

Confronting the Constitutional Order:  
Reconciling Satan and the Free Exercise of Religion

Julia Wells

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Thesis Advisor:  
Professor Jenna Reinbold

Defense Committee:  
Professor Christopher Vecsey  
Professor Benjamin Stahlberg

In defending the separation of church and state, James Madison wrote, “The 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.”<sup>1</sup> The crux of Madison’s argument was that if the government were allowed to interfere in people’s religious choices, the government would be able to choose or remove people’s religious practices at will. In Madison’s conception, one’s freedom of conscience precedes one’s commitment to the government, and therefore shouldn’t be within the power of government to regulate.

Since the founding of the United States, religious freedom has been one of the most venerated values, but determining which religions are afforded religious freedom has historically been very contentious. This principle of freedom of conscience was translated into the U.S. Constitution in the form of the very first words of the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>2</sup> The establishment clause prevents the government from creating a state church, while the free exercise clause limits the government’s ability to force people to act in violation of their religion.



religions, on the other hand, are more likely to be understood as “bad.” Thus, while people often understand U.S. secularism as an absence or contraction of religions from the public sphere, this



supports the idea that the Founders wished to create a government under the authority of God or Christianity.<sup>12</sup> Yet, while the Christian nation argument has been largely rejected by historians, many Americans still ardently claim that America is at its core a Christian nation.

The prevalence of the Christian nation myth is largely due to the purpose it serves. The Christian nation myth has been “created and retold for the purpose of anointing the founding, and the nation, with a higher, transcendent meaning.”<sup>13</sup> Myths like “Christian America” “are essentially identity-creating narratives...that help identify [nations and peoples] as a distinct group, distinguishable from other peoples, and legitimate their heritage.”<sup>14</sup> In other words, “statements like ‘America is a Christian nation’ represent a discursive practice that seeks to align the boundaries of authentic national belonging with adherence to the dominant religious faith.”<sup>15</sup> The U.S. is a diverse nation filled with people of many different ethnicities and heritages. The myth of America as a Christian nation binds Americans together. Of course, this myth does not reflect the religious diversity of the U.S., particularly as we move further into the twenty-first century. Like a lot of myths, the myth of Christian America both is and is not true. The founders did not establish Christianity as the official religion of the U.S., but there is an implicit Protestantism that makes it seem as if America is a Christian nation. Christianity has a default hegemony in the history and in the contemporary politics of America.

According to a survey by the Pew Research Center, the percentage of Americans who identify as Christian is declining while the percentage of those who do not identify as a member of an organized religion is increasing. While the U.S. remains the nation with the highest

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<sup>12</sup> Ibid., 259.

<sup>13</sup> Ibid., 260.

<sup>14</sup> Ibid., 261.

<sup>15</sup> Jeremy Brooke Straughn and Scott L. Feld, “America as a ‘Christian Nation’? Understanding Religious Boundaries of National Identity in the United States,” *Sociology of Religion* 71, no. 3 (2010): 281.

percentage of people who identify as Christians, “the percentage of adults (ages 18 and older) who describe themselves as Christians has dropped by nearly eight percentage points in just seven years, from 78.4% in an equally massive Pew Research survey in 2007 to 70.6% in 2014.<sup>16</sup> Meanwhile, the percentage of people who are religiously unaffiliated (atheists, agnostics, or “nothing in particular) has increased from 16.1% in 2007 to 22.8% in 2014, and the percentage of Americans who identify with a non-Christian faith has increased from 4.7% to 5.9%.<sup>17</sup> Although the number of Christian-identifying Americans has decreased, the Christian America myth is still strong; in fact, views of the U.S. as a Christian nation “have generally grown *more* prevalent among U.S. adults since the turn of the century.”<sup>18</sup> Myths that create “boundaries of authentic national belonging” that are aligned with the dominant religious faith often mark “certain groups as prototypical of the larger community while relegating others to the symbolic margins.”<sup>19</sup> By aligning authentic national identity with the Christian faith, the myth of America as a Christian nation “tacitly reinforces the moral prestige of the religious majority, even as it presents Americans of other faiths, or with no formal religion, with invisible barriers to symbolic inclusion.”<sup>20</sup>

found in violation of the Constitution, people may face penalties.<sup>22</sup> On the symbolic level, the Constitution's authority rests "on the ability



true religion is “critical for maintaining American strength,”<sup>26</sup> and because different religions were allowed to coexist in America, early Americans feared that, in the religious free market, people might choose incorrectly and thereby threaten the nation.<sup>27</sup> In such a context, the ideal of religious tolerance proved much easier to uphold than the actual practice of tolerance. The Church of Jesus Christ of Latter-day Saints (LDS), commonly known as Mormonism, is perhaps the most prominent religion to have become entangled within this paradox of religious “truth” and “falsity.” From its very origins in the 1830s, Americans have denounced Mormonism as a fake religion and have attempted to lessen its influence.

