was terror for us," explained the father, an auto-manufacturing worker.

The oldest daughter, 11 at the time, was forced to endure a "sex education" class so graphic and intense—without so much as parental consent—that she couldn’t even speak when she arrived home in tears. She had to describe the "lesson" to her mother in a letter. The mom was shocked. The young girl started bathing obsessively—"wash, wash, shower, shower, wash"—a problem that persists to this day. Bernard Grüninger and his wife spoke with school officials on numerous occasions, to no avail. Instead, teachers lectured them about hugging and kissing their children goodbye when they dropped them off, saying the displays of parental love were inappropriate. So the family finally decided to homeschool.

But it wasn’t that simple. Even under the old law, parents seeking to educate their children at home needed a permit from local authorities. The Grüninger family applied, and was denied. They were committed to the idea, however, and so continued to homeschool while appealing the decision. "When we started homeschooling, it was so, so great for us to see how good the children feel and how much they learn," said the father, clearly getting emotional. "It was crazy! Then we saw what a low level [of education] the children have in school."

To retaliate, the local government sent social services to the family’s home for an “inspection.” The Grüningers suffered incredible anxiety, with the children worrying about police possibly coming to take them away. After two or three weeks, the social services worker decided the family was doing well. But the harassment and intimidation continued. Finally, however, it became a moot point: Parliament stepped in and basically banned home education altogether.

"Because of the new school law, we have to decide—we can’t stay in Sweden—we will never, never, never bring the children back.
Mischa Hammarnejd and his family left Sweden for Finland because of the homeschooling issue.

Mischa Hammarnejd and his family left Sweden for Finland because of the homeschooling issue. "We did not want to confront the politicians head-on with the consequences that follow," he said, citing fines, social service investigations, and at least two instances of families having their children seized. "We didn't want to go the route of fighting and standing up for our rights and being humiliated by the social services . . . so we said, 'Well, we'll move.'" And they did; to Finland, a country where even the constitution makes clear that parents are responsible for the education of their children.

Hammarnejd said Sweden has a long tradition of unchecked government authority, going back to monarchs who presumed to dictate what clothing their subjects could wear. The first public schools, he said, taught children always to obey the regime. "The Swedish population is so used to being told what to do that we've never opposed higher authorities," he explained, adding that it upset him to realize he had never learned about what much of the rest of the Western world takes for granted—the idea of negative rights, or freedom from coercion. "That concept doesn't exist in the Swedish mind."

But Finland is "radically different," Hammarnejd explained. And his kids are doing fantastic there, easily learning twice as much as their peers in government school, maybe more. "It's amazing—totally amazing!" Of course, there was a price to pay: uncertainty, leaving everything behind, and more. "But we're not going to give this up." He's already given up his career and his homeland. And he would do it again, if necessary. Despite initial sadness over being separated from his home, however, Hammarnejd's experience taught him that "home is where the heart is." As for fellow Swedish homeschooling families mulling their options: "Never give in," Hammarnejd offered. "Follow your heart, and do what you know is best for your children."

Other parents, rather than leave their homes immediately, plan to wait and see. "Whether we leave the country or not remains to be seen—that's always been a possibility," admitted Christopher Warren, a homeschooling father of three who authored a detailed report on home education for the Swedish government and runs FreeSweden.net, a Web site focused on defending the rights of Swedish homeschoolers.

"If I am forced to leave Sweden because of this law, I will make 10 times as much noise abroad about Sweden than I am doing currently, as this country has been my home for the last 13 years and my children were raised here." Warren's oldest son, 16, is no longer subject to compulsory schooling in Sweden. But he continues homeschooling and has completed all of the Swedish final exams, proving it can be done.

Even before the new law, the government brutally targeted a family escaping Sweden in search of educational freedom. In a now-infamous case that prompted a worldwide outcry and condemnation from human-rights organizations in Sweden and abroad, Domenic Johansson, a 7-year-old homeschooler at the time, was seized by armed Swedish police while waiting to take off for India with his parents. The family had clashed with local authorities, who refused to permit home education for no apparent reason.

"They said it's the law, and every child's right, I tried to discuss the matter, but they refused to listen," explained Christer Johansson, the father. After carefully considering their options, the family decided to move to the mother's home country of India—permanently. The regime, however, would not allow it. Domenic has been in state custody since he was abducted from the plane, and is only permitted a short, supervised visit with his parents once every five weeks.
After seizing the boy, social services added to the homeschooling-without-a-permit charge that he had not received all recommended vaccines, and that he had a painless baby-tooth cavity the family was planning to treat in India. The battle rages on as the Alliance Defense Fund, the Home School Legal Defense Association, the Nordic Committee on Human Rights, and others seek justice for the family through the European Court of Human Rights. "Our situation right now is, we are just waiting to get our son back. After that, we will leave at once," Johansson said.

Why the Fuss?
Leading the charge for the new law was the Swedish Education Ministry, presently controlled by the "People's Party," part of the "center-right" ruling coalition. The decision to basically ban homeschooling was "in the interest of the pupils," insisted Education Ministry political adviser Therese Wallqvister, adding that the government curriculum was designed so all children could attend "regardless of their or their parents' religious or philosophical beliefs." If school-age children are not in class, police could get involved, she noted, admitting a degree of uncertainty regarding the consequences for families who defy the new rules. Fines could also be a punishment, she said.

"Sweden has always been very restrictive about homeschooling, and the reason for that is we think every child has a right to a good education," Wallqvister said. She acknowledged, however, that the regime did not have any evidence for the assumption that parents are incapable of providing an excellent education. She pointed to chemistry and biology as subjects that parents were not—as far as the Education Ministry is concerned—able to teach properly.

In addition to the new homeschooling restrictions, Wallqvister explained that all nongovernment-run schools—already financed by the state—will now be forced to adopt the national curriculum. No more praying, no more alternative teaching approaches, and no more options. "Praying is not something you can do objectively," she said, quickly adding that Christianity would still be taught in history lessons—"objectively," of course.

There were many topics Wallqvister could not address: criticism of the legislation by Sweden's high court, alleged conflicts with human-rights treaties, and more. When asked for other contacts in favor of the new law, she listed three government agencies and offices. Nobody she could think of outside government supported the scheme.

Waiting, Hoping, Wondering
Despite the intimidation campaign, many Swedish families plan to stay and fight until the end. "I haven't heard any active homeschoolers saying they're going to stop homeschooling permanently," explained author Jonas Himmelstrand, president of the Swedish Homeschooling Association (ROHUS). The government seriously underestimate the determination of Swedish homeschoolers, he added. "There are basically two reactions: the people who still have permission or have a lot of stamina with the authorities and a lot of trust in themselves—they are still staying and will stay until the autumn and try out the new law and see what possibilities and difficulties the new law has. Those who feel very uncomfortable with the harassment and the intimidation—they will leave."

