

# What does Religious Liberty Look Like?

Discovering American Jewish History Through Objects

## 01 PROCLAIM LIBERTY

How would you proclaim liberty throughout the land?

“Proclaim liberty throughout the land unto all the inhabitants thereof.”

וקראתם דרור בארץ לכל-ישיביה

Leviticus 25:10

## 02 A HISTORIC LETTER

Do you think Washington's words are still relevant today?

It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights.

George Washington to the Hebrew Congregation of Newport, RI, August 1790

## 03 THIS MONUMENT IS OUR PROTEST

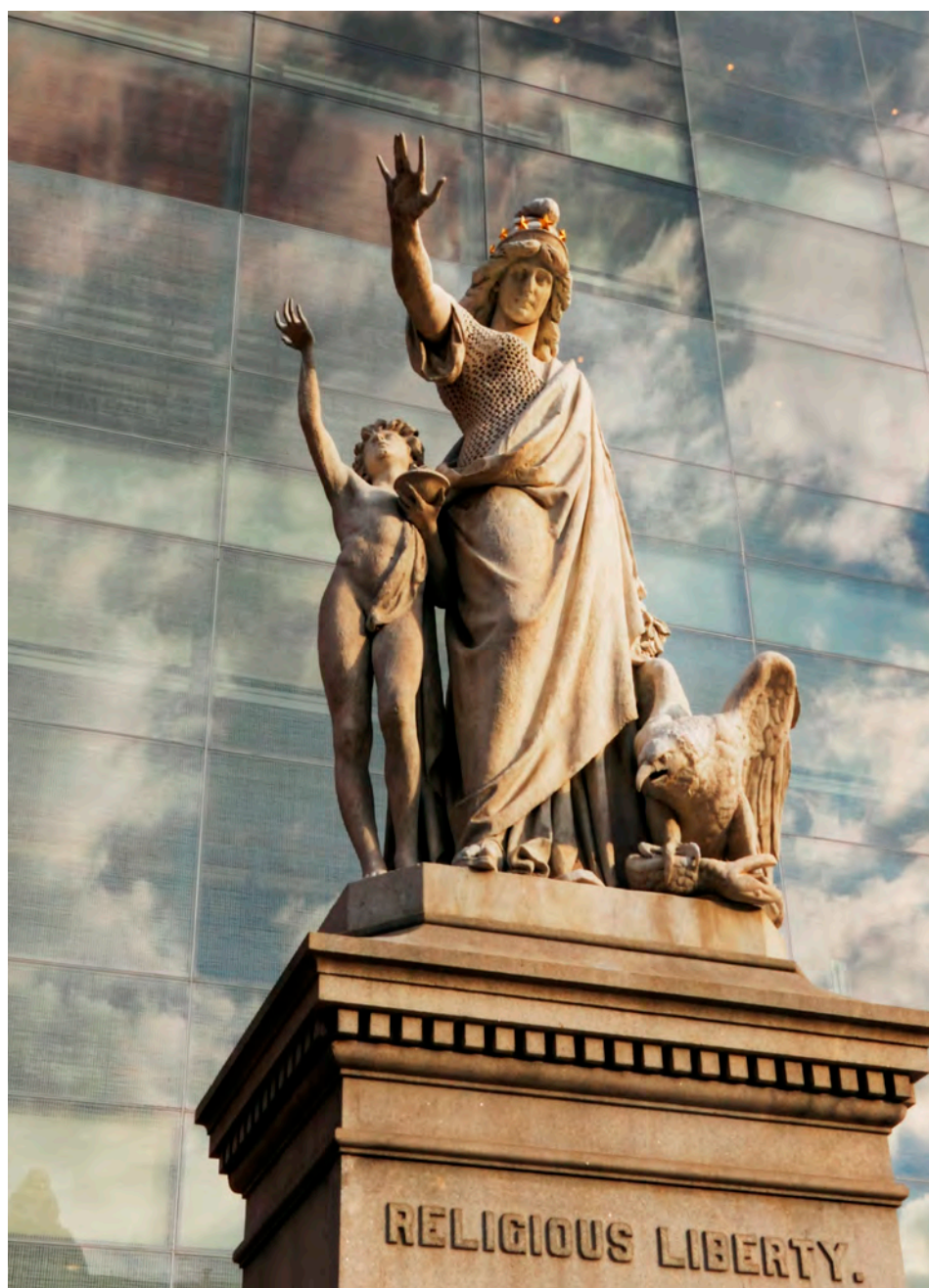
It is the crowning glory of our Constitution that it guarantees perfect religious equality to all, not from passing reasons of expediency, but on the high ground of justice and humanity.... This monument is....our protest against any unlawful encroachment upon the civil rights of American freemen.

