

Edward Cardinal Egan Catholic Center at New York University  
**THE 2015 CARDINAL EGAN LECTURE**

## Religious Freedom: Yesterday, Today and Tomorrow

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It is a great privilege to have been asked to give this lecture named for Cardinal Egan. When this event was in the planning stage, it was of course expected that he would be here with us this evening. Now that we are honoring his memory, I can think of no better way to do so than by reflecting on religious freedom, a subject that was always close to the center of his concerns.

But I must begin with a word of gratitude for MAGNIFICAT. Emeritus Pope Benedict once said that the best arguments for the truth of the Church's teachings are its art and its saints. You may wonder why a great theologian would defer to other ways of leading people to truth. I believe Pope Benedict's answer would be that the lives of the saints and the great works of Christian art have a special power to change the way we see the world—and thus to change us! MAGNIFICAT's creators understood that so well that they have literally transformed the spiritual lives of countless men and women with a little booklet that—month after month—brings us saints galore, treasures of Christian art, and life-changing wisdom. I know I speak for many of their beneficiaries here when I say thank you, and ad multos annos!

It was only natural, therefore, when I pondered my topic for this evening—"Religious Freedom: yesterday, today and tomorrow"—that my thoughts should turn to a painting that I first saw in MAGNIFICAT. It is a painting that artfully captures past, present, and future in a single frame.



*The Future Victims of the Colosseum* (1899), Henryk Siemiradzki (1843-1902), Seminario Vescovile, Warsaw, Poland. © All right reserved.

At first glance, we might think it is all about a present moment: the blossoming of faith in two Roman women who are being instructed by a man who may be a composite of Peter and Paul. It's an idyllic scene, but it is heavily shadowed—almost too heavily. And in the background we see why. There on the right is an immense golden idol of the Emperor Nero, and next to him is the arena where so many early Christians met their fate. Then we understand why the artist titled this peaceful scene, “The Future Martyrs of the Coliseum.”

Today, the Coliseum holds no terror, unless you fear pickpockets and crowds of tourists. But today once again, we are living in an age of religious persecution, horrifyingly violent in some parts of the world, and more insidious in the liberal democracies of the West. According to the latest report from the respected Pew Research Center, 76% of the world's inhabitants currently live in countries with a “high or very high” level of restrictions on religion. That is up from 68% only eight years ago. And so I am grateful for this opportunity to share with you some of my concerns about the state of religious freedom today.

Since some of what I will say this evening is based on what I have learned as a member of the U.S. Commission on International Religious Freedom, I am required by Commission rules to emphasize that the views I will express here are my own, and do not represent official positions of the Commission.

My remarks about “religious freedom yesterday” will be brief. But I do need to begin with a great moment in the history of religious freedom

## Religious Freedom Yesterday

When the First Amendment was added to the U.S. Constitution in 1791, each of

the thirteen states had its own church-state arrangement—they ran the gamut from established churches in states like Massachusetts, where the Congregational Church of my mother's ancestors was the state church until 1833, to disestablishment in Thomas Jefferson's Virginia, with various forms of church-state accommodation in between. The decision of the framers was to leave those arrangements in place, by barring the federal government from interfering with religious freedom, either by establishing a national church, or by restricting the free exercise of religion in any other way.

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

THE FIRST AMENDMENT TO THE U.S. CONSTITUTION,  
15 December 1791

When I say that was a great moment, I don't mean that, presto change-o, early Americans enjoyed perfect religious freedom. What I mean is that what our framers set in motion was something entirely new in the world—a system that lifted up religious freedom as a fundamental right, and that left room for diverse ways of bringing it to life.

Many of the founders expected that religious freedom would bring benefits for our ambitious experiment in self-government as well. Even the Deists and skeptics among them understood that democracy demands a good deal of character and competence in its citizens and statesmen. George Washington insisted on that point in his Farewell Address,

where he said that protection of religion was essential for the success of the republic, and warned people against imagining that a healthy civic culture could be sustained without religion.



Print based on Edward Percy Morgan's *George Washington's Farewell Address* (c. 1917).

As it happened, Washington never actually delivered that famous address in public, deciding to proclaim it in print instead. This charming painting shows him practicing it in front of his family.

