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# Introduction

## *Rights on the Right*

In the spring of 2015, a diverse group of activists gathered to celebrate their victory in a hard-fought battle for the government protection of their rights. The achievement would fulfill essential constitutional guarantees and prevent this class of citizens from discrimination. Their victory was countered with prodigious backlash, resulting in a narrower protection than they desired, but the advocates prevailed. Those seeking the protection of their individual rights triumphed, which should come as no surprise. Rights are the currency of American politics, and rights-based arguments have been victorious for the better part of the past century.

What is surprising, however, is *who* was making this argument. This is not the story of gay marriage, with gay rights activists achieving the right for LGBT people to marry whom they wish via the Supreme Court's 5–4 decision in *Obergefell v. Hodges* (2015). Rather, this is the story of the 2015 Indiana Religious Freedom Restoration Act (RFRA), a measure passed by the Indiana legislature providing robust protections for religious freedom. This is the story of *conservatives*, not liberals.

More importantly, the battle over religious freedom in Indiana is emblematic of a seismic shift in American politics. Conservatives are now using typically liberal arguments, promoting *individual rights*. Conservatives are wielding these rights arguments with increasing frequency in judicial courts and courts of public opinion. And religious conservatives, such as evangelical Protestants and some Catholics, are at the helm, winning political victories and gaining legal protection. The result is a refashioning of the American "culture war." The political right has turned to rights. In the process, conservative Christians have shifted from protecting community morality to embracing certain liberties, particularly as free speech and religious liberty. Evangelicals, and their Christian Right allies, have been baptized into political liberalism. At least in *public*

life, they have been converted; they now speak in the tongues of liberty, being filled with the rights spirit.

This change is monumental. Traditionally, as liberalism has been entrenched in rights,[1] conservatism, especially religious conservatism, has emphasized common morality, personal responsibility, and civic republicanism. In the process, religious conservatism has objected to liberalism's demand that religious and moral arguments be secularized.[2] These liberal and conservative viewpoints, while certainly not uniform, can be traced to variant perspectives on American democracy, with James Madison emphasizing pluralism and the respect for difference and Alexis de Tocqueville and John Adams emphasizing similarity. While liberals typically emphasized rights, conservatives typically promoted moral communities.

Building on this, Robert Bellah, the famed sociologist of culture, and his colleagues have identified different strands of American culture: biblical, republican, utilitarian individualist, and expressive individualist. The biblical and republican strands have been tied to political conservatism, while the individualist strands have been tied to liberalism.[3] The change for religious conservatives, then, is from a biblical conservatism to a utilitarian individualism, from communitarianism to pluralism, from morality to liberty.

Scholars are noticing this shift, with recent work identifying secular conservatives' transition toward libertarianism in free speech politics.[4] But scant attention has been given to religious conservatives in this process. Conservative Christians are now more supportive of political liberalism, though they continue to reject many items of expressive individualism, particularly individualist approaches to sexual morality. Rights then are more political, and less expressive in nature, for evangelicals and other religious conservatives.

The adoption of this form of liberalism is quite noteworthy. Only two decades ago some on the right argued that it was anathema to engage in liberal "rights talk." Harvard legal scholar Mary Ann Glendon, for example, in her 1991 book *Rights Talk*, delivered a sharp conservative critique of rights discourse. She argued:

> Our rights talk, in its absoluteness, promotes unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead toward consensus, accommodation, or at least discovery of common ground. In its silence concerning responsibilities, it seems to condone acceptance of the benefits of living in a democratic social welfare state, without accepting the corresponding personal and civic obligations. In its relentless individualism, it fosters a climate that is inhospitable to society's losers, and that systematically disadvantages caretakers and dependents, young and old.[5]

Despite this warning, religious conservatives, who were often seen as the last vestige of communitarianism as well as defenders civic republicanism in American politics, have come to embrace rights and rights talk. Notwithstanding setbacks in the 2016 presidential campaign, political liberalism seems to be triumphing, as evangelicals and their allies increasingly turn to rights,

particularly the utilitarian, political version of individualism. Due to the changing demographics in America, with white Christians increasingly becoming less of a numerical and cultural majority, this is likely to persist. Diversity will foster pluralism and rights politics.

In this book, I identify the epic shift in evangelicals' approach to rights through some of the most pressing political issues – free speech, religious liberty, health care, capital punishment, and LGBT rights. I also trace the sources of this shift, identifying an under-appreciated cause – the politics of abortion.

