



PUBLIC JUSTICE *REVIEW*

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FAIRNESS FOR ALL: DOES SUPPORTING RELIGIOUS FREEDOM REQUIRE OPPOSITION TO LGBT CIVIL RIGHTS? VOL. 9, ISSUE 3, 2019

Fairness for All: Does Supporting Religious Freedom Require Opposition to LGBT Civil Rights?

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Editor's Note: This following text was originally delivered as a lecture by Shapri LoMaglio on April 25, 2019 at Calvin College for the Center for Public Justice annual Kuyper Lecture. It has been slightly modified and adapted to be presented as an article in the PJR series, Fairness for All.

I was asked to speak this evening about a legislative initiative you may have heard of, sometimes called Fairness for All, because the organization where I am employed, the Council for Christian Colleges & Universities, has been on record publicly as exploring this for about two and a half years. In summary, this initiative seeks to find a way to harmonize federal protections for religious freedom and for LGBT persons, two "sides" that have often viewed their protections as being violated by the existence of protections for the other. Specifically, Fairness for All would create federal legal protections for LGBT persons in the basic areas of public space (employment, housing, stores, and restaurants), financial services, and jury duty service, while at the same time explicitly adding to the law the full scope of religious rights ensured by the Constitution.

The CCCU's involvement now comes after four decades of debate regarding whether LGBT Americans should be included in the basic protections of the law. This debate has been deeply contentious, driving national political and social debates - ones where many parts of the Christian church, have often been the primary public opponent of including sexual orientation and gender identity as protected classes in the law.

I want to begin by drawing you a bit into the political history which shows growing support for LGBT legal protections and rapidly weakening support for religious freedom. In just a few weeks it will be the 45th anniversary of the introduction of the Equality Act in Congress. When the Equality Act was first introduced in 1974 it would have expanded the employment, housing, and public accommodations sections of the Civil Rights Act to include protections for gay, lesbian, and unmarried persons, as well as women. This same named piece of legislation is working its way through the House of Representatives as we speak, now applying



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to sexual orientation, gender identity and sex.* *(Editor's Note: The Equality Act H.R.5 Passed the House of Representatives on May 17, 2019).*

From 1994 through 2014, the Employment Non-Discrimination Act (ENDA) was the LGBT community's primary federal legislative effort, which focused on the employment piece only. ENDA would have prohibited employers from making hiring decisions based on an employee's sexual orientation (later versions also included gender identity), but most versions would have continued to allow religious employers to hire consistent with their religious beliefs. It passed in the House in 2007 and the Senate in 2013, but never became law. With each version, religious freedom advocates – myself included – had to work to ensure the religious protections remained strong despite offering no support for the base bill.

Two court cases, one in 2013 and one in 2014, significantly changed the legislative landscape. In the summer of 2013, the Supreme Court struck down the Defense of Marriage Act in the *Windsor* case ([United States v. Windsor](#)). Then the next year, the Supreme Court issued a landmark ruling in the *Hobby Lobby* case, ([Burwell v. Hobby Lobby](#)), that affirmed the religious freedoms of for-profit business owners. While seemingly unrelated, *Hobby Lobby* fell during an already contentious time and became the excuse for many to change their position on supporting almost any religious exemptions. Long-standing religious protections like those in Title VII of the Civil Rights Act - which has allowed religious employers to consider religion in hiring largely without controversy since its passage in 1964 - were suddenly seen as too expansive and, to some, dangerous.

Religious protections previously had wide bipartisan support. The Religious Freedom Restoration Act which provided the Supreme Court's basis for a favorable outcome in the *Hobby Lobby* case was originally sponsored by Senator Chuck Schumer (now the U.S. Senate minority leader), passed by a Democratic Congress - including only a voice vote in the House - and was signed into law by President Bill Clinton. But in the wake of *Hobby Lobby*, religious protections were rejected by many on the left, specifically by many in the LGBT rights and women's rights groups. The scope of what they viewed as acceptable religious protections had narrowed significantly.

