

Joel Barlow And The Treaty With Tripoli A Tangled Tale Of Pirates, A Poet And The True Meaning Of The First Amendment

by Rob Boston

The June 17, 1797, edition of *The Philadelphia Gazette & Universal Daily Advertiser* was heavy with news of the day. The ship *Diana* was soon to depart for Liverpool, and local merchant John Savage advertised fine French wine, vinegar and almonds for sale. Edward Fox was eager to auction the services of an indentured servant – described as “a tolerable cook” – who had nine years left on her contract.

Newspapers of the post-Revolutionary War period frequently printed laws of Congress, proclamations and other government documents. Among the dispatches from Washington that day was a notice that the Senate and President John Adams had approved a Treaty of Peace and Friendship with the North African state of Tripoli. The *Gazette* printed the full treaty, consisting of 12 separate articles.

Most of the 12 articles dealt with commercial matters and procedures for maritime trade. But buried among the talk of ports, cargo and duties was a passage that stood out. Article 11 read, “As the government of the United States of America is not founded in any sense on the Christian religion – as it has in itself no character of enmity against the laws, religion or tranquility of Musselmen [Muslims] – and as the said states have never entered into any war or act of hostility against any Mahometan nation, it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries.”

The Treaty with Tripoli was unanimously approved by the Senate on June 10, 1797. It would today be relegated to obscurity like most early treaties were it not for Article 11. Thanks to that provision, the treaty remains the focal point of controversy more than two centuries later.

The treaty has figured prominently in the ongoing debate over whether the United States was intended to be an officially “Christian nation.” Advocates of church-state separation point to Article 11 as evidence that public officials in the fledgling United States were well aware of the government’s non-religious character and weren’t afraid to state it publicly. Religious Right advocates have worked to undercut the treaty’s significance and imply that Article 11 represented the views of only one man.

The man in question is Joel Barlow of Connecticut. A reluctant diplomat who had aspirations of being an epic poet, Barlow served as the United States’ diplomatic agent to the Barbary States, charged with concluding treaties with three countries – Algiers, Tripoli and Tunis. Barlow spent two years in North Africa, hammering out agreements and working to keep the United States from going to war with the Barbary States. Among his duties was overseeing the negotiations of the Treaty with Tripoli.

The conflict between the United States and the Barbary States is today largely forgotten, but in the 19th century it was the stuff of legend. Today considered an obscure figure, Barlow was a central figure in the drama. In his time, he was a leading political thinker, writer, diplomat and poet.

With the relationship between religion and government in the midst of debate, it’s an excellent time to step back and assess the importance of the Treaty with Tripoli. How did the anti-“Christian nation” language get into the document? Is it significant? Why, more than two centuries after the fact, should anyone care what a musty treaty once said?

A little background of the relations between the United States and the Barbary States during the post-Revolutionary War period is necessary to set the stage. The Barbary States were essentially outlaw nations that made money through piracy or extortion on the high seas. The great naval powers of Europe, primarily Great Britain and France, were accustomed to paying annual sums in tribute to the Barbary nations to keep their commercial shipping safe.

The United States emerged from the Revolution with an uncertain position on the world stage, making the country's shipping easy prey for the Barbary pirates. Although the new nation was eager to establish trade overseas, the lack of a strong Navy left its merchant shipping vulnerable.

Great Britain, still smarting from the loss of its former colony, was determined to crush the United States' growing overseas trade. When American ships began appearing in the Mediterranean, British officials urged the Barbary pirates to prey on U.S. vessels. Algeria formally declared war on the United States in 1785, and within a few years, 300 U.S. citizens, mostly sailors, were in captivity in Northern Africa.

As Secretary of State under President George Washington, Thomas Jefferson advocated the use of military might against the Barbary States. Jefferson believed the United States should form a multi-national naval force of less powerful nations, including Portugal, Spain, Sweden and Italy, and attack the Barbary nations. In July of 1786, when Algeria captured a Russian ship, Jefferson hoped Catherine the Great would bring her navy into the alliance.