The LDS Church arose in 1830, founded by New Yorker Joseph Smith who published *The Book of Mormon*, which Smith claimed contained the translations of the “prophecies of Jesus’s then-future life, death, and resurrection, as well as teachings that Jesus himself gave during a visit he made to the Americas after he rose from the dead.”<sup>28</sup> From the beginning of the Mormon Church, many non-Mormons declared Mormonism a fake religion, which many people thought was evident from the fraudulent, unamerican, and alien nature of the religion. Smith, who understood himself to be a prophet, was deemed a fraud by many non-Mormons, and the *Book of Mormon*, thought to be a ludicrous imitation of the Bible, was considered by anti-Mormons to be a clear marker of Smith’s deceit.<sup>29</sup> Anyone who followed Joseph Smith and accepted the *Book of Mormon* was considered fanatical and gullible. The apparent fraudulent nature of the religion was further bolstered by the association of Mormonism with magic and trickery. Smith’s early involvement in treasure hunting was associated with folk supernaturalism,

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and thus Mormonism as a whole has been studied both in early and modern America through the lens of “occult supernaturalism and folk magic,” regardless of early Mormon condemnation of magic.<sup>30</sup> Smith thus seemed to be dabbling in “magic” rather than actual religion, and by claiming

Polygamy was considered an affront to American morality, and out of fear of religious anarchy, Congress passed the Morrill Act of 1862, which outlawed polygamy.<sup>34</sup> This act was upheld by the U.S. Supreme Court itself, in large part due to the Court's perception of polygamy as a profound threat to civic order. In *Reynolds v. United States* (1878), the Supreme Court noted that if polygamy were allowed, people could argue for bride burning and human sacrifice on religious grounds, making "the professed doctrines of religious belief superior to the law of the land, and, in effect, ... permit[ing] every citizen to become a law unto himself."<sup>35</sup> Under these circumstances, the government would not be able to rule properly over the people. Polygamy thus bolstered the idea that Mormonism was a fraudulent religion that acted in opposition to the American constitutional order and morality.<sup>36</sup> Although Mormonism was similar to mainstream Christianity, it was just different enough for anti-Mormons to feel threatened by its presence. The full force of the American constitutional order worked toward "squeez[ing] the Mormon leadership until Mormons could no longer survive without choosing between political annihilation and recognition of the order's ultimate authority."<sup>37</sup>

resemblance to Christianity. This Protestant preferentialism still exists today as is evident in the treatment of The Satanic Temple (TST). In early America, Satan was perceived as the ultimate evil against which Americans must fight. As the “discarded, unloved son” of God, Satan gets his revenge against God by “corrupting the individual soul by preventing the spread of the gospel or surfeiting it on the pleasures of the flesh.”<sup>38</sup> Early Americans understood Satan as able to take on





Satan could easily enter America through the home, people became concerned with destroying Satan and Satanism with spiritual warfare.

While the effects of the Satanic Panic have dissipated considerably, the basic stereotypes about Satanism and Satanists prevalent during this time have remained in the minds of many Americans, continuing to affect court cases and other public situations. Local governments have often aligned with groups against so-called cults and have used the law ““as a weapon of harassment”” in the “battle over the cultural ability to define religion in the United States, as well as the power to define the United States itself.”<sup>55</sup> The continued success of the labels of “deviant” and “evil” as applied to Satanists reflect the ongoing campaign of the dominant religious group to preserve the notion of a “Christian America.”

