

**Religious Tolerance: Where Do We Draw the Line?**  
**Big Sky Unitarian Universalist Fellowship**  
**Worship Service presented by Bill Kronholm**  
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*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...”* Those are the first words of the Bill of Rights. They are the 16 words that guarantee our freedom of religion. And they have been followed by more than 200 years of debate and litigation over how broadly, or how narrowly, they should be interpreted. As Unitarian Universalists, that debate is one we often join with enthusiasm – but not always with a single voice.

There is no question that as UUs, we consider ourselves to be tolerant and respectful of the right of others to believe as they wish. But as individuals, facing real life situations, we may differ on just how far tolerance should extend.

Today I want us to consider just where each of us would draw the line.

There is an insert in your order of service with a list of 10 items that illustrate the difficulty in balancing majority rule with minority rights. It is based on one compiled by Howard Tolley Jr., who teaches law and political science at the University of Cincinnati. This list, and the discussion that follows, were adapted from a service Professor Tolley delivered at St. John’s Unitarian Universalist Church in Cincinnati last summer.

I suspect that most of you read the list before I started speaking and already reached some conclusions. So, very quickly, I would like you to take a pencil and mark with a T for tolerance each of the practices you believe the majority should tolerate out of respect for a minority religious practice.

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### **How Much Free Exercise?**

Mark with a "T" each of the following minority religious practices that you think should be tolerated.

1. A Christian Scientist who refuses all vaccination and inoculations
2. Ritual animal sacrifice as part of a religious service.
3. Polygamy by Mormons and Muslims.
4. The refusal of Jehovah's Witnesses to salute the flag and recite the Pledge of Allegiance
5. The decision by Amish parents to remove their children from public schools after the 8th grade.
6. The refusal of some Quakers to pay that share of their taxes that would be spent on war
7. Native American use of peyote in traditional worship.
8. A Muslim woman's insistence on wearing a head covering or burqa in violation of a workplace dress code.

9. The refusal of a born-again Christian teen to attend a high school class teaching evolution.

10. The refusal of a Catholic adoption agency to place children with gay or lesbian couples.

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Shall we begin?

First, some general thoughts. Our Third UU principle calls for acceptance of one another; and our Fifth principle affirms the right of conscience and the democratic process. As religious liberals we tilt toward preserving and protecting minority rights by allowing exceptions to laws that may restrict religious practices.

Conservatives are more inclined to deny exemptions to minorities, reasoning that under majority rule, laws that are neutral on religion and generally applicable to all should apply to all.

From a conservative perspective, exceptions would grant minorities unequal special privileges. Some conservatives argue that special accommodations would be an unconstitutional preference for minority faiths. Minorities can **believe** whatever they wish, these conservatives say, but their **actions** can be regulated under general laws, no matter how sincere their motivation.

Liberals and conservatives sometimes find common ground, as illustrated by the first item in our list. **#1** Although generally tolerant, many liberals are prepared to limit religious practices when the state has a compelling interest, as in the case of public health. Liberals generally would deny liberty of conscience and compel religious minorities to submit to vaccination. Checking an epidemic trumps the right of conscience. The conservative position is more muddled. Conservatives are generally reluctant to accommodate religious minorities, and so many would support mandatory vaccination on the same grounds as liberals. But others believe vaccination over a parent's objections amounts to unreasonable government interference with the family. They might well come down on the side of the allowing Christian Science parents to exercise their choice – but the decision would not really be based on religious freedom.

The choice in **#2**, acceptance of animal sacrifice, is not a hypothetical. The city of Hialeah, Florida, enacted a cruelty to animals ordinance outlawing animal sacrifice, but only after a religion called Santeria opened a church there in 1987 and began conducting ritual sacrifices. You may not have heard of Santeria, but its roots are in West Africa, and it was brought to the Caribbean with the slave trade. It has an estimated 20,000 adherents in the U.S., and was practiced underground in Hialeah for some time before the church opened. The church challenged the city's ordinance, and in 1993 the Supreme Court ruled

unanimously that because the statute was aimed specifically at the church, it was unconstitutional. The church, by the way, is still in business.

Professor Tolley argues that this case reflects some of the less appealing reasons that liberals and conservatives agree. Both liberals and conservatives tend to apply a double standard. Both tolerate minority religious practices they respect -- but would deny minority religious practices they consider unworthy or reprehensible.

The challenge for both conservatives and liberals is to take care that restrictions on minorities are based on a principled commitment to the common good and are not motivated by hostility to unusual religious practice. Which brings us to **#3** on the list, polygamy. In the 19th Century, Americans were overwhelmingly hostile to the Mormon practice of polygamy, and states adopted marriage laws that reflected that hostility. The granting of statehood to Utah was conditioned on the Mormon church renouncing polygamy. Those anti-polygamy laws remain in force today, with minimal tolerance for plural marriages by Muslims as well.

Not until World War II did our society begin on the road toward greater tolerance. That change is exemplified in **#4** on our list, involving the Pledge of Allegiance. In 1940 the Supreme Court ruled that students in public schools could be compelled to swear the Pledge, even Jehovah's Witnesses who considered the flag salute

to be idolatry. A rash of mob violence and intimidation against Jehovah's Witnesses followed the ruling, and in 1943 the Supreme Court reversed its decision. Justice Jackson wrote the opinion guaranteeing their right of conscience. His opinion read in part: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."

The pledge became objectionable to even more religious minorities in 1952 when Congress added the phrase "one nation under God." The original, written by a Christian socialist, did not contain the phrase. But by 1952, the Cold War was at its height, and the change was a slap at communist atheism. Subsequent challenges to the pledge have failed to restore the original language, but presumably those who do not believe in a God cannot be compelled to recite the amended pledge.