But the world political situation of the period doomed the alliance. Powerful nations like Britain and France, which benefited from Barbary piracy, would not allow it. Sentiments in Congress ran in favor of paying tribute to the Barbary States, so in spring of 1785 the first U.S. envoy to North Africa, John Lamb, a former mule trader, was dispatched. It took Lamb a year to get to Algiers, and he soon proved to be incompetent.

Lamb was quickly recalled, and Jefferson's next two candidates for the job, John Paul Jones and Thomas Barclay, died before they could set out. In 1793 an exasperated Jefferson asked David Humphreys, U.S. ambassador to Portugal, to go to Algiers.

Humphreys arrived in North Africa in the fall of 1793, but by this time Jefferson had resigned as secretary of state. The U.S. government was preoccupied with problems along its frontier and increasing hostilities on the high seas with France. Lacking support from home, Humphreys too failed in his mission and was recalled. In 1795, Washington asked Barlow to try again.

This time Washington seemed serious about reaching an accommodation with the Barbary States. Barlow was authorized to promise Algeria, the leading Barbary state in their loose confederation, a payment of \$800,000 – a staggering sum at the time – and an additional \$20,000 in naval supplies every year.

While in Algeria, Barlow met Richard O'Brien, one of the first seamen captured by Barbary pirates. Barlow sought and won permission to send O'Brien to Europe to borrow money to pay the tribute, but on the way O'Brien's ship was captured by pirates from Tripoli. O'Brien, under Barlow's direction, used the time to negotiate the famous Treaty with Tripoli and forwarded it to Barlow for redrafting and approval.

On Nov. 4, 1796, Barlow concluded negotiations on the Treaty with Tripoli with Jussof Bashaw Mahomet, Bey of Tripoli. The treaty was forwarded to the United States. By the time it reached the United States, a change of administrations had occurred. President John Adams submitted it to the U.S. Senate for ratification.

In a brief note dated May 26, 1797, Adams wrote to the Senate, "I lay before you, for your consideration and advice, a treaty of perpetual peace and friendship between the United States of America and the Bey and subjects of Tripoli, of Barbary, concluded, at Tripoli, on the 4th day of November, 1796."

Unfortunately, no record of the negotiations leading to the treaty exist. It's not known how Article 11 found its way into the document. Other treaties negotiated at the same time with Algeria and Tunis do not contain similar clauses. This has led to speculation that the provision may have been inserted at the insistence of officials in Tripoli, who wanted some assurance that the United States would not use religion as a pretext for future hostilities.

The Muslim regions of North Africa would have good reason to be concerned about this issue, given the centuries-long conflict between Islam and Christianity. Muslim leaders resented their treatment at the hands of the officially Christian countries of Europe. Tripoli's leaders may have viewed the United States as a mere extension of "Christian" Great Britain and expected similar tensions over religion.

To be sure, Islam was considered an exotic religion to most Americans at this time. Although Jefferson celebrated the fact that his Virginia Bill for Religious Freedom extended its protections to “the Jew and the Gentile, the Christian and Mahometan, the Hindoo, the infidel of every denomination,” the fact is that Muslims were rare in 18th century America – if there were any at all – and most Americans continued to view Islam as a strange, even sinister, faith.

For their part, North Africa’s Muslims had little love for Christianity. In 1784, Barbary pirates captured the U.S. schooner *Maria* and took the crew and passengers to Algeria, where they were paraded through the streets and jeered as “infidels” before being imprisoned.

In 1793, Algerian pirates captured the cargo ship *Polly*, plundered it and imprisoned the 12-man crew. The Algerian captain informed the American captives they could expect harsh treatment “for your history and superstition in believing in a man who was crucified by the Jews and disregarding the true doctrine of God’s last and greatest prophet, Mohammed.”

Incidents like this underscore the current of religious tension between the United States and the Barbary region, but they do not prove conclusively that Article 11 was an attempt to mollify those pressures.

