

CONSTITUTIONAL RIGHTS FOUNDATION

Bill of Rights in Action

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Separating Church and State

Thomas Jefferson, James Madison, and most of the other founders favored the separation of church and state. Today, though, we are still debating where to draw the line separating church and state.

Shortly before the outbreak of the Revolutionary War, an evangelical Baptist preacher named "Swearing Jack" Waller attempted to lead a prayer meeting without a license from the colonial government of Virginia. Because he was violating Virginia's religion laws, "Swearing Jack" was jerked off his platform by sheriff's men who proceeded to beat his head against the ground. The sheriff then lashed him 20 times with a horsewhip.

At this time, the Church of England (also known as the Anglican Church) was the established religion of Virginia. This meant that the Anglican Church was the only officially recognized church in the colony. Virginia taxpayers supported this church through a religion tax. Only Anglican clergymen could lawfully conduct marriages. Non-Anglicans had to get permission (a license) from the colonial government to preach.

Although the Anglican Church was the sole established church in all five Southern colonies, other protestant Christian churches became established in the towns of the Northern colonies of New York, Massachusetts, Connecticut, and New Hampshire. Each town chose by majority vote one Protestant church to be supported by taxpayers. In these colonies, one church usually predominated. For example, in Massachusetts almost all towns selected the Congregational Church since the majority of people living in the colony belonged to that faith.

Thus, on the eve of the Revolutionary War, nine of the 13 colonies supported official religions with public taxes. Moreover, in these colonies, the government dictated "correct" religious belief and methods of worship. Religious dissenters, like "Swearing Jack," were discriminated against, disqualified from holding public office, exiled, fined, jailed, beaten, mutilated, and sometimes even executed. Only Rhode Island, Pennsylvania, New Jersey, and Delaware did not have a system linking church and state. After the Revolution, leaders like Jefferson and Madison worked to ensure freedom of religion for all citizens of the new nation.

The Struggle for Religious Freedom in Virginia

During the Revolutionary War, all Southern states ended the Anglican Church's monopoly on religion, but they continued to financially support Christian churches in general. Virginia, however, moved to separate church and state after the Revolution.

A year after Thomas Jefferson drafted the Declaration of Independence, he wrote a bill on religious freedom for his home state of Virginia. In writing these documents, Jefferson was strongly influenced by the 17th century English philosopher John Locke. In 1689, Locke had argued that "the church itself is a thing absolutely separate and distinct from the commonwealth [government]." Taking this idea from Locke, Jefferson proposed that Virginia end all tax support of religion and recognize the natural right of all persons to believe as they wish.

Jefferson introduced his bill to the Virginia Assembly in 1779, but state lawmakers did not consider the matter of church and state until after the Revolutionary War. In 1784, another Virginia patriot, Patrick Henry, proposed making Christianity the established religion of Virginia. After failing to get the General Assembly to pass this proposal, Henry submitted another religion bill that called for a tax supporting all Christian churches in the state. Henry felt this would improve public morals, which he thought had declined during the Revolution.

Under Henry's bill, taxpayers could designate their tax payment to go to the Christian church of their choice. Henry's bill probably would have passed had not Jefferson's ally, James Madison, persuaded the General Assembly to delay voting until the following year (Jefferson was in Paris as U.S. ambassador to France).

During spring and summer of 1785, Madison worked to sway public opinion against Henry's religious tax bill. In a widely circulated petition against the bill, Madison declared that it was the natural right of all persons, even atheists, to be left to their own private views of religion. He argued that throughout history "superstition, bigotry, and persecution" have accompanied the union of religion and government. He also asserted that Christianity did not need the support of government to flourish.

Baptists and other evangelical religious groups in Virginia also circulated petitions against the religious tax bill. They viewed this bill forcing government into church affairs and threatening religious liberty. Overwhelmed by the negative public response to Henry's bill, the General Assembly did not even bring it up for a vote. Instead, Madison reintroduced Jefferson's bill, which called for severing all ties between the state of Virginia and religion. Jefferson's "Virginia Statute for Religious Freedom" was passed on January 19, 1786. This was the first time that a government anywhere in the world had acted to legally separate religion from the state.

"A Wall of Separation"

As written in 1787, the U.S. Constitution did not mention religion except to prohibit any religious requirement for holding federal office. When the first Congress met in 1789, Madison proposed a series of amendments to the Constitution guaranteeing the rights of Americans. The opening words of the First Amendment declared that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The First and other nine amendments, called the Bill of Rights, were ratified in 1791 as part of the Constitution.

The Bill of Rights originally only limited acts of the federal government. Thus, the First Amendment's prohibition against laws "respecting an establishment of religion" did not affect what states could do. Consequently, seven states (including newly admitted Vermont) continued to assess taxes in support of Christian churches. State laws also frequently required public officeholders to be Christians, denied the vote to non-Christians, and enforced the Christian Sabbath.

When Thomas Jefferson became president in 1801, he tried to maintain a strict separation between government and religion in federal matters. He was criticized for refusing to proclaim a national day of prayer and thanksgiving as presidents George Washington and John Adams had done before him. Jefferson wrote a letter to the Baptists of Danbury, Connecticut, to explain his views on religion. In this letter, he quoted the First Amendment's clause prohibiting Congress from passing laws establishing religion. Jefferson then remarked that this establishment clause built "a wall of separation between Church and State."

Where Should the Line Be Drawn?

Gradually, all states followed the lead of Virginia in ending religion taxes. Massachusetts in 1833 was the last of the original 13 states to do this. But some states still involved themselves with religion. For instance, several states made recitation of the Lord's Prayer and devotional Bible readings mandatory in public schools.

Not until the 20th century did the U.S. Supreme Court apply most of the Bill of Rights to the states. The Supreme Court has ruled that the 14th Amendment (ratified in 1868) requires states to guarantee fundamental rights such as the First Amendment's prohibition against the establishment of religion. This means that states, like the federal government, can "make no law respecting an establishment of religion."

In 1947, the Supreme Court attempted to define the "establishment of religion" clause of the First Amendment. Justice Hugo Black, writing for the court, held:

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . In the words of Thomas Jefferson, the clause against the establishment of religion by law was intended to erect a "wall of separation between Church and State." [Everson v. Board of Education (1947).]

Some constitutional experts dispute Justice Black's definition of the establishment clause. They argue that "an establishment of religion" only prohibits the federal and state governments from supporting a national church or preferring one religion over others. In a 1985 case, current Supreme Court Chief Justice William Rehnquist stated in a minority opinion, "The Establishment Clause did not require government neutrality between religion and irreligion [no religion] nor did it prohibit the federal government from providing nondiscriminatory aid to religion." [Wallace v. Jaffree (1985).] Rehnquist and

others take the position that government may aid all religions or religion in general as long as no groups suffer discrimination.

The Supreme Court still struggles today over exactly where to draw the line separating church and state. On the one hand, the Supreme Court has struck down state laws providing for organized prayer in the public schools. But the court has also upheld laws that exempt churches from paying taxes.

For Discussion and Writing

1. How were Baptists and other dissenting religious groups discriminated against during colonial times?
2. In what ways did John Locke, Thomas Jefferson, and James Madison agree on separating church and state?
3. How do Justices Black and Rehnquist differ over the meaning of the establishment clause in the First Amendment? Whom do you agree with? Why?