

# White Christian Privilege

The Illusion of Religious Equality in America

BY KHYATI Y. JOSHI

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Discussion Guide for Law School Students and Undergraduates with Interest in Law

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# DISCUSSION GUIDE FOR LAW STUDENTS AND UNDERGRADUATES WITH INTEREST IN LAW

***White Christian Privilege : The Illusion of Religious Equality in America* exposes the invisible ways in which White Christian privilege disadvantages racial and religious minorities in America.**

The United States is recognized as the most religiously diverse country in the world, and yet its laws and customs, which many have come to see as normal features of American life, actually keep the Constitutional ideal of “religious freedom for all” from becoming a reality. Christian beliefs, norms, and practices infuse our society; they are embedded in our institutions, creating the structures and expectations that define the idea of “Americanness.” Religious minorities still struggle for recognition and for the opportunity to be treated as fully and equally legitimate members of American society. From the courtroom to the classroom, their scriptures and practices are viewed with suspicion, and bias embedded in centuries of Supreme Court rulings create structural disadvantages that endure today.

In *White Christian Privilege*, Khyati Y. Joshi traces Christianity’s influence on the American experiment from before the founding of the Republic to the social movements of today. Mapping the way through centuries of slavery, westward expansion, immigration, and citizenship laws, she also reveals the ways Christian privilege in the United States has always been entangled with notions of White supremacy.

Through the voices of Christians and religious minorities, Joshi explores how Christian privilege and White racial norms affect the lives of all Americans, often in subtle ways that society overlooks. By shining a light on the inequalities these privileges create, Joshi points the way forward, urging readers to help remake America as a diverse democracy with a commitment to true religious freedom.

## NOTE TO INSTRUCTORS

As long as we treat our foundational ideals of freedom of religion and “all men are created equal” as if they are realities rather than aspirations, the dominance of Protestant Christianity and Whiteness over the political and social institutions of the United States will remain invisible.

Although *White Christian Privilege* is not a law school text, it offers a whistle-stop tour of major statutes and court rulings, from the Colonial Era to the present, that relate to race and racial formation (in particular, Whiteness), immigration, naturalization, and of course the First Amendment’s religion clauses. As such, it offers myriad opportunities to discuss the influence of law on social reality and mainstream culture, the effect of lawyers’ and judges’ identities on the rulings they issue, and modern-day legal disputes from the civil rights era to very contemporary debates over immigration and national security.

It is often derisively observed that America is the world’s most litigious society.<sup>1</sup> First or not, Americans’ propensity to litigate is intrinsic to the rule of law. Dr. Joshi’s book presents examples throughout history of legal challenges to White Christian cultural norms, resulting in varying degrees of success and failure. Included in her book are discussions

of litigation concerning the very definition of a white person, including *United States v. Bhagat Singh Thind* and *Takao Ozawa v. United States* (pp. 108-120). From 19th-century cases like *Dred Scott v. Sandford* (109-110), *Reynold v. US* (38-39), through seminal cases 20th and 21st-century cases like *Burwell v. Hobby Lobby Stores, Inc.* (37-38) and litigation over the 45th President’s “Muslim Ban” Executive Order (122-123), Joshi tracks the perpetuation of White supremacy and normative Protestant Christian hegemony. For the law student or the undergraduate considering further study in social sciences, ethnic studies, or American history, this book elucidates essential subject matter for a complex and nuanced understanding of the field.

Another adage true of all societies, but of America in particular, with its history of racial and religious diversity and domination, comes from Faulkner: “The past is never dead. It’s not even past.”<sup>2</sup> The very foundation of American jurisprudence is legal precedent,

# NOTE TO INSTRUCTORS

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which is either adhered to by way of *stare decisis* or departed from in the form of new precedent. With every day's events, history is made. Your students should understand that the content of this book, by informing students of the history of this country, has the potential – if not the inevitable effect – of influencing how they respond to daily events better informed of historical context which, in turn, influences how they choose to direct their lives.

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<sup>1</sup> In determining the validity of this observation, there are various means by which to measure litigiousness per capita and a consequent divergence of conclusions as to which of the world's countries is, in fact, most litigious. See [Comparative Litigation Rates, by J. Mark Ramseyer & Eric B. Rasmusen](#). Other analysis suggests that the notoriety of the US does not result from the way citizens and judges handle routine disputes, which is not very different from other wealthy, democratic societies; rather, American notoriety results from the peculiarly dysfunctional way judges handle disputes in certain discrete legal areas, such as class action and punitive damages lawsuits.