Himmelstrand said it was clear that municipalities' tactics—fines of more than $30,000 per year in one case, numerous instances of social services investigations—were aimed at "putting fear in people." Of course, some local governments are better than others, but the trend is troubling. The battle, however, is worth fighting, Himmelstrand explained. "We see the success of our homeschooling every day... what we see in our children—I mean, they are doing so clearly and completely better than school children are doing, especially socially... Of course, you can't send your kids to school when you see that happening—you can't do that as a parent."

On top of the benefits Himmelstrand and his fellow homeschoolers see, there are serious issues in Swedish society—particularly in the educational system—that are cause for concern. For example, the Swedish national curriculum emphasizes abolishing "traditional gender roles." (Even in government day care—considered a form of school under the new law, with more than 90 percent of children between 18 months and 5 years old already enrolled—a "gender educator" makes the rounds to ensure that children are not absorbing any traditional notions about the sexes.)
Himmelstrand also worries about total political control over all education, saying it could lead to a "nightmare scenario" in which children are taught things based on political whims instead of reality. But the current minister of education is adamant against parents "imposing" their views on children. Despite the fact that most homeschoolers in Sweden are not particularly religious, concern over parents raising their children in their faith has played an important role in the debate. "There's a real fear of parents having influence over their children," Himmelstrand said. And as for the Education Ministry's claims of educational objectivity: "Saying that school can be comprehensive and objective is in itself a philosophical statement," Himmelstrand added, calling the ban on homeschooling "scary" and "dangerous."

The Fight Goes On
One strategy homeschooling families will pursue until the end is legal action. Despite opposition from some parties when the bill was originally adopted, "It is unlikely we will manage to change the law in Parliament," Himmelstrand acknowledged. Justice through Swedish courts is still a possibility too. "What we're getting ready for now is to make sure—and we will have support for this from other organizations—to get one or two cases this autumn to go to the European Court." He also said increased international pressure will be a crucial factor.

The United Nations, a highly regarded institution in Sweden, is opposed to government squashing of homeschooling, Himmelstrand noted. Its special rapporteur on human rights blasted Germany in a 2007 report, saying: "Distance learning methods and homeschooling represent valid options... bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social, and Cultural Rights." The report also notes that the international body received complaints about threats to the parental rights of homeschoolers, concluding that: "The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school." So Himmelstrand's assertion that homeschooling is a fundamental human right—even recognized by the U.N., a body largely composed of totalitarian governments—should not be taken lightly.

Of course, if international pressure and legal action fail, there is still the option of going abroad in search of political asylum. Himmelstrand believes it would be too embarrassing for the regime to handle, noting that a parliamentarian his association met with was clearly displeased when he found out that was a very real possibility. "I think Sweden trying to implement a view which is foreign to the rest of the Western world is just not possible in the long run, but it will be a difficult time until then," Himmelstrand said, noting that if the Swedish government finds tough enforcement of the new rules too uncomfortable, they could be "interpreted" in a less authoritarian fashion.

As for those families that plan to wait and see: "Some will emigrate, some will stay and do civil disobedience—continue homeschooling as long as it's possible while being safe in this country—then they will leave as well," Himmelstrand said. But he hasn't lost hope, expressing confidence that the international community will assist, partly because of the precedent it would set if the ban is allowed to stand. "If Sweden abolishes homeschooling—if it actually manages to do that—it's going to have repercussions," he said, noting that, though small, Sweden has a disproportionate amount of influence on the world.

Help From Abroad
Swedish homeschooling families do have broad support overseas—especially in America and among the legions of homeschoolers scattered throughout the world. The U.S.-based Home School Legal Defense Association (HSLDA), which has some members in Sweden, is one of the heavy hitters coming to bat for the beleaguered Swedes.

“We're willing to support whatever ROHUS is doing,” said attorney Michael Donnelly, director of international relations for the HSLDA. And not just because of its small Swedish membership. One primary motivation for the organization's international involvement is "the concern of our [American] members for their persecuted brothers and sisters," Donnelly explained. Plus, "we can't let these ideas take root anywhere—they have to be swatted down wherever they may be."

The organization has been working on the issue in Sweden for years, battling the proposed law in Parliament before it passed, standing up for "kidnapped" homeschooler Domenic Johansson, and more. Next step: litigation. HSLDA is already supporting a number of cases making their way through the Swedish court system. Eventually, it could go on to the European level, especially since Donnelly is not hopeful about homeschoolers’ prospects in Swedish courts. “We hope we’ll be victorious—we’ll certainly do the very best we can, but we don’t have a lot of reasons to be optimistic.

But even if they fail through the judicial system, it isn’t over. Donnelly said it wasn’t out of the realm of possibility that HSLDA could even help the targeted families obtain asylum. A U.S. immigration judge ruled that “the rights being violated here are basic human rights that no country has a right to violate” when granting a persecuted German homeschooling family asylum. (That battle is not finished either, but the initial ruling is encouraging to Swedish families too. And even if that option falls through, all of Sweden’s neighbors and most of the world’s governments allow homeschooling.)
“Parents in Sweden have to make a decision—do they want to live in Sweden and homeschool [in defiance of the ban], or are they going to have to leave Sweden?”

“It’s incredible that a country that calls itself a free Western country would go in this direction of repressing educational freedom,” says Donnelly. “Educational freedom is a fundamental precondition to a free, democratic, pluralist society,” He concluded, noting that while Sweden has adopted a “narrow-minded authoritarian view,” the global trend has been toward more liberty in education.

The Future
The future of educational freedom doesn’t look bright for Sweden. Of course, the battle is not over yet. It probably won’t be for many years. But what is certain is that Swedish homeschoolers fought valiantly for their rights. And they don’t plan to give them up, even if it means leaving behind their homes, jobs, friends, country, and past lives.

But despite the gloom, there may be something of a brighter side, too. Swedish homeschoolers and even media commentators hope the revocation of a human right by Parliament could serve as a catalyst for limiting government—rather than the people—through law. As of now, Sweden doesn’t have what most countries would consider a real constitution. With the added scrutiny given to the regime’s virtually unlimited powers, however, that could change. Whether something good will come out of the tragedy remains to be seen. But it certainly isn’t out of the question.

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The Rage Against God: How Atheism Led Me To Faith

Book Review

BY: JAMES D. STANDISH

By now most of us are familiar with Christopher Hitchens. Christopher is, among other things, the author of the 2007 work God Is Not Great: How Religion Poisons Everything. Everything? Apparently so, in the eyes of Christopher Hitchens. That his journalist brother, Peter, has now produced a volume in opposite is by its very nature the stuff of drama that drives considerable interest.

