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"I Will Fight (For) You": Donald Trump, The First Amendment, and the LGBTQ Community

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In its brief, tersely worded *per curium* opinion in *One, Incorporated v. Olesen* in 1958, the U.S. Supreme Court ruled that homosexual content in and of itself did not make a publication obscene. In so doing, the Court effectively halted the censorship by the U.S. Post Office of lesbian and gay material, fostered the growth of nationally distributed LGBTQ magazines and newspapers (and therefore organization of a nationwide queer rights movement), and legally refuted Oscar Wilde's infamous description of same-sex attraction as "the love that dare not speak its name" (Ellmann, 1988, p. 435).

The ensuing six decades saw dramatic progress in the queer rights movement: marches on Washington; protest actions against establishments that discriminated against LGBTQ customers; the historic uprisings at the Stonewall Inn in New York, Compton's Cafeteria in San Francisco, and the Black Cat bar in Los Angeles; the lifting of restrictions on military service by LGBTQ people; and court victories affirming marriage equality and overturning anti-sodomy laws. Social acceptance of queers likewise made steady progress, easing barriers on employment and career advancement, removing much of the stigma from the coming-out process, and increasing the visibility of queers in media and popular culture.

Recent years, however, have seen efforts to reverse many of these gains—sometimes, but not always through direct curbs on LGBTQ expression—but more often through legislation and court rulings making religious belief grounds for denial of service to LGBTQ people. The efforts seemingly have found a champion in the

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administration of Donald Trump, who had promised queers during the 2016 presidential campaign, "I will fight for you" (Smith & Magness, 2017). In this essay, I argue that efforts by Trump and political and religious conservatives, frequently considered part of his electoral "base," to re-impose anti-LGBTQ discrimination amount to an unconstitutional abridgement of queers' First Amendment rights through actions that may create relative impairments to their ability to express themselves and effectively establish a state religion, rather than protect religious rights. More broadly, these moves frame a case study of the contested space between the Foucaudian constructs of state and civil society: the former, whose legislative and judicial advances until recently had bolstered protections for marginalized citizens, and the latter, which seeks to strike a balance rolling back that set of protections in favor of ones favoring the expression of certain religious beliefs.

Civil Society and the State

Of course, the dynamic tension between the practice of individual religious belief and enforcement of state policy is neither new nor particular to U.S. society. Power relations between formalized state structures and the less formalized—but no less potent—civil society were a concern of pioneering sociologist Emile Durkheim and permeated particularly the early works of philosopher and social theorist Michel Foucault. Chidester (1986) believes an encounter with the work of Foucault provides those investigating such questions a perspective on religion as a "social fact" whose "power is simultaneously invested in the formation of religious, legal, moral, economic, and aesthetic discourses and practices" (p. 8). Moreover, given the present question, some commentators interpret Foucault's thinking as being especially sensitive to issues of diversity and marginality and the related practices of activism and identity politics (Flyvbjerg, 1998).

According to Foucault (1999), power is not an entity in itself but instead a relationship among people and one that is not complete, given that the determination

of others' conduct is never exhaustive nor coercive: "There is no power without potential refusal or revolt" (p. 152). Power exists in both the formalized state, which relies upon "multifarious relations of micro-power" (Villadsen, 2016, p. 9), and in civil society, which is a transactional reality that does not exist in itself but which is the product of various discourses and therefore may have real effects (Veyne, 2010). Civil society, according to Foucault, was neither a mere abstraction nor a realism constituting particular agencies and groups. It judges governmental practices but not necessarily in terms of law or principle (Villadsen, 2016).

Indeed, given the sheer variety in contemporary political discourse, the impossibility of ascribing to civil society a particular constituent membership becomes apparent; it is as dynamic and fluid as it is multifaceted and equivocal. At the same time, current alignments of conservative Judeo-Christian voices and organizations with like-minded social and political movements and niche-appeal media outlets against the policies of prior progressive administrations, particularly those favoring marginalized sexual and gender identities, amount to power structures with demonstrated influence among state actors and the electorate.

If he was skeptical of the intentions and behavior of the state, Foucault also refused to accept the idea that civil society was sufficiently principled to be capable of countering the evils of the state (Gordon, 1996). As evidence, Villadsen (2016) cites the essay "Lives of Infamous Men," in which Foucault wrote critically of petitioners during the French revolution who pleaded with the king to imprison or deport marginalized people accused of insignificant crimes. In Foucault's view, the petitioners represented the encouragement by civil society on the state to enact another layer of stigmatization and deprivation on those already marginalized.