Adolph Sanger, chairman of the B'nai B'rith Centennial Committee, unveiling the statue *Religious Liberty* in Fairmount Park, Philadelphia, November 30, 1876

## 04 THE CHALLENGE OF RELIGIOUS LIBERTY

In America, where religion is totally voluntary, where religious diversity is the norm, where everyone is free to choose his or her own rabbi and his or her own brand of Judaism—or, indeed, no Judaism at all—many...have assumed that Judaism is fated sooner or later to disappear.

Jonathan D. Sarna, *American Judaism: A History*, 2004



Religious Liberty sculpture in front of the Museum's glass façade  
Moses Jacob Ezekiel, *Religious Liberty*, 1876, The City of Philadelphia  
Photo courtesy of Jeff Goldberg/Esto

## RELIGIOUS LIBERTY ON TRIAL 08

Abercrombie refused to create an exception to its neutral Look Policy for Samantha Elauf's religious practice of wearing a headscarf....Elauf received the same treatment from Abercrombie as any other applicant who appeared unable to comply with the company's Look Policy.

Justice Clarence Thomas, dissenting opinion in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores*, February 25, 2015

Is there a time you shouldn't treat everyone the same way?

## TEAR DOWN THE WALLS 07

When my predecessors asked to be part of the Jewish community they were rejected, reviled, ridiculed. I made it my mission to tear down the walls that kept us out.

Rabbi Capers Funnye Jr., spiritual leader of Beth Shalom B'nai Zaken Ethiopian Hebrew Congregation of Chicago, April 29, 2016

## CORE VALUES 06

Freedom of religion is absolutely a core value of our nation. What we're concerned about is the weaponization of that right. Weaponization that allows for and encourages discrimination and harm. Religious freedom is NOT freedom to discriminate. #LGBTQ

Posted on Lambda Legal's official Twitter feed, 2018

Can you identify other examples of social media being used to express opinions about religious freedom?

## WHO GETS TO PARTICIPATE? 05

I think it is wrong for the federal govern-

ment to force Christian individuals, businesses, pastors, churches to participate in wedding ceremonies that violate our sincerely held religious beliefs. We have to stand up and fight for religious liberty.

Bobby Jindal, governor of Louisiana, on NBC's *Meet the Press*, June 28, 2015

# OPEN BOOK

Teacher  
Guide  
7th – 11th  
Grade

## What does Religious Liberty Look Like?

## On a cold and wintry Thanksgiving Day, November 30, 1876, Jewish and gentile dignitaries gathered on the grounds of the 1876 Centennial Exposition, held in Philadelphia, to witness the unveiling of a new monument to religious liberty.

Commissioned by the national Jewish fraternal organization B'nai B'rith, the neoclassical sculpture was dedicated “to the people of the United States.” Among those who spoke at the ceremony that day was the sculptor who had carved the statue in Italy, Moses Jacob Ezekiel. Ezekiel was a Civil War veteran who fought for the South, and the first Jewish sculptor to achieve international renown.

The sculpture’s origins date to the January 1874 Convention of the Independent Order of B'nai B'rith, which unanimously approved commissioning a statue to be displayed at the 1876 Centennial Exposition. The exposition brought ten million visitors to Philadelphia between May and November of 1876, but delivery delays resulted in the statue’s unveiling three weeks after the exposition closed.

*Religious Liberty*, as the sculpture is called, is an allegorical work in which each figure symbolizes an abstract concept. The main figure represents liberty, and she holds her right arm protectively over a young child who represents religious faith by reaching toward the heavens and holding a burning lamp in his hands. An eagle at the base of the statue crushes a serpent and looks to the horizon, suggesting America’s continuing struggle against intolerance.

In 1986 the monument moved from Philadelphia’s Fairmount Park to the grounds of the National Museum of American Jewish History on Independence Mall.

### **KEY QUESTIONS:**

- What does religious liberty mean and why is it important?
- Who is responsible for defending and expanding religious liberty, and how can they do so?
- What is the relationship between religious liberty and other human rights?  
Are they ever in conflict?
- How has religious liberty shaped Jewish religion and identity in America both in the past and today?