Our interest in sibling disagreements of a religious nature goes all the way back to Cain and Abel. How could two brothers, raised in the same home and presumably under similar conditions, end up approaching the most fundamental questions of life so differently? And on a more voyeuristic level—what impact has the disagreement had on their relationship? We know how the divergence of opinion ended in the case of Cain and Abel. What of the case of Christopher and Peter?

In order to appreciate Peter's volume, it is important to first make note of Christopher's flamboyant and wildly successful career. In cuttingly sharp prose Christopher has publicly flagellated the powerful while defending his contrarian views with relish. Henry Kissinger, Bill Clinton, and George H. W. Bush all came in for the Hitchens treatment. Not even Mother Theresa escaped the unrelentingly harsh judgment of the Hitchens' pen. But should we be surprised? A man willing to attack God Himself is presumably not driven by excessive restraint.

Unfortunately, the deficit of restraint can be found not only in his public life but also in his personal life. Christopher Hitchens proudly describes his daunting daily drinking regimen that for most of his life has been complemented by a steady stream of cigarettes. Christopher recently confirmed he is suffering from esophageal cancer, the prognosis for which is not good.

Against Christopher Hitchens’ larger-than-life public persona, Peter Hitchens comes across in his 219-page volume as a rather humble man. There is gentleness to his writing style, and an understated dignity that comes with it. But dignity and gentleness do not necessarily result in great reading. Some readers may find this the case in The Rage Against God. Rather than sharp prose and crisp intellectual argument, The Rage Against God is primarily a series of reflections, firsthand observations, interesting quotes, and poignant memories that feel at times like the musings of a worldly wise uncle. In short, Peter not only takes the opposite position of Christopher’s volume, but does so using a language and style that almost perfectly contrasts with his brother’s style.

The restraint of style should not blind readers to the acuity of Peter’s observations and conclusions, which are at times profound and deeply relevant. In the first section of the book, Peter Hitchens explores his loss of faith. To explain this, he turns to the English society he grew up in. The England of Peter’s youth was depleted from exhausting wars and the loss of its vast empire, and struggling under crippling public debts. All of this may not have had a detrimental impact on the faith of the populace—indeed, it may have strengthened it—but for one phenomenon Peter comes back to repeatedly: English religion was tied to the English state. It was fervor for a state-defined God and a God-ordained monarch that had built its empire and fueled the English through two brutal world wars. The virtues of bravery and sacrifice for the nation were so intimately intertwined with the faith
of the national church that belief in one could not falter without taking down the other. When faith in the state dissipated after World War I and accelerated after World War II, the state religion necessarily became collateral damage.

American readers may find Peter Hitchens’ preoccupation with post-World War II England at times perplexing. Do many Americans remember the Suez crisis or the sex scandals of English politicians obscured in time? Probably not. But in the second half of the book Peter gives an insight into why he believes England provides a cautionary tale to American Christians. He first notes that the presidency of George W. Bush “combined noisy religiosity with ruthlessness,” and then goes on to conclude: “The conscription of God into unjust wars does grave harm to faith. . . . Mr. Bush also undoubtedly hurt Christianity in America by allying it to his war and his administration. The ultimate effects of this error on the part of many church leaders may take years to emerge, just as the European churches’ support of the First World War took decades to devastate those churches. But among younger people especially, I believe great damage has been done.”

Time will tell if this prediction comes true. It’s also interesting to note against Peter’s critique of the Iraq War that Christopher became a darling of neoconservatives for his bellicose support of the Iraq invasion. Is there nothing the Hitchens boys agree on?

The second cause for the crisis in English faith Peter explores is the acceptance of science as an explanation of all things. The England Peter grew up in was one in which there was general agreement among the intelligentsia that notions of God, faith, miracles, and so forth were antithetical to intelligence. He comes back repeatedly to Virginia Woolf’s statement on learning of T. S. Eliot’s conversion to Christianity: “There’s something obscene in a living person sitting by the fire and believing in God.” In the society in which he grew up, if you wanted to be seen to be clever, you couldn’t believe in God; both Peter and Christopher, like many of their peers, did want to be clever—so naturally enough, God had to go.

While societal forces are of interest, Peter Hitchens gives little insight into more personal matters. For example, he does not explore to any length the tepid religiosity of his own parents. From what he does say, however, it appears that he didn’t so much lose his faith, as simply take his parents’ religious indifference to its logical conclusion.

After providing his thoughts on losing faith, he then turns his attention to finding faith. His journey back to Christianity is more hinted at than explained. Maybe this is because it is a journey that is as mysterious to him as it would be to a reader, or maybe it is because of English reticence to discuss personal matters in public. He makes much of witnessing firsthand the brutality of atheism as practiced in the Soviet bloc, but he only discusses in passing why this led him to reject the secularism as practiced in modern Britain.

In describing his return to God, Peter does give one glimpse into his inner thoughts. He focuses on an epiphany he had while viewing a painting of the last judgment in the Hôtel-Dieu, Beaune, France. But his reaction of fear to the painting raises as many questions as it answers. Did the painting simply frighten him, or did it expose his moral inadequacies in a deeper, more morally redemptive manner? Many people view the same painting every day, as has the author of this review, but it is safe to assume that most don’t have religious conversions as a result. Why did it impact Peter in such a profound way? We are given hints, but not answers.

If Peter’s precise journey to faith remains unrevealed in the volume, his efforts to counter some of his brother’s arguments in the final chapters of the book are mixed. Maybe the volume’s biggest weakness is its extensive rebuttal of Christopher’s transparently self-serving claim that the horrors of militant atheism were actually caused by religion because Stalinism is in fact a religion. Peter thoroughly debunks Christopher’s argument, but he does so by rehashing details of Soviet abuses covered previously in the volume. A good editor would have organized the two sections more tightly or eliminated one altogether.

His efforts to show that religion is not the actual cause of sectarian conflicts fails for an entirely different reason: he is wrong. Religion has and continues to play a key role in a number of conflicts. It may well be true that the conflicts themselves do not rest on particular theological differences, and he is correct that in most religious conflicts there are associated economic, ethnic, and political tensions that accompany sectarian violence. But that religion plays a pivotal role in many conflicts cannot credibly be denied.