Taking his cue from Foucauldian writing on civil society, Lease (1994) believes religions have "become the most finely tuned examples of power structures, patterns of force which control human lives and dictate how they are to be conducted. Make no mistake about it: religions are about power, about the power to be given you and

about the power which controls you" (p. 474). As to the specific case of Christianity, Foucault believed its use of the shepherd/flock metaphor necessitated that the shepherd's will would prevail regardless of its consistency with laws of the state (Foucault, 1999). He was not entirely dismissive of the potential positive role of religion within civil society; Foucault believed it could, for instance, express the collective will of the people. But he stopped short of endorsing it as a political form because the fulfillment of the goals of civil society often entails persecution of the "others" it opposes or who simply stand in the way (Villadsen, 2016).

Context: Promises Broken

The election of Donald Trump, who claimed a populist mantle and whose messaging was openly hostile toward state actors and structures (including those aligned with his own political party), presaged a shift in the role and significance of civil society in the U.S. Following a campaign event in June 2016, then-candidate Donald Trump took to the social media platform Twitter with the following promise to the lesbian, gay, bisexual, transgender, and queer communities: "Thank you to the LGBT community! I will fight for you while Hillary brings in more people that will threaten your freedoms and beliefs."

As a summary by *Newsweek* magazine (Guarnieri, 2017) subsequently noted, early steps taken by the Trump administration not only broke that promise but signaled a hostility toward LGBTQ people that was an ironic realization of the very fears he raised regarding his opponent. According to *Newsweek*, within the first year,

- Six members of the Presidential Advisory Council on HIV/AIDS resigned after the Trump administration announced policies they believed would be harmful to individuals with HIV and AIDS. Trump fired the remaining member of the council.
- Trump surprised his own Pentagon with a tweet announcing a ban on transgender people joining the U.S. military. It was unclear whether the ban might extend to those already serving in the armed forces.

- Trump's Attorney General Jeff Sessions wrote a memo to the Justice Department saying courts no longer would recognize Title VII workplace discrimination protections for transgender persons.
- In his World AIDS Day statement, Trump expressed support and offered prayers for women and girls in African countries with HIV, ignoring the 1.2 million gay men living with HIV in the United States.
- Trump signed into law a GOP tax bill cutting funding for social programs including healthcare, food stamps, housing, and homeless support on which LGBTQ people depend.
- Though candidate Trump pledged solidarity after the June 2016 Pulse Nightclub shooting that left 49 dead and dozens injured, President Trump omitted mention of the LGBT community on Twitter a year later.

Indeed, Trump's ambivalence towards the victims of both the Pulse Nightclub shootings (who were patrons of a queer-friendly business) and of the violence against marchers in Charlottesville, Virginia (who demonstrably opposed white supremacy) betrayed his feelings toward racial, ethnic, and sexual minorities. In addition, shortly after Trump's inauguration, content referring to LGBTQ individuals suddenly disappeared from White House, State Department, and Labor Department websites, and the Department of Health and Human Services advised policy analysts at the Centers for Disease Control and Prevention in Atlanta that the agency henceforth would be forbidden from using the words "vulnerable," "entitlement," "diversity," "transgender," "fetus," "evidence-based," and "science-based" in its budget documents (Sun & Eilperin, 2017).

The First Amendment

The latter actions—the censoring of language, such as "vulnerable," "diversity," and "transgender," intended to facilitate government intervention on behalf of historically marginalized groups on the one hand and the abject elimination

of references to an entire culture from a governmentally controlled area of cyberspace on the other—are particularly onerous, conjuring images of a type of verbal genocide in which public officials accomplish virtually that which they cannot in the physical world. As far back as 1976, Gerbner and Gross equated the lack of representations of portions of the population by the private parties in control of television as "symbolic annihilation" and described the consequence as a perpetuation of a state of power relations in which the marginalized remained that way. Even though the parties in the instant case are state actors, First Amendment guarantees of free speech *are not* implicated, since the restrictions are exercised within governmental agencies as a part of the furtherance of a particular policy. The State is not interfering with the speech of private individuals, and the State cannot be compelled to allow speech contrary to its own positions outside of the formal administrative procedures process.