The landscape changed further in 2015 when the landmark *Obergefell* case legalized same-sex marriage nationwide ([Obergefell v. Hodges](#)). Shortly thereafter, instead of reintroducing ENDA on employment, the Equality Act was back - this time to add sexual orientation and gender identity to almost every section of the Civil Rights Act *without* adding any new religious protections that would help resolve the inevitable conflict it's passage would create for religious organizations. In fact, the 2015 version, and current version, of the Equality Act would roll back many religious protections currently in law. This would devastate the hiring rights, autonomy over their buildings, and access to federal funds that are available to Christian colleges, K-12 schools, adoption agencies, relief agencies, and almost every religious organization with traditional beliefs on marriage and human sexuality. It would also explicitly prevent the application of the Religious Freedom Restoration Act to any of these inevitable legal conflicts.



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In 2015 the First Amendment Defense Act (FADA) was also introduced. This would have ensured the federal government and other federal agencies could not take negative action against people or organizations that defined marriage as between one man and one woman. While FADA's intent was worthy, neither FADA nor the Equality Act resolved many of the nuanced questions of how civil rights for LGBT Americans could intersect peaceably with First Amendment protections for religious individuals and institutions. Both FADA and the Equality Act are one-sided pieces of legislation that addressed only part of the equation, even as the intersection of the Obergefell decision and the First Amendment create legal questions that need to be resolved. For instance, FADA does not grapple with the fact that a person can legally enter into a same-sex marriage one day but then be turned out of their home by their landlord who simply doesn't like that they have married a person of the same-sex. Likewise, the Equality Act does not grapple with the fact that while Obergefell created a legal right to same-sex marriage, it also recognized that some people and religious traditions object to this; as a result, certain spaces and places of employment will need specific protections so that they can continue to hire and use their buildings in ways that are consistent with their religious beliefs.

We've seen these one-sided approaches create great controversy at the state level as well. "Religious freedom only" legislation in Indiana, Georgia, and Arizona was considered controversial in states where there were already no LGBT protections. Other state laws, like in North Carolina or Texas, were seen by some to be targeting LGBT persons directly. These led to eruptions of protests within the state and significant pressure from national corporations like Disney and Eli Lilly as well as organizations like the NCAA. Meanwhile, there have been laws that have targeted religious organizations, like Christian colleges in California in 2016, in Illinois and Massachusetts, and most recently here in Michigan when religious adoption agencies were *de facto* shut down or threatened to be shut down.

So while this debate is 45 years old, as you can see, in the last five to six years, the pace of legal activity has accelerated rapidly - and that's without mentioning decisions by the Equal Employment Opportunity Commission or other federal agencies and courts. And though balanced legislation that addressed both sets of concerns was the norm from 1994 to 2014, after 2015, one-sided bills that made no effort to holistically address both sets of important considerations and questions became the new norm. Additionally, over the last 10 years, the number of counties, cities, or towns that have extended some form of sexual orientation and gender identity - or SOGI as the short-hand term I will use - protections has increased from 171 to 438, a 156 percent increase. Today, approximately 60 percent of American citizens live in a jurisdiction with some form of LGBT protections in housing, employment, and public space, and 100 percent of Americans live in a jurisdiction with marriage and family protections for same-sex couples. At the same time, there is also a patchwork of protections for religious people and organizations that is strong in some places and weak in others.

So, What is Fairness for All?



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Fairness for All is a legislative construct that would ensure that there are baseline LGBT and religious freedom protections across all 50 states. In other words, it would establish a federal floor for both sets of rights that all states can build upon, but no state can undermine. LGBT Americans could not be denied access to employment, housing, financial credit, social service programs funded directly by federal money, service in stores or jury duty service simply because of their sexual orientation or gender identity. And churches and religious organizations such as Christian educational institutions, adoption agencies, relief agencies, etc. that define marriage or gender differently than social norms or the United States government will not be ruled discriminatory. In short, it would insert sexual orientation and gender identity into the Civil Rights Act in tandem with strong religious freedom protections.

The general idea behind Fairness for All is that religious organizations can continue to hire employees and retain internal organizational policies that reflect their religious beliefs; additionally, they would not be treated differently by the government (e.g., denied government funding or tax-exempt status) because of their views on marriage or gender. In secular employment contexts, small businesses would be unburdened by federal law; and an individual employee's religious beliefs would be respected by their employer (unless it puts an unreasonable burden on the employer); and an employee's ability to express their religious beliefs in and out of the workplace on social media and other places would be protected. Religious counselors and other licensed professionals could not have their license put into jeopardy simply because of their religious beliefs. Fairness for All would also ensure that across the nation LGBT persons could not be denied generally available housing, employment, or access to businesses simply because of their sexual orientation or gender identity.