Rather than peddling in the wares of denial, Peter Hitchens would have done better to acknowledge frankly that religion can play a deeply destructive role, but put this into context. Every human entity has the capacity for abuse, whether it is religious or secular. This is the price of living in a deeply faulted world. That religion has its pitfalls should not blind us to its enormous benefits. Most societies, including most Western societies, could not function without the education, health care, and social services provided by religious organizations. Further, the peacemaking impact of faith is at least equal to its capacity to make war. Imagine, for example, what the consequences to American society would have been if the civil rights movement was led by a violent secular revolutionary instead of a peaceful Christian clergyman.
But there is a deeper flaw in Peter Hitchens’ rebuttal of his brother—Peter takes on Christopher on his own premise, and when dealing with a skilled polemicist this is bound to be a losing battle. One does not have to prove that religion heals all to counter the argument that it poisons everything. Rather, Peter simply has to establish that religion heals when it is rightly understood and practiced. Thus, rather than defending “religion” as a generic—a defense that is fraught with problems as virtually everyone would agree that at least some religions are deeply destructive and have little or no redeeming value—Peter Hitchens would have done better to defend his own view of faith properly understood. While this might be a little less all-embracing, it would form a much stronger argument and, one suspects, an argument much more in keeping with Peter’s own beliefs.

Similarly, his chapter exploring the requirement of faith to establish right and wrong does little to explain why the religious, like the irreligious, so often support hideous acts. The chapter is full of interesting quotes and thoughtful considerations, but it simply fails to make the case that religion provides for a better moral compass than secular philosophies. For that, the reader should look elsewhere.

The final section of the book gives readers the red meat they were looking for from the start. What of all this tension between brothers? Do they hate each other, do they speak, are they friends or mortal enemies? Peter makes a few modest observations and muted references, and concludes with affection. Readers would have to read further afield to learn that Christopher has publicly called Peter an “idiot” and other similar ill-tempered insults. Readers would also have to read further afield to find the “Rosebud” moment in the lives of the Hitchens brothers. It is a moment so dreadful and so monumental that it is impossible to believe that it did not profoundly impact both brothers’ approach to the fundamental questions of life. In 1973 their mother killed herself in a suicide pact with her illicit lover, a former Anglican clergyman. How did this moment impact the relationship Peter had with God? How did it impact Christopher? Peter not only isn’t giving us any answers—he doesn’t even mention that the suicide occurred.

Without critical windows into his personal life, readers can read and reread The Rage Against God and come away feeling that they know as little about Peter Hitchens as they did at the start. Nothing, that is, other than if you were Christopher Hitchens and you had a brother, you’d hope that he was a fellow like Peter—someone you’ve publicly excoriated, someone who knows your every fault, someone who deeply disagrees with you, someone who must at times feel the kind of intense resentment that only siblings can feel against each other, but nevertheless, when given the perfect chance at a very public revenge, has the decency and the dignity not to spill the beans.

And maybe, in the final analysis, Peter’s self-controlled yet generous style displayed throughout the book might be a far better defense of his understanding of God than all the sharp arguments a more troubled soul might make.

James D. Standish was a past executive director of the U.S. Commission on International Religious Freedom. He is currently working in Sydney, Australia.

1 For the purposes of this piece, the author will use the convention of referring to each of the Hitchens brothers by their first names to efficiently ensure clarity.
2 Peter Hitchens, The Rage Against God (Grand Rapids: Zondervan, 2010), pp. 159, 160.
3 Ibid., p. 24.
4 Christopher Hitchens, The “Case’ Against Atheism,” God is Not Great (New York: Warner Books, 2007). (In this chapter Christopher Hitchens repeats the well-worn charge that some Christians enthusiastically supported fascism, and then makes the leap to painting the aggressively antireligious regimes of Soviet Union and North Korea as a form of religion. The argument is poorly structured and reasoned. There is no effort to provide a principled definition of what a religion is, nor to delineate between one form of antireligious extremism and Hitchens’ own extreme view. If Stalinism is a religion, what of the New Atheists’ orthodoxy, of which, Christopher Hitchens is a leading proponent? No effort is made to seriously consider the implications of the argument.
5 Think, for example, of the Heaven’s Gate UFO suicide cult, Jim Jones, or Islamic terrorists.
7 Christopher Hitchens describes the suicide in his autobiography Hitch-22, and it is referenced in many biographies of him, including his BBC Bio: Caroline Frost, Christopher Hitchens Profile, BBC Four, http://www.bbc.co.uk/bbcfour/documentaries/profile/christopher_hitchens.shtml.
The Demos And Religious Freedom: What Will Be The Fate Of Christians In The "Arab Spring"?

Opinion

BY: BAL HARBOR

It's a geographical fact, based on the geometry of the earth, that springtime in one part of the world means cold weather in another. Though an analogy only, it fits what's being hailed as the "Arab Spring," the uprisings that have either toppled or challenged the rule of dictators throughout the Arab world, from North Africa to the Persian Gulf and even into Mesopotamia.

The metaphor for "spring," of course, entails hope, promise, new life, and a new beginning. However, even while the outcome in some nations is still uncertain, such as Syria and Libya—where the winter isn't leaving so easily (and not without plenty of blood, either)—in places where "spring has sprung," some signs are already not so hopeful that the sunshine is going to last long, if at all. In other words, the flush of freedom that democracy is supposed to usher in isn't turning out as many had imagined.

In fact, for many citizens, especially the Christian minorities in these countries, "spring" threatens them with harsh, even deadly, weather.

Democracy in Egypt

Of all the uprisings, the most dramatic and potentially consequential, and the one that started out so full of hope, was in Egypt. In just a matter of weeks, three decades of Hosni Mubarak (who was probably going to be followed by his son) collapsed, and from Tahrir Square were heard the hopeful cries of "Freedom!" and "Democracy!"

Not too long after, however, stories of the persecution of Christians started making news, such as the following from the Washington Post: "Clashes between Muslims and Coptic Christians in a Cairo suburb left 12 people dead, dozens wounded, and a church charred in one of the most serious outbreaks of violence Egypt's interim rulers have faced since taking power in February.

"The unrest began Saturday night in the Imbaba district northwest of Cairo, as a mob of hard-line Muslims attacked the Virgin Mary church. A separate group of youths also attacked an apartment building several blocks away, residents said" Washington Post, ("Twelve Dead in Egypt as Christians and Muslims Clash," May 8, 2011).

Though the persecution of Christians in Egypt has always been a problem, the recent change in government has accelerated the issue. Many Egyptian
big question remaining, once elections are held, is What happens if, as many expect, Islamist parties, such as the Muslim Brotherhood, start gaining control? Christians in Egypt do not expect to fare well under them or under any Islamist group that gains power, especially through democratic means.