## LEARNING OBJECTIVES:

### By the end of this unit students will be able to:

- Apply inquiry-based methods to interpreting museum objects and/or primary sources.
- Think critically about the message that the Jewish community of 1876 aimed to convey through the design of *Religious Liberty*.
- Explain how religious liberty brought new opportunities for Jews to openly embrace their religious identities and at the same time new concerns that freedom might make it easy to convert, assimilate, or reject Judaism.
- Explain why monuments can be tools of both expression and protest.
- Understand that a core American value is to preserve and protect civil rights and civil liberties, which should be celebrated, fought for, and preserved by governments as well as by individuals.

## Suggested Pre-Lesson Activity

- 1. Create a T-chart on the board by writing above the two columns the words “toleration” and “acceptance.”**
- 2. Ask students to describe each word. They can offer their own definitions of each word, descriptive adjectives, or examples of each.**
- 3. Discuss the difference between toleration and acceptance, especially with regard to religion. What does it mean to tolerate people of other religions? What does it mean to accept people of other religions?**
- 4. Continue the discussion, and consider using the following questions:**
  - a) Does the First Amendment advocate for religious tolerance or religious acceptance? Why do you think so?
  - b) What does one need to do or know in order to tolerate someone of another religion? What does one need to do or know in order to accept someone of another religion?
  - c) Which is better, toleration or acceptance? Why? Can you think of an example when the other option would be preferable?
  - d) Have you ever tolerated someone? Have you ever accepted someone?

# Procedure

1. Refer to the *OpenBook Overview* and follow the instructions for the “See, Think, Wonder” activity as a class. Consider using the following discussion questions.

## See:

- What animals do you see in the image? What people do you see in the image?
- What is the bird holding in its talons?
- What is the woman wearing?
- What position are the people’s hands in?
- What is the boy holding?
- What text do you see on the pedestal?

## Think:

- What do you think the bird represents?
- What do you think the snake represents?
- Who do you think the people represent?
- Why do you think the people are holding their hands out?
- Why do you think the eagle is at the people’s feet?
- Why do you think the pedestal says “Religious Liberty”?

## Wonder:

- I wonder why this statue represents religion.
- I wonder why this statue is in Philadelphia.
- I wonder what story is being told by the statue.
- I wonder why there is a woman and a child on the statue.
- I wonder what other artistic representations of religious liberty look like.
- I wonder if the religious liberty depicted here can relate to all religions.
- I wonder how this can relate to other types of freedom.

**2. If you haven't already, divide students into pairs or trios. Distribute one Talmud page to each group and Student Guide to each student.**

**3. Refer to the *OpenBook Overview* and follow the instructions for the *havruta study*.**

**4. Refer to the *OpenBook Overview* and follow the instructions for the *Wrap up activity*. Consider using the following discussion questions.**

- Can you find two texts that agree with each other? What do you think their authors might say to each other?
- Can you find two texts that disagree with each other? What do you think their authors might say to each other?
- Which texts say that the United States ensures freedom of religion? Which texts say that the United States has yet to perfect religious liberty?
- Jindal (#5), Funnye (#7), and Thomas (#8) all describe incidents where someone was denied religious liberty. What is similar about their situations? What is different?
- Sarna (#4) and Funnye (#7) both discuss who makes up the American Jewish community. What do you think they would say to each other?
- Sanger (#3) and Lambda Legal (#6) both present a form of protest. What is similar about them? What is different?

**General prompting questions:**

- How do you define religious liberty?
- Do you think religious liberty is possible for people of all religions? Why or why not?  
Is the government responsible for preserving, protecting, and expanding religious liberty?  
Explain your opinion.
- What can you (students) do to preserve, protect, and expand religious liberty?
- If you could design your own statue depicting religious liberty, what would it look like?  
Can you draw it?

## Suggested Post-Lesson Activity

1. Use the museum's resource, <http://religiousfreedom.nmajh.org/>, to further explore George Washington's letter to the Hebrew Congregation of Newport, RI.
2. Distribute copies of the letters written by Seixas and Washington to all students. Have them circle words or phrases they don't know and underline words or phrases they think are important. Discuss as a class.
3. Explore <http://religiousfreedom.nmajh.org/> as a class; use the highlighted annotations to uncover more meaning in each of the letters.
4. Discuss the letters using the following questions:
  - Why do you think both Seixas and Washington make so many biblical references? Do you think they understood each other's references, even though they came from different religions?
  - What do you think Washington's letter accomplished? What do you think needed to be done next?
  - Do you believe Washington? Why or why not?
  - Do you think that, today, we have achieved a government that “gives to bigotry no sanction, to persecution no assistance”? Why or why not?

