



**Discriminating in the name  
of religion?  
Segregationists and  
slaveholders did it, too.**

Photo above: All eyes will be on the Supreme Court today as it hears a blockbuster case pitting religious freedom against anti-discrimination laws.

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**Dec. 5, 2017**

Today the Supreme Court will hear arguments in a blockbuster case: *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*.

The suit stems from cake shop owner Jack Phillips's refusal to create a wedding cake for a same-sex couple, on the grounds that it would violate his right to free expression and free exercise of religion as a conservative evangelical Christian.

The state civil rights commission and the Colorado courts both ruled that Phillips's religious and free speech rights did not outweigh the state's interest in enacting an anti-discrimination law. Now the Supreme Court is poised to rule on the constitutional balance between discrimination and free exercise, two American values that in contemporary U.S. politics seem to be in constant tension.

Yet while the issues confronting the court are fresh, the larger tension between religious freedom and civil rights actually stretches far back in American history. In battles over slavery and racial segregation, religion and scripture were often cited as justification for maintaining inequality. Until the civil rights era, refusals to serve African Americans were often cloaked under the guise of religious freedom. As social norms changed, the religious justifications for this bigotry became legally untenable.

Religious freedom has been weaponized so frequently in civil liberties debates because of the cultural and constitutional weight it carries. Such appeals have the potential to reshape cultural and religious worlds: to make a group's political convictions and cultural practices appear more "religious," or more central to their religion, than they otherwise might have been. For this reason, the scope and meaning of religious freedom have been constantly contested throughout American history — for every group would like to use this powerful value to protect its other beliefs. Which is why religious freedom must always be balanced against other American ideals, lest we allow it to trample on other deeply held values.

In the 19th century, slaveholders and their sympathizers defended slavery by pointing to its presence in the Bible as evidence that it fit

within God's plan for social order. They also interpreted biblical stories like those about Cain and Abel and the supposed "curse of Ham" as proof that God had made "Negroes" to be slaves.

They thundered that abolitionists were distorting the Bible and threatening the Christian social order of the South. Such extremists, they argued, had no right to impose their own distorted and dangerous orthodoxy on everyone else.

Proslavery leaders employed the language of religious freedom because this principle carried significant cultural value. In so doing, they solidified (or even forged) their own view of slavery as a central religious concern.

It took the Civil War to shatter the notion, shared by many white Northerners and Southerners alike, that religious freedom was a reason to avoid anti-slavery action.

After the war and the years of Reconstruction ended, white Southerners and the Northerners who wanted to reestablish social and economic ties with them updated these older proslavery ideologies to support an emerging Jim Crow regime of racial segregation. Preachers, politicians and pundits developed a segregationist folk theology that defended the reconstituted Southern racial order as divinely ordained: God had created the races separate and did not intend for them to mix.

Through the civil rights period and beyond, this theology enabled segregationist appeals to religious freedom — and shaped a distinctive white racial Christianity in the process. Much like their proslavery predecessors, 20th-century segregationists argued that the civil rights movement was trying to impose an alien, anti-Christian, even communistic ideology that would destroy the Christian racial order of the South.

Daniel Richberg, a former New Deal staffer, warned in 1948 that the proposed Federal Fair Employment Practices Act was communist-inspired and would destroy the individual freedoms of association and religion. Such legislation, he wrote, would force associations that many Americans found "repulsive ... not because of any narrow prejudice, but because of ... profound religious convictions." Religious freedom was an all-American value, and these Americans — white Christian Americans — should not be forced to violate their conscientious convictions.

According to segregationist readings of the Bible, black people were inferior to white people, cursed by God and naturally suited to manual labor. Requiring white employers to hire black people would violate these sincerely held religious convictions and threatened once again to destroy the settled racial order of the nation.

The successes of the civil rights movement made overt racial discrimination no longer tenable even under the cover of religious

freedom. But although it was forced underground, racial bigotry remained very much alive in the Christianity of white America.

Private Christian academies sprouted up all over the country, allowing white Christians to avoid sending their children to the newly integrated public schools. In the 1970s, the IRS moved to revoke the tax-exempt status of Bob Jones University because of its racially segregated campus. As historian Randall Balmer has described, the new religious right began to mobilize in the 1970s specifically against this IRS action.

In the 1982 case *Bob Jones University v. United States*, the Supreme Court ruled that the First Amendment guarantee of religious freedom did not give Bob Jones the right to claim tax-exempt status while practicing racial discrimination. Yet the cultural foundation of white supremacy remained very much in place, a subterranean stream suffusing the cultural and religious landscapes of the United States.

This stream made it possible for many white evangelicals and Catholics to support Donald Trump despite his record of adultery, alleged sexual violence, profanity and violent rhetoric, all of which Christians have previously claimed to abhor.

They have supported him, at least in part, in the name of a religious freedom that all too often they apply only to themselves.

Jack Phillips and his supporters claim that their objections are of a different order — more fundamental to Christianity and to biblical standards of morality — than the grounds for racial discrimination could ever have been. These convictions are no doubt sincerely held. The centrality and sincerity of religious commitments are famously difficult for courts to adjudicate, but even if one gives Phillips the benefit of the doubt, sincerity is not enough.

There is little that distinguishes his religious freedom claim from those of the segregationists who argued that they should not be forced to hire, serve or associate with African Americans. Proslavery and segregationist Christians — along with their descendants in the resurgent white supremacy movement today — professed just as much sincerity and had every bit as strong a foundation in the Bible and in Christian tradition as do the Christians who are opposed to same-sex marriage today.

In short, religious freedom should not be granted this much power. If a bakery or an adoption agency can deny their services to same-sex couples on religious freedom grounds, then what prevents other businesses and organizations who may sincerely profess Christian white supremacy from refusing to serve African Americans or Jews, as they have done before?

If religious freedom trumps equality under the law, it provides a “cover” that actually encourages discrimination. With the publicity that cases like Phillips’s receive, professed Christians who may not otherwise have thought much about sexual orientation may also come to see it as a religious obligation to refuse same-sex couples their services. In other words, such a religious freedom regime tends to reshape the contours of conscience toward discriminatory ends.

Recognizing this does not negate the constitutional principle of religious freedom. Those who are frustrated by the contemporary politics of religious freedom should not be tempted to jettison it entirely, as some on the left have recently proposed. This freedom remains such a treasured American ideal that any such proposal would be a political nonstarter.

More importantly, religious freedom remains as an important tool for minority groups — Jews, Muslims, Sikhs, Hindus, Native Americans and more — who need culturally sanctioned ways to defend their communal practices and identities. Rather than upending this freedom, those who seek a more just society should instead reclaim and redefine it in more inclusive and more balanced ways.

<https://www.washingtonpost.com/news/made-by-history/wp/2017/12/05/discriminating-in-the-name-of-religion-segregationists-and-slaveholders-did-it-too/>