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ARTICLE

THE PARADOX OF THE BLACK CHURCH AND RELIGIOUS FREEDOM

BY JACQUELINE C. RIVERS* **

INTRODUCTION

Considerable attention has been paid to religious freedom claims and the laws that protect those freedoms; less attention has been paid to how religious freedom is used. African Americans, from the time of slavery, have been greatly impacted by how whites enacted their religious freedoms, and even more by how blacks themselves did so. The Civil Rights Movement of the 1960s and the abolitionist movement were among the most consequential exercises of enacted religious freedom. Both of these efforts transformed the nation. The benefits that African Americans derived from these struggles might lead one to expect that the black church would be a natural ally in the struggle to defend religious freedom in the United States. Moreover, black people, given the moral standing derived from their being targets of the most egregious and violent racial hostility in the U.S., are uniquely positioned to rebut a popular argument being made against religious freedom, that it is tantamount to discrimination. However, whites have used their religious freedom to the great detriment of blacks. In the middle of the twentieth century, they justified hostile actions against blacks with claims of religious freedom. In addition, the whites who most vigorously made appeals to religious freedom were those associated with the defense of slavery and with racial hatred during the early and mid-twentieth century. As a result, blacks are now slow to identify with religious freedom, threatening the loss of a valuable partner in maintaining religious rights in America.

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** While the citations in this article generally conform with the Bluebook, paragraphs summarizing a single work are cited with a single footnote at the end of the paragraph in accordance with the American Sociological Association Style Guide ("ASA Style Guide"). The ASA Style Guide discourages the use of footnotes because "[n]otes can be distracting to the reader." AM. SOCIOLOGICAL ASS'N, AMERICAN SOCIOLOGICAL ASSOCIATION STYLE GUIDE 59 (4th ed. 2010).

Enacted religious freedom is an important concept central to discussing the consequences of the First Amendment for African Americans. Much of the discussion around this subject to date has focused on the underlying principles and how they ought to be applied in specific conditions or their implications in specific cases before the courts. Enacted religious freedom by contrast focuses on how religious freedom is used, often taken for granted, often without specific claims of that right being made. To ground the discussion of the effect on the black community, this essay opens with a very brief consideration of the history and principles of religious freedom in the United States, which demonstrates the enduring importance of religious practice in the formulation of this right. Since this has been particularly significant for African Americans, the impact of the use of religious freedom on blacks in three time periods is reviewed: during the Antebellum Period, in the mid-twentieth century Civil Rights Movement, and in the twenty-first century. Prior to the Civil War, religion played a pivotal role, both for good and for ill, in an issue fundamental to the wellbeing of black people: slavery. The actions justified by the faith commitments of both blacks and whites were pivotal in this period, a fact that was perhaps unsurprising in an era when religion was a significant force in the lives of the overwhelming majority of the population. A hundred years later, while the centrality of religion had declined to some extent, it was still a potent force in the United States. Once again, religiously inspired action was critical to another great event in the lives of blacks, the Civil Rights Movement.

The life and work of Rev. Dr. Martin Luther King, Jr. provides a powerful example from that era. By the dawn of the twenty-first century, there had been a further decline in the societal influence of religion, but in the black community, faith commitments have remained strong and continue to play an important role in meeting the needs of the poor. Clearly enacted religious freedom has been important for blacks throughout their history in the United States. A discussion of the paradox of their failure to engage in the struggle to ensure support for religious freedom in the current period, given its importance in their history, closes the essay.

I. THE CENTRALITY OF PRACTICE: RELIGIOUS FREEDOM AND THE FOUNDERS

The Constitution of the United States places a premium on religious freedom, giving it pride of place in the First Amendment. One important precursor to the First Amendment was the Virginia Statue for Religious Freedom, drafted by Thomas Jefferson. In arguing for religious freedom, Jefferson, who was heterodox by Christian standards, stated that God had created human beings with free minds and intended that they should remain that way: "Almighty God hath created the mind free and manifested his

Supreme will that free it shall remain.”¹ The act was intended to guarantee the freedom to hold and practice even unpopular religious beliefs without any burdens being inflicted as a result. In drafting the act, Jefferson appears to have drawn on the thinking of one of the early church fathers from Africa, Tertullian; in a related document, *Notes on the State of Virginia*, he penned a marginal reference to a text in which Tertullian defends religious freedom as a natural right, as Jefferson himself does.² Similarly, James Madison, who drafted the Bill of Rights, argued for religious freedom in both belief and practice, stating, “The religion then of everyman must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.”³

The First Amendment builds on these ideas in declaring the right to the “free exercise” of religion. In his analysis of this clause, Thomas Farr argues for the universal agreement among the Founders of the United States on the importance of religion. Though there were vigorous debates about the establishment of religion that were resolved in differing ways in different colonies, by the time of the Revolutionary War, the leaders had come to the conclusion that religious freedom was essential to a liberal democracy and that the establishment of religion hindered that right. As Madison put it, religious duty is “precedent, both in time and degree of obligation to the claims of Civil Society.”⁴ There was also widespread agreement at that time that the success of the republic depended on the moral virtue of its citizens and that religion had a vital role to play in shaping their consciences. Furthermore, since it was that sense of right and wrong that would place limits on the power of the state and hold officials accountable, it was essential that the government not control either religious belief or practice. The importance of the latter is clear from the wording of the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” The use of the words “free exercise” was deliberate; the drafters of the amendment had considered “rights of conscience” as alternative wording to protect religious freedom.⁵

The decision to enshrine the words “free exercise” in the Constitution gives evidence of the drafters’ desire to protect not merely the right to religious belief, but also to protect the right to a way of life consistent with those

1. Nicholas Wolterstorff, *Why There Is a Natural Right to Religious Freedom*, in *HOMO RELIGIOSUS? EXPLORING THE ROOTS OF RELIGION AND RELIGIOUS FREEDOM IN HUMAN EXPERIENCE* 195, 209 (Timothy Samuel Shah & Jack Friedman eds., 2018) (quoting Thomas Jefferson).

2. Timothy Samuel Shah, *The Root of Religious Freedom in Early Christian Thought*, in *CHRISTIANITY AND FREEDOM: HISTORICAL PERSPECTIVES* 33–61 (Timothy Samuel Shah & Allen D. Hertzke, eds., 2016).

3. Quoted in Wolterstorff, *supra* note 1, at 210.

4. U.S. CONST. amend. I; Thomas F. Farr, *The Ministerial Exception: An Inquiry into the Status of Religious Freedom in the United States and Abroad*, in *RELIGIOUS FREEDOM AND THE LAW: EMERGING CONTEXTS FOR FREEDOM FOR AND FROM RELIGION* (Brett G. Scharffs, Asher Maoz & Ashley Isaacson Woolley, eds., 2018).

5. Farr, *supra* note 4.

beliefs. Such action had to take place both in private and in the public square to be consistent with the high esteem in which religious duty was held. Protection of religious practice in the public square is also essential if in fact religious conviction is to be effective in promoting the welfare of the republic as a whole. Furthermore, since the First Amendment protects the free exercise of religion it indubitably involves not merely individuals, but institutions as well.

One extremely influential study of religion, *The Elementary Forms of Religion*, by the eminent sociologist Émile Durkheim, analyzes the centrality of communal experience to the practice of religion.⁶ While there have always been individuals who eschewed organized religion, the majority of those involved with religious practice hold common beliefs with a community of co-religionists with whom they also engage in public religious practice both in houses of worship and in the wider society. In addressing the “exercise of religion” the drafters of the First Amendment were protecting institutionalized religion as well as the rights of the individual. In short, the signers of the U.S. Constitution and their peers unquestionably held religion in very high esteem. They sought to protect both the right to hold religious beliefs and to act in a manner consistent with those beliefs in the public square. And they clearly intended to defend the rights of institutions as well as those of individuals.⁷

Despite the high ideals often expressed by the American Founders, there were glaring violations of those very principles incorporated into the documents they crafted and the way of life they instituted. The most egregious example of this is the relegation of enslaved Africans to the status of three-fifths of a person. In agreeing to this devil’s bargain, the Founders both denied the full humanity of the people on whose backs the wealth of the South, and indeed of the whole nation, was built. At the same time, this formulation, through a cruel irony, gave the South enormous and unjust political power, since its representation in Congress was thereby calculated based on large numbers of enslaved people who had no right to vote or otherwise participate in the political process.

