

## SAVED FROM THE GALLOWS – THE TRIAL OF LEOPOLD AND LOEB



Chicago Daily News negatives collection, Chicago History Museum

From right, defense attorney Clarence Darrow and his two clients, Richard Loeb and Nathan Leopold, sit in court.

IN 1924 IN CHICAGO, NATHAN LEOPOLD, 19, AND HIS FRIEND, RICHARD LOEB, 18, WERE TRIED FOR THE BRUTAL MURDER OF A 14-YEAR-OLD BOY. THE PROSECUTOR CALLED IT “ONE OF THE MOST COLD-BLOODED, CRUEL AND COWARDLY CRIMES EVER COMMITTED IN HISTORY.” NEWSPAPERS ALL OVER THE COUNTRY CARRIED STORIES OF THE ARREST AND THE GRISLY FACTS OF THE CRIME ON THE FRONT PAGE. THE PUBLIC CALLED FOR LEOPOLD AND LOEB’S EXECUTION. BUT THE BOYS

WERE SAVED FROM THE GALLOWS BY THE WORK OF THEIR ATTORNEY, CLARENCE DARROW, IN WHAT HAS OFTEN BEEN CALLED ONE OF THE MOST FAMOUS TRIALS OF THE 20TH CENTURY.

Nathan Leopold grew up in Chicago, Illinois. He came from a wealthy family; his father had made millions manufacturing boxes. By 1924, Nathan had graduated from college and was a law student at the University of Chicago. He engaged in

many hobbies and interests, including birding, which he pursued with a passion. At home he read books on philosophy, including books by the German philosopher, Friedrich Nietzsche. Nietzsche wrote often about the *Übermensch*, a superman who sets his own values and can affect the lives of others.

Leopold admired his close friend, Richard Loeb, whom he often described as a “superman.” Loeb, like Leopold, was extremely intelligent. He skipped several grades in school and was the youngest student ever to graduate from the University of Michigan. Like Leopold, he also came from a wealthy family; his father was a retired vice president of Sears Roebuck. Loeb did not read books on philosophy; he loved detective stories, reading every one he could find. Loeb also tried committing minor crimes — stealing bottles of liquor from a relative and a Liberty

What he really wanted was to commit the “perfect” crime, a crime in which he would collect ransom after kidnapping a young person and escape detection by murdering the kidnapped victim and hiding the body where it would not be discovered. Loeb managed to persuade his friend Leopold to help him create and carry out such a plan.

After at least two months of planning, Loeb and Leopold decided to carry it out. On May 21, they got into a car, which they had rented under a false name, and cruised a street near the Harvard school, where wealthy parents sent their children. It was late afternoon and a 14-year-old student, named Bobby Franks, was walking home. Leopold and Loeb pulled over to the curb and persuaded Bobby to climb into the car. Two minutes later Bobby had been hit four times on the head with a chisel, thrown onto the floor, and suffocated to death. The killers then drove into marshlands around Wolf Lake, a place where Leopold often went birdwatching. They stripped off Bobby’s clothes, poured hydrochloric acid on his body, and stuffed it into a drainpipe. They then called the Franks’ house, telling Bobby’s mother that her son had been kidnapped, he was safe, and further instructions would follow.

The next day, Mr. Franks received a ransom note, sent by special delivery, stating that if he put \$10,000 in old \$20 and \$50 bills into a cigar box and delivered it as instructed, Bobby would be safely returned in six hours. But that didn’t happen, because the perfect crime had gone wrong.

## Glasses Foil the Crime

A day after the murder, a workman walking near Wolf Lake saw two feet sticking out of a drain pipe close to the railroad tracks. He yelled for help, and another group of workmen joined him. Together they pulled out the body of Bobby Franks and called the police. One of the workers noticed a pair of glasses nearby and handed those to the police. Bobby Franks’ father had been waiting to hear from the kidnappers, certain that the kidnappers would not harm his son. At first, he paid no attention to the news that the body of a

young boy had been found in a swamp. He refused to go to the morgue to look at the body, but finally agreed to send a family member, who came back with the horrible news that it was Bobby’s body.

