

Separation of Church and State

Wall of Separation

When Thomas Jefferson first used the phrase “wall of separation,” it is certain that he never would have anticipated the controversy that surrounds that term two centuries later. The metaphor has become so powerful that more Americans are more familiar with Jefferson’s phrase than with the actual language of the Constitution.[\[1\]](#)

In one sense, the idea of separation of church and state is an accurate description of what must take place between the two institutions. History is full of examples (e.g., the Inquisition) of the dangers that arise when the institutions of church and state become too intertwined.

But the contemporary concept of separation of church and state goes far beyond the recognition that the two institutions must be separate. The current version of this phrase has come to mean that there should be a complete separation between religion and public life.

At the outset, we should state the obvious: the phrase “separation of church and state” is not in the Constitution. Although that should be an obvious statement, it is amazing how many citizens (including lawyers and politicians) do not know that simple fact.

Since the phrase is not in the Constitution and not even significantly discussed by the framers (e.g., *The Federalist Papers*), it is open to wide interpretation and misinterpretation. The only clear statement about religion in the Constitution can be found in the First Amendment and we will look at its legislative history later in this article.

Thomas Jefferson used the phrase “separation of church and state” when he wrote to the Danbury Baptist Association in 1802. Then the phrase slipped into obscurity. In 1947, Justice Hugo Black revived it in the case of *Everson v. Board of Education*. He wrote that the First Amendment “was intended to erect a wall of separation between church and State.” He added that this wall “must be kept high and impregnable.”[\[2\]](#)

The wall metaphor revived by Justice Black has been misused ever since. For example, the wall of separation has been used to argue that nearly any religious activity (prayer, Bible reading, moment of silence) and any religious symbol (cross, creche, Ten Commandments, etc.) is impermissible outside of church and home. Most of these activities and symbols have been stripped from public arenas. As we will see, it doesn't appear that Jefferson intended anything of the sort with his metaphor.

It's also worth noting that six of the thirteen original states had official, state-sponsored churches. Some states (Connecticut, Georgia, Maryland, Massachusetts, New Hampshire, and South Carolina) even refused to ratify the new Constitution unless it included a prohibition of federal involvement in the state churches.

History of the Phrase (part one)

So what was the meaning of “separation of church and state” and how has it changed? Some history is in order.

The presidential campaign of 1800 was one of the most bitterly contested presidential elections in American history. Republican Thomas Jefferson defeated Federalist John Adams (who served as Vice-President under George Washington). During the campaign, the Federalists attacked Jefferson's religious beliefs, arguing that he was an “atheist” and an “infidel.” Some were so fearful of a Jefferson presidency, they buried

their family Bibles or hid them in wells fearing that President Jefferson would confiscate them.^{3} Timothy Dwight (President of Yale College) even warned a few years before that if Jefferson were elected, “we may see the Bible cast into a bonfire.”^{4} These concerns were unwarranted since Jefferson had written a great deal in the previous two decades about his support of religious liberty.

In the midst of these concerns, the loyal Republicans of the Danbury Baptist Association wrote to the president congratulating him on his election and his dedication to religious liberty. President Jefferson used the letter as an opportunity to explain why he did not declare days of public prayer and thanksgiving as Washington and Adams had done so before him.

In his letter to them on New Year’s Day 1802, Jefferson agreed with their desire for religious freedom saying that religious faith was a matter between God and man. Jefferson also affirmed his belief in the First Amendment and went on to say that he believed it denied Congress (or the President) the right to dictate religious beliefs. He argued that the First Amendment denied the Federal government this power, “thus building a wall of separation between Church and State.”

It appears that Jefferson’s phrase actually came from the 1800 election. Federalist ministers spoke against Jefferson “often from their pulpits, excoriating his infidelity and deism.”^{5} Republicans therefore argued that clergymen should not preach about politics but maintain a separation between the two.

We might add that a century and a half before Jefferson wrote to the Danbury Baptists, Roger Williams erected a “hedge or wall of separation” in a tract he wrote in 1644. Williams used the metaphor to illustrate the need to protect the church from the world, otherwise the garden of the church would turn into a wilderness.^{6} While it might be possible that Jefferson borrowed the metaphor from Roger Williams, it appears that

Jefferson was not familiar with Williams' use of the metaphor.[{7}](#)

Jefferson used his letter to the Danbury Baptists to make a key point about his executive power. In the letter, he argued that the president had no authority to proclaim a religious holiday. He believed that governmental authority belonged only to individual states. Essentially, Jefferson's wall of separation applied only to the national government.

History of the Phrase (part two)

Although the Danbury letter was published in newspapers, the "wall of separation" metaphor never gained much attention and essentially slipped into obscurity. In 1879 the metaphor entered the lexicon of American constitutional law in the case of *Reynolds v. United States*. The court stated that Jefferson's Danbury letter "may be accepted almost as an authoritative declaration of the scope and effects of the [First] Amendment thus secured."[{8}](#) Although it was mentioned in this opinion, there is good evidence to believe that Jefferson's metaphor "played no role" in the Supreme Court's decision.[{9}](#)

In 1947, Justice Hugo L. Black revived Jefferson's wall metaphor in the case of *Everson v. Board of Education*. He applied this phrase in a different way from Thomas Jefferson. Black said that the First Amendment "was intended to erect a wall of separation between church and State." He added that this wall "must be kept high and impregnable."[{10}](#)

Daniel Dreisbach, author of *Thomas Jefferson and the Wall of Separation Between Church and State*, shows that Black's wall differs from Jefferson's wall. "Although Justice Black credited the third president with building the 'wall of separation,' the barrier raised in *Everson* differs from Jefferson's in function and location."[{11}](#)

The wall erected by Justice Black is “high and impregnable.” On the other hand, Jefferson “occasionally lowered the ‘wall’ if there were extenuating circumstances. For example, he approved treaties with Indian tribes which underwrote the ‘propagation of the Gospel among the Heathen.’”[{12}](#)

There is also a difference in the location of the two walls. Whereas Jefferson’s “wall” explicitly separated the institutions of church and state, Black’s wall, more expansively, separates religion and all civil government. Moreover, Jefferson’s “wall” separated church and the federal government only. By incorporating the First Amendment nonestablishment provision into the due process clause of the Fourteenth Amendment, Black’s wall separates religion and civil government at all levels—federal, state, and local.[{13}](#)

Jefferson’s metaphor was a statement about federalism (the relationship between the federal government and the states). But Black turned it into a wall between religion and government (which because of the incorporation of the Fourteenth Amendment could also be applied to state and local governments).

First Amendment

How did we get the wording of the First Amendment? Once we understand its legislative history, we can understand the perspective of those who drafted the Bill of Rights.[{14}](#)

James Madison (architect of the Constitution) is the one who first proposed the wording of what became the First Amendment. On June 8, 1789 Madison proposed the following:

“The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.”

The representatives debated this wording and then turned the task over to a committee consisting of Madison and ten other House members. They proposed a new version that read:

"No religion shall be established by law, nor shall the equal rights of conscience be infringed."

This wording was debated. During the debate, Madison explained "he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."

Representative Benjamin Huntington complained that the proposed wording might "be taken in such latitude as to be extremely hurtful to the cause of religion." So Madison suggested inserting the word "national" before the word "religion." He believed that this would reduce the fears of those concerned over the establishment of a national religion. After all, some were concerned America might drift in the direction of Europe where countries have a state-sponsored religion that citizens were often compelled to accept and even fund.

Representative Gerry balked at the word "national," because, he argued, the Constitution created a federal government, not a national one. So Madison withdrew his latest proposal, but assured Congress his reference to a "national religion" had to do with a national religious establishment, not a national government.

A week later, the House again altered the wording to this:

"Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience."

Meanwhile, the Senate debated other versions of the same amendment and on Sept. 3, 1789, came up with this wording:

“Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion.”