One of the key misunderstandings that has shaped all of the events leading to this point is a broad cultural failure to recognize that civil rights are actually a balancing test. Rights for one person are always balanced against the rights of others. Of course, we recognize that while we have the right to free speech, we cannot shout, "Fire!" in a movie theater, or play loud music or conduct a parade down residential streets at midnight. Our right to free speech is subject to time, place, and manner restrictions. Yet whether that is the case as it relates to religious rights and SOGI rights is currently in dispute. Jonathan Rauch - a gay man, author, journalist, and senior fellow at the Brookings Institution who has been a longtime supporter of gay marriage and LGBT civil rights, but who also is an ardent supporter of the principle of religious freedom - observed in a Summer 2017 piece for *National Affairs* entitled ["Non-Discrimination for All"](#) that both religious freedom advocates and LGBT rights advocates have been "in recent years experiencing parallel evolutions towards absolutism. He writes, "The reason, or an important reason, is that both sides are applying — misapplying, I would argue — the lessons of the granddaddy of civil-rights struggles, that of African-Americans."

This is indeed one of the big sticking points on this topic. LGBT rights advocates point to the sweeping nature of race protections as supporting the exclusion of almost any religious



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exemptions. Meanwhile, many religious persons and advocates say that because sexual orientation and gender identity are different than race, they should not be protected in the same law. Is discrimination against gay people identical to racism, the national evil that the historic passage of the 1964 Civil Rights Act combatted? And if the problem is discrimination, how can there even be serious talk about religious protections?

Rauch does, I believe, the best job I've read of anyone deconstructing these arguments, and so I will quote a short excerpt from his piece here:

“So pervasive and evil was the regime of racial discrimination that rooting it out required the legal and cultural equivalent of overwhelming force... Culturally, what the country learned from the civil-rights movement is that discrimination is everywhere and always wrong, and therefore must be everywhere and always illegal and unacceptable. *Every* diner, drinking fountain, and swimming pool open to the public must be open to blacks. In practice, after all, any lesser standard was exploited by racists as a tool of Jim Crow. The oppression of black Americans is historically and morally unique. Thank goodness, there is no other stain like it. That said, the persecution inflicted on gay Americans was very severe in its own way. Gay people were terrorized on the streets and in the schools, fired from their jobs, and banned from government employment and military service. Psychiatrists called them sick. Politicians called them subversive. Preachers called them a stench in God's nostrils. Their bars and churches were vandalized and burned; their children were taken away; and police, instead of protecting them, entrapped them for sport. As recently as 2003, in multiple states, they were deemed criminals. Emotionally, gay people and equality-minded allies have reason to reach instinctively for the black civil-rights model. The problem is that the zero-tolerance interpretation is wrong. The landmark civil-rights bills that broke the back of racial segregation in the 1960s were not absolutist.”

Rauch is right. The Civil Rights Act is replete with exemptions, and no protected category is treated the same as the others. Even for race, political necessity required including the Mrs. Murphy exemption, which excludes small landlords of fewer than four units and people renting a room in their own house. While in general, employers cannot consider religion, religious employers are exempted and can hire according to religion. While in general a bar cannot take the gender of its employees into account, the bona fide employee occupational qualification exemption allows a bar to hire only male bartenders for its ladies' night. Age-discrimination rules allow pension plans to treat older people differently than younger people, and sex-discrimination rules allow single-sex elementary and secondary schools. And where there are



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already SOGI anti-discrimination laws, they include religious exemptions and protections, even in deep blue states. Though *Hobby Lobby* cast a spotlight on religious exemptions and cast them out of vogue, on a day-to-day basis, legal exemptions of all sorts are in use, are deeply relied upon, and are infrequently noticed. General rules with certain exemptions is our social and legal norm.

Rauch describes the differences among the anti-discrimination rules as a spectrum, not a hierarchy: “It ... does not rank the social importance of various groups or the validity of their nondiscrimination claims.” Rather, he argues, “the spectrum reflects the natural diversity of needs, situations, and histories of groups seeking protection and of the social contexts in which they are embedded.”

It is in fact the very precise set of implications that each protected category raises in different contexts that makes civil rights law best crafted by a scalpel not a hatchet. Protecting LGBT civil rights and religious freedom is not accomplished by winning court decisions that issue either very broad decisions that work out almost none of the details (like *Obergefell*), nor is it accomplished by one-sided legislation that addresses one set of issues leaving the others completely unresolved. Rather, the gap in the law that remains is the precise balance between the two rights in the many different specific places where they come into contact.