Although The Satanic Temple is drawing on a long-standing central image of Satan as the ultimate rebel and the representation of individuality similar to the Church of Satan, TST has done something different with it. It is true that TST is a reactionary activist organization, but they also have a theological orientation that guides their political activism. TST, founded in 2013 by “Lucien Greaves” and “Malcolm Jarry,”<sup>56</sup> was created with the following mission: “to encourage benevolence and empathy among all people, reject tyrannical authority, advocate practical common sense and justice, and be directed by the human conscience to undertake noble pursuits guided by the individual will.”

2. The struggle for justice is an ongoing and necessary pursuit that should prevail over laws and institutions.
3. One's body is inviolable, subject to one's own will alone.
4. The freedoms of others should be respected, including the freedom to offend. To willfully and unjustly encroach upon the freedoms of another is to forgo one's own.
5. Beliefs should conform to one's best scientific understanding of the world. One should take care never to distort scientific facts to fit one's beliefs.
6. People are fallible. If one makes a mistake, one should do one's best to rectify it and resolve any harm that might have been caused.
- 7.



religion can, and should, be divorced from superstition.”<sup>60</sup> For TST, Satan is not a real being but is the embodiment of “rational inquiry removed from supernaturalism and archaic tradition-based superstitions.”<sup>61</sup> Furthermore, “Satan is a symbol of the Eternal Rebel in opposition to arbitrary authority, forever defending personal sovereignty.”<sup>62</sup> Contrary to popular belief, TST does not promote evil, but rather promotes beneficence.

Although somewhat dependent on media coverage for raising awareness about the organization and its campaigns, TST deeply believes in the goals of those campaigns. Detached from the supernatural, TST emphasizes that “a religion should be without a compulsory attachment to untenable items of faith-based belief.” Religion “provides a narrative structure by which we contextualize our lives and works” and “a sense of identity, culture, community, and shared values.”<sup>63</sup> In accordance with TST’s philosophy, core tenets, and mission, the Satanic Temple has been involved in numerous campaigns aimed at enforcing church-state separation and religious liberty (e.g., TST has been particularly active in campaigns involving religious

valid viewpoint.”<sup>64</sup> As a trolling organization, then, TST is not a religion but a joke, an organization whose media stunts are aimed only at banishing Christianity from the public sphere.<sup>65</sup> Not only conservative Christians, but other satanic affiliated organizations as well, characterize TST as merely a troll. The Church of Satan has accused TST of being a “prank” and a “self-acknowledged satire and an activist group, which pretends to be a religion when it suits their ends.”<sup>66</sup> For these reasons—and in an interesting parallel to American reactions to Mormonism—TST is often accused of fraudulence. TST is also often accused of fake Satanism because of the group’s nonconformity to the accusers’ traditional ideas of satanic values and beliefs. Many people charge that, because TST believes that Satanism is about beneficence rather than spreading evil and because TST does not believe in the supernatural, TST embodies fake Satanism. While TST’s brand of Satanism is different from that of the Church of Satan, the name and imagery TST uses draw on previous forms of Satanism. For both TST and the Church of Satan, “Satanic’ beliefs, ideas, practices, and attitudes are rooted—however tenuously—in the mythological character of Satan, especially the myth of Satan’s rebellion against God as told by Milton.”<sup>67</sup> By charging that TST is merely a trolling organization and that TST embodies fake Satanism, TST’s opponents have been prone to characterize TST as fraudulent in both its religious claims and in its claims to be committed to religious freedom.

The contrasting examples of the LDS Church and the Satanic Temple reveal two ways in which a society that claims to value religious freedom a.( ) 10 (f) -7 0 (S) sociT -10 (c) 4“(nt) (i) -282 (gi) 7 (e) 4

Church and TST as fake religions harmful to the American constitutional and moral order, opponents of both are able to maintain the implicit Protestant Christian rule in the U.S. Though the U.S. Constitution and judicial system are commonly perceived as mechanisms designed to protect minority groups from the domination of more culturally and politically powerful groups, the interplay of concerns about order and morality show that these realms are often surprisingly hard to separate. In fact, the experiences of the Mormons and TST members as free exercise claimants within the U.S. constitutional order reveal the true difficulty that religious minorities face in a country so strongly shaped by Protestant preferentialism.