They have good reason to fear democracy too. Assuming fair elections were held, what could be expected in a democracy where, according to a 2010 Pew Research Center survey, 84.5 percent of Muslim Egyptians who make up about that percentage of the population—a healthy majority even by American standards—believe that those who convert from Islam to Christianity or any other faith should be publicly executed? An even larger majority, 95 percent, believes that Islam should play a large role in the politics of the new Egypt. If so, democracy could bode very badly for the Christian minority there, especially given the few precedents already seen.

Iraq and the Palestinian Territories

Whatever the ultimate outcome of the Iraq War, the biggest losers (besides Saddam's immediate Baathist clique) have been Iraq's Christians, who have found life under the new democracy so unbearable and dangerous that many have fled. It's estimated that half of Iraq's Christians have left the country since the ouster of Saddam. Even with the large American presence there, many Christians don't feel safe in Iraq, which—unlike its neighbors—had its own "spring" imposed on it by hundreds of thousands of outsiders funded by billions of dollars.


The article continued: "Here in northern Nineveh province, life for Iraq's diminishing Christian community is particularly bleak. At least 5,000 Christians from the provincial capital of Mosul fled the city after targeted attacks in late 2009 and early this year left at least 12 Christians dead."

All this, meanwhile, as thousands of American troops still remain. What might happen when these troops do leave is something that many of Iraq's Christians have decided not to hang around and find out for themselves.

Also, after democratic elections in the West Bank and Gaza, the prospects for religious freedom for Christians haven't been too promising, either. A State Department report on religious freedom in the Palestinian Authority-administered (PA) areas warned: "The PA did not take sufficient action . . . to remedy past harassment and intimidation of Christian residents of Bethlehem by the city's Muslim majority. The PA judiciary failed to adjudicate numerous cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. PA officials appear to have been complicit in property extortion of Palestinian Christian residents, as there were reports of PA security forces and judicial officials collud[ing] with gang members in property extortion schemes. Several attacks against Christians in Bethlehem went unaddressed by the PA."

According to the report, Christians under Hamas aren't faring any better. Or, to be more specific, Christians under the democratically elected government of Hamas aren't faring any better. Did anyone really expect them to?

Syria

As of this writing, President Bashar al-Assad is still securely in power, despite widespread and vociferous protests that his regime has been brutally repressing. Amid all the chaos, however, Syria's Christians are exceedingly worried about their fate should the "Arab Spring" reach its borders too.

Syria has a Christian community that dates back to the earliest days of the faith. The apostle Paul's famous conversion happened on "the road to Damascus"; Damascus was the first place he went to after that experience and in that city he was baptized (see
Whatever else one could say about the al-Assad regime, it has enforced a strict secularism on the country. (Many remember his father’s brutal massacre of thousands in 1982, in which the Syrian army all but demolished the city of Hama, in a successful squashing of the Muslim Brotherhood, the same group who appears to have the most to gain from Egypt’s new democracy.) This secularism, however undemocratic, has benefited the nation’s Christians, which have for many years enjoyed a peaceful, even prosperous existence.

Bashar al-Assad has maintained very good relations with Syria’s Christians, even visiting their communities to pray and pass on messages of goodwill. Christians, about 10 percent of the population, hold a disproportionately high number of senior positions in the government and make up a large professional class of doctors, dentists, and engineers. Now, though, with so much uncertainty, many are fearful. In fact, already weddings have been canceled and Christians have become much more low-key, all out of fear of extremist elements within the Muslim community, the same groups that are working so hard to overthrow the present regime.

Here, as everywhere the revolts have been taking place, large, gaping, and fearful questions remain about whether the old despotic regimes will be replaced by new despotic ones, even if democratically elected, because democracy is no guarantee of freedom.

The Demos

As the world watches these events unfold, many mistakenly equate the word “democracy” with “freedom,” a potentially disastrous link. The concepts are not synonymous; democracies can be the most despotic of all forms of government, because they come with an aura of legitimacy. After all, it was what the people, the demos, wanted, and they proved it by how they pulled the lever at the polls. Democracy does not automatically translate into freedom. As far back as fourth century B.C., Plato railed against the inherent dangers of democracies, calling it one of the worst forms of government imaginable.

America’s founders understood this danger as well, which is why they purposely built into their new government numerous mechanisms with the express purpose of limiting the power of the demos. Besides the divided government—with one branch, the Supreme Court, almost completely out of the democratic process—a powerfully striking example of how they sought to curtail the “power of the people” is the electoral college for presidential elections, which explain why, in a few cases, the candidates who had the highest popular votes were still denied the presidency.

Also, from the ratification of the United States Constitution, in 1787, to the Emancipation Proclamation, in 1863, millions of Americans were kept in abject slavery—all under a democratically elected government in Washington. And even then it took the brutality of the Civil War and the death of hundreds of thousands of Americans in order to free the slaves in democratic America. That is, it took a war to do what the people wouldn’t do at the voting booth.

It was still, then, another hundred years before many segments of the American democracy would allow fellow citizens to sit in the same restaurants, sit in the same trains, or even sit in the same part of the bus as other citizens did. In fact, it took the U.S. Supreme Court, the most undemocratic branch of our government, to do what American democracy still wouldn’t do, and that was get rid of the repressive nonsense about “separate but equal” when it came to American public schools. America’s Black community has known, historically, firsthand the potentially ugly and dangerous side of democracy.

If even after almost 200 years American democracy still couldn’t get it totally right, who but the most Pollyanna-ish are going to expect anything better in the Arab world, where decades of repression has fueled a simmering fanaticism? One can be hopeful, and the West should do what it can to help, but what can it expect from a region in which, almost daily, people blowing themselves up (along with others) in the name of religion, not in the name of “Jeffersonian democracy,” “church-state separation,” and “religious liberty”?

Hence, the fear that many Christians in the region have about the “Arab Spring.” All things considered, they have good reasons to, especially if the outcome of that “Spring” is determined by a demos with little or even no understanding of, or sympathy for, religious liberty.
Setting An Example: Policy-Makers' Reactions To Countries Of Particular Concern

BY: MELISSA REID

Each year the U.S. Commission on International Religious Freedom (USCIRF) releases a report of nations whose conduct marks them as the world's worst religious freedom violators and human-rights abusers.

USCIRF is composed of nine private-sector commissioners and the U.S. ambassador-at-large for International Religious Freedom, the recently confirmed Dr. Suzan Johnson Cook, who gave the keynote address at this year's Liberty-sponsored Religious Liberty Dinner.

This year the commission recommended that the secretary of state name the following nations [countries of particular concern] (CPCs): Burma, China, Egypt, Eritrea, Iran, Iraq, Nigeria, North Korea, Pakistan, Saudi Arabia, Sudan, Turkmenistan, Uzbekistan, and Vietnam.

