

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *United States v. Ballard, 322 U.S. 78 (1944)*



Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. *"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."* *Watson v. Jones*, 13 Wall. 679, 80 U. S. 728. **The First Amendment has a dual aspect.** *It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship,"* but also *"safeguards the free exercise of the chosen form of religion."* *Cantwell v. Connecticut*, 310 U. S. 296, 310 U. S. 303. (Emphasis added)

"Thus, the Amendment embraces two concepts -- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

Id., pp. 310 U. S. 303-304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education by Barnette*, 319 U. S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. ***Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others.***

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Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree.