

Constitution Corner – The Right of Conscience

“... there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power.”¹

Despite Madison’s initial reluctance to add a Bill of Rights to the Constitution, he finally succumbed to the arguments of Jefferson, Mason, Henry and others, and then fought vigorously for its addition. Nevertheless, as he warned Jefferson, if the rights to be secured are not described “in the requisite latitude” they will likely not receive the protection they deserve.

So how do you describe the right of conscience?

You start by understanding what conscience is and why it is part of the human condition.

Every person is born with a conscience; it has been called “a gift of God to mankind.” This gift manifests itself as the “still, small voice” in our spirit that speaks as we contemplate a particular action: *“And your ears shall hear a word behind you, saying, ‘This is the way, walk in it,’ when you turn to the right or when you turn to the left.”²* We may not hear a verbal “word” behind us, but we know the guidance is there; that guidance, based on the laws of God, is “written upon our hearts.”

Notice that conscience guides *actions* as well as thoughts; we are to “walk it its light.” Thoughts or beliefs are a first step, but insufficient; they are impotent if they cannot also be acted upon.

In 1778, Theophilus Parsons warned: *“We have duties, for the discharge of which we are accountable to our Creator and benefactor, which no human power can cancel. What those duties are, is determinable by right reason, which may be, and is called, a well informed conscience. What this conscience dictates as our duty, is so; and that power which assumes a control over it, is an usurper...”³* “Duty” implies action.

Based on the suggestion of New Hampshire as they ratified the Constitution, and his own inclinations, Madison tried to explicitly secure such a right.

He had observed, first-hand, the ill-treatment afforded Baptist ministers in nearby Culpepper County, Virginia. Arrested for preaching without the required license from the state (which they were unable to obtain since the Church of England was the established state church), they

¹ James Madison letter to Thomas Jefferson, 17 Oct 1788.

² Isaiah 30:21.

³ <http://press-pubs.uchicago.edu/founders/documents/v1ch4s8.html>

were thrown in the “goal” and treated harshly; one account has a jailer urinating into their cell through the bars. Hearing of this and apparently visiting and speaking with them, Madison pleaded in a letter to his college friend William Bradford: “[P]ity me and pray for Liberty and Conscience to revive among us.”

It was the ministers’ freedom to act upon their beliefs of conscience that had Madison most concerned. The beliefs themselves were, “in the main ... very orthodox.”⁴

Madison’s “Memorial and Remonstrance against Religious Assessments on June 20th, 1785 reminds us that:

“[t]he Religion ... of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate... It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no mans (sic) right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.⁵ (emphasis added)

New Hampshire suggested: “*Congress shall make no laws touching religion, or to infringe the rights of conscience.*” Madison added his own thoughts and came up with: “*The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.*” The Senate removed the conscience reference altogether and left us with what we have today.

So to what “objects” does the right of conscience extend? Here’s where Madison’s warning about “requisite latitude” comes into focus. Conscience clearly begins with religious thought and action. Any fair study of the right of conscience during the founding period must conclude that freedom of religion was the driving force behind this right. From the Pilgrims to the Puritans, to the formation of Connecticut, Rhode Island, Pennsylvania and Maryland, religious

⁴ From James Madison to William Bradford-24 January 1774

⁵ http://press-pubs.uchicago.edu/founders/documents/amend1_religions43.html

liberty and the freedom to act on Christian conscience has been central to the American experience.

Accommodations have indeed been made to allow people (and even corporations) to align their actions with their specific religious beliefs:

For-profit companies as well as religious organizations are not forced to cover contraceptives in their healthcare plans.⁶

A woman can voluntarily quit her job over a requirement to work on the Sabbath without losing her right to unemployment benefits.⁷

A Jehovah's Witness cannot be denied unemployment benefits after quitting his job at a weapons plant over objection to manufacturing weapons of war.⁸

The Amish cannot be forced to send their children to compulsory public school.⁹

But does right of conscience extend only to religious tenets and beliefs?

No! In two cases,¹⁰ the Supreme Court decided that “conscientious objection” beliefs did not have to be religiously based to be valid and deserving of respect and accommodation; they could be based on personal codes of morality.

Pharmacists in Illinois have been granted the freedom to not dispense abortifacants (the “Plan B Pill”) if doing so conflicted with their objections to abortion.¹¹

So a person cannot be forced to serve in the military when he or she believes war to be morally wrong, but apparently a florist can be forced to sell flowers which will be used to celebrate a homosexual wedding,¹² a baker forced similarly to bake a cake for such a wedding,¹³ and a photographer forced to photograph it.¹⁴ If they refuse to provide these services because they believe homosexual marriage to be morally wrong or Biblically condemned, they will be sued, fined, forced out of business and almost certainly sent to “diversity training”¹⁵ to align their “aberrant” beliefs with public policy.

