Religious Liberty at the Founding

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[00:00:00] Jeffrey Rosen: Hello, friends and Happy New Year. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan non-profit chartered by Congress to increase awareness and understanding of the Constitution among the American people. Friends, I'm so excited today to convene two of America's leading scholars of religious liberty to talk about a great, uh, new book by Vincent Phillip Munoz. Uh, it's called Religious Liberty and the American Founding Natural Rights and the Original Meaning of the First Amendment Religion Clauses. Professor Munoz is joined in conversation by Professor Michael McConnell of Stanford, and we'll talk about what freedom of religion meant at the founding, and what it means today. Vincent Philip Munoz is Tocqueville Associate Professor of Political Science and concurrent Associate Professor of Law at the University of Notre Dame. His most recent book, as I said, is called Religious Liberty and the American Founding Natural Rights and the Original Meaning of The First Amendment Religion Clauses. Philip, thank you so much for joining and congratulations on the book.

[00:01:10] Vincent Philip Munoz: Oh, thanks for having me. It's great to be with you again.

[00:01:12] Jeffrey Rosen: And Michael McConnell is the Richard and Francis Mallory Professor and director of the Constitutional Law Center at Stanford Law School. He's also a senior fellow at the Hoover Institution. His upcoming book, co-authored with Nathan Chapman, is Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience. Michael, welcome back to We the People. It's always an honor to have you on the show.

[00:01:35] Michael McConnell: Great to be here, Jeff.

[00:01:37] Jeffrey Rosen: Philip, one of the great virtues of this important new book is, it's clear organization, and you sum up your main arguments at the end, and you attempt to show, as you say, that the founders held the right to worship according to conscience, to be a natural right possessed by all individuals. And the founders understood this right to be inalienable, meaning that the authority over religious worship was not granted and could not be granted to government authorities. You quote important documents to help us understand the meaning of an inalienable right at the founding from the Essex result by Theophilus Parsons, to the Virginia Declaration of

Rights of 1776. Tell us about that first important part of your argument that the founders held the right to worship according to conscience to be a natural and inalienable right?

[00:02:20] Vincent Philip Munoz: Yeah. The first part of the book, the first third of the book is concerned with the founder's political theory of government; what's the proper role of government? What are the powers government has? And, um, I, I was always struck when the founders talk about religious liberty, they called it, uh, unalienable, right? We would say inalienable, right, uh, natural right. Um, and then you mentioned Theophilus Parsons, who was very influential founder, kind of not, not so well known today, but very influential in Massachusetts where he, who was on the, uh, the highest court in Massachusetts. And, um, he, in this essay you mentioned, the Essex result talks about the distinction between alienable natural rights and inalienable natural rights. And you could say the first part of the book tries to, uh, explain what the founders meant when they said, "We... Our right to religious liberty is an inalienable natural right."

[00:03:11] Vincent Philip Munoz: Um, and, and the short summary of that is it's a jurisdictional concept. Uh, it just means that there's certain things, certain powers we don't give to government, uh, because we don't alienate them because they're inalienable. Uh, and one of those authorities is over our, um, the exercise, uh, of our worship. Uh, so they're called re- the religious liberty, or especially the, the right to worship, but inalienable natural right. Uh, there's certain powers that government simply doesn't have, doesn't have them because we didn't give them to them.

[00:03:43] Jeffrey Rosen: Thank you so much for that. Michael, I'm gonna quote the language from the Essex result, 'cause as Phillips says, it's important, uh, all men are born equally free. The rights they possess that their births are equal and of the same kind. Some of these rights are alienable and maybe parted with for an equivalent. Others are unalienable and inherent, and of that importance that no equivalent can be received in exchange. Uh, do you agree with Philip or not that this distinction was widely accepted at the founding that conscience was seen as an unalienable right, and that it is a limit on government's jurisdiction to legislate?

[00:04:20] Michael McConnell: Well, certainly, and I would look to James Madison's memorial and Memorial and Remonstrance Against Religious Assessments for an explanation because he's, he specifically tells us why, uh, religious liberty is, uh, inalienable. And he defines religion, first of all, using the, ref- referring back to the Virginia Declaration of Rights as the duty of every man to render to the Creator such homage, and such only as he believes to be acceptable, uh, to him. And then he says that this is an inalienable right uh, because, uh, first of all, it's because he cannot give it up. It's sort of impossible, uh, al- along with other interior rights of the mind. Uh, you might be able to pretend, uh, to give up your beliefs, but you can't, uh, coercion can't, uh, force you, uh, uh, to do that. Uh, but I think the more important reason is the second reason, which is because, uh, what is, uh, here, a right toward other men is a duty to the Creator.

[00:05:24] Michael McConnell: And because it's actually a duty, uh, it can't be given up. You don't have a right to give up, uh, your duty. Now, I, I hasten to add that this duty is only to give, uh, to, uh, to render the Creator, uh, what you believe to be, uh, owed to him. So if you're an atheist, you may not believe, you may believe you don't owe any duties. And, you know, and,

and that's fine. Madison is not imposing upon you, uh, any particular set of beliefs, but whatever they happen to be, it is your duty to the, to the Creator, uh, to, uh, to practice those.

[00:06:02] Jeffrey Rosen: Thank you so much for that. I'm gonna quote the Virginia Declaration, uh, which you just mentioned, and Philip, discusses that religion or the duty, which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence. Philip, you talked about John Locke's influence on Jefferson. I, I wanted to ask, 'cause I'm interested in it. It, it seems that Madison may have gotten that notion of unalienable from Francis Hutchinson, who defines the difference between alienable and unalienable right by saying, "Natural rights can be alienated or transferred to government first if it transfers in our power. And second, if it would serve some valuable purpose. And the rights of conscience are unalienable for those two reasons, it's not in our power to transfer freedom of thought to others, and it could never serve any valuable purpose." Does that capture what Madison was getting at, and what's the significance for you of, of the Virginia Declaration and, and Madison's Memorial and Remonstrance?

[00:06:57] Vincent Philip Munoz: Yeah. Well, it, it's, it more, it more captures what Jefferson thought. Jefferson, uh, and, and Madison follow Locke. Jefferson may be more clearly, uh, follows Locke. Uh, we know that Jefferson read Locke's letter concerning toleration very carefully. Uh, we know that because we have Jefferson's notes on the text, on Locke's text. Um, I, I do wanna agree though, with Professor McConnell here. Um, Madison develops an argument that, uh, I think is, is novel and certainly different than Locke in emphasizing duties, Locke, and then Jefferson say, the right of religious liberty is inalienable because our religions are not directed by force. Uh, it's an epistemological argument. Um, Madison agrees with that as well. But, but then develops this second argument that Professor McConnell just nicely explained. He says, "Our, our rights are inalienable also," that is a second argument, not only for epistemological reasons, but because of our obligations to our Creator or of higher dignity or higher authority, uh, than our obligations to our fe- fellow men.

[00:08:02] Vincent Philip Munoz: So, uh, this is one of the places where I think Madison develops, uh, arguments that Locke himself didn't fully articulate even the language of inalienability. As far as I know, Locke never used the term inalienable natural rights. I mean, he obviously talks about natural rights. I'm not 100% sure of that. Um, I, I, I take this on authority from Michael Zuckert, the great Locke scholar. Um, this is not to say that the concept of inalienability is not consistent with Locke's thought, but the idea of an inalienable natural right certainly, at least in a constitutional sense, you could say it's one of the founders contributions to constitutionalism.

[00:08:42] Jeffrey Rosen: Michael, Phillips says that there was an overlapping consensus about the inalienable character of the right to religious worship, which the framers reached in different ways, enlightenment philosophy through Jefferson Natural Theology, through Madison Protestant theology, through Isaac Backus. But he says that the founder's agreement on the inalienable character of the right to worship didn't preclude disagreement on how far the rights extended. And he distinguishes between narrow Republicans like George Washington and Patrick Henry, who understood the scope of the right to be more limited and took a more

Republican disposition to church state policies like state funding of religion and expansive Liberalists like Madison and Jefferson, who held a more expansive view of the right of religious liberty and a more robust view of how limited governmental action. Do you agree or disagree with, uh, his characterization of the areas of disagreement among the founders?

[00:09:31] **Michael McConnell:** I don't really disagree, but I'm, I might give a slightly different, uh, uh, emphasis here because the disagreement between, say, Washington and Henry on one hand, and Madison and Jefferson did not, I think, have to do so much with the right of free exercise of religion, uh, as it did with the appropriateness of the government using, uh, various means to promote religion. And, and, and, and that means spending money that is tax money, uh, to, uh, prom- promote religion through, uh, through education, primarily education in the churches, uh, and so forth. Now, Madison and Jefferson understood this, and so did Isaac Backus, who was, uh, uh, a Phillips, uh, other sort of third great figure in these, in these chapters. Uh, they understood, uh, taxing people, uh, for the support of religion as being coercion of a religious duty. Uh, whereas, uh, people like, uh, Washington and he, Patrick Henry, and, and by the way, Theophilus Parsons, uh, believed that taxation, uh, for the purpose of spending, uh, and and support of religion was not actually a, a, a coercion of a, of a religious duty, but was a, uh, a kind of a non-coercive way, uh, in which they could promote religion, uh, more generally. And so I think that is the big disagreement between these camps, not so much, uh, the scope of religious liberty at its core.

[00:11:16] Jeffrey Rosen: Thank you for that. Philip, uh, put on the table, if you would, your distinction between the narrow Republicans and the expansive Liberals and how this disagreement played out in your view on questions such as, uh, church state funding of religion, and also of religious tests for office.

[00:11:34] Vincent Philip Munoz: Yeah, good. Thanks. So, uh, let me set the context here. Uh, my argument is that the, the founders agreed on, on the great principles, uh, that religious liberty is an inalienable right, that is a jurisdictional right, there's certain things that government can't do. So they, they all agreed, uh, they were all natural rights thinkers. I think that's pretty easy to show. And, um, that's the first chapter of the book. I, I say, where they, where, where they moved away from first principles into the application. You know, what do these principles mean in, in real life political situations such as tax funding of religion, that's where you see the disagreement. So the way I put it is they agreed about the principle of religious liberty. They disagreed about the practice of the separation of church and state. I think Professor McConnell said, we disagree. Uh, I, I liked his summary quite well.

[00:12:23] Vincent Philip Munoz: So I- I'm not sure, maybe I only disagree that we disagree. It seemed, it seemed that we agreed to, to me. So a concrete example, as Professor McConnell just said, is on tax funding of religion. And this is Patrick Henry's proposal in Virginia was to fund ministers, basically to give ministers a stipend. This is what was done in, uh, colonial Virginia as part of the Virginia establishment. Patrick Henry tried to reinstitute that. George Washington supported it, and the idea was that you're gonna support religious ministers because religious ministers helped provide the education for the, for the people. There was no public, you know, system of public education at the time. Uh, so the people received their moral education through

churches, through ministers. And then, so funding ministers w- was argued to be a, a proper, uh, and legitimate thing to do to help nurture the moral character of the citizenry.

[00:13:15] Vincent Philip Munoz: Uh, Madison and Jefferson here disagreed, and their position was not, not what's known as strict separatism. I think that's a mistaken interpretation of their position, but rather they are... You can't fund religious ministers simply as religious ministers, special taxes that are just for religion. Uh, that, that goes beyond the jurisdiction of, of government. Um, maybe where I disagree with Professor McConnell is when, when Jefferson and Madison, especially Madison, wrote about this, they said it was a violation of the, the rights of religious liberty. So I'm not sure actually if I disagree with Professor McConnell, but this is a, in a practical way, where the application of the right to concrete political policies where the founders started to disagree, uh, even if they agreed in principle, uh, that religious liberty was a natural right.

[00:14:06] Jeffrey Rosen: Michael, uh, is it right in your view that there was disagreement in the founding era about what kind of taxes could be levied and under what circumstances? Philip just said that, uh, Patrick Henry and, and company, uh, supported ministers to promote moral education of the people. And, and Madison and Jefferson thought only that you couldn't fund them as religious ministers. So, so he identifies a disagreement among the founders about taxation to support religious education and also about religious tests. Uh, recognizing there are nuances between you, is, is it right that there was disagreement in the founding era on those two questions?

[00:14:43] Michael McConnell: Oh, I don't think there's any doubt about that. Uh, and at the time of the founding, uh, there were an, a number of states, uh, that did, uh, have religious taxes. Now, by, by the time of, uh, independence, that did not mean an established, an established church, uh, because taxpayers were permitted to, uh, direct their, uh, taxes to the church that they believed in. Uh, and in, uh, Virginia and the Patrick Henry proposal, if they didn't believe in any of them, they could direct them to, uh, secular education, or I don't think it's secular education, but at least government controlled, uh, uh, education. And, and there was a disagreement over whether this was a violation of religious conscience. The Theophilus Parsons in, uh, in Massachusetts wrote, and I, I, I, I find this a rather witty, uh, comment, although I don't agree with it, but it's, it's, uh, it nicely encapsulates this point of view.

[00:15:44] Michael McConnell: Uh, he said that the objection to taxation for supportive religion, he said, co- confuses a man's pocketbook for his conscience. Uh, and, and we have this disagreement today. Does it, does it violate, uh, a taxpayer's conscience say you believe that abortion, uh, is the killing of an innocent human life. Does it violate your conscience if some of your tax dollars are used, uh, to, uh, uh, to support abortion? Or if you think, uh, war is, uh, some... You- you're a, you're a, a conscientious pacifist and you disbelieve in war, uh, can some of your tax dollars, uh, be spent on war? Or, or, or what about art? If you think certain types of art, like maybe the depiction of Mohamed or, or, uh, or art that is, um, sacrilegious or obscene, uh, does it violate your conscience to use taxation, you know, to go to the National Endowment for the arts that might support some of these things? See, these are debates that they had at the founding and their debates that we have, uh, today, uh, as well.

[00:16:50] Jeffrey Rosen: So, Philip, we've talked about the first half of your book where you talk about agreement that conscience was an unalienable right, and disagreement about its scope. Uh, the next part of your book proposes original meanings of the religion clauses, in particular, the free exercise and establishment clause. Let's begin with the establishment clause. Your, your key argument here is that the establishment clause was adopted to recognize first national legislature's lack of authority to establish religion. And second, the idea that church state affairs should remain at the state level. Uh, tell us about that core argument.

[00:17:25] Vincent Philip Munoz: Yeah, good. Okay. So we're moving to the, the second part of the book. Uh, I will say this part of the book is written, especially for lawyers. So it's a detailed history, sort of line by line history and the drafting of both the establishment clause and free exercise clause. Um, it's the part of, part of the book My wife couldn't Get Through [laughs]. So, um, uh, but these, I wanted to do this in detail because of the drafting record of the religion clauses has been so important in Supreme Court jurisprudence, and I, and I think some people have misinterpreted that drafting record. Um, uh, rather than go through the argument minutely, uh, let me pull back and give a bigger picture. Uh, my conclusion is that we can know some general things about the establishment clause and the original meaning of it. Uh, it, it was clearly the founders who drafted the establishment clause were clearly concerned about federalism.

[00:18:22] Vincent Philip Munoz: They were concerned to limit the authority of the national government in not interfere with the authority of state governments. Um, you could say the establishment clause, the original meaning is, uh, akin to the 10th Amendment. I mentioned that because that's the interpretation that Justice Thomas has given. And I think there's a lot of historical evidence to support that view. It's complicated for matters of contemporary jurisprudence, jurisprudence because of the doctrine of incorporation, which applies the Bill of Rights and including the establishment clause against the states. So, how do you incorporate a right to apply against the states that was originally meant to protect the states? It's not a easy problem to address with, and I'm just trying to present the historical evidence that no, in fact, Justice Thomas has an argument that, um, the, the original meaning of the establishment clause was to protect state authority.

[00:19:14] Vincent Philip Munoz: But there was another purpose, uh, and it was to prevent the national government from making an establishment. But here I say, if you look at the drafting record, the founders never clarified what exactly is an establishment, or what constituted an establishment. And the reason why, if I can just take one more minute here, is we have to remember that the people who, the men who drafted the First Amendment, they were the federalists. They never thought, uh, the Bill of Rights was necessary in the first place. It was the anti-Federalists, those who were against ratification on the Constitution, who demanded a Bill of Rights. Uh, what the anti-Federalists really wanted was a second constitutional convention, 'cause they, they didn't like the, the way the Constitution arranged power. They wanted to rewrite the whole document. Uh, the Federalist said, led by James Madison said, "Look, we can defeat the opposition against the Constitution if we deliver what we promised. We promised amendments they want amendments, even if they're not necessary, we'll give them amendments."

[00:20:12] Vincent Philip Munoz: And, and this is what you see in the drafting record, a, a bunch of people who don't really think a Bill of Rights is necessary drafting a Bill of Rights. And so they weren't particularly careful or precise. We know that they chose the language, establishment, uh, and I think they chose the language, you know, the gov- national government can't make an establishment because no one was for establishments, um, or the national government doing them. And they didn't need to clarify exactly what that meant. And so we get this odd situation where, uh, it's clear that the national government was not meant to interfere with state authority over church state matters. It's clear the national government was, uh, not to make an establishment, but it's not exactly clear what the original meaning of an establishment is.

[00:21:00] Jeffrey Rosen: Michael, Phillip's core argument in part two, as he says, is that the framers design the establishment clause to enforce two rules. Congress will make no law erecting a religious establishment, and Congress will make no law concerning state level religious establishments. Uh, what do you think of this argument?

[00:21:17] Michael McConnell: Well, I think that's entirely correct. At the time of the adoption of the First Amendment, roughly half of the states had legal arrangements that we would consider to be, uh, establishments of, uh, religion. Uh, I'm not quite sure why Phillip is so committed to the view that they didn't know what they were talking about though, because, uh, the idea of a religious establishment was relatively familiar at the time looking at, at the law of the country from which we broke, the Church of England was the church by law established. And there were certain laws, the unifi- the, uh, Uniformity Acts, the Text Incorporation Acts, uh, uh, the Supremacy Act, uh, that defined the, uh, establishment. And we had those at the state level or the colonial level first, and then at the state level. So I think what you, in order to define what an establishment was, we look at the various states that had establishments, and I think we can figure out, uh, what they were.

[00:22:20] Michael McConnell: Now, what happened in the United States was that between, uh, the, uh, adoption of the First Amendment in 1791, uh, and, uh, the Civil War, every one of those states that had an establishment disestablished it. And I think the process of disestablishment also tells us a great deal about what was understood to be, uh, an establishment. So by the time the 14th Amendment was adopted, uh, there were no establishments. So what the operative portion of the establishment clause, First Amendment Establishment Clause that still existed was the prohibition on the federal government of, um, an establishment. And if we believe, as I think all, all the justices in recent times do, uh, that the 14th Amendment was designed in part, uh, to apply all individual freedoms, uh, from, uh, that are in the Bill of Rights to the states as well, uh, that then, uh, if that applies to the establishment clause, it means that the individual freedoms reflected in disestablishment such things as, you can't be required to go to church. You can't be required to, to pay to a church. You can't be required to worship, you cannot be required to attend religious services, et cetera. That sort of thing, uh, then, uh, become, uh, applied to the states as well, not from the First Amendment, but from the 14th.

[00:23:55] Jeffrey Rosen: Philip. Let's... Uh, continuing on the establishment clause, in part three, you construct it or in- in- interpreted to apply to modern cases in the face of what you view

as ambiguity in the history. And you conclude that the establishment clause prohibits state establishments that is government itself exercising the functions of an institutional church, including the regulation of internal church matters, like the content of doctrine in this election of ministers and second church establishments, the delegation of government's coercive authority to churches, especially in matters of taxation and financial contributions. Tell us about that construction and, and how it differs from m- modern establishment clause and, uh, construction.

[00:24:34] Vincent Philip Munoz: Yeah, I think, I think I, I, um, agree in part with what Professor McConnell just said, maybe disagree, uh, a little bit just in emphasis. I mean, I, I, I think, um, I think it's actually not so clear, or let me put it this way, um, that there wasn't a clearly accepted general meaning of this is exactly what an establishment of religion is. Um, certainly true as Professor McConnell says, there's all sorts of, uh, historical examples of what an establishment consisted on, but it's, it's not a term of art. They're not referring to something that, "Oh, everyone agrees that this exactly is what an establishment is." And my point is that they didn't have to agree. They could leave it somewhat ambiguous or under determined. Um, because the text is under determined, we have to go somewhere beyond the text to, to fill in the blanks.

[00:25:22] Vincent Philip Munoz: You know, what, well, what actually constitutes an establishment of religion. Um, the way I do this, as you alluded to, uh, in the third part of the book, is, um, actually, uh, here I do have a disagreement, I think with Professor McConnell and, and most everyone, to be honest, I actually think there's only one clear religious establishment at the time of the founding, and that's the South Carolina Constitution of 1778. And I say that because it's the only state constitution that said, "This, there is an established church. The, the Protestant church is established as the established religion of the South Carolina, State of South Carolina." The constitution of 1778 said it's the only constitution in the founding era that explicitly said, this is an establishment of religion. Um, professor McConnell says, what is generally accepted by most scholars and justices that six or seven states had established religion.

[00:26:12] Vincent Philip Munoz: But I actually think that's a little bit imprecise because we- we're taking a modern understanding of establishment that is taxpayer funding of religion. And then we're reading that back into the founding era. I don't think that's historically accurate. We're not historically precise. There's really only one state that clearly had an establishment. If you look at the South Carolina Constitution of 1778, what you see is, um, a, a system of privileges and controls between church and state. Uh, establishments refer to, to institutional arrangements where the state grants the established church specific privileges, and then it exerts specific controls. Um, examples of privileges are the delegation of state power to the church. So in South Carolina, the church has had power to tax, uh, effectively, and that's a, a unique privilege. So it was a delegation of state power to the church. Also, state controls over the church, uh, there were specific constitutional rules on how ministers had to be elected, uh, that they had to be elected.

[00:27:17] Vincent Philip Munoz: Um, there was an oath and office in the state constitution that ministers had to take. So this is the state acting like a church, uh, that's what I call a state establishment. And then the state delegating its power to the church. I think that's the core of what the historical record teaches us about an establishment. But I say it's a construction because

I'm, I'm really getting this from the South Carolina Constitution of 1778, not the drafting record of the First Amendment, uh, much later in time.

[00:27:46] Jeffrey Rosen: Thanks so much for that. Michael, what do you make of Phillip's construction of the establishment clause? As he notes his approach would allow forms of state a, to religion, like state a to religious elementary school that the Supreme Court has prohibited and would forbid practices like legislative chaplains that the court has allowed. What do you think?

[00:28:07] Michael McConnell: Well, I'm not sure whether I have major quarrels, uh, over, uh, some of these specifics, but I have to say, I just don't understand, uh, uh, Phillip's, uh, reluctance to look more broadly than South Carolina for the, uh, evidence here, because all... I don't have any doubt that South Carolina had an establishment of religion, but at the time, people didn't have any doubt that other states did as well. Uh, John Adams referred to the Massachusetts system as an establishment. The awful, as Parsons referred to it as an establishment, uh, the Massachusetts Constitution, uh, authorized, uh, both, uh, direct religious taxes and also, uh, authorized towns to require attendance, uh, at church, uh, to those who could conscientiously, uh, do so. And in the debate over the establishment clause in the Congress, in the first Congress, uh, a, uh, a me- member of Congress from Connecticut, uh, worried that, uh, prohibition on establishment, uh, would disrupt the Connecticut system, which was also similar to this.

[00:29:17] Michael McConnell: And he wouldn't have said that if he didn't understand the Connecticut system to be an establishment. So I think we actually know a lot more about what establishments were. Um, now an interesting, uh, fact, a a about this, and I don't think, uh, uh, Phillip mentions in the book and that the US Supreme Court has never mentioned is that, uh, the dis- the people who had advocated against establishment, uh, did not... They, they opposed, uh, government taxes for the purpose of supporting churches and ministers, but not necessarily, um, uh, social welfare activities that were conducted by the church, even with religious elements. So the same, the very same legislatures, uh, that rejected, you know, Patrick Henry's, uh, proposal for church funding, uh, appropriated money to colleges that were controlled by, uh, denominations. And the difference in their mind was that the duty to God is to support the, the, uh, actually religious activity that the church and the minister, um, the, uh, support of religious education or orphanages or other, uh, other, uh, social welfare activities conducted by the church. That was a civic obligation, not a religious obligation, and there was no problem, uh, with using tax money, uh, to support those things.

[00:30:49] Vincent Philip Munoz: Jeff, can I just add a, I just wanna emphasize a point of agreement here that we have. I think too often it's been, um, misinterpreted that the founders were against religious groups receiving, uh, taxpayer funds to provide civic services. You know, um, I think that's a misinterpretation. I think Michael's exactly right here, that if, um, government was to fund some civic program of welfare, and the means by which to implement that program ran through churches. So churches received taxpayer dollar to, you know, fund education or orphanages, or today it would be AA or something like that. Um, I think that n- no founder would've had a problem with that, that was not considered to be an establishment of religion. I think this is one of the places where the founders have been misinterpreted, especially by the, by the Supreme Court.

[00:31:37] Jeffrey Rosen: Thanks for that. Mi- Michael, maybe one more beat on the establishment clause before we turn to the free pre-exercise clause. Uh, Ph- Phillip distills two prohibited relationships, government ins exercising the function of an institutional church, or the delegation of government's authority to churches. Um, how does the interpretation of the establishment clause in your forthcoming book differ from Phillips in this respect?

[00:31:59] Michael McConnell: I take a broader view. He identifies two, I agree that those two are both, uh, elements, uh, but the, uh, historic establishments, uh, did some other things as well. Uh, the, uh, any requirement of a person to attend religious worship, uh, was part of an establishment. Any requirement that a person pay taxes, uh, to support religious worship was part of an establishment. Prohibitions on alternative, uh, uh, forms of worship to the established church that was part, uh, uh, of the establishment controlled by the government over, uh, either religious doctrine or the personnel, uh, was part of an establishment. And interestingly, in recent, in the last decade, the Supreme Court has come to this, and in fact, unanimously, uh, held that a government regulation of the choice of a minister by a church is prohibited by both the free exercise and the establishment clause. I think that was a correct, uh, interpretation.

[00:33:04] Michael McConnell: And then the, uh, delegation of certain civic, uh, functions, even of a non-coercive nature, like keeping records, uh, public records of births and marriages and so forth, uh, were, uh, were, uh, were part of the, uh, establishment as well. Uh, I don't think Philip necessarily disagrees with this, but I think that he is identifying only two. I might give a, a misleading impression, but where I think he and I agree and, and where I think the modern Supreme Court is coming around, uh, to this, but, uh, but only recently is just the enormous emphasis upo- of the founders, uh, on the idea that as the established church was controlled by the state, uh, we think of establishments as advancements of religion or pro- something, promoting religion. But the most important feature of the classic establishments was that they were controlled by the state. Uh, and disestablishment means above all, uh, that religious institutions are autonomous from the state.

[00:34:13] Vincent Philip Munoz: Can I, can I just jump in here? 'Cause I think that's such an important point. I mean, what you see in the, uh, South Carolina constitution of 1778 is, there's actually five articles of faith that every established church to be a part of the Protestant establishment, to be an established church, the church had to accept these articles of faith. So here you have the state, you know, in the state constitution telling the churches, "This is what you must believe." Uh, and I think Michael's exactly right, that this is really the, the central aspect of, uh, what an establishment is. It is, it is the state, uh, uh, controlling the doctrine of churches. Um, the other things that Michael finds as are part of the establishment clause, and maybe the reason why I'm a little bit more hesitant to ascribe them to the establishment clause is I think just properly, um, speaking, they're, they're, uh, more properly belong with under the free exercise clause, at least in the American context, that, um, state, uh, mandating religious attendance at church services or state prohibiting certain religious, uh, uh, practices.

[00:35:16] Vincent Philip Munoz: In the American context, those, I think, properly fall under the free exercise clause. I reserve the establishment clause just 'cause I think that's what the

historical record more clearly shows to these, uh, limited institutional arrangements between chu- church and state.

[00:35:31] Jeffrey Rosen: Thanks so much for that. Michael, do you think that interpretation of the, uh, establishment clause is right or not?

[00:35:37] Michael McConnell: The reason the founders did not think that compulsory church attendance, for example, necessarily violated the free exercise clause, uh, is because a lot of people are simply indifference. So the, the way the Ma- Massachusetts Constitution was worded is that it authorized to require attendance if there is a religious service to which the, uh, individual conscientiously attend. And so what they were really trying to do was, uh, regulate people who didn't, they didn't object to going to church. It didn't violate their conscience. They were just, they'd rather do the New York Times crossword puzzle than attend church. It says that's what this was really directed at. And the free exercise clause is protects people against being required to do things contrary to conscience.

[00:36:26] Michael McConnell: That's why the establishment clause is more expansive than the free exercise clause, is that it not only protects against making you do things that are contrary to conscience, but it protects against requiring you to do anything, uh, even, even in accordance with your conscience or to which you are indifferent, if it is a religious exercise, uh, that's being compelled.

[00:36:50] Jeffrey Rosen: Well, Philip, let's put on the table now your interpretation of the free exercise clause. And I think this is the most notable disagreement between you and Professor McConnell. Uh, you say the free exercise clause contains one principle, Congress shall not violate rights of religious liberty. You construe it to mean that no government can punish, prohibit, mandate, or regulate religious beliefs or exercises as such. But you say that the free exercise clause should not be understood to include a right for religious exemptions from burdensome laws, uh, and that scenario of disagreement between you and Professor McConnell. Tell us more about your interpretation and construction of the free exercise clause.

[00:37:28] Vincent Philip Munoz: Yeah, I guess this is the, the most significant diff- disagreement with that I have with Professor McConnell. Um, uh, it is interesting, this conversation has helped clarified in my own mind too. I... Professor McConnell has a more robust conception of, uh, establishment, um, uh, because he has the free exercise clause do work that I just don't think the free exercise clause was intended or originally meant to do. Uh, so our discussion of the scope of the establishment clause is, is related to our discussion of the scope of the free exercise clause. Um, here I take my bearings again from the, the from where we began, uh, the idea of a inalienable natural right, um, the idea of a inalienable right is a jurisdictional concept. So government doesn't have a jurisdiction according to the founders over a certain realm of our natural freedom. Uh, we just... It, it can't act, um, uh, exercise direct authority over those elements of our, of our freedom.

[00:38:30] Vincent Philip Munoz: I see that as, as relatively narrow, it's the free exercise of religion. But the, the, what is the free exercise of religion is a objective, not a subjective, um,

term. What do I mean by that? Uh, a subjective understanding of the right would be, um, whatever the subject, that is, the individual, uh, whatever religiously motivated behavior they wish to do is part of the free exercise of religion. I think that's what Professor McConnell holds the right of religious free exercise to be. So it's subjective, not in the sense of relative, just that is the scope of the right is determined by the subject. I, I don't think that's how the founders conceived a free religious free exercise. Um, they, they held religious free exercise, uh, to be an objective thing. There's an essence or essential character to the free exercise of religion. It includes things, uh, most obviously like worship.

[00:39:24] Vincent Philip Munoz: Uh, that's what the state doesn't have jurisdiction over. But the scope of free exercise isn't determined by the individual. And the, the way we know that is because, uh, government does have jurisdiction over all sorts of things that a subject might perceive to be religious. Um, the obvious example is, uh, fi- fighting in war. You know, Quakers and other religious pacifists don't believe they can fight in war. They say pacifism is, uh, their subjective understanding of religious free exercise, but the founders clearly thought that you could draft, uh, even Quakers to fight in war. Why? Because fighting war is one of the first objects of government. Uh, government does have jurisdiction over raising troops. Uh, so it can draft people that wasn't part of, uh, religious exercise in the objective sense that the First Amendment is meant to protect.

[00:40:24] Jeffrey Rosen: Thank you for that. Michael, what do you make of Phillip's argument, that the debate over the conscientious objector provisions of the Second Amendment is relevant here? And Phillips says that the Senate's elimination of the conscientious objector provision would seem to undermine Professor McConnell's assertion that the significance of Boudin's position is that a majority of the house considered exemption from a legal duty to be necessary to protect religious freedom. Uh, Phillips says that you failed to acknowledge that Congress rejected Boudin's position and that the first Congress considered and rejected constitutional texts that would've provided a right to religious exemption from burdensome laws.

[00:41:00] Michael McConnell: If I understood what we just heard Phillip to say, he said that no, um, framers believed that compulsory military service, uh, violated, uh, freedom of religion. And I just don't... In fact, the House of Representatives voted in favor of the, uh, of the cause. Madison advocated that, uh, there were three views. One was, uh, the, the, uh, full exemption, a second view, which is what the Quakers and Mennonites, uh, wanted. Uh, the second was exemption so long as they paid for, uh, an alternative. Uh, and then the third was, well, let's... This is just so complicated, let's leave it to the legislative discretion. Uh, but, uh, the... Everybody favored, uh, in the end, uh, e- exemptions from compulsory military service because they believed it was important, uh, for the protection, uh, of religious conscience. But more fundamentally than that, uh, the idea that religion, what constitutes religion for purposes of free exercise is objective, not subjective, uh, strikes me as completely, uh, untenable. Uh, because, uh, from an objective matter, we don't know what is religious.

[00:42:23] Michael McConnell: So for example, working on Saturday is a religious matter for an observant Jew. It is not a religious matter for most other people. Uh, drinking an alcoholic beverage is a religious question for some people, it's not a religious question for others. Uh, the

Virginia Declaration of Rights, uh, defines religion as, as duties to God and the manner of discharging them. It is the right of every individual to decide for himself or herself, uh, what God, uh, demands of us. And that is, and that is as subjective as anything, uh, can possibly, uh, be. And if our natural right is to, uh, carry out our duties to God, subject to, and, and Philip makes us clear on the book, and I think totally correctly subject to the law of nature, which is essentially, uh, the equal right of everyone else, uh, to exercise their rights and the basic peace and order of society.

[00:43:29] Michael McConnell: Um, if that was the natural right and that is brought forward to us, uh, through the First Amendment and the various state constitutional, uh, uh, uh, equivalence, then that means we have certain rights to worship. And the question is whether any limitations on those rights can be, uh, justified, uh, on, as a matter of the law of nature. Now, the, the, this idea that neutral and generally applicable laws are okay no matter how, um, much they may infringe upon the ability to practice your religion, seems completely, uh, foreign to Phillip's own observations about the natural rights origins of this, uh, freedom. Because that idea, uh, has, has to do with how the, how the government frames its laws, or does it frame its laws as being, uh, neutral and generally applicable or not. But the natural law, the natural right, has nothing to do with the way government frames its laws because, uh, in, in, in the state of nature, there is no government. So it seems to me that the first half of Phillip's book, which I think is excellent, contradicts his conclusion, uh, with respect to, uh, the, the meaning of the free exercise clause.

[00:44:53] Jeffrey Rosen: Philip, your response about why you think that the free exercise clause means that Congress and the states can't exercise jurisdiction over religious exercises as such, but this does not require religious exemptions from generally applicable laws.

[00:45:06] Vincent Philip Munoz: I mean, this is obviously a complicated matter, uh, but let me try to get right to the essence. Um, when we say, um, that the right of religious liberty is inalienable, there has to be something that's not alienated, right? It, it can't be anything we believe to be religious is not alienated. That makes the idea of an inalienable, right, nonsensical. Uh, to have an inalienable right means, uh, a- according to um, reason, there are certain things... certain, uh, certain realm. Um, if you think visually, uh, uh, uh, think of a circle. Whatever's in this circle, we don't give to government. Government can't touch it. It's outside the realm of government. That has to be a... there has to be an essence that describes that circle what belongs in that circle. That's what I mean by an objective right. I just don't think Professor McConnell's understanding of religious free exercise, that whatever the subject thinks is religious is, uh, within the right, it doesn't square with the philosophical conception of an inalienable natural right.

[00:46:20] Vincent Philip Munoz: Let me say a little bit more to explain that because, um, the idea of inalienability is a jurisdictional concept. It is to say the state doesn't have jurisdiction over this type of behavior, but Professor McConnell's interpretation necessarily says, "Well, yes, the state has jurisdiction over this type of behavior, it just can't have jurisdiction over your behavior that are... is within this realm." That's contradictory, I think. It just doesn't square. You know, I kind of like Professor McConnell's understanding of what religious free exercise should be. I just don't think it's consistent with the founder's philosophy. Let me say one other thing on this point.

Um, I, I think his depiction of the, the drafting record was just slightly... it wasn't complete. There was a third position this... he said there's three positions. The third position was articulated by founders, and I think this is the position that actually went out.

[00:47:15] Vincent Philip Munoz: And they explicitly said that the Quakers desire not to be drafted, not to fight, is not... no part of the natural right. They used that precise language. They were against, um, the extending a constitutional right of exemptions to Quakers because they said it was not part of the natural right. If you think through what that means, I think it's because they understood natural right of religious liberty to be inalienable. That's a jurisdictional concept, and therefore, it's necessarily limited. Government can't do certain things. We know government can raise troops, right? That's the first pur- pur- purpose of government is self-defense. If we know government can raise troops, uh, religious objections to fighting the army can't be part of their in alienable right to religious liberty. It, it, they're... it just makes the right contradictory if they are.

[00:48:09] Jeffrey Rosen: Michael, your response to Phillips claim that the founders viewed, uh, inalienability as a jurisdictional limitation on the kinds of behavior that government could regulate, and not as an inquiry into the subjective understanding of the religiously motivated individual.