Meanwhile, across the Atlantic, a very different approach to religion was being taken in France. Under the slogan that there should be “no intermediaries between citizen and state,” French revolutionaries closed or destroyed most of France’s 40,000 churches. And in a wave of anti-clerical sentiment, they put thousands of priests and religious sisters to death in what later became known as the Reign of Terror.



So you may imagine how surprising it was to young Alexis de Tocqueville, when he visited the United States in the 1830s, to see a system that actually protected religion and churches from the central government. What he saw here convinced him that, contrary to what his skeptical French friends believed, religion was good for democracy. At the same time, contrary to what many devout Catholics like his mother believed, he became convinced that freedom was good for religion.

*The Americans combine the notions of Christianity and of liberty so intimately in their minds, that it is impossible to make them conceive the one without the other.*

Alexis de Tocqueville

In fact, Tocqueville could have been channeling George Washington when he advised his French readers that “Lovers of liberty should hasten to call religion to their aid, for they must know that one cannot establish the reign of liberty without the support of the mores,” *les moeurs*—by which he meant the customs, habits, and attitudes of the people.

In the United States, the idea that the First Amendment was intended to protect religion and churches from government prevailed in our legal system up to the mid-1940s. To be sure, we didn’t always live up to our ideals, and to be sure, there were setbacks as the nation absorbed large-scale immigrations in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. But the ideal—the ideal of America as a tolerant, pluralistic country—was widely shared, and Norman Rockwell captured it in one of his “Four Freedoms” paintings where he showed members of the country’s major religions worshipping “each according to the dictates of his own conscience.”

Up to the 1940s, there was a fair amount of church-state cooperation in the United States, and up to that time, the Supreme Court had never held any of these accommodations unconstitutional. But starting in 1947, a Court majority began using the metaphor of a “wall of separation between church and state” to cast doubt on nearly every form of public cooperation with religious institutions. That gradual judicial transformation of church-state law did not attract much public attention until 1962, when the Supreme Court banned the nearly universal practice in public schools of beginning the day with a prayer. The school prayer decision stunned much of the majority Protestant community, as they began to realize that they were confronted with a version of secularism that seemed bent on driving every vestige of religiosity from America’s public institutions.



*Freedom of Worship* (1941-1943), Norman Rockwell (1894-1978).

## Today: Religious Freedom under Siege

Moving now to the state of religious freedom in the U.S. today, I have to begin by saying how thankful I am every time I return from a USCIRF trip to a country where religious minorities live in daily fear of violent persecution. My renewed appreciation for the freedoms we enjoy here at home, however, comes with increasing concern that we are letting something precious slip away.

To put it starkly: I do not think it is an exaggeration to say that religious freedom is well on its way to becoming a second-class right—in the sense that it is being demoted from the status of a fundamental right to just one of many competing interests—one that can all too easily be trumped by other rights, claims, and interests.

It pains me to say this, because I am old enough to remember the vital role that religion once played in our public life. When I became active in the civil rights movement as a young lawyer in the 1960s, the downgrading of religious freedom was a development I could not have imagined. But with the passage of time, many people have forgotten how much of the energy that fueled the drive to put an end to the shame of segregation in this country—and how much of the determination that sustained it—sprang directly from religious conviction. The public ministry of Martin Luther King galvanized people who had never given much thought to how many opportunities were denied to many of our fellow Americans on the basis of race.

Yet how many people today know that during his Birmingham campaign, Rev. King required every participant to sign a pledge promising to “meditate daily on the teachings and life of Jesus”? How many Catholics know that the courageous Archbishop of New Orleans,

Joseph Rummel, stood up to four powerful Louisiana political leaders and excommunicated them for opposing integration of the schools?



The positive role of religion in public life at that time was so evident, so palpable, that I would have been astonished if anyone had told me that someday expanded definitions of civil rights would come into sharp conflict with religious freedoms. Yet that day is here. A telling sign is that Rev. King is now commonly referred to as Dr. King. And the religious freedoms that America once took for granted are now under severe challenge from a variety of directions.