With Bobby’s death known, the plot to collect ransom collapsed. But for eight days, the identity of the killers was unknown. Then suddenly the pieces of the puzzle came together. The police located the company that had sold the eyeglasses found near the crime site. The company had kept careful records, and after searching 54,000 records in the company’s files, the police discovered that the glasses had been sold in November 1923 to a person named Nathan Leopold. At 2:30 p.m. on May 29, the police went to Leopold’s house and took him in for questioning. He acknowledged that the glasses belonged to him. He told the police that he often walked near Wolf Lake to do birdwatching, and the

*Two minutes later Bobby*

psychiatrists in the country to examine the boys and explain their medical condition. On June 11 (the day that Richard Loeb turned 19), the defendants appeared in court and pleaded not guilty to the charges against them, murder and kidnapping. Trial was set for August 4, with all motions to be filed on July 21. When that day arrived, the boys entered the courtroom carefully groomed and dressed in dark suits. Judge John R. Caverly called the courtroom to order, and Darrow began a lengthy statement about the facts of the crime as set forth in the defendants' confession. He acknowledged that given the facts of the crime, the boys should not ever be released and should be "permanently excluded from society." He then exploded an unexpected bombshell. After long reflection, he said, we have decided to move the court to withdraw the defendants' plea of not guilty and enter a plea of guilty.

No one had anticipated a guilty plea; everyone was in shock and reporters raced for the door. But Darrow's goal was simple: to avoid a jury trial. If the defendants pleaded not guilty by reason of insanity, the law required a jury trial. And Darrow believed that public opinion was so inflamed that no jury would accept insanity as a defense. But he had hope that with the judge making the decision, he might be able to obtain mercy for his clients. He planned to introduce evidence of the mental condition of his clients "to show the degree of responsibility they had" as grounds for mitigating the sentence. "With that," he concluded, "we throw ourselves upon the mercy of this court — and this court alone."

## A Crime Without a Motive

The trial began on July 23, 1924. Three hundred people — 200 of whom were reporters from all over the country — packed Judge Caverly's courtroom. There were 70 seats set aside for the public, which were hotly contested for each day. The trial — which technically was a hearing for mitigation of the sentence because of the guilty pleas — lasted just over a month. Even though guilt was no longer an issue, the state called 102 witnesses to confirm the facts of the crime and impress

the court with its horror and cold-bloodedness. Darrow stipulated to the facts and chose not to cross-examine any witnesses. The evidence presented by the defense was the testimony of the eminent psychiatrists who had examined Loeb and Leopold while they were in jail. The defense also presented various other medical specialists, including neurologists and endocrinologists, who testified to various metabolic abnormalities that affected the boys' mental condition.

At the closing arguments, one of the state's three attorneys boomed out with passion: "You have before you one of the most cold-blooded, cruel, cowardly, dastardly murders that was ever tried in the history of any court." It was then time for Darrow's closing argument, the demanding task of persuading the judge to spare the boys from hanging.

Darrow's argument began at 2:30 on Friday, August 22. Crowds rushed to the courthouse to hear him speak. Judge Caverly had to battle his way through the mob to get into the courtroom. Finally, Darrow rose to speak. His argument rested on two points: (1) disproving the state's claim that the boys' motive in kidnapping and killing Bobby Franks was to collect \$10,000, and (2) convincing

## Excerpts From the Closing Arguments

### Defense Attorney Clarence Darrow

[N]either the parents, nor the friends, nor the attorneys would want these boys released . . . [T]hose the closest to them know perfectly well that they should not be released, and that they should be permanently isolated from society. We have said it and we mean it. We are asking this court to save their lives, which is the last and the most that a judge can do.

...

How insane they are I care not, whether medically or legally. They did not reason; they could not reason; they committed the most foolish, most unprovoked, most purposeless, most causeless act that any two boys ever committed . . .

...

What is [the state attorney's] idea of justice? He says to this court . . . "Give them the same mercy that they gave to Bobby Franks." Is that the law? Is that justice? Is this what a court should do? Is this what a state's attorney should do? For God's sake, if the state in which I live is not kinder, more human, more considerate, more intelligent than the mad act of these two mad boys, I am sorry I have lived so long.