### *Engaging with the Constitutional Order*

Despite the Constitution's applicability to all citizens, not every group is able to encounter the American legal system on equal footing. In *The Americanization of Religious Minorities*, Eric Mazur identifies three strategies that religious minorities have tended to take when confronting the American constitutional order: congruence, conflict, and conversion. Using the congruence strategy, religious communities can receive recognition from the constitutional order without relinquishing fundamental aspects of their religion. If a religious community finds that joining the American constitutional order is not an attractive choice, the religious community can choose to abstain by living in relative seclusion under its own rule (as long as its rule does not violate the constitutional order); however, this abstention is only granted by the constitutional order if the religious community is not considered a danger to the authority of the American government.<sup>68</sup> Under this strategy, the religious community must be benign or congruent in such a way that the community's behavior does not clash with the constitutional

order's ideals and mandates.<sup>69</sup> Only when it meets these (often unstated) requirements is the

governmental authority.”<sup>75</sup> Jehovah’s Witnesses were thus no longer a threat to the political authority of the American constitutional order.

Earlier in their history, however, the Jehovah’s Witnesses engaged in legal battles with the constitutional order. By translating their

community and the constitutional order once co-existed, but either the religious community adopted a new tenet that conflicted with the order's authority, or the constitutional order's values shifted, causing conflict between the dominant culture and the religious minority.<sup>79</sup> On the other hand, in the continuous conflict mode, the "basic terms and concepts [of the religious community and the constitutional order] are irreconcilable from the start."<sup>80</sup> This mode of conflict may involve physical violence between the religious minority and the dominant culture.<sup>81</sup> In both the eruptive and the continuous modes of conflict, there is an "inability to reconcile the conflicting authority of theology and the constitutional order," and the constitutional order may decide that differences in orientation and practice should not be permitted.<sup>82</sup> Religious minorities can utilize more than one of these strategies, but whichever strategy they use, religious minorities will still have to decide between their religion and its authority and a peaceful place within the American constitutional order.<sup>83</sup>

Some religious groups are so fundamentally different from the dominant culture of (Protestant) Christianity such that those groups are not congruent with the American constitutional order. One such religious group that has been unable to use the congruence strategy is Native Americans. Native American tribal sovereignty and emphasis on the importance of land are difficult for the dominant culture to understand or accept.<sup>84</sup> Notions of tribal sovereignty and sacred land threaten the authority of the American constitutional order, and those notions have typically not been protected by the Supreme Court. In fact, several court

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cases and laws have minimized the communal authorities of different tribes.<sup>85</sup> Initially, Native Americans were not granted citizenship, but when they were granted citizenship “without asking for it,” Native Americans were able to “do virtually everything that all other citizens could,” except “express themselves through their distinctive collective identities.”<sup>86</sup> Furthermore, the typical non-Native view of land is that land is a commodity, which “stands in stark contrast to many traditional Native American religious beliefs that posit a custodial or partnership approach.”<sup>87</sup> Court cases arguing for the extension of religious freedom to Native Americans have largely lost due to Protestant presuppositions in the court system and to contrasting views of sovereignty and land.<sup>88</sup> Due to the fundamental differences between indigenous beliefs and practices and Christian beliefs and practices, coupled with





Mormon leadership realized that the endless government persecution was too high a cost for retaining the practice of polygamy and that, by relinquishing the practice of polygamy, the Mormon Church “might salvage the remainder of the LDS Church leadership’s authority,”<sup>97</sup> and allow the Church to “continue its work of missionizing the world and administering the rites necessary for salvation.”<sup>98</sup> In effect, the Mormon leadership decided that ceding certain practices and assimilating to the constitutional order’s idea of appropriate behavior was necessary to salvage what was left of the religion.

The concession of polygamy was not enough to “Americanize” the LDS Church. Realizing that its political involvement and authority posed a threat to the American constitutional order, the Mormon Church dissolved its political party, church courts, and economic cooperatives.<sup>99</sup> Early responses to these actions indicate the beginnings of Mormon acceptance into the American constitutional order, but many people still suspected that the Mormon Church secretly supported polygamy.<sup>100</sup> The election of Mormon Reed Smoot to the Senate and Utah’s admission into the Union signaled the further growth of the acceptance of Mormons into American society. After Smoot’s election to the Senate, Mormon leadership altered its political role from “involved kingmakers to acting as leaders of an involved interest group.”<sup>101</sup> Rather than acting as a group working toward creating a theocracy, the Mormon Church’s political role became one resembling that of other religious groups in which it dealt with what it “perceived to be the best interest of the community but declining to operate an

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<sup>97</sup> Ibid., 83.