So what are the proposed alternatives to struggling to put sexual orientation and gender identity protections into federal law alongside robust religious protections?

One question that must be asked as there is a one-sided and devastating piece of legislation working its way through Congress is: If not Fairness for All, then what? What are the alternatives? There are a few that I have heard proposed, and, in my opinion, they aren't very good.

One is to continue trying to pass “religious freedom only” legislation. I would argue that if this didn't pass in the last Congress with a Republican House, Republican Senate, and Republican President - the party that holds itself out as the champion of religious freedom - and was unable to pass in even the reddest of states like Indiana, Georgia, and Arkansas, this strategy is one with little political viability.

Another option, some say, is to continue to oppose the LGBT rights-only Equality Act without working to make it better (or at least less devastating) for religious organizations, and, if it passes, then challenge it in court. This would, of course, result in decades of expensive and mission-derailing litigation for the organizations lucky enough to pursue this. Others wouldn't even have the opportunity to engage in litigation because the halt in funding, or accreditation, or licensure, could force them out of business even before their lawsuit was able to run the course of years-long litigation. This is exactly what happened here in Michigan for



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Bethany Christian Services. Litigation was not a viable option, and they were coerced by the state to either change their policies or close.

Depending on litigation as the way to protect religious organizations and religious exercise has another deep flaw: the Supreme Court will only overturn the provisions of a bill like the Equality Act if its provisions are deemed unconstitutional or are otherwise illegal. And so, while aspects of the Equality Act are certainly unconstitutional or illegal, I would count religious hiring rights among the categories most likely to be struck down. There is no constitutional right to federal funding, and Congress regularly draws lines about how to allocate it. And while it certainly is not okay to prohibit religious organizations from receiving federal funding simply because they are religious, establishing new protected categories under civil rights law and drawing the line for federal funding as requiring compliance with those is perfectly consistent with constitutional law and longstanding legal precedent. Similarly, restricting the Religious Freedom Restoration Act would likely not be found impermissible. In fact, RFRA is itself already a response to a bad Supreme Court decision that allows governments to put in place laws that have disproportionately negative effects on religion provided they are neutrally applied.

In other words, while aspects of the Equality Act would certainly be struck down, most certainly the entire thing would not be struck down. A lot of it is simply bad policy, and no one can predict with any degree of certainty which pieces would be struck down, how long it would take, or how many religious rescue missions, adoption agencies, schools, colleges, universities, refugee resettlement agencies and poverty alleviation agencies would close in the meantime. Are we really willing to risk the very organizations that are the embodiment of our commitment to follow Christ's commands to care for the poor, the widow, the orphan, the stranger, and the least of these, and to go into all the world teaching and preaching the Gospel in order to try and prevent the insertion of sexual orientation and gender identity into federal law?

Other critics of Fairness for All say this: "Perhaps a Fairness for All bill can make it through Congress, but there is no assurance that whatever religious protections it contains will remain over time. Rather, opponents of religious freedom will strip out those protections, leaving only the LGBT protections, and religion will be in a worse place after Fairness For All than before." However, the idea that the religious freedom protections in this bill will eventually be undermined by a future Congress is not consistent with historical precedent. In fact, precedent shows that when big national agreements are enacted, they remain because the political will of the people is diffused once some reasonable arrangement has been established. The religious exemptions in the Civil Rights Act remain relatively uncontroversial 55 years later. Even in deep blue states, religious exemptions have existed for decades with little controversy. It is only in recent years - as a reaction to some of the actions taken by other states seen as antagonistic to LGBT rights - that the states have become the battleground. Historically, there is very good reason to believe that if a national settlement could be reached, it would remain in place. Further, any future legislative body that would be so extreme as to go into a finely tuned, well-balanced, bi-partisan bill in order to simply strip away the religious freedom protections could



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be counted on to pass extreme pro-LGBT, anti-religious legislation anyway. We cannot fear that future Congress so much that we fail to act now while simultaneously hoping that a future Congress will not pass something similar to or even worse for religious freedom than the current version of the Equality Act.

Imagine that world - a world where the brand of religious liberty is so damaged that a Congress, not even seeking to advance rights for LGBT people, simply would go into a bi-partisan, well balanced, political settlement, just to strip away the religious protections and provisions. That is a frightening concept. But while historical precedent does not support the likelihood of this imagined world, if the current trend of how religion and religious freedom continues, it is a world that is not completely outside the realm of possibility.

