

“All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect and to violate would be oppression.” (Thomas Jefferson)

If someone from merely five or six decades ago was to be told the topic of this essay - debating the justification of preserving the freedom of religion and conscience - and then was to read the words by Thomas Jefferson quoted above, the person would likely be confused as to the relevance of those words to the topic. After all, the majority of the population would have identified with a religious affiliation, and thus the warning to protect the rights of the minority would have little to do with preserving freedom of religion and conscience in Canada. Much has changed in the subsequent decades and Jefferson’s quote now carries some weight in defending this fundamental freedom, which is a constitutionally protected right according to the *Canadian Charter of Rights and Freedoms*. As outlined by the *Charter*, this right allows Canadians to practise or refrain from religion, including the freedom to assemble and worship without interference, and to establish media organizations with or without religious content.

Statistics clearly present a picture of this major shift, with increasing secularism and declining religious participation in Canada (Statistics Canada, 2001). However, as Jefferson’s words warn, the argument that the preservation of the freedom of religion and conscience in Canada should be diminished because those that participate in religious activities are becoming a minority would be undemocratic and at worst, oppressive. Although the notion of democracy implies a leaning towards the majority, a critical part of a free and democratic society is pursuing equal rights and equity for all. Majority rule cannot be the exclusive expression of “supreme power” in a democratic state. Accordingly, the many battles that have been waged for social justice and equal rights throughout history have been for the rights of the minority. Easy examples that come to mind are civil rights or the gay rights movement. Thus, the argument that

because only a minority of Canadians attend a place of worship regularly, the freedom of religion and conscience can be diminished, is a faulty one. For majority's rights to hold meaning in a democracy, the minority's rights must be safeguarded regardless of how singular or alienated that minority is from society.

Now having established the moral grounds for objecting to the argument that because Canadian society is becoming increasingly secularized, the freedom of religion and conscience can be diminished, we will next lay the foundation upon which to make the arguments for preserving the right to freedom of religion and conscience. We must first articulate the link between the preservation of the right and the preservation of religion and conscience itself, as some may argue that religion or conscience can still exist even if it is not a constitutional right. While it may be true theoretically that even if the right of freedom of religion and conscience was to be taken out of our *Charter*, that religious beliefs and practices could continue on, in practice, without such legal protections, the maintenance and preservation of religious activities and speech would be fundamentally diminished. Similarly, though to a less extreme degree, some may argue that the freedom of religion and conscience could be limited to just a right to establish and attend places of worship. This view is similarly objectionable, however, because for many, religion encompasses more than the religious activity of worship or the congregation of fellow adherents, and therefore without all of the other aspects and provisions the current constitutional right provides, the freedom of religion would again be fundamentally diminished. This point is echoed by Marshall (2010) who holds that attempts to relegate religion to the private sphere to prevent religious institutions from conducting their activities according to their beliefs threaten this fundamental freedom. "Religious individuals and institutions should be free to exercise their religious belief within their private spheres as well as to engage publicly on the basis of religion" (Marshall, 2010). Canadians should be able to leave or change their religion without fear of persecution, and deserve the right to protection under the rule of law regardless of belief.

Evidence of this direct relationship between the absence of religious freedom as a constitutional right and the lack of religious freedom in society can be seen by looking at jurisdictions in other parts of the world where this right does not exist - China, North Korea or Saudi Arabia. These countries provide clear examples where without the freedom of religion as a provision of the state, religious persecution abounds (Pellet, 2014). Therefore, this essay will operate on the premise that the preservation of the freedom of religion and conscience as a constitutional right can be considered synonymous to the preservation of religious and conscience itself.

We now finally turn directly to the reasons that the freedom and religion and conscience should be maintained. We will first deal specifically with the freedom of religion and address the freedom of conscience in the latter part of this essay.

There are four main reasons that the freedom of religion should be preserved as a constitutional right. Firstly, religious faith can be considered as not simply a matter of “toleration” but can be seen as the exercise of “inherent natural rights.” In other words, religion can, and often is, thought of as a fundamental part of human dignity. At the individual level, for many who practice or identify with a religion, religion can be considered as far more than a lifestyle choice - it is the deepest part of who they are. Religions often provide rites of passage such as marking birth, marriage and death - all core parts of a person’s identity. Consequently, to violate a person’s religious freedom or conscience and require them to act counter to their religious beliefs or practices is a violation of the very core of that person’s being. Meanwhile, at the societal level, religious communities, including churches, temples, mosques, etc. are an essential part of the social and cultural fabric that make up Canada’s identity (Buckingham, 2012). Thus, the freedom of religion and conscience is an integral part of Canada’s identity as a free society. In the words of Chief Justice Dickson who spoke on the right to religious freedom in the first Supreme Court of Canada judgment on section 2(a) of the *Charter*:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct... Freedom must surely be founded in respect for the inherent dignity and the inviolable

rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination (*R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, par. 94).

Therefore, the freedom of religion and conscience concerns the essence of who we are as individual beings and as a country, and thus cannot be easily discarded without changing the very nature of those identities.

