



# RELIGIOUS FREEDOM AS A FUNDAMENTAL FREEDOM

CARDUS

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## **ABOUT CARDUS**

CARDUS IS A THINK TANK dedicated to the renewal of North American social architecture. Headquartered in Hamilton, ON, Cardus has a track record of delivering original research, quality events, and thoughtful publications which explore the complex and complementary relationships between virtues, social structures, education, markets, and a strong society. Cardus is a registered charity.

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As we at Cardus continue to advance our efforts to better comprehend, reveal, and reflect on our common life, freedom of religion or conscience looms large. This freedom enables us to live fully as we are and are called to be. It bears witness to the fact that we as human beings have a metaphysical need to make sense of our world and to encounter God. Beyond the legal framings of religious freedom contained in international human rights covenants is a freedom to contemplate who I am: Who I am in relationship to you; who I am in relationship to the created world; and who I am in relationship to God or to a particular philosophy. The ability to freely and both publicly and privately act on that metaphysical need is foundational to our democracy, our common life together, and indeed to our capacity to recognize and actively embrace the dignity each one of us bears. Without the guarantee of this freedom we are no less free in our interior life, but when freedom of religion is threatened or ignored, the living out of our public lives of faith can be undermined, sometimes gravely so.



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## *Increasing Our Focus on Religious Freedom*

Through Cardus Law we are giving greater focus and attention to the state of religious freedom in North American society, and Canadian society in particular. It is only through the robust defence and exercise of religious freedom within the context of many other interrelated human rights that we can advance a genuine pluralism. This is a pluralism that acknowledges, celebrates, and affirms different beliefs and traditions that bear witness to the beauty and strength of our common life. Yet we see increasing pressures on the free exercise of religion in North America. We see it being confused or even equated with freedom of speech or freedom of assembly rather than being understood as a foundational freedom that informs our free speech and encourages our free and public assemblies. We also see it being confused with a constrained freedom to worship. At Cardus Law we wish to understand why these trends are emerging and ultimately what effect they are having and could have on our common life.

In early December 2016 Cardus Law assembled an august group of practitioners and academic experts at Wycliffe College in the University of Toronto for the Cardus Symposium on Religious Freedom as a Fundamental Freedom. In our gathering we reflected on the question that brought us together: What has changed in the religious-freedom landscape in North America that necessitates such a gathering?

From Cardus's perspective we recognize that there are indeed increasing challenges posed to religious freedom within Canadian and broader North American society. This includes attempts by provincial governments to limit the right of Catholic schools to teach provincial curriculum through the lens of Catholic tradition, as in the case of Loyola College in Montreal. It includes attempts by professional bodies to deny the freedom of conscience and religion of Catholic and other faithful doctors who refuse to refer for abortions or prescribe artificial contraception and abortifacients. It includes threats to faith-based hospitals and medical facilities that refuse to euthanize patients in the wake of Canada's new euthanasia law passed this autumn. And it includes attempts by de facto representative bodies to constrain the right of religious institutions of higher education to hire faculty and staff that adhere to faith-based teaching on sexual ethics and marriage, as in a recent situation involving Universities Canada.

At the symposium, we at Cardus wanted to hear and engage a diversity of voices that would be able to deepen our understanding of the origin of religious freedom, its particular anthropolo-

gy, and how religious freedom exists within multicultural and multi-faith societies. We desired to better understand the importance of religious freedom as a foundational human right and the role played by institutions, including the courts and Parliament, and individual citizens in defending and upholding this freedom. Finally, we desired to better comprehend what are the most significant challenges to the robust exercise of religious freedom in Canada and in North America more broadly.

To this end, Cardus Law, with the very generous support of the Fieldstead Foundation, commissioned a series of four papers. The author of each paper was asked to present their findings at the symposium. A group of discussants responded, which led to considerable debate and discussion from a variety of perspectives. The group considered the nature of the current zeitgeist that appears to be threatening the foundational understanding of religious freedom in North America, and whether we can indeed refer to religious freedom as fundamental and/or foundational. These papers and accompanying video interviews with their presenters and discussants will, we hope, contribute to the broader public debate on this crucial topic. This summary paper, in addition to providing the backdrop for the symposium, also serves as a means of summarizing some of the debates that took place.



## *Perspectives on the State of Religious Freedom in North America*

The participants in the symposium's round-table of US and Canadian experts made several key arguments and observations regarding the contemporary state of religious freedom in North America. One participant asserted that those in influential leadership positions have lost touch with the core rationale for religious freedom. The deep basis in human dignity for safeguarding conscience and religious freedoms for all citizens and communities has come to be viewed as irrelevant or dangerous to many. Indeed, it was noted that this foundation has become obscured even, and especially for those with distinguished professional and educational backgrounds. We have accepted the post-Enlightenment myth that religion is a purely private matter that has no place outside the home or place of worship. The fruits of our secular formation have helped create our present moment, and we are not able to see that we seculars are the outliers with blind spots not shared by the vast majority of the rest of the world.

A second scholar noted that religious freedom has become politicized, narrowed, and privatized. Others elaborated that religious freedom has been construed in the media and by its adversaries as “a zero-sum game”—reducing religious freedom to a contest that positions gay rights claims and sexual freedoms, among others, against religious freedom, conscience rights, and associational freedoms. Another participant likened members of faith communities to long-term tenants who were being evicted from their house and being told they have no legitimate claim to dwell there, so they must now hire a lawyer and search for the title to justify their existence in a neighbourhood turned hostile.