...

Dick and Nathan . . . see the Franks boy, and they call to him to get into the car. It is five o'clock in the afternoon, on a thickly settled street, the houses of their friends and their companions; known to everybody, automobiles on the street, and they take him in the car – for nothing. If there had been a question of revenge, yes; if there had been a question of hate, where no one cares for his own fate, intent only on accomplishing his end, yes. But without any motive or any reason picking up this little boy right in sight of their own homes, surrounded by their neighbors. They drive a little way on a populous street, where everybody could see, where eyes might be.

...

There is not a sane thing in all of this from the beginning to the end. There was not a normal act in any of it, from its inception in a diseased brain, until today, when they sit here awaiting their doom. But they say they planned. Well, what does that mean? A maniac plans, an idiot plans; an animal plans; any brain that functions may plan, but their plans were the diseased plans of a diseased mind, of boys.

...

What do they want? Tell me, is a lifetime for the young spent behind prison bars – is that not enough for this mad act? And is there any reason why this great public should be regaled by a hanging?

stated that no one in Chicago had ever been sentenced to death who was under the age of 23 and who had pleaded guilty. And, “I think I am safe in saying — that never has there been such a case in the state of Illinois.” Why then, asked Judge Caverly, is the state demanding the death penalty? Yes, Darrow said, children were hanged in days long past. But to send these boys to the gallows would be turning your face toward the past. By saving these boys lives, you will make it

easier for every human being with an aspiration and a vision and a hope and a fate. I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.

When Darrow finished his closing argument, there were tears in his eyes and tears on the judge’s face. And the courtroom was silent for two minutes.

Darrow’s argument did not change the state’s position. In his rebuttal argument, the state’s lead attorney Robert Crowe insisted that if the case had been tried by a jury, it would have fixed the punishment as death — and if not, everyone would believe that the verdict “was founded in corruption.” Crowe insisted that the boys’ motive was indeed money. “All the way through this unusual crime runs money, money, money,” he claimed. And these defendants are not entitled to mercy. “They are as much entitled to sympathy and the mercy of this court as a couple of rattlesnakes flushed with venom, coiled, ready to strike.” Crowe finished his argument warning the judge not to follow Clarence Darrow’s philosophy of life, because by doing so, “a greater blow had been struck to our institutions than a hundred, yes, a thousand murders.” With that, after 32 days, the hearing in mitigation of the boys’ guilty plea was adjourned.

## Life, Not Death

After two weeks, Judge Caverly returned to the courtroom to announce his decision. He acknowledged the considerable amount of testimony concerning the defendants’ mental and emotional conditions, but said that absent legislative guidelines, his decision would not be affected by it. And he acknowledged that the case was one of “singular atrocity” and had been carefully planned and executed “with every feature of callousness and cruelty.” Though “the path of least resistance” would be to impose the death penalty, the judge announced that the punishment would be life imprisonment, rather than death. In making that decision, he said, he was “moved chiefly by the consideration of the age of the defendants, boys of 18 and 19 years.” The defendants will not be put to death by hanging, “but to the offenders, particularly of the type they are, the prolonged suffering of years of confinement may well be the severest form of retribution and expiation.”

The boys were sent to the state penitentiary. In 1936, Loeb was killed in a fight with another inmate. Leopold managed to keep intellectually active, teaching in a prison school and work-

ing as an X-ray technician in the prison hospital. He also volunteered to be tested with an experimental malaria vaccine. In 1958, after 34 years of

# The Great Qing Code:

## LAW AND ORDER DURING CHINA'S LAST DYNASTY

THE *GREAT QING CODE* CONTAINED THE COLLECTION OF LAWS WRITTEN OVER A PERIOD OF MORE THAN 2,000 YEARS BY CHINA'S RULING DYNASTIES. THE QING, CHINA'S LAST DYNASTY, BROUGHT THE CODE TO ITS ULTIMATE FORM.

China's first laws emerged from customs, traditions, and declarations by regional rulers. The first written code of laws appeared in 536 B.C. The purpose of the code was to control the people and maintain order.