The First Amendment *is* implicated in cases in which government policy restricts the ability of individuals to speak or to be heard (for, as Chief Justice Warren Burger famously noted in *Red Lion v. U.S.* [1969], the right to speak is relatively useless without the right to hear) and in which the government enacts policies with the intent and effect of privileging one set of religious beliefs over others in violation of the Establishment Clause. This, it can be argued, has occurred in the Trump Administration's efforts at repealing the Federal Communications Commission's so-called "Net Neutrality" policies and in its actions on behalf of those citing a religious basis for denial of service to citizens whose very identities they find objectionable.

Net Neutrality

Although proposals to guarantee equal access to all internet web sites regardless of content or ownership date to at least the early 1990s, the first federal action to that effect was the FCC's Policy Statement on Broadband Access to the Internet (2005), in which the agency stopped short of formal rulemaking but instead adopted a set of principles to guide its future policymaking. When the U.S. Court of

Appeals ruled in *Comcast Corp. v. FCC* (2010) that the commission had exceeded its authority over internet access provided by the cable industry, the commission responded with its so-called Open Internet Order ("Preserving the Open Internet," 2011), which also was overturned by the courts (*Verizon Communications, Inc. v. FCC*, 2014). To address the judges' concerns that media companies could not be made to surrender their discretion over content, the FCC reclassified broadband internet services as common carriers under Title II of the Communications Act ("Protecting and Promoting the Open Internet," 2015).

The move was applauded by a number of LGBTQ publications. Shortly after the rulemaking was announced, an editorial in the Detroit-based queer newspaper *Between the Lines* observed,

> We know that the internet has revolutionized the LGBT equality movement. We know it has revolutionized the way we meet, socialize and connect with each other. It has served as a platform to empower the transgender community, served as a connection to drive HIV testing and information and it has been used as a tool to lobby lawmakers to support LGBT-inclusive legislative actions.

But also,

> We know that queer content has often been the target of censorship. It is no stretch of the imagination that an ISP might slow down or even block access to a website because it was gay related. And with the ever-growing "religious freedom" legislative movements, those organizations could easily claim a religious right to do so ("Net Neutrality is a Queer Issue," 2015, p. 12).

The editorial proved prophetic. Shortly after his inauguration in January 2017 and with the encouragement of Vice-President Mike Pence who, as Indiana governor, had championed so-called Religious Freedom Restoration legislation at the state level, elevated FCC commissioner Ajit Pai to chair of the agency. Among the first issues Pai raised was repeal of the Title II rulemaking. Then-White House spokesperson Sean Spicer in March noted that Trump had viewed net neutrality as regulatory "overreach" by the Obama administration that Trump had pledged to repeal (Tam, 2017). By the end of his first year as chair and despite very public opposition from a

number of cyberspace pioneers, Pai accomplished the repeal in a party-line vote of the commissioners (Kang, 2017).

The response from the LGBTQ communities, and their media particularly, was swift and cautioning. Attorney Angela Giampolo, whose practice specializes in LGBTQ law, in her newspaper column questioned whether nationwide marriage equality would have been possible in the U.S. without a free and open World Wide Web as a platform for broadening the discourse on the nature of families and individual rights. She further warned:

> For any group with a cause, the possibility of censorship could inhibit movement from the widespread coverage needed to inform the public of the injustices which its members are fighting (Giampolo, 2017, p. 14).

A front-page editorial in San Francisco's *Bay Area Reporter* quoted Indiana University professor Mary L. Gray, who predicted, "LGBT-identifying people will be collateral damage if internet service providers are allowed to discriminate among content, apps, or services" ("FCC's Dangerous Plan," 2017, p. 1.) Gray cautioned that the privileging of certain content by ISPs according to market forces would result in higher costs for providing LGBTQ content and thus reducing the amount of it, particularly from nonprofit and government sources that had been highly valued in the queer communities. GLAAD chief executive officer Sarah Kate Ellis was quoted as well, noting the importance of an open internet to queers because it facilitated information gathering, idea dissemination, and the reporting of discriminatory practices. The editorial offered an especially bleak outlook for those living in rural communities, who are isolated from libraries and community centers and who rely on the web for information on queer history and on coming out. For trans* people, the writers believed, a free and open web could be nothing short of a lifesaver.