Troublingly, we've already seen these sentiments in the United States Senate. Senator and presidential candidate Bernie Sanders tweeted, "We cannot sanction racism, sexism, homophobia and other forms of discrimination under the guise of 'religious freedom'." Similarly, Dianne Feinstein, the senior senator from California and ranking member on the Senate judiciary committee, said to Amy Coney Barrett during her hearings that because of Barrett's Catholic beliefs, "I think whatever a religion is, it has its own dogma. And I think in your case, professor, when you read your speeches, the conclusion one draws is that the dogma lives loudly within you, and that's a concern when you come to the big issues that large numbers of people have fought for years in this country."

Beyond the pragmatics which we have now discussed at length and are undoubtedly important, I am also deeply hopeful and very encouraged by what I have seen thus far in Fairness for All. What I see is potential to help restore credibility to religious freedom, to accurately reflect what historic Christian teachings are and are not, and - most importantly - to provide Christians with an opportunity to bear witness to the Gospel in the midst of a deeply divided and contentious culture.

There is a famous saying in Washington that if you're not at the table you're on the menu. Andy Crouch says it more eloquently in his outstanding book, *Culture Making*. He first identifies several postures towards culture: condemning culture, critiquing culture, copying culture, consuming culture, and finally cultivating or creating culture. He says that cultivators and creators are the ones who are invited to critique; they derive their identity not from what they consume but from what they create.

Until very recently, Christians who held to a historic view of marriage, gender, and human sexuality were either silent in these political debates or were almost exclusively on the side of being opposed to the insertion of SOGI rights into law. (To be clear, I am not talking about laws pertaining to marriage. I am referencing the legal questions that FFA deals with - employment, housing, access to public space, financial credit, jury duty service, etc.) This created two general effects. First, Christians with historic views were left without a voice in how



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the laws were actually being crafted because they either decried the effort - arguing that SOGI protections should never be put into law no matter what - or were completely silent on the issue. They couldn't weigh in on questions such as: What religious protections should be included? Are there other proprietary concerns for privacy or other matters that would have benefited from a Christian voice speaking into them?

The Equality Act is a perfect example of this effect. Since Christians with traditional views failed to engage those lawmakers in favor of SOGI rights, those lawmakers proceeded forward anyway, saying, "It doesn't matter what we do or say; you will never attempt to engage with us in a constructive way. So we will put the boundaries as far as possible, and because you are merely condemning our efforts, we will not invite you in to critique them and work with us to create something better."

I had a searing experience with this around the ENDA 2013 debate, which forever changed the way I viewed these matters. I worked with colleagues from other religious organizations to try to improve the religious exemption in the bill. We were in meeting after meeting on Capitol Hill, but could offer no support for the bill; the most we could promise was that we wouldn't oppose it. After countless meetings we were reassured by a key senator's office that they wouldn't support it until the religious freedom issues were addressed. Shortly thereafter, that senator announced his support as the 60th vote before any of the needed improvements had been made. When we were sitting in that office, they only told us what we wanted to hear. The only reason the exemption was improved was because at the time of the vote, some Democratic Senators wound up being absent, and so Republican senators - ones who supported the bill - were able to use their leverage by locking themselves in the cloakroom and refusing to vote for the bill until it was improved. But in all those meetings - going to those offices, begging hat in hand, and offering nothing - I've never felt more voiceless; I've never felt like a less effective advocate. The second effect it has had is to undermine religious freedom. When Christians say their concerns are about religious liberty, but then reject a bill that has sufficient or even excellent religious freedom protections in it, it becomes more difficult for people to believe that their concerns are actually about religious freedom and that they are not just opposed to protections for LGBT persons in the law. Unfortunately, religious freedom has become synonymous with bigotry. One positive effect of Fairness for All is that it has forced these arguments to be distilled. Now that there are religious freedom advocates vouching for the strength of the religious protections, it then distills that others oppose SOGI rights for different reasons, but those reasons can be clearly differentiated.

Further, it allows debate about what Christian teaching and doctrine actually states. Does it speak to God's design for marriage and gender, or does it say that people who do not live according to God's design should not have jobs, houses, or be served a hamburger or receive credit for a loan? There may be other public policy arguments against putting SOGI into law, but is it because of Christian teaching? It allows there to be much needed nuance and differentiation in the public square.



