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What's Religion Got to Do with It: United States Supreme Court Jurisprudence on the Free Exercise of Religion and the Clash of Cultures

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By Vincent Gilbert

I. Introduction

The Framers of the First Amendment religion clauses likely could not have conceptualized the expansive interpretation that it receives today.[1] While some scholars have determined that Thomas Jefferson and James Madison were theist,[2] nothing in their literature suggests that they were better equipped to define religion than courts are today. For example, James Madison held a rather progressive view of religion.[3] Indeed, Madison argued that religion is "the duty to which we owe our Creator, and the manner of discharging it."[4] However, Jefferson cannot be considered to have had such a definition of religion because he stated, "religious freedom was meant to be universal…to comprehend within the mantle of its protection the Jew and Gentile, the Christian and Mohametan, the Hindoo, and infidel of every denomination."[5] While Jefferson's quote may seem to be inclusive, there is a marked difference between Madison's view and Jefferson's view. Madison's position suggests that the subsequent actions that a believer takes in accordance with his/her religious beliefs should be protected.[6] This is evident by his reference to "discharging" one's religious duties. Conversely, Jefferson provides a vague, limited, and disparaging (i.e. referring to certain beliefs as infidel) description for what is encompassed in First Amendment religious protection.[7] Nothing in Jefferson's statement hints that he is willing to afford constitutional protection for the religious actions of

[1] John Sexton, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056 (1978).
[2] *Id* at 1060.
[3] *Id*.
[4] *Id*.
[5] *AMERICAN STATE PAPERS BEARING ON SUNDAY LEGISLATION* 133 n.1 (1911).
[6] *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1060.
[7] *Id*.

those groups mentioned.[8] This early dichotomy in thought and approach towards constitutional protection exists today as courts perform legal acrobatics to determine what religious acts or behaviors have constitutional protection. United States Supreme Court jurisprudence seems to indicate a trend toward finding constitutional protection for those religious practices that conform to western concepts of religion and a denial of protection for those acts that do not demonstrate the same conformity.

When Christian values, beliefs and practices are protected by law, a dominant Christian culture is preserved. All groups seek cultural stability, even endorsement. But when minority religious groups seek protection, they usually do so to preserve their culture. Such efforts are often met with hostility from the dominant culture within law and society.

II. Cultural Parity and Disparity

An early United States Supreme Court case seems to deviate from the Constitutional mandate, that the government not establish a religion, by recognizing Christianity as the common law of Pennsylvania.[9] Although the case primarily focused on the enforceability of a charitable trust, the Court found that it was able to enforce the trust because it did not contain any "regulations or restrictions…which are inconsistent with the Christian religion."[10] The court further clarified its position by stating:

> So that we are compelled to admit that although Christianity be a part of the common law of the state, yet it is so in this qualified sense, that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public.[11]

[8] *Id*.
[9] *Vidal v. Girard's Ex'rs,* 43 U.S. 127, 198 (1844).
[10] *Id* at 201.
[11] *Id*.

The Court's adherence to Christian principles stems from the values of the 'old world' carried over by the framers of the Constitution.[12]The theocratic language of the Court not only departs from the plain language of the First Amendment, it was subsequently cited by several state cases extending beyond the first quarter of the twentieth century.[13] The language of the Court suggests a preference for activities that conform to Christian and 'old world' values, and provides insight for later decisions made by the Supreme Court regarding the constitutionality of religious activities.

Perhaps on the clearest examples of religion serving as proxy for culture came in a Supreme Court decision addressing the issue of education. In the majority opinion in Board of Education of Kiryas Joel Village School District v. Grumet, the United States Supreme Court invalidated a New York law that created a school district inhabited exclusively by member of the Satmar Hasidic sect of Judaism.[14] The Satmar community is a strongly religious group that interprets the Torah strictly.[15] As a result of the group's strict adherence to their religious text they intentionally abstain from activities that may foster assimilation.[16] For example the Satmar's: "(1) segregate the sexes outside of the home, (2) speak Yiddish as their primary language, (3) eschew television, radio, and English-language publications, and (4) dress in distinctive ways that include head coverings and special garments for boys and modest dresses for girls."[17] In addition to the aforementioned activities the Satmar's further distance themselves by privately educating their children.[18] However, despite privately educating their