The reality is that no one is certain how Article 11 got into the Treaty with Tripoli. “It’s an interesting question – why this was put into the treaty,” says Robert J. Allison, a Suffolk University history professor who authored the 1995 book *The Crescent Obscured: The United States and the Muslim World, 1776-1815*. Allison’s research did not turn up any definitive clues, but, he adds, “I don’t think you can ascribe a treaty to any one author. There are too many interests at play. Whether it came from Barlow or Tripoli will remain unknown.”

Nevertheless, Barlow seems a likely candidate. Although he served as a military chaplain representing the Congregational Church during the Revolutionary War, Barlow later in life drifted into the Deist camp championed by his friend Jefferson. And, like Jefferson, Barlow was a strong advocate of church-state separation. (Also like Jefferson, Barlow was frequently accused of being an atheist by his political enemies.)

In addition to writing epic verse – he worked for 30 years on his epic poem *The Columbiad* – Barlow wrote treatises on political philosophy. In the fall of 1791, while living abroad in Britain, Barlow penned a book with the unwieldy title *Advice to the Privileged Orders in the Several States of Europe Resulting from the Necessity and Propriety of a General Revolution in the Principle of Government*. The work’s second chapter attacks established churches.

Barlow biographer James Woodress notes in his book *A Yankee’s Odyssey: The Life of Joel Barlow* that in *Advice to the Privileged Orders*, “Barlow makes a clear distinction between the state church as an ally of authoritarian government and plain religion. He argues that the wedding of church and state is a great evil and points to the blessings enjoyed by the United States without a state church. As a result, he asserts, ‘in no country are the people more religious.’”

Other evidence points toward Barlow as the source of Article 11. Historian Morton Borden notes in his book *Jews, Turks and Infidels* that Mordecai M. Noah, U.S. counsel to Tunis under President James Madison, believed Barlow responsible for the passage. Although Noah was Jewish, he wrote in 1850 that he personally opposed Article 11, saying it “was engrafting [Barlow’s] private prejudices upon a solemn contract made with a foreign nation....”

The other suspect for authoring Article 11 is O’Brien. O’Brien had been a prisoner in Algiers from 1785-95, during which he acted as a type of unofficial U.S. ambassador in northern Africa. O’Brien’s experience left him skeptical of the view, promoted by some, that eventually all of Europe would unite with the United States against the Muslim Barbary states on the basis of a common Christian heritage. O’Brien grew more cynical during his captivity and realized that the Barbary States were mere pawns manipulated by the great powers of Europe.

In the end, how Article 11 got into the Treaty is less important than the reaction it received in the United States. As Borden notes, “What is significant about the Tripoli treaty is...its ready acceptance by the government. Not a word of protest was raised against Article 11 in 1797....Whatever their personal feelings on the question of religious equality for non-Christians in particular states, all concurred that Article 11 comported with the principles of the Constitution.”

In the Senate, the treaty barely caused a ripple. According to *The Journal of the Executive Proceedings of the United States Senate*, the treaty was read aloud on the floor of the Senate and copies were printed for the senators. No discussion or argument about the document was recorded, but the vote in favor was unanimous.

In recent years, some “Christian nation” advocates have argued that Article 11 never appeared in the treaty. They base the claim on research conducted by a Dutch scholar, Dr. C. Snouk Hurgronje, published in *The Christian Statesman* in 1930. Hurgronje located the only surviving Arabic copy of the treaty and found that when translated, Article 11 was actually a letter, mostly gibberish, from the dey of Algiers to the ruler of Tripoli.

But Hurgronje’s discovery is irrelevant. There is no longer any doubt that the English version of the treaty transmitted to the United States did contain the “no Christian nation” language. Article 11 appeared intact in newspapers of the day as well as in volumes of treaties and proceedings of Congress published later, including the *Session Laws* of the Fifth Congress, published in 1797, and in a 1799 volume titled *The Laws of the United States*. In 1832 Article 11 appeared in the treaty when it was reprinted in *Documents, Legislative and Executive, of the Congress of the United States 1789-1815, Volume II* – a tome that can still be examined today in the Library of Congress’ main reading room.

