

# 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.<sup>{3}</sup> 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.”<sup>{4}</sup> 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.”<sup>{5}</sup> 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.<sup>{6}</sup> 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"](#)

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# The Bill of Rights

## Introduction

The Bill of Rights is the first ten amendments to the Constitution. It establishes the basic civil liberties that the federal government cannot violate.

When the Constitution was drafted some were fearful that a federal government would usurp the rights and powers of the states and the people. Critics were fearful that the federal government would exceed its enumerated powers—a fear that in hindsight seems most reasonable. The Bill of Rights was designed to address those apprehensions. The states ratified the Bill of Rights in 1791, three years after the Constitution was ratified.

In this article we are going to provide a brief look at the ten amendments that comprise the Bill of Rights.

## First Amendment

*Congress shall make no law respecting an 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 peaceably to assemble, and to petition the Government for a redress of grievances.*

The First Amendment begins by preventing Congress from establishing religion or prohibiting the free exercise of religion. Originally the religion clause of the First Amendment was intended to prevent the federal government from establishing a national church. Some New England states maintained established state-churches until the 1830s.

In the last century, the Supreme Court has extended the First Amendment to any religious activity by any governmental body. The establishment clause originally prohibited the establishment of a national church by Congress, but now has been broadened to prohibit anything that appears like a government endorsement of religious practice. The free exercise clause supposedly prohibits government from placing any burden on religious practice.

The second part of the First Amendment provides freedom of political participation. This includes freedom of speech, freedom of the press, and freedom of assembly with the right to petition the government for a redress of grievances. This quartet of freedoms allows citizens to be actively involved in electing representatives and influencing legislation.

## **Second Amendment**

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*

The Second Amendment gives Americans the right to keep and bear arms. Although the amendment clearly provides such rights, proponents of limiting a citizen's right to arms attempt to argue that the amendment only applies to a militia like the National Guard.

Before the drafting of the Constitution, citizen-militias existed to guarantee order and domestic security. The framers envisioned an armed citizenry that was separate from a federal

military that could be controlled by government authorities. They were well aware of the abuses that came when a King or Prime Minister could control a standing army. Armed citizens provided an important check and balance of power. The framers well understood the threat to freedom when gun ownership was a government monopoly.

## Third Amendment

*No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.*

The Third Amendment guarantees that no soldier may be quartered in any house without the consent of the owner. At its face, this would seem to be an obsolete amendment since the federal government has never placed soldiers in private homes.

Unfortunately this amendment has been used to make the case for a right to privacy in the U.S. Constitution. The Supreme Court cited this amendment in 1965 in the case of *Griswold v. Connecticut* involving the issue of contraceptives. This case provided the foundation for the infamous abortion case of *Roe v. Wade* in 1973.

Many legal scholars question whether the Constitution has an implicit right to privacy. Obviously the Third Amendment provides homeowners with protection against unreasonable military intrusion. But it is quite a stretch to manipulate this amendment into a justification for a right to privacy with regard to contraception or abortion.

## Fourth Amendment

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall*

*issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

The Fourth Amendment requires that a specific warrant be obtained before a search is made of a person, their house, their papers, or personal effects. The framers wanted to ban the British practice of obtaining a general warrant which allowed the seizure of anything in the suspect's home. A search requires a specific warrant issued by a neutral magistrate.

In the last century, the Supreme Court has refined the amendment through what is called "the exclusionary rule." Evidence obtained outside the specific requirements of the warrant is inadmissible in a court of law. Cases in court often swing on whether evidence was obtained legally and whether the law enforcement officer acted in "good faith" in the securing of that evidence.

## **Fifth Amendment**

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

The Fifth Amendment is best known for guaranteeing a citizen's right to refrain from answering a question that might be incriminating. Actually there is more to this amendment than "taking the fifth." The amendment also provides for due

process, a grand jury, and freedom from double jeopardy.

Many citizens believe that the amendment guarantees your right to remain silent. Actually the amendment states that no person should be compelled to be a witness against himself. The right to remain silent comes from the so-called Miranda warnings read by a police officer before questioning. The Supreme Court mandated these phrases in an attempt to further protect the rights of the accused.

