

# Confusion Over the First Amendment

**Exclusive:** The Blunt Amendment went down to a narrow defeat in the Senate on Thursday, but its contention that employers must be allowed to impose their religious beliefs on the medical insurance choices of their employees will remain a hot political topic one dressed deceptively in the First Amendment, writes Robert Parry.

By Robert Parry

To state what should be obvious but is apparently not, liberties even those cited in the Bill of Rights are not absolute and indeed many liberties that Americans hold dear are inherently in contradiction. Since the nation's founding, it has been a key role of government to seek out acceptable balances in this competition of interests.

For instance, the Bill of Rights guarantees freedom of speech, but not to cry "Fire!" in a crowded theater. The press is protected, but that does not mean that newspapers can do whatever they want. If they print malicious lies against a citizen, they can be subject to libel laws because it is accepted that people also need some protection against losing their reputations unfairly.

It also would be illegal under federal law to hack into a person's cell phone as Rupert Murdoch's media empire did in Great Britain. In the United States, there is a constitutional expectation of some personal privacy.

Similarly, you can make the claim that the Second Amendment gives you the right to have a gun for self-protection, but you'd be on a lot shakier ground if you insisted that your "right to bear arms" justified your possession of a surface-to-air missile or a tactical nuclear bomb. Then, the competing right of others in society to expect a reasonable level of safety would trump your weapons right.

Churches, too, were afforded broad protections under the Bill of Rights, but they still must abide by civil laws. For instance, a religion that practices pedophilia or polygamy or fundraising fraud cannot simply assert a blanket right under the First Amendment to do whatever it wants.

Yet, today we're being told by the Right that religious liberty is boundless and that any moral or religious objection by an employer against giving an employee some specific health benefit trumps the employee's right to get that medical service. In other words, the religious freedom of the employer should trample the rights of the employee who may have a different moral viewpoint.

A compromise from President Barack Obama on whether a religious-owned institution can deny women employees access to contraceptives in health plans (Obama shifted the costs for that coverage directly to the insurance companies) has failed to satisfy the Catholic bishops who continue to protest the plan as an infringement on their religious dogma against birth control, although many other Catholic groups have praised Obama's compromise.

In this campaign year, Republicans have denounced Obama's plan as an unconstitutional infringement on religious freedom. Sen. Roy Blunt of Missouri proposed an amendment that would allow any employer to cite a moral objection in denying insurance coverage for any medical service. That raised the prospect that some owner who, say, considers AIDS a judgment from God against immoral behavior could exclude that expensive coverage for employees.

### **Appeals to the Founders**

On the Senate floor on Thursday as his proposal was facing a narrow defeat Blunt said "this issue will not go away unless the administration decides to take it away by giving people of faith these First Amendment protections."

Senate Minority Leader Mitch McConnell of Kentucky claimed to be speaking for the nation's Founders: "It was precisely because of the danger of a government intrusion into religion like this one that they left us the First Amendment in the first place, so that we could always point to it and say no government no government no president has that right. Religious institutions are free to decide what they believe, and the government must respect their right to do so."

The Blunt amendment also tapped into the "hate-government" message of the Tea Party, that "gub-mint" shouldn't be imposing regulations that impinge on "liberty," either for individuals or the states. But these propaganda themes rely on a revisionist founding narrative of the United States, pretending that the Founders opposed a strong central government and wanted a system of states' rights and unrestrained personal liberty.

This narrative – pushed by Tea Partiers and libertarians – always skips from the Declaration of Independence of 1776 to the U.S. Constitution of 1787, while ignoring the key government document in between, the Articles of Confederation, which was in force from 1777 to 1787. The Articles represent an inconvenient truth for the Right since they created a system of a weak central government with independent states holding almost all the cards.

Key Founders, such as Virginians George Washington and James Madison, regarded the Articles as unworkable and dangerous to the nation's survival. They decided to reshuffle the deck. So, in 1787, operating under a mandate to propose

amendments to the Articles, Washington, Madison and others engineered what amounted to a coup against the old system. In secret meetings in Philadelphia, they jettisoned the Articles and their weak central government in favor of the Constitution and a strong central government.

Madison, the Constitution's chief architect, was also the author of the Commerce Clause, which bestowed on the central government the important power to regulate interstate commerce, which many framers recognized as necessary for building an effective economy to compete with rivals in Europe and elsewhere.

### **Fooling the Tea Partiers**

Today's Right leaves out or distorts this important chapter because it undercuts the message that is sent out to the Tea Partiers – that they are standing with the Founders by opposing a strong central government. This propaganda has proved to be a very effective way to deceive ill-informed Americans about what the true purpose of the Constitution was.