[12] *Id*.
[13] *State v. Bott*, 31 La. Ann. 663, 666 (1879); *Ecker v. First Nat. Bank*, 1 A 849, 853 Md. (1885); *Shaw v. Board of Education of Village of Hobbs, N. M.,* 31 P.2d 993, 997 N.M. (1934).
[14] *Bd. of Education v. Grumet*, 512 U.S. 687 (1994).
[15] *Grumet*, 512 U.S. at 691.
[16] *Id.*
[17] *Id* at 691.
[18] *Id*.

children the Satmar's did not provide educational services for special needs children in violation of the Individuals with Disabilities Education Act.[19]

Although the Satmars chose to send their special needs children to public schools, they quickly recanted because of the ridicule the children received due to their differences.[20] The ridicule and subsequent withdrawal of the students from public schools led to this case because, according the United States Supreme Court the law enacted by the state of New York entitling the Satmar children to educational services was an unconstitutional establishment of religion by entangling state power with a religious group.[21]

Despite the majority's decision the issue remains of whether New York State's accommodation of the special needs children is indeed a religious issue at all. For example, according to the facts the Satmar children were not antagonized because of their faith but rather their cultural differences.[22] This point is corroborated by Justice Scalia's dissenting opinion.

In that dissent, Justice Scalia argues that it is the cultural distinctiveness of the Satmar community and not their theological distinctiveness that motivates the majority opinion.[23] Justice Scalia states:

> on what basis does Justice Souter conclude that it is the theological distinctiveness rather than the cultural distinctiveness that was the basis for the New York State's decision? The normal assumption would be that it was the latter, since it was not theology, but dress, language, and cultural alienation that posed the educational problem for the children.[24]

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[19] *Id*.
[20] *Id*.
[21] Joanne Kuhns, *Board of Education of Kiryas Joel Village School District v. Grummet: The Supreme Court Shall Make No Law Defining an Establishment of Religion*, 22 PEPP. L. REV. 1599.
[22] *Grumet*, 512 U.S. at 691.
[23] *Id* at 740.
[24] *Id*.

Justice Scalia makes a poignant argument as it demonstrates that the apprehension expressed in the majority opinion is unfounded. Moreover, Justice Scalia argues that if the same set of facts were present but the parents of the children had no religious affiliation, the majority would find that the Establishment Clause has not been offended.[25] He understood that allowing the school district would enhance cultural cohesion, not religion.

Many modern cases demonstrate how the Court minimizes the religious practices and indeed the culture of minority religious groups. Challenges relating to Sunday closings, a mark of Christian dominance, were easily dismissed. *Braunfield v. Brown* presents a different legal issue but the cultural clash is still present.[26] In *Braunfield* the petitioners are Orthodox Jews arguing that a Pennsylvania statute proscribing retail sales on Sunday is a violation of their First Amendment free exercise rights.[27] As Orthodox Jews they argue that their religion requires that they observe their Sabbath from Friday evening until Saturday evening.[28] Therefore, petitioners argue that by being compelled to close on Sunday they lose out on substantial revenue that compensated for their Saturday closing, and thus are deprived of earning a livelihood.[29] In addition to the economic loss they suffer, the appellants maintain that the statute will deter new adherents to the Orthodox Jewish faith and that their religion is being subjected to discriminatory treatment by the state by being forced to close on Sunday.[30]

The Court begins with a historical analysis that accurately describes the cultural dichotomy that they are addressing in the present case.[31] The Court begins in Virginia in 1776

[25] *Grumet*, 512 U.S. at 741.
[26] *Braunfield v. Brown*, 366 U.S. 599 (1961).
[27] *Id* at 601.
[28] *Id*.
[29] *Id*.
[30] *Braunfield*, 366 U.S. at 602.
[31] *Id* at 602.