## Sixth Amendment

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

The Sixth Amendment provides additional rights in a criminal trial. These include the right to an attorney, the right to a trial by jury, and the right to confront one's accusers.

The right to an attorney implies the right to "competent" counsel. Appeal courts have had to decide what constitutes competent or incompetent counsel. Usually a guilty verdict is allowed to stand if it seems that an attorney's actions did not significantly affect the judicial outcome.

The right to confront your accusers was a deliberate attempt to prevent the possibility of the U.S. some day having a Star Chamber as occurred previously in England. Witnesses must testify in open court and thus are available for cross-examination. The only cases where this is not done are in child abuse cases where child-victim testimony is allowed by

videotape.

## Seventh Amendment

*In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment addresses civil cases. It provides for a jury trial (in cases involving more than \$20) that involves suits at common law. Although this seems like a logical right that would already be assumed, it reflects the concerns of the framers that a federal judiciary would set aside jury verdicts and perhaps even eliminate juries altogether.

## Eighth Amendment

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

The Eighth Amendment protects citizens against excessive actions. These include excessive bail, excessive fines, and cruel and unusual punishment. These were all provisions found in English law used to restrict the excesses of the English kings.

The Supreme Court on many occasions has been called upon to consider whether a particular punishment was proportional to the crime. This has also included a number of controversial rulings over the last few decades about whether long prison terms or capital punishment constitutes cruel and unusual punishment.

## Ninth Amendment

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

The Ninth Amendment prevents the courts from thinking that the rights listed in the first eight amendments are exclusive and exhaustive. In other words, just because the Constitution does not specifically list a right does not mean that right is not retained by the people.

Judicial activists have used this amendment to justify their expansion of additional rights. The Supreme Court reasoned in this way concerning the so-called right to privacy. The Court argued that the First, Third, Fourth, and Fifth Amendments all protect privacy in some way. Therefore, they argued that the right to privacy does exist and should be protected by the Constitution.

## Tenth Amendment

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

The Tenth Amendment protects the structure of federalism. Those powers not specifically delegated to the federal government are reserved to the States or the people. The framers intended that the people and the states would decide how power was to be delegated to the other levels of government (cities, towns, counties, etc.).

The Tenth Amendment was written to provide additional protection for federalism since many citizens were concerned with giving a national government too much power. Although the Tenth Amendment did provide some protection, its impact was



undercut by the Fourteenth Amendment that effectively made the federal government the ultimate protector of states rights and has lessened its importance. **For Further Reading**

David M. Wagner, *Freedom Forum: A Commentary on the Bill of Rights*, Washington, DC: Family Research Council, 2000.

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# Church and State

## Introduction

Soon after assuming office as president, Thomas Jefferson received a letter from the Danbury Baptist Association of Connecticut containing warm congratulations for his victory. In January of 1802 Jefferson drafted a response of unpredictable importance. The contents of the letter have influenced the shape of the American debate over the place of religion in public affairs ever since. Addressing the Baptists, Jefferson wrote:

*Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinion, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State. [\[1\]](#) (emphasis added)*

The idea of a “high wall of separation” first entered into our nation’s judicial conscience in the 1947 *Everson v. Board of Education* case. Although the court decided to allow public funding for the transportation of Catholic school students, it invoked the “high wall” doctrine as a rule for determining the future use of public funds. Justice Hugo Black appealed to Supreme Court precedent as well as the intent of the Founding Fathers in winning his 5-4 decision which included the “high wall” language. Justice Black wrote that our founders “reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.”[\[2\]](#) This 1947 decision became the catalyst for a growing debate in the last half of the 20th century regarding the relationship between faith and government in America.

The phrase *high wall of separation* has divided Americans into a number of different groups depending upon their theological and political leanings. Some feel that the high court drastically overstepped the original meaning of Jefferson’s words, going far beyond his original intent. Others applaud the Court’s attempt to separate once and for all this country’s bias towards Christianity, especially its Protestant wing. Since the question often revolves around the original intent of the Founding Fathers, many seek to determine whether or not the Founders supported a Christian state, a secular state, or something in between.

