

US Attorney General William Barr and the establishment of religion

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During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.

—James Madison, *Memorial and Remonstrance Against Religious Assessments*, 1785

US Attorney General William Barr made a highly provocative speech at the University of Notre Dame on October 11, ostensibly on the subject of religious freedom. In what was perhaps more properly viewed as a sermon, or papal encyclical, Barr made the case for a fusion of church and state. Specifically, Barr argued that Judeo-Christian morality held the country together and that publicly funded religious education should serve as the cornerstone of a desperately needed “moral renaissance.”

To appreciate the reactionary character of the speech—and a more explicit government endorsement of religion could hardly be imagined—unfortunately requires some extensive quoting.

“Religion helps promote moral discipline within society,” Barr said. “Because man is fallen, we don’t automatically conform ourselves to moral rules even when we know they are good for us.”

Not to be ambiguous, he added, “Judeo-Christian moral standards are the ultimate utilitarian rules for human conduct. They reflect the rules that are best for man, not in the by and by, but in the here and now. *They are like God’s instruction manual for the best running of man and human society*” [emphasis added].

Barr claimed, referring to the American revolutionists of the late 1700s, “by and large, the Founding generation’s view of human nature was drawn from the classical Christian tradition,” and the protection of religious freedom in the Bill of Rights—as the first 10 amendments to the US Constitution are known—actually “reflects the Framers’ belief that religion was indispensable to sustaining our free system of government.”

But just as man had “fallen,” according to Barr, so had the nation: “I think we all recognize that over the past 50 years religion has been under increasing attack. On the one hand, we have seen the steady erosion of our traditional Judeo-Christian moral system and a comprehensive effort to drive it from the

public square.”

Barr denounced “the growing ascendancy of secularism” and “the campaign to destroy the traditional moral order” which was causing “virtually every measure of social pathology ... to gain ground.”

To that end, he offered a religious veil to the old right-wing mantra which holds that every social ill derives from a lack of personal responsibility. Echoing the 1990s racist slander against “welfare queens,” Barr attacked unmarried women in urban areas—read working class African-American females—who expected the state to serve “as the ersatz husband for single mothers and the ersatz father to their children.”

Likewise, the very idea that the state should solve social problems was both secular and anti-Christian, and any focus on “political causes and collective action to address social problems” allowed Americans “to not worry so much about the strictures on our private lives, while we find salvation on the picket-line.”

Under this theory, the height of *civic* activity would not be voting, or marching for civil rights, and certainly not going on strike; but rather, going to church.

As an example of secular attacks on traditional values, Barr cited a New Jersey law requiring public school curricula to consider “the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people.” California and Illinois have passed similar measures promoting tolerance to LGBTQ persons.

In the upside-down view of the Attorney General, and with him, a substantial part of the legal profession and a majority of Supreme Court justices, the US Constitution’s guarantee of religious freedom means that the government can take no action that offends religious sensitivity, least of all those associated with the most conservative and fundamentalist sects of Christianity.

Thus, a bakery can refuse service to a homosexual couple on religious grounds, or a large family company can refuse to provide contraceptive coverage to female employees. At the same time, a death-row inmate has no right to have a Muslim imam present at his own execution.

Barr also referred to the amicus brief his office filed in *Espinoza v. Montana Department of Revenue*, pending in the

current US Supreme Court term. The case centers on the state of Montana's "scholarship" scheme that funnels tax revenue to religious schools. According to the terms of the 2015 law creating the scheme, a taxpayer in Montana can earn a dollar-for-dollar tax credit (up to \$150) by contributing to Student Scholarship Organization (SSO).

Of the 13 private schools receiving SSO aid—essentially tax revenue redirected from public schools—12 have a religious affiliation, and 94 percent of funding through the program goes to religious schools. The Montana Supreme Court struck down the entire scheme, finding that it violated the state constitution's ban on any "direct or indirect" state support for religious schools.

The Trump administration filed a brief arguing that Montana's constitutional ban on state funding for religious schools violates the federal constitutional right to the free exercise of religion. A victory for Trump and Barr here—a substantial probability given the Supreme Court's increasing deference to religion—would signal nothing less than the end of public education, allowing states to starve it of revenue and redirect it to parochial schools.

Without saying so directly, Barr and a growing consensus of jurists propose to rewrite the First Amendment of the US constitution, which begins with the famous words, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..."

But its deep historical and democratic roots make this task difficult.

For this reason, of the innumerable falsehoods in Barr's Notre Dame remarks, the most politically significant is that contained in his brief reference to the American revolutionist and ardent supporter of the separation between church and state, James Madison.

Barr says, "James Madison described religious liberty as 'a right towards men' but 'a duty towards the Creator,' and a 'duty ... precedent both in order of time and degree of obligation, to the Claims of Civil Society.'" With contempt for history, Barr misrepresents this excerpt as somehow proving that Madison advocated state support for religion.

Historical context will allow the reader to assess Madison's real meaning.

In late 1784, after the successful American Revolution but before passage of the US Constitution, the legislature in Madison's home state of Virginia considered legally establishing Christianity in a measure called, honestly enough, "A Bill establishing a provision for Teachers of the Christian Religion." It proposed a tax (or assessment) to raise funds for training ministers, preachers and clergymen. Proponents of the Bill—foreshadowing the likes of Barr, and much of the modern political establishment—considered public funding for Christian education necessary for the moral foundation of civil society.

Madison strenuously disagreed, seeing in the Bill the unmistakable seeds of tyranny. He penned *Memorial and*

Remonstrance Against Religious Assessments in early 1785 to mobilize public opposition to the Bill.

Contrary to Barr's claim that the Founding generation considered religion necessary for a free society, a memorable passage from *Memorial and Remonstrance Against Religious Assessments* directly refutes this:

If Religion be not within the cognizance of Civil Government how can its legal establishment be necessary to Civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: *in no instance have they been seen the guardians of the liberties of the people.* Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure & perpetuate it [i.e., public liberty] needs them not (*emphasis added*).

This description of rulers who wish to subvert the public liberty—written over 200 years ago—holds true for Attorney General Barr, political servant to a present-day aristocracy.

The presidential administration of Donald Trump is the most reactionary in American history, setting new lows with each passing day in the assault on democratic rights. The American bourgeoisie heaps scorn on its revolutionary democratic heritage not as a function of personal preferences, but as a matter of life and death. Presiding over a widening chasm between the super-rich on the one hand and a restive working class on the other, the financial oligarchy scrambles to sow divisions.

In that sense, the Trump administration's embrace of religious obscurantism dovetails with its anti-immigrant and anti-Muslim chauvinism.



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