An Amish family named Yoder won the next major Supreme Court decision extending the right of conscience, **#5** on our list. In violation of compulsory school attendance laws, Amish parents sought to withdraw their children from school after the eighth grade. The parents regarded teenage work on the family farm as essential to protecting Amish community membership and values against secular influence. The Supreme Court agreed in a unanimous decision. But, interestingly,

Justice Douglas filed a partial dissent because there was no provision for asking the children what they wanted to do. He declared that, "It is the future of the students, not the future of the parents, that is imperiled by today's decision."

In **#6**, the history of refusing to pay taxes to support war is far older than our country. Shortly after the Quakers arrived in America in 1656, there were a number of individual instances of war tax resistance. In 1709 the Quaker Assembly refused a request of £4,000 for an expedition into Canada, replying "it was contrary to their religious principles to hire men to kill one another."

Under federal law, it is still illegal to refuse to pay war taxes, though the IRS tends to seize property rather than imprison protesters. In 1982 the government came up with a new civil penalty which was specifically aimed at war tax resisters. Called the "frivolous" fine, it charged a \$500 penalty against anyone who altered their 1040 forms, such as by claiming a war tax deduction, to be paid in addition to the disputed tax amount. Despite the fact that it remains illegal, some Quakers and others still refuse to pay war taxes, knowing that their property may be seized.

The use of peyote as a sacrament, **#7**, is protected, but it is due to the Congress, not to the Supreme Court. A 1963 Supreme Court decision on behalf of a 7th Day Adventist named Adell Sherbert did establish a liberal rule that applied for

nearly 30 years – in order to burden free exercise of religion, the state must show a compelling interest and use the least restrictive means. However, the Sherbert test was struck down in 1990, and Justice Scalia replaced it with the old 19th Century conservative rule -- the right of conscience does not overcome the obligation to comply with a valid and neutral law that is generally applied. Thus the Court found that Native Americans could be required to comply with drug laws, even if it ended their ritual use of peyote. In 1993, Congress responded by passing the Religious Freedom Restoration Act, which restored the Sherbert test and thus granted protection to peyote rituals. The new law was supported both by liberal groups such as the [American Civil Liberties Union](#), and conservative groups including the [Traditional Values Coalition](#) and the [National Association of Evangelicals](#).

The headscarf in **#8** is protected in many instances. The law requires employers to make a reasonable accommodation for such religious practices unless doing so would impose an undue hardship on the employer. And when it comes to religious apparel, typically only safety concerns justify limiting a particular dress. But that is not always the case. In Philadelphia, a Muslim policewoman asked permission to wear a head covering with her uniform. The headscarf would not have covered her face or her ears, but would have covered her head and the back of her neck. The request was denied because the Philadelphia Police Department has a strict dress code that does not authorize the wearing of

religious symbols with the uniform. A federal appeals court upheld the department's dress code, saying the police department had a compelling interest in maintaining the appearance of neutrality and impartiality.

The question of burqa is more recent, and I'm not aware of any cases in the United States about when it is protected. But as you may know, France is considering banning it in some public places. A parliamentary commission declared the burqa to be "a challenge to our republic" and proposed banning burqas in hospitals, schools, government offices and on public transport. And President Nicolas Sarkozy declared that the burqa was not welcome in France. We'll see if the U.S. is more welcoming

And how tolerant are religious liberals about the rights of Christian Fundamentalists? For #9, mandatory evolution classes, Fundamentalist high school students have argued that lessons on evolution would undermine their faith. The professor who put together this exercise said he found that liberals who supported an exemption from school mandates for Amish and Jehovah's Witnesses were not as supportive of Fundamentalists. The liberals argued that the state has a compelling interest in exposing all children to evolution.

Professor Tolley does not say what the current law would be in this case, and I am not a lawyer. But from the reading I have done, it appears that schools can

require students to study theories and ideas that violate their religious beliefs, as long as there is no compulsion to accept those theories. Any of you who are lawyers, please feel free to correct or elaborate.

**#10** addresses our willingness to tolerate intolerance -- in this case, discrimination against gays in the name of religion. At what point do we find equal rights such a compelling interest that it supercedes the right of religious belief? We already deny tax-exempt status to some religious institutions that practice racism. In states that allow gay marriage, is the need to ban discrimination against gays so compelling that Catholic adoption agencies must be required to place children with same sex couples, contrary to their beliefs?

Massachusetts determined that its equal rights laws, which prohibit discrimination based on sexual orientation, should indeed apply to all adoption agencies. In 2006, Catholic Charities of Boston, a highly respected agency that had operated for more than a century, announced that it would end its adoption work rather than comply. Church officials said they could not reconcile the law with church teaching that placing children in gay homes is "immoral." Gov. Mitt Romney asked the Legislature to exempt Catholic Charities from the anti-discrimination law, but found no support, and the bill died in committee.

So where do we stand on religious tolerance? You can get a feeling for your own perspective by the number of T's that you marked on your list. There is no 'right'

number, of course. But it's worth noting that from a UU perspective, we must remain on guard against a liberal bias in deciding what practices to tolerate. We also must insist that non-believers enjoy the same right of conscience afforded to the religiously inspired.

Each society draws the line of religious tolerance in accord with its own values, and we can see an ebb and surge in tolerance based on world affairs. In the United States, there appears to be a growing intolerance for religious diversity, particularly on the part of the Christian right. Overall, however, we have thus far been spared the carnage involving Muslims and Hindus, Catholics and Protestants, Jews and Palestinians, elsewhere in the world. I attribute that to our cultural history, a shared commitment among most Americans to free exercise, equal rights and separation of church and state. With the apparent surge in religious intolerance in recent years, let us hope that the core commitment to tolerance will continue to hold sway.

Shalom and amen.