

Seth Barrett Tillman, a lecturer in law at the National University of Ireland Maynooth, writes in:

Professor Geoffrey R. Stone—University of Chicago School of Law—was recently appointed to the NSA Surveillance Review Committee. Professor Stone has written on some subjects which may interest your readers.

Geoffrey R. Stone, *The Second Great Awakening: A Christian Nation?*, 26 *Georgia State University Law Review* 1305, 1333 (2010):

“This is the fundamental issue posed by the Second Great Awakening, and it remains a fundamental issue today. As citizens, advocates of Sunday closing laws, temperance legislation, the abolition of slavery, anti-abortion laws, prohibitions of stem-cell research, and law forbidding same-sex marriage are free to support such policies because they honestly believe they serve constitutionally legitimate ends; and they are also free to urge others to embrace and abide by their religious beliefs. But what they are not free to do, what they must strive not to do if they want to be good citizens, is to use the law disingenuously to impose their own religious beliefs on others.”

I guess some opposition to slavery is “disingenuous” if somehow connected to religion. Why does Stone think it so obvious that a citizen circa 1860 who had supported public policies seeking to limit or to overthrow slavery on sectarian religious grounds failed to live up to the aspirational goals of our constitutional order? Is it a matter of any concern that slave owners were, to use Professor Stone’s terms, “imposed” upon? One wonders why Professor Stone sees the legal order so clearly through the eyes of slave owners, rather than the slave who might have had his shackles loosened? Why cannot Professor Stone see that in our world of second bests, First Amendment church-state absolutism ought, in some circumstances, to give way to other values, and that in making that difficult weighing of competing values responsible persons should be loathe to declare our fellows bad citizens merely because they weigh things differently than we do?

Geoffrey R. Stone, *The Second Great Awakening: A Christian Nation?*, 26 *Georgia State University Law Review* 1305, 1324 (2010):

“Indeed, some of the most ardent supporters of slavery, such as the Baptist clergyman Theodore Dwight Weld”

Weld was from a New England Brahmin family, as is Massachusetts Governor William Weld (1991-1997). Stone believes Weld supported slavery—when even the source Stone cited (Mason I. Lowance, Jr., ed., *A House Divided* 93 (2003)) says just the opposite: Weld was a leading abolitionist. And how did Theodore Weld become a Baptist! Who knew?—it is as if Stone is writing about some other America, with some other historical past.

Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 *UCLA Law Review* 1, 21 (2008):

“The Christian establishment responded with a vengeance [to the spread of Deism]. As early as 1759, Ezra Stiles [President of Yale] warned that ‘Deism has got such a Head’ that it is necessary to ‘conquer and demolish it.’”

This is what Stiles wrote in a letter to a colleague:

“It is true with this Liberty [of accepting deistical books into religiously-affiliated university libraries] Error may be introduced; but turn the Tables [and see that] the propagation of Truth may be extinguished [if you do otherwise]. Deism has got such Head in this Age of Licentious Liberty, that it would be in vain to try to stop it by hiding the Deistical Writings: and the only Way left to conquer & demolish it, is to come forth into the open Field & Dispute this matter on even Footing—the Evidences of Revelation in my opinion are nearly as demonstrative as Newton’s Principia, & these are the Weapons to be used Truth & this alone being our Aim in fact, open, frank & generous we shall avoid the very appearance of Evil.”

In other words, Stiles was urging his colleague to include deistical tracts in the college’s library—not to ban or exclude such books. Why does Stone characterize such a letter—which exudes toleration—as Christianity’s “vengeful” response to Deism?

I could go on and on and on . . . but here is my favorite, the pièce de résistance . . .

Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 *UCLA Law Review* 1, 21 (2008) (quotation marks omitted):

“Edward Gibbon’s *Decline and Fall of the Roman Empire* was literally put to the torch at Harvard because of its uncomplimentary interpretation of early Christianity.”

The trouble with this book-burning story is that it never happened. And if Stone could believe that late 17th or early 18th century Harvard (!) Congregationalists (!!) and Unitarians (!!!) had a book burning, then—in my opinion—he has pretty poor judgment. No doubt, it is a considerable and time-consuming responsibility to review National Security Agency conduct and policy. I hope that Professor Stone’s new responsibilities will leave him with sufficient time to check his sources in his future academic publications.