However, this is not the only example of the hypocrisy of the founding generation. Almost all of them were slaveholders, despite claims to despise slavery from those such as Thomas Jefferson. Similarly, though Southerners claimed religious freedom for themselves, they denied it to others. They subverted the logic of their own documents to uphold a system that enslaved blacks. The Fundamental Constitutions of Carolina were explicitly written, by no lesser man than John Locke, so as to prevent slaves from

6. ÉMILE DURKHEIM, *THE ELEMENTARY FORMS OF RELIGIOUS LIFE* (Carol Cosman trans., Oxford 2001) (1915).

7. See FARR, *supra* note 4.

suing for freedom on the basis of a clause in English Common Law, which prohibited the enslavement of fellow Christians.⁸

The question of practice has always been central to the issue of religious freedom. While the First Amendment is undeniably a noble statement protecting religious freedom, its framers *acted* in a way that undermined religious freedom. The very act of formulating the laws of the colonies was a denial of the freedom of enslaved people who shared the faith of the writers.⁹ Action based on religious belief and the assumption of the right to be guided by those beliefs has continued to be extremely significant in American society. Many actions motivated by religious beliefs are carried out without any reference to religious freedom; rather there is an unquestioning presumption of the right to exercise that freedom, to act as one's faith convictions dictate without the expectation that such an action might be prohibited or otherwise constrained. This is what I have been referring to as enacted religious freedom: acting in a manner consistent with faith commitments even when appeals to religious freedom are not expressly articulated by the actors. In situations where religious freedom is limited, individuals frequently self-censor, particularly when the price of religious action is high. However, some individuals act in accordance with their faith regardless of the price. In cases where the penalty for acting on a particular religious belief is moderate, more individuals are likely to push the permitted boundaries. For African Americans, their assumptions regarding their freedom to act on religious beliefs has had an enormous impact on their lives. Similarly, religiously motivated actions by whites have been very important for blacks, for good or for evil.

A very brief sampling of black history clearly supports this claim. The enacted religious freedom of both blacks and whites shaped the lives of African Americans in the Antebellum Period when religiosity in the society was very high, as it did in the middle of the twentieth century, when it was lower, though still very significant. Even today, when religion is much less important in the life of the nation, enacted religious freedom plays a key role in the black community.

II. ENACTED RELIGIOUS FREEDOM IN THE ANTEBELLUM PERIOD

The first examples of enacted religious freedom to be discussed relate to the Antebellum Period when there was enormous ferment regarding the institution of slavery. The relationship between religious freedom and slavery is a very complicated one. On one hand, slaveholders and other proponents of slavery advanced arguments based on their reading of the Bible to

8. TISA WENGER, *RELIGIOUS FREEDOM: THE CONTESTED HISTORY OF AN AMERICAN IDEAL* 8–10 (2017).

9. HENRY H. MITCHELL, *BLACK CHURCH BEGINNINGS: THE LONG-HIDDEN REALITIES OF THE FIRST YEARS* 23–45 (2004).

justify the institution.¹⁰ They acted on these religion-tinged premises, assuming their right to religious freedom both in the public sphere and in their private lives, to perpetuate the egregious injustice of Southern slavery. On the other hand, abolitionists, both black and white, opposed slavery almost universally on the basis of their faith commitments and, I argue, through exercising their religious freedom.¹¹ In both cases, there were enormous impacts, some negative, others positive, on African Americans from whites' enacted religious freedom—their assumption that they could act on religious principles in the public square.

A. *Slavery and Religious Freedom*

Southern slaveholders attempted to defend the enslavement of blacks based on the Bible. Fox-Genovese and Genovese point out that, to them, religious motives were inseparable from political and economic action.¹² Southern clerics argued that not only was slavery permitted, but that it was ordained by the Bible. They based this claim on a number of scriptures. The most important was regarding the structure of the household of Abraham in the book of Genesis, which records that he had large numbers of retainers, using a word that could be applied to slaves. In addition to this, they pointed out that the ancient Israelites were permitted to enslave other peoples, and in particular were instructed to hold Canaanites in perpetual slavery. One particularly powerful proponent of these arguments was Reverend Thornton Stringfellow, who asserted in addition to all the above that the Ten Commandments ordained slavery. His powerful propaganda was published in Virginia in 1860.¹³

Their arguments were not limited to the Old Testament, but rather included the claim that Jesus had failed to repudiate slavery, though He spoke forcibly against many other social evils. Finally, they pointed to the letter of the Apostle Paul to Philemon, arguing that he had not condemned slavery or even required that Onesimus, Philemon's slave, be set free. Instead Philemon is commanded to forgive his slave and restore him as a brother. Southern clerics saw in this a concern for humane conditions rather than a repudiation of the institution.¹⁴

Furthermore, the most politically powerful argument made by the divines in the South was that of the Hamitic curse, which they used to justify the grounds for racialized slavery. They argued that when Noah's son,

10. THORNTON STRINGFELLOW, *SLAVERY: ITS ORIGIN, NATURE AND HISTORY* (Alexandria, Va. Sentinel Office 1860).

11. PARKER PILLSBURY, *ACTS OF THE ANTI-SLAVERY APOSTLES* (Rochester, Clague, Wegman, Schlicht & Co. 1883).

12. ELIZABETH FOX-GENOVESE & EUGENE GENOVESE, *THE MIND OF THE MASTER CLASS: HISTORY AND FAITH IN THE SOUTHERN SLAVEHOLDERS' WORLD VIEW* 484 (2005).

13. STRINGFELLOW, *supra* note 10.

14. FOX-GENOVESE & GENOVESE, *supra* note 12, at 505–27.

Ham, was cursed in the book of Genesis, he was condemned to slavery, and with him all of his descendants, whom they asserted, without justification, were black. On these grounds they maintained that enslaving all people of African descent was mandated. Northern abolitionists repudiated this argument, showing that there was no connection in the Bible between the descendants of Ham and Africans; indeed, in the fourth century, church fathers such as Augustine rejected a racial interpretation of the passage altogether. In response to this challenge, some in the South reverted to a position of defending slavery in the abstract. Some among them even went so far as to argue that “slavery is the best possible relation between the employer and the laborer.”¹⁵

Not only did Southerners invoke scriptural precedents to defend slavery, they also claimed that abolitionists infringed upon their religious freedom. They maintained that abolitionists were interfering with their right to follow their conscience on the issue by advocating for the position that slavery was a sin in and of itself.¹⁶

In addition to refuting any basis for racial slavery, Northern clergy were able to challenge the conditions under which enslaved people in the South were held. If, as Southerners claimed, the basis of slavery was the biblical model, then slaves in the South should be treated with the same respect and freedom as Abraham’s household. Southerners recognized how far short of this standard their society fell and that, not only was it nearly impossible to make the transformations necessary to reach that goal, but that to do so would end slavery and substitute a form of serfdom in its place.¹⁷

The strengths and limitations of the arguments made of Southerners notwithstanding, clerics, slaveholders, and politicians all assumed the right to act in accordance with their religious beliefs. In some cases, they even made direct appeals to religious freedom, all to the great detriment of African Americans.¹⁸ The discussion will now turn to how both black and white abolitionists enacted their religious freedom.

15. *Id.* at 525.

