CONTEMPORARY PAGANISM

MINORITY RELIGIONS IN A MAJORITARIAN AMERICA

CAROL BARNER-BARRY

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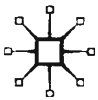

ISBN 978-1-349-99969-9 ISBN 978-1-4039-7338-2 (eBook)
DOI 10.1007/978-1-4039-7338-2

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First published in 2005 by
PALGRAVE MACMILLAN™
175 Fifth Avenue, New York, N.Y. 10010 and
Houndmills, Basingstoke, Hampshire, England RG21 6XS
Companies and representatives throughout the world.

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Library of Congress Cataloging-in-Publication Data

Barner-Barry, Carol, 1938–
Contemporary paganism: minority religions in a majoritarian America / Carol Barner-Barry.
p. cm.
Includes bibliographical references and index.
ISBN 978-1-4039-6441-0
1. Neopaganism—United States. 2. Freedom of religion—United States. 3. United States—Religion. I. Title.

BF1573.B37 2005
323.44'2'0882994—dc22 2004057315

A catalogue record for this book is available from the British Library.

Design by Newgen Imaging Systems (P) Ltd., Chennai, India.

First edition: March 2005

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Preface

The issue of Pagan religious rights was the original focus of this book. Over time, however, it became clear that the threats of discrimination and persecution that intimidated so many Pagans were not limited to them. Rather, all non-Christian religious groups in America shared these experiences in one way or another. This is not a book that is intended in any way to attack Christianity or Christians. It is about the relationship between a religious group that has historically and contemporaneously dominated the religious landscape in America and an emerging religion that has had, until recently, little visibility and is still subject to much misunderstanding. All religious groups include persons who are deeply threatened by religious differences and who do not hesitate to try to eliminate those differences by any means possible. It is one of the reasons the religion clauses were included in the First Amendment of the U.S. Constitution and one of the chief sources of turmoil and violence in the contemporary world.

The tradition of Christian religious dominance combined with the Christian proselytizing imperative has led some Christians to assert their privileged status in ways that are harmful to those who do not share their religious beliefs and practices. These Christians are in the minority. Overall, Christians have been relatively unaware and unconcerned about the religious minorities in their midst. When bad things happen to minority religious groups and individuals, however, Christians have often been in the forefront of efforts to try to ameliorate or remedy the situation.

It might be interesting to do a study of the psychological, political, and social characteristics that differentiate Christians who see this situation in a religiously ethnocentric, or even xenophobic, way from those who see religious differences as an expression of the freedom that America offers to all. This is not that book. Rather, it is intended to be a wakeup call to all those who value freedom of religion and see it as a core American principle. Minority religions are growing rapidly on American soil and an important part of the history of the twenty-first century will be the way in which they become a part of American society.

It is probably safe to say that the days of the "melting pot" are over and that the challenge now is to deal with the growing religious pluralism as what Diana Eck (2001, 56–69), drawing on the ideas of Horace Kallen, calls a "symphony of difference." She envisions something more like jazz than a symphony that is written before it is played. She points out that "in jazz the playing is the writing." Each player must attend closely to what the others are doing and bring all parts into a synchronization of differences. Applying this principle to minority religions she observes: "Learning to hear the musical lines of our neighbors, their individual and magnificent interpretations of the themes of America's common covenants, is the test of cultural pluralism. Our challenge today is whether it will be jazz or simply noise, whether it will be a symphony or cacophony, whether we can continue to play together through dissonant movements."

A host of persons have contributed to this book in one way or another. My first acknowledgment, however, should be to the adult religious education program of the Unitarian Universalist Congregation of Columbia. It inspired the group of women, Gaia Circle, with whom I first explored contemporary Paganism. Although two members are no longer alive and others have scattered, I owe a debt to each and every one of them. I also owe a substantial debt to the person who evaluated the first half of this manuscript for Palgrave Macmillan. Dennis Goldford made many valuable and incisive comments that broadened my focus to the wider implications of my research and changed the face of this book in very important ways.