"Within the ranks of CPCs impunity has become a matter of escalating alarm," said USCIRF chair Leonard Leo. "A number of countries are idly standing by in the face of violent attacks against religious minorities and even dissenting members of majority faiths, and this imperils religious freedom much the same way that direct state-sponsored repression does."

Liberty recently had the opportunity to query several key policymakers and human-rights advocates about the CPCs, and solicit for their recommendations as to how U.S. foreign policy could effect positive change in countries with serious religious freedom violations.

Senator Patrick Leahy of Vermont spoke candidly to the situation: "Some of these countries, there's no direct way we can make changes. We have to set as an example that we believe in religious freedom. If you guarantee diversity, you have a democracy, and I worry very much as we see theocracies developing around the world. No government should impose a religion on their people. Everybody has to answer to their own conscience. It is wrong to impose a political ideology or religious ideology."

Bill Richardson, the former governor of New Mexico and former U.S. ambassador to the United Nations, was equally fervent on the significance of religious freedom.

"It's important that we consider religious freedom the most important component of our human rights policy," said Richardson. "That means having special envoys that carry messages in that area; it means organizing in the United Nations; it means organizing in the nongovernmental community; it means funding religious freedom issues as part of civil society programs."

For the first time, the 2011 USCIRF report recommended that Egypt be designated a CPC. "In the case of Egypt, instances of severe religious-freedom violations engaged in or tolerated by the government have increased dramatically since the release of last year's report, with violence, including murder, escalating against Coptic Christians and other religious minorities," said Leo. "Since President Mubarak's resignation from office in February, such violence continues unabated without the government's bringing the perpetrators to justice. Consequently, USCIRF recommends CPC designation for Egypt."

Her Majesty Queen Noor of Jordan, a longtime advocate for issues of world peace and justice, shared her thoughts on the recent uprisings and political demonstrations in the Middle East and her forecast for the future of the religious minorities in that region.
Queen Noor mentioned that some of the most moving images she’d seen come out the coverage of those events was the image in Tahrir Square of Muslims protecting Christians in prayer on Sunday, and Christians protecting Muslims in prayer on Friday.

"I think it bodes well for the future and is also a reflection of reality," said the queen. "That spirit of solidarity and unity in the struggle for freedom and for pluralism and human rights is, I think, something emblematic. And I pray we’ll see it soon in many, many parts of the Middle East."

Melissa Reid is the associate editor of Liberty.
Is Membership Required For Religious Freedom?

BY: RANDY WRIGHT

When Proposition 8 was proposed in California to make marriage between a man and a woman the state's only valid marriage format, members of the Church of Jesus Christ of Latter-day Saints (LDS) piled into the political fray in support. They joined Roman Catholics, evangelical Christians, some city governments, and many conservative individuals and groups in a determination to protect traditional marriage as an essential element of American society.

Protection of heterosexual marriage had been a marquee issue for Mormons for decades, and the church's rank and file mobilized in a big way. The Los Angeles Times reported that more than $20 million of the total $40 million raised to pass the proposition was thought to have come from individual Mormon families; and about 45 percent of out-of-state donations came from Mormon-dominated Utah. The level of activism angered supporters of gay marriage.

Voters passed Proposition 8 in November 2008, and the backlash against Mormons was swift. Pro-gay interests launched a retaliatory onslaught that included vandalism of LDS church buildings, vitriolic verbal attacks, intimidation, assaults, and threats to undo the church's tax-exempt status.

Awash in controversy, the church encountered a potential for an olive branch in the summer of 2009 in the form of two proposed municipal ordinances in its own Salt Lake City backyard. The ordinances, backed by much of the city council, were favorable to gays. They would ban discrimination in housing and employment on account of sexual orientation. Church support would virtually assure their passage.

A major Salt Lake City property owner with extensive for-profit (and taxable) business operations, the church held off until the last minute because it was concerned that a blanket nondiscrimination law could undermine its First Amendment rights of association by requiring it to bring nonbelievers, or even antagonists, into areas related to its ecclesiastical mission—church offices, for example, or dormitories at church-owned schools. Those fears were eased in negotiations with the city: exemptions were fashioned for churches and educational institutions.

With the new exemptions, discrimination would be allowable "for reasons of personal modesty or privacy or in the furtherance of a religious organization's sincerely held religious beliefs." (Italics supplied.)

The deal tipped the scales. Within hours of the church's endorsement, the two ordinances sailed through the city council on unanimous votes. Homosexuality was still wrong, church leaders said, but that shouldn't get in the way of humane treatment of individuals.

Church spokesman Michael Otterson told the city council: "The issue before you tonight is the right of people to have a roof over their heads and the right to work without being discriminated against... The church supports this ordinance because it is fair and reasonable and does not do violence to the institution of marriage..."
represent a church that believes in human dignity, in treating others with respect even when we disagree—in fact, especially when we disagree."

Because the LDS church had never before supported any law expressly speaking to gay rights, the endorsement surprised many and was widely hailed as a seismic shift. The New York Times wrote: "The church's support was seen by gay activists as a thunderclap that would resonate across the state and in the overwhelmingly Mormon legislature." Other headlines across the nation captured the flavor of the national impact: "Utah Leading on Gay Rights," "Landmark Moment," and "Gay Rights Gaining Momentum." Invigorated gay activists immediately launched a campaign aimed at getting the Utah legislature to enact a statewide nondiscrimination law modeled on Salt Lake City's new ordinances, and a number of other Utah cities began crafting their own new rules.

But underneath the news that the Mormons had embraced part of the gay agenda runs a discordant thread. The antidiscrimination ordinances in Salt Lake City, with their exemption for religious organizations only, are out of step with the quintessentially American tradition that religion is a matter of individual conscience. In Salt Lake City the right to associate (or not) with another person on the basis of one's personal religious framework—say, a belief that homosexuality is a grave sin in the eyes of God and a faithful person should not facilitate it—is available only to such corporations as churches, or other formally organized groups, not to individuals.

This sets up a moral and legal clash of potentially epic proportions when viewed against the backdrop of U.S. history and in light of appellate and Supreme Court rulings that appear strongly to support religious privileges on the basis of individual beliefs, not institutional affiliations. The central requirement for First Amendment protection is simply that a person's belief be sincerely held.

The irony is pointed: in Salt Lake City the LDS church as an institution may act on religious grounds in a way that would be illegal for any of its own members. A religious organization is immune from a discrimination charge, while individuals with identical religious beliefs are held to a different standard.