16. WENGER, *supra* note 8, at 192.

17. FOX-GENOVESE & GENOVESE, *supra* note 12, at 505–27.

18. Timothy Shah argues that religious freedom which brings harm to others, as the enacted religious freedom of the proponents of slavery did, is not religious freedom at all. Yet this seems an unsatisfactory definition, functional in nature. It is based on the effect of the action rather than on its motive, a sincere and deeply held religious belief. Any action proceeding from such a motive is bound to be reviewed on the basis of religious freedom. Indeed, it is possible for the same action to be viewed as harmful by some and helpful by others. For example, the religiously motivated work of abolitionists is widely regarded as highly admirable today but was seen as very detrimental by slaveholders in the Antebellum Period. Surely it is the religious conviction behind the action that makes it an example of enacted religious freedom. However, all such actions must be weighed against the rights and freedoms of other individuals in the society and for that reason the exercise of slaveholders’ religious freedoms should not have held. What might be a more telling critique is to argue that Southerners and other proponents of slavery were not genuinely

B. Abolitionism and Religious Freedom

The case for the abolition of slavery was made on religious grounds by William Lloyd Garrison and his other white abolitionists in the American Anti-Slavery Society beginning in the early nineteenth century. Many of them were pastors from various denominations who maintained that slavery violated the biblical message of the brotherhood of all humans. They called for an immediate end to slavery throughout the United States. In addition, they demanded that churches expel slaveholders from their congregations, exercising discipline over them as they would over repeat drunkards, fornicators, and other sinners. Most denominations, both in the North and in the South, rejected these arguments, refusing to condemn slavery outright as a sin. However, a few of the smaller denominations, such as the Quakers, held positions on slavery that were very similar to that of the abolitionists. With the failure of many denominations, such as the Congregationalists, to refuse to fellowship with slaveholders, a number of abolitionists, known as “come-outers,” stopped attending church and some disfellowshipped their churches, excommunicating their congregations. In some cases this was in response to their denominations’ attempt to discipline them for their non-attendance.¹⁹

The abolitionists vehemently attacked the church hierarchy and other members of the clergy who rejected their position on slavery. Their constant agitation led to a split along North-South lines in Baptist, Methodist, and Presbyterian congregations, following the 1840s and 1850s national convocations. Northerners, while not willing to condemn slavery as sin or expel slaveholders from their fellowships, refused to name men who held slaves as bishops or missionaries for their churches. Southern churchmen were outraged, and split their denominations into northern and southern wings. However, an explicitly Christian version of abolitionism arose that was less hostile to the hierarchy of the church in the form of the American and Foreign Anti-Slavery Society. These leaders organized to end slavery but were less biting in their critique of the churches.²⁰ Abolitionist clergy, whether in the American Anti-Slavery Society or in the American and Foreign Anti-Slavery Society, were not the only voices calling for the abolition of slavery. However, their use of their religious freedom to make faith-based arguments against slavery was critical to the growing ferment that ultimately culminated in the Civil War and emancipation.²¹

motivated by deeply held religious motives, but were acting to perpetuate their power and wealth, and merely used biblical texts out of context to provide a rationale for their actions. Shah, *supra* note 2.

19. PILLSBURY, *supra* note 11, at 307.

20. JOHN R. MCKIVIGAN, *THE WAR AGAINST PROSLAVERY RELIGION: ABOLITIONISM AND THE NORTHERN CHURCHES, 1830–1865*, at 15–21, 67, 90–92 (1984).

21. *Id.* at 13–17.

Black abolitionists, many of whom were former slaves, were also extremely influential in the struggle to end slavery. For example, Frederick Douglass was the preeminent orator of the period, working closely with William Wilberforce and lobbying Abraham Lincoln to emancipate the enslaved people. As a radical abolitionist, he was a millenarian who believed in God's imminent judgment on the United States for the sin of slavery. This belief led to his embrace of the approach of violent overthrow of the institution and his evolution to advocacy against slavery beyond the projects of William Lloyd Garrison and the American Anti-Slavery Society.²² Also, Harriett Tubman ferried hundreds of slaves to freedom in the North and spoke out against the institution.

Sojourner Truth was a Christian who enacted her religious freedom in working against slavery on theological grounds. Truth travelled widely, giving antislavery lectures and challenging racist notions of blacks that were used to justify slavery by the exhibition of her prowess in reasoning. She spoke out against slavery in women's rights meetings, a move that was not welcomed by feminists, such as Jane Swisshelm, who opposed joining the antislavery work to the women's rights cause. As a devout Christian, Truth spoke primarily in biblical terms, combining antislavery messages with extremely effective humor that allowed her to advance harsh criticism of white supremacy. As she rose to greater prominence due to the work of Harriett Beecher Stowe and Frances Dana Gage, other feminist abolitionists, Truth used her campaign for the reelection of Abraham Lincoln, which she saw as key to the antislavery cause. Sojourner Truth's millenarian faith was the basis of her belief that whites would soon face terrible divine judgment for slavery and drove her work to end the institution.²³

Other free blacks such as James McCune Smith and David Walker worked for the abolition of slavery on the grounds of their faith. David Walker's searing *Appeal to the Colored Citizens of the World* was a millennial vision that called down God's judgment on whites and urged enslaved blacks to rise up violently against slaveholders. But he went further, calling for black unity on the basis of "a collective mission founded on a special, 'chosen,' relationship with God."²⁴ McCune Smith joined with Frederick Douglass, Gerrit Smith, and John Brown to embrace radical abolitionism, advocating the violent overthrow of slavery, which Brown ultimately sought to carry out at Harper's Ferry.²⁵ McCune Smith sought not only to end slavery but to demonstrate that blacks were the equal of whites and that

22. JOHN STAUFFER, *THE BLACK HEARTS OF MEN: RADICAL ABOLITIONISTS AND THE TRANSFORMATION OF RACE* 1-7 (2001).

23. NELL IRVIN PAINTER, *SOJOURNER TRUTH: A LIFE, A SYMBOL* (1996).

24. DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF EMANCIPATION* 209-16 (2014) (quoting David Walker); WENGER, *supra* note 8, at 186-89.

25. STAUFFER, *supra* note 22, at 42-44.

with time and opportunity for blacks to progress socially, the two races could live together harmoniously.²⁶

Despite internal controversies between different factions of the anti-slavery movement and the repudiation by some activists of the mainline churches, it is clear that the driver of abolitionism was issues of religious conviction and conscience. The theological ideas of Arminianism, perfectionism, and beneficence that flowed from the Second Great Awakening transformed religious views and convinced many Christians that slavery was a sin that had to be repented of immediately. For that reason they championed immediate abolition. Their determined advocacy shifted attitudes towards slavery in the church and in society at large. In the words of abolitionist Charles K. Whipple, “the Anti-slavery movement . . . was at its commencement, and has ever since been, thoroughly and emphatically a religious enterprise.”²⁷

Religious arguments and deeply held religious motivations were at the heart of the abolition movement, making it a powerful example of enacted religious freedom even though few if any appeals to religious freedom were made. While, at the same time, the spectacular levels of wealth and profit that the slave trade and the use of slaves generated were the true grounds for many centuries of enslavement of blacks, these reprehensible practices were also defended vigorously on what were claimed to be biblical grounds. Given the taken-for-granted nature of religious belief and action at the time, it is not surprising that it is difficult to find efforts to invoke religious freedom in defense of arguments or actions either for or against slavery. Nonetheless, it is undeniable that the exercise of that freedom had a powerful effect on enslaved blacks. The continued importance of enacted religious freedom for black people is evident in the next period to be examined, the Civil Rights Movement.

III. THE CIVIL RIGHTS MOVEMENT AND RELIGIOUS FREEDOM

The Civil Rights Movement was an extraordinarily powerful display of enacted religious freedom that transformed the South and the nation and reverberated around the world. Black Americans turned out by the thousands on the streets of cities such as Birmingham, Alabama, organized bus boycotts across the South, demanded full access to retail services, and integrated transportation across multiple states. They faced unbelievable levels of violence from informal groups such as the Ku Klux Klan and from official law enforcement agencies, both on the streets in front of television cameras and at night in unseen alleys or out in the countryside. Through it all, they maintained awe-inspiring discipline, appearing in their Sunday best to march, facing down hostile sheriffs to register to vote, never retaliating

26. DAVIS, *supra* note 24, at 216–25.

27. MCKIVIGAN, *supra* note 20, at 18 (quoting Charles K. Whipple).

against the violence directed against them. Religious faith was the driving force that empowered the sacrifice and victory of the Movement.