What seems to me especially ominous is the mounting evidence that less value is being attached to religion and religious freedom in the very places where one might have expected it to be more secure—namely, in the minds and hearts of citizens in liberal democracies. I would be glad to be persuaded that this concern is exaggerated. (Perhaps you will tell me that I need to get out of the People’s Republic of Cambridge more often.) But it seems to me that

there are too many signs to ignore that concrete commitment to the protection of religious freedom is weakening, both internationally and here at home.

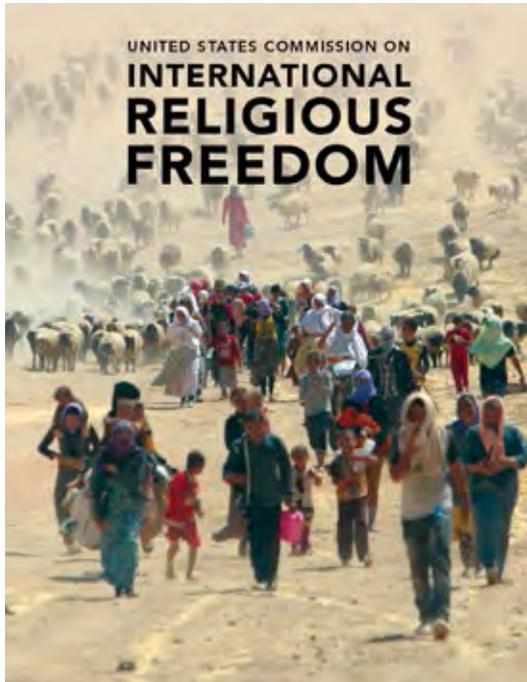
Ironically, this weakening of support is occurring just at a time when violent religious persecution is roiling much of the world. Even if you went back to the Roman Empire, you would not find persecution of Christians on a scale comparable to what our brothers and sisters are experiencing today, with an estimated 100,000 being killed every year, not to mention those who are being forced to flee their homes and countries.

Although we here in the United States are fortunate by comparison, no one who follows the news can doubt that there is a rocky road ahead for religious believers who dissent from reigning secular orthodoxies.

Let me mention just four developments that seem to point to declining support—both official and social—for the capacious concept of religious freedom that is enshrined in our First Amendment, and to which our government committed itself internationally when it championed the Universal Declaration of Human Rights in 1948.

First, there is the difficulty of persuading political decision-makers to pay attention to the dramatic increase in the most shocking cases of religious freedom violations in the world. The U.S. Commission on International Religious Freedom chose this photograph (*see page 6*) of Yazidis fleeing Iraq for the cover of our 2015 Annual Report because it is emblematic of the religious and ethnic cleansing that is taking place in many troubled areas of the world.

The increase in situations where religious minorities are suffering ever more extreme persecution is so massive that one would expect the U.S. government to show increased vigor in defending those principles.



Yet the opposite seems true. Testifying before Congress last September, Thomas Farr, who directs Georgetown’s Center for Religion, Peace and World Affairs, told the legislators that “the United States has had no impact on the global rise of religious persecution.” And the Chairwoman of the U.S. Commission on International Religious Freedom testified on the same occasion that the U.S. State Department “has tended to sideline these concerns.”

Moreover, when government officials do speak of religious freedom, they tend to use narrower terms such as “freedom of belief” or “freedom of worship.” Those narrow definitions of religious liberty, of course, leave wide room for infringement. On my recent Commission trips to Pakistan and Turkey, I was repeatedly assured by government officials that their citizens enjoy freedom of belief and worship. But freedom of religion means much more than believing what you like in the privacy of your room and worshipping in church. It means freedom to be yourself in public as well as in private; it includes parents’ rights to have the primary say in their childrens’ education; and it

means the right of citizens to advance religiously grounded moral positions in the public square.

A second sign of decreasing support for religious freedom here in the U.S. is the erosion of conscience protection for religious individuals and institutions. Sometimes these inroads on conscience protection have been successfully resisted, as in the recent Hobby Lobby case, where a family-owned company won the right to be exempted from a federal requirement that would have forced it to provide abortion-causing drugs to its employees in violation of the religious principles of the owners.

