

The Religious Liberty Disappearing Act

Easter is coming. We are at the conclusion of Lent, a time of sacrifice and spiritual renewal for Catholics. During Lent, we imitate Jesus' fasting in the desert. Our small self-denial is rightly understood not as an exercise in masochism, but as a form of spiritual food. Sadly, we cannot go to Mass and celebrate the Resurrection.

The recent coronavirus outbreak and related economic consequences have forced all of us to confront privation and uncertainty, even our own mortality. Not merely a voluntary sacrifice, we are reminded how earthly life is uncertain, contingent, and often filled with suffering. It always ends in an earthly death. For many, this crisis has led to an increased reliance upon their faith.

Most churches, including my own diocese, have suspended services and encouraged believers to follow online and engage in telephonic outreach to priests and other ministries. This is prudent. Religious services, which always entail the close proximity of worshipers, undoubtedly create risks to the health of congregants.

Some churches have not, including [Rodney Howard Browne's "The River" Church](#) in Tampa, Florida. He was arrested last week by our sheriff for violating a statewide quarantine order. This has been a disturbing development for believers. Florida's quarantine order shuttered most businesses, except so-called essential businesses like the police, sanitation workers, grocery stores, Uber Eats, and even Lowe's.

While I am not sure the pastor's decision was the right one, it wasn't obviously a wrong one, either. Religious life is not merely important, but *essential* for believers. It is not

entertainment – at least it is not supposed to be – but ideally it is the pinnacle of the various subordinate duties people have to their families, employers, communities, and country.

It is certainly more important than Lowe's.

Respect for Religious Freedom Is a Core American Value

Within living memory, there used to be a shared understanding among Americans that religion was an elevated form of community with unique, non-negotiable obligations. It wasn't just a club, like the Kiwanis or the Elks, nor was it on the same level as commerce. It was privileged.

It was sacred.

While under our constitutional structure no particular denomination is privileged, religion generally is. It is, after all, protected in the First Amendment. It has also been protected historically in other ways that go beyond mere constitutional protection.

Blue Laws encouraged respect for the Sabbath and limited the ability of commerce to invade it. Tax exemptions and the accommodation of conscientious objectors limited the demands of citizenship for members of dissenting sects. Even the familiar "right to remain silent" has [religious roots](#); specifically, the concern that forced testimony would encourage perjury under oath, endangering the accused's soul with the sin of blasphemy.

The government's various powers are ultimately the power to destroy. This is well known in other contexts. This is the reason government cannot impose "[prior restraints](#)" upon speech, nor can the government differentiate between publications with [tax policy](#).

Religious people get touchy when the government orders them around. Everyone does, of course. Businesses gripe about regulations. Bikers hate helmet laws. But there is not a *constitutional* right to operate a restaurant or feel the wind in your hair on a Harley.

These choices, like most things, are subject to taxes and regulations under the rubric of the state's extensive "[police power](#)." By contrast, those things protected as fundamental rights – free speech, freedom of religion, the right to bear arms – are supposed to be sacrosanct and immune from ordinary exercises of state police power.

Because of the Supreme Court, Religion Is Now Just Another Club

Traditionally, religion's privileged status prevailed, even when it conflicted with the police power. In the 1963 [Sherbert v. Verner](#) decision, the U.S. Supreme Court held that laws in conflict with religious beliefs had to meet the stringent test of being "narrowly tailored" to serve a "compelling interest." In other words, even a neutral law had to give way in most cases when it conflicted with sincere religious beliefs.

The Supreme Court reversed itself in 1992 in [Employment Division v. Smith](#), colloquially known as the "peyote case." This decision held that mere impingement on religion was not an obstacle to the enforcement of a neutral law that invaded sincere religious belief, so long as the law had a rational basis – the lowest form of judicial scrutiny.

While supporters of the specific religious practice at issue in *Smith* are few and far between, Congress recoiled at the prospect of religious institutions being treated no better than college fraternities and passed the Religious Freedom Restoration Act (RFRA) in 1993 in an attempt to reverse the Court.

That response might as well have taken place 100 years ago. In the 28 years since RFRA became law, it has become fashionable to mock religion, with many activists now piling on and demanding [the application of gay rights laws against believers](#), including a humble Denver bakery, along with casual suggestions that the government should keep churches [shut for a year or more](#) due to a virus with a roughly one percent mortality rate.