with the evolution of Sunday closing laws.[32] While Virginia had a stated policy of respecting all faiths it remained adamant that citizens abstain from commerce.[33] The state maintained that Sunday closing laws were a legislative means used to promote "a day of community tranquility, respite and recreation, a day when the atmosphere is one of calm and relaxation rather than one of commercialism, as it is during the other six days of the week."[34] The state supports its picturesque depiction of Sunday by positing that the state has a preoccupation with improving the health, safety, morals, and general well-being of its citizens.[35] After the historical analysis the Court finds that there is no constitutional violation in the present case, because the state may impose legislation that regulates secular activity, so long as it does not criminalize a religious practice.[36]

The Court's opinion seems to overlook the cultural contrast that lies beneath the appellants' claim and the Court's position. Aside from the monetary loss that the appellant's suffer, they also claim that the Sunday laws are a deterrent to future adherents of the Orthodox Jewish faith.[37] Indeed, it would appear that appellants are concerned with the continued stability of their community and religion is merely the vehicle through which it makes its claim for preservation.

[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Braunfield,* 366 U.S. at 602-03.
[36] *Id* at 606.
[37] *Id* at 602.

III. Polygamy

Perhaps the clearest judicial statements of dominant Christian culture appears in the polygamy cases. In the seminal polygamy case of Reynolds v. United States[38] the clash of cultures, and not religion, is apparent based on the language used by the Justice writing the opinion. In *Reynolds* the petitioner is challenging the impartiality of the jurors selected and the constitutionality of a law proscribing polygamy.[39] On the issue of polygamy the court provides context for its rejection of the Mormon challenge to the statute prohibiting polygamy. The statute at issue reads in pertinent part:

> Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years.[40]

Petitioner is seeking an exemption to the statute as a violation his First Amendment right to free exercise of his religion because as a member of the Mormon Church it was his religious duty to engage in polygamy.[41] In addition to polygamy being a religious obligation, petitioner testified that failure to engage in the practice would lead to eternal damnation in the afterlife.[42] Moreover according to the petitioner his second marriage was permissible because the ceremony was conducted by a parishioner having such authority.[43]

In introducing its opposition to petitioner's claims, the Court begins by providing legislative history of the Constitutional language authorizing the free exercise of religion.[44] According to the Court both the definition and genesis of the Constitutional language can be found in Thomas

[38] *Reynolds v. United States*, 98 U.S. 145 (1879).
[39] *Id.*
[40] *Id.*
[41] *Reynolds*, 98 U.S. at 161.
[42] *Id*.
[43] *Id*.
[44] *Id* at 164.

Jefferson's correspondence regarding the proposed amendment.[45] Jefferson found that the Free Exercise clause "permits a man to exercise his religion between him and his God,…but he has no natural right in opposition of his social duties."[46] The latter part of Jefferson's statements makes it clear that while the Government may not generally impose on one's practice of religion, governmental imposition is permissible when a religious act violates the law.[47]

Once establishing the context of the Free Exercise clause the court explains the historical opposition to the practice of polygamy.[48] Ironically, Chief Justice Waite does not begin with American opposition to the practice of polygamy. Instead, Justice Waite pits European culture against African and Asian cultures by stating that polygamy was almost an exclusive feature of the latter two cultures.[49] Indeed, the Justice posits that until the arrival of the Mormon Church polygamy was foreign to the European culture.[50] In addition, to demonstrate the cultural disdain for the practice of polygamy, Justice Waite explains that the practice of polygamy was an offense punishable by death at common law.[51] The historically cultural contempt for the practice of polygamy, rejection of a Mormon exemption, and the subsequent finding of guilt of Mr. Reynolds demonstrates that the Court was more concerned with a practice that is antithetical to the pre-American and American values. Mr. Reynolds Mormon faith is not a central feature of the trial. Rather, the Court is again dealing with a cultural practice that offends the American values system.

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[45] *Id*.
[46] *Id*.
[47] *Id*.
[48] *Reynolds*, 98 U.S. at 164.
[49] *Id*.
[50] *Id*.
[51] *Id* at 165.

Early case law reveals an abhorrence for the practice of polygamy.[52] In *Miles v. U.S.* the challenger, John Miles, is challenging his conviction of polygamy in the state of Utah.[53] However, in *Miles* the Court not only admonishes the practice of polygamy; it departs from the language in *Vidal* by disregarding the accused's claims that polygamy is a sincere practice of his religion.[54] Readers may recall that in *Vidal* the Court unquestionably accepted the "divine origin and truth" of the Christian faith.[55] However in *Miles* the language of the opinion puzzlingly demonstrates a callousness towards the defendant's faith.[56] Subsequent case law offers an explanation for the disparity in treatment.

