

A civil debate about religious freedom

John Corvino, Ryan Anderson, and Sherif Girgis agree: religious liberty is good, discrimination is bad, and the clash between these values is complicated.

by [Paul Marshall](#) in the [January 17, 2018](#) issue

In Review



Debating Religious Liberty and Discrimination

By John Corvino, Ryan T. Anderson, and Sherif Girgis
Oxford University Press

John Corvino, Ryan Anderson, and Sherif Girgis are leading advocates in America's culture wars, particularly concerning religious objections to complying with newer sexual mores. But they don't all agree with one another. Corvino, a skilled philosopher, argues for the liberal side and thanks his husband for his support, while Anderson and Girgis are students of Robert George, perhaps the most trenchant critic of modern views of marriage, gender, and sex. Their book is as lively and informed as it promises to be.

The names of those who commend the volume on the back cover are also noteworthy. Redoubtable philosopher Martha Nussbaum, whose views are reminiscent of Corvino's, calls the work "a refreshing and hope-inspiring book. Provocative, clear, careful in argument, searching in coverage." This sentiment is echoed by Southern Baptist leader Russell Moore. The agreement of two leading advocates on opposite sides on most of these issues suggests that the book they endorse is well worth reading.

The introduction, which carries all three authors' bylines, provides a succinct overview of contemporary controversies embedded within a history of religious freedom in America. Many of these conflicts are not new but have appeared "whenever people have conscientious objections to laws and policies that bind them." They arose when Quakers sought exemption from militia service and the Amish from mandatory schooling. They arise when Muslim prisoners want to have beards or Sikhs request exemptions from helmet laws. What's new is that most modern disputes concern exemptions from laws and regulations pertaining to marriage, gender, and sex, raising the question of whether such exemptions constitute unlawful discrimination.

All of the authors agree that religious freedom is a good and freedom from discrimination is also a good. This means that apparent conflicts between these two ideals are usually complex, involve disparate principles, and resist any one-size-fits-all response.

Consider the cases of Kim Davis and Baronelle Stutzman. Davis is a Kentucky county clerk who refused to issue marriage licenses to same-sex couples and also refused to allow her deputy clerks to do so. Stutzman had employed gay and lesbian people

since opening her flower store, and for ten years she had designed flower arrangements for the very couple that later sued her for declining to make an arrangement designed for their same-sex wedding. Davis is an agent of the government required to administer a law. Stutzman is a private party, comfortable interacting with gay people, who did not want to use her talents for a ceremony she could not endorse. Anderson and Girgis point to the different issues at stake, empathizing with both Davis and Stutzman while suggesting that there are various potential remedies. Corvino rejects Davis's claims but argues that "there are better ways to handle" Stutzman's situation than lawsuits (without specifying what those ways might be).

Such intricacies can also upend our conventional left-right categories. Currently debated Religious Freedom Restoration Acts began as a response to a Supreme Court decision authored by the late Justice Antonin Scalia which held that members of the Native American Church who use peyote sacramentally were not exempt from neutral, generally applicable drug laws. In response to this narrowing of religious freedom, a federal RFRA was passed unanimously in the House and with 97 votes in the Senate (both of which had Democratic majorities) and was lavishly praised by the American Civil Liberties Union, as well as by President Bill Clinton, who signed it into law. Later, when the Supreme Court held that this law applied only at the federal level, the states began to institute their own RFRA's, which, in a peculiar volte-face, are now being denounced as right-wing and bigoted.

The book's format—with chapters defending one position, then responses by critics, and then responses to responses—refines and advances the debate. I found myself persuaded by an argument and then persuaded to reject it. While it is probably unrealistic to expect that the authors could write a joint conclusion parallel to their introduction, without such a conclusion the volume does not really end. It simply stops with Anderson's and Girgis's final response to Corvino. I regard this lack of a conclusion as an invitation to them (and to us) to continue the argument.

The major virtue of this book is its civility. As Nussbaum stresses, it "shows that people who strongly disagree can both find much common ground and also articulate their differences with respect and care, fostering a culture of reason." The engagement these authors model is vital in a country that seems daily to become more divided and fractious. Moore laments, echoing John Courtney Murray, "Sadly, most Americans don't have these debates at all, content to stay in our silos and never engage with those who disagree with us." Discussion or even argument are

often cast aside as giving unwarranted legitimacy to the opposition and are replaced by condescension and vilification.

Of course, we want to defeat policies that we believe are unjust. But in a democracy such victories need to be tempered by the realization that we still need to live alongside each other as fellow citizens in a political community. We continue to be neighbors. As Moore concludes: "This book will equip you, wherever you stand, on how the 'other side' from you thinks. If American society follows the lead of this book, our culture wars won't end, but they just might be kinder and smarter. That's a good start."