All of this points to a few important questions faced by Christians. How should individual believers and the church as a whole relate to the state and its various institutions? What about the role individuals should take in politics, efforts to reform government, and attempts to pass laws that make our society behave more “biblically”? In this article we will look at three different responses to these questions and examine

some of the pros and cons of each. Since every believer is limited in both their time and resources, it is important to think carefully about where we focus our efforts in furthering God's kingdom. The purpose of this discussion is not to question anyone's commitment to Christ, but to merely step back and look at some of the underlying assumptions held by each of these three positions.

## Anti-Religious Separatists

Americans support the notion of separation of church and state by a small majority.[{3}](#) Just what we mean by *separate* seems to be the real issue. Some go as far as to argue that any position on public policy that is motivated by a religious belief is out of bounds and should not receive a hearing. This group, who might be called "anti-religious separatists," argues that religion is fine as long as it does not invade the public sphere. Religion must impact only private morality; if it leaks into the public square where policy making actually occurs, it is inappropriate at best. There are many examples of such anti-religious bias. Writing about a speech that Ronald Reagan made that included religious overtones, a *New York Times* article said, "You don't have to be a secular humanist to take offense at that display of what, in America, should be private piety. . . . Americans ask piety in Presidents, not displays of religious preference. Mr. Reagan uttered not just an ecumenical summons to the spirit. He was pandering to the Christian right that helped to propel his national political career."[{4}](#) Another presidential candidate wrote, "No president should attempt to transform policy debates into theological disputes."[{5}](#) Some believe the separation of church and state to mean a complete separation of religious values from public policy debates.

It's one thing to complain of inappropriate public piety, it is quite another to apply an anti-religious bias to court decisions and other actions that affect all Americans,

religious or not. In one of the most important Supreme Court decisions on the separation of church and state in regards to education, Justices William Douglas and Hugo Black concurred that religious schools are by nature harmful. Writing specifically about Catholics schools they said:

*The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, not to teach Scripture truths and Americanism, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think.*[\[6\]](#)

Although this quote refers specifically to Catholic schools, its description could apply to many types of private religious schools. This caricature of private Christian schools, that they do not teach but indoctrinate, that they fail to convey Americanism (whatever that is), is still a concern of many who have observed and objected to the recent rapid growth in private schooling.

Those who hold an “anti-religious separatist” viewpoint often talk positively of an American civil religion. The idea is that some religion might be better than no religion at all, but it must never actually enter into policy decisions. A thin veneer of religion is all that is needed. An example might be President Dwight Eisenhower urging Americans to spend the first Fourth of July holiday of his administration in prayer and penance. He then proceeded to fish in the morning, go golfing in the afternoon, and play cards all evening.[\[7\]](#)

When Christians advocate such a vague form of public religion, they do great harm to the faith. A lukewarm civil religion does not address the redeeming sacrifice that makes Christianity what it is. Nor does it value the revealed

knowledge found in the Bible. The idea of providing America with a non-preferential treatment of religion is legitimate. The danger lies in the promotion of religious activity that waters down the beliefs of the various faiths, both Christian and non-Christian.

## Christian America

It is a popular notion among Christians that America was founded as a Christian nation, and that the goal of believers everywhere should be to place our government back into the hands of committed Christians who hold acceptable views on theological and moral issues. As a corollary to this position, it follows that our nation's institutions, its schools, courts, regulatory commissions, etc, should be established on Christian principles. Various Christian groups use language that supports this view. The Christian Coalition, Eagle Forum, Concerned Women for America, and others often present this perspective. Jerry Falwell has stated, "Any diligent student of American history finds that our great nation was founded by godly men upon godly principles to be a Christian nation."[\[8\]](#) John Whitehead, in his 1977 book *The Separation Illusion*, wrote, "In recent years Christians and non-Christians alike have been questioning whether America was ever a Christian nation. Without doubt it was, but secular historians have eradicated as much Christian influence as possible from history."[\[9\]](#)

Pat Robertson began the Christian Coalition in response to this perceived conspiracy to purge our history and government from Christianity. Stating its goals, its executive director said, "What Christians have got to do is take back this country, one precinct at a time, one neighborhood at a time, and one state at a time, I honestly believe that in my lifetime we will see a country once again governed by Christians . . . and Christian values."[\[10\]](#)

This view has much to commend itself in the actual words used

by our Founding Fathers. John Eidsmoe, Peter Marshall, Marshall Foster, and David Barton have provided a wealth of examples in their writings of how the Founders used Christian ideas and terminology to describe their efforts to create a new nation.

Those who hold to this view are comfortable with making Christianity the semi- established religion of America. Everywhere the government is involved in our lives would take on a Christian flavor. Every citizen, regardless of religious affiliation, would be responsible for understanding and adjusting to this ubiquitous Christian culture.

To many, this would be doing to those of other faiths, including atheists, just what we have been accusing them of doing to Christians. Forcing people to separate their public lives from their beliefs and thus denying them their first amendment freedom of religion. Another question that arises is, What are Christians going to do if they fail to muster the necessary votes to put into place the people and legislation that they desire?

This line of thinking can easily lead to a “whatever it takes” mentality to return the nation to its Christian roots, including armed revolt if necessary. This form of Christian ethnocentricity discounts the importance of Christians in other countries and the possibility that God might use other nations as well as the U.S. to accomplish His purposes.

There is no question that we have been blessed as a nation because our Founding Fathers built our government on Christian principles regarding human nature and a theistic view of reality. We enjoy common grace as a people when our laws conform to God’s standard of justice. The question that we must ask is, Can we as Christians can impose a biblical culture on a majority who no longer acknowledge the authority of Scripture? Since only 32 percent of Americans agree that “The government should take special steps to protect the

Judeo-Christian heritage,” this question is more than theoretical.<sup>{11}</sup> Perhaps a better goal would be to work for a government based on the concepts of freedom and neutrality with regards to religion.

## Positive Neutrality

The idea of positive neutrality begins with the assumption that both religious structures and the state possess a certain degree of sovereignty over their respective domains. Each possess certain rights and responsibilities and should be free to operate without interference from the other. As the Dutch Protestant Abraham Kuyper stated it: “The sovereignty of the State and the sovereignty of the Church exist side by side, and they mutually limit each other.”<sup>{12}</sup> Christians can find support for this view in biblical passages that describe both the church and the state as divinely ordained realities (1 Peter 2 and Romans 13).

Positive neutrality argues that religious organizations have both rights and responsibilities. According to Stephen Monsma, author of *Positive Neutrality*, religious groups have the right to develop and teach their core beliefs, to shape their member’s behavior and attitudes, to provide a wide range of services to members and non-members, and to participate in the policy making process of our republic. On the responsibility side, religious organizations must both accept and seek to enhance the authority and legitimacy of the state and encourage its members to obey its lawful decisions. Religious groups should also seek to develop civic virtue that enhances public life and not attempt to take over those things given to the state to perform. This does not mean that religious groups do not have the right to criticize the state; it means that they may not work to remove its legitimacy.

According to the notion of positive neutrality, the state also has certain rights and responsibilities. The government should make decisions that coordinate, protect, encourage, and

empower society's various spheres of influence (including the religious sphere) with the goal of promoting justice, the public interest, the common good, or some other similar goal. The state is not to transgress the sovereignty of the other spheres although there are times when it is appropriate for the state to give material aid, in a neutral manner, to organizations in another sphere.

The immediate impact of moving towards a system of positive neutrality would be reflected in three areas. First, our political system would have to tolerate and accommodate a wider range of religious practices. Second, the state would have to protect the right of religious groups to influence public policies. And finally, rather than working only through secularly based groups and programs, the government would fund the activities of both religious and secular groups for the purpose of providing needed social programs. These changes may be possible only by dropping the "secular purpose" part of what is known as the Lemon test, a three part test for appropriate government spending resulting from the *Lemon v. Kurtzman* Supreme Court case in 1971.

What this means, in effect, is that when the government gives financial aid to schools, homeless shelters, day care, or other agencies, it cannot discriminate against religiously based organizations. To continue to do so shows a bias towards secular organizations, motivations, and ideals.

## **Conclusion**

We have considered three views of how the church and the state should relate to each other. The first was the anti-religious separatists. This group included those who desire what could be called a naked public square, naked of any religious influence. The second was the Christian America perspective; it advocates a sacred public square and the semi-establishment of the Christian religion. The third view is called positive neutrality, which argues for an open public square. The first



two positions discriminate against the religious rights of Christians or non-Christians, the last treats all religious groups equally and does not favor secular organizations over religious ones.

Let's look at the specific issue of religion in our schools and see how the notion of positive neutrality might change what we consider to be constitutional and what isn't. Currently the Court uses a three part test to determine constitutionality. First, a program must have a secular purpose. Second, it cannot further a religious effect, and finally, it may not cause excessive entanglement between religion and the state. In its attempt at applying these rules, the Court has created a very unclear line of what is permissible and what isn't. It has forbidden state-composed prayers, Bible reading, reading of the Lord's Prayer, posting the Ten Commandments, a minute of silence for meditation and prayer, mandating the teaching of evidence for creationism, and certain types of prayers at graduation ceremonies. However, it has permitted release time programs held off campus for religious instruction, teaching about religion, transportation for private school children, a minute of silence for meditation, and voluntary, student-led and -initiated religious clubs.

The obvious result of the Lemon test has been a bias against the religious and for the secular, not neutrality. In trying to account for local religious practices, some justices have argued that prayer and religious celebrations are actually secular and traditional activities rather than acts of worship. This tactic satisfies no one. Positive neutrality argues for a full and free play of all religious groups and of both religion and secularism. True neutrality is achieved by welcoming and encouraging all religions and secular philosophies to participate in the open marketplace of ideas on campus.

True neutrality could be accomplished in our public schools by

applying the equal access principle the Court used in *Westside Community Schools v. Mergen*. This decision treated all extracurricular clubs, both religious and secular, with neutrality. This principle could be applied to prayer, the study of origins, and the posting of the Ten Commandments. In effect, this would remove some of the anti-religious bias that pervades public schools.

Neutrality is also enhanced when the government encourages educational choice by funding private schools regardless of their religious or non-religious nature. By allowing vouchers for parents to use to send their children to religious schools of their choice, the government would be treating religious and non-religious schools in a neutral manner.

Positive neutrality insists that religious ideas should never be forced to hide themselves behind secular ones in order to participate in the public square. The government is not being neutral when it endorses a secular idea over a religious one in our schools or in other social programs. While many Americans are unhappy with the government's current bias against religious beliefs, it remains to be seen if they are ready for real religious freedom that would allow full participation in the public realm by all faiths and philosophies.

## Notes

1. Edwin Gaustad, *Sworn On The Altar Of God* (Grand Rapids, MI: Eerdmans, 1996), 99.
2. Wayne House, ed., *Restoring The Constitution* (Dallas, TX: Probe Books, 1987), 298.
3. Stephen V. Monsma, *Positive Neutrality* (Grand Rapids, MI: Baker Books, 1993), 57.
4. Ibid., 63.

5. Ibid.

6. Ibid., 71.

7. George Will, "Who Put Morality In Politics?" *Newsweek*, 1980.

8. Monsma, 73.

9. John Whitehead, *The Separation Illusion* (Milford, MI: Mott Media, 1977), 17.

10. Monsma, 73.

11. Ibid., 57.

12. Ibid., 179.

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## The Culture of Disbelief

A new book, *The Culture of Disbelief* by Stephen Carter, may be the catalyst to open up a much needed discussion on the role of religious belief in public life. It has even caught the attention of President Clinton. The author teaches law at Yale University, is an Episcopalian, an African-American, and to a great degree an iconoclast, a nonconformist whose ideas will please neither the right nor the left, the liberal nor the conservative. But, just as it took a Nixon, with his irrefutably conservative credentials, to open the door to better relations with communist China, it may be necessary for a Stephen Carter to help bring back into balance the role of

religion in America.

This book is provocative, in an irksome, irritating, vexing way, but also in an alluring, insightful way. Carter's defense of religiously motivated actions in the public square (in government, education, and the marketplace, or wherever people conduct public business) is worth cheering about. Carter argues that our government has trivialized serious religious belief to the point that we are losing the protection once provided by the First Amendment, which was written, according to Carter, to protect religious groups from government interference, not to protect the non-religious from the religious in our society.

The vexing part of Carter's book is his consistent rejection of conservative biblical positions. He argues vehemently for the right of others to hold them, but then declares these positions to be naive, developed by shoddy thinkers, and just plain wrong. His complete confidence in his position, often without stating why, will be very irritating to readers who hold to biblical inerrancy and a biblical worldview.