A decade later in *Davis v. Beason*, the callous language in the opinion of *Miles* is clarified when the Court decided on a case that challenged the constitutionality of an Idaho statute that disqualified any person that practiced bigamy from holding public office, voting, teaching, etc.[57] The tone of the Court's opinion towards the challengers reveals a visceral aversion for the defendant's religious practice.[58] The Court's aversion is grounded in what appears to be a preference for Christianity:

> Bigamy and polygamy are crimes by the law of all civilized and Christian countries…They tend to destroy the purity of marriage relation, to disturb the peace of families, to degrade women, and to debase men. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community.[59]

[52]See *Reynolds v. United States,* 98 U.S. 145 (1878); *Miles v. U.S.,* 103 U.S. 304, (1880); *Davis v. Beason*, 133 U.S. 333 (1890).
[53] *Miles v. U.S.,* 103 U.S. 304 (1880).
[54] *Id* at 307.
[55] *Vidal*, 43 U.S. at 198.
[56] *Miles,* 103 U.S. at 307.
[57] *Davis v. Beason*, 133 U.S. 333 (1890).
[58] *Id* at 341.
[59] *Id* at 341.

In the aforementioned the Supreme Court tempers its vehemence against the practice of polygamy by assuming the values of the nation and the subsequent moral declination that will occur if polygamy is not prohibited by law.[60] To accomplish this dubious purpose the Court analogizes civilization and Christianity and the concomitant moral degradation that will occur with the practice of polygamy.[61] The court's position appears to offend the Free Exercise clause of the First Amendment because it seems to deny what Mormon's consider a required religious practice.[62] In addition, it would appear that the Court has deviated from James Madison's position by denying "man's discharge of duty to his creator."[63]

However, despite the Framer's view on Free Exercise the court resumes its posture of religious assumption regarding acceptable behaviors by stating, "to call their advocacy a tenet of religion is to offend the common sense of mankind."[64] The Court is showing an early tension between religious practices and society's norms. However, the dilemma is easily dismissed when the Court finds that religious practices are subordinate to the law of the land.[65] Although that sentiment is to be repeated often, i.e. religious practices are subordinate to the law of the land, this case, like many others, provides some insight into what practices are acceptable and the criteria used for determining their acceptability.

Aside from the moral condemnation afforded polygamy, in *Cope v. Cope* the Supreme Court was faced with the concomitant issue of illegitimacy.[66] *Cope* was a matter of first impression as the Court had to determine the constitutionality of a Utah statute that permitted

[60] *Id*.
[61] *Id*.
[62] *Id* at 341.
[63] *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. 1056, 1060.
[64] *Beason*, 133 U.S at. 341-42.
[65] *Id* at 342.
[66] *Cope v. Cope*, 137 U.S. 682 (1891).

illegitimate children to share in the estate of a deceased parent the same as a legitimate child.[67] The Court begrudgingly determined that while the statute did not contemplate illegitimate children from a polygamous relationship, some such children could, nonetheless, share in their parent's estate.[68] According to the opinion it was Congress' position that only those illegitimate children born within twelve months of the passage of the statute could inherit from their parent's estate.[69] All children born thereafter could not inherit from their parent's estate.[70] It is evident that the contempt for the practice of polygamy reached beyond the parties directly engaged and affected the lives of children borne out of illegal unions. However, this nineteenth century disdain would persists for many years to come.

Indeed case law from the mid-twentieth century reveals that the attitude of the court had not changed much.[71] In *Cleveland v. U.S.* the petitioners are challenging their conviction under the Mann Act, which proscribes transporting women across state line for the purpose of prostitution.[72] Their convictions were based on their engagement in a polygamous relationship, which meant any subsequent wife beyond the first was considered unlawful under the Mann Act.[73] Consistent with prior case law the Court expressed its detestation of polygamy, and quoted the Reynolds' opinion stating that polygamy was almost an exclusive feature of Asian and African cultures.[74] Moreover, the practice has always been unacceptable in European nations.[75] More poignantly the juxtaposition between Christianity and other religions and the disparate treatment they receive is made clear when the Court stated:

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[67] *Cope*, 137 U.S. at 684.
[68] *Id* at 689.
[69] *Id* at 688.
[70] *Id*.
[71] *Cleveland v. U.S.*, 329 U.S. 14 (1946).
[72] *Cleveland,* 329 U.S. at 16.
[73] *Id*.
[74] *Id* at 15.
[75] *Id*.

> The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Christianity and of the civilization which Christianity has produced in the western world…The establishment of maintenance of polygamous households is a notorious example of promiscuity.[76]

The above quote demonstrates the contrast between the Christian values which the Court finds acceptable and those that it does not. Moreover, the religious deference extended to the Christian values earlier in *Vidal*[77] are categorically denied to non-Christian values in *Cleveland*.[78] It is clear that the religious preference for Christian and old world values still permeated the Supreme Court in the mid-twentieth century.

IV. Religious Sincerity

Over a century later the United States Supreme Court echoed the sentiments of James Madison in *U.S. v. Ballard* when it stated, "with man's relations to his maker and the obligations he may think they impose, on interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the moral of its people, are not interfered with."[79] In *Ballard* the court was confronted with the issue of whether the defendants could be charged with making false representations about their divine or supernatural powers in an attempt to defraud its followers out of money, property, etc.[80] The defendants' challenged their convictions on the grounds that the Free Exercise Clause prohibited the state from bringing charges against them regarding the validity of their religious claims.[81] The court supported its rationale by stating:

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[76] *Cleveland,* 329 U.S. at 15- 16.
[77] *Vidal*, 43 U.S. at 198.
[78] *Id* at 20.
[79] *U.S. v. Ballard*, 322 U.S. 78, 87 (1944).
[80] *Id*.
[81] *Id.*

> The first amendment has a dual aspect. It not only forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship but also safeguards the free exercise of the chosen form of religion…Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.[82]

The Court's statements demonstrate that the government is prohibited from making inquiries into the religious validity of the defendant's claims.

To further clarify the Court's position on the state making religious inquiries it analogized the defendant's claims with the transcendental occurrences of the New Testament.[83] The Court recognized the popularity of the belief in Immaculate Conception and the resurrection and noted that if the miracles in the New Testament are accepted without state condemnation, then the claims of the defendants are likewise constitutionally protected.[84] Government can require that a religious claim be sincere, but it cannot require that it be true. The Court's position seems to represent the spirit of the Free Exercise clause, but that seem broad view becomes astonishingly narrow when it addresses the Nation of Islam.

V. Black Muslims

In *Fulwood v. Clemmer* the United States District Court for the District of Columbia addressed the issue of hostility towards non-Western religions and practices, when it reviewed a case by a member of the Nation of Islam.[85] The Nation of Islam is a religious organization founded by Elijah Muhammad which taught a form of Islam designed to help African Americans improve their conditions in America.[86] In *Fulmer* the petitioner claimed religious discrimination

[82] *Id* at 86.
[83] *Id* at 87.
[84] *Id*.
[85] *Fulwood v. Clemmer*, 206 F. Supp. 370 (1962).
[86] Alex Haley, *THE AUTOBIOGRAPHY OF MALCOLM X* (1964).

when members of the Nation of Islam were not allowed to hold religious meetings in prison.[87] The respondent, Donald Clemmer, Director of the Department of Corrections for the District of Columbia, refused Mr. Fulwood's request for religious meetings because Mr. Clemmer believed that Muslims teach hatred.[88] Mr. Clemmer stated:

> I don't know any other religion that teaches racial hatred as an essential part of the faith of the religion. There are many religions which have practiced racial hatred at various times, but this movement is the only movement that I know of which makes it a tenet of the faith that all white people should be hated. The Muslim's consider the white man as their natural enemy according to a handbook which a witness for petitioner regards as a standard and recognized text of religious denominations in the United States.[89]

The court goes on to acknowledge the religion as an admixture of political aspirations, economic goals, racial prejudice with substantial emphasis on the Muslim faith.[90] Although the court found that the petitioner should not be discriminated against due to his religion[91], the antagonistic language used toward the Nation of Islam would be repeated in subsequent cases.