Furthermore, in Hunter Miller’s definitive 1931 work on treaties from this period, *Treaties and Other International Acts of the United States of America*, he notes that “the Barlow translation is that which was submitted to the Senate....it is the English text which in the United States has always been deemed *the* text of the treaty.” It’s clear that the English version of the treaty, which Congress approved, contained the famous Article 11. Why the article was removed from the Arabic version of the treaty, who did it and when remains another mystery.

Article 11 soon took on a life of its own. Years after the treaty was ratified, references to it began popping up in speeches, articles and court rulings. Borden notes that “Article 11 had been cited hundreds of times in numerous court cases and in political debates whenever the issue of church-state relations arose....Jews frequently referred to the article in discussions of a much-debated question, whether or not the United States was a Christian nation.”

Borden also reports that in 1899 American diplomat Oscar S. Straus translated Article 11 into Turkish and presented it to the sultan of the Ottoman Empire in an effort to save American lives in the Philippines. The Philippines had recently reverted to American control, and Straus had to find a way to convince the sultan that the United States was not hostile toward Islam so that he would press Sunni Muslims there to accept U.S. rule.

In his 1922 memoir, *Under Four Administrations*, Straus wrote, “I had come prepared with a translation into Turkish of Article XI of an early treaty between the United States and Tripoli, negotiated by Joel Barlow in 1796....When the Sultan had read this, his face lighted up. It would give him pleasure, he said, to act in accordance with my suggestions, for two reasons: for the sake of humanity, and to be helpful to the United States.”

Today the Treaty with Tripoli is considered obscure, although it remains the occasional subject of vigorous debate between “Christian nation” proponents and advocates of church-state separation. Occasionally, the treaty has been quoted out of context by overzealous separationists. In 1955 an atheist group attributed its famous words to George Washington.

Ironically, the treaty failed to achieve its stated purpose of ensuring peace and friendship between the United States and Tripoli. By 1800 the ruler of Tripoli, angry because his tribute payments were late, was again harassing U.S. shipping. Jefferson, by then president, beefed up the fledgling U.S. Navy and sent ships to blockade Tripoli. In 1803 disaster struck when the *U.S.S. Philadelphia* ran aground in Tripoli, and its 300-man crew was imprisoned. Jefferson called for war.

In 1804 U.S. ships under the command of Stephen Decatur bombarded Tripoli, and the blockade was stepped up. The following year, Tripoli sued for peace. A diplomat named Tobias Lear negotiated a peace treaty; the new document did not contain the exact anti-“Christian nation” language of Barlow’s treaty, although it did contain an article stating that the United States has no established church. The United States agreed to pay Tripoli \$60,000, and all of the *Philadelphia*’s sailors were released.

And what of Joel Barlow, the poet turned diplomat who sparked 200 years of controversy? In 1811 Madison sent him to France to represent U.S. interests, where the envoy met an unkind fate. Napoleon's armies were redrawing the map of Europe, and the continent was in turmoil. Barlow was invited in 1812 to travel to Vilna, Lithuania, to sign an important treaty with the French emperor. Napoleon's army had planned to spend the winter in Vilna, but his forces were routed by Russian Cossacks and had to flee. As both armies stormed toward Vilna, Barlow and other refugees fled.

Straggling across the frozen wasteland of southern Poland in a horse-drawn carriage, Barlow contracted pneumonia. On Dec. 21 Barlow reached the village of Zarnowiec, where he announced he was too sick to travel farther. He languished for a few days in the home of the mayor but died around noon on Dec. 26 and was buried in the courtyard of a local church. He was 58.

Barlow's wife, Ruth, tried to have her husband's remains brought to America, but the downfall of Napoleon spawned so much chaos in Europe that the plan proved impractical. In 1930 a U.S. senator from Illinois introduced a bill to erect a monument to Barlow in Zarnowiec, but it failed to get out of committee.

Poland remains Barlow's final resting place. His grave is marked by a simple marble tablet with a Latin inscription that translates as, "Joel Barlow, diplomatic minister from the United States of America to the Emperor of the French and the Queen of Italy, died here while traveling."

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