During the years when I was working on this project, many people helped me in a number of ways, large and small. They include Marcos Bisticas-Cocoves, Cerridwen Connelly, Larry Cornett, Diane Conn Darling, William R. Eade, Richard Eicher, Sandy Fink, Selena Fox, Rev. Paige Getty, Flora Green, Abul Hassan, Margaret Held, Jerrie Hildebrand, Lady Ker of Dun Banatigh, Brent McKee, Andrea Marshall, Silvia Moritz, Dave Pollard, Rona Russell, Emma Sellers, Gay Sídhe, Cindi Simpson, Rev. Cynthia Snavely, Swansister, Geoffrey Vaughan, and Oberon G'Zell. They also include a number of people who prefer to remain anonymous.

A special mention is due to those hearty souls who were willing to read and comment on part or all of this manuscript. A special thanks is due to Marianne Goodrich, Cindy Hody, and John Machate.

Finally, I would like to thank all those who were willing to share their experiences. Although their identities have been protected, except when they appeared in the press or otherwise become public knowledge, their stories are valuable and, in some cases, their suffering great. They have

my deepest respect and gratitude. In addition, I would like to acknowledge all the Pagans whom I have met and learned from over the years. They have immeasurably enriched both this book and my life.

As is the custom, I would like to absolve all persons mentioned above from any and all responsibility for what appears in this book. Any errors or misinterpretations are mine alone.

Introduction: Majorities, Minorities, and Religious Diversity

Majority rule is a value that is deeply embedded in American political culture. From the playground to Congress, when the need to make a choice arises and there are differences of opinion, Americans almost invariably resort to a vote. This is not just a casual practice. It represents a value that is profoundly ingrained in American political thought as the bedrock essence of democracy. But, where there are majorities there must also be minorities. The composition of most minorities tends to shift from situation to situation and from issue to issue. Also, in most cases, members of the minority have the option to decide to switch to the majority. Certain minorities, however, are more or less permanent. Either they are based on some immutable characteristic such as gender, or they are based on some deeply held belief or value that makes up a core aspect of a person's identity such as religion. In such cases, switching to the majority is not an option or it is an option that carries a very heavy psychological and social cost.

That minorities should have rights and protections is also a basic American political value. It is not, however, as entrenched in practice. Minority rights and protections are, to a very great extent, what the majority is willing to allow or, at least, to tolerate. This has varied greatly over time and from situation to situation. Historically, the rights and protections of relatively permanent minorities have been preserved or expanded more often by courts than by legislatures or executives. And, commonly, significant groups within the majority have met court expansions of minority rights or protections with consternation and resistance, fearing that they might disturb a status quo that favors their majority status. Often, only the fact that federal and some state judges have life appointments and, thus, are protected from direct accountability to the majority has permitted them to be responsive to the problems and needs of minorities, particularly those with relatively permanent minority status.

What a majority is willing to permit a minority to do (or not, as the case may be) depends greatly on the extent to which the majority is able to understand and empathize with the minority's problems or needs. The ability of a minority to prevail or, at least, to protect itself depends on a number of factors. First, the greater the size of a minority, the more likely it is to be a force that the majority must take seriously, particularly if the minority is well organized politically. The numbers that can be mobilized by a minority are not limited to the membership of the minority itself, but can also include members of the majority who, for whatever reason, are able to empathize with the minority and to support it at critical junctures in the political process.

Second, a minority is more able to protect itself from majority oppression if it is well organized and politically active in the community. Many actions that oppress minorities are not intended to do so, but are the result of indifference or a lack of understanding by the majority of the true characteristics of the minorities among them and the impact its decisions and actions can have on certain minorities. In some cases, lack of familiarity and understanding can lead to an unfounded fear of some minorities—a classic case of fear of the unknown. This is a direct result of the fact that in a majoritarian political culture, the members of the majority tend to be both uninformed and uninterested in minorities, unless something or someone forces them to take a serious look at who the members of the minority are and what unites them in their minority status. Thus, minorities need organizations and spokespersons to inform and persuade the members of the majority regarding the need for attention to the problems of the minority.