For most of these administration critics, the apparent concern was a complete ban on LGBTQ-oriented web content. Certainly such an outcome would be possible from smaller internet service providers more subject to pressure from local special interests, particularly religious organizations and elected officials eager to curry favor.

But given the size and high public profile (and hence resilience to pressure) of most internet service providers, it would be unlikely they would risk backlash from such a blatantly discriminatory act. The more likely targets would be LGBTQ-themed media streaming services such as Wolfe Video and Here TV, who would be too small to compete with major players like Netflix, Hulu, and Amazon in negotiations for favorable access agreements and thus might suffer a throttling of their bandwidth that would make them unattractive to potential subscribers.

Privileging Religious Practice

Even so, from the standpoint of the First Amendment, the most pernicious actions by the Trump administration involve support for those who would cite religious belief as a rationale for refusing other sorts of service to LGBTQ persons. The foundation for many of those actions was the U.S. Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.* (2014), in which it ruled that "closely held" private companies (i.e., those owned by a family or a small group of like-minded individuals, rather than by a large and otherwise unaffiliated body of shareholders) were protected from regulations to which they objected on religious grounds by the Religious Freedom Restoration Act (RFRA, 1993), provided the regulation's interests could be advanced through other less restrictive means. Prior to *Burwell*, courts had ruled repeatedly that even the most sincerely held religious beliefs could not be invoked as a defense for illegal discrimination (Abcarian, 2014). As examples, ACLU deputy legal director Louise Melling notes companies cannot use religious objections to racial integration as a rationale for not serving African Americans nor can church-affiliated universities refuse racial integration.

An early signal of Trump's inclinations to reward religious conservatives for their role in his election by making the bolstering of religious liberty a top agenda item came in summer 2017 with his nomination of Kansas Governor Sam Brownback as ambassador-at-large for international religious freedom (Collins, 2017). In January of

2018, the administration announced creation of a new conscience and religious freedom division within the Department of Health and Human Services whose remit would be to investigate complaints from health care professionals that their employers were insisting they provide care that runs counter to their religious beliefs and to ensure hospitals, clinics, and medical practices were accommodating those beliefs. The types of care assumed to be the focus of the division were abortion procedures and those involving transgender people. Groups including the American Civil Liberties Union and the Human Rights Campaign worried the division might encourage discrimination against LGBTQ people and Harper Jean Tobin, director of policy for the National Center for Transgender Equality, called the move "the use of religion to hurt people because you disapprove of who they are" (Eilperin & Cha, 2018).

In September 2017, the Department of Justice filed an *amicus* brief on behalf of Jack Phillips, whose Masterpiece Cakeshop had refused to create a wedding cake for a gay couple in 2012. Phillips's refusal had been found by the Colorado Civil Rights Commission to have violated state anti-discrimination laws (*Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 2017). The administration supported Phillips's contention that his cakes are a form of protected expression and that he cannot be compelled to create them if doing so would run counter to his religious beliefs (Barnes, 2017). Ironically, while Phillips's legal counsel framed the case as implicating their client's First Amendment rights under the Free Speech and Free Exercise Clauses ("Colorado Wedding Cake Baker," 2016), the administration's brief disclaimed any reliance on religious rights in favor of a focus only on free speech grounds ("Potential Supreme Court," 2017). Courts hearing previous similar cases involving florists, calligraphers, and photographers (see, for instance, *Elane Photography, LLC v. Willock*, 2014) have ruled that businesses serving the general public must comply with states' anti-discrimination laws. In its review of the commission's decision, a narrow majority of the U.S. Supreme Court avoided the larger question of whether religious belief

justifies discrimination, instead finding that the Commission had been hostile to Phillips's beliefs (*Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 2018).

The administration's positions parallel so-called religious freedom restoration legislation in two states particularly. In Arkansas, an individual's religious beliefs can be used as justification for obtaining damages or injunctive relief against regulations the individual believes violate them; Indiana law allows religion as a defense when someone is sued for failure to comply with a statutory requirement. In the latter instance, concerns over a possible hidden agenda in the passage of the legislation arose when photographs of the signing ceremony depicted then-governor Mike Pence with three anti-gay marriage activists standing behind him (Friedman, 2015). Indiana's law subsequently was amended following worries from the state's business community over threatened boycotts.