<sup>98</sup> Duffy and Howlett, *Mormonism*, 12.

<sup>99</sup> Ibid.

<sup>100</sup> Mazur, *The Americanization of Religious Minorities*, 84-85.

<sup>101</sup> Ibid., 88.

exclusive political system.’’<sup>102</sup> By ceding the practice of polygamy and its political power and by accepting the constitutional order’s authority, Mormons were able to peacefully coexist with the dominant culture.

Because of TST’s theological commitments to justice and their particular ideas about authority and rebellion, the congruence strategy is even more inaccessible to TST than it was to the LDS Church. Due to its particularly aggressive and confrontational modes of political and legal participation, TST is seen as a threat by the American constitutional order. Furthermore, TST is often understood to hold beliefs out of line with or harmful to the American constitutional order and thus not congruent with the constitutional order’s values. Unlike the Mormon Church, TST cannot convert to the constitutional order. Conversion would require TST to violate its theology of justice and its goal of exposing the hypocrisy

three main strategies aimed at revealing the entrenched Protestantism and views of good and evil in the constitutional order.

The most striking of these strategies is “culture jamming,” a type of “guerilla theater

Detroit. In August of 2015, anti-abortion protestors orchestrated a #PPSellsBabyParts protest, the slogan of which was based on a video “in which a Planned Parenthood staffer is filmed in such a way that gives the impression that the nonprofit harvests and sells organs from fetuses.”<sup>108</sup> The TST chapter of Detroit organized a counter-protest in which “two actresses [were] tied up in a kneeling prayer position, as people dressed as clergymen attempted to drown them in milk,” and counter-protestors sported signs declaring that “America is not a theocracy. End forced motherhood!”<sup>109</sup> The message of the counter-protest “was that the pro-life movement amounts to religious persecution of women.”<sup>110</sup> Protestors responded to the counter-protest by loudly reciting a prayer to oppose spiritual evil.<sup>111</sup> As Penny Lane, director of the recent film *Hail Satan?*, describes, shock value as an important part of TST because TST is at its core about “poking people...to reconsider their assumptions about what they think is true or right or good” and “confronting corrupt authority, wherever you see it however you can. And part of that process is again, part of how you do all this is by putting on certain clothes. Engaging in certain types of rituals employing certain symbols and iconography to achieve those goals than, like, that's what it is like that Satanism. So in other words, trolling is part of the practice of Satanism.”<sup>112</sup> Protests like the Planned Parenthood counter-protests are “about images and the...power of images to...disrupt, you know, kind of your mind in a way.”<sup>113</sup> In other words, TST’s theological

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<sup>108</sup> Lee DeVito, “The Satanic Temple Countered Planned Parenthood Protests with Some Guerrilla Theatre,” *Metro Times*, August 24, 2015, <https://www.metrotimes.com/news-hits/archives/2015/08/24/the-satanic-temple-countered-the-planned-parenthood-national-day-of-protest-with-some-guerrilla-theatre>.

<sup>109</sup> DeVito, “The Satanic Temple Countered Planned Parenthood Protests with Some Guerrilla Theatre.”

<sup>110</sup> Laycock, *Speak of the Devil*, 143.

<sup>111</sup> Ibid.

<sup>112</sup> Penny Lane, Hail Satan Interview, interview by Jenna Reinbold, April 4, 2020, [https://colgate.zoom.us/rec/play/usd5Jr\\_8qzg3TNXH4wSDBvBxW9S0f\\_qs03Ab-aYJyB68ByNRN1qmYuYRY7HYm\\_CTxhLYheFb-w12RXSD?continueMode=true&\\_x\\_zm\\_rtaid=K9atiDBdSMm0tpXCBDaZlw.1587757900956.9264946a9430c4064935b9c7090b5e3c&\\_x\\_zm\\_rhtaid=83](https://colgate.zoom.us/rec/play/usd5Jr_8qzg3TNXH4wSDBvBxW9S0f_qs03Ab-aYJyB68ByNRN1qmYuYRY7HYm_CTxhLYheFb-w12RXSD?continueMode=true&_x_zm_rtaid=K9atiDBdSMm0tpXCBDaZlw.1587757900956.9264946a9430c4064935b9c7090b5e3c&_x_zm_rhtaid=83).