In *Clay v. U.S.*, then heavyweight champion, Muhammad Ali, challenged his conviction for willful refusal to submit to induction into the armed forces.[92] Muhammad Ali challenged his conviction on the grounds that he is a member of the Nation of Islam and therefore a conscientious objector to war.[93] To satisfy the requirement as a conscientious objector a registrant must demonstrate the following: (1) he is conscientiously opposed to war in any form, (2) his opposition is based upon religious training and belief, as the term has been construed, and

[87] *Fulwood,* 206 F. Supp. at 372.
[88] *Id* at 373.
[89] *Id*.
[90] *Id*.
[91] *Fulwood,* 206 F. Supp. at 379.
[92] *Clay v. U.S.*, 403 U.S. 698 (1971).
[93] *Id* at 699.

(3) his objection is sincere.[94] The government contends that Mr. Ali's conviction should be upheld because he is not genuinely opposed to war, but only selective about which wars he would choose to fight.[95]The government stated:

> It seems clear that the teaching of the Nation of Islam precludes fighting for United States not because of objections to participation to war in any form but rather because of political and racial objections to policies of the United States as interpreted by Elijah Muhammad. It is therefore our conclusion that registrant's claimed objections to participation in war insofar as they based on the teaching of the Nation of Islam, rest on grounds which primarily are political and racial.[96]

The government later conceded its position regarding Mr. Ali's religious sincerity when it became evident that he was not merely a member of the Nation of Islam to avoid induction into war.[97]

Less than one year later in *Joseph v. U.S.*, the Supreme Court is again asked to review the claims of a member of the Nation of Islam that refuses to join the military as a conscientious objector.[98] Despite the rhetoric being identical to that in *Clay*, the government doubted the religious sincerity of Mr. Joseph.[99] That claim was based on the following statement made by Mr. Joseph years earlier when he was 17:

> We believe that we who declared ourselves to be Rightous [sic] Muslims Should not Participate in wars which take the lives of humans. We do not believe this nation should force us to take part in such wars, for we have nothing to gain from it unless America agrees to give us the necessary territory wherein we may have something to die for…I receive my training from the Honorable Elijah Muhammad Last Messenger of Allah Leader and Teacher of the Nation of Islam herein the Wilderous [sic]

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[94] *Id* at 700.
[95] *Id* at 701.
[96] *Id* at 702.
[97] *Id*.
[98] *Joseph v. U.S.,* 405 U.S. 1006 (1972).
[99] *Id* at 1006.

of North America.[100]

Mr. Joseph's statements seem to be a more detailed explanation than that offered in *Clay*.[101] The words of Mr. Joseph demonstrate a keen awareness, similar to that in the *Grumet* case.[102] As previously mentioned, in *Grumet* the plaintiffs are aware that allowing that their children to be exposed to secular children has a traumatic psychological effect.[103] Indeed, in *Grumet* the claim of psychological trauma may have been preemptive, as nothing in the case seems indicate that any child had actually suffered a traumatic event.[104] However, Mr. Joseph's awareness is based on his understanding of the travail of African Americans in America. Mr. Joseph is not engaging in hyperbole when he stated, "we do not believe this nation should force us to take part in such wars, for we have nothing to gain from it unless America agrees to give use the necessary territory wherein we may have something to die for.[105] Mr. Joseph is showing an acute understanding for several aspects of life for African Americans. His statement reveals that he comprehends that it would be irrational to kill or be killed for a country that supports an economic, educational, and social disparity based on race. Furthermore, as a member of the group that receives the brunt of that social dynamic his rationale is evident. However, without questioning his religious sincerity, Mr. Joseph's religious claim[106] is identical to the claims of all the others. Just as in the *Grumet* case where the Supreme Court explains the origin of the Satmar community[107], Mr. Joseph too recognizes himself as a part of a community whose religious beliefs are subsequent to other identifiers. Therefore, the members of the Nation of Islam are

[100] *Id*.
[101] *Clay*, 403 U.S. at 702.
[102] *Grumet*, 512 U.S. at 691.
[103] *Id* at 691
[104] *Id* at 692.
[105] *Joseph*, 405 U.S. at 1006.
[106] *Id*.
[107] *Grumet*, 512 U.S. at 690-91.

expressing the same sentiments as the other religious groups as they are using their religious beliefs to preserve their cultural community.