Perhaps most importantly, the minority must have a clear and well-conveyed message that imparts legitimacy or, at least, credibility when the minority presents itself to the majority. This means that it must have a message that members of the majority can understand and with which they can potentially sympathize. Its members must also appear to be "normal" in most salient respects. If they are too different or "weird," they are too easily dismissed, because the members of the majority simply cannot relate to them and this gives them an excuse not to take the minority seriously. In addition, obvious differences in behavior or dress can seem threatening. Finally, the demands of the minority must be such that they are not likely to be perceived as menacing by significant subsets of the majority.

To date, the religious minority that has done the best job in interacting with the Christian majority in the United States is the Jews. Particularly since the Holocaust, Americans have been more sensitive to

anti-Semitism than previously. And this is reinforced by organizations, such as the Anti-Defamation League, that are prepared to step in with appropriate publicity or political pressure when Jewish religious practices are threatened or actually harmed. More recently, American Muslims have devoted much energy to developing a network of organizations and activities that helps them to protect themselves and to exercise some leverage in the political process. In some ways, the events of September 11, 2001, have been a setback, but in other ways they have presented an opportunity to American Muslims to more clearly define themselves and their beliefs and practices while they could command an attentive audience. Finally, Native Americans have developed an effective information and advocacy network, but their situation is, in some critical ways, unique.

There are currently two basic types of non-Christian religious minorities in the United States. One is composed of followers of some of the world's most ancient and well-established religions that have recently established a rapidly growing presence in America. This can be traced primarily to the greater non-European immigration that followed the loosening of restrictions on immigration initiated by the Immigration and Nationality Act of 1965, as well as the adoption of Islam by many African Americans. Among these are the Sikhs, Muslims, Hindus, and Buddhists. The second type is composed of adherents to indigenous or "home-grown" religions. Some, such as Santeria, emerged in the United States fairly early in its history. Others emerged from the events of the 1960s and 1970s. While the latter includes a resurgence of Native American religious practices, most of the religious traditions that surfaced in the middle of the twentieth century have drawn on elements of what are believed to be ancient religions to create a host of sects that can be loosely grouped under the term "Pagan." Among these are Wicca, Asatru, and Druidism. Both types of religious minorities are growing rapidly and are, thus, impinging on what has been an almost exclusively Christian religious landscape in America.

While these religious minorities are very different from each other in a host of ways, they have in common the fact that they present a face of religion that is unfamiliar to most Americans who tend to equate "religion" with Christianity and, perhaps, Judaism. To these Americans, the practices of minority religions present a challenge of understanding. Their activities and concerns are so different from Christianity that many Americans, including government officials, find it difficult to take them seriously as religions and hesitate to accommodate them in a social and political system that is based on Christian norms. For those

Americans who are inclined toward ethnocentrism or xenophobia, they can engender considerable fear and hostility. This book uses one of these groups, American Pagans, as a case in point to illustrate the challenges faced by minority religions in the contemporary United States.

I first became aware of American Paganism in the late 1980s as a result of an adult religious education curriculum developed by the Unitarian Universalists. I found their ideas and practices fascinating and, with a group of friends, went on to explore Paganism more deeply. As I got to know more Pagans and participated in some of their activities and online discussions, I became aware of two factors that led to the research that has culminated in this book. First, most of the Pagans that I came to know were "in the broom closet." That is, they were afraid to identify openly as Pagans, except in situations that were private and Pagan, such as small group meetings or larger Pagan gatherings at remote locations. They feared discrimination or persecution. Second, I found that these fears were justified. Many people who chose to be open about their religious choices and practices paid a price.

Over the last decade, an increase in public knowledge about Paganism and some significant victories in court have helped to legitimate Paganism as a religion. Many people, however, are still reticent about their Paganism. It is easier to be open about a Pagan religious choice in urbanized areas, especially in the northeast, the middle Atlantic region, and the west coast. It is more difficult (though far from impossible) in rural areas, especially those with high concentrations of evangelical Christians. This geographic distinction is not absolute. I have known Pagans who have faced serious persecution in relatively urbanized areas of states such as New York or Massachusetts. Conversely, one Pagan of my acquaintance has thrived and been an influential member of a relatively small community in Iowa.

There have been many reasons why it is becoming easier to be open about being Pagan. One important reason is that Pagans have established a formidable presence on the worldwide web. This has made information about Paganism easily available to the curious. Second, media coverage, popular television shows, movies, and the phenomenon of the Harry Potter books have increased the number of people who are curious and open to more accurate information about Pagans, particularly about Witches and Wiccans. Also, Pagans have established a significant presence within Unitarian Universalism, creating the Covenant of Unitarian Universalist Pagans.