<sup>2</sup> *Requiem for a Nun* by William Faulkner. You may wish to discuss with students how these words continue to figure in this country's dialogue on race: e.g., then-Senator and presidential candidate Barack Obama's "More Perfect Union" speech given on March 18, 2008 at the National Constitution Center in Philadelphia, Pennsylvania in which he addressed the phenomenon of white privilege (without invoking the term) and explained to the American public the basis of Pastor Jeremiah Wright's controversial remark "God damn America" for its racism and "for killing innocent people." The speech is widely seen as having salvaged President Obama's candidacy. African American Spike Lee has produced an oeuvre of film rich in historical context with a focus on how White supremacy manifests in religious movements from the Black Muslims to white supremacist Christian movements; As is stated in [this New York Times article](#). The blurring of where history ends and the story begins is vintage Lee. His last film, "[BlackKkKlansman](#)," ended with footage of the racist violence in Charlottesville, Va., in 2017, crashing the fictionalized horror into a factual one. Lee used a similar technique in the opening of his 1992 epic "[Malcolm X](#)," which overlaid vocals of an incendiary Denzel Washington, speaking in character as X, onto video of the police beating of Rodney King. See Chapter 1, *infra*.

# CHAPTER 1

## Christianity and American National Identity

The optical illusion of American religious freedom begins with the idea that just writing it down makes it real. The illusion is fed by one of the United States' grand narratives: that the nation was founded as a haven for those fleeing religious persecution, where all can worship freely and equally. The facts behind the illusion are very different.

### Discussion Questions

- What is Christian normativity? How is White Christian identity linked to ideas of what it means to be an American?
- *Church and State*. One may take the position that the phrase "separation of church and state" is itself an example of Christian hegemony, by using the word "church" to describe religion in America. Can you think of other examples of Christian hegemony from the legal sphere not contained in Professor Joshi's book? Instructors should consider assigning students to read the 2019 US Supreme Court decision *American Legion v. American Humanist Association*, 588 US \_\_\_ (2019), a case in which the AHA challenged the presence of a giant cross on a federally maintained World War I cemetery. The Supreme Court allowed the cross to remain, but in Justice Ruth Bader Ginsburg's dissent, she maintained that all crosses displayed on public property are a presumptively unconstitutional endorsements of Christianity. In her view, the so-called "Peace Cross" unconstitutionally "elevates Christianity over other faiths, and religion over non religion." Question for students: Do you accept or reject, in whole or in part, the thesis of Dr. Joshi's book as contained in the title? Do decisions like in the Peace Cross case tend to validate or undermine her thesis?
- How would you re-draft the First Amendment to provide for greater religious liberty? How would you re-draft the First Amendment to provide for religious co-existence, while also protecting the rights of those who do not have a particular religious affiliation or religious faith of any kind (agnostics and atheists)?

# CHAPTER 1

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- What do you think about lawsuits directed against perceived symbols of Christian hegemony? Discuss the merits of the legal challenges to insertion of “under God” in the Pledge of Allegiance ([outcome of litigation is mixed](#)) (p. 56, 146); installation of the Ten Commandments on grounds of the

Alabama Supreme Court (*Americans United Against Separation of Church and State v. Moore* (2013), Plaintiff prevailed) (p. 56); and “In God We Trust” on our coinage (*Aronow v. United States* (1970), Defendant prevailed), and the “Peace Cross” Supreme Court case cited above.

## CHAPTER 2

### Christianity and the Construction of White Identity

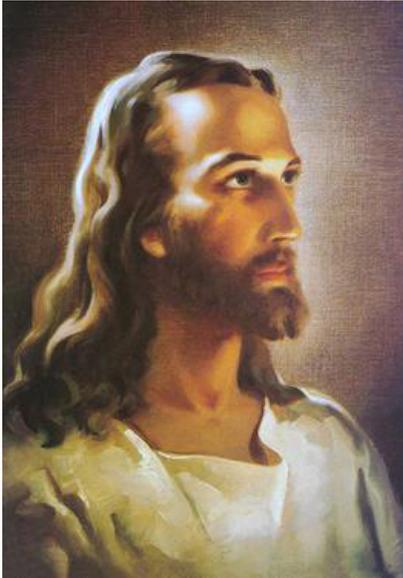
It takes an understanding of Whiteness's role in US history and its collusion with Christianity in the construction of American identity for us to trace how laws, court decisions, public policies, and social movements perpetuate White Christian privilege despite the optical illusion of religious freedom for all.