The Left's Hostility to Christians Is Manifest

Hostility to religious exemptions for shutdown orders has been amplified by the general climate of fear about the coronavirus. Florida's Governor Ron DeSantis recently classified religious gatherings as "essential businesses," otherwise exempt from the state's far-reaching lockdown orders.

The Left went bonkers.

Representative Donna Shalala, a Democrat from Miami, [said](#) the state's exemption for religious services is "inappropriate and scary."

Slate writer Mark Stern [wrote](#), "It is NOT GOOD to carve out religious services from stay-at-home orders. We know COVID-19 will spread during worship; it does not make exceptions for religious exercise. DeSantis should've stood behind the Tampa state attorney and halted all congregations, religious or not."

Rachel Laser, president of Americans United for Separation of Church and State, [sent a letter](#) to the Michigan governor calling similar exemptions "dangerous" and "unconstitutional."

This is strong language. You hardly hear anyone complaining like this about convenience stores, Lowe's, or Uber Eats being

open. Surely, [Amazon warehouses](#) and their multiple workers could lead to the transmission of coronavirus. I presume the Holy Spirit doesn't swoop in to give Walgreens singular protection!

More important, there is no evidence that all these shutdowns and restrictions [actually work](#). For being so anti-religion, the Left is remarkably credulous. The real faith at work here is their faith in the "experts." Unfortunately, the experts' models have proven – as with global warming – [unable to make useful predictions](#).

Something else is going on here.

The Left Hates and Also Fails to Understand Religious Belief

Obviously, commerce, friendship, political and social gatherings, concerts, and other aspects of life restrained by the shutdown orders are important things. These are the things that give life meaning and purpose and zest. I do not believe they should be treated as [cavalierly](#) as the public health experts have treated them. I am concerned the cure is worse than the disease.

But even these important things are only devoted to our earthly life and purposes. If we are worried about the potential disaster of an earthly death, how much larger does eternity loom?

This, of course, is a religious way of thinking. I am a religious person and a believing Catholic. It's quite natural for me to think this way, just as it is quite natural for the country's other religious Christians and non-Christians to think this way, too. In other words, we know that earthly life is relevant and immediate, but it is not everything. It is of lesser importance to believers than our supernatural and

eternal life.

The prospect of eternal consequences, genuinely believed, can motivate men to do great and terrible things. It is what motivated Mother Teresa to devote her life to the poor, and for Catholic Saint Maximillian Kolbe to sacrifice his life at Auschwitz. But it's also the root of the suicidal determination of the 9/11 hijackers.

In order to reduce friction between earthly power and the uncompromising nature of religious belief, most of the West has protected religious freedom since the [age of religious wars](#). This was an important component of the American constitutional system. We know from that era of European religious violence – the time when most of America's early settlers fled Europe – that failing to carve out this protection can yield total resistance and total violence on both sides. The Founders wisely enshrined religious toleration as the foundation of social peace.

But knowledge of the foundations of that compromise, along with a rudimentary knowledge of and respect for religious beliefs, is now absent from our ruling class. They are confused by religion at best, and deem it worthy of mockery and contempt at their worst. They simply do not comprehend how anyone might deem religion essential, and they want the state to show religious believers, especially Christians, who's the boss.

Such an approach [will not end well](#). For believers, the consequences are higher than the temporary and immediate risk of the loss of life from this plague. After all, Christianity has always had martyrs, and martyrdom is a demand of the faith when the [state demands apostasy](#). This is not ancient history; the 20th century was the [greatest age of Christian martyrdom](#).

In addition to the prospect of violent resistance and violent oppression, the state's intrusion upon religious gatherings in

the name of public safety will be the loss of a way of life. Like organized religion, a nation has a reality that stretches from before we are born and will, we all hope, flourish long after we are gone. In other words, it has a value that transcends any of our earthly lives. It has been deemed worthy many times over for the sacrifice of earthly life by our patriots, soldiers, and other national heroes. But we will not be the same nation if we abandon the American commitment to religious freedom.

Jesus was condemned to death this week nearly 2,000 years ago. But he conquered death, and so can we . . . with faith. We have a duty to preserve our earthly lives, but not at all costs. This is true both for individuals and for nations. As the Gospel of Mark reminds us, "For what shall it profit a man, if he gain the whole world, and suffer the loss of his soul?"

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