Gayle Ruzicka, Utah president of the Eagle Forum, the conservative political activist group, captured a pivotal point: "We expected the church not to have a problem, because they've been carved out of it," she said of the city ordinances. "The rest of us have not been carved out of it." The ordinances, she said, "discriminate against people who have personal religious beliefs."

Critics say a legal requirement that a landlord must rent property to a homosexual when he sincerely believes that it would facilitate behavior that will bring God's condemnation upon the nation is akin to requiring a Muslim to eat pork, or forcing a Quaker to kill in war. On the other hand, proponents of gay rights argue that allowing an individual the freedom to associate or not with any person as he chooses would undo the whole idea behind nondiscrimination laws. If individual scruples can override generally applicable laws, they say, then the laws have no real force, and discrimination will become pervasive, as with racial discrimination in the South.

Yet religion clearly occupies a special place in American tradition. In her eloquent dissent in a Supreme Court decision invalidating key portions of the Religious Freedom Restoration Act of 1993 (RFRA), Justice Sandra Day O'Connor concluded: "The religious clauses of the Constitution represent a profound commitment to religious liberty. Our nation's founders conceived of a republic receptive to voluntary religious expression, not of a secular society in which religious expression is tolerated only when it does not conflict with a generally applicable law" (City of Boerne v. Flores, 1997).

Her dissent arose from the High Court's refusal to apply a balancing test when considering the sacramental use of peyote (Human Resources of Ore. v. Smith, 1990). The test required that when enforcing a law that imposes a substantial burden on religion, the government must show a compelling interest and then resolve that interest by the least restrictive means available.

As nondiscrimination codes favoring homosexuals multiply across the nation, however, it appears that many lawmakers do find a compelling interest when it comes to shielding sexual preference. Whether, and how heavily, those laws might burden religion appears uncertain, especially in light of the vagaries of individual conscience. In the peyote case, Justice Antonin Scalia's majority opinion came down against individual religious choice. "To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the state's interest is 'compelling'—[thereby] permitting him, by virtue of his beliefs, 'to become a law unto himself'—contradicts both constitutional tradition and common sense," Scalia wrote, adding that a private right to ignore generally applicable laws would create a constitutional anomaly that would lead to the evasion of many laws, including those designed to prevent discrimination.

And yet Salt Lake City's ordinances authorize exactly such private evasion—but only for organizations, not individuals. Its ordinances do that in spite of clear precedent that the sincerely held religious beliefs of individuals are entitled to First Amendment protection. The Supreme Court has spoken unambiguously:
“We reject the notion that, to claim the protection of the free exercise clause, one must be responding to the commands of a particular religious organization,” a unanimous Court held in a 1989 case (Frazee v. Illinois Department of Employment Security).

In a similar vein, while serving as a U.S. appeals court judge, Sonia Sotomayor, now a Supreme Court justice, wrote that where conscience is concerned, judicial scrutiny “extends only to whether a claimant sincerely holds a particular belief” (Ford v. McGinnis, 2003). She cited precedent that “courts have jettisoned the objective, content-based approach previously employed to define religious belief, in favor of a more subjective definition of religion, which examines an individual’s inward attitudes toward a particular belief system” (Patrick v. LeFevre, 1984).

In other words, an individual's personal scheme of things religious—not the scheme dictated by an institution—is covered by the First Amendment. In fact, no institutional association at all is required for the protection of one’s sincerely held religious beliefs.

The implications are not lost on gay rights advocates. When presented with the notion of extending to individuals the same religious exemption enjoyed by institutions, Utah state Senator Ben McAdams, a Democrat who advised Salt Lake City's mayor on the ordinances, said doing that would gut the law.

But would it?

Thomas Kleven provides a thorough analysis of freedom of association in "On the Freedom to Associate or Not to Associate With Others" (Tennessee Journal of Law and Policy, (no. 1 [Fall 2004]), in which he shows the variability of circumstances in which associations may be required, or not required, by government. The question turns on a philosophical fulcrum: on one side is the Lockean view that the individual precedes society; on the other the Aristotelian view that human beings are collective creatures and that "society at large has a legitimate interest in preventing and imposing relationships in the name of the common good."

Kleven proposes his own balancing test to determine how to resolve associational conflicts in which one party wants integration and the other does not. At its center is the scope of the marketplace or "community." If there are ample choices available to accommodate the preferences of either party, the claim for forced integration is weaker than if there are few choices, Kleven writes. Where few choices exist, the majority will tend toward perpetual dominance "and thus strengthen the minority claim for being empowered to force an unwanted relationship on the majority."

Kleven's line of reasoning suggests a basic question for Salt Lake City: Would allowing discrimination by individual landlords with religious scruples really result in a shortage of housing for lesbian/gay/bisexual/transgender individuals? Or would each instance of religiously motivated exclusion open a business opportunity for numerous other competitors in the marketplace who have no scruples about renting to gays, and who may in fact prefer them as responsible tenants? If the answer is the latter, one might argue that the law should tilt toward the historical right of conscience.

The same test could be applied to a claim of discrimination against gays in employment. In that case, however, the market inventory would likely be substantially smaller than the housing inventory. Given a limited number of jobs in a given field, the balance may tip the other way.

U.S. courts have wrestled for more than a century with the problematic conflicts that can arise between broad societal goals and individual rights, and they've struck a delicate balance in matters of religion—though not always with perfect consistency. Broadly speaking, an emphasis on the protection of individual conscience seems consistent with American history and traditions. Thus one might argue that, as the relative newcomer, sexual orientation should be supported by compelling justifications before it can reasonably outweigh society's long-established respect for individual religious belief, action, and right of association.
The Supreme Court has taken on a case entitled *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC.* It will likely decide the scope of the so-called "ministerial exception" to coverage of employment discrimination laws. The doctrine is one often invoked by religious institutions when they are sued by their clergy under federal civil rights laws. The case turns on how broadly to define the class of employees whose claims can be resisted on this basis by religious organizations. As it is wont to do, the Supreme Court may decide the case narrowly. If so, it is likely to leave unresolved a host of issues about the basic nature of the "ministerial exception."

The courts describe the ministerial exception doctrine as one "rooted in the First Amendment's guarantees of religious freedom." That description immediately raises a host of questions that the Court may or may not reach in its decision. Is the doctrine a constitutional mandate that is also binding on state courts adjudicating employment discrimination claims under state antidiscrimination statutes? Does it then also apply to common law retaliatory discharge claims against religious institutions by its "ministerial" employees?