<sup>113</sup> Lane, Hail Satan Interview.



the traditional barrier between good and evil, pushing people “to reassess who is good and who is evil.”<sup>118</sup> By identifying with what the dominant culture perceives as the symbol of evil but then arguing that they, instead of their opponents, are the ones who truly value compassion and justice, TST members try “to undermine the assumption that the dominant religious group—American Christians—are inherently more moral.”<sup>119</sup> This appropriation of the discourse of evil threatens the dominant rhetoric surrounding who is evil and who is good. Many people are uncomfortable with this appropriation, as is evident by the responses to TST’s actions. Government agencies and philanthropic organizations have obstructed TST’s efforts to engage in philanthropic deeds, and many Christian opponents have “accused them of not being ‘proper Satanists,’ to the extent that their actions are morally defensible.”<sup>120</sup>

TST chapters have engaged in a variety of philanthropic campaigns, such as “Menstruatin’ with Satan.” Various TST chapters have been a part of this campaign, but the

campaigns involving the Satanic Temple can be unraveled merely because the dominant narrative of good and evil is flipped and because many organizations are “more concerned about not upsetting unfounded prejudices rather than helping people who need help.”<sup>123</sup> People associate evil with Satanism and good with Christianity. By engaging in philanthropic endeavors, TST members cause people to think about the assumptions about good and evil that influence what people understand as “true” religion.

While TST’s efforts to make people reassess good and evil have led people to see the hegemonic discourse at work, appropriating the discourse of evil is risky. Appropriating this discourse successfully requires that TST avoid “advertently reinforcing existing power structures

resources.”<sup>126</sup>



monuments have legislative sponsorship before the Commission considers them, which TST was unable to obtain.<sup>129</sup> In response, TST hauled the statue of Baphomet to Little Rock for a rally protesting the Ten Commandments monument. Many Satanists, atheists, and Christians attended the rally, but not all were supportive. TST's message of pluralism and equality did not satisfy many of the protestors. For example, one of the protestors "interrupted the ceremony at one point to scream at a speaker for 'leading people to hell.'"<sup>130</sup> Many people, especially Christians are clearly uncomfortable with the idea of allowing Satanists free reign to promote their messages in the public sphere—so uncomfortable, in fact, that they may be prone to back off of their own efforts to have Christian displays in public places.

The "Lucien's Law" strategy is the one that has earned TST most of its notoriety in recent years. Interestingly, this strategy reveals the true complexity of TST's relationship with the American constitutional order, since this strategy hinges on actually demanding an equal place within the order itself. In other words, even as TST regularly sets itself in conflict against the constitutional order and US society in general, the Lucien's Law strategy actually hinges upon a cooperative, rather than a purely conflictual, interaction with this constitutional order. Lucien's Law requires

Religious freedom is highly valued in the U.S., but not all religious groups are able to interact with the American legal system in such a way that secures the same level of religious freedom. Religious minorities tend to use one of three strategies in their interactions with the American constitutional order: congruence, conflict, or conversion. While Mormons found it difficult to achieve congruence with the constitutional order, achieving congruence is a much more difficult task for TST because of its theology and worldview. TST's commitment to unveiling the implicit Protestantism in American rule and its association with Satan leads TST into a highly conflictual relationship with the constitutional order. Despite the utility of Mazur's framework for helping us understand the particular burdens faced by religious minorities and the particular strategies they have used to navigate the constitutional order, Mazur's framework does not capture the uniqueness of TST.

### *Conclusion*

When it comes to religion and its place in America, the U.S. constitutional order is guided by the establishment and free exercise clauses. Although the wording of these clauses is sparse, the history of their interpretation by the U.S. judicial branch has demonstrated that they can be interpreted in various ways. Some of these interpretations have proven more useful than

more permissive of religion's presence in the public sphere. Over the past few decades, the Supreme Court has expanded religious groups' access to public property, money, and institutions, or at least confirmed religious groups' right to these things. As a result of this shift away from strict separationism, religious groups are able to receive (limited) financial aid from the government, and in certain conditions, religious groups can display religious symbols on public property.

While it is unquestionably the case that US courts' recent post-separationist shift has



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