In addition, Pagans have used the internet to establish a network of groups that are organized to further Paganism and help Pagans who are

experiencing significant problems attributable to their Paganism. On the one hand, there are groups that are organized to provide some coordination among Pagan leaders in order to enable them to speak out together on issues that affect Pagans. One of the most notable of these is the online group, Our Freedom. On the other hand, groups, such as the Lady Liberty League, are designed to provide resources and support to Pagans who face discrimination or persecution because of their religion. These groups (as well as individual Pagans) have also been able to tap into the resources of the American Civil Liberties Union.

A more recent development has been the organization of groups intended to call attention to Pagans in order to make the majority aware of Paganism and to educate them about it. Notable here is the active and growing Pagan Pride Project that organizes Pagan Pride days in cities and towns all over the United States. It makes available information about Paganism and collects charitable contributions, such as resources for local food banks and shelters, as well as money to be distributed to local, regional, and national charities. There are also fledgling Pagan professional organizations, such as the Pagan Bar Association, the [Police] Officers of Avalon, the Pagan Alliance of Nurses, the Pagan Teachers Association, and the Pagan Firefighter Association. The Military Pagan Network is one that has been around and active for a long time. Finally, Pagans have begun to establish community centers, such as Betwixt & Between in Dallas, Texas. It provides a meeting place for Pagans of all traditions, as well as a base for outreach activities and a vehicle through which Pagans can voice their concerns about events or activities that affect them. It also supports a range of community activities such as support groups and the Spiral Scouts.

Nevertheless, individual Pagans still suffer from incidents of discrimination or outright persecution. In this, their experience is similar to that of other minority religious groups, such as Muslims, Sikhs, Buddhists, and Hindus (Eck, 2001, 294–332). There are three major ways in which the religious majority has oppressed the religious minorities in this country. First, there are harmful actions that are taken through disinterest and lack of understanding. The damage these inflict ranges from giving offense and treating minority religious adherents like non-Americans to outright interference with their ability to practice their religions. Second, there are attempts to convert or force Christianity on people espousing minority religions. This is particularly a problem for parents who must deal with significant pressures that are put upon their children to convert to Christianity. Finally, there are outright and malicious attempts to try to drive minority religious people

and their organizations from communities. Sometimes, the latter reach such an extreme that they can justifiably be called hate crimes.

This book attempts to call attention to what can happen to people who attempt to practice a minority religion in contemporary America. In spite of the Constitutional protections embodied within the First Amendment and in spite of a national pride in America's supposed religious freedom, it can be difficult or even dangerous to belong to a minority religion. The first chapter presents a historical context for understanding the legal and social role of religion in America. It also contains an introduction to the legal status of emerging and minority religions. Chapter 2 is intended for those who have little or no knowledge about contemporary American Paganism. Although it is impossible to do justice to contemporary American Paganism in the space of one chapter, it gives a brief introduction to those factors most important for understanding the information to be presented later in the book. In doing so, it places particular emphasis on Wicca and Witchcraft, because most of the illustrative incidents used in the book involve people who belong or are accused of belonging to this particular branch of Paganism. Chapter 3 traces the history of Christian political and social dominance in America, as well as the basic confusion and misunderstanding many Christians hold about Paganism and the nature of Pagan religious beliefs and worship.

Chapter 4 constitutes an introduction to Paganism as a religion, starting with a discussion of the legal definition of religion that has been established by the courts. This makes it clear that Paganism is definitely a religion. Subsequently, there is a discussion of the Pagan situation with regard to core religious concerns such as worship sites, ordination, clergy, and religious holidays. Chapter 5 focuses on the Christian proselytizing imperative and the ways in which it can affect Pagans, particularly children. Chapter 6 focuses on the types of persecution and discrimination to which many Pagans are subject. Within the context of the latter two chapters, chapter 7 explores Christian hegemony and privilege in the United States and its impact on those who are not Christian. Finally, chapter 8 returns to the theme of majority and minority status and how they affect the lives of those who are in the religious minority.

