

In reply to Jeffery Toobin's editorial, "William Barr's Wild Misreading of the First Amendment" (<https://www.newyorker.com/news/daily-comment/william-barrs-wild-misreading-of-the-first-amendment>).

America's Original Tolerance

Robert Herron

I understand Jeffrey Toobin's umbrage at William Barr's speech. His moral indignation mirrors many of those of us on the Right. He and Barr are examples of our cultural divide.

But he overstates his case. The Framers did, indeed, think "free government was only suitable and sustainable for a religious people."

So said our first President, George Washington: "Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience forbid us to expect that national morality can prevail in exclusion of religious principle."

So said our second President, John Adams: "Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

So said our third President, Thomas Jefferson: "Can the liberties of a nation be thought secure, when we have removed their only firm basis, a conviction in the minds on the people that these liberties are the gift of God?"

So said Benjamin Franklin: "[The great mass of men and women] have need of the motives of religion to restrain them from vice, to support their virtue, and to retain them in the practice of it until it becomes habitual."

Mr. Toobin has carefully chosen the words of Justice Hugo Black to support his case that no government can or should require religious practice or test of its citizens. Every eighth grade civics student knows that.

But as a counterpoint, I notice how carefully, assiduously we as a nation excise the words of Martin Luther King, Jr. (*Letter from Birmingham Jail*) from our cultural conscience: “A just law is a man-made code that squares with the moral law or the law of God. To put it in the terms of Saint Thomas Aquinas: An unjust law is a human law that is not rooted in eternal and natural law.”

The first version of our First Amendment, which seed was planted in the Virginia Constitution, proclaimed that “All men should enjoy the fullest toleration in exercise of religion, according the dictates of conscience.”

During the debate, however, James Madison, a junior member, persuaded the other delegates of the Virginia Convention that the language was too weak; that toleration implied that government was granting a concession to its citizens, and anything a government could grant it could also withdraw.

Ultimately, the Virginia Convention opted for stronger language:

That religion or the duty we owe our Creator, and the manner of discharging it, being under the direction of reason and conviction only, not of violence and compulsion, all men are equally entitled to the full and free exercise of it according to the dictates of conscience.

The Virginia delegates to America’s Constitutional Convention prevailed in adopting similar language into our First Amendment.

Civil Rights and the Free Exercise of Religion are of a single cloth: both are God-given and inalienable. They are derived from Natural Law. They can only be recognized by a government, not granted, withdrawn, or circumscribed.

Neither is to be merely tolerated.