A. *The Institutional Power of the Black Church*

For African Americans in the middle of the twentieth century, the black church was the institutional hub of the community. For decades, the black church had functioned as the only social organization in which blacks could participate fully in a segregated world. It provided a venue for the development of social solidarity, and a setting in which a shared worldview could be developed, and common burdens imposed by segregation and oppression were borne collectively. Simultaneously, it offered the opportunity, particularly in urban churches that had a larger population from which to attract a congregation, for the growth and refinement of organizational and management skills.²⁸

Another critical feature of the black church was its autonomous nature: funded entirely by black people it was independent of the white power structure and of white individuals. Large churches, which could afford to pay a fulltime minister, also gave the pastor an important level of freedom, since he too was independent of the strictures of the white community. The black church served largely as a self-determining power base, and a means for the pastor to mobilize large numbers of people with minimal interference from whites. Yet churches were also organized into local affiliations, often in the form of an interdenominational ministerial alliance, which allowed them to cooperate on major issues and to reinforce each other. All these strengths served the Civil Rights Movement that was based largely in black churches.

However, the black church was not merely the equivalent of an effective social club where members could find emotional affiliation and personal growth. Nor was it just a version of a financial institution that allowed participants to draw on the strength of the collective to manage fiscal crises. Members did not attend primarily for the benefits of communal life. Instead the black church was profoundly rooted in an evangelical Christianity that took seriously belief in the supernatural life, death, and resurrection of Jesus Christ; it was an institution that embraced the concepts of sin, grace, and forgiveness. The church believed in the sovereignty of an eternal God who dispensed justice and would one day bring about righteousness in every sphere of life and would wreak vengeance on all who had been agents of evil and injustice. These beliefs had empowered African Americans as far back as the nineteenth century slave rebellions under Nate Turner and Den-

28. Recent quantitative research has shown a positive relationship between the development of such skills and social activism among church members. See R. Kahri Brown & Ronald E. Brown, *Faith and Works: Church-Based Social Capital Resources and African American Political Activism*, 82 Soc. FORCES 617 (2003).

mark Vesey. In the middle of the twentieth century, they still provided strength for blacks who were embedded in the church to meet the ongoing burdens of their individual and collective lives.²⁹ Central to the existence and operation of the black church were deeply held religious beliefs that were lived out daily—examples of enacted religious freedom.

The church provided the base from which the massive, multi-year organizing effort that ended segregation in the South was launched and maintained. Pastors and leaders planned strategy together in their churches; students and others attended training sessions during the day; and adults met at night to sing hymns, pray at length, and listen to rousing sermons. These activities sustained both the planning and the resolve needed to carry out the resulting schemes. As Aldon Morris summarized it:

The black church functioned as the institutional center of the modern civil rights movement. Churches provided the movement with an organized mass base; a leadership of clergymen largely economically independent of the larger white society and skilled in the art of managing people and resources; an institutionalized financial base through which protest was financed; and meeting-places where the masses planned tactics and strategies and collectively committed themselves to the struggle.³⁰

The black church was evidently a driving force behind the Civil Rights Movement. It was the church's organizational power and its faith-based mass meetings that led to the Movement's great success.

The spiritual practices that were such an effective means of rallying the masses have another function for those who seek to understand the power of the Movement. The preaching, prayer, and singing reveal the motivation of black people who braved such virulent attacks to undermine a racist system in the South. Cornel West brilliantly describes the powerful worship style that saturated those services as "kinetic orality," a hallmark of the black church.³¹ The term captures the energy and the movement of the preaching, singing, and prayer. This manifestation of the faith tradition is greatly influenced by the African roots of the black community, but also by faith commitments to "praise [the Lord] with . . . dancing . . . praise him with the clash of cymbals, praise him with resounding cymbals"³² to "shout praises to the Lord."³³ The courage of the civil rights protesters was deeply rooted in their faith: being on the streets in opposition to racist sheriffs and facing down violent mobs were acts of religious freedom. Black Christians

29. CORNEL WEST, *THE CORNEL WEST READER* 426–30 (1999).

30. Aldon Morris, *The Black Church in the Civil Rights Movement: The SCLC as the Decentralized, Radical Arm of the Black Church*, in *DISRUPTIVE RELIGION: THE FORCE OF FAITH IN SOCIAL MOVEMENT ACTIVISM* 29, 29 (Christian Smith ed., 1996).

31. WEST, *supra* note 29, at 428.

32. *Psalm* 150:4–5 (New International Version).

33. *Psalm* 146:1 (Contemporary English Version).

asserted the right, despite virulent opposition, to follow the commitment to justice that arose from their faith, in a display of enacted religious freedom.

The Southern Christian Leadership Conference (SCLC), one of the most important organizations in the Civil Rights Movement, capitalized on these strengths. It brought together churches, ministerial alliances, and other church-based groups into a joint effort to pursue civil rights for blacks. Other community-based organizations were also allowed to join the SCLC, but it was overwhelmingly a faith-based operation. The SCLC grew out of the recognition among Northern supporters of the movement, such as Ella J. Baker, Bayard Rustin, and Stanley Levison, for the need of a decentralized organizing hub for the many independent efforts to desegregate local buses that had arisen in response to the successful bus boycott in Montgomery. Being in a loose affiliation with each other allowed activists in Montgomery, Tallahassee, New Orleans, Atlanta, Nashville, Baton Rouge, and other cities in sixteen states across the South, to share ideas, strategies, and encouragement as they tackled issues of pressing concern to large numbers of blacks. Given the many efforts to address segregation in local transportation, the original name of the organization was the "Southern Negro Leaders Conference on Transportation and Non-Violent Integration."³⁴ However, as the name evolved, Rev. Dr. Martin Luther King, Jr. insisted that the title "Southern Christian Leadership Conference" be adopted to reflect its deep roots in the church.³⁵ The SCLC demonstrated the efficaciousness of the institutional power of the black church, power that was tied to faith-based action and brought about vast improvements in the lives of black people, who asserted the right to act on their religious commitments, another example of enacted religious freedom.

B. The Ideology Behind the Institution

A closer analysis of *Weltanschauung* of the black church further demonstrates that the mass action of the Civil Rights Movement was motivated by religious convictions. A powerful ideology was required to empower and motivate thousands of black people to be involved; that impetus came from their Christian faith. Morris argues that Christian teaching, which for the first half of the century had focused on spiritual fulfillment in the afterlife and turning the other cheek to social oppression and injustice, was re-oriented by Rev. Dr. Martin Luther King, Jr. He promoted an approach that boldly embraced the pursuit of social justice:

But religion true to its nature must also be concerned about man's social conditions. . . . Any religion that professes to be concerned with the souls of men and is not concerned with the slums that

34. Morris, *supra* note 30, at 37.

35. DAVID GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 97 (1999).

damn, the economic conditions that strangle, and the social conditions that cripple them, is a dry-as-dust religion.³⁶

King articulated the implications of what Cornel West views as one of four key themes in the black church: the infinite worth of every human life.³⁷ The Christian doctrine of the *imago dei* provided the basis for the deep-seated belief of African Americans in their own personal dignity despite the unrelenting challenges that came from racist humiliations that threatened to negate their sense of self-worth. Another key theme that West explores is a commitment to the social responsibility of Christians that fueled a passionate pursuit of justice and redress from wrongs. These themes appear more strongly at some times in the life of the black church than at other times; the Civil Rights Movement was a gripping manifestation of these aspects of the religious beliefs of the black church.³⁸

Furthermore, since King's call to resist injustice was usually couched in biblical language and metaphors, it moved the faithful to action as no mere appeal to resist segregation and racial injustice would have done. King recognized that his hearers adhered to an "oppositional civic culture," which was oriented towards civic order as much as it was steeped in stories of biblical justice, such as the exodus of the Israelite slaves. It was not only biblical language that was important; the operationalization of those ideas through nonviolence was also aligned with the cultural orientation. The embrace of dignified nonviolent behavior and respectable attire appealed to civic-minded, church-going blacks as a vehicle to express their outrage at racial injustice and to demand the right to vote.³⁹ Enacted religious freedom was clearly at work in the Civil Rights Movement: in the role that houses of faith played, in the leadership of clergymen, in the participation of adherents, and in the use of biblical language and metaphor. Without the right to assemble freely in churches and to act on deeply-held religious beliefs, the faithful who fueled the movement would have been unable to act. Just how pivotal religious belief was in motivating the movement can be explored by examining some aspects of the life of Rev. Dr. Martin Luther King, Jr., a towering figure of the movement.