The basic rationale underlying the doctrine seems straightforward. For a religious institution to thrive, it must be free from government constraint in selecting who will "preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large." At its core, the ministerial exception is a principle with which few would take exception. Laws against religious discrimination in employment should not permit the government to tell a Presbyterian church, for example, that it must hire a rabbi as its spiritual leader. The employment discrimination prohibitions in Title VII of the 1964 Civil Rights Act carry exemptions that deal with such a situation. Churches, religious schools and other religious institutions may limit their hiring to individuals of a particular religion. Also, hiring may be on the basis of religion, sex, or national origin, where the requirement is a bona fide occupational qualification.

It is not unusual in Title VII cases for a court to be faced with the question of whether an employer's reasons for firing, or refusing to hire, an individual were merely pretexts for discrimination. But in the case of hiring or firing of clergy, however, making such a determination is an especially sensitive matter. Because one remedy available under Title VII is reinstatement, the risk of an erroneous determination imposing on a church an unqualified religious leader is great.

All of this, of course, makes choosing the clergy as one's calling a sometimes perilous decision. In many denominations clergy are not particularly well paid, and often enter the profession unaware of the pettiness and prejudice that can occasionally underlie the decision by the board of a house of worship to hire or fire a particular individual as its spiritual leader. Courts rarely if ever ask to what extent it is unfair to require clergy merely to "turn the other cheek" when faced with racial, gender-based, national origin, or age discrimination that has no basis in the religious doctrines on which a particular church is founded.

Concerns regarding the judicially created ministerial exception become greater as courts extend the doctrine beyond employment
disputes between a church and its primary religious leader. Courts have extended the ministerial exception to claims by various other individuals employed by religiously affiliated organizations in which the individual is involved in teaching religious doctrine, leading religious worship, proselytizing, or performing other pastoral work, even if the person is not an ordained minister. *Hosanna-Tabor* raises the question of how broad the group of individuals covered by the ministerial exception should be. Is it enough that the employee has some religious duties, or does the exemption apply only if the person's primary duties are religious? The Sixth Circuit, which decided *Hosanna-Tabor*, opted for the "primary duties" approach.

The case was filed by Cheryl Perich, who was a teacher at an elementary school affiliated with the Lutheran Church Missouri Synod. The school holds itself out as providing a Christ-centered education and says that its staff are Christian role models who integrate faith into all subjects. Perich began as a "contract teacher"; however, within a year she completed sufficient religious classes to become a "called" teacher, giving her a sort of tenure. Perich taught math, language arts, social studies, science, gym, art, and music. She also taught a 30-minute religion class four days per week, led her class in a brief prayer three times each day, and accompanied her class to chapel once a week. Twice a year, in rotation with other teachers, Perich led the chapel service. For five years Perich taught kindergarten, and then taught fourth grade for one year. That class involved an extra five- to 10- minute devotional each morning. Her religious activities consumed at least 45 minutes of her seven-hour school day.

The Sixth Circuit concluded that Perich was not a "ministerial" employee, so she could move ahead with her claim that she was fired in violation of the Americans With Disabilities Act (ADA) when the school refused to take her back after an eight-month disability leave of absence for a condition eventually diagnosed as narcolepsy. The school had concerns about changing teachers for her fourth graders midyear, and also had questions about whether Perich was attempting to return too quickly in light of her physical condition. However, her ADA claim was based primarily on the school principal's statement to Perich that her threat to sue under the ADA justified revoking her "call."

In the view of the Sixth Circuit, neither Perich's "call" nor her religious duties were enough to make the ministerial exception applicable. Her duties after she became a "called" teacher were identical to her duties before that. Despite the school's statements about integrating religious and secular subjects, Perich claims she rarely did so. Accordingly her "primary" duties were not religious, and her firing implicated no church doctrines and involved no theological disputes. The ADA by its terms explicitly permits religious organizations and religiously affiliated schools to give an employment preference to individuals of a particular religion and allows religious organizations to require employees to conform to the religious tenets of the organization.

Determining who qualifies as a "ministerial employee" in religiously affiliated elementary and secondary schools poses a special problem. Many of these schools, like the one in *Hosanna-Tabor*, say that their entire curriculum is suffused with religion. If that is so, then all their instructional staff is involved in teaching religious values and interpreting religious doctrine. Many parochial schools, however, fail in practice to carry out their promise to endow the three R's with theological meaning. Interestingly, the reason for this failure is rooted in a related constitutional development.

Teaching a history or literature or art curriculum suffused with religion requires textbooks and materials that facilitate that mission. However, decades ago a Supreme Court decision that permitted state governments to "lend secular—but not religious—textbooks to parochial school students virtually assured that the temptation to accept government aid would lead schools to create a curriculum that likewise centered on secular materials in parts that were separate from classes that focused on religion. The establishment clause in part reflects concerns of colonial leaders (such as Roger Williams) who worried that mixing of church and state would lead to the state "watering down" church doctrine. As religious schools moved from an integrated curriculum intertwining the religious and the secular to separate religious and secular segments, exactly that kind of watering down took place. The lure of free textbooks was enough to cause some churches to give up on the idea of a unified curriculum.

In 2008 private elementary and secondary schools in the United States employed 456,000 teachers. A large percentage of these private schools are religiously affiliated. A broad interpretation of who is covered by the ministerial exception could lead to eliminating employment protections even for many nonteaching staff. Many nonteaching employees can be seen as implementing part of the school's religious mission in its broadest sense. Thus the cook in the kosher cafeteria of a Jewish day school, the school nurse in a Catholic middle school, or the recess monitor in a Christian elementary school arguably all have a role in spreading religious values. A broad definition of ministerial employees may deprive a significant number of individuals of protections against arbitrary treatment. From the perspective of the school, however, the issue is not arbitrariness, but the need to justify religion-based decisions to a court in the face of charges that religious doctrine was a pretext. The Catholic middle school, for example, will be required to prove that the school nurse was in fact fired because she subtly encouraged students to learn about the use of condoms and not because she was nearing 60 years of age. The Supreme Court's decision in *Hosanna-Tabor*, implicitly or explicitly, will decide whether we consider that an unacceptable burden to place on religiously affiliated schools, churches, and other religious institutions.
Howard M. Friedman is professor of law emeritus for the University of Toledo College of Law and has taught law at Notre Dame University, Case Western Reserve University, St. John's University, and the University of North Dakota. He is the founder of Religion Clause, a blog devoted to legal and political developments in the free exercise of religion and the separation of church and state.

1 597 F.3d. 769 (6th Cir., 2010), cert. granted 131 S. Ct. 1783 (2011).
2 Rayburn v. General Conference of Seventh-day Adventists, 772 F.2d 1164, 1167-68 (4th Cir., 1985).
3 520 F.3d 198 (2nd Cir., 2008).
The Just Bounds

BY: JOHN LOCKE

I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other.

John Locke, in *A Letter Concerning Toleration*, 1689.