Among those present at the symposium, several contrasted a new illiberal liberalism with a different, older understanding of democracy in which people of all faiths and those claiming no particular faith are mutually engaged in shaping public life and public policy. In this older understanding, all seek the common good together, and religiously motivated actions and convictions are exercised and permitted, even if they must be contended for against competing ideas, interests, and beliefs. Indeed, one scholar guarded against prematurely dividing up society into us-versus-them sides on this issue, noting that broad swaths of the public don't fit into a bipolar framing of “religious advocates” or “antagonists,” while asserting, however, that “we live in a largely religiously illiterate society.”

## *Why Care About Religious Freedom?*



Believer and unbeliever alike, it was argued in the symposium, should be concerned to protect the space necessary for the investigation of truth. Furthermore, members of the group affirmed that other fundamental freedoms, such as freedom of speech, press, assembly, have received constitutional protection in the past (in the US context) because they were bound up with religious practice in public life. In this sense, religious freedom was both fundamental and foundational for citizens and communities, and integral to the shaping of shared civic and political life. “Freedom of thought, conscience, and belief,” one participant said at the round-table, “is the taproot of the tree for all human rights.” This is reflected in magisterial documents such as the Magna Carta, the US Declaration of Independence, and even the French Declaration of the Rights of Man and the Citizen, which invokes “sacred rights.” This presenter questioned how respect for other rights will fare in a “cut-flower culture” if the current trends to marginalize or redefine religious freedom continue. “Religious claims,” one presenter noted, “are the most morally serious claims made by human beings. If we are collectively unwilling to protect those, undoing freedom of belief, why should we expect institutions to respect other important civil rights?”

It was also argued that religious freedom, properly understood, erects a barrier against statism, imposing limits on a government’s claim to power and authority. Claims of religious freedom “point to weighty interests that the state is obliged to respect.” The Universal Declaration of Human Rights was adopted in part as a postwar reaction to statist monism in Germany and Japan, where governments had invoked claims of state authority to trump rights based on appeals to individual conscience. Further discussion in this vein resulted from a paper presented on religious freedom as a casualty of what the author called the autonomy doctrine. The autonomy doctrine confuses dignity with autonomy, affirming an entirely self-referential, autonomous individual who is neither morally accountable nor bound by religious obligations. Several present argued that the communal nature of the exercise of religious freedom is antithetical to the present orthodoxy of the autonomy doctrine.

In our context today, conscience rights and claims of religious freedom are likely to be dismissed as private concerns or unpopular opinions. They are likely to be trumped by public reason, or the presumed will of popular majorities, or Supreme Court decisions adjudicating the clash between rights to publicly assisted suicide and rights of those opposing conscription into such practices. It was pointed out that recent decisions emerging from the Supreme Court of Canada have sought to strike a balance between these rights, but that the court has clearly upheld freedom of religion or conscience as a fundamental right.

Participants at the symposium also noted that conscience rights first gained legal recognition as part of communal and institutional claims, often connected to religious communities, for example, the granting of religion-based exemptions for pacifists from mandatory conscription by the state to fight in war. Returning to the theme of the “cut-flower culture,” one member of the group asserted that protecting conscience rights in the current environment will be especially challenging when the foundations of the human rights project are being eroded, concurrent with major expansions of the size and power of the state beyond boundaries that were once more solid and sacred.

One participant suggested that a way forward would be to address how to bring new images into public consciousness that would create a more hospitable environment for religious-freedom claims. Generational trends, it was suggested, play a role. Many young people have grown up with the perception that religious communities are the persecutors, and not the persecuted, as they were viewed in previous decades.

Another topic over the course of the day’s discussion was that with the decline in the authority and vitality of the mediating institutions of civil society, “the individual’s primary relationship is now with the state.” The challenge that results from this is often first of all in making a public argument that is capable of being heard. One respondent asked, “How do you put forward an argument to a society that is not interested?” Round-table participants argued that it is difficult to have deep exchanges in public when religious freedom is viewed primarily as divisive rather than as a valuable and unique constitutional protection to which all citizens are entitled. Religious claims in the public square are dismissed as being “on the wrong side of history” without much argument or deliberation, while legal professionals and jurists are questioning whether religious rights have any independent existence at all apart from “more fundamental freedoms.” The dangers of this, noted another scholar, are multiple, including an impoverished and imperilled public square: “When religion is driven out of society it is pushed into dark corners that can create religious fanaticism.” It is important for us to ensure that religious voices are present in the public square and so helping to guarantee a vibrant pluralism enlivened by religious faith.

## *Conclusion*

The Cardus Symposium on Religious Freedom as a Fundamental Freedom presented a unique opportunity to engage leading experts in the field so as to help guide Cardus Law in its new and emerging work on religious freedom. It is our belief that our common life is very much predicated on each of us being able to freely profess and privately and publicly manifest our deepest held beliefs. We look forward to continuing our work with faith communities, religious-freedom advocates, the academic community, public institutions, and our fellow citizens to affirm the importance of religious freedom. We aim to accomplish this through supporting next-generation research and scholarship, supporting public dialogue, and making effective use of media so as to influence policy makers, business leaders, and young professionals to champion religious freedom as key to a thriving, open, and democratic society.

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