Nineteen other states have passed RFRAs, most of them after the U.S. Supreme Court ruled the federal version could not be applied to state laws (*City of Boerne v. Flores, 1997*). The Indiana and Arkansas versions, perhaps coincidentally, were passed after the U.S. Supreme Court had heard arguments in *Obergefell v. Hodges* (2015), the case that ultimately would strike down state prohibitions on marriage equality. The U.S. Court of Appeals has since ruled the federal RFRA cannot be used as a justification for employment discrimination, including against LGBTQ people (*EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.,* 2018).

Queer People and Religion

Where the reasoning by those advancing religious belief as a rationale for discrimination against LGBTQ people runs afoul of constitutional guarantees is in the varied positions religions themselves take on queer rights. Human Rights Campaign (HRC), the largest organization in the U.S. advocating LGBTQ positions in politics, maintains summaries of the stances of more than 30 large domestic religious sects. It describes more than a third—including the Church of God in Christ, Mormons,

Nazarenes, the American Baptist Church, Orthodox Christianity, Pentecostals and other charismatics, the Presbyterian Church in America, Seventh Day Adventists, Southern Baptists, Methodists, and Orthodox Jews as generally not accepting of queer members, nor self-identified LGBTQ church leaders, nor marriage equality ("Faith Positions," 2018). In addition, it notes the leadership of the Roman Catholic Church officially distinguishes between same-sex attraction, which is not considered sinful, and queer sexual practice, which it finds to be contrary to biblical teaching, and in all cases, condemns marriage equality and non-celibate queers as church leaders (though members of the laity may tend to be more accepting.) Similarly, the National Baptist Convention officially accepts LGBTQ people as members but not as pastors and does not allow them to marry. And Islam generally is not affirming of lesbians and gays, though its traditions are more favorable towards transgender people.

The HRC finds another third of the sects it examined to be queer-affirming in most all respects—congregational membership, pastoral ordination, and solemnization of same-sex marriages—including Episcopalians; the queer-centric Metropolitan Community Churches; so-called Old Catholics and Independent Catholics; the Presbyterian Church (USA); the Alliance of Baptists; Unitarian Universalists; United Church of Christ (and Congregational Churches that use its liturgies); Judaism's Reform, Reconstructionist, and (for the most part) Conservative traditions; and the Disciples of Christ, whose churches are officially self-governing but which are encouraged to be queer affirming and to recognize marriage equality.

Among the other religious organizations in the HRC report, Buddhists generally have no clear position on queer people and believe the acceptance of marriage equality is a personal issue; African Methodist Episcopal (AME) churches include some LGBTQ-affirming congregations but officially oppose marriage equality; Evangelical Lutherans embrace queers as members but leave to individual churches their positions on clerical ordination and marriage; and many Quaker

societies and practicing Hindus are accepting of queers but the degree of that acceptance may vary by congregation.

From the standpoint of religious denominations, then, there is equivocation in attitudes and practices towards LGBTQ people. The story likely is quite different politically: a recent survey by the online organization ChurchClarity.org concluded that none of the largest churches in the U.S. are LGBTQ-affirming and that individual churches frequently make it difficult for congregants to discern the degree of acceptance accorded queer members. The churches tended to be evangelical philosophically, part of a group of congregations that also are less progressive in their willingness to accept female pastors (Silva, 2018). But their sheer size, doctrinal fundamentalism, and activism in social issues tends to magnify both the visibility of their views and their influence among politicians seeking to woo voters in the faith community.

Additional Policy Consequences

Quite apart from the constitutional questions they implicate, there is evidence actions by the Trump Administration relative to the LGBTQ communities have had a detrimental impact on the integration of queers into mainstream society and could have tangible (and tragic) consequences for individual queers. In a general sense, a recent survey by the Harris organization on behalf of the Gay Lesbian Alliance Against Defamation (GLAAD) found 49% of non-LGBTQ adults were very or somewhat comfortable around LGBTQ people, down from 53% in 2016. GLAAD attributed the decline to fallout from the 2016 election. Though the exact mechanism for the decline was not specified, the simultaneous rise in activity among white supremacists and anti-Muslims suggests those who harbor such attitudes have been emboldened by what they sense is a tone in executive-branch policies and pronouncements that is more sympathetic to them. Because acceptance of those in marginalized groups also tends to decrease during periods of economic stress, it also is

possible the same sense among some working-class Americans of having been left behind by the most recent economic recovery that swept Trump into office may also have made them less tolerant of diversity.