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I believe that Christians having a voice in the public square has a Gospel witness. To quote Kuyper, “There is not a square inch in the whole domain of our human existence over which Christ, who is Sovereign over all, does not cry, Mine!” Therefore, I think it was a real loss to culture for Christians with historic views to take a posture which excluded their voice from the important cultural debates occurring because they were not able to influence the substance of the laws. If laws are going to be created, do we want religious voices, and religious perspectives joining the conversation and pointing out important things that need to be considered - not just in the parts that affect religious entities or persons specifically, but also culture generally? But beyond the substance of the laws, I also think that Fairness for All has had a powerful Gospel witness in our culture for how we relate to one another as citizens, shaping the kind of society we want to live in, and considering how our laws get made and what they say about how we want to care for one another as fellow citizens.

In *Awaiting the King*, James K.A. Smith says that “politics, then, both requires formation and forms us... laws, then, are not just boundary makers; they are social nudges that make us a certain kind of people.”

If politics *itself* both requires formation and forms us, how we engage in politics matters to its formation. In turn, it will form us. How are we forming and being formed by our politics if we simply play hardball politics at every turn? If we are unyielding to the legitimate concerns of another side on an issue, regardless of the issue - are those the values we want reflected in our culture? If not, should we do something different in our politics that could help change how we interact as neighbors and as citizens in our larger society? We know that our country is more divided than any time since the Civil War. We know that since 2016, one in six people report having a broken relationship with a close family member or friend over politics. So what can we as Christians offer to the formation of politics that in turn yields positive results in the culture that is formed by our politics?

Christians have too often declared that we are at war with our culture. Ephesians 6 reminds us that “we are not fighting against flesh and-blood enemies, but against evil rulers and authorities of the unseen world, against mighty powers in this dark world and against evil spirits in the heavenly places.” While the culture war paradigm suggests that we’re warring against culture and those within it who hold different values, Ephesians 6 affirms that our enemies are not flesh and blood.

The term “culture war” has been used by some as shorthand to imply that there is a battle to make societal laws reflect God’s laws. As America has transitioned from a Christian majority nation to a Christian minority nation and culture has changed all around us, some may feel that our laws were previously somehow “more Christian.” Yet intellectually, we know that our nation’s laws have never fully reflected God’s laws. American laws once permitted the cruelty towards people of the First Nations, slavery, the oppression of racial minorities and inhumane



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working conditions for adults as well as children. Likewise, laws today do not fully reflect God's laws.

We can take heart from Jesus' Sermon on the Mount, however, that we need not put our hope in the laws of this land. In fact, Jesus affirms that we will be uncomfortable in this world - as he actually sets the expectation that God's laws and earthly laws will be in opposition. And while Jesus taught that humility, mercy, and peacemaking will be rewarded in heaven, He did not seek to impose these values upon the culture of that day through military might, government edict or even cultural dominance.

The culture war paradigm fails to acknowledge that the counter-cultural nature of our faith means that we should not find ourselves at home in any culture. No culture in our broken world can fully reflect the kingdom of heaven nor can we do anything to bring the kingdom. In fact, James Davidson Hunter reminds us that it is God and God alone who brings his kingdom - when Christians "participate in the work of world-building they are not, in any precise sense of the phrase, 'building the Kingdom of God.' This side of heaven, the culture cannot become the Kingdom of God, nor will all the work of Christians in culture evolve into or bring about his Kingdom. The establishment of his Kingdom in eternity is an act of divine sovereignty and love, and it will only be set in place at the final consummation at the end of time."

The culture war language of battle, winning, and losing focuses us on the physical realm instead of the spiritual realm; it puts the end game on this world rather than the one to come - a place where the battle has already been won.

The attempt to conquer culture through the law has come at a cost. While it is imperative that Christians try to influence the culture through law, such efforts can also tempt us to believe the illusion that if we only get the laws right, hearts will follow. Yet we know that the story of Israel suggests that this is not the case. Even while their entire political nation was organized around God's law, their hearts were not right before God. In pursuing victory, we have sometimes made enemies of fellow flesh-and-blood people who are made in the image of God. By doing so, we have severed relationships instead of building them and alienated other image-bearers instead of welcoming them.

