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This issue of Creighton Legal Insights explores the historical roots of religious coercion and their relevance to modern law. Drawing parallels between Reformation-era Catholic processions and state-mandated Ten Commandments displays in classrooms, the article argues that such mandates replicate coercive dynamics the Founders sought to prevent. It critiques the Supreme Court's narrow historical approach and calls for a broader lens that includes European persecution shaping the First Amendment.

Ten Commandments Cases and Reformation-Era Religious Persecution

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Introduction

In May 1562, Protestant attempts to seize control of Toulouse, France, erupted into religious violence that left over 200 people dead. In the aftermath, the government mandated commemorative Catholic processions and required public displays of religious conformity, transforming religious ritual into a legally enforced test of faith. Historian Natalie Zemon Davis explains that these events became flashpoints: Protestants who refused to kneel or decorate their homes for the passing procession faced mob violence, fines, and imprisonment. This manufactured dilemma forced religious dissenters to publicly declare their private beliefs under threat of violence, exemplifying the religious coercion that drove refugees to America.

Today, when states mandate Ten Commandments displays in public school classrooms, they replay that coercive dynamic: students must either accept a state-endorsed religious message or publicly identify themselves as dissenters. The current Supreme Court, however, would likely miss this parallel. In Kennedy v. Bremerton School District, the Court announced that Establishment Clause challenges must be decided based on "historical practices and understandings." Yet, the Court's historical method focuses almost exclusively on Anglo-American practices from the colonies and early states. This creates a blind spot for the European religious persecution that shaped the Founders' understanding of the establishment of religion.

A principled historical approach to contemporary Ten Commandments cases must examine the European religious conflicts the Founders' ancestors fled. The Catholic processions of the Reformation era provide a particularly relevant analogy: like modern classroom displays, they forced captive audiences to make visible choices about religious belief, marking themselves for persecution.

The Court's Historical Tunnel Vision

To properly analyze state mandates for Ten Commandments displays, we must understand the Supreme Court's new historical test. While the command to interpret the Establishment Clause through "historical practices and understandings" sounds comprehensive, in practice, the Court

considers only history from England and early America, mentioning Reformation Europe only obliquely and ignoring the broader context of European religious persecution. This treats the Founders' religious worldview as if it emerged fully formed from Anglo-American experiences—a form of historical tunnel vision that is fundamentally mistaken. The First Amendment's Framers were descendants of European settlers whose understanding of religious establishment was shaped by religious persecution throughout Europe. The Court's narrow approach captures what the Founders chose to permit in America but misses what they deliberately rejected from the broader European experience. Thus, we cannot understand why certain religious establishments did not appear in early America without reviewing the European precedents that made them unthinkable to the founding generation.

The consequences of this historical omission are especially apparent in cases involving religious coercion—precisely the kind of establishment the Founders found unthinkable. For instance, Justice Gorsuch's opinion in Kennedy dismissed concerns about a high school football coach's visible prayer as mere "offense" that "does not equate to coercion." By contrasting offense with coercion, he ignored centuries of European precedent showing how public religious displays can coerce. The Founders' generation understood establishment through stories of Protestant martyrs and family memories of persecution. As James Madison warned, the same government that can establish Christianity can establish one Christian sect over others—a fear derived from European experience, not American practice.

Catholic Processions as a Model of Coercion

Catholic Eucharistic processions in Reformation Europe illustrate the coercive power of public religious displays. In the sixteenth and seventeenth centuries, Catholic authorities conducted processions in which priests carried the consecrated communion bread, the Host, through city streets accompanied by crowds. These marchers paraded through mixed-religion neighborhoods where public worship by Protestants was often suppressed.

