

SEPARATION OF CHURCH AND STATE: A HISTORY OF
THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT
IN AMERICA, INCLUDING ITS RECENT INTERPRETATION.

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In law school, my Constitutional Law professors taught that the Constitution was “a living, breathing document, capable of stretching to cover new situations in a modern era.”

To a neophyte law student, that sounded good — until I discovered that the politics of those university lecturers was, in some cases, the ruddy pink of Socialism, and in others the bright red of Communism. Then I understood that these instructors were planting an idea in the minds of students and sending them forth, like tiny ships under full sail on the ocean of society, to convince the general public that judges could rewrite the Constitution — giving it a meaning contrary to the will of the Founding Fathers; a meaning that would shape and change America into something never intended. They didn’t just favor different approaches to problems. They sought a different America.

Take the First Amendment:¹

“Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble; and to petition the government for a redress of grievances.”

Inserted to insure that the newly-formed federal government, acting through Congress, would never declare a national religion, and also to keep it from interfering with the right of the people to freely practice whatever religion they preferred, its first

¹ Passed along with nine others when Virginia, the final State to do so, ratified the Bill of Rights on December 15, 1791.

sixteen words later became known as The Establishment Clause. But under the notion that the First Amendment separates religion and the civil state, thereby mandating a strictly secular policy, these words have been interpreted in ways far beyond the founder's original intent. Result? The federal government, many in the education establishment, and certain private organizations, sometimes assert positions hostile to people of religious beliefs.

BACKGROUND:

When initially proposed, that first clause addressed two concerns: federalism and protection of religious liberty.

Federalism is the system under which each governmental unit, federal, state and local, retains authority to govern its own affairs. The founders developed this concept to limit the power and scope of the federal government. Looking at its awesome size today, it's difficult to believe that many tasks it now performs were not considered legitimate functions for it back then. For instance, taxing power was not initially given to the national government. And under our first Constitution, religious affairs were left to the States.

The second concern was how to protect religious liberty. The goal? To prevent the federal government from establishing a national denominational church similar to that which existed in England. Many felt that to be forced to worship in a particular church was an undesirable interference with the free exercise of their religious beliefs. However, others saw nothing wrong with an established church at the *local* level. In fact, by 1791, five of the thirteen colonies already had established churches within their boundaries, mostly Christian denominations. Later, states developed religious tests for public office, the requirements varying from one state to another. Some states punished

blasphemy; others imposed fines for irregular church attendance. By today's standards, America was surprisingly illiberal. But since religious affairs were a matter of state concern, no one objected. And no one equated *that* America with the theocracies across the seas.

The overall intent of the Establishment Clause was, then, *not* to mute Christianity, but to provide an atmosphere in which this widely held religious belief, expressed in an already thriving Christian religion, could flourish, while protecting the right of those of different faiths to worship as they saw fit. This concept of religious liberty was uniquely American.

According to Paul Craig Roberts,² over the past thirty years, our country's basic principles and values have been under attack in public schools and universities "by postmodernists firmly entrenched in our educational system." This has not been a process of imperceptible mutation. Rather, it happened while Americans, good sports that we are, looked on, but failing to understand the significance of what was happening, refused to impute harmful motives to our liberal brethren.

That was a mistake. Because of it, a generation of Americans knows little about the Constitution and other basic documents, and even less about those who wrote the documents by which we've governed ourselves for over two centuries. In fact, few Americans under forty know that neither the phrase "wall of separation" nor "separation of church and state" are found in the Constitution. "For many Americans, this metaphor has supplanted the actual text of the First Amendment . . ."

Thomas Jefferson first coined the phrase "wall of separation between church and state" in a letter written in 1802. He used it again in 1805 in his inaugural address. But he

intended it to mean non-interference with the practice of *any* religion by the federal government. Whatever he intended, the Constitution does *not* make Jefferson's understanding of the relationship between church and state obligatory.

RELIGIOUS BELIEF IN OUR BASIC NATIONAL DOCUMENTS:

THE DECLARATION OF INDEPENDENCE:

In this secular age, so perniciously influenced by postmodernist thought, many are uncomfortable talking about God publicly. But expression of religious belief was widespread in America's early years. The Founding Fathers referenced God easily and often in their public utterances and through the actions of the Continental Congress, revealing a remarkable understanding of the connection between belief in God and good government. They did so in *The Declaration of Independence*, and later, in *The Northwest Ordinance*. Let's look at *The Declaration* first.