The dominant position of Christianity in the United States is secure for the foreseeable future. Its proportion in the population, however, is shrinking while the proportion of minority religions is growing. By most counts, there are well over 2,000 different religions in America, many of them non-Christian. As the population grows and its ethnic composition shifts, minority religions are likely to grow both in numbers

and in the ability to play the game of American pluralistic politics. This will increasingly challenge the hegemony and privilege that Christians, particularly Protestants, have historically enjoyed. Much of the current discrimination and persecution being directed toward followers of minority religions has an air of insecurity and, at times, even desperation.

Americans, thus, are at a crossroads. The relations between the majority and minorities in our religious life can be treated as a win/lose situation engendering a considerable amount of strife—political and otherwise. Or, as Diana Eck (2001, 383) suggests, we can move toward a religious pluralism that accepts diversity and tries to create a positive and strong multireligious society.

Chapter 1
The Historical and Legal Context

The First Amendment to the Constitution of the United States begins with the assertion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It is—at first glance—simple and straightforward. Since these words were written, however, the proper interpretation of this section of the First Amendment has been the subject of a debate that became particularly lively and contentious during the twentieth century and continues to be so into the twenty-first century. In addition, the Establishment Clause and the Free Exercise Clause seem to call for mutually incompatible outcomes in many concrete situations.

Although the idea of freedom of religion goes far back into the American colonial period, by today's standards its original meaning was very restricted. The primary notion was that there would be freedom of religion for the various Protestant sects that dominated American society during the colonial period and later (Berman, 1986; Duncan, 2003; Feldman, 1996; Newsom, 2001). Both Catholicism and Judaism were considered unacceptable in many parts of colonial society, but their adherents were able to worship openly in a few colonies where they were tolerated, if not exactly welcomed. Other less familiar (to Europeans) religions, such as those of the original native inhabitants or the imported Africans were not considered protected and their adherents were treated as fair game for the imposition of Christianity—by force, if necessary.

Thus, the idea of free exercise took on its meaning within a society that was highly homogeneous from a religious point of view. That the United States was a "Christian nation" was widely assumed and found its way (in various forms) into the law[1] (Green, 1999, 427–433; Feldman, 1996, 845). Gradually, Catholicism and Judaism became at least grudgingly accepted as having a legal right to exist, but religions outside of Judaism and Christianity were not always accorded even

that much respect. Protestant Christianity remained dominant. The Establishment Clause was seen as a protection against domination of the government by any single Protestant sect. Other religions, such as Islam and Hinduism, because of their world status, were accepted as religions, but as their numbers grew during the late twentieth century, they were seldom welcomed and frequently their members and places of worship were attacked. The world "cult" came to be used for those religions that the speaker did not want to recognize as fully protected religions.

The United States, therefore, ended the twentieth century with a definition of religious freedom that clearly reflected a historical Christian homogeneity (Berman, 1986) that was pan-Protestant (Feldman, 1996). The First Amendment religion clauses, as well as the rest of the law, was interpreted within this context. For example, in 1984, Kent Greenawalt, Cardozo Professor of Jurisprudence at Columbia University School of Law, wrote an article entitled "Religion as a Concept in Constitutional Law." In it he stated: "My basic thesis is that for constitutional purposes, religion should be determined by the closeness of analogy in the relevant respects between the disputed instance and what is indisputably religion" (762). At that time, as now, in the United States the analogy would be with Christianity, regarded as America's "normal religion" (Ball, 1990; Duncan, 2003).

Perhaps more important in terms of day-to-day impact was the fact that all other laws involving religion were written and interpreted within the same context. Sometimes Christianity was even mandated by law. For example, until it was declared unconstitutional in 1971, the Maryland Annotated Code art. 27, sec. 20 read: "If any person, by writing or speaking, shall blaspheme or curse God, or shall write or utter any profane words of and concerning Saviour Jesus Christ, or of and concerning the Trinity, or any of the persons thereof, he shall on conviction be fined not more than one hundred dollars, or imprisoned not more than six months, or both fined and imprisoned as aforesaid, at the discretion of the court." By the advent of the twenty-first century, however, the United States had become the most religiously diverse country in the world (Eck, 2001) and was steadily growing more diverse. Nevertheless, its legal system still reflected its historical Christian homogeneity and its government reflected its pan-Protestant hegemony. Moreover, the Republican Party had formed a clear alliance with evangelical and fundamentalist Christianity and the administration of President Bush was strongly advocating legislation that would funnel governmental funds primarily to Christian charitable organizations and to Christian educational institutions.