## THE RIGHTS SHIFT

On some level, we should not be surprised that conservatives have come to utilize rights arguments. Individual rights are central to both American culture and American politics, profoundly affecting politics and law.[6] Though there has been some debate about the nature of rights and individualism in the American Founding,[7] the language of rights permeates American politics. While not exclusive values, individualism and liberty have also been prominent in American religious culture, influencing approaches to church-life, personal morality, and public policy.[8]

The American rights culture, however, has long been the domain of liberals, especially as the role of rights has increased in law and politics over the past century in what has been called the "rights revolution."[9] Liberal legal organizations developed sophisticated strategies to gain short and long-term victories,[10] defeating conservatives with their rights-based arguments. These included victories in civil rights and civil liberties. In the area of civil rights, for example, African Americans gained access to the ballot box, black and white children were required to attend public school together, women and men were to generally receive equal legal treatment, and restaurants and hotels were required to serve all races. Extending civil liberties, women gained access to the birth control pill and abortions, the criminally accused received state-funded lawyers and the right-to-remain silent, gay sex was decriminalized and gay marriage was legalized, and Muslims were able to retain their beards in prison.

But even more, the secular and religious liberal successes in individual rights were largely responsible for activating the "culture wars" in American politics, pitting liberal individualists who were focused on rights against conservative traditionalists who were focused on morality.[11] Even after seeing their lost ground in the culture and before the Supreme Court in the latter half of the twentieth century, conservatives' initial push was not to pitch rights-based arguments, but to urge for limited government and law and order.[12] In fact, as discussed above, there was an aversion to doing so.[13]

I suggest that now the role of rights in American politics has been transformed; the paradox is that conservatives, particularly religious conservatives,

have come to share the mantle of rights-based advocacy with liberals, though their focus on rights is centered more on political individualism than expressive individualism. These conservatives have shifted from defending cultural and biblical morality to cultivating a rights-based advocacy strategy, achieving considerable success in politics and especially law. In fact, some of this advocacy serves the dual purpose of expanding religious individualism while preserving elements of traditional morality.[14] Abortion politics are amenable to this opportunity.

Regarding morality, conservative rights talk has been used to counter other individual rights claims, seeking to reduce contraceptive coverage, fight nondiscrimination provisions, and protect the role of religion in public life. In addition, conservative rights claims are proffered to counter common good policies favored by liberals, such as limitations on campaign contributions, the separation of church and state, and national health insurance. At the same time, conservative rights claims are supporting political rights of radicals and minorities. These rights claims use individualism to preserve traditional morality, if not for the entire country at least for the religious sect. In the process, conservative Christian activists are making legal and political justifications that would have been controversial, if not untenable, only a generation ago. Some of their issue positions are quite different too, though others are merely refashioned with the veneer of rights talk. In the process, the culture wars have been refashioned.

Free speech law is a notable example, and it is discussed in full in Chapter 3. For much of the twentieth century, minority and radical political groups, such as the Ku Klux Klan and the Socialist Party, libertine social critics and so-called "smut peddlers" like comedian Lenny Bruce and Hustler founder Larry Flynt, respectively, were the frequent participants in free speech cases. Liberal mainstays such as the American Civil Liberties Union (ACLU) often defended these organizations and individuals. Conservatives, and particularly conservative evangelicals, were the supporters of the rule of law, order, and common morality. In the past two decades, this has changed for conservatives, with evangelical elites and organizations promoting an expansion of the individual rights approach to free speech, particularly in the areas of public protesting, campaign finance, and student speech.[15] Now those suing for their free speech rights include a school-aged religious group, the Good News Club, an anti-abortion organization, the Susan B. Anthony's List, and a religious wedding photographer from New Mexico, Elaine Huguenin.

## HOW HAVE WE GOTTEN HERE?

Some prior research has identified this shift in conservative politics, highlighting conservatives' coopting the language of liberalism,[16] engaging in deliberative discourse,[17] and embracing libertarian approaches to free speech and other rights advocacy.[18] But what underlies the rights-based advocacy change?

The previous studies suggest that political pragmatism, professionalization, and policy venue are causes, yet these works are largely silent on how religious conservatism cultivated rights arguments.[19] Scholars have underappreciated the breadth and underanalyzed the mechanisms that produced the religious conservative evolution in rights politics. In contrast, I tell the story of this rights evolution via its primary mechanism – abortion politics.

Following the Supreme Court's *Roe v. Wade* decision in 1973, anti-abortion activists became solidified as a political minority, and minority politics are often focused on rights and legal challenges. As I describe, among evangelicals abortion politics has prompted rights learning, rights claiming, and rights extension, what I call the LCE Process of rights politics. Moreover, because it is an "easy issue," elites have utilized abortion to expand the domain of evangelical advocacy. As evangelicals have grown more accepting of their minority status, prompted by abortion politics and rising cultural diversity, they have turned toward rights.