VI. Education

Likewise in Wisconsin v. Yoder[108] cultural preservation, as opposed to religious tenets, is the central issue of the case. But here it is the cultural preservation of a traditional Christian community, so its stability and protection become an urgent priority for the Court. In the Yoder case, Jonas Yoder and Wallace Miller- members of the Old Order Amish Religion- and Adin Yutzy- member of the Amish Mennonite Church- are challenging their conviction of violating the state of Wisconsin's compulsory school laws.[109] Collectively the respondents argue that Wisconsin's compulsory attendance law is a violation of their First Amendment and Fourteenth Amendment rights as it threatens the continuity of Amish communities.[110] Respondents supported their position by stating:

> …[R]espondents believed, in accordance with the tenets of the Old Order communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children.[111]

Although the aforementioned quote makes reference to the term religion, respondents make it clear that exposure to other communities threatens their cultural viability.[112] To further demonstrate this point it is stated, "…Old Order Amish communities are characterized by a

[108] Wis. v. Yoder, 406 U.S. 205 (U.S. 1972).
[109] *Id* at 207.
[110] *Id* at 209.
[111] *Yoder*, 406 U.S. at 209.
[112] *Id*.

fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence."[113] The latter half of the quote, i.e. "separate and apart from the world and worldly influence", seems more concerned with creating a homogenous community as opposed to religious tenets.[114] This appears to be evident by their agrarian lifestyle described in the case:

> A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil , as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activites. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents…Amish society emphasizes informal learning-through-doing; a life of goodness , rather than a life of intellect; wisdom, rather than technical knowledge, community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.[115]

Indeed, judging by the language in the opinion it seems clear that the Amish are concerned with cultural continuity, as many of their professed religious tenets seems more concerned with shielding their ways from those not associated with their tradition.[116]

The emphasis on cultural and communal viability being intertwined with societal isolation forms the basis for the respondent's case. Although respondents concede that education up to the eighth grade is necessary for the rudimentary activities of everyday Amish life, they argue that education beyond that point infuses values that are antithetical to both their religion and way of life.[117] The respondent's support their position by positing that education beyond the

[113] *Id* at 210.
[114] *Id*.
[115] *Yoder*, 406 U.S. at 210-11.
[116] *Id*.
[117] *Id* at 210-11.

eighth grade instills competitiveness, worldly success, and intellectual acumen over the Amish approach of informal learning through "doing it yourself "and more devotion to spiritual development.[118] Indeed, the Amish position seems almost entirely predicated on the premise that exposure to the outside world beyond a certain age threatens the ideals that they have so long preserved.[119]

The crux of the litigation before the Court is whether the state's interest in providing universal education is greater than the Amish's need to preserve their way of life.[120] Writing for the court, Chief Justice Burger pits the state's interest in providing education for its citizens against a parent's right to direct the religious upbringing of the child.[121] In his analysis, Chief Justice Burger recognizes that the fundamental right of a free exercise of religion is a longstanding right that has a history in American jurisprudence of taking precedent over socially important interest.[122] In fact, Justice Burger makes it clear that the right to freedom of religious exercise predates the social interest in universal education.[123] Despite the longstanding tradition of freedom of religious exercise the Court finds that the respondent's claims can only defeat the state's interest in providing education if their claims are "rooted in religious belief."[124] To demonstrate that their claims are rooted in religious belief the court found that the Amish must show that their claims are not predicated on their "subjective evaluation and rejection of the contemporary values accepted by the majority…"[125] The Court found that the Old Order Amish way of life was not merely an arbitrary rejection of values because of their literal interpretation

[118] *Id* at 211.
[119] *Id*.
[120] *Id* at 213.
[121] *Id*.
[122] *Yoder*, 406 U.S. at 214.
[123] *Id*.
[124] *Id* at 215.
[125] *Id* at 216.