#### Discussion Questions

- Is there an inherent conflict between “secular” areas of study such as science, on the one hand, and religious expression and tolerance on the other? Where do you stand on whether creationism should be taught in public school alongside evolution? (pp. 139 and 149) What about in private parochial schools?
- In the 1920s, it was illegal to teach evolution in Tennessee public schools. When high school teacher John T. Scopes was charged with violating the law, it prompted litigation that became known as the “Scopes Monkey Trial,” later fictionalized in the film *Inherit the Wind*. Today we may view the state’s advocacy of teaching the Biblical creation story as anachronistic, but what are some current legal disputes in which the government (federal or state) is taking positions informed by religious principles over secular ones?
- In 1978, an event very much like the 2017 demonstrations in Charlottesville, Virginia took place in Skokie, Illinois when a group of [neo-Nazis marched through a town where many Holocaust survivors lived](#). Do you think it was right to allow the neo-Nazis to march?
- *Art.* Do you remember the first image you had of God when the concept was explained to you? Did your conception of “God the Father,” or of Jesus on the cross, entail a racial construct influenced by millennia of western religious art? Look at cover of Dr. Joshi’s book, taken from Michelangelo’s rendition of the Creation of Adam at the Sistine Chapel.
- In popular culture, we are all probably familiar with this image below (and available here [https://en.wikipedia.org/wiki/File:The\\_Head\\_of\\_Christ\\_by\\_Warner\\_Sallman\\_1941.jpg](https://en.wikipedia.org/wiki/File:The_Head_of_Christ_by_Warner_Sallman_1941.jpg).)

## CHAPTER 2

continued



*The Head of Christ*, also called the Sallman Head, is a 1940 painting of Jesus of Nazareth by the American artist Warner Sallman (1892–1968). It had been reproduced over half a billion times worldwide by

the end of the 20th century, from enlarged copies in churches to wallet-sized prayer cards. Religion scholars Charles Lippy and Steven Prothero have identified it as the basis for the image of Jesus for hundreds of million of people in the US and worldwide. [Watch this excerpt from Muhammed Ali](#) explaining how seeing art depicting Jesus as White affected him as a young child and influenced his conversion to Islam.

Discuss how art has the power to influence how certain dominant racial constructs are perpetuated, or in other cases, challenged. Regarding this latter effect, consider the work of artist Kehinde Wiley, who takes iconographic images depicting white Christian subjects and replaces them with African American and Native American subjects in order to compel the viewer to reorient their perspective:

In the artwork on the bottom, Wiley begins with traditional religious iconography and modifies it, replacing Mary, a symbol of comfort, protection, and virtue in Christianity, with a black man holding a child. In [Wiley's own words](#): “There is a political and racial context behind everything that I do. Not always because I design it that way, or because I want it that way, but rather because it’s just the way people look at the work of an African-American artist in this country.”

How would our perspective change if he or the people in his paintings were another race? Can art be part of a critique or challenge to White Christian supremacy in American culture? What other White Christian norms are manifest in art or music, and how might they be challenged?



# CHAPTER 3

## Immigration, Citizenship, and White Christian Supremacy

The United States' racial and religious hierarchy is not a result of coincidence. The demographics of every era, whether the idealized 1950s or the present day, are a consequence of public policies, intentionally adopted and implemented by government officials and approved by the courts over the course of centuries.

### Discussion Questions

- Do you think America may fairly be described as a country of immigrants? Do you see the encouragement of immigration as a positive social value in America today?
- What do you think of the race-based history of America's immigration system and how it has changed since passage of Immigration and Naturalization Act of 1965?
- Can you imagine a scenario in which Muslim Americans, Chinese Americans, or another group might be subject to heightened surveillance or even internment? What lessons from Dr. Joshi's book would be instructive in combatting calls for heightened surveillance or internment of particular ethnic or religious communities?
- Do you see vestiges of or parallels to the ethnic hostility of the late 19<sup>th</sup> and early 20<sup>th</sup> century (culminating in the Chinese Exclusion Act) and America's reaction to the Covid-19 Coronavirus? Why or why not? Give examples.
- The National Origins Act of 1924 tied immigration quotas to the 1890 US census, even though more current demographic information was available through contemporaneous Census data. Why did Congress select the 1890 census?