Enacted by the Second Continental Congress on July 4, 1776, its content clearly shows a belief in God, a Supreme Being to whom Man is accountable and from whom all our rights are derived.

Jefferson, who later became Secretary of State in Washington's Administration, took no part in writing the Constitution. Earlier, he had chaired a Committee made up of Ben Franklin, John Adams, Roger Sherman, Robert Livingston and himself, to draft *The Declaration*. The text these men produced speaks of the laws of Nature and of Nature's God:

"... that all men are created equal; that they are endowed by their Creator with certain inalienable rights, and among these are the rights to life, liberty, and the pursuit of happiness."

The concept that human rights come from a Creator rather than from the state, derived from John Locke's "Natural Law" philosophy, is extremely important to free peoples everywhere, and to those who aspire to be free. Why? Because if rights do not come from God, but instead from the state, then the state can take those rights away at the whim of any tinhorn despot. In the former Soviet Union, the converse of this, i.e., that all rights *are* derived from the state, was applied with disastrous results. And in Afghanistan, a country where this concept is now becoming understood, an earnest but misguided Northern Alliance leader announced, during the American incursion against terrorism, that when the Taliban was ousted, the new government "would grant rights to woman." If, instead, he had said that when his group triumphed, it would protect rights granted by Allah to all citizens, Afghans might have breathed easier.

Paul Johnson:³

"There is no question that the Declaration of Independence was, to those who signed it, a religious as well as a secular act . . ."

THE NORTHWEST ORDINANCE OF 1787:

The Founding Fathers also believed that religion *and* education went hand in hand. *The Northwest Ordinance*, passed to preserve property in the Territories for schools and also to prohibit slavery in the new Northwestern states, said this:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of learning shall forever be encouraged."

at Religion and the formation of moral values were inseparable from government and the actions of government leaders. No voice was raised arguing that holders of this view

³ Paul Johnson, *A History of the American People*; HarperCollins Publishers, Inc. New York, N.Y. 1997.

sought to create a theocracy.

RELIGIOUS BELIEF IN THE FOUNDING ERA: PUBLIC LIFE:

Numerous instances reflect the enlightened understanding held by Washington, Adams, Jefferson, Madison and much of the general public, that religion, morality, knowledge, virtue and good government are inextricably linked; that God and good government go hand in hand.

As Thanksgiving 1789 approached, responding to requests from Congress, Washington, who had become President the previous April, issued a *Proclamation of General Thanksgiving*. Because he understood that a nation which believes in and honors a Creator is not apt to be a problem either on the world scene or within its own borders, he declared:

"It is the duty of all Nations to acknowledge the providence of God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor . . ."

And in his *Farewell Address* in September 1796, he remarked:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports . . . Promote . . . institutions for the general diffusion of knowledge. . . it is essential that public opinion should be enlightened. "

After Washington voluntarily retired from the national scene, his Vice-President, John Adams took the helm as the Nation's second president. The day *The Declaration* was signed, Adams wrote these words to his wife, Abigail:

"The second day of July, 1776 will ... be celebrated by succeeding generations as a great anniversary festival. It ought to be commemorated as the day of deliverance, by solemn acts of devotion to God Almighty."

"Our constitution was made for a moral and religious people, it is wholly inadequate for any other. Statesmen may plan and speculate for Liberty, but it is Religion and morality alone which can establish the principles

under which Freedom can securely stand."

James Madison became the third leader of our nation:

"We have staked the whole future of American civilization, not upon the power of government, far from it. We have staked the future of all our political institutions upon the capacity of each and all of us to govern ourselves, to control ourselves and to sustain ourselves according to the Ten Commandments of God."

And Samuel Adams, a signer of *The Declaration*, from Massachusetts, is credited with these comments during debate in the Second Continental Congress:

"The rights of the colonists as Christians ... may be best understood by reading and carefully studying the institutes of the Great Lawgiver and head of the Christian Church, which are to be found clearly written and promulgated in the New Testament."

"While the people are virtuous they cannot be subdued; but when once they lose their virtue, they will readily surrender their liberties to the first external or internal invader."

Daniel Webster, in what now appears a prophetic pronouncement, stated:

"If the power of the Gospel is not felt throughout the length and breadth of this land, anarchy and misrule degradation and misery, corruption and darkness will reign without mitigation or end."

Finally, Edmund Burke:

"True religion is the foundation of society, the basis on which all true civil government rests, and from which power derives its authority, laws their efficacy, and both their sanction. If it is once shaken by contempt, the whole fabric cannot be stable or lasting."