C. *A Key Figure: Rev. Dr. Martin Luther King, Jr.*

At the heart of King's vision was a complex and evolving theology. David J. Garrow, author of the definitive single-volume biography of King, *Bearing the Cross*, argues that King's point of departure was a fundamentalist faith although he challenged it even during his teenage years.⁴⁰ Ac-

36. *Quoted in id.*

37. WEST, *supra* note 29, at 426–30.

38. *Id.*

39. Allison Calhoun-Brown, *Upon This Rock: The Black Church, Nonviolence, and the Civil Rights Movement*, 33 PS: POL. SCI. AND POL. 168, 173–74 (2000).

40. GARROW, *supra* note 35, at 34.

According to Garrow, this trajectory accelerated during his years at Morehouse College when King “‘came to see that behind the legends and myths of the Book were many profound truths which one could not escape . . . [and] the shackles of fundamentalism were removed’ from his mind.”⁴¹ However, Cornel West interprets King’s evolution differently, perceiving merely youthful rebellion in his early struggles with the faith. West rejects the implication that the black church practiced the fundamentalism typical among white evangelicals. The faith and praxis of the black church differed in important ways from fundamentalism, which was both legalistic and literalist, bordering West says, on bibliolatry. In contrast, while the black church took the Bible as the definitive guide for life, adherents were more flexible in their understanding of it, remaining open to the leading of the Holy Spirit. The theology that King was taught early in life was far more than mere fundamentalism. As a result, his belief system had the power and flexibility to serve as the foundation for King’s spiritual evolution. The central precepts that guided the black church shaped his reaction to the doctrinal interpretations that he encountered in his intellectual development.⁴²

At Crozer Seminary, King enriched his core theology, embracing the ideas of the social gospel proposed by Walter Rauschenbush, that religion was not merely spiritual practices unrelated to the practical realities of life, but that the church should be involved in serving the needy in society and in pursuing social justice. Yet the social gospel was an extension of a theme fundamental to the black church that every human being possessed intrinsic worth. That theme shaped the resistance to oppression that the black church had long practiced.⁴³

Another important influence in King’s development was the pragmatic approach of Protestant theologian Reinhold Niebuhr, who asserted that the proponents of the social gospel underestimated the potency and reach of sin. Instead Niebuhr maintained that it required the exercise of power to constrain the operation of evil. King sought to integrate Rauschenbush’s optimistic vision of humankind with Niebuhr’s realism, being convinced of the power of aspects of both approaches. The Hegelian dialectic proved a powerful intellectual tool to address the apparent dichotomy between these two theological positions. Resolving Rauschenbush’s thesis of the social gospel with Niebuhr’s antithesis of the exercise of power, King developed his own synthesis: an ethic of love at the interpersonal level combined with the use of political power to overcome opposition to social justice at the societal level. King opined: “The balanced Christian must be both loving and realistic Whereas love seeks out the needs of others, justice . . . is a

41. *Id.* at 37.

42. WEST, *supra* note 29, at 429–30.

43. *Id.* at 430–34.

check (by force, if necessary) upon ambitions of individuals seeking to overcome their own insecurity at the expense of others.”⁴⁴

King responded with skepticism to some of the intellectual currents that he encountered as a young man. This was his initial reaction to the non-violent philosophy of Mahatma Gandhi. Despite his reservations, King ultimately committed himself to the nonviolent approach. An early sermon from his pulpit at Dexter Avenue Baptist Church in Montgomery provides evidence of the connection King drew between the Christian faith and nonviolence: he cautioned in the strongest terms against the use of violence and equated it to the use of “Christian methods and Christian weapons.”⁴⁵ In the same sermon, King quotes Jesus’s command to love our enemies in connection with his call for mass nonviolent resistance. West draws the parallel between Gandhian nonviolence and Jesus’s “love ethic.” Furthermore, nonviolence was the perfect answer to both Marx’s historical materialism and Nietzsche’s nihilism.⁴⁶ The practice eschewed both the predatory selfishness of capitalism and the atheism of the Marxian alternative while providing hope in defiance of Nietzschean despair. The nonviolent response to racial violence was the supreme example of Christ’s command to “turn . . . the other cheek.”⁴⁷ Its appeal to King arose not merely from its political expediency, powerfully demonstrated by Gandhi’s movement, but also from its coherence with Christian teaching.

Ultimately, King’s synthesis of Rauschenbush’s social gospel and Niebuhr’s realism, coupled with the philosophy of nonviolent resistance, was a great match for the practice of the black church. In resisting racial oppression, blacks had for decades organized mass rallies and marches as a means of protest. When implemented with King’s radical commitment to nonviolence, it was the perfect response to the overwhelming white violence that blacks confronted in the South ever since the days of slavery, right through the first half of the twentieth century. Civil rights activists were trained to give a loving response to whites’ spoken invective and physical attacks: they did not respond in kind, whether verbally or otherwise.⁴⁸ It was a perfect example of King’s take on the social gospel, a loving interpersonal response even in the face of violence.

44. GARROW, *supra* note 35, at 34.

45. Martin Luther King, Jr., ‘The Most Durable Power,’ Excerpt from Sermon at Dexter Avenue Baptist Church (Nov. 6, 1957), in *THE PAPERS OF MARTIN LUTHER KING, JR. VOLUME VI: ADVOCATE OF THE SOCIAL GOSPEL, SEPTEMBER 1948–MARCH 1963*, at 302 (Clayborne Carson et al. eds., 2007).

46. WEST, *supra* note 29, at 432.

47. *Matthew* 5:39 (New International Version).

48. Randolph Hohle, *The Body and Citizenship in Social Movement Research: Embodied Performances and the Deracialized Self in the Black Civil Rights Movement 1961–1965*, 50 *SOC. Q.* 283, 293–94 (2009); DOROTHY F. COTTON, *IF YOUR BACK’S NOT BENT: THE ROLE OF THE CITIZENSHIP EDUCATION PROGRAM IN THE CIVIL RIGHTS MOVEMENT 161–62* (2012); DOUG MC-ADAM, *FREEDOM SUMMER* 69 (1988); GARROW, *supra* note 35, at 168–69.

At the same time, King and other civil rights leaders orchestrated massive outpourings of people to dramatize the egregious racial injustice in the South, to project shocking images via television into Northern living rooms and indeed around the world. This was the Niebuhrian perspective, the use of power politics to coerce those who practiced evil. Reverend King and his colleagues carefully planned marches and protests to be effective in rousing public opinion in support of the cause of civil rights protections for blacks. But he did more than that; he strategically met with President Lyndon B. Johnson and his attorney general to move legislation forward and gain protection for civil rights activists who were viciously assaulted by bigoted law enforcement officials. His campaign led to the Civil Rights Act of 1964 and ultimately to the most important piece of Civil Rights legislation according to the Justice Department, the Voting Rights Act of 1965, which ensured access to political power for African Americans.⁴⁹

The belief in a transcendent God, which is foundational to the black church, also shaped King's response to another important influence. King developed a trenchant critique of capitalism, largely informed by the writing of Karl Marx.⁵⁰ He resonated with Marx's perspective and his outrage against widespread economic inequality, given his personal experience as a black man and his knowledge of the hardships borne by the poor members of the black church. However, based on the faith he had learned as a boy, he rejected the atheism central to Marx's theory of historical materialism. King wrote:

I read Marx as I read all of the influential historical thinkers—from a dialectical point of view, combining a partial yes and a partial no. Insofar as Marx posited a metaphysical materialism, an ethical relativism, and a strangulating totalitarianism, I responded with an unambiguous “no”; but insofar as he pointed to weaknesses of traditional capitalism, contributed to the growth of a definite self-consciousness in the masses, and challenged the social conscience of the Christian Churches, I responded with a definite “yes.”⁵¹

The manner in which King reacted to Marx's analysis supports West's argument that his intellectual trajectory was guided by the bedrock of faith he learnt in the black church. Furthermore, West argues that King returned to the most important influences of the black church when he faced the harrowing reality of fighting racial oppression. Though he had adopted a more immanent and less transcendent understanding of his faith as a student, it

49. GARROW, *supra* note 35, at 42–48.

50. Tommie Shelby, *Prisoners of the Forgotten: King on Ghettos and Economic Justice*, in *TO SHAPE A NEW WORLD: ESSAYS ON THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR.* 187, 198–204 (Tommie Shelby & Brandon M. Terry eds., 2018).

