

The Breakfast Club

Constitutional Minute for 22 March 2022

Liberty 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."*ⁱ

James Madison was initially reluctant to add a Bill of Rights to the Constitution, but 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.*"ⁱⁱ 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.'*"ⁱⁱⁱ 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 or beliefs; we are to "*walk in it.*" Thoughts or beliefs are but a first step; they are impotent if they cannot also be acted upon.

In 1778, Massachusetts lawyer Theophilus Parsons^{iv} writing in *The Essex Result*, 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....*"^v "Duty" implies action.

As they ratified the new Constitution ten years later, New Hampshire suggested an amendment: "*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 in the First Amendment.

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 liberty and the freedom to act on Christian conscience was 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.^{vi}

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

The Amish cannot be forced to send their children to compulsory public school after a certain age.^{viii}

However, despite the clear indications the Supreme Court sides with a Right of Conscience, the Woke Left continues to declare war on Christian conscience, the best evidence being Colorado baker Jack Phillips. After winning his case in 2018,^{ix} he was sued once again.^x

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.”^{xi}

Liberty of conscience, at the very heart of the settlement and formation of America, must be preserved if America is to remain America. But how long will it survive in the face of the Woke onslaught? 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.”^{xii} How long will America remain an “asylum” for Liberty of Conscience?

What would you like to see discussed next week? Send me an email.

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club. Contact: gary@constitutionleadership.org; 757-817-1216

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

ⁱⁱ <https://bibleresources.org/conscience/>

ⁱⁱⁱ Isaiah 30:21.

^{iv} https://en.wikipedia.org/wiki/Theophilus_Parsons

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

^{vi} Hobby Lobby Stores & Conestoga Wood Specialties Corp. v. Burwell, Little Sisters of the Poor v. Burwell.

^{vii} Sherbert v. Verner 374 U.S. 398 (1963)

^{viii} Wisconsin v. Yoder 406 U.S. 205 (1972)

^{ix} <https://founderscode.com/7-2-scotus-decision-jack-phillips-wins/>

^x <https://www.advocate.com/transgender/2021/6/17/baker-jack-phillips-fined-again-refusing-cake-lgbtq-customer>

^{xi} <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>

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