So what if, equal to our commitment to influence the substance of a particular law, was our commitment to how a law is made? What if Christian citizens and the institutions they comprise stepped forward in our deeply divided political system and said we want to be peacemakers? There is of course, a difference between "peacemaking" and "peacekeeping." Peacekeeping is a passive retention of the status quo. Peacemaking involves entering into the conflict in order to make peace. Peacekeeping forces stand *against* something - against violence, against the warring factions. Peacemakers stand *for* something - for peace, for reconciliation, for a way forward. In many ways, peacemaking is more difficult than winning. Peacemaking can be an



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uncertain process that requires listening to people who have different viewpoints, as well as working with people who look differently, think differently, or have different values. Peacemaking can be a humbling process that reminds us of our weaknesses and that we are not fully in control. Yet in a warring culture – a culture where the U.S. military has been at war for more than 15 years; where the presidential election is a war of words; where the culture wars wage on – perhaps being peacemakers is the kind of radical countercultural living that can set Christ-followers apart.

Fairness for All now has been a three-year process that has required me and other leaders from religious organizations with conservative sexual ethics to sit down with LGBT rights advocates in rooms to try to learn and discern where there is common ground. In these conversations, the religious community has said to the LGBT community, “Tell us what your needs are. What are the concerns you’re trying to protect in the law? What are you worried about? Tell us how you were hurt and what you’re trying to prevent from happening again. We want to understand.” That has been a powerful witness - both for Christ and for what we want to see in our culture more broadly as well as in our politics.

And you know what? LGBT advocates in turn have asked us the same questions. “Tell us your concerns. What are the harms your community has faced? What are you trying to protect?” We have worked together to protect one another. We have been able to tell them about how Gordon College’s accreditation was under threat; about how low-income students in California were almost denied access to college because of the religious beliefs of the college; about how adoption agencies have become political hockey pucks; about professional therapists have had their license threatened because of their religious beliefs.

And we’ve been able to hear and learn that 74.1 percent of LGBT students were verbally bullied (e.g., called names, threatened) in the past year because of their sexual orientation. We learned that 55.2 percent of LGBT students were bullied because of their gender expression. We learned that LGBT youth are almost five times as likely to have attempted suicide compared to heterosexual youth; that about 40 percent of trans people will attempt suicide - nine times the rate of the general population - and that the vast majority of these attempts will be before the age of 25. We learned that the unemployment rate for LGBT people is two to three times the national average, and that same-sex couples were 73 percent more likely to be denied a mortgage than heterosexual couples with the same financial worthiness.

Over time, this journey has become more than just developing the legislative text. Religious leaders have tearfully apologized for sins committed by the Church against LGBT persons. LGBT persons have tearfully confessed that they’ve only recently started going back to church because they had only recently begun to believe that God loved them. It has been the Gospel’s redeeming power at work indeed.



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FAIRNESS FOR ALL: DOES SUPPORTING RELIGIOUS FREEDOM REQUIRE OPPOSITION TO LGBT CIVIL RIGHTS? VOL. 9, ISSUE 3, 2019

In his book, *Awaiting the King*, James K.A. Smith states that “The liberal state lacks the formative resources it needs to engender citizens who have the know-how to live well in pluralistic societies, which is precisely *why* liberal democracies should not only *make room* for traditional religious communities but in fact *depend* on them.” Could we ever then imagine then a way in which society was able to move forward *because* of the intervention of the religious voice into a political problem and into political stagnation? What if, after Fairness for All, society marks Christians as an essential element to developing the solution that helped lead to social peace and flourishing? What if we were invited into other conversations on other vital issues subsequently and seen as necessary thought partners because of this?

And so, the exploration of Fairness for All has been a way for us to do it differently. To look at our political system and to say, “We want to bring something to the table that you would miss if we were gone.” We want to make sure it’s not just the folks who agree with us, but that the people who often don’t agree with us would say that. We want to be able to make the case to lawmakers for the importance of religion in the United States not solely based on facts, figures, and economic impact studies, but by the way we engaged in the political arena. It is in the darkest areas where light is most needed.
Thank you.

To respond to the author of this article, please email PJR@cpjustice.org. The articles in the Public Justice Review do not represent a consensus of positions on questions of public policy. We do not expect our readers will agree with all the arguments they find here, but we believe that within the broad tradition of what we call public justice we can do more by providing a forum for the debate and exchange of Christians, within those bounds, to work out public policy faithful to God and in service of our neighbors. We do not necessarily share the views expressed, but we do accept responsibility for giving them a chance to appear.