This widespread although visionary understanding was described by French historian Alexis de Tocqueville in *Democracy in America, Part One*, a commentary on American life, published in 1835:

“Religion . . . must be regarded as the foremost of the political institutions of the country, for if it does not impart a taste of freedom, it facilitates the use of free institutions. . .

“Most Americans hold religion to be indispensable to the maintenance of republican principles.”

Quite frankly, the secularized version of American society that the American Civil Liberties Union, Americans United for Separation of Church and State, an activist Judiciary, school boards and others have sought to impose upon us in recent times would have shocked Americans 170 years ago. Despite sound religious underpinnings, the specifically American concept of religious liberty envisioned by our Founding Fathers has been twisted into something else. By a gradual process, Jefferson’s “wall of separation” has been misinterpreted to mean a separation of God and morality from government and from the public forum, something that flies in the face of our history. Yet these clowns of the present era, with the postmodernist’s almost total disregard for reason and logic — persist.

GOD TALK AND THE EXECUTIVE BRANCH IN LATER YEARS:

It’s not a concern to anyone but certain postmodernist thinkers that leaders throughout our nation’s history expressed their religious beliefs publicly. That people should be excluded from doing so everywhere except in church or at home, was a foreign concept. Was this view widely shared in the Executive Branch? The answer is “yes.” Here are words of three 20th Century presidents.

December 1952: Democrat President Harry Truman gave his final Christmas message before leaving office; a profession of our nation’s faith in God:

“As we go about our business of trying to achieve peace in the world, let us remember always to try to act and live in the spirit of the Prince of Peace. He bore in His heart no hate and no malice - nothing but love for all mankind. We should try as

nearly as we can to follow His example.

"We seek only a universal peace, where all nations shall be free and all peoples shall enjoy their inalienable human rights, We believe that all men are truly the children of God.

"Through Jesus Christ the world will yet be a better and a fairer place. This faith sustains us today as it has sustained mankind for centuries past . . ."

witnessed an orderly transfer of power from one American administration to another, and heard both incoming and outgoing presidents, speaking in their official capacities, humbly professing their belief in God.

As his Inauguration began, Eisenhower spoke the words of a prayer he had written hours before:

"Almighty God, as we stand here at this moment, my future associates in the Executive branch of government join me in beseeching that Thou wilt make full and complete our dedication to the people in this throng, and their fellow citizens everywhere.

"Give us we pray, the power to discern clearly right from wrong, and allow all our words and actions to be governed thereby, and by the laws of this land. Especially we pray that our concern shall be for all the people, regardless of station, race, or calling.

"May cooperation be permitted and be the mutual aim of those who, under the concept of our Constitution, hold to differing political faiths; so that all may work for the good of our beloved country and Thy glory. Amen."

dependence upon God that has been basic to America. He then placed his left hand upon two open Bibles, raised his right hand and repeated the oath administered by Supreme Court Chief Justice Fred Vinson. One of those Bibles, open to the 127th Psalm, had been used by Washington at *his* inauguration:

"Except the Lord build the house, they labor in vain that build it; except the Lord keep the city, the watchman waketh but in vain."

The second Bible, open to II Chronicles, Chapter Seven, was Eisenhower's own:

"If my people, who are called by my name, shall humble themselves and pray, and seek my face, and turn

from their wicked ways, then will I hear from Heaven, and will forgive their sins, and will heal their land."

Commenting on this in his book, *All God's Children*, published in 1953, James Keller said:

"President Eisenhower's use of our First President's Bible is eloquent testimony to the continuous importance of religion in the official acts of the United States Government — from the days of Washington down to the present time."

The concept that the rights of the people come from God, not from the state, expressed so clearly in *The Declaration of Independence*, has recently been re-affirmed by President George W. Bush in many speeches:

"Freedom is not America's gift to the world, it is Almighty God's gift to all humanity."

One reason Mr. Bush repeats this line is peculiar to present times: the stated fear of some that God does not align Himself with any individual or country, and to attempt to align the United States with the purposes of God is a radical act. As we've seen, it is *not* radical. Many prominent early Americans believed exactly that. Voiced as a concern mostly by atheists and liberal historians, and used by Muslims to vilify America, this idea is becoming known as "American exceptionalism." It is Mr. Bush's purpose to both revive the idea of freedom as a gift from God and allay this somewhat paranoid fear of "American exceptionalism" in the minds of these people. America has never been, nor will it ever become, a theocracy like the Taliban's Afghanistan.