In 221 B.C., the Chin Dynasty arose and established the first centralized Chinese empire ruled by an emperor. This accomplishment was greatly aided by a law code written by Chin officials called "Legalists." Their idea was to eliminate special privileges for those of high status and treat everyone equally under the law, thus protecting the weak from the strong. The Legalists also believed in harsh punishments for law violations to prevent crime and disorder in society.

The followers of Confucius (551–478 B.C.) opposed the Legalists. Confucians taught that the emperor, family ancestors, senior relatives, and those of higher rank, such as government officials, should be treated with great respect. Therefore, the penalties for offenders should differ, depending on their family and social ranking.

Confucians also rejected mandating harsh punishment for each crime. They favored making the punishment fit the seriousness of the offense based on the circumstances of a case.

Over the centuries, Legalist and Confucian legal principles merged in the laws approved by each emperor. The first comprehensive law code was produced during the Tang Dynasty in A.D. 653. After that time, each ruling dynasty revised and added to the code of the previous dynasty. China also developed a judicial system of local courts and an elaborate criminal review procedure.

### Qing Dynasty in 1820



1. The lightest penalty was a beating with the **light bamboo stick**. There were five degrees from 10 to 50 strokes. Its purpose was to physically punish and also to make one feel ashamed.
2. The next level of punishment was beating with the **heavy bamboo stick**. The degrees ranged from 60 to 100 strokes. (The number of strokes was later reduced by the Qing after the dimensions of both the light and heavy bamboo beating sticks were enlarged.)
3. **Penal servitude** required forced labor in a region different from one's home province. Its purpose was to enslave and disgrace the law violator. This punishment involved an amount of time, ranging from one to three years, plus 60 to 100 strokes of the heavy bamboo stick. There were no prisons, only lockups where accused persons and sometimes even witnesses were held pending the outcome of a case.
4. **Exile for life** was considered a severe penalty since it removed a person from family and rituals at the graves of ancestors. The degrees of this punishment were based on how far from home the convicted person had to go (about 700 to 1,000 miles) plus 100 strokes of the heavy bamboo stick. This penalty was sometimes used by the emperor because "he cannot bear to inflict the death penalty."
5. The **death penalty** originally had two degrees: strangulation with a cord and beheading. But the Qing added a third degree of death by "slicing." This was a slow death by numerous cuts to the body followed finally by beheading. It was reserved for especially wicked crimes such as treason and murdering a parent or grandparent. Death penalty sentences were either "immediate" or "delayed" until the annual Autumn Court met to confirm or recommend a reduction of sentence to the emperor. The emperor had to approve all death penalty sentences.

There were other punishments in addition to the traditional five. These included whipping, wearing a wood



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A depiction of the punishment of a beating with the heavy bamboo stick.

collar, tattooing, and paying a sum of money to substitute for a sentence called for by the *Code*. The substitution option usually just applied to women, those over 70, children under 16, and government officials.

## Excerpts from *Great Qing Code Criminal Statutes*

### Statute 266. Theft with Force (Robbery)

In the case of theft with force when it has been committed but no property has been taken, each [offender] will receive 100 strokes of the heavy bamboo and exile. . . . But if property is obtained from an owner, do not distinguish between principal and accessory. All will be beheaded.

### Statute 302. Affrays and Blows

Quarreling together is an affray. . . . Everyone who engages in an affray or inflicts blows. . . and, using hands or feet, strikes another but does not cause injury, will receive 20 strokes of the light bamboo. . . . If he inflicts a blow with some other object and does cause injury, then he will receive 40 strokes of the light bamboo.

### Statute 290. Killing Another in an Affray

1. Anyone who during an affray, strikes and kills another, regardless of whether he has struck with the hand, or the feet, or with another object, or with a metal knife, will be punished with strangulation with delay [until the Autumn Court considers mercy].

2. One who kills intentionally will be punished with beheading with delay.

### Statute 282. Premeditated Murder

In the case of one who plots . . . to kill another, the principal formulator of the plot will be beheaded with delay. . . . Only if the killing takes place is there punishment.

### Statute 284. Plotting to Kill Paternal Grandparents or Parents

In the case of anyone who plots to kill his paternal grandparents, parents, or his relatives. . . who are of superior rank or older, . . . or a husband . . . [will be] beheaded. If the killing has taken place, then [the murderer] will be condemned to death by slicing.

### Statute 319. Striking Paternal Grandparents or Parents

Every child or [grandchild] who strikes his paternal grandparents or parents . . . will be beheaded.

### Statute 315. A Wife Striking a Husband

Whenever a wife strikes a husband . . . she will receive 100 strokes

were common and involved peasants, town people, and wealthy landlords all suing one another.

The role of the magistrate in lawsuits was to find the facts of a case and rule in favor of one side. The magistrate had more freedom to use common-sense reasoning in deciding civil cases. Nearly all lawsuits were decided at the local level. They could be appealed, but not above the province level.

Although no lawyers officially existed in China, people involved in disputes sometimes turned to lawsuit specialists, who had some knowledge of the civil law. For a fee, these specialists helped illiterate persons file the correct lawsuit forms and sometimes managed their cases before the magistrate.

The government accused the lawsuit specialists of cheating ignorant peasants and clogging up the courts with cases based on false claims. The government branded them as “tricksters,” but they provided poor people access to the courts and helped resolve disputes by the law rather than by violence.

### End of the Great Qing Code

The strength of Qing Dynasty rule weakened during the 1800s when European nations and Japan used military force to open up trade relations and seize territory. After 1900, Western law and constitutional rights began to influence government and legal reforms. But the reforms came too slowly as Chinese revolutionary movements arose.

In 1911, revolutionaries rebelled against Manchu Qing rule. The following year, the last Qing emperor, Xuantong (also known as Puyi), abdicated the throne. This act ended the rule of China’s last imperial dynasty.

The new Chinese republic based its laws on the German law code, as Taiwan still does today. Elements of the *Great Qing Code*, especially its great detail, remain in Taiwan’s code. After the Chinese Civil War, the victorious Communists established a socialist legal system. But it continued the Qing emphasis on using the law to control the people.

The *Great Qing Code* and the codes that came before it seem harsh and lacking in rights familiar to us today. But the rulings of magistrate-judges

and the elaborate review process for serious criminal cases, including the death penalty, apparently did achieve a sense of justice among the Chinese people for more than 2,000 years.

## DISCUSSION & WRITING

1. How did the law codes following the Tang code of A.D. 653 repre-

sent a compromise between the principles of the Legalists and Confucians?

2. In what ways did Chinese criminal and civil law procedures differ from those of the U.S. today?
3. What do you think were the best and worst features of the Qing Dynasty’s legal system?

# THE FREE EXERCISE OF RELIGION IN AMERICA

WHEN, IF EVER, MAY THE GOVERNMENT LIMIT FREEDOM OF RELIGION? THE SUPREME COURT AND CONGRESS HAVE GRAPPLED WITH THIS QUESTION.



Library of Congress

A lithograph, done seven years after the killing, depicts the 1844 murder of Mormon leader Joseph Smith.

The First Amendment to the U.S. Constitution begins with what are known as the religion clauses: “Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof . . . .” Note that initially the First Amendment only limited the actions of Congress, our national legislature, but not the governments of any of the states. That came later.

The phrases *establishment of religion* and *free exercise of religion* mean different things. Most British colonies in America before 1776 had “established churches,” churches that received direct financial support from taxpayer money. Several states in the early American republic also had established churches. The establishment clause protects against the federal government’s funding or sponsoring particular religious views.

The free exercise clause serves another purpose: It prevents the government from interfering with people’s religious beliefs and forms of worship. It was many years before the Supreme Court heard its first case involving the free exercise clause.

## The First Free Exercise Case

In the 1820s, a man named Joseph Smith had spiritual visions, and from his visions came the new religion of the

Church of Latter-day Saints, whose adherents are called Mormons. Throughout

## Incorporation of Rights

The First Amendment initially only applied to the federal government. The Mormons could challenge the Anti-Bigamy Act because it was an act of Congress, the only governmental body named in the First Amendment.

But following the Civil War, the 14th Amendment was added to the Constitution. Among its provisions was the due process clause: “nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .” Beginning in the 1920s, the Supreme Court began to interpret the due process clause as incorporating the fundamental rights of the Constitution and thus protecting individuals against the actions of state and local governments. On a case-by-case basis, the court has decided which rights are incorporated into the 14th Amendment’s due process clause. Once a fundamental right has been incorporated, it protects persons from unconstitutional laws and actions of their state and local governments and not just the federal government.

The free exercise clause was incorporated in the 1940 case of *Cantwell v. Connecticut*. Newton Cantwell belonged to the Jehovah’s Witnesses, a Christian sect that places great importance on its members’ proselytizing, or working to convert others to its beliefs. One day, Cantwell and his two sons went door-to-door in a mostly Catholic neighborhood in Connecticut, taking with them religious books and pamphlets and even a portable phonograph (record player) to play recordings for people at their front doors.

The recordings offended many people in the neighborhood. Some listeners later testified that they had to restrain themselves from punching Cantwell. A local ordinance forbade anyone from soliciting (asking for donations) for “any alleged religious, charitable or philanthropic cause” without prior approval from the local “public welfare council,” a governmental body. The punishment for violating the ordinance included a fine and up to 30 days in jail. Cantwell was arrested for violating the ordinance and for disturbing the peace.

Cantwell defended his actions on the basis of his free exercise of religion

under the First and 14th amendments. When his case was appealed to the Supreme Court, the court held unanimously in Cantwell’s favor. In his opinion, Justice Owen Roberts wrote:

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets [basic beliefs] of one man may seem the rankest error to his neighbor . . . . But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

## Compelling Interest

More than 20 years later, in *Sherbert v. Verner* (1963), the Supreme Court made another important ruling on the free exercise clause. The court was presented with this issue: If an employee cannot perform the required functions of a job for religious reasons, and is then fired, may a state deny that employee unemployment benefits?

## Full Text of the Religious Freedom Restoration Act

In the text of RFRA below, note how it uses the language of the Supreme Court's *Sherbert* decision to describe the only circumstances when the government may burden any person's free exercise of religion.

### 42 U.S. Code Sec. 2000bb – 1 - Free exercise of religion protected

#### (a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

#### (b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person –

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

#### (c) Judicial relief

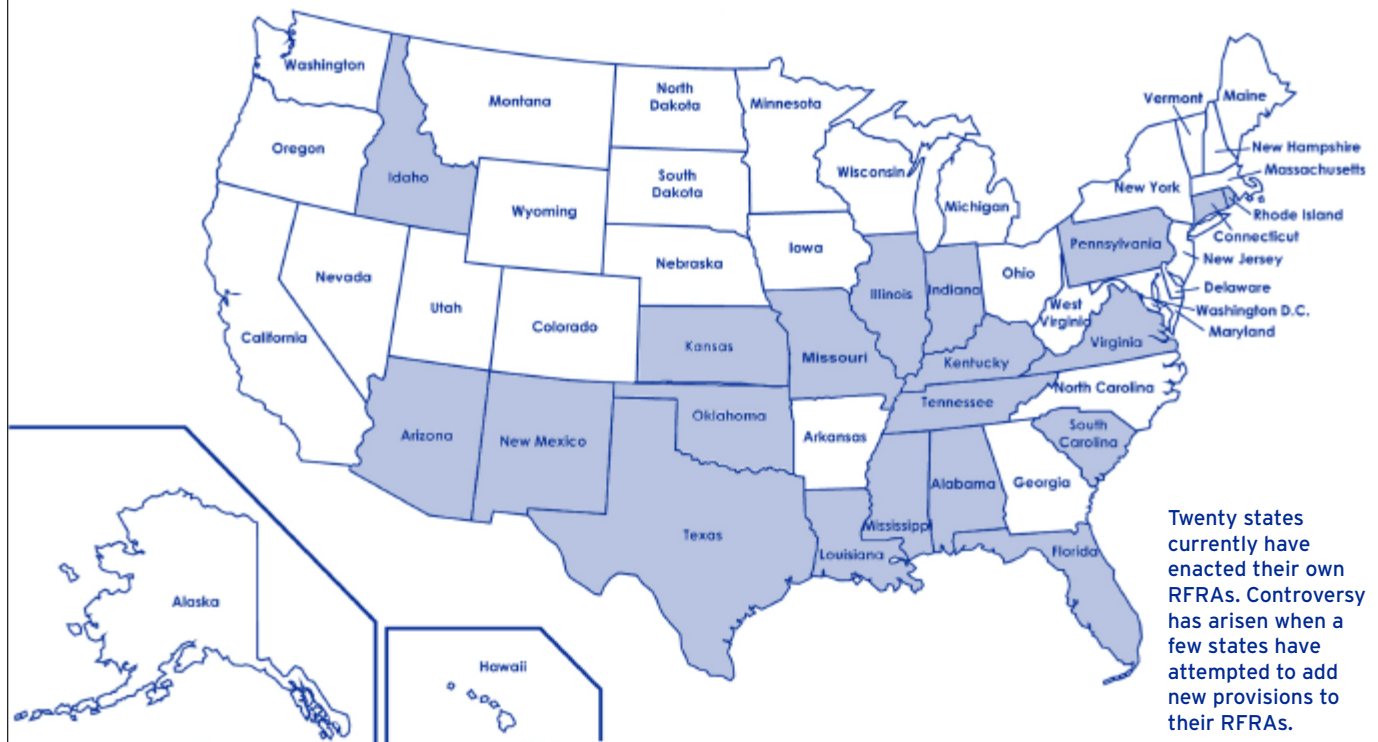
A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Part of the NAC's ritual practices, however, involves the controversial use of part of a small cactus called peyote (pronounced pay-OH-tee). When ingested into the body, peyote can cause a strong hallucinogenic (mind-altering) effect. Archaeologists have found peyote "buttons" (bite-size pieces) in caves in southern Texas that date back to 5,000 B.C., indicating a long tradition of use before the arrival of Europeans in North and South America.

The federal government classifies peyote as a Schedule I controlled substance, or illegal narcotic. Federal law, however, makes an exemption for peyote's use by the NAC: "The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church." All states also outlaw the use of peyote, but many of them also have exemptions for its use by the NAC.

In the late 1980s, Alfred Smith and Galen Black worked in a private Oregon drug-rehabilitation clinic as counselors. They also belonged to the Native American Church. When their employer learned they ingested peyote as part of their religious practice, they were fired for "misconduct" even though they did it when they were not working. Use of peyote is a crime in Oregon, and the state does

## States With Religious Freedom Restoration Acts (March 2015)



RFRA. The court decided that congressional legislation could limit the federal government's actions, but that Congress could not tell state governments to give citizens more First Amendment protection than the *Smith* decision required.

Over the ensuing years, several states passed their own *state-level* "RFRAs." As of March 2015, a total of 20 states have RFRA laws.

### Hobby Lobby and Beyond

In *Burwell v. Hobby Lobby* (2014), the Supreme Court was once again asked to tackle the Religious Freedom Restoration Act. The owners of Hobby Lobby, a private for-profit corporation, are members of a single family and are evangelical Christians. *Hobby Lobby* is a "closely held" corporation, which is one that is owned by relatively few people and whose stock is not traded on the stock market. The corporation runs more than 500 stores nationwide and employs thousands of people.

Acting collectively as the Hobby Lobby corporation, the owners objected to having to comply with a portion of the Affordable Care Act (ACA) that required employers' health insurance plans to cover birth control for employees. They argued that their religious beliefs for-

bade them from funding "abortifacient" contraceptives, or those they believed caused the abortion of fetuses.

*Hobby Lobby* sued the federal government under RFRA. In its decision, the U.S. Supreme Court ruled 5–4 in favor of Hobby Lobby. In his opinion for the majority, Justice Samuel Alito wrote, "Protecting the free-exercise rights of corporations like Hobby Lobby protects the religious liberty of the humans who own and control those companies."