# CHAPTER 4

## Everyday Christian Privilege

When your beliefs simply *are*, while mine are represented as “myths” and “legends,” you enjoy an implied legitimacy that I can never match.

### Discussion Questions

- *Marking Time:* To what extent, if any, do you think cultural norms reflecting Christian dominance should be accepted or challenged by way of litigation or legislative lobbying?

#### *Years*

- Do you think it wise to make an issue of archaic language that permeates all manner legal documents and diplomas referencing “In the Year of Our Lord” in implicit recognition of the sovereignty of Christianity upon which our calendar year is based? Three Rutgers Law School alumni did just that in 1989, resulting in the removal of the words from the bar membership certificates issued to new lawyers. This prompted vigorous debate, including the *New Jersey Law Journal's* publication of numerous mocking and *ad hominem* attacks against the activists from older attorneys; their experience illustrates how challenges to facially ministerial indicia of Christian supremacy can

strike a cultural nerve. More recently, [Justice Ruth Bader Ginsburg raised a similar objection](#), resulting in people who admitted to practice before the US Supreme Court having the option to have their certificates retain or omit the phrase “in the Year of Our Lord.”

- What might we do to change the language we use to be more inclusive of other religious groups who do not share the belief that the birth of Jesus should be the starting point of the common calendar? Discuss whether or when to use religiously neutral designations, like “BCE” and “CE” (“Before Common Era” and “Common Era”). [Here is an article](#) on the subject.

#### *Days*

- Do your state’s government offices or courts close on Good Friday? Easter? Christmas? What do you think about that? Why does the State recognize some holidays and not others, closing governmental

# CHAPTER 4

## continued

offices whose employees may or may not adhere to the religion whose holiday is recognized? Whether you are a member of the majority or minority religious group, how do you feel about that? Should policy be changed? If so, on what basis and with what result? What are the benefits and drawbacks of your proposed solution?

- How would you and your classmates feel if government buildings and schools in the United States were closed for the Muslim holy month of Ramadan; the Hindu holidays of Navratri and Shivratri; or Fet Gede, the Vodou Festival of the Dead, a national holiday in Haiti? By what criteria, if any, should such holidays be observed?
- Does your state or county have “Blue Laws,” which call for the closing of all retail stores, or for restrictions such as the prohibition of alcohol sales or gambling, on Sundays? Are these vestiges from an era of more blatant influence of Christian tenets on daily life? Whether or not such laws exist where you live, do you think they should be perpetuated or abolished? Does imagining a contemporary, secular rationale for Sunday closing laws “cure” them of their sectarian origins? Why or why not?
- What are your thoughts about cultural controversies, such as the purported “War on Christmas” or the movement to “put Christ back in Christmas”? (p. 9 Introduction) Do such statements offend you, scare you, resonate with you? Do you see such rhetoric as being more consistent with Christian hegemony that is waxing, waning, or holding steady?

# CHAPTER 5

## Voices of Christian Privilege

Only by recognizing systemic inequality in history and in the present day will we build a more just and equitable society for people of all faiths and achieve authentic engagement between people of diverse religious and racial backgrounds.

### Discussion Questions

- In Chapter 1, Dr. Joshi wrote “nothing feels so imbalanced as a level playing field, when for as long as you can remember the field has been tilted in your favor.”
  - How does this statement make you feel?
  - Can you find examples of this idea in the voices of Christians presented in Chapter 5? In the voices of religious minorities?
  - Describe some examples of this idea found in current events.
- This chapter consists of first-person narratives from people of different backgrounds. Take time to consider your own perspectives on race and religion. Do any particular quotes or perspectives from this chapter resonate with you?
- Like it or not, we all have biases – favorable, unfavorable, innocuous – about races and ethnicities, including our own. Consider how your own thinking of others may be influenced by White Christian privilege. Do you hold indigenous believe systems (e.g., Wakan Tanka, Sioux tradition, Vodou, Santería) in the same regard as you do traditional organized religions?
- Positionality of the Practitioner.
  - Recall Joshi’s point, in Chapter 2, that the votes of the Justices of the Supreme Court in *Greece vs. Galloway* broke down on almost perfectly sectarian lines: five of the Court’s six Catholic Justices supported the town’s policy of sectarian prayer, with all three Jewish Justices (plus Sonia Sotomayor) in dissent. What might this, considered in light of Joshi’s commentary in Chapter 5, tell us about how the positionality of the practitioner might affect legal outcomes?
  - How might a Christian judge who was exhibiting what Joshi calls “denial and avoidance” rule if Suhas (Chapter 4, p. 126-27) were to sue his public school over compelled participation in the Lord’s Prayer? What about a judge with an attitude of “superiority and entitlement”?