GOD TALK AND THE JUDICIAL BRANCH:

Members of the third branch of government have also frequently and publicly recognized America's faith in God.

Our first Supreme Court Justice John Jay, who resigned in 1795 to run for

governor of New York, acknowledging both his belief that a *good* Christian is a moral and spiritual person who generally tends to exercise power responsibly, and the fact that perhaps ninety-nine percent of Americans of his time were Christians, reflected:

“Americans should select and prefer Christians as their rulers.”

Later, in *Marbury v. Madison*⁴, Chief Justice John Marshall asserted the Supreme Court’s asserted its authority to declare unconstitutional Congressional legislation “repugnant to the Constitution.” Although Marshall articulated this role for the Court, thus elevating the judicial branch to a status not envisioned by the Constitution’s authors, even he would probably not be comfortable with the extent to which “judicial review”—a power not mentioned there, but one he believed both implicit and necessary—has gone.

For the next hundred years, so widespread was the view that God and religion are important in American public life, that in 1892, Supreme Court Justice David Brewer, while summarizing a survey of our historical national documents, said:

“There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings or declarations of private persons. They are organic utterances. They speak the voice of the entire people.”

Sixty years later, in a Court decision in 1952, Justice William O. Douglas wrote:

“We are a religious people whose institutions presuppose a Supreme Being.”

And on October 11, 2003, Michael Novak, author of *On Two Wings: Humble Faith and Common Sense at the American Founding*, noted:

“Starting about 60 years ago, the Supreme Court took a half-truth about the meaning of (the word) ‘establishment’

⁴ 5 U.S. (1 Cranch) 137. 1803.

and carried it by tortuous logic to conclusions that go against the whole of its own prior tradition and against the tradition of American public life. In shifting its focus from the constitutional term 'religious liberty' to the much more recent and polemic slogan 'separation of church and state,' the Court has come to seem radically anti-religious and in particular, anti-Jewish and anti-Christian."

Federal Court interpretation of the First Amendment during the past forty-three years bears him out. Beginning in 1962 with the Warren Court's ruling precluding people from praying in public schools, and progressing to bans against prayer at school functions, these decisions are eons away from the original intent of the Founding Fathers. During 2001 alone, courts banned student-led prayers at football games and okayed the introduction of "prayer police" in Alabama schools, while five Justices of the Supreme Court ruled that a prayer by a student at a football game presented the nation with a constitutional crisis. In 2004, we saw a court rule that *The Declaration of Independence* was unconstitutional because it mentioned God. Soon, we may be treated to the spectacle of a court deciding that the *Constitution* itself is unconstitutional. This is the practice of judicial activism — making laws from the Bench — at its worst.

Paul Johnson again,⁵ regarding the First Amendment guarantee:

"This guarantee has been widely, almost willfully misunderstood in recent years, and interpreted as meaning that the federal government is forbidden by the Constitution to countenance or subsidize even indirectly the practice of religion. That would have astonished and even angered the Founding Fathers."

Congress and state legislatures have checked in on the issue. We've seen that an early Congress asked President Washington to issue a proclamation at Thanksgiving 1789, a holiday that gives thanks to the Creator, but which is now under attack for doing so.

⁵ Johnson, *A History of the American People*. Ibid.

In 1956, Florida Congressman Charles Bennett sponsored legislation to replace the national motto “E Pluribus Unum,” which means “From Many, One” with “In God We Trust.” Bennett, now in his 90s, recalls little controversy during debate. His bill quickly passed.

State legislatures have also spoken. The Virginia Legislature, in its *Declaration of Rights*, cogently enunciated the American concept of religious liberty:

“. . . 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; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.”

In the wake of September 11, a nationwide movement has developed to place the words “In God We Trust” in every classroom in the country. According to Debbie Howlett, writing in *USA Today* on February 20, 2002):

“Mississippi had been the only state to pass such a law (prior to that time). But three months after the terrorist attacks, Michigan adopted the requirement as part of homeland security legislation. At least eight more states are poised to pass similar measures — over the objections of those who say such displays would violate the separation of church and state.”

Predictably, the American Civil Liberties Union (ACLU) oppose this move. Larry Spalding, Florida chapter:

“This is no more than a means to get religion in the schools through the back door.”

However, Chip Campsen, a Republican in South Carolina’s State Legislature sees it differently:

“We get sobered by events like 9/11, and that sobering

brings about reflection on what virtues provide a foundation for a thriving republic."

Logically, the secularized version of society that the American Civil Liberties Union and others seek to impose upon us would have shocked Americans living a mere fifty years ago.

