

Free Exercise

Free exercise: 3 Major Problems

- 1) Legal prohibition of religiously obligatory activities: polygamy, snake-handling, peyote
- 2) Acts required by law, but prohibited by religion: mandatory school attendance, Social Security
- 3) Disadvantage because of regulation - Blue Laws, Restrictions on public funds

A Foundational Problem: Defining Religion

Two major contexts:

**1) Benefits – avoiding taxes,
regulation**

**2) Equivalence with ethical beliefs
– example: nonreligious
conscientious objectors**

U.S. v. Seeger (1965)

Welch v. U.S. (1970)

Dispute denial sought conscientious objector status for failure to "belong to an orthodox religious sect."

Claim pacifism as ethical, not religious, choice

Seeger uses agnostic language, Welch most likely an atheist

***U.S. v. Seeger* (1965)**

***Welch v. U.S.* (1970)**

“the statute does not distinguish between externally and internally derived beliefs. Such a determination would ... prove impossible as a practical matter, and we have found that Congress intended no such distinction.” *(Seeger)*

Is secularism a religion?

Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others

Ftn 11 in *Torcaso v. Watkins* (1961)

Reynolds v. US (1878)

U.S. criminalizes polygamy in federal territories, including Utah

Court decides in favor of U.S.

Fundamental principle: Free exercise rights protect belief, not action

Reynolds v. US (1878)

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice.

Chief Justice Waite

***Davis v. Beason* (1890)**

Idaho territory statute required voters to swear that they were not members of any organization that "teaches, advises, counsels or encourages" its members to commit the crime of bigamy.

Question: could Idaho prohibit voting based on religious affiliation and not criminal action?

Davis v. Beason (1890)

... if [bigamy and polygamy] are crimes, then to teach, advise and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment....

Crime is not the less odious because sanctioned by what any particular sect may designate as religion.

Justice Field

Religious Freedom Restoration Act (RFRA) of 1993

"Government shall not burden a person's exercise of religion even if the burden results from a rule of general applicability [unless] it demonstrates that application of the burden... 1) furthers a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest."

Religious Land Use and Institutionalized Persons Act (RLUIPA)

Act passed in 2000 in response to *Boerne v. Flores*

Restored strict scrutiny to federal, state, and local government regulations concerning prison inmates' religious practices and property use by religious institutions

Regulation of government only, more closely tied to Congress' 14 Amend powers