51. WEST, *supra* note 29, at 431 (quoting Martin Luther King, Jr.).

took a supernatural encounter to give him the strength to rise to his calling in the Civil Rights Movement.

Throughout his work, King was often exhausted, sometimes to the point of being hospitalized. His life was threatened on a weekly, even daily, basis. On one occasion, he was told that the threat was not carried out merely because the assailant could not get a clear shot at him. On another, his house was bombed while his daughter and wife were at home, though no one was injured. Just one year later, another attempt failed when twelve sticks of dynamite thrown on his porch failed to explode. Reverend King's ethic of love shone through on these occasions. He urged the angry crowds that responded to the first bombing to remain peaceful, saying: "We are not advocating violence. We want to love our enemies. I want you to love your enemies. Be good to them. Love them and let them know you love them."⁵²

The source of Martin Luther King's strength was his faith. Just before the first bombing of his house, he had had an encounter with Jesus; at midnight, sitting alone in his kitchen he heard the voice of Jesus telling him to stand up for righteousness, to keep fighting, promising never to leave him alone, to always be with him. From this, King drew courage time and again through the years when the burden of the civil rights struggle seemed too heavy to bear.⁵³

The connection between Martin Luther King Jr.'s sacrificial life of service and his Christian faith is evident in all aspects of his life: be it his daily conversations, mundane decisions, or influential strategic leadership. But it is probably nowhere more evident than in his adaptation of Isaiah's prophecy in his most famous speech, "I Have a Dream":

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low. The rough places will be made plain, and the crooked places will be made straight. And the glory of the Lord shall be revealed, and all flesh shall see it together. This is our hope.⁵⁴

There can be no doubt that King acted on deeply held religious convictions that had been birthed in his childhood and that many who followed him were likewise motivated. The Civil Rights Movement took place in an era in which religion was less pivotal than during the period of the Civil War, though it was still enormously influential. Nonetheless, it was a massive instance of enacted religious freedom. In the words of Stephen Carter, professor of law at Yale University:

[O]rdinary black people believed profoundly that their cause was just because God was on their side So they marched and

52. GARROW, *supra* note 35, at 59–60.

53. *Id.* at 57–58.

54. Martin Luther King, Jr., *I Have a Dream* (Aug. 28, 1963).

suffered and praised God, and, in some ways, changed America forever. This, surely, was a resisting faith in action.⁵⁵

These African Americans' enacted religious freedom changed their lives and transformed the entire country. It was evident in their use of the taken-for-granted right to act as their faith dictated, resisting unjust laws without specific claims of religious freedom. However, in the late twentieth-century religion was even less significant in daily life than it had been during the middle of the century.⁵⁶ The argument regarding the importance of enacted religious freedom for the black church turns to that period next.

IV. THE TWENTY-FIRST CENTURY: SERVING THE POOR

The importance of enacted religious freedom for blacks in the Antebellum Period and during the Civil Rights Movement, which was analyzed above, paralleled the importance of religion in American society to some extent. However, in the twenty-first century the effect of religious freedom in the black community may be amplified by the difference in trends in religiosity among blacks versus the decline of faith in the rest of the society. For this reason, these trends will be reviewed before the effects of enacted religious freedom in the current period are discussed.

A. *The Continuing Strength of Faith Among African Americans*

Although the United States experienced very high levels of religiosity throughout the twentieth century, particularly in contrast to the rest of the developed world, there has been some decline in the level of faith reported since 2000. In 2008, the share of the population believing in God in the U.S. ranked fifth of thirty nations and was the highest among developed nations except Israel. However, the same study pointed out that while faith in the U.S. remained high, it had eroded slowly from the levels of the 1950s.⁵⁷ More recent research supports this observation, showing that the share of the population in the U.S. that self-reports as Christian, while still over 70 percent, has declined, as has the fraction reporting any sort of faith generally. As a corollary, the percentage of the population that is religiously unaffiliated has risen, though roughly 30 percent of these individuals report that religion is somewhat or very important to them. Furthermore, despite population growth in the U.S., Christians have lost ground in relative terms

55. Stephen L. Carter, *Liberalism's Religion Problem*, FIRST THINGS (Mar. 2002), <https://www.firstthings.com/article/2002/03/liberalisms-religion-problem>.

56. PEW RESEARCH CTR., AMERICA'S CHANGING RELIGIOUS LANDSCAPE: CHRISTIANS DECLINE SHARPLY AS SHARE OF POPULATION; UNAFFILIATED AND OTHER FAITHS CONTINUE TO GROW 3–12 (2015), <http://www.pewforum.org/wp-content/uploads/sites/7/2015/05/RLS-08-26-full-report.pdf>; see Mark Chaves, *Secularization as Declining Religious Authority*, 72 SOC. FORCES 749 (1994).

57. TOM W. SMITH, BELIEFS ABOUT GOD ACROSS TIME AND COUNTRIES 2–7 (2012), http://www.norc.org/PDFs/Beliefs_about_God_Report.pdf.

and even in absolute terms, by no less than two million people. Two major factors account for the shift: the most important is generational replacement, as 36 percent of young millennials (born between 1990 and 1996) were religiously unaffiliated in 2014, compared with only 17 percent of baby boomers.

Another contributing factor is the drift away from religion within each cohort: even among boomers, there was a three percentage-point rise in the number of unaffiliated individuals between 2007 and 2014. This change was documented among all demographic groups regardless of age or geographic location.⁵⁸ Perhaps just as important, some scholars of secularization have focused not merely on the decline in the number of the faithful, but also on the receding authority of religion in society at large.⁵⁹ Christian Smith traces the shift of influence from the ecclesial hierarchy to the intelligentsia during the late nineteenth and early twentieth centuries and the power struggle that brought it about.⁶⁰ Again, this trend is borne out by more recent research as there is evidence of public awareness of the declining impact of the church.⁶¹ So, despite continued high levels of religiosity in the United States, it is clear that the influence of the church in general in the late twentieth century and early twenty-first century is not what it was in the 1950s.

However, the situation in the black church is different. There was no statistically significant decline in the share of the population reporting as affiliated with black denominations. In fact, the Pew Research Center report states: “the size of the historically black Protestant tradition . . . has remained relatively stable in recent years, at nearly 16 million adults.”⁶² Furthermore, the continuing influence of the black church in the African American community and the importance of enacted religious freedom is evident in a number of ways.

B. *Religious Freedom and Service*

One very important contribution of the black church is its service to the poor and the needy in inner-city neighborhoods. One study of black congregations⁶³ in Philadelphia by Ram Cnaan and his colleagues found

58. PEW RESEARCH CTR., *supra* note 56, at 4–12.

59. Chaves, *supra* note 56.

60. Christian Smith, *Introduction: Rethinking the Secularization of American Life*, in *THE SECULAR REVOLUTION: POWER, INTERESTS, AND CONFLICT IN THE SECULARIZATION OF AMERICAN PUBLIC LIFE 1* (2003).

61. PEW RESEARCH CTR., *PUBLIC SEES RELIGION’S INFLUENCE WANING: GROWING APPETITE FOR RELIGION IN POLITICS 1* (2014), <http://www.pewresearch.org/wp-content/uploads/sites/7/2014/09/Religion-Politics-09-24-PDF-for-web.pdf>.

