giously motivated conduct has waxed and waned over the years.[257] It has long been recognized that the Free Exercise Clause, in some instances, allows the government to regulate an activity even if religious beliefs are implicated by the conduct in question.[258] What has varied most significantly over the years, though, is the extent of the Court's willingness to protect religiously motivated conduct from generally applicable laws.

In its first free exercise case, *Reynold v. United States*,[259] involving the power of government to prohibit polygamy, the Court invoked a hard distinction between conduct and belief, saying that although laws "cannot interfere with mere religious beliefs and opinions, they may with practices."[260] The rule thus propounded protected only belief, so that religiously motivated action was to be subjected to the police power of the state to the same extent as would similar action springing from other motives. This no-protection for conduct rule was then applied in a number of other early cases.[261]

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[257] Academics as well as the Justices grapple with the extent to which religious practices as well as beliefs are protected by the Free Exercise Clause. For contrasting academic views of the origins and purposes of the Free Exercise Clause, *compare* McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1410 (1990) (concluding that constitutionally compelled exemptions from generally applicable laws are consistent with the Clause's origins in religious pluralism) *with* Marshall, *The Case Against the Constitutionally Compelled Free Exercise Exemption*, 40 CASE W. RES. L. REV. 357 (1989–90) (arguing that such exemptions establish an invalid preference for religious beliefs over non-religious beliefs).

[258] *E.g.*, Reynolds v. United States, 98 U.S. 145 (1879); Jacobson v. Massachusetts, 197 U.S. 11 (1905); Prince v. Massachusetts, 321 U.S. 158 (1944); Braunfeld v. Brown, 366 U.S. 599 (1961); United States v. Lee, 455 U.S. 252 (1982); Employment Division v. Smith, 494 U.S. 872 (1990).

[259] 98 U.S. 145 (1879).

[260] 98 U.S. at 166. "Crime is not the less odious because sanctioned by what any particular sect may designate as 'religion.'" Davis v. Beason, 133 U.S. 333, 345 (1890). In another context, Justice Sutherland in United States v. Macintosh, 283 U.S. 605 (1931), suggested a plenary governmental power to regulate action regardless of religious motivation. Denying that recognition of conscientious objection to military service was of a constitutional magnitude, Sutherland asserted that "unqualified allegiance to the Nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God." Id. at 625.

[261] Jacobson v. Massachusetts, 197 U.S. 11 (1905) (compulsory vaccination); Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor); Cleveland v. United States, 329 U.S. 14 (1946) (polygamy). In Sherbert v. Verner, 374 U.S. 398, 403 (1963), Justice Brennan asserted that the "conduct or activities so regulated [in the cited cases] have invariably posed some substantial threat to public safety, peace or order."