[00:48:28] Michael McConnell: An inalienability had to do with the basic social contract. And at the time of the social contract, as understood by Locke and by virtually all of the founders, uh, individuals gave up, uh, many of their natural rights, uh, in exchange for a more secure protection, uh, uh, of what was, what was left. That's the essential lockian, uh, social compact. Uh, but, uh, but there were certain things you had no right, uh, to give up of which the, uh, religious conscience, uh, was one of them. This doesn't actually tell us anything about what the duty to God actually constitutes. It's whatever is the duty to God is what you couldn't, uh, give up. The more important, uh, point, and I think this is in right out of Philip's book, and I think he gets it exactly right, is that natural rights were naturally bounded by, uh, the law of nature.

[00:49:31] Michael McConnell: This is not because government comes in and has certain rights to do things. It's... It has to do with the natural boundary of natural rights. And natural rights were understood not to go... So not to extend so far, uh, is to, uh, interfere with the equal rights of others. Uh, and I think once you're in civil society, also the basic peace and safety of the state, um, that's not because the government has some, uh, you know, interferes with them, but it's not because just because the government has, has some, uh, you know, enumerated right to regulate in some area, it wins. It's because the natural right doesn't go any farther, uh, than that. And, uh, and Philip makes very clear in the book, and I think he's right, uh, that the, uh, provisos in the various state constitutions, that the free... right of free exercise did not go... should not be interpreted to extend to anything that violates the peace and safety of the state or the equal rights of others.

[00:50:38] **Michael McConnell:** That is simply a restatement of the law of nature. It is not an idea that anything that the government wants to regulate, as long as it has an enumerated power to do it, and does it, uh, in a, in a neutral and generally applicable way, uh, it is all right if, if that,

that were true, uh, then, um, the government could essentially outlaw, uh, almost, you know, any religious practice. The, the, the first recorded case in the United States and New York had to do with the Roman Catholic priests, right, not to divulge information that he learned in the, uh, in the privacy of the, of the confessional. Well, that was a neutral and generally applicable law, and the court said, "No, uh, state cannot require that because that's an essential part of the free exercise of religion under the New York Constitution."

[00:51:36] Jeffrey Rosen: Philip, let's apply your construction of the free exercise clause to current cases, as you say, the leading free exercise clause question today is, does the First Amendment provide a right of exemptions from generally applicable laws that burden individuals and institutions religious belief? And you say that the natural rights construction would not construe the free exercise clause to provide exemptions from generally applicable laws. Walk us through how that would apply in the current controversies before the court.

[00:52:03] Vincent Philip Munoz: Yeah, well, uh, and let me start with just some clarifications here. Uh, what we're talking about here in terms of religious exemptions are constitutional rights, uh, not necessarily legisle- legislatively granted rights. So I want to make clear my... the argument of the book is not that, uh, exemptions, religious exemptions or exemptions for other people, for that matter, are constitutionally prohibited. The question is whether they're constitutionally required. Does the First Amendment... uh, does the scope of the First Amendment extend, uh, a first amendment right to religious exemptions from burdensome laws? And here we're not talking about laws that directly target a religious practice, you know, that prohibit, uh, worship on Saturday or mandate worship on Sunday. We're talking about, uh, otherwise valid laws that, um, in their application burden religious believers. So you, you, um, oh, uh, you outlawed drugs, uh, the famous case, the Smith case, the peyote, you outlawed, the state of Oregon outlawed hallucinogenic drugs, including peyote.

[00:53:09] Vincent Philip Munoz: Peyote is used by the Native American Church and one of their, um, uh, church practices, one of their, uh, sacramental practices. Uh, and therefore, effectively the state of Oregon made the practice of, uh, this Native American church... uh, made their religion illegal. Now, the long question didn't target the church, it just ma... it was just a general drug law. So the question, the disagreement between Professor McConnell is and myself is, does the First Amendment provide an exemption for the religious believers from this, um, otherwise general law, a drug law in this case? And my argument is, uh, not that religious exemptions are prohibited, just that the First Amendment, the free exercise clause, its original purpose and design was much, was much more narrow. Um, what it... the work it was meant to do is to, to teach the American people to instruct, uh, those who hold political power, that you cannot make laws directly targeting religious exercises.

[00:54:10] Vincent Philip Munoz: You cannot prohibit, make laws prohibiting specific religious exercises. You cannot make laws mandating specific religious exercises. It's a very narrow conception. It's the conception, I believe, that squares with the founder's natural rights political philosophy. Uh, it, it doesn't prohibit much. I, I want to be very clear about this. Um, my role of, as a scholar is simply to, to provide what I believe is the best interpretation of the founder's natural rights theory. The founders were much more Republican or Democratic than

we... they would allow the state to do much more that would burden religious individuals. Many of those things I, I wouldn't like, I, I don't want the Native American Church members not to be able to practice their religion. But the question is, um, the First Amendment question is one of historical accuracy, and I just don't see the natural rights political philosophy extending, uh, a right to exemptions from burdensome laws that are otherwise within the State's jurisdiction.

[00:55:10] Jeffrey Rosen: Thank you so much for that. Michael is, is your argument for religious exemptions based on the idea that natural law requires it or, uh, on a construction of the, uh, historical evidence to apply to unforeseen circumstances?

[00:55:26] Michael McConnell: Well, I think if, if Phillip is right and on this, I think he is right, those are the same thing. That is to say that the free exercise clause carries forward the natural rights understanding, uh, that, that preceded it. And I think the way you would think about, say, the peyote case from a natural rights point of view is, first of all, is this the exercise of religion? Well, certainly it is from the point of view of a member of the Native American Church to, uh, to use, uh, the sacramental substance of peyote in their services is just as central, uh, to their practice as say, the communion is, uh, to Catholics or, or Protestants. Uh, so it is the exercise of religion. And then you would ask, "Well, is there something... does it violate the equal rights of others or the peace and safety of the state?"

[00:56:19] Michael McConnell: And that, of course, is a, a more... it, it's a little bit more difficult question, but, uh, what the, uh, what the, uh, men... the, the lower courts had concluded, uh, in the Smith case was the, the use of peyote, uh, by members of this church did not affect anyone else. It was... These were very isolated ceremonies. They didn't, uh, didn't break out into problems for, uh, anyone else, or peace and order. And so from a natural rights perspective, uh, the members of the Native American Church have a natural right to do this. And it's, it's, it's totally within its boundary. Now, from a natural rights perspective, who cares whether the law is neutral and generally applicable because natural rights exist before government exists. And so the natural rights are not framed about what kinds of laws governments can do. It's... they're framed around what rights individuals have, uh, and, and what are the limits on those rights. And, uh, I think that's where, um, uh, where, where Philip... he gets the theory of natural rights, correct, but I think his projection of that into, um, modern doctrine actually contradicts his theory.

