

## The Breakfast Club

### Constitutional Minute for 31 January 2023

#### Right #2: Religious Exercise

*“A nation founded on religious tolerance no longer tolerates its founders’ religion.”*

I didn’t make that up, it’s the subtitle of Bill Federer’s book, *Backfired* (link at the end of the essay). Mr. Federer isn’t trying to be flashy or hyperbolic, he supports his book’s title with example after example. And we all know the point to be true: public expressions of Christianity, Bible-based morality, even something as innocuous as quoting verses from the Bible is becoming more frequently mocked, sometimes litigated and generally, actively opposed in the “good ole’ USA,” aka “God’s Country.” Just last week, a man wearing a “Jesus Saves” T-shirt was asked to leave the Mall of America in Minnesota because his shirt apparently made another customer feel “uncomfortable.”<sup>i</sup>

What would America’s founders think?

America’s attitude towards Christianity is starting to look a bit like Afghanistan, North Korea or Somalia, the three top countries where it is dangerous, quite often fatal to be a professing Christian.<sup>ii</sup>

The Pew Research Center conducted a six-year study of religious oppression; Christians were being harassed for their faith in 151 countries and Muslims in 135, making Christians the most oppressed religion on earth.<sup>iii</sup>

The California Assembly recently passed a resolution telling Christian clergy to accept and support LGBTQ ideology, even if doing so violates their Christian beliefs.<sup>iv</sup> So much for a right of conscience.

But of course, it didn’t start out this way in America.

The first settlers to come to Virginia were given the goal of “propagating [the] Christian religion to such people as yet live in darkness.”<sup>v</sup> Once the Massachusetts Bay colony obtained a proper charter, it reminded them that “the principal End of this Plantation” was to win and incite the Natives ... “to the Knowledge and Obedience of the only true God and Savior of Mankind, and the Christian Faith.”<sup>vi</sup>

America was settled by Christians; early colonial laws if not directly based on the Bible at least reinforced Christian religious observance; most states adopted official Christian denominations; other states (PA, MD) set themselves up as havens of religious tolerance; although Thomas Jefferson would (and did) argue the point, the great Justice Joseph Story proclaimed that “there never has been a period in which the Common Law did not recognize Christianity as lying its foundations.”<sup>vii</sup> In 1892, Supreme Court Justice David Brewer inventoried the evidence and pronounced that America was indeed a Christian nation.<sup>viii</sup>

So, what happened to turn America into a place where the Christian religion is no longer welcome in the public square? Don’t we have a Constitutional amendment guaranteeing religious freedom? Of course, we do; it says that “Congress (and after incorporation, the States) shall make no law...prohibiting the free exercise [of religion].” Great, what does that mean, what does that include?

For that answer, there are two sources: the first is to examine American attitudes and governmental interactions towards religion in the first century after the Bill of rights was ratified, there are many

books written on that subject and I don't have time to go into the detail; the second is to examine "American attitudes and governmental interactions towards religion" since the Supreme Court got involved in interpreting the Religion Clauses of the First Amendment.<sup>ix</sup> The Supreme Court has really made a mess of things; but I don't place all the blame on them; with the help of the courts, American atheists and humanists have had great success in secularizing this country. For its part, the court has had to grapple with two words: "religion" and "exercise." It doesn't take a rocket scientist to discover what those words meant in the founding period. Noah Webster included two very different definitions of "religion" in his 1828 dictionary:

1. "[R]eligion in its most comprehensive sense, includes a belief in the being and perfections of God, in the revelation of his will to man, in man's obligation to obey his commands, in a state of reward and punishment, and in man's accountableness to God; and also true godliness or piety of life, with the practice of all moral duties. It therefore comprehends theology, as a system of doctrines or principles, as well as practical piety; for the practice of moral duties without a belief in a divine lawgiver, and without reference to his will or commands, is not religion. (Emphasis added)
4. Any system of faith and worship. In this sense, *religion* comprehends the belief and worship of pagans and Mohammedans, as well as of christians; any *religion* consisting in the belief of a superior power or powers governing the world, and in the worship of such power or powers. Thus, we speak of the *religion* of the Turks, of the Hindoos, of the Indians, etc. as well as of the christian *religion*. We speak of false religion as well as of true religion." (Emphasis added)<sup>x</sup>