There are two primary areas where individual rights have found a home in conservative Christian politics – religious liberty and abortion. Some religious groups were long-engaged on topics of rights and liberties, though most are newcomers. For much of American history, the Baptists were fervent defenders of the individual right to religious liberty,[20] though they often did so via the communitarian approach of church-state separation.[21] In the post–New Deal period, Catholic Christians too developed a commitment for a universal, individual right – the *right to life* – though it was wielded in service of their desire to protect common morality and sexual mores.[22] As I describe in Chapter 2, Catholics increasingly framed their anti-abortion position in the language of human rights - the individual right to life - resulting in the creation of the National Right to Life Committee (NRLC) in 1968. Evangelicals were slow to adopt the Catholic position on abortion, and evangelicals and Catholics were often enemies in many public affairs battles.[23] Still, evangelicals increasingly opposed legalized abortion, though for a variety of reasons, including opposition to feminism and sexual freedom. Yet, in the mid-late 1970s evangelical thinker and apologist, Francis Schaeffer, helped bring the Catholic, rights-oriented opposition to abortion to evangelicalism, merging individual rights with cultural moral decline.[24] In short order, evangelicals joined Catholics to promote opposition to abortion, as the former enemies became allies.[25] By the second wave of the Christian Right activism in the 1990s, the right-to-life argument had come to the fore.[26] In due time, the Catholic human rights (or natural rights) approach to anti-abortion became the dominant public frame for evangelical activists. This prompted learning about the power of individual rights arguments and an application by activists to other policy areas.

I demonstrate that these two rights-based streams – right to life (abortion) and religious liberty – have formed the basis for conservatives to learn about individual rights and claim them. The pro-life movement in particular served to orient evangelical advocacy leaders toward a commitment to rights – *rights*

*learning*. This has promoted an expansion of rights-based advocacy – *rights claiming* – as leaders found connections to these rights issues in abortion politics and other domains, and either expanded or altered their advocacy to support their pro-life and pro–religious freedom positions. The expanding rights sphere helped establish a minority politics perspective, often in service to protecting cultural morality. The activation of minority and rights politics among conservatives has also yielded secondary effects. The rights turn has yielded greater support for the rights to others, even disfavored groups – *rights extension* – fulfilling the LCE Process.

As the following chapters illuminate, this LCE Process is not often linear or perfectly consistent, as the illiberal components the Donald Trump presidential campaign and presidency illustrate. The broad arc of evangelical politics is bending toward rights, however, and this will continue to be bolstered by the growing religious and demographic diversity in America. In fact, much of evangelicals' support for Donald Trump was not that he would renew Christian majoritarian politics, but rather vouchsafe religious rights, both pro-life rights and religious freedom rights.

## Rights and Representation

To understand the arc of rights politics within conservative Christianity, my approach is to pair elite activity and mass opinion. Doing so helps illustrate how political representation functions in rights politics.

In order for evangelical elites to take unorthodox, individual rights positions, the leadership must gain constituent credibility and/or mobilize the masses, lest they suffer representation problems from being generals without armies.[27] How can elites get the rank-and-file to support nontraditional, individual rights positions? Drawing on political behavior and interest group scholarship, I suggest that in order for elites to expand and alter their political advocacy, particularly in unorthodox ways, they need to appeal to their members (or respond to them) in ways that promote policy congruence and group stability. Advocacy on salient issues is important for this process,[28] and it has helped public affairs groups, particularly conservative religious political groups, thrive while membership associations have declined.[29] Further, elites can also frame issues in a salient way that appeals to their base.[30]

For evangelical groups, abortion may be central to this process of representation within interest groups, because most people have an opinion on abortion, and these opinions have remained quite stable in the face of growing liberalization of other attitudes, particularly same-sex marriage.[31] While aggregate abortion attitudes have long fallen somewhere in the middle regarding abortion,[32] mass attitudes have become more polarized of late.[33] Importantly, the politics of abortion are quite salient to evangelicals.[34] Abortion politics are also a "dominant dividing line" in American party politics.[35] Because of the salience and clear differences between the parties, abortion attitudes may even

cause some to alter their party attachments.[36] In political behavior research, stable attitudes, like party identification, typically affect less stable attitudes, such as less salient issue positions. So, an attitude as stable and salient as abortion could be an effective tool to stimulate opinion change.

