

## The Problem with Religious Freedom

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Tisa Wenger, [Religious Freedom: The Contested History of an American Ideal](#) (2017).

Most likely, [Tisa Wenger](#)'s new book *Religious Freedom: The Contested History of an American Ideal* is not on many law professors' reading lists. But for anyone who is interested in issues of church and state, race, and American empire, it should be. Wenger has uncovered a powerful collection of movements, legal claims, and government interference in religious life in the early twentieth century. Many of us have either never heard of them, or have not understood how crucial they were to religion's role in public policy and (occasionally) resistance to government power. This is not a book written by a legal expert: the terms "disestablishment" and "free exercise" don't appear here. But it is full of constitutional claims and legal conflict, as well as a careful examination of the incentives for invoking religious freedom.

*Religious Freedom* is in some ways a continuation of Wenger's first book. In [We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom](#), Wenger argued that Pueblo Indians successfully deployed the language of religious freedom in the 1920s to protect their dances from white interference. In the process, Wenger maintained, they subtly changed how they understood their own practice, buying into a division between what counts as religious and what is secular.

Her new book extends that argument far more broadly, beginning with the effects of the Spanish American War of 1898 and continuing up to the outbreak of World War II. In this period, Wenger argues, "religious freedom talk" was deployed by "a dizzying array of people, on behalf of every imaginable practice and tradition." (P. 12.) This talk was motivated by the importance that Americans themselves attached to the concept of religious freedom. And it reinforced the concept's central assumption—that religion is a category, distinct from other aspects of individual and social life. To invoke religion, it must be separated from the secular, compartmentalizing human experience in ways that conform to dominant modes of American political culture.

Wenger uses these insights to examine how religious freedom talk was received, and who it helped. Key to her study are the ways that both race and empire affected how religious freedom was understood and who could use it to their advantage. Through beautifully written chapters that range from religious movements and their connection to struggles for independence in the Philippines, to Native American claims to self-governance and ritual practice on reservations, to Jewish rebranding from racial to religious identity (and becoming white in the process) and African-American attempts to escape oppressive racism through new religious identities, Wenger shows the power and limits of religious freedom talk. In each episode, race was central to the story.

Wenger concludes that a claim to religious identity achieved success in only two of the five major studies she undertakes in the book. First, U.S. Catholics "became fully American, fully modern, and racially white," in contrast to Filipinos at the turn of the twentieth century. (P. 44.) Second, Jews effectively helped create and joined a tri-faith (Catholic, Protestant, Jew) coalition of white religious groups that "pushed race and class into the background"—a process that unfolded, in Wenger's persuasive telling, in the 1930s, earlier than we had previously understood. (Pp. 172, 186.) For Native Americans, African-Americans, and Filipinos, however, racist assumptions and barriers set sharp

boundaries around what religious freedom talk could achieve. As Wenger explains, the “expansion of whiteness” achieved by Catholics and Jews only exacerbated the problem for racial others. For Filipinos, their “weird shriekings” and “uncivilized tribes” justified attacks on indigenous customs that were framed in terms of progress toward greater moral development and “progress” toward civilized status. (Pp. 45, 93.) Among Native Americans, appeals to religious freedom channeled customary practices into forms that were legible to Christians, or into secular discourse. In either case, religious freedom talk “transformed” Native culture and belief, rather than protecting it. (Pp. 135, 142.) And for African-Americans, the “black-white racial binary” remained the primary identifier for the larger American society. Religious freedom talk “simply did not have the power to transcend the racialized terms of their oppression.” (P. 231.)

Wenger’s conclusion—that “the dominant strains of American religious freedom talk functioned to bolster racial discrimination and the civilizational hierarchies that sustained it”—is a sobering one. (P. 235.) Much of this history has flown underneath the radar, or has been obscured by the drumbeat of celebration of religious freedom as both a fact of American life and an unqualified good. Yet Wenger stresses that she does not believe that the ideal of religious freedom is unsalvageable. She acknowledges that defining religion limits its scope and places it in opposition to anything outside the lines drawn around what counts as religious. But she argues that “the potential shape of such definitions and oppositions are infinite in their possibilities.” (P. 239.) Despite the clear limits of resistance among racial minorities, that is, religious freedom talk did prove valuable in defending tradition and crafting identity. In Wenger’s view, this is grounds for hope. To this reader, it seems a slender reed. But it offers a useful contrast to the view of other major writers on the subject. In contrast to the noted law and religion scholar Winnifred Fallers Sullivan, for example, Wenger is not wholly pessimistic about the emancipatory potential of religious freedom talk.

Clearly, there is much to admire and learn from in Wenger’s book. *Religious Freedom* is a breakthrough study that productively “brings the state back in” to a monograph that is as grounded in religious studies as history. Wenger offers a reinterpretation that disturbs comfortable myths, even as she carefully parses the drawbacks (and a few benefits) of religious freedom talk for those groups that engage in it.

For legal academics, Wenger’s work opens up valuable new avenues of inquiry. To name just one, consider her argument that religious freedom talk obscured racial discord and discrimination. Even the inclusion of those formerly excluded from its reach—especially Catholics and Jews—did not prevent the privileging of religious over racial diversity. Consider the way that [\*Bob Jones University v. United States\*](#) (1983) sent shock waves around evangelical communities, when the Court held that in a conflict between religious freedom and racial equality, race won. After reading Wenger, the venerable history of precisely the opposite presumption is thrown into sharp relief, helping explain the shock, among those whose claims of religious freedom had sidelined race and class. These insights are highly relevant to an age in which religious freedom is once again claimed to support exemptions from anti-discrimination laws, as in the [\*Masterpiece Cakeshop\*](#) case currently pending in the Supreme Court.

Wenger shows clearly the costs of such strategies in the past. Equally important, she demonstrates in accessible ways how theories of the religious nature of “the secular” make a difference in how we understand the more subtle dimensions of a vaunted freedom, which traditionally has often served as an excuse or vehicle for government interference in the religious life of people of color.

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