And this, in a nutshell, is the problem with the vaguely worded First Amendment. Must the word "religion" in the First Amendment encompass any and all religions? By not distinguishing between Webster's "false religion" and "true religion," we end up with Satanists winning their chance to say prayers at local government meetings,<sup>xi</sup> and being allowed to erect a statue of Satan alongside a Christmas display;<sup>xii</sup> native Americans (who, ironically, were also drug counselors) being allowed to smoke peyote as part of their religion,<sup>xiii</sup> Santeriaists<sup>xiv</sup> allowed to conduct animal sacrifice as part of religious exercise,<sup>xv</sup> "[Michigan's Muslim-majority city council approves animal sacrifice for religious purposes](#)" read one of last week's headlines. Is this simply democracy in action? Must American Christians tolerate anything and everything which claims to be an exercise of "religion," even while not being tolerated themselves? Perhaps it is time the Supreme Court take a hard look at the word "religion" and review our nation's "historical practices and understandings" (see last week's essay).

For further reading:

[Ten Tortured Words; How the Founding Fathers Tried to Protect Religion in America and What's Happened Since](#), Stephen Mansfield, Thomas Nelson, Inc., Nashville, TN, 2007.

[Original Intent; The Courts, the Constitutoin, & Religion](#), David Barton, Wallbuilders, Inc., Aledo, TX, 2005.

[Backfired: A Nation Founded on Religious Tolerance No Longer Tolerates it Founders' Religion](#), Bill Federer, Amerisearch, Inc., St. Louis, MO, 2005.

Next week: Right #3: Freedom of speech.

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<sup>i</sup> <https://alphanews.org/video-shows-security-booting-man-with-jesus-saves-shirt-from-mall-of-america/>.

<sup>ii</sup> <https://worldpopulationreview.com/country-rankings/countries-where-christianity-is-illegal>.

<sup>iii</sup> <https://www.cnsnews.com/news/article/barbara-boland/pew-study-christians-are-world-s-most-oppressed-religious-group>.

<sup>iv</sup> <https://www1.cbn.com/cbnnews/us/2019/september/ca-senate-passes-bill-forcing-pastors-to-embrace-lgbtq-beliefs>.

<sup>v</sup> [https://avalon.law.yale.edu/17th\\_century/va01.asp](https://avalon.law.yale.edu/17th_century/va01.asp).

<sup>vi</sup> <https://www.consource.org/document/charter-of-massachusetts-bay/>.

<sup>vii</sup> Joseph Story, *Commentaries on the Constitution of the United States*, 1833, p. 593.

<sup>viii</sup> *Church of the Holy Trinity v. United States*, (1892).

<sup>ix</sup> The Free Exercise clause was “incorporated” in 1940 in *Cantwell v. Connecticut*.

<sup>x</sup> Webster, Noah. *Noah Webster's First Edition of an American Dictionary of the English Language: Republished in Facsimile Edition*, by Rosalie J. Slater. San Francisco, CA: Foundation for American Christian Education, 2006

<sup>xi</sup> <https://www.independent.co.uk/news/world/americas/us-politics/hail-satan-prayer-protest-alaska-kenai-peninsula-satanic-temple-a8968581.html>.

<sup>xii</sup> <https://www.lifenews.com/2018/12/07/satanists-erect-sacrilegious-statue-inside-state-legislature-next-to-christmas-display/>.

<sup>xiii</sup> *Employment Div. v. Smith.*, 494 U.S. 872 (1990).

<sup>xiv</sup> *Santeria* is a fusion of traditional African religions and Roman Catholicism.

<sup>xv</sup> *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993).