Moreover, prior studies have also demonstrated that rights-framing can alter public opinion,[37] tapping into Americans' common support for rights discourse.[38] Tying abortion to rights discourse could then be quite successful, especially in light of evangelicals' increasing minority status. Initial evidence suggests that the right-to-life framework is a potent counter to liberal rights claims.[39]

Rights become important as evangelicals lose prominence in American life, both in fact or in perception, and the nonreligious increase.[40] *Ordered* liberty is a majoritarian enterprise, while *individual* liberty is the domain of minorities. As such, the "moral majority" of a generation ago emphasized communitarianism, while today's religious minority emphasizes rights that seek protection, not domination. Despite the 2016 presidential election, this trend will continue.

## THE HIDDEN IMPACT OF ABORTION POLITICS

There is an ongoing debate in social science and history about the importance of abortion politics in the mobilization of the Christian Right in American party politics. Abortion is given much popular and scholarly credit,[41] though some suggest the politics of race and gender played a greater role through the 1990s.[42] Thorough analyses suggest that the evangelical shift toward the Republican Party happened prior to *Roe v. Wade*, Jerry Falwell, and Ronald Reagan, developing throughout the middle of the twentieth century.[43] My research, however, investigates the role of abortion politics in areas beyond party politics and voter mobilization. I am interested in the impact of abortion on policy preferences, elite activism, and issue framing. Despite the history of partisan alignment, abortion matters here. For evangelical advocates, abortion is the focal point for cultural engagement and policy preferences. And in abortion politics, evangelicals came to understand the value of rights, particularly the value of rights arguments, both to protect elements of cultural morality and to protect evangelicals' individual rights. Much of this congruence has developed in the second wave of evangelical politics, coalescing in the mid-1990s. Moreover, this time period fits well with the findings of prior research on the impact of cultural politics on party mobilization and the rise of the individual rights approach to pro-life politics in evangelicalism.[44]

### Abortion and Contemporary RFRA Battles

The link to abortion politics becomes quite clear as we consider the opening example from Indiana. In Indiana, one of the leading voices supporting the RFRA bill was the state's chapter of the National Right to Life Committee – a

largely religious organization leading the anti-abortion movement.[45] Chapter 2 will provide more detail about the history of the NRLC and its relationship between Catholics and evangelicals. But for now, some background regarding RFRA is illustrative. While many now consider opposition to abortion and religious freedom to be congruent ideological positions of American religious conservatives, this was not always the case. In fact, when the national RFRA legislation was debated in the early 1990s, many pro-life groups were concerned that the legislation might *promote* abortion. Some conservative anti-abortion groups, including the Southern Baptist Convention (SBC) and the U.S. Conference of Catholic Bishops (USCCB), were afraid that individuals might bring suits claiming that their religious beliefs necessitated their access to abortion coverage.[46] Such claims could override limitations on federal funding for abortion, commonly known as the Hyde Amendment. In the 1990s, liberal religious freedom advocates convinced conservatives that this was unlikely, and the legislation eventually passed with little opposition.

Nonetheless, a much different situation currently exists. Shortly after the passage of the Indiana RFRA, Mike Fichter, President of Indiana Right to Life, praised the bill for protecting anti-abortion advocates. "RFRA is an important bill to protect the religious freedom of Hoosiers who believe that the right to life comes from God, not government," he said.[47] While the RFRA coalition in Indiana was diverse, pro-life, pro-family conservatives dominated it. They sought to use rights politics to promote traditional morality and religious pluralism.

The connection between abortion politics and other rights claims, such as religious liberty, is an important shift in conservative politics. It helps explain the fundamental tension in American democracy between rights and morality, and it is an exemplar of the shifting role of religion in society.

Pro-life groups became especially interested in religious liberty concerns following the 2010 Affordable Care Act (ACA), which expanded health care coverage, and the following contraceptive coverage mandate (both discussed in Chapter 5). Religious individuals and groups sought protection from being required to provide insurance that covered contraceptives, a handful of which were said to cause abortions by ending a pregnancy shortly after conception (e.g., the "morning after" pill). These anti-abortion groups used the federal RFRA statute to gain greater protections from the courts, resulting in the 2014 Supreme Court case *Burwell v. Hobby Lobby*, in which the pro-life groups prevailed. Abortion politics triggered an emphasis on religious liberty advocacy, which has since been transferred to the domain of gay rights (Chapter 7). As such, abortion politics has been instrumental to the expansion of conservative religious advocacy in the United States.

For most of the policy areas in the following chapters, abortion also contributed to evangelical Christians shifting their views over the past forty years. Abortion has been a prominent cause in evangelicals supporting a broader, more individual right to free speech, and it contributed to an increased focus on

religious liberty as opposed to church-state separation. It has altered the considerations in debates regarding health care and the death penalty, and it is serving as an object lesson following the nationwide legalization of same-sex marriage. Consequently, the politics of abortion has transformed the landscape of conservative politics.