This reflection of Christian homogeneity and hegemony is, as of this writing, still enshrined in the constitutions of some states. For example, the Texas Constitution's Bill of Rights (art. 1, sec. 4) permits a person to be "excluded from holding office" if that person does not "acknowledge the existence of a Supreme Being." Many other states have equivalent documents with similar language.[2] This not only formally excludes atheists and agnostics, but also most Buddhists and some Unitarian Universalists. If the section is interpreted literally, then followers of Hinduism, and Zoroastrianism could not hold office because they believe in more than one "supreme being" or deity (Robinson, 2000). At this point in time, it seems that these provisions are being treated as historical relics and not being enforced. As long as they are "on the books," however, it is uncertain what the future situation might be. Also, for members of affected minority religions, they hold considerable exclusionary symbolic significance.

Before turning to a consideration of the implications of this situation for minority religious groups, it is necessary to take a closer look at the history and development of the idea of religious freedom in the United States.

Free Exercise as a Legal Concept

The legal term "free exercise" can be traced back to colonial Maryland. In 1648, Lord Baltimore commanded the governor and councilors of Maryland to respect the "free exercise" of religion by Christians. This was a marketing decision. He was attempting to make Maryland more attractive as a refuge for people who felt threatened by the contemporary limitations on religious freedom in other colonies. Subsequently, the Maryland legislature enacted a statute that included the first free exercise clause in America: "noe person . . . professing to believe in Jesus Christ, shall henceforth bee any waies troubled . . . for . . . his or her religion nor in the free exercise thereof . . . nor in any way [be] compelled to the beliefe or exercise of any other Religion against his or her consent" (as quoted in McConnell, 1990b, 1425).

Maryland was one of a small number of colonies[3] that were havens for people who were religiously persecuted in Europe or in other colonies. The wording of Maryland's free exercise provision, however, made it clear that the goal was protection of dissenting Christian sects. In fact, more precisely, Maryland's major focus was on protecting its Roman Catholics who continued to be marginalized elsewhere by the de facto establishment of a cultural Protestant Christianity (Thiemann,

1998, 290) Jews did not fare as well and persons embracing other faiths were not even contemplated.

Thus, from the start, the protection of free exercise was primarily a safeguard for minority Christian sects against dominant Christian sects. While the federal government never had an established denomination, many of the states retained their established denominations well into the nineteenth century. The rationale was that the Establishment Clause of the United States Constitution limited only the federal government (Gray, 1998a, 518–519). In fact, at the time the Constitution was written the impetus toward religious freedom that shaped the First Amendment was an outgrowth of an evangelistic reaction against the established sects in many of the former colonies and the fear of discrimination (Furth, 1998, 594–595). Establishment was also seen by many as a way for state governments to limit and control religious enthusiasm and initiative, especially through the use of state financial support.

Although 1834 marked the end of all state-level established denominations, this did not stop the debate about the proper relationship between religion and government that continues to the present. During the eighteenth century, the dispute was framed differently from the contemporary debate. Argument revolved around what role religion should play in helping the government to maintain a well-ordered society. Contemporary concern about religion using the government for its own ends was still in the future. What McConnell (1990b, 1442), calls the "paradox of the religious freedom debates of the late eighteenth century" was "that one side employed essentially secular arguments based on the needs of civil society for the support of religion, while the other side employed essentially religious arguments based on the primacy of duties to God over duties to the state in support of disestablishment and free exercise." The main focus was on competing Christian sects. Other religious paths were perceived primarily as "non-Christian." And in the case of Native Americans, their "non-Christian" status was seen as a problem to be remedied by the federal government.