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## Object Information

In front of the National Museum of American Jewish History in Philadelphia, facing Independence Mall, stands a 25-foot tall monument called *Religious Liberty*. In 1874, B'nai B'rith, a secular Jewish fraternal organization, commissioned Moses Jacob Ezekiel (1844-1917) to create the sculpture, which was then given to the United States as a gesture of appreciation for the Constitutional guarantee of religious freedom.

The Centennial Exposition featured displays from each state as well as businesses and ethnic groups aiming to show their patriotism. For example, Mrs. Maxwell's Museum of Taxidermy, funded by the states of Kansas and Colorado, presented the natural resources of the Rocky Mountains and E.C. Hazard & Co, a canning company, showcased the great bounty of American farms through towering displays of canned preserves.

B'nai Brith's decision to commission a monument for the Centennial Exposition fit well within the fashion of the time. The Freedman's Memorial was erected in 1876 to commemorate Lincoln's role in ending slavery. Auguste Bartholdi's *Liberty Enlightening the World*, known by contemporary audiences as the Statue of Liberty, was originally intended for display at the Centennial Exposition but instead found its home in New York harbor.

Ezekiel's sculpture depicts religious liberty through a group of allegorical figures. The main figure, a woman in classical dress, is Liberty. She wears a Phrygian cap, a symbol of liberty in neoclassical art (the Statue of Liberty also wears one), decorated by thirteen stars, representing the original thirteen colonies. She holds a copy of the United States Constitution in her left hand and stretches her right hand



Religious Liberty sculpture in front of the Museum's glass façade  
Moses Jacob Ezekiel, *Religious Liberty*, 1876, The City of Philadelphia  
Photo courtesy of Jeff Goldberg/Esto

forward in a protective gesture. The young boy who stands next to her holds a flame represents Faith. The eagle represents Freedom, and he is crushing a serpent that represents Intolerance.

B'nai B'rith invited sculptors to submit proposals in line with their chosen theme of religious liberty. The winning proposal came from Moses Ezekiel—a former Confederate soldier. Ezekiel was born in Richmond and was the first Jewish cadet at the Virginia Military Institute. He returned to the Institute after the Civil War and graduated in 1866. He is considered the first prominent American Jewish sculptor and he worked in the neoclassical style. He was trained as an artist in Europe and spent most of his professional life in Rome where he maintained a very active studio. Despite the irony of a proponent of slavery crafting a sculpture celebrating liberty,

it was enormously successful. Before his death, Ezekiel became wildly famous and was even knighted by three different kings and queens.

*Religious Liberty* was shipped to the United States in 1876 and arrived in Philadelphia exactly twenty days after the Centennial Exposition closed, partly due to an inability to pay Ezekiel. One thousand five hundred people of every denomination attended the dedication ceremony in Philadelphia's Fairmount Park on Thanksgiving Day, November 30, 1876.

In 1985, B'nai B'rith and the National Museum of American Jewish History worked together to have the monument moved to the Museum's first building on Independence Mall. And in 2010, *Religious Liberty* moved with the Museum to its current location at 5th and Market streets.

## Appendix A – Historic Background

As the ship the Sint Catrina reached the mouth of the Hudson River in September 1654, twenty-three Jews disembarked to begin a new life in the Dutch colony of New Amsterdam. Former residents of the town of Recife in Brazil, these Jews had been forced to flee their home when the Portuguese reclaimed Dutch colonies in Brazil. Under Portuguese rule, the Brazilian colony officially became subject to the rules of the Inquisition, meaning that all Jews there would be forced to convert to Catholicism. These refugees from religious persecution were granted a new home in New Amsterdam, as beneficiaries of the more tolerant Dutch position on religious practice. This group of men and women became the first Jewish community in North America. They founded Shearith Israel congregation, which still exists today.