of the Epistle of Paul to the Romans, "be not conformed to this world."[126] In addition to the Court's finding of their strict interpretation of the Biblical verse, an expert witnessed testified that the "Old Order Amish religion pervades and determines virtually their entire way of life…"[127]

The state's primary arguments for why Wisconsin's compulsory school laws should be enforced are: (1) education is necessary to prepare citizens for active participation in the political process, and (2) education promotes self-reliance and self-sufficiency.[128] The Amish were able to successfully counter the state's position by presenting an expert that testified that the education that the Amish children receive beyond the eighth grade is sufficient for them to survive as law-abiding adults in their community.[129] In addition, evidence was presented demonstrating that the one or two more years beyond the eighth grade that their children would receive under Wisconsin law would not advance them in their community.[130] Moreover, according to the expert, "compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region."[131] Furthermore, the expert testifies that exposure to "worldly" values beyond the eighth grade could cause psychological harm to the children.[132] The psychological harm discussed in *Yoder*, combined with the threat of undermining their way of life aligns with the *Grumet* case.

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[126] *Id*.
[127] *Id*.
[128] *Yoder*, 406 U.S. at 221.
[129] *Id* at 212-13.
[130] *Id* at 218.
[131] *Id*.
[132] *Yoder*, 406 U.S. at 212.

In both of these cases the groups are arguing that exposure to groups unlike themselves causes psychological harm and presents the concomitant threat of undermining their way of life. Indeed, in both of these cases preservation of culture and way of life are the gravamen of their arguments, not religion. Therefore, it would seem that what is really being litigated in these cases is the conservation of tradition, with the Free Exercise Clause serving as the constitutional standard to protect that tradition.

VII. Conclusion

A review of the several significant decisions of the United States Supreme Court on the topic of the Religion clauses seems to suggest that the Court has a preference for religious practices that align more with traditional, western concepts of Christianity. For example, the Court posits little objection to the Amish's violation of compulsory school laws.[133] According to the opinion in that case the Court agreed that exposure beyond the eighth grade for Amish children was potentially detrimental to their way of life.[134] In contrast, the *Grumet* Court gives no regard to the Orthodox Jew's claims that their children's exposure to non-members of their faith could have damaging effects.[135] Finally, in *Ballard* the court showed unprecedented deference for an admitted religious fraud.[136]

Ironically, that same deference is not extended in other cases. Beginning with the issue of polygamy the Court shows a long-tradition of cultural repugnance for the practice.[137] Indeed the opinion regards the practice of polygamy as being a practice exclusive to the Asian and

[133] Wis. v. Yoder, 406 U.S. 205 (U.S. 1972).
[134] *Yoder*, 406 U.S. at 210-11.
[135] *Grumet*, 512 U.S. at 740.
[136] *Ballard*, 322 U.S. at 81.
[137] *Reynolds*, 98 U.S. at 164.

African cultures.[138] Furthermore, the Court based its position on the finding that historically at common law in Europe the practice of polygamy was punishable by death.[139] Indeed Supreme Court jurisprudence reveals over a century of case law rejecting the professed Mormon religious practice of polygamy.[140]

In addition, the skepticism towards the religious authenticity of the conscientious objectors in the Nation of Islam also reveals a conspicuous hostility for that faith.[141] As is apparent in the *Joseph* and *Clay* cases the court is attempting to determine if their opposition to war is a genuine tenet of their faith.[142] Although the petitioner's religious claims are ultimately validated, the inquiries made in their respective cases are absent in the cases that align more with traditional, western notions of Christianity. It appears that partiality permeates United States Supreme Court jurisprudence regarding the First Amendment Religion Clauses and the subsequent religious practice of various groups. Cultural stability, which is available through the protection of religious practices, is not always afforded to non-mainstream groups.

[138] *Id*.
[139] *Id*.
[140] *See e.g., Reynolds v. United States*, 98 U.S. 145 (1879); *Miles v. U.S.,* 103 U.S. 304, (1880); *Davis v. Beason*, 133 U.S. 333 (1890); *Cope v. Cope*, 137 U.S. 682 (1891).
[141] *Joseph v. U.S.,* 405 U.S. 1006 (1972).
[142] *Clay*, 403 U.S. at 702.