Of much greater concern should be the prospect that administrative and legislative actions and adverse judicial rulings could deprive LGBTQ persons, not just of more discretionary services and accommodations, but vital emergency or medical care. Those who doubt the possibility of such things occurring in supposedly more enlightened times need only recall the lessons of director Kate Davis's 2001 documentary film *Southern Comfort*, in which transman Robert Eads was declined treatment for ovarian cancer by two dozen doctors near his home in the rural South because they feared treating him would damage their reputations among local colleagues and patients.

Conclusions and Recommendations

From the foregoing analysis, it is clear that the use of the Free Exercise clause of the First Amendment to justify discrimination by private individuals and organizations against LGBTQ people implicates the complex power relations between the state and civil society described by Foucaudians. In this case, it can be argued that elements in civil society are leveraging their influence over portions of the electorate to extract from the executive branch policies and administrative regulations inspired (though not necessarily provided for) by the federal RFRA and its interpretation by the U.S. Supreme Court in *Burwell vs. Hobby Lobby Stores, Inc.* (2014). A key concern in the Trump Administration actions advantaging those who would claim a religious basis for differential treatment of individuals based upon gender or sexuality is the extent to which elements of civil society are colluding with the state in the determination of individual rights. Thus, as Villadsen (2016) has observed, "freedom is less an intrinsic human attribute but produced at an interface between governors and governed" (p. 13).

Moreover, Foucault (1999) was correct to question the will of civil society to protect the rights of the marginalized. A basic tenet of the U.S. system of governance is the role of an independent judiciary in interpreting laws made by legislatures and enforced by the executive, both beholden to elective majorities, including the rights enshrined in The Bill of Rights. Historically, where liberties, rights, and protections have been won by LGBTQ people, at least at the national level, it has been in the courts, including the aforementioned *One v. Oeleson* (1958) and *Obergefell v. Hodges* (2015), but also *Lawrence v. Texas* (2003), which invalidated anti-sodomy laws in 14 states, and *MANual Enterprises, Inc. v. Day* (1962), which found gay erotica to not violate obscenity laws.

While Foucault's positions and priorities on some matters evolved over time, the Foucauldian perspective on the Trump Administration's actions relative to LGBTQ people does add weight to Flyvbjerg's (1998) observation regarding Foucault's apparent, though not necessarily consistent, support for diversity and marginality. It also acknowledges the potential complicity of the state in circumscribing the rights of the marginalized. As Foucault (1999) himself argued, "Since the state is its own finality...it is clear that the governments don't have to worry about individuals; or government has to worry about them only insofar as they are somehow relevant for the reinforcement of the state's strength" (p. 152).

It would appear Foucault was correct in his assessment that religion can represent the popular will—but that will, often as not, is parochial and disregards freedoms and protections for those seen as hostile to its greater aims (Villadsen, 2016). LGBTQ people as frequent critics of organized religion and, as was noted earlier, not affirmed by major faith organizations, continue to be favorite targets of conservative evangelical leaders and the political operatives hoping to curry favor with them. Ironically, his view runs counter to much of the current thinking among social scientists. As Burchardt (2017) notes, sociological and anthropological scholarship

largely has abandoned the power of religion over people as a subject of concern, having taken for granted state power over religion.

Finally, given the portentous outcomes for the LGBTQ community from the early months of the Trump Administration, it should be noted that the work of civil society is at its heart a discursive practice, subject to the influence of varied arguments within and without. If the Trump White House can be accused of salves to socially conservative elements within civil society, so perhaps were the Clinton and Obama administrations that preceded it guilty of playing to the interests of its more progressive elements. Control of the branches of the state apparatus by political parties is subject to change: in the post-World War Two period, only once has a party held the White House for more than two terms and party control of Congress, likewise, has shifted multiple times. The ideological tilt of the U.S. Supreme Court is less volatile but is nevertheless subject to periodic adjustment. There is also promise in demographic shifts in the U.S. electorate towards those with less animus toward minority sexualities and genders. Realignments in state power will be reflected in the power relations in civil society, placing in doubt the stability of the recent balance struck between religious practice and the rights of the marginalized.

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