The Jews of New Amsterdam soon became the Jews of the British colony of New York. Religious groups like the Puritans came to the British colonies in the early 1600s so they could practice their own religion, which diverged from the canons of the Church of England. But America had its own religious martyrs – three Quakers were put to death in the Massachusetts Bay Colony in the 1660s, before England passed a religious toleration act. By the late seventeenth century, a multitude of Christian communities, Jews, Quakers, a very small group of Muslims, and Native Americans all worshipped freely – although Native Americans could not always count on European tolerance, and slaves had no rights whatsoever to free practice of religion.

Like their neighbors, many colonial Jews supported the transition to independence as the American Revolution began. After the United States was founded, Jewish communities in the United States began to reckon with the fact that their traditional community structure had been built upon the fact that Jews lived in countries with an official state religion – how might their religious liberty change, they wondered, when they practiced their religion in a democratic republic espousing religious freedom?

In 1790, Moses Seixas, the *gabbai* (warden) of the synagogue in Newport, Rhode Island, wrote a letter to George Washington congratulating him on becoming the first president. Washington responded, assuring Seixas that Jews would not simply enjoy toleration in the new republic. No longer regarded as a communal entity, Jews were now regarded under the new government as individual citizens in possession of the natural rights of freedom of religion and freedom of expression – “All possess alike liberty of conscience and immunities of citizenship,” Washington wrote. “For happily the Government of the United States...gives to bigotry no sanction, to persecution no assistance...” Washington’s words reflect his immense faith and trust in the newly-ratified American Constitution, including the Bill of Rights, which had been drafted only a few months earlier.

The Bill of Rights, composed of the first ten amendments to the Constitution, protects individual liberties that are not explicitly listed in the main body of the Constitution. The first right recorded in the Bill of Rights is that of religious liberty, which both protects the right of individuals to practice any or no religion, and prevents the government from establishing

a state religion, or creating an official relationship between “church” and state.

In the 19th century, restrictions on religious groups became a way of marking prejudice against groups of people as a race or ethnicity. Emma Lazarus, a New York-born poet whose words now appear on the base of the Statue of Liberty, descended from America’s first Sephardic settlers. Lazarus’s family was wealthy and her father wished for his family to socially integrate with New York’s Christian elite. Because of their deep roots in the country, Lazarus’s family largely achieved social acceptance, but Lazarus began to notice that more recent Jewish immigrants did not enjoy similar access. This awareness spurred her to become an advocate for Russian Jewish immigrants in the 1880s. As she wrote in *Epistle to the Hebrews*, “Until we are all free, we are none of us free.” Lazarus realized that religious prejudice was part of a larger problem in the United States, where individual liberty could not be enjoyed by all living in America – women and African Americans were not able to vote, and immigrants from all backgrounds faced discrimination and intolerance. Even after the 13th, 14th, and 15th amendments fundamentally redefined the concept of freedom, by abolishing slavery, establishing birthright citizenship, and guaranteeing equal treatment under the law, fundamental inequalities remained.

In the 1840s, recent Jewish immigrants from Germany founded B’nai B’rith, a fraternal order that was America’s first non-synagogue-based national Jewish organization. Its members wanted to advocate for their fellow Jewish immigrants, but recognized that in the United States, thanks to the First Amendment, they had the opportunity to do so outside of the formal structures of the religious community. It was this ideal of religious freedom which

inspired B’nai B’rith to commission the sculpture *Religious Liberty* for the 1876 Centennial Exposition, acknowledging this protection, and demonstrating that America’s Jews were woven into the fabric of American life. That statue now stands at the corner of 5th and Market streets in Philadelphia, in front of the National Museum of American Jewish History.

## Appendix B – Supplementary Information for Talmud Page

### 01 PROCLAIM LIBERTY

And you shall hallow the fiftieth year. You shall proclaim liberty throughout the land unto all the inhabitants. It shall be a jubilee for you: each of you shall return to his holding and each of you shall return to his family.

- *Leviticus 25:10*

Leviticus is the third book in the Torah and contains a wide variety of rules for Jewish life and practice. These rules range from dietary laws, to restrictions on trading, to instructions for what to do when your house gets mold.

This passage refers to the jubilee year (in Hebrew, *yovel*); it occurs every fifty years, after seven cycles of the seventh or sabbatical year (in Hebrew, *shemitah*), when the land must lie fallow. According to Leviticus, during the jubilee year slaves and prisoners would be freed, debts forgiven, and divine mercy would be most generous. Additionally, Levitical law requires that farming should cease for the full year so that the land can rest and that all

property be returned to its original owner or heirs. The name *yovel* references the shofar blast that announced the jubilee year to all. Today, most Jewish communities do not celebrate the jubilee year because, according to biblical law, the rules only apply when the majority of Jews live in Israel.