The House didn't like the Senate's changes and called for a conference, from which emerged the wording ultimately included in the Bill of Rights:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

As we can see, Congress was attempting to prevent the establishment of a national religion or a national church with their drafting of the First Amendment.

Separation, Sponsorship and Accommodation

How should the government relate to the church? Should there be a separation of church and state? Essentially there are three answers to these questions: separation, sponsorship, and accommodation.

At one end of the spectrum of opinion is strict separation of church and state. Proponents of this position advocate the complete separation of any religious activity (prayer, Bible reading) and any religious symbol (cross, Ten Commandments) from government settings. Richard John Neuhaus called this “the naked public square” because religious values are stripped from the public arena.[{15}](#)

Proponents of this view would oppose any direct or indirect benefit to religion or religious organizations from the government. This would include opposition to tuition tax credits, education vouchers, and government funding of faith-based organizations.

At the other end of the spectrum would be sponsorship of religious organizations. Proponents would support school

prayer, Bible reading in public schools, and the posting of the Ten Commandments in classrooms and public places. Proponents would also support tuition tax credits, education vouchers, and funding of faith-based organizations.

Between these two views is accommodation. Proponents argue that government should not sponsor religion but neither should it be hostile to religion. Government can accommodate religious activities. Government should provide protection for the church and provide for the free expression of religion. But government should not favor a particular group or religion over another.

Proponents would oppose direct governmental support of religious schools but would support education vouchers since the parents would be free to use the voucher at a public, private school, or Christian school. Proponents would oppose mandated school prayer but support programs that provide equal access to students. Equal access argues that if students are allowed to start a debate club or chess club on campus, they should also be allowed to start a Bible club.

We should reject the idea of a “naked public square” (where religious values have been stripped from the public arena). And we should also reject the idea of a “sacred public square” (where religious ideas are sponsored by government). We should seek an “open public square” (where government neither censors nor sponsors religion but accommodates religion).

Government should not be hostile toward religion, but neither should it sponsor religion or favor a particular faith over another. Government should maintain a benevolent neutrality toward religion and accommodate religious activities and symbols.

Notes

1. Barbara Perry, “Justice Hugo Black and the Wall of Separation between Church and State,” *Journal of Church and*

State 31(1989): 55.

2. *Everson v. Board of Education*, 330 U.S., 16, 18.

3. Dumas Malone, *Jefferson and His Time*, vol. 3, *Jefferson and the Ordeal of Liberty* (Boston: Little, Brown, 1962), 481.

4. Timothy Dwight, *The Duty of Americans, at the Present Crisis*, reprinted in Ellis Sandoz, ed., *Political Sermons of the American Founding Era, 1730-1805* (Indianapolis, IN: Liberty Press, 1991), 1382.

5. Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002) 111.

6. Roger Williams, "Mr. Cotton's Letter Lately Printed, Examined and Answered," in *The Complete Writings of Roger Williams* (Providence, RI: Providence Press, 1866), 1:392.

7. Edwin Gaustad, *Sworn on the Altar of God: A Religious Biography of Thomas Jefferson* (Grand Rapids, Mich.: William B Eerdmans, 1996), 72.

8. *Reynolds v. United States*, 98 U.S. 145, 164.

9. Robert M. Hutchins, "The Future of the Wall," in *The Wall between Church and State*, ed. Dallin H. Oaks (Chicago: University of Chicago Press, 1963), 17.

10. *Everson v. Board of Education*, 330 U.S., 16, 18.

11. Daniel Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: New York University Press, 2002), 125.

12. Derek H. Davis, "Wall of Separation Metaphor," *Journal of Church and State*, vol. 45(1), Winter 2003.

13. Dreisbach, *Thomas Jefferson*, 125.

14. The details of the debate on the First Amendment can be found in the Annals of Congress. *The Debates and Proceedings in the Congress of the United States*. "History of Congress." 42 vols. Washington, D.C.: Gales & Seaton, 1834-1856.

15. Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America* (William B. Eerdmans Publishing Co., 1984).

See Also:

- ["I Have Some Questions on the Separation of Church and State"](#)