



Religion

Population

Area

- Christians : **77.7%**
- Agnostics : **15.3%**
- Jews : **1.7%**
- Muslims : **1.4%**
- Buddhists : **1.3%**
- Others : **2.6%**

324.119.000

9.833.517 Km²

Legal framework on freedom of religion and actual application

The first amendment to the US constitution guarantees religious freedom, stating that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”^[1] The fourteenth amendment to the US constitution guarantees the equal protection of the laws and the right to due process to “all persons born or naturalized in the United States, and subject to the jurisdiction thereof,”^[2] including all religious and non-religious people. Article six of the US constitution mandates that “no religious test shall ever be required as a qualification to any office or public trust under the United States”.^[3] The constitutions of the 50 states have similar mandates.

Collectively, these state and federal constitutional provisions guarantee the free exercise of religion for all individuals and religious communities and prohibit an established religion. As Chief Justice John Roberts puts it, the national government “possesses only limited powers; the states and the people retain the remainder.”^[4] The federal Bill of Rights and various states’ Declaration of Rights serve the same purpose: to ensure that individuals and groups will have legal remedies when governments encroach on specified fundamental rights that exist prior to the state, and therefore are not created by the state. The first of those rights is the free exercise of religion. The role of government is to recognise, protect, and encourage the free exercise of religion in public life, in part by forbidding a state establishment of religion.

The guarantee of free exercise of religion and the ban on establishment and religious tests for public office work to limit the power and reach of the state. They also encourage “common good” contributions by faith-based institutions as part of America’s traditionally vigorous civil society, including hospitals and clinics, universities, primary and secondary schools, orphanages, immigration services, hospices for the sick and dying, soup kitchens, and the like. One study estimates that religion contributes US\$1.2 trillion to the US economy each year, which is more than the annual revenues of the top 10 tech companies combined and “would make US religion the 15th largest national economy in the world.”^[5]

In addition to the constitutional provisions identified above, the following statutes, listed chronologically, are included in the legal framework for religious freedom in the United States:

- The Civil Rights Act of 1964 prohibits discrimination “on the basis of race, color, religion, national origin, or sex”. Title Seven of the Act “requires that employers reasonably accommodate applicants’ and employees’ sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer’s business.”^[6]
- The Religious Freedom Restoration Act of 1993 states that “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” The only cases where the government is permitted to “substantially burden a person’s exercise of religion” is if “the application of the burden to the person (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest”. Twenty-one states have also enacted Religious Freedom Restoration Acts.^[7]
- The Religious Land Use and Institutionalized Persons Act of 2000 prohibits discriminatory land use regulation against “a person, including a religious assembly or institution,” and guarantees free exercise of religion to institutionalised persons.

Incidents

In the last few years, there has been an increase in the levels of reported violence and discrimination against religious minorities in the United States, particularly Muslims and Jews. The Federal Bureau of Investigation’s (FBI) most recent Hate Crimes Statistics Report shows that 1,538 “hate crimes motivated by religious violence” were reported by law enforcement in 2016. About 55 percent of the crimes were classified as anti-Jewish, while approximately 25 percent were classified as anti-Islamic.^[8]

This and previous FBI reports display a troubling trend in the United States. Since 2014, the number of reported “hate crimes” motivated by religious bias has increased by about 41 percent. Examples of such crimes include assault, intimidation, and vandalism of property. The proportion of crimes motivated by religious violence that are classified as anti-Islamic has increased by over eight percent during this same period of time. More broadly, the proportion of all incidents characterised as being motivated by religious bias has increased in the last two years. Incidents motivated by religious bias are now the second-most reported category, trailing only those motivated by racial bias and surpassing those motivated by sexual orientation bias.^[9] The fact that these figures do not reflect the crimes or incidents of discrimination motivated by religious bias that go unreported each year should not be taken lightly.

The existence of these troubling trends in violence and discrimination is further substantiated by public polling of religious minorities, as well as by reporting on the number of active groups in the United States whose bias against religion in general or against particular religions is characteristic of their extremist views. Crimes against Muslims have reached the highest level since the aftermath of the 11th September 2001 attacks. The number of anti-Muslim groups in the United States tripled in 2016.^[10] In a 2017 Pew Research Center survey, 75 percent of US Muslims agreed that there is “a lot of discrimination against Muslims in the United States”, while 50 percent agreed that “in recent years, being Muslim in the United States has gotten more difficult.”^[11] The Institute for Social Policy and Understanding’s “American Muslim Poll 2017” similarly reports that “Muslims are the most likely faith group to report religious-based discrimination in the past year,” with 60 percent of Muslims surveyed reporting such discrimination in 2016-2017.^[12]

Specific instances of anti-Muslim and anti-Jewish violence and discrimination in the last few years include the murder of an imam and his assistant in New York, multiple counts of arson against mosques in Florida, Texas, and Washington State, “waves of bomb threats targeting the Jewish community,” and multiple incidents involving the desecration of headstones in Jewish cemeteries.^[13]