But such victories require great courage—and costly litigation. Many religious individuals and groups have simply left the field, rather than challenge laws that would force them to compromise their deeply held religious convictions. (That was the case, for example, with Catholic Charities in Massachusetts and Illinois, both of which gave up their much-needed adoption and foster care services rather than contest requirements that they place children with same-sex couples.) Such developments not only harm religious individuals and groups; they deprive the neediest among us of the special quality of educational, health care, and relief services they have long received from highly motivated religious providers.

A third ominous development is the increasingly aggressive hostility to religion among opinion leaders, especially in the media and the academy. Anti-religious bias is hardly new in those circles, but the current version is marked by a new lack of civility—especially on the part of those who regard traditional ideas about human sexuality as obstacles to human liberation, and who treat anyone who holds those ideas as motivated by bigotry. These attitudes are so prevalent in the American legal academy that some constitutional scholars now openly maintain that religious freedom is an unnecessary right.

Fourth, and perhaps most troubling of all, there are many signs that the status of religious freedom in popular culture is not so secure as many suppose. In some respects, what we are seeing here in the U.S. is something like what Tocqueville observed long ago in France. He said that when religious irreverence became fashionable among elites, there was a kind of trickle-down effect. Religion in popular culture began to be replaced “by a host of new loyalties and secular ideals,” while “many who retained their beliefs became fearful and kept silent, or pretended to share the sentiments of the others.” I certainly think we see that in many places today.

It is of course impossible to know what is really in people’s hearts and minds. But recent surveys do show two striking trends: an increasing proportion of persons who decline to affiliate with any organized religion, and an increasing proportion of persons who describe themselves as “spiritual” but not “religious.” It seems inevitable that those two trends are affecting attitudes about freedom of religion (since the more that people come to see religion as a private and solitary activity, the greater the likelihood that their concern about robust free exercise will decline.)

Now, here’s a puzzle about all this: How did religious freedom go so quickly from the status of a right once recognized as fundamental to a right that is being marginalized or downgraded by the civilization that once championed it?

Surely a major factor is the cultural revolution that took rise in the 1960s—the emergence of what Charles Taylor has called a culture of “expressive individualism, in which people were encouraged to find their own way, discover their own fulfillment, and ‘do their own thing.’” Or, as Peggy Noonan put it more colorfully, it was a time when “the whole country went on a toot.” (You may have noticed that, as pioneers of that philosophy have started to die off, many

have requested that the song “I did it my way” be played at their funerals. I must say that if I were their lawyer, I wouldn’t advise that as the best line to take when approaching the Day of Judgment.)

At the heart of this turn to expressive individualism, of course, was a revolution in sexual mores, where the pursuit of individual self-fulfillment at all costs caused more and more people to fall away from churches that uphold rigorous standards of sexual morality. Like other revolutions, the sexual revolution had its costs and casualties, some of which took time to come into view. With hindsight, though, it was the beginning of what George Weigel has aptly called a “long march through the institutions of American life, and through the public moral culture those institutions once embodied as well as sustained.” Those embattled institutions include three great mainstays of human well-being: the rule of law, the Church, and the marriage-based family.

And so it came to pass that the very period when some of us saw the civil rights movement as expanding the inclusiveness of what Rev. King called the Beloved Community, was actually a time when individual self-expression was about to become an overriding value.

Five decades later, we can see the effects of this transformation in practically every aspect of life, including the appearance of a new public morality that turns the Judeo-Christian moral inheritance upside down, and that brooks no dissent from its rigid new dogmas.

We can also see that the zeal for maximizing individual self-fulfillment took its heaviest toll on the most defenseless. When one considers the epidemic of fatherlessness and the havoc wrought by abortion, it is hard to pretend that you can have freedom without responsibility, rights without duties, and sex without consequences. As the late Jean Elshtain once observed, it is as though unlimited sexual

liberties, like bread and circuses in ancient Rome, are a kind of distraction from the loss of real freedom.

Interestingly, while the United States has been veering toward an approach to religious freedom that resembles old-style French secularism, at least one French political leader has been harkening back to Tocqueville.

Former French President Sarkozy startled many of his countrymen when he took the occasion of then-Pope Benedict's 2008 visit to France to acknowledge the role of religion in sustaining a free society and to call for respecting religion in the public square. He said: "It would be crazy to deprive ourselves of religion; quite simply, a failing against culture and against thought."