## ACTIVITY

### What Should the Test Be? A Close-Reading Activity on the Free Exercise Clause

The Supreme Court in the *Sherbert* and *Smith* cases used two different tests to decide free exercise clause cases. In this activity, students will apply the tests to the 1972 case of *Wisconsin v. Yoder*.

That case involved the Amish, separatist Christians who avoid most modern technology in favor of traditional communal farming. In the *Yoder* case, Amish parents refused to enroll their children in public high school, arguing that attending was “contrary to the Amish way of life.” These parents were charged and fined for violating the state’s compulsory education laws. The U.S. Supreme Court had to decide the following issue: **Do a state’s compulsory education laws violate the First Amendment rights of parents who refuse to send their children to school for sincerely held religious reasons?**

For this activity, students should first form pairs and do a close reading of the facts of *Wisconsin v. Yoder*. Then each student will write a short essay, answering text-dependent questions.

#### Instructions:

1. Read the facts of the case below, taken directly from the majority opinion written by Chief Justice Warren Burger. Circle words or phrases that you do not understand or need to look up. After reading, discuss the main points with a partner and try to reach agreement on what the case is about. Read aloud the words or phrases that you do not understand and see if your partner can help explain them to you.
2. Re-read the excerpts, this time drawing a question mark in the margin next to any paragraph or sentence that makes you have a question about the text. Write down your questions on a separate sheet of paper if the margin does not give you enough room.
3. After re-reading, share your questions about the text with your partner. Determine if your partner can help you answer them, or if you need to look up more information.
4. **Writing Activity:** Using the text and the main article, answer the following questions, each with at least one well-developed paragraph, citing relevant text to support your answers:
  - (a) How should the *Yoder* case be decided under the compelling interest test of *Sherbert v. Verner*?
  - (b) How should it be decided under the “general applicability” test of *Employment Division v. Smith*?
  - (c) How do you think the case should be decided? Why?

#### Facts (as stated in the majority opinion of *Wisconsin v. Yoder*)

Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This

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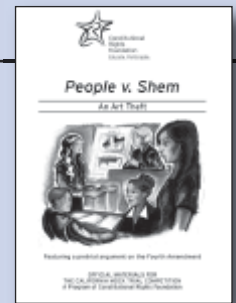
A graduate student in fine arts, defendant Evan Shem is a talented artist with a knack for recreating famous works of art. Shem is accused of stealing a painting from the art gallery where he interned and replacing it with a fake. Pretrial issue: Can Shem's roommate consent to the search of a storage cabinet located in an unattached parking carport or did the search violate the Fourth Amendment protection against unreasonable searches and seizures?

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- Explores the era of Reconstruction through a letter written by a former slave, Jourdon Anderson, titled "To My Old Master."
- Provides opportunities for students to practice advanced critical-thinking skills.

Visit our website at [www.crf-usa.org/common-core](http://www.crf-usa.org/common-core) to take advantage of this great professional development opportunity, watch the webcast, and download the handouts.

## Standards

### Leopold and Loeb

National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (2) Knows historical and contemporary practices that illustrate the central place of the rule of law (5) Understands how the individual's rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law . . . (7) Understands the importance of an independent judiciary in a constitutional democracy.

National High School Civics Standard 25: Understands issues regarding personal, political, and economic rights. (1) Understands the importance to individuals and to society of personal rights such as . . . the right to due process of law . . .

National High School U.S. History Standard 22: Understands how the United States changed between the post-World War I years and the eve of the Great Depression. (1) Understands the major social issues of 1920s America . . .

Common Core Standard RH.11-12.3: Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

Common Core Standard W.11-12.1: Write arguments to support claims with clear reasons and relevant evidence.

Common Core Standard W.11-12.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

Common Core Standard RH.11-12.8: Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

### Great Qing Code

National High School World History Standard 30: Understands transformations in Asian societies in the era of European expansion. (4) Understands the cultural, economic, and social structure of China during the period of European commercial expansion (e.g., cultural and economic achievements of the Chinese during the reigns of the Kangxi and Qianlong emperors; . . . aspects of life of the elite in China; the family and its role in Chinese society).

National High School World History Standard 34: Understands how Eurasian societies were transformed in an era of global trade and the emergence of European power from 1750 to 1870.