## CHAPTER 5

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- As an advocate, thinking strategically, how would your arguments – either for Suhas or for the school district – change if you knew the religious background or attitude of the judge you were appearing before?
- Take the online [Harvard Implicit Bias Test](#) (it takes approximately 10 minutes), then

discuss the results with your classmates and instructor. How does what you learned about yourself affect your thinking about the subject matter of *White Christian Privilege*?

# CHAPTER 6

## Making Meaning and Making Change

How do we find escape from ordinary patterns of thought, even as we exist within them? How do we identify, and help others to identify, the changes that will free us from legacies of injustice and enable us to create “a more perfect union”?

### Discussion Questions

- What do you think about Professor Joshi’s challenge to adopt a social justice approach to Christian privilege and religious diversity in America so that all genuinely valued and afforded equal opportunity to thrive? (pp. 198, 205)
- Consider the five “changes” Dr. Joshi prescribes in this chapter. What will “changing the questions” (pp. 214-15) or “changing the paradigm” (pp. 222-24) look like in the legal field? What does that tell you about the feasibility or desirability of such change? What does it tell you about the strategies that will be required to effect that change?
- What drawbacks, if any, do you see in promoting social justice through the practice of law? The accusation of some politically conservative critics is that such litigation invites “judicial activism,” defined as departure from a strictly precedent-based or “originalist” reading of the Constitution and other early legal authorities. [Others have contested the conservative definition of “judicial activism,”](#) pointing out that if such activism is defined as the Courts overturning laws adopted by legislatures, then there has been as much conservative judicial activism as liberal judicial activism. Is “judicial activism” a useful frame for the discussion and, if so, what does it mean today? Do you think complaints of “judicial activism” outweigh the benefits of effecting change through the courts?
- Besides lawsuits, a social justice approach toward attaining Dr. Joshi’s challenge would be through elections and legislation. What kind of legislative initiatives might be advanced to achieve the ends she writes about? What kind of legislative initiatives might be advanced to achieve the ends you think desirable? By what means (social media, door-to-door, lobbying, running for office) might you advance such initiatives?

## RECOMMENDED PROJECTS & INTERGRATIVE WORK

“A seat at the table” only helps produce real change when the person in that seat holds a real voice – even, and especially, when that voice may make you uncomfortable.

**Autobiographical Assignment:** Have your students prepare a Reflective Essay early in the course, centered around their racial and religious identities.

**Integrative Historical Essay:** Have students prepare an essay or timeline that relates the little-known historical milestones described in Chapters 2 and 3 to the history of that period that students learned in US high school or college history classes. What connections can students find between, for example, immigration and naturalization policies and the wars, social trends, or economic dislocations of the same period? Alternatively, can students identify the role of Christianity, as a national norm or standard, in the social, military, or economic milestones of 19<sup>th</sup> and 20<sup>th</sup> century history?

**Short Papers:** Assign a short paper that allows students to integrate or compare trends in case law using one or more of the analytical frames in the questions above. For example,

- In the context of litigation under the religion clauses of the First amendment, is a textualist or “originalist” approach appropriate at this time in history? Why or why not? What alternative framework of analysis would you prescribe? Use cases cited in Joshi’s text to support your argument.
- Joshi describes the numerous revisions made to Executive Order #13769, also known as the “Muslim Ban,” which was ultimately upheld by the US Supreme Court. Do you regard the President’s executive action to limit Muslims’ efforts to immigrate or even visit the US as “business as usual” for the United States, or a departure from historical trends? Explain with references to other legislation and case law.
- How should we square the need for uniform national standards on religious rights and accommodations under the First Amendment with regional differences in the population of religious minorities whose right to “accommodations” or policy changes might fairly be the subject of litigation?



[khyati@khyatijoshi.com](mailto:khyati@khyatijoshi.com)

[www.khyatijoshi.com](http://www.khyatijoshi.com)

[linkedin.com/in/DrKhyatiYJoshi](https://www.linkedin.com/in/DrKhyatiYJoshi)

[instagram.com/profkjoshi](https://www.instagram.com/profkjoshi)

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