The Founders also spoke and wrote frequently about the necessity of trading off some liberty for a functioning society. Contrary to the Right's founding myth, the Founders were not absolutists for liberty (beyond the obvious fact that many were slaveowners); they had read the works of political philosophers who recognized that civilization required some constraints on individual actions.

The Founders also were mostly practical men who wanted a vibrant and successful nation recognizing that only such a country could protect the independence that had just been won at a high price in blood and treasure. To make the Founders into caricatures of religious zealotry, who would place the dogma of any religion over the decisions of individual citizens, is a further distortion of what the leading framers were thinking at the time.

Some of Madison's key allies in the fight for the Constitution and later enactment of the Bill of Rights were Virginian Baptists who believed fiercely in the separation of church and state. Thus, the First Amendment begins by prohibiting establishment of an official religion before barring interference in religious practices. Nothing in the First Amendment says churches are exempt from civil law or that the government must help them impose their doctrines on citizens.

So, what is this coordinated attack on the federal government really all about? Clearly, the Right does not truly care about Americans having freedom of conscience on religious matters. Otherwise, we wouldn't be seeing all these attacks on women's access to contraception and abortion services. The Right has no compunction against intruding on the religious beliefs of those women.

## **Demonizing the New Deal**

Which gets us to the key point about the orchestrated hostility toward any action by the U.S. government when it supports the welfare of the average American. What we are watching is a class war as billionaire Warren Buffett has rightly noted and that the wealthy are winning. As part of that war, the wealthy and their operatives have developed what might be called a “united front” against government, with poorer Americans drawn in by the so-called “cultural issues.”

The wealthy understand that in the absence of government intervention on behalf of common citizens, nearly all power would accrue to corporations and to the rich. The average American would become, at minimum, a second-class citizen with far fewer meaningful rights and, in some ways, a virtual slave to the powerful.

What many Americans seem to have forgotten is that the Great Middle Class wasn't a natural outgrowth of the nation's economic system; it was the creation of the federal government and especially the New Deal. After the Great Depression brought on largely by vast income inequality and rampant stock speculation President Franklin Roosevelt launched the New Deal, pitting the federal government against the titans of business.

The New Deal's goal was to spread the wealth of the country more equitably by legalizing unions and investing public funds in building the nation, while simultaneously reining in reckless financial practices and restraining the power of the rich. Inevitably, that meant intruding on the “liberty” of the wealthy to do whatever they wanted. It meant allowing workers to engage in collective bargaining and to strike. It meant imposing higher taxes on the rich so the national infrastructure could be expanded and modernized.

Those efforts grew in the post-World War II era with veterans benefiting from the GI Bill to go to college and buy homes. And later, with projects like the Interstate Highway system, which sped goods to markets, and the Space Program, which spurred technological advances. Even more recently, the government-created Internet introduced dramatic growth in productivity.

These innovations generated great national wealth and combined with high marginal tax rates on the rich created a much more equitable society, both economically and politically. But many of the rich never accepted the social contract implicit in the New Deal, that all Americans should share in the nation's bounty and that a strong middle class was good for everyone, including fair-minded businessmen who benefited from larger markets for their products.

Instead, many rich Americans wanted to keep their money for themselves and to

pass it on to their progeny, creating what would amount to an aristocracy, a class that would essentially own and govern America. Of course, they couldn't exactly express it that way; they had to dress up their greed in different clothing. After all, even the dumbest American wasn't likely to sign on to a program for restoring the Gilded Age under an unrestrained financial system that had led to the Great Depression.

The rich had to sell their new era of plutocratic dominance as a "populist movement," essentially as "liberty" from government. The national government, in particular, had to be transformed from the defender of the middle class and the promoter of a broad-based prosperity into an oppressor holding back "enterprise" and restricting "freedom."

That required building a powerful propaganda megaphone with angry voices blaring out messages that exploited the frustrations of average Americans. Instead of blaming the rich for shipping jobs overseas and for eroding middle-class incomes, the villain had to become the "gub-mint." The answer had to be giving money and power back to corporations and their allies.

In some ways, the Blunt amendment fits into this pro-corporate philosophy (albeit with a religious twist of empowering the Catholic Church's hierarchy as well as company bosses with moral qualms). The GOP plan would have transferred even more power to employers over their employees' lives, down to their choices of medical services.

The Senate rejected the Blunt amendment, 51-48, but Republicans vowed to make it an issue in the presidential campaign.

**Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush*, was written with two of his sons, Sam and Nat, and can be ordered at [neckdeepbook.com](http://neckdeepbook.com). His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras, Cocaine, the Press & 'Project Truth'* are also available there.**

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## The Risk of Contagion Nation

Challenges to science are emerging across the political spectrum from Christian fundamentalists on the Right to skeptics on the Left who question the inherent good of progress with one result a growing resistance to vaccinations for children, as Bill Moyers and Michael Winship note.

By Bill Moyers and Michael Winship

We haven't even turned the page on the controversy over contraceptives, health care and religious freedom, when another thorny one arises involving personal conscience and public health. A flurry of stories over the past few days coincided with seeing a movie that inspires more than passing interest in their subject.

Steven Soderbergh's film *Contagion* came out a few months ago and was inexplicably and completely frozen out of the Oscar nominations. But it is the most plausible experience of a global pandemic plague you're likely to see until the real thing strikes. With outstanding performances from an ensemble cast that includes Matt Damon, Kate Winslet, Gwyneth Paltrow and Laurence Fishburne, *Contagion* is stark, beautiful in its own terrifying way, and all-too-believable.

The story tracks the swift progress of a deadly airborne virus from Hong Kong to Minneapolis and Tokyo to London – from a handful of peanuts to a credit card to the cough of a stranger on a subway. Rarely does a film issue such an inescapable invitation to think: it could happen; that could be us. What would we do?

With *Contagion* making such a powerful impression, for several days news articles seemed to keep popping up about contagious disease and the conflict between religious beliefs and immunization. There was nothing new about the basics: All 50 states require some specific vaccinations for kids, yet all of them grant exemptions for medical reasons say, for a child with cancer. Almost all of them grant religious exemptions. And 20 states allow exemptions for personal, moral, or other beliefs.

According to the Feb. 15 edition of *The Wall Street Journal*, a number of pediatricians are dropping families from their practices when the parents refuse immunization for their kids. "In a study of Connecticut pediatricians published last year," the paper reported, "some 30% of 133 doctors said they had asked a family to leave their practice for vaccine refusal, and a recent survey of 909 Midwestern pediatricians found that 21% reported discharging families for the same reason.

"By comparison, in 2001 and 2006 about 6% of physicians said they 'routinely' stopped working with families due to parents' continued vaccine refusal and 16% 'sometimes' dismissed them, according to surveys conducted then by the American Academy of Pediatrics."

But some parents still fear a link between vaccinations and autism, a possibility science has largely debunked. Some parents just want to be in charge

of what's put into their children's bodies, as one West Virginia politician puts it.

And some parents just don't trust science, period – a few have even been known to fake religion to avoid vaccinating their kids. So there are many loopholes. But now seven states are considering legislation to make it even easier for mothers and fathers to spare their children from vaccinations, especially on religious grounds.

In Oregon, according to a story by Jennifer Anderson in *The Portland Tribune*, the number of kindergartners with religious exemptions is up from 3.7 percent to 5.6 percent in just four years, and continuing to rise. This has public health officials clicking their calculators and keeping their eye on what's called "herd immunity."

A certain number of any population group needs to have been vaccinated 80 percent for most diseases, 92 percent for whooping cough to maintain the ability of the whole population "the herd" to resist the spread of a disease.

Ms. Anderson offers the example of what used to be called "the German measles" rubella. All it takes are five unvaccinated kids in a class of 25 for the herd immunity to break down, creating an opportunity for the disease to spread to younger siblings and other medically vulnerable people who can't be vaccinated. If you were traveling to Europe between 2009 and 2011, you may remember warnings about the huge outbreak of measles there, brought on by a failure "to vaccinate susceptible populations."

Here in the United States, several recent outbreaks of measles have been traced to pockets of unvaccinated children in states that allow personal belief exemptions. The Reuters news service recently reported 13 confirmed cases of measles in central Indiana. Two of them were people who showed up to party two days before the Super Bowl in Indianapolis. Patriots and Giants fans back east were alerted. So far, no news is good news.

But this is serious business, made more so by complacency. Older generations remember when measles killed up to 500 people a year before we started vaccinating against them in 1963. The great flu pandemic of 1918 killed ten times more Americans than died in the Great World War that ended that year and took the lives of as many as 40 million globally. Our generation was also stalked by small pox, polio and whooping cough before there were vaccinations.

In a country where few remember those diseases, it's easy to think, "What's to worry?" But as the movie *Contagion* so forcefully and hauntingly reminds us, the earth is now flat. Seven billion people live on it, and our human herd moves on

a conveyer belt of perpetual mobility, so that a virus can travel as swiftly as a voice from one cell phone to another.

When and if a contagion strikes, we can't count on divine intervention to spare us. That's when you want a darn good scientist in a research lab. We'll need all the help we can get from knowledge and her offspring.

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