In 1751, the speaker of the Pennsylvania Assembly ordered a bell from London for Independence Hall's bell tower—to celebrate the fiftieth anniversary of William Penn's Charter of Privileges, which granted religious liberties and political self-government to the people of Pennsylvania. Engraved on the bell was this passage, "proclaim liberty throughout the land unto all the inhabitants thereof," a reference both to Penn's charter and the jubilee year. After the bell cracked on its first test ring, local metalworkers melted it down and cast a new one. For nearly ninety years this bell called lawmakers to their meetings and townspeople to hear the reading of the news. A new crack began to appear in the 1840s and then in 1846 the City of Philadelphia decided to repair it in preparation for the commemoration of George Washington's birthday (what we today call President's Day). Metalworkers widened the thin crack to prevent its further spread, so the wide split visible today was actually the fix!

## 02 A HISTORIC LETTER

It is now no more that toleration is spoken of, as if it was the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions

their effectual support.

- *Excerpt, George Washington's letter to the Hebrew Congregation of Newport, RI, August 1790*

Washington's 1790 letter to the Newport Jewish community affirmed religious freedom as a right, not a privilege—an assertion that no other nation had ever granted its Jewish residents. Fourteen years after the signing of the Declaration of Independence, Washington, the revered hero, had been entrusted with establishing a revolutionary new form of government. During Washington's visit to Rhode Island upon its ratification of the Constitution (it was the last state to do so), Moses Seixas addressed the first president on behalf of Newport's Jews, emphasizing their hope that this government would maintain its commitment to "the invaluable rights of free Citizens." Responding to "the Hebrew Congregation in Newport," Washington composed a moving and courageous affirmation of religious freedom, a right that continues to shape our national identity.

Washington's iconic address to "the children of the stock of Abraham" emphasized the ideals enshrined in America's founding documents and confirmed the new president's commitment to a government that "gives to bigotry no sanction, to persecution no assistance." Yet in practice universal religious freedom did not exist for all white citizens of the early republic and slaves continued to have no rights whatsoever.

Despite President Washington's assertions, many states in the US prevented Jews from holding office or voting well into the nineteenth century. And the same year the United States adopted the Bill of Rights, Russia established the Pale of Settlement, confining Jews to a specific geographic area and constraining their economic and political rights.

### 03 THIS MONUMENT IS OUR PROTEST

In other countries, progress has been made in toleration, from time to time, by the gradual removal of disabilities. But it is the crowning glory of our Constitution that it guarantees perfect religious equality to all, not from passing reasons of expediency, but on the high ground of justice and humanity.... This monument is...our protest against any unlawful encroachment upon the civil rights of American freemen.

- Adolph Sanger, chairman of the B'nai B'rith Centennial Committee, at the monument unveiling in Fairmount Park, November 30, 1876.

Adolph Sanger spoke these words at the unveiling of *Religious Liberty* in Philadelphia's Fairmount Park on November 30, 1876. He had begun his remarks by noting that there was nothing particularly Jewish about honoring religious freedom. Then he turned to current events, specifically recent “unwise and unpatriotic efforts” to “introduce sectarianism into the Constitution,” referring to a proposed (and ultimately unsuccessful) amendment to the Constitution abolishing the separation of church and state.

### 04 THE CHALLENGE OF RELIGIOUS LIBERTY

In America, where religion is totally voluntary, where religious diversity is the norm, where everyone is free to choose his or her own rabbi and his or her own brand of Judaism—or, indeed, no Judaism at all—many, and not just rabbinical scholars, have assumed that Judaism is fated sooner or later to disappear. Freedom, the same quality that made America so alluring

to persecuted faiths, also brought with it the freedom to make choices: to modernize Judaism, to assimilate, to intermarry, to convert. American Jews, as a result, have never been able to assume that their future as Jews is guaranteed. Each generation has had to wrestle with the question of whether its own children and grandchildren would remain Jewish, whether Judaism as a living faith would end and carry on as ancestral memory alone.

- Jonathan D. Sarna, *American Judaism: A History*, 2004

For Jews, freedom brought with it a vast array of choices, not only to fulfill dreams of citizenship but also to experiment, innovate, and achieve. Jews had lived for centuries in places that denied them basic economic and political rights. In America, they discovered new opportunities and challenges, and a chance to invent and reinvent themselves, their religious lives, and their communities.