62. PEW RESEARCH CTR., *supra* note 56, at 8.

63. Though the study discussed included faith congregations of all kinds, since blacks overwhelmingly self-identify as Christians, the majority of these congregations were Christian churches.

that they were located in high need neighborhoods where residents were poorer, experienced more violence, and encountered more housing and other challenges than average Philadelphians.⁶⁴ Confronting such issues, in this city alone, black congregations provided roughly \$90 million in services per annum to residents of the neighborhoods in which they were located. The authors of the study put such a high value on this work that they concluded the services provided by the black church contributed in an important way to social stability: “One can only imagine how our urban scene would look if these congregations ceased to be providers of care. If such a scenario were to occur, the burden on public services and the social unrest that that would follow are hard to imagine.”⁶⁵

The authors also found that black congregations outperformed white co-religionists in the provision of social services. African American congregations had fewer financial resources than white congregations that were generally situated in more prosperous neighborhoods. In addition, and on average, blacks worshipped in smaller groups with fewer members. Despite these limitations, blacks provided more social services to their communities in fourteen of thirty-eight areas of need such as street outreach to the homeless and programs for gang members. On twenty of the remaining twenty-four measures, blacks and whites provided equivalent levels of service. In only four areas, such as scout troops and programs for seniors, did white congregations furnish greater service to their neighbors. Furthermore, blacks were more likely to serve poorer and needier people than white congregations did. On average, black churches provided more social service programs than their white peers: 3.2 programs per congregation. Finally, despite their limited resources, on average the net value of the services provided by black congregations was greater than the net value of white congregations’ community work.

The black church is clearly still a vital institution in inner-city Philadelphia despite the indications of secularization in larger society already highlighted. In light of the powerful influence of Christian teaching on the Civil Rights Movement that is evident in the earlier discussion of King, it seems highly likely that the services that Philadelphia congregations provide is another striking example of enacted religious freedom making a tremendous difference in the lives of African Americans. However, while Cnaan et al. provide abundant evidence of vital community service provided by black churches, their study is limited to a single city.

Another study of the black church, conducted by Sandra Barnes, based on a national database, also found that the majority of black churches were involved in providing social services to their members and community re-

64. RAM A. CNAAN, STEPHANIE BODDIE, CHARLENE MCGREW & JENNIFER KANG, *THE OTHER PHILADELPHIA STORY: HOW LOCAL CONGREGATIONS SUPPORT QUALITY OF LIFE IN URBAN AMERICA* 143–44 (2006).

65. *Id.* at 153.

sidents. Over 75 percent of churches were active in one of the four top service areas: support for youth, cash assistance, voter registration, or food pantry. Over half of black churches provided assistance in seven additional areas. On average, each church provided service in nine areas.⁶⁶ The number of programs operating in this national sample of churches is much higher than Cnaan et al. found in their Philadelphia sample. Barnes showed that black churches are very active in providing social services: supporting youth; furnishing cash assistance; battling food insecurity, and much more. This suggests that the findings of Cnaan and his colleagues regarding the important role that black churches play in addressing the needs of their community may apply not only to Philadelphia, but more widely.

The black church's being involved with service to the poor and needy is arguably a national phenomenon that contributes substantially to the good of society at large by addressing the needs of individuals who may already require extensive public support. It is likely that these actions are motivated by religious beliefs and are executed with the assumption that blacks are free to fulfill what they perceive as their religious obligation: assisting the poor. If so, although these services are provided without any reference to religious freedom, they are another example of enacted religious freedom, the taken-for-granted freedom to act as faith commitments dictate.

Cnaan and his colleagues did not inquire into the motivation that led black congregations to serve as they did despite their financial limitations. However, there is some evidence that suggests the impact of religious convictions in motivating churchgoers. Barnes's study investigated the effect of priestly and prophetic influences on the provision of social services and found that the number of religious programs, such as Bible study, available to congregants was predictive of the level of social service provided by a church even when other variables such as pastoral education and socioeconomic status were taken into account.⁶⁷ In a related study that drew on the same national database, Barnes found that the frequency of prayer reported in a congregation was positively related to provision of social service and to advocacy on social justice issues.⁶⁸ Both studies by Barnes also found that the content of sermons was relevant to social action: the frequency of sermons about the love of God was related to the number of services provided.⁶⁹ Similarly, sermons that focused on black liberation and womanist theology were associated with both the presence of voter registration programs and social justice advocacy.⁷⁰ These findings make it clear that par-

66. Sandra L. Barnes, *Priestly and Prophetic Influences on Black Church Social Services*, 51 *SOC. PROBS.* 202, 213 (2004).

67. *Id.* at 215–19.

68. Sandra L. Barnes, *Black Church Culture and Community Action*, 84 *SOC. FORCES* 967, 986 (2005).

69. Barnes, *supra* note 66, at 215–17.

70. Barnes, *supra* note 68, at 981–84.

ticular religious activities and messages are associated with a variety of community service. Thus, the findings support the inference that various programs provided by black churches to serve their communities are examples of enacted religious freedom, believers acting on deeply held religious beliefs.

V. THE FAILURE TO DEFEND RELIGIOUS FREEDOM

Given the importance of enacted religious freedom in the black community, it might reasonably be expected that the black church would be in the forefront of any defense of this right. And this would be particularly true in a situation where there was waning support for, or growing intolerance of, religious freedom. Yet that has not been the case. A more muscular liberalism, related to the growing secularization discussed earlier, has been pushing at the boundaries regarding gender and sexual mores and has been increasingly at odds with religion and people of faith in the last decades.⁷¹ At the same time there has been sharply reduced acceptance of religious freedom claims when they are at odds with other social issues.

In the current decade, there has been a sharp acceleration to the point where the tensions are high, debate is rancorous, and religious freedom is viewed with suspicion if not hostility. In other words, “‘bitter polarization along partisan . . . and religious lines [has] become the norm in today’s America,’ not least with respect to ‘the public discourse’ regarding religious freedoms.”⁷² Accommodations that were taken for granted, such as religious student groups on college campuses electing only co-religionists to office, are now contended or revoked outright.⁷³ The University of Iowa, having disestablished a religious group on these grounds, was found by the courts to have discriminated against the religious club. Rather than reverse their position, the university required all student groups to include specific non-discrimination language in their bylaws and has deregistered thirty-eight student groups that failed to do so.⁷⁴

One very clear case of the decline of support for religious freedom is the fate of recent attempts to strengthen legislative protections of religious freedom. As recently as 1993, federal legislation in this area, the Religious Freedom Restoration Act, was passed unanimously in the House and with broad bipartisan support in the Senate on the same day.⁷⁵ The Act was

71. Carter, *supra* note 55.

72. John Dilulio, Keynote Address at American Charger Project Conference, Religious Polarization in America Today: A Puzzle, a Prescription, and a Prayer (Sep. 13, 2017).

73. *InterVarsity, College Christian Group ‘De-Recognized’ at California State University Campuses*, HUFFINGTON POST (Sep. 10, 2014, 2:07 PM), https://www.huffingtonpost.com/2014/09/09/intervarsity-sanctioned-california-state-university_n_5791906.html.

74. Emily Wangen, *UI deregisters 38 student groups*, DAILY IOWAN (July 25, 2018), <http://daily-iowan.com/2018/07/26/ui-deregisters-38-student-groups/>.

75. *H.R. 1308 (103rd: Religious Freedom Act of 1993*, GovTrack.com, <https://www.govtrack.us/congress/bills/103/hr1308/summary> (last updated Oct. 11, 2018).

signed into law by President Clinton, a Democrat.⁷⁶ However, in 2014, efforts to pass bills at the state level, using language identical to the federal statute, failed. Of ten religious freedom bills proposed that year only one became law.⁷⁷ It would be disingenuous to ignore the highly contentious and extremely politicized struggle over homosexual unions and related issues. This conflict has much to do with the decline of tolerance for religious freedom.

The politics still swirling following the fight to change the definition of marriage makes the involvement of the black church even more important. On the left, this has been presented as the latest advance in securing civil rights for an expanding number of groups, as the outgrowth of the Civil Rights Movement. Advocates for the redefinition of marriage have maintained that religious freedom is merely another form of discrimination, drawing a parallel between the intransigence of white Southerners in perpetuating vicious, murderous racial injustice.⁷⁸

However, the parallel is misguided at best, duplicitous at worst, for several reasons. The most important reason is that the level of terror and oppression experienced by blacks in the South is unmatched in U.S. history. Certainly homosexuals in this country have never faced the equal of that experience. There is no parallel between the degradation and violence of the Jim Crow South and the injustices experienced by the LGBTQ community. Furthermore, the mantle of the Civil Rights Movement clearly belongs to the black church, which was the seedbed and power behind the movement, as documented in this essay. For this reason, the black church, which has benefited enormously from enacted religious freedom, would be the most powerful voice to stand up for religious freedom. Yet that has not happened, in general.⁷⁹

The energetic engagement of the black church on behalf of religious freedom would have done much to severely limit the claim that the LGBTQ lobby had the right to the mantle of the Civil Rights Movement, and thus reduce the legitimation of their cause by the association with the unquestioned validity of the effort to end racial injustice. In addition, the support of the black church, which represents irrefutable victims of hateful prejudice, could still do much to silence the charge that religious freedom

76. *Id.*

77. 1st Amendment Partnership, 2014 Religious Freedom Legislation: Pass/Fail Record (unpublished chart) (on file with 1st Amendment Partnership).