Secondly, although it is true that Canada has become an increasingly secularized society, it would be greatly inaccurate to say that religion has altogether lost its value to Canadians. Though religion has had a number of negative connotations attributed to it over history due to its role in the justification of wars and political oppression, it also possesses many inherent benefits that demonstrably holds significant value in many Canadians' lives. There is a vast amount of research that has looked at the effects of participation in religious activity on physical, psychosocial and mental health. A number of sociological studies have indicated positive benefits of religious affiliation for school performance (Schludermann, Schludermann & Huynh, 2000), positive family life (Clark, 1998), physical and mental well-being (Graham & Crown, 2014; Green & Elliott, 2010; Nicholson et al., 2010) and contribution to community life (Bowen, 1999; Guo et al., 2013). Religious institutions are also the source of a great deal of humanitarian work within Canada and internationally, providing much of the funding as well as volunteered human resources for these institutions (Statistics Canada, 2004). Finally, religions generally promote ethical, law-abiding behaviour in their members, thereby fostering "moral self-government" (Sullivan, 1994).

According to Buckingham (2012), "these traditions suffer a loss of function when they are removed from the domain of public life", meaning that if religious adherence is not valued and accommodated and rather impeded from being a part of public life, society will lose the many stated benefits derived from religious practices and their participants.

A third major argument for the preservation of religious freedom and conscience is that if Canada was to diminish its protection of this right, we would be standing apart from many national jurisdictions around the world that we normally consider our peers or models in terms of rights and freedoms. Most of the free democratic world, including our closest allies such as the United States of America, most parts of Europe, Australia, and Japan also have the freedom of religion and conscience as one of their fundamental rights. In fact, Article 18 of the *Universal Declaration of Human Rights* states that, “In international law the freedom of religion and belief is protected by the International Covenant on Civil and Political Rights. This protection extends to specific non-religious beliefs.” Meanwhile, countries such as Burma, China, North Korea, Sudan and Iraq are the ones that have a limited scope in terms of their protection of this right. Would we want to join that grouping of the world? Most certainly not. These countries are often the very ones that Canada has taken steps to criticize.

Finally, religious freedom is strongly related to political liberty, economic freedom, and prosperity. As one researcher of international religious liberty notes, “Wherever religious freedom is high, there tends to be fewer incidents of armed conflict, better health outcomes, higher levels of earned income, and better educational opportunities for women” (Grim, 2008). Grim, Clark & Snyder (2014) also found that religious freedom is significantly associated with global economic growth. The study looked at GDP growth for 173 countries in 2011 and controlled for 24 different financial, social and regulatory influences. It found that “religious hostilities and restrictions create climates that can drive away local and foreign investment, undermine sustainable development, and disrupt huge sectors of economies” (RFBF, 2014). On the other hand, when religious freedom is respected within a company, it can directly benefit the bottom line.

For argument’s sake, let us examine the other side of the coin. What are some of the downsides of preserving the freedom of religion and conscience in Canada? Historically, what have been the costs of its preservation and do they outweigh the benefits of maintaining it as a constitutionally protected right? Opponents of the

preservation of the freedom of religion would argue that religious practices protected by the freedom of religion may conflict with secular law. An example of this would be polygamy, which is permitted in Islam though prohibited by secular law in many countries. This raises the question of whether prohibiting the practice infringes on the beliefs of certain Muslims. A common stance taken by Canadian and American judiciaries on this has been that the freedom of religion cannot imply freedom from law. In 1955, Chief Justice of California Roger J. Traynor neatly summarized this view: “Although freedom of conscience and the freedom to believe are absolute, the freedom to act is not.” If this delineation can be respected and maintained, the cost of such an ideological conflict does not have to impede on the way the freedom of religion and conscience takes shape in a democratic society like Canada.

Another argument used in opposition to religious freedoms points to the divisive effects of religion; on conflict and wars that occur with religious overtones. While this has been true historically, history also shows that in many conflicts, religion has been a positive force of peace and state building. Examples would be the case of Poland and East Germany where civil society began in church basements, or how in South Africa, a national day of prayer contributed to the relative peace in which the 1994 general election was held (Buckingham, 2012).

Thus, while there are undeniably potential as well as real concerns the freedom of religion may bring to society, if policies and safeguards are put in place to limit the potential of conflict with secular law or to prevent religious viewpoints from being abused as political propaganda, these concerns can be minimized.

Finally, we will examine the freedom of conscience. The freedom of conscience is the “freedom to have, hold and act upon (or not) one’s conscientiously-held beliefs” (Peters, 2001). It speaks toward strongly held moral and ethical beliefs that are not religiously motivated. In *R v Morgentatler* [1988] 1 SCR 30, Justice Bertha Wilson wrote,

Certainly, it would be my view that conscientious beliefs which are not religiously motivated are equally protected by freedom of conscience in s. 2(a)...

It seems to me, therefore, that in a free and democratic society 'freedom of conscience and religion' should be broadly construed to extend to conscientiously-held beliefs, whether grounded in religion or in a secular morality. Indeed, as a matter of statutory interpretation, 'conscience' and 'religion' should not be treated tautologous if capable of independent, although related, meaning (pp. 177-178).

As Justice Wilson points out, it is important that the provision for the freedom of conscience exist independent of the freedom of religion because it is possible for one to hold strong moral and ethical beliefs outside the bounds of religion. Much of the same rationale provided previously applies to the argument that the freedom of conscience should be a fundamental right.

These various arguments for the value of preserving the freedom of religion and conscience make it clear that the benefits of doing so greatly outweigh the possible costs. The premise that because Canada is increasingly becoming a secularized society it no longer needs to maintain religious freedoms is a faulty one in light of the values of a free and democratic society. The benefits to Canadians at a societal, community and individual level also are numerous enough that the diminishment of religion would change who we are as Canadians and be a detriment to the vibrant and free society in which we live in. Finally, we should be proud to stand alongside our allies and peers on the global stage in preserving and defending the right of our citizens to claim this fundamental right.

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