As the procession passed, assembled Catholics showed reverence to the Host by kneeling or removing hats, expecting the same of others. While this may seem like an innocent ceremony from a distance, in context, these processions could be orchestrated tests of religious conformity. The Catholic doctrine of transubstantiation holds that the Host is the actual presence of Christ; Protestants rejected this. Thus, the procession was a direct provocation in which Protestant observers faced a dilemma: kneel and betray their conscience, or remain standing and identify themselves as heretics, risking legal punishment or mob violence.

Two factors made these processions particularly coercive. First, they compelled visible, physical responses that publicly revealed private belief. Unlike private worship, public processions created evidence of heresy. Second, they occurred in public spaces, facilitating immediate violence and systematic persecution. The clear message was that non-Catholics should conform or leave.

From the Streets of Europe to the Classrooms of America

The current wave of state laws mandating Ten Commandments displays matches the coercive pattern of these processions. First, as with the processions, choosing a text of the Ten

Commandments endorses one side of a sectarian divide. For example, Louisiana mandates a version derived from the King James Bible, a translation historically favored by Protestants. It includes the command "Thou shalt not make to thyself any graven images," a commandment absent from the Catholic version and rooted in Protestant rejection of Catholic "idolatry." Knowledgeable students and parents understand the religious significance of this choice.

Second, claims that these displays serve a secular purpose are mere pretense. Legislative history reveals an actual intent to ensure children "learn what God says is right," enforcing religious orthodoxy. This echoes the rhetoric of Catholic processions, which claimed civic purposes while establishing religious dominance.

Third, a student viewing a specific sectarian version of the Ten Commandments faces the same dilemma as her Reformation-era forebears: acquiesce to theological error or speak up and mark herself as different. Like the refusal to kneel, a student's objection—whether voiced to a teacher or demonstrated by non-participation—marks them as an outsider. While modern dissenters face ostracism rather than physical violence, the dynamic of creating in-groups and out-groups remains the same.

These points show why Justice Gorsuch erred in characterizing a religious objection as mere "offense." "Offense" suggests a subjective emotional reaction. Religious coercion involves the government placing its authority behind particular religious propositions, pressuring citizens to conform or mark themselves as outsiders. For a Native American student, the command "I AM the LORD thy God" may evoke the history of forced conversion; for a Catholic student, the Protestant text misrepresents God's law. To suggest they merely "look away" asks them to affirm a false teaching presented as religious truth.

Widening the Historical Lens

As the Supreme Court turns to history to interpret the Establishment Clause, it must not ignore the persecution that shaped the Founders' views. The collective memories of the Founders' generation included European persecution passed on through family histories—such as those of the Huguenots—and Protestant literature. Figures like John Jay, the first Chief Justice, were deeply affected by the persecution of their ancestors. To insist on a historical methodology while ignoring these experiences privileges form over substance.

States argue that Stone v. Graham—which invalidated classroom Ten Commandments displays—should be overruled because no Founding-era law specifically prohibited them. This is a fallacy. The Founders prohibited religious establishment based on principles learned from European experience, not a list of then-existing practices. They understood that government power to mandate religious expression inherently coerces conscience.

The Court's recent Second Amendment decision in United States v. Rahimi supports looking to underlying principles rather than specific historical matches. There, the Court found an analogy for disarming domestic abusers in the general principle of disarming violent persons, even though domestic violence restraining orders did not exist at the Founding. Similarly, courts should ask whether a challenged religious law shares the coercive structure of historical establishments. Does it confront a captive audience? Does it

compel a response that reveals belief? Does it occur where social consequences attach to dissent? If so, history condemns the practice.

Conclusion

States defending Ten Commandments mandates claim historical authenticity, but the opposite is true. The Founders, informed by the European experience, understood that government-mandated religious displays could be tools of persecution. The Eucharistic processions provided a clear model of how a seemingly benign observance could be weaponized to marginalize dissenters. Overruling Stone would not correct a historical error but commit one.

*The full *Michigan Law Review Online* article is available at https://michiganlawreview.org/ten-commandments-cases-learning-from-reformation-coercion/

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