78. Eugene Rivers & Kenneth Johnson, *Same-Sex Marriage: Hijacking the Civil Rights Legacy*, WEEKLY STANDARD (May 31, 2006, 11:00 AM), <https://www.weeklystandard.com/eugene-rivers-and-kenneth-d-johnson/same-sex-marriage-br-hijacking-the-civil-rights-legacy>.

79. There has been one notable exception. Gay activists in California interpreted the restrictions on pre-marital activity found at many Christian colleges to be discriminatory. As a result, a bill was proposed in the state legislature that would have led to many of these colleges losing federal funding. The intervention of the Presiding Bishop of the Church of God in Christ, Bishop Charles E. Blake, was instrumental in successfully opposing the bill.

claims are a thin disguise for discriminatory behavior. Making clear the important role that religious freedom has played and continues to play in the lives of black people would do much to burnish its credentials with Americans, especially less-religious millennials. It would greatly benefit the cause to be able to induce a more positive attitude toward religious freedom among the American public, to create an atmosphere that is more supportive of claims for exemptions based on convictions of faith or of conscience. The failure to do this is the opportunity cost of the lukewarm attitude of the black church towards religious freedom.

The lack of involvement of the black church is closely linked to the identity of some of the most ardent proponents of religious freedom. The face of the strenuous defense of the First Amendment's clauses on religion has often been Southern white evangelicals. This demographic is one which blacks are loath to support and with which they refuse to collaborate. Two major reasons stand out.

First is the history of Southern white evangelicals. During the run-up to the Civil War, Southern whites in Baptist, Methodist, and Presbyterian churches were so unflinching in their support for slaveholding that, as has been mentioned before, they split from the rest of their denominations.⁸⁰ Even after the war, bitter racial oppression was rampant in the South, a region where white evangelicals form a significant fraction of the population. In addition, resistance to efforts to pursue racial justice in the South were sometimes explicitly couched in terms of religious freedom. For example, segregationists' resistance to the Federal Fair Employment Practices Act (1948) and its ban on racial discrimination in employment was based on defense of individual freedoms, including religious freedom.⁸¹ In a more subtle example, the Baptist Joint Committee, which maintained the connection between the Southern Baptist Convention and Northern Baptists, used their concern for ensuring continued religious freedom after the Second World War to avoid acting on a resolution to include racial discrimination in the denominations' public affairs portfolio.⁸² Much more potent connections between the religion of the white South and race-based hatred exists in the practices and rhetoric of the Ku Klux Klan.⁸³ The deep and enduring historical connections between white evangelicals and virulent racism have had an undeniable impact on the attitudes of black church leaders towards the debate regarding religious freedom. While black pastors are concerned about religious freedom, they are unwilling to work closely with white churches that historically perpetuated brutal and bloody racial practices.

80. MCKIVIGAN, *supra* note 20, at 82–87.

81. WENGER, *supra* note 8, at 193–95.

82. *Id.*

83. See Kelly J. Baker, GOSPEL ACCORDING TO THE KLAN: THE KKK'S APPEAL TO PROTESTANT AMERICA, 1915–1930, at 1–70 (Erica Doss & Philip Deloria eds., 2011).

Second, the current day politics of white evangelicals do little to promote coalition building with black religious leaders. White evangelicals has overwhelmingly supported the Republican party since Nixon's infamous Southern Strategy converted Dixiecrats into Republicans.⁸⁴ Data on recent presidential elections show that over 70 percent of this demographic group voted for the Republican candidate in 2004, 2008, and 2012, even in the context of Barak Obama's historic candidacy and election with a solid majority of the vote.⁸⁵ Furthermore, the results of the 2016 election show that the share of the white evangelical vote going to Donald Trump, a Caligula-like figure who should have been anathema to religious conservatives, was even higher, over 80 percent.⁸⁶ Subsequently, at least until April 2018, support for Trump among this demographic remained high.⁸⁷ According to Robert P. Jones, chief executive officer of the Public Policy Research Institute, "white evangelical support for Trump remains strikingly high, with 75 percent holding a favorable view of the president and only 22 percent holding an unfavorable view. This level of support far exceeds his favorability among all Americans, which is at 42 percent. Among all non-white evangelical Americans, Trump's favorability is only 36 percent."⁸⁸ In light of consistent Republican opposition to policies advantageous to blacks and Republican affinity for those that would be detrimental, it is not surprising that blacks, who overwhelmingly vote Democratic,⁸⁹ would not readily volunteer to join a coalition led by white evangelicals, even one in defense of religious freedom. Any illusion about the lack of connection between Republican positions and racial animus was swept away with the emergence of the vulgar, racially loaded rhetoric of Donald Trump,⁹⁰ further reinforcing blacks' distaste for causes championed by white evangelicals.

84. James Boyd, *Nixon's Southern Strategy*, N.Y. TIMES (May 17, 1970), <https://www.nytimes.com/1970/05/17/archives/nixons-southern-strategy-its-all-in-the-charts.html>.

85. PEW RESEARCH CTR., ELECTION 2012 POST MORTEM: WHITE EVANGELICALS AND SUPPORT FOR ROMNEY (2012), <http://www.pewforum.org/2012/12/07/election-2012-post-mortem-white-evangelicals-and-support-for-romney/>.

86. Sarah P. Bailey, *White evangelicals voted overwhelmingly for Donald Trump, exit polls show*, WASH. POST (Nov. 9, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/11/09/exit-polls-show-white-evangelicals-voted-overwhelmingly-for-donald-trump/?utm_term=.fa42bf3d1d5.

87. Robert P. Jones, *White Evangelicals Can't Quit Donald Trump*, THE ATLANTIC (Apr. 20, 2018), <https://www.theatlantic.com/politics/archive/2018/04/white-evangelicals-cant-quit-donald-trump/558461/>.

88. *Id.*

89. See Quentin Kidd, Herman Diggs, Mehreen Farooq & Megan Murray, *Black Voters, Black Candidates, and Social Issues: Does Party Identification Matter?*, 88 SOC. SCI. Q. 165, 169–75 (2007); MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 6 (1994).

90. See generally Lawrence D. Bobo, *Racism in Trump's America: Reflection on Culture, Sociology and the 2016 Presidential Election*, 68 BRIT. J. SOC. S 85 (2017); Jennifer Rubin, *Trump is Back to Racist Rhetoric*, WASH. POST: RIGHT TURN (Apr. 5, 2018), <https://www.washingtonpost.com/blogs/right-turn/wp/2018/04/05/trump-is-back-to-racist-rhetoric/>; Lydia O'Connor & Daniel Marans, *Here Are 13 Examples of Donald Trump Being Racist*, HUFFINGTON POST (Feb.

CONCLUSION

The right to act on one's religious convictions has always been an integral aspect of formulations of religious freedom since they were articulated by America's Founding Fathers, despite their egregious failure to live up to their own principles. This assumption of the right to live in accordance with the dictates of one's faith is highlighted in the concept of enacted religious freedom. The taken for granted right to do this, often without any explicit appeal to religious freedom, has had a powerful impact on the lives of African Americans, for ill in the case of slavery, but with overwhelmingly positive results in many other major historical developments. These include the abolition of slavery, the Civil Rights Movement, and essential services provided to the needy in the black community today. However, despite the many benefits that black people have reaped from enacted religious freedom, they have stood apart from efforts to defend that right in the face of growing criticism and skepticism in the American public. This disengagement is related to the powerful association of religious freedom with white evangelicals, who have often been on the wrong side of racially charged issues and who have failed to act in the interest of black people. Thus, an essential partner in the effort to preserve religious freedom, the black church, is alienated from the effort.