Dr. Jonathan Sarna is a professor of American Jewish history and the chief historian for the National Museum of American Jewish History. In his book *American Judaism*, he responded to another scholar's claim that freedom would eventually lead to the full assimilation of Jews into American society, and, ultimately, the end of Judaism.

### 05 WHO GETS TO PARTICIPATE?

I think it is wrong for the federal government to force Christian individuals, businesses, pastors, churches to participate in wedding ceremonies that violate our sincerely held religious beliefs. We have to stand up and fight for religious liberty. That's where this fight is going.

- Bobby Jindal, governor of Louisiana, on NBC's

Meet the Press, *June 28, 2015*

Bobby Jindal, the governor of Louisiana from 2008 to 2016, spoke on NBC's *Meet the Press*. The context of his statement was a court case brought by a lesbian couple from Louisiana that in 2015 contacted a local bakery about making their wedding cake. The bakery declined the couple's request, citing religious beliefs. Jindal was speaking in support of a state law that would make it legal for a business to refuse a service based on religious or moral beliefs. The law did not pass. Just a few months later, on June 26, 2015, the Supreme Court ruled in *Obergefell v. Hodges* that all states must issue marriage licenses to same-sex couples and recognize same-sex marriages performed in other jurisdictions.

## 06 CORE VALUES

Freedom of religion is absolutely a core value of our nation. What we're concerned about is the weaponization of that right. Weaponization that allows for and encourages discrimination and harm. Religious freedom is NOT freedom to discriminate. #LGBTQ

- *Posted on Lambda Legal's on their official Twitter feed, 2018*

Lambda Legal is a national organization committed to protecting the civil rights of LGBTQ people and anyone living with HIV. The organization posted this tweet in response to an executive order signed by President Trump aimed at giving faith-based organizations greater access to federal funding. Advocacy groups like Lambda Legal worried that the executive order would be used to impose certain beliefs on others or to discriminate. This intensified the ongoing debate over the

role of religion and religious organizations in United States politics.

## 07 TEAR DOWN THE WALLS

When my predecessors asked to be part of the Jewish community they were rejected, reviled, ridiculed. I made it my mission to tear down the walls that kept us out.

- *Rabbi Capers Funnye Jr., spiritual leader of Beth Shalom B'nai Zaken Ethiopian Hebrew Congregation of Chicago, April 29, 2016*

Capers Funnye Jr. is the rabbi of Beth Shalom B'nai Zaken Ethiopian Hebrew Congregation of Chicago; he is also the cousin of former first lady Michelle Obama and the first African American rabbi to be accepted onto Chicago's Board of Rabbis. He grew up in a Christian household and converted to Judaism during college. Here he speaks about the racism he has encountered within the Jewish community and about white Jews' historical rejection of Jews of color.

## 08 RELIGIOUS LIBERTY ON TRIAL

Abercrombie refused to create an exception to its neutral Look Policy for Samantha Elauf's religious practice of wearing a headscarf. In doing so, it did not treat religious practices less favorably than similar secular practices, but instead remained neutral with regard to religious practices. To be sure, the effects of Abercrombie's neutral Look Policy, absent an accommodation, fall more harshly on those who wear headscarves as an aspect of their faith. But that is a classic case of an alleged disparate impact. It is not what we have previously understood to be a case of disparate treatment because Elauf received the same

treatment from Abercrombie as any other applicant who appeared unable to comply with the company's Look Policy.

- *Justice Clarence Thomas, dissenting opinion in Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, February 25, 2015*

In 2008, Abercrombie & Fitch refused to hire Samantha Elauf, a practicing Muslim, because she wears a hijab, a head covering worn in public by some Muslim women; the company based its decision on its dress code's prohibition on wearing hats or caps. Elauf sued, arguing that she wore the hijab as an expression of her religious beliefs, not as an accessory. In 2015, the US Supreme Court ruled in Elauf's favor, calling Abercrombie & Fitch's actions religious discrimination.

Elauf said, "I loved fashion and was eager to work for Abercrombie & Fitch. Observance of my faith should not have prevented me from getting a job. I am glad that I stood up for my rights." Though she never worked for Abercrombie & Fitch, Elauf did pursue a career in fashion after graduating from the University of Oklahoma.



# OPEN BOOK

Student  
Guide

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