⁶ Hobby Lobby Stores & Conestoga Wood Specialties Corp. v. Burwell, Little Sisters of the Poor v. Burwell.

⁷ Sherbert v. Verner 374 U.S. 398 (1963)

⁸ Thomas v. Review of Indiana Employment Security Division 450 U.S. 707 (1981)

⁹ Wisconsin v. Yoder 406 U.S. 205 (1972)

¹⁰ Seeger v. United States (1965) and Welsh v. United States (1970)

¹¹ <https://aclj.org/pharmacists-victory-illinois-seven-year-fight-conscience-rights>

¹² <http://www.adfmedia.org/News/PRDetail/8608>

¹³ <http://www.wnd.com/2016/07/christian-baker-takes-compulsion-of-speech-case-to-supremes/>

¹⁴ <http://www.adfmedia.org/News/PRDetail/5537>

¹⁵ <http://www.christianpost.com/news/christian-business-owner-gay-pride-t-shirts-diversity-training-148793>

America, what a country!

It should go without saying that a Jewish or Muslim butcher will never be compelled in this country to sell pork, a black carpenter compelled to build crosses for the KKK, or a lesbian print shop owner compelled to print posters for the Westboro Baptist Church.

It should be clear by now that Christian business owners and only they are being systematically targeted, with one intent: to drive them out of business if they refuse to support the LGBT agenda. They will be forced to celebrate homosexual marriage along with everyone else, or find a different line of work!

So what is God's view of homosexuality and homosexual "marriage?"

"While the Bible does address homosexuality, it does not explicitly mention gay marriage/same-sex marriage. It is clear, however, that the Bible condemns homosexuality as an immoral and unnatural sin. Leviticus 18:22 identifies homosexual sex as an abomination, a detestable sin. Romans 1:26-27 declares homosexual desires and actions to be shameful, unnatural, lustful, and indecent. First Corinthians 6:9 states that homosexuals are unrighteous and will not inherit the kingdom of God. Since both homosexual desires and actions are condemned in the Bible, it is clear that homosexuals "marrying" is not God's will, and would be, in fact, sinful.

Whenever the Bible mentions marriage, it is between a male and a female. The first mention of marriage, Genesis 2:24, describes it as a man leaving his parents and being united to his wife. In passages that contain instructions regarding marriage, such as 1 Corinthians 7:2-16 and Ephesians 5:23-33, the Bible clearly identifies marriage as being between a man and a woman. Biblically speaking, marriage is the lifetime union of a man and a woman, primarily for the purpose of building a family and providing a stable environment for that family."¹⁶

James Madison called conscience "the most sacred of all property." "Government is instituted to protect property of every sort;" he wrote, "as well that which lies in the various rights of individuals... that alone is a just government which impartially secures to every man whatever is his own."¹⁷

Just as government is taking an increasingly dim view of personal property in this country,¹⁸ they are taking an equally dim view of the rights of conscience, at least when the beliefs in question do not align with those of the progressive Left.

¹⁶ <https://www.gotquestions.org/gay-marriage.html>

¹⁷ <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>

¹⁸ https://en.wikipedia.org/wiki/Kelo_v._City_of_New_London

Rather than being secure, liberty of conscience finds itself under attack by those who feel we must all think and act alike on certain issues. While there have been occasional victories, liberty of conscience still finds itself, at least on the subject of homosexual marriage, very much on the defensive. We hope and pray that soon-to-be Justice Neil Gorsuch will help bring sanity to this pitiable situation.

Liberty of conscience, at the very heart of the settlement and formation of America, must be preserved if America is to remain America. Samuel Adams told those gathered in the State House in Philadelphia on August 1, 1776, "...[f]reedom of thought and the right of private judgement, in matters of conscience, driven from every other corner of the earth, direct their course to this happy country as their last asylum."¹⁹

No longer.

"If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner, and yet directly violates the property which individuals have in their opinions, their religion, their persons, and their faculties; ... such a government is not a pattern for the United States. If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments."²⁰ (emphasis added)

As "James Madison" tells the school kids I visit, if you do not know your rights and/or are not willing to defend and assert them, you effectively have no rights and are on the road to slavery. If Americans, and particularly Christian Americans, don't stand united against this oppression, as Ronald Reagan once said: ..."we will wake up one day telling our children and our children's children what it was once like in the United States where men were free."

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¹⁹ <http://www.revolutionary-war-and-beyond.com/american-independence-speech-by-samuel-adams-august-1-1776.html>

²⁰ <http://teachingamericanhistory.org/library/document/property/>