THE TYRANNY OF THE MINORITY?

America is not only a Christian nation, but it is a nation of Christians. Almost ninety percent of Americans — a huge majority — call themselves Christians. This was so from the beginning. Patrick Henry, a founder and patriot, said in 1776:

"It cannot be emphasized too strongly or too often that this great nation was founded not by religionists but by Christians, not on religions but on the Gospel of Jesus Christ. For that reason alone, people of other faiths have been afforded the freedom of worship here."

Ignoring the final sentence of Henry's observation, this and the comment by Chief Justice Jay are cited today by minorities fearful that the views of the majority might be forced upon them.

However, Jefferson, Madison and others *were* concerned that with the arrival of Democracy, the "tyranny of the majority" was a possibility. They decided to do something to protect minorities from the federal Leviathan. Their solution was twofold: the Bill of Rights and the concept of Separation of Powers would insure that each governmental branch would act as a check and balance with regard to the other.

So those who fear a "tyranny of the majority" needn't worry. From its inception, this country has enacted safeguards for minorities. Neither Jewish nor Christian beliefs are forced upon Muslims, Buddhists, atheists or anyone else.

But it seems this is not enough for some. Gradually, in a misguided attempt by

postmodernists to accommodate a small minority of different faiths and no faith at all, it's become the norm to try to eliminate any mention of God or a Creator from all laws, governmental activities, schools and public life. This despite the wishes of the vast majority who believe in God and see nothing wrong with praying to Him, mentioning His name now and then, mounting an occasional display of a religious nature in the public arena, such as the Ten Commandments or a Nativity scene, or even letting their religious beliefs influence their political views. In espousing these views, conservatives are *not* denying the importance of religious liberty. They do *not* advocate that the government set itself up as a kind of church, or that the Church set itself up as a kind of government. While it is true that the occasional "tyranny of the majority" can *sometimes* be uncomfortable for the minority, misguided attempts to restructure society to accommodate the few, now threaten the opposite; a 'tyranny of the minority,' which will *always* be uncomfortable for the many.

Two hundred years ago, Washington, in his *Response to the Whiskey Rebellion*, in 1794, said:

"If the laws are to be trampled upon with impunity, and a minority . . . is to dictate to the majority there is an end put, at one stroke, to republican government."

Indeed, Jefferson, picking up on Washington's thought, worried that courts would overstep their authority and instead of interpreting law would begin making law, turning the nation into an oligarchy; the rule of the few over the many.

WHAT'S WITH AMERICA'S PUBLIC SCHOOLS?

Hostility toward religion has become the prevailing rule in American public schools, a view that is clearly in opposition to the *Constitution*, the founding era, and Americans today. So powerful have certain educators become that we now see school

boards banning signs and music containing references to Santa Claus, Jesus, and other religious Christmas symbols. Even the famous words of Patrick Henry spoken in 1775 have been erased from many textbooks:

“An appeal to arms and the God of hosts is all that is left to us. But we shall not fight our battle alone. There is a just God that presides over the destinies of nations. The battle, sir, is not to the strong alone, is life so dear and peace so sweet as to be purchased at the price of chains and slavery? I know not what course others may take, but as for me, give me liberty or give me death.”

This development is reminiscent of the revisionism practiced under Communism in the former Soviet Union, and today in Red China and Cuba. *That* should make thinking people everywhere wonder what’s actually going on here. Is it, perhaps, the desire of Marxists and atheists among us to do exactly what Washington warned against? Put an end to republican government, replacing it with the repressive leftist agenda of Socialism and/or Communism? Washington again, writing to James Madison on March 2, 1788):

“The preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people.”

CONCLUSION:

From this republic’s earliest days, voices have called for preservation and continuance of the religious spirit of America. Only recently have people hostile to religion begun to invoke a false interpretation of the Establishment Clause in their effort to eliminate all references to God from the public forum. They seek to represent “separation of church and state” as meaning something it has never meant in American

history — that the state has no interest in religion and should look with disfavor on its presence in society.

But America was founded upon a belief in God. It has been led by men and women who presuppose the existence of a Supreme Being. Separation of God from government was never intended. A bogus interpretation of the Establishment Clause flies in the face of historical analysis. It has brought about changes undesirable and even dangerous to the health of a morally sound republic. Despite recent cries to eliminate Him from society, we *still* recognize God publicly as part of our way of life and the tradition that makes America a great nation. It's time for Americans to reject these nefarious voices and restore God and religion to the public forum.

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