With that warning said, this is still an important book for anyone interested in the role of religious belief in America. Carter rightfully points out that the Constitution and First Amendment were written for a world in which regulation was expected to be rare and would almost never impinge on religious liberty. Today, we live in a highly regulated welfare state, one which sees no limits to its regulatory powers. There is literally no place to hide for those who are religious and try to act in a way consistent with those beliefs.

Professor Carter makes a powerful argument that governmental agencies are removing religion as an "ground for objection" to its various mandates, whether they be sex education in the schools or housing anti-discrimination laws. In other words, the beliefs or disbeliefs of those running our government are

being imposed on Christians via the power of the ever expanding ruling bureaucracy.

Carter responds to this governmental encroachment into the intimate details of our lives by calling those on both sides of the ideological debates to value, not oppose, those who refuse to accede to the authority of others, for it yields the diversity that America needs. His lucid arguments for true religious freedom, especially from his political and religious position, are helpful and well thought out. Carter is willing to speak boldly against the tyranny of secular government, especially when governmental agencies become oppressive.

Again, let me be very clear. This book will be difficult to read for many believers. Professor Carter bends over backwards to make his message palatable to the more politically correct crowd on our college campuses and in government. On the other hand, conservative Christians can benefit from a close reading of this book. If this book has a significant impact, our government could return to (in regard to religious freedoms) a position much closer to that of our Founding Fathers.

## **God as a Hobby**

The most powerful message of *The Culture of Disbelief* is that religion has been trivialized in America. By religion, professor Carter is referring to any worshipping group that believes in a supernatural God and that actually makes demands on its members, in this life, based on its beliefs about the nature and character of God. He notes that "More and more, our culture seems to take the position that believing deeply in the tenets of one's faith represents a kind of mystical irrationality, something that thoughtful, public-spirited American citizens would do better to avoid. If you must worship your God, the lesson runs, at least have the courtesy to disbelieve in the power of prayer; if you must observe your sabbath, have the good sense to understand that it ...is just like any other day of the week." According to Mr. Carter, this

development is both unfortunate and dangerous to our religious freedoms in America.

This bias has encouraged some of our public institutions to accept religious prejudice as neutrality. The public schools are one of the more obvious illustrations of this bias. One recent example involves a Colorado public school teacher who was told by superiors to remove his Bible from his desk where students might see it. He was told not to read it, even silently, when students were present. He was also ordered to remove books on Christianity from his classroom library, even though books on Native American religious traditions and the occult were allowed to remain. According to Carter, "The consistent message of modern American society is that whenever the demands of one's religion conflict with what one has to do to get ahead, one is expected to ignore the religious demands and act...well...rationally."

Another example of this bias towards religious faith in general is found in modern America's phobia about those who attempt societal change as a result of religious beliefs. An anti-abortion protestor that is against abortion for religious reasons will conjure up grim pictures of religious wars, inquisitions, and other assorted religious atrocities as examples of people trying to impose their religious will on other people. It is like saying that if those murdered for religious reasons had somehow had a choice, they would have chosen a secular killer: "that those whose writings led to their executions under, say, Stalin, thanked their lucky stars at the last instant of their lives that Communism was at least godless."

Professor Carter's response to liberal America's religious bigotry is to remind them that the civil rights movement "was openly and unashamedly religious in its appeals as it worked to impose its moral vision" on America. One can also remember a time when getting out the evangelical vote for a Democratic Presidential candidate was considered a good thing by many in

the press. Jimmy Carter's campaign was never charged with advocating a narrow sectarianism, as was Ronald Reagan's or George Bush's, because his religious sentiments promoted policies that were more in line with the liberal mindset.

Professor Carter recognizes that much of society's current intolerance of those who are religious focuses on those who advocate a conservative set of values that arise from the belief that God has communicated via the Bible truth about human nature and righteous living, truth that is not available to us via reason alone. Mr. Carter disagrees with the conservative view but sees danger in using the power of government to remove the political freedoms of those who hold to it.

## **Separation of Church and State**

In this important book the author makes some interesting observations concerning church and state in America. For example, Carter believes that, "Simply put, the metaphorical separation of church and state originated in an effort to protect religion from the state, not the state from religion." As Thomas Jefferson declared, religious liberty is "the most inalienable and sacred of all human rights." The First Amendment