Certainly abortion is not the only thing affecting the conservative political views of the Christian Right, and the chapters will investigate other political, religious, social, and psychological arguments. Still, the politics of abortion remains central. Abortion politics, especially as combined with evangelical minority politics, has taught evangelicals about rights and the political process, and it is often the substantive frame motivating other issue positions.

## SIGNIFICANCE FOR AMERICAN DEMOCRACY

The development of conservative, religious rights-based advocacy signals a profound political and cultural shift that has a broad ripple effect on American politics. American culture wars now largely involve competing rights claims, not simply rights versus morality. Does this reinforce our polarized politics and degrade our discourse?[48] Or does it enhance democratic norms, including deliberation and tolerance?[49] Does it signal the failure of American democracy or the vindication of Madisonian pluralism? Perhaps there are some lessons from the past for the present.

While Alexis de Tocqueville, the famed nineteenth-century French observer of American democracy, is often credited with describing the civic republican vision of America, he foreshadowed evangelicals' contemporary approach to politics. In a less-quoted section on religion in his seminal *Democracy in America*, Tocqueville discusses the republican nature of Catholics in nineteenth-century America. Intuitively, he declares:

> Their social position, as well as their limited number, obliges them to adopt [democratic and republican] opinions. Most of the Catholics are poor, and they have no chance of taking a part in the government unless it is open to all citizens. They constitute a minority, and all rights must be respected in order to ensure to them the free exercise of their own privileges. These two causes induce them, even unconsciously, to adopt political doctrines which they would perhaps support with less zeal if they were rich and preponderant.[50]

Twenty-first-century American evangelicals have become like Tocqueville's nineteenth-century American Catholics, respecting the political process of secular rights claims in order "to ensure them the free exercise of their own privileges." They have been induced, whether unconsciously or consciously, to respect the hegemony of liberalism. The moral majority has shifted to become the pluralistic minority. Evangelicals embrace rights to protect their status in the increasingly diverse political community; they embrace rights to preserve cultural morality; and they embrace rights because it is an expected

part of citizenship. In the process, religious conservatives may be exhibiting that our political theories have long promoted a false dichotomy of either rights or culture shaping citizenship. Instead, there may be room for a robust rights culture that is not inhospitable to society's losers and can promote common ground. Rather than *either*, the reality may be that *both* rights *and* culture shape our polity. This resembles Amy Gutmann and Dennis Thompson's "deliberative democracy," which provides procedural and institutional mechanisms to aggregate pluralist perspectives to promote common goals.[51] In fact, prior work has identified some of these qualities in the advocacy of the Christian Right.[52] The American culture war does not have to be a total war.[53]

## TERMINOLOGY

My focus here is on evangelicalism, because evangelicals have become the most important religious group in American politics due to their size, their shifting political alignment in the past fifty years, and their role in conservative politics. Evangelicalism, though it is a diverse religious classification, has several identifiable traits: (1) a high view of the authority and trustworthiness of the Bible; (2) a belief in God's real, historical work of salvation; (3) a belief that salvation comes only through the atoning work of Christ; (4) a commitment to the importance of evangelism and missions; and (5) a commitment to living a spiritually transformed life.[54] In the modern era, many evangelicals participate in the National Association of Evangelicals (NAE), as opposed to mainline Protestants – an even more diverse group of more progressive, liberal, or neo-orthodox Protestants – who participate in the National Council of Churches (NCC). While many evangelicals are involved in the NAE, the largest evangelical denomination, the Southern Baptist Convention, has in the past resisted identification as evangelical. In recent decades, however, this resistance has subsided, with most Southern Baptist leadership embracing the term. The SBC, however, is not an official member denomination of the NAE.[55]

Evangelical Protestants are quite diverse, if one limits classification to the five articles of faith listed above. Yet for purposes of political analysis, scholars of religion and politics have typically limited their attention to white evangelical Protestants when discussing the politics of evangelicalism.[56] This is especially important when trying to understand the politics of the Christian Right, of which evangelicals are the primary players.[57] Following this approach, I too limit my analysis to white evangelical Protestants or traditionally Anglo-Saxon evangelical denominations, such as the SBC, the Presbyterian Church in America, the Evangelical Free Church of America, and others. When analyzing survey data, I follow the strategy of sociologist Brian Steensland and his colleagues in their categorization of evangelicals from survey questions about religious denominational affiliation.[58] Though there has been some recent