Just a few months earlier, Pope Benedict had sounded that same Tocquevillean theme in a speech to the U.S. bishops. Warning that the erosion of religious freedom would imperil the American tradition of ordered liberty, he said: "The preservation of freedom calls for the cultivation of virtue, self-discipline, sacrifice for the common good, and a sense of responsibility toward the less fortunate. It also demands the courage to engage in civic life and to bring one's deepest beliefs and values to reasoned public

debate. In a word, freedom is ever new. It is a challenge held out to each generation, and must constantly be won over for the cause of good."

The preservation of freedom is indeed a challenge—it's a legal challenge, it's a political challenge, and above all it's a cultural challenge. Which brings me to offer a few thoughts about:

## Religious Freedom Tomorrow

Being a lawyer, I tend to focus much of my attention on legislation and litigation, and I do believe that the preservation of religious freedom in the U.S. will depend to some extent on legal and political action. But there is not the slightest doubt in my mind that legal efforts will be in vain unless religious freedom is secure in the hearts and minds of our fellow citizens. Meeting the current challenges to religious freedom will depend much more on religious believers and leaders than on the efforts of lawyers and politicians.

It will be up to religious believers and leaders to find ways to advance their viewpoints with reasoning that is intelligible to men and women of good will.

It will be up to them to resist the forces that aim to install an intolerant secularism as the established religion.

And it will be up to them to persuade people who have never personally suffered religious persecution that religious freedom deserves its honored place in our canon of fundamental rights.

Some will say it's already too late, and that it's time to retreat into enclaves on the margins of society. But I do not think that is an option for people who are called to be light, leaven, and salt in the world. It is certainly not considered an option by our brothers and sisters in other parts of the world who, even as we speak, are risking their lives rather than compromise their faith.

Nor was it the option taken last year by little Gordon College, a Christian school north of Boston, when it was threatened with loss of accreditation because it requires students and faculty to abide by a policy that requires a pledge to abstain from sex outside marriage, and that defines marriage as the union of a man and a woman. Gordon had the courage to stand its ground, and when the accreditation controversy became public, two things happened. Various bullies piled on, including the City of Salem, which repudiated a contract to let Gordon use one of its buildings, and the City of Lynn, which severed a relationship under which Gordon students had served as volunteers in the city's troubled public schools. But when the story went national, support poured in from across the country. In the end, a settlement was reached that did credit to both Gordon and the accreditors—they issued a joint statement in which the accrediting body affirmed Gordon's right to maintain its religious identity and Gordon agreed to augment its spiritual support to students who identify as homosexual.

An instance of successful assertion of religious freedom that deserves to be better known among Catholics is that of the citizens of Nowa Huta, a town built by Poland's communist leaders after World War II as a model workers' city. Nowa Huta was intentionally designed to be free of all traces of organized religion, and particularly aimed at lessening the influence of the Catholic Church. But several of the residents erected a large cross in a field and started assembling there to pray. A young bishop from nearby Kraków started celebrating Masses for them, and joined their struggle to get permission from the authorities to build a church. That struggle lasted nearly twenty years, during which building permits were repeatedly denied; demonstrators were arrested; many

lost their jobs; construction was begun, interrupted, and begun again; and the young bishop became Cardinal Karol Wojtyła. Finally, in 1977, this modest building was completed and consecrated.

In later years, Pope Saint John Paul II credited the courage of the people of Nowa Huta for bolstering his confidence in Christian witness and for showing the importance of being willing to take an unpopular stand, and to stay with it for the long haul.



The Lord's Ark Church, Bieńczyce (Nowa Huta), Poland.

This little church will never win any architectural awards. It will probably never grace the cover of *MAGNIFICAT*. But it stands as a sign of hope for all who struggle for religious freedom under extremely difficult circumstances.

And hope there is, especially in the United States, where we have a proud tradition of religious freedom to defend. And it's important to keep in mind that, even in ancient Rome, the Coliseum was not the end of the story.

In the "Future Martyrs of the Coliseum," the artifacts of ancient despots are rightly pushed into the background, soon to be relegated to the dust heap of history. In the center of this beautiful painting is the transmission of the faith—ever ancient, ever new—yesterday, today, and tomorrow.