An equally troubling trend in the United States is the decline in support for the free exercise of religion in public life,

especially for the expression of non-violent religious views that have recently become unpopular. In a 2016 report from the US Commission on Civil Rights (USCCR), an institution established by Congress to ensure protection of the civil rights of all Americans, Chairman Martin Castro wrote that “phrases like ‘religious liberty’ and ‘religious freedom’ will stand for nothing except hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance.” Mr Castro then went on to write that “as in the past, religion is being used as both a weapon and a shield by those seeking to deny others equality,” broadly comparing religious freedom arguments in today’s political and legal discourse to those used to justify slavery and Jim Crow laws in previous centuries.^[14] The USCCR, created at the dawn of the civil rights movement in 1957, describes itself as “an independent, bipartisan, fact-finding federal agency,” whose “mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws”^[15]

Mr Castro’s views, expressed in an official US government publication, are representative of an increasingly visible cultural movement in America to marginalise and exclude from public discourse the ideas and arguments of long-standing American religious communities. A recent reflection of this trend can be seen in the Supreme Court’s 5-4 decision in *Obergefell v. Hodges* (2015), which declared a new right to same-sex marriage throughout the United States. This decision effectively ended public debate about same-sex marriage at a time when only 17 of 50 states had taken action to recognise same-sex marriage, and polls showed that 39 percent of US adults were opposed to same-sex marriage, including 66 percent of black Protestants and 76 percent of white evangelical Protestants.^[16] Chief Justice John Roberts, writing in dissent, called the decision, “an act of will, not of legal judgement. The right it announces has no basis in the Constitution or in this Court’s precedent.” The Chief Justice and three other dissenting justices warned that the free exercise of religion was imperilled by the decision and traditional religious voices were likely to be silenced because they did not align with the Court’s views.^[17]

This case reflects a broader cultural trend in the United States to delegitimise traditional religious views on sexuality, marriage, human rights, and other matters of law and public policy. The trend undermines both the No Religious Test Clause of Article VI and the First Amendment, both of which were written to protect all religious ideas and actors in public life, based on the conviction that the involvement of religion in the public square is necessary for the health of American democracy. The trend threatens the freedom of Christians, Muslims, Jews, and adherents of other faith traditions, who are increasingly condemned when they contend for laws and public policies on an equal footing with their more liberal and/or secular peers. It reflects an anti-pluralist movement in American political and social life that represents a serious threat to religious freedom and democracy itself.

The United States has seen incidents of religion-related terrorism. In 2016, of nine incidents with fatalities that were classified as terrorism by the Global Terrorism Database, four were committed by Jihadis or Muslim extremists^[18] The deadliest attack was the 12th June 2016 attack on the Pulse Nightclub in Orlando, Florida committed by Omar Mateen, who pledged allegiance to Daesh (ISIS). In 2017, eight people were killed and more than a dozen injured in an attack carried out by Sayfullo Habibullaevic Saipov. Saipov drove a truck into pedestrians near the World Trade Center in New York City. A note found near the truck indicated that the attack had been carried out in the name of Daesh!^[19]

Prospects for freedom of religion

The prospects for religious freedom in the United States over the coming years are mixed. On the one hand, the Trump administration has offered consistent rhetorical support for the protection of religious freedom. This rhetoric has been accompanied by certain potentially fruitful actions, including a Presidential Executive Order directing the Attorney General to issue guidance on interpreting religious liberty in federal law. The resulting guidance included “20 high-level principles that administrative agencies and executive departments can put to practical use to ensure the religious freedoms of Americans are lawfully protected”^[20] and led to the creation of a Conscience and Religious Freedom Division within the Department of Health and Human Services.^[21] Such federal actions, including renewed support by the Department of Justice for judicial cases dealing with religious freedom, inspire some hope. To the extent that they increase religious freedom for all American citizens and groups, they may yield at least a short-term slowing of the negative trends cited

above.

Within American civil society, there is a recognition of the need to address the growing polarisation around religious liberty issues. The US Conference of Catholic Bishops represents one of the leading actors working to protect and promote religious freedom in the United States today. The bishops voted in June 2017 to make permanent its Committee for Religious Liberty. They are major advocates for the promotion and defence of religious freedom in law and policy, including through the release of substantive educational materials.

However, there remain a number of reasons why both religious and non-religious Americans should be concerned about the future of religious freedom in the United States. A central reason is the increase in violence and discrimination against non-Christians. This has taken place as anti-Muslim and anti-Jewish extremist groups, such as the white nationalist movement, have become increasingly visible and vocal on the national stage, most infamously in the Charlottesville, Virginia rally of August 2017.^[22] The failure of President Trump and other officials at all levels of government to condemn, unequivocally and consistently, such acts of violence and discrimination seriously harms religious freedom in the United States. The increasing normalisation of anti-Muslim rhetoric in American political life, combined with the spread of inaccurate, biased media accounts that vilify entire religious groups, both minority and majority, will only serve to magnify these patterns in the near future.^[23]

Viewed from a long-term perspective, the protection and promotion of religious freedom in the United States are at a critical juncture. The American understanding of religious freedom acknowledges the value that religion has for individuals and society in general, including interior spiritual benefits and public benefits that help to advance the common good. Critical to this understanding is the idea that religion deserves special protection, both at the level of individual conscience and at the level of public action, for all individuals and all religious communities, so that everyone can engage equally in religiously inspired action in the public square. This understanding of religious freedom is a pillar of the American experiment in democracy and has made substantial contributions to the nation's success over the last two and half centuries.

Religious freedom is necessary for the health of American democracy, and any decline in religious freedom would be detrimental to American society. If religious and non-religious Americans of all stripes do not take action to protect this freedom, it could eventually be lost.

Endnotes / Sources

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