[00:57:38] Jeffrey Rosen: Thanks so much for that. Well, it's time to sum up this superb discussion. I hope we'll continue it because it's relevance for current debates before the court is clear. Philip, tell us how your natural rights construction of the First Amendment, uh, differs from the Supreme Court's current understanding and, uh, what its significance is for our current debates.

[00:58:01] Vincent Philip Munoz: Well, thank you again for having me, and thank you to Professor McConnell. I mean, I... uh, professor McConnell really is the, the Dean of Church State Scholars, and it's really an honor for me to be on the show with the National Constitution Center, but also to have Professor McConnell here. I mean, we have our disagreements, but I have enormous respect for him and I- I'm... He's been very generous to me in my career, and I-

I'm very thankful, uh, to him. Um, well, you know, right now on the Supreme Court, uh, there, [laughs] in some ways, there is no clear meaning to the establishment clause, and there is no clear meaning to the free exce... free exercise clause. I mean, everything is really up for grabs. Um, my argument again is simply like I... if you, if you want to follow the founders, you should turn to their natural rights thinking, and I... given the na- my interpretation of what their natural rights thinking would, uh, look like today, uh, applied to, to modern cases.

[00:58:52] Vincent Philip Munoz: It's a much more limited approach. Uh, very few things that are unconstitutional. I, I think, um, you know... and as I say in the preface, I, I don't really like all the results I find. But again, my, my job as a scholar is simply to present the evidence as I see it, not to advocate for positions I like or what I would like to see happen. Um, I think the founders are, as I say, much more Republican or we'd say Democratic. They really would turn over a lot more authority to the people themselves to advance religion in, in ways if the people thought it was, uh, effective in promoting the common good. Also to encroach upon religious exercises of individuals in, in ways that we might not, like. For example, if we decide to make, um, uh, drugs illegal and we don't give legislative exemptions, it would mean that it's within the power of the state to, to make the practices of the Native American Church illegal.

[00:59:49] Vincent Philip Munoz: I, I would not wish the state of Oregon or any state to do that, but again, it's, it's what the Constitution prohibits the people from doing. The Constitution actually doesn't prohibit the people from doing much. It prohibits the people only from targeting religious exercises. As such, it's a narrow prohibition, it's, it's very much not within the spirit of modern constitutional law or the spirit of... with the... of the modern judiciary, or what the role we see the Supreme Court playing in our society, society today. But again, what I'm trying to do here is to explain, uh, the natural rights philosophy of the founders. And, uh, I think I get it right. I might get some things wrong, and, um, but I suppose that's why we're here talking about it, to have, um, uh... someone like Professor McConnell of his stature, his learning, um, take the book seriously, even if he disagrees with some of it, I think, you know, that that can only profit, uh, all of us actually to engage in this type of conversation.

[01:00:44] Jeffrey Rosen: Absolutely. Uh, well, Michael, the last word in this great discussion is to you, your view is that the national rights philosophy of the founding leads to a more vigorous judicial oversight of generally applicable laws that burden religion. Uh, tell us about your alternative reading of the Natural Rights philosophy of the Religion clauses.

[01:01:03] Michael McConnell: Well, first of all, thank you also, and thank you to, uh, uh, uh, Philip for, uh, this opportunity for, uh... I, I, I love the book and, uh, think it opens up... I, I think that it's, it's returned to the actual natural law thinking of the founding is extremely, uh, useful because I think the modern Supreme Court has been too fixated on illegal doctrines, which were, you know, concocted in, in recent decades since World War II. And, and getting back to the foundations is, is, is very important. But I have to disagree, uh, that, uh, with the basic thrust of your, uh, thought that the republicanism of the founders, uh, led to the view, uh, that, you know, government can regulate restriction in the case of the Native American Church, even make illegal, uh, and entire religions even when, uh, they, the government has no, uh, justification based upon the equal rights of others or the peace and safety of the state.

[01:02:10] Michael McConnell: I think that those were the limits, uh, that natural rights, uh, uh, uh, theory, uh, impose. And, you know, I would re- return to a quote that I love f- from your book, from Jefferson, uh, where Jefferson, uh, says that, uh, "Rightful liberty is unobstructed action according to our will, within the limits drawn around us by the equal rights of others." And then he goes specifically to say something which I think is almost a refutation of the modern, of, of you that you take, which is he says, "I do not say within the limits of the law because the law is often, but the tyrants will and al- always, so when it violates the right of an individual." And when I think about the Native American Church, I... people who were writing, uh, the laws about hallucinogenic drugs weren't intended to be tyrants, but if the effect was to shut down, uh, this ancient religion, uh, for, uh, a reason that has nothing to do with the equal rights of others or the peace and safety of the state, the effect of that is tyranny. And I don't believe that the founders would've approved of that.

[01:03:26] Jeffrey Rosen: Thank you so much, Vincent Phillip Munoz and Michael McConnell for a wonderful discussion of natural rights at the time of the founding. You've just provided a model for deep informed historical discussion, and I can't wait to continue this conversation with you and with our great NCC audience. Happy New Year everyone, and please join me in thanking Philip Munoz and Michael McConnell for a great discussion.

[01:03:52] Jeffrey Rosen: Today's show was produced by Lana Ulrich and Bill. It was engineered by Kevin Kilburne. Research was provided by Liam Care, Emily Campbell and Lana Ulrich. Homework of the week read Philip Munoz's, great new book, *Religious Liberty, and the American Founding: Natural Rights, and the Original Meaning of the First Amendment Religion Clauses*. In addition to that, please rate, review and subscribe to We the People on Apple, recommend the show to friends, colleagues, anyone who in this new year is looking for a weekly dose of civil, thoughtful, and meaningful constitutional dialogue and debate.

[01:04:24] Jeffrey Rosen: And always remember friends that the National Constitution Center of Private nonprofit, thanks so much to those of you who sent in end of year donations. And what better way to begin 2023 than by sending $5, $10 or more to signal your support for our mission and for this show. You can do that by becoming a member at constitutioncenter.org/membership or give a donation of any amount. Support the work, including the podcast at constitutioncenter.org/donate. Happy New Year friends, here's to lots of light and learning together, and on behalf of the National Constitution Center, I'm Jeffrey Rosen.

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