It is clear that when the founding fathers wrote the First Amendment they did not consider the free exercise rights of Buddhists, Hindus, Animists, Native Americans, or any of many other nondominant religions. This is not surprising given the religious context within which they were acting. They were attempting to address problems that overwhelmingly originated in the differences among the ways in which various sects practiced Christianity. The small number of Jews and atheists did not pose comparable problems and—with the significant

exception of the Native American population—there were few Americans who practiced other religions.

To date, First Amendment free exercise jurisprudence has reflected much the same historical demographic—focusing primarily on the rights of Christians who were "different," like the Jehovah's Witnesses, as well as Jews and persons asserting rights based on conscience rather than any particular church dogma. Those with beliefs that fell outside this narrow focus were not a significant part of the legal debate until almost 200 years after the passage of the First Amendment. In both the colonies and the United States, religious freedom and toleration was seen as a way of handling differences among Christian sects. Jews were clearly second-class citizens and the traditional religious beliefs and practices of Native Americans and African Americans were scorned and suppressed. The Native American experience furnishes a useful guide to both Free Exercise and Establishment Clause interpretation relevant to the protection they afford for nondominant religious beliefs and practices.

The Native American Experience

The idea of America as a Christian preserve began in the fifteenth and sixteenth centuries "when the seafaring nations of Christendom (now Europe) began to 'discover' indigenous nations and their lands" (Newcomb, 1993, 309). The underlying theory was that the agents of a Christian monarch could locate and take possession of any lands not already claimed by another Christian monarch. Thus was born the right of discovery: "discovery dissolved the territorial sovereignty of non-Christian peoples, thereby rendering their lands subject to Christian invasion, conquest, and possession" (312). Under this early Doctrine of Christian Discovery, the United States formally found the Indian nations without freedom or independence. It did, however, make treaties with them. Given that treaties are usually formal agreements between or among sovereign states, such treaty making had a certain disingenuousness.

Chief Justice John Marshall took care of this logical problem, acting with the authoritativeness that he brought to many other uncertain areas of early American law. In an 1823 landmark decision, *Johnson v. McIntosh* (21 U.S. 543), he asserted that the Native Americans had exchanged their unlimited independence for the gifts of civilization and Christianity (which were assumed to be intertwined). For Chief Justice Marshall "discovery gave title to the government by whose subjects, or

by whose authority, it was made, against all other European governments, which title might be consummated by possession." Therefore, "[t]he exclusion of all other Europeans, necessarily gave to the nations making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it" (21 U.S. 543, 573). The indigenous people, thus, could only make treaties with the initial discovering Christian state. A title of occupancy could be conveyed, but not title to the land itself, because the land already belonged to the discovering state.[4]

When the United States was created, it initially confined its activities primarily to gaining possession of Native American land. By the middle of the nineteenth century, this had largely been accomplished. While Christian missionary activities had taken place during the period of conquest, it became a more express government policy in the latter half of the nineteenth century when the federal government financially underwrote the activities of Christian missionaries and used representatives of Protestant sects as government agents on many reservations. "The agents assumed that the government had the authority to suppress specific religious practices of its Native American wards, *because their practices were not Christian*" (Dussias, 1997, 794, emphasis added). In the 1908 case, *Quick Bear v. Leupp* (210 U.S. 50), the Supreme Court interpreted Indian religious freedom as the freedom to choose among Christian denominations, not—by implication—to choose traditional Native American religious practices. Neither the Free Exercise Clause nor the Establishment Clause was seen as a barrier to these governmentally sponsored Christian proselytizing activities. It was not until 1934 that the Commissioner of Indian Affairs "issued orders aimed at ensuring Native American religious liberty and curtailing missionary activity at Indian schools" (Dussias, 1997, 805).

Subsequently, the Native Americans were free to practice their ancestral religions, if they still remembered them and with significant limitations. Repeatedly, during the twentieth century, the courts handed down decisions that permitted obstacles to the free exercise by Native Americans of their ancestral religions—sometimes to the point of making traditional religious practices impossible. Thus, since the founding, the pattern has been one of an overwhelmingly Christian judiciary demonstrating its inability to appreciate or care about the suppression of practices that were radically different from the religious practices to which they were accustomed (Bannon, 1997).[5] This has left the way open for those administering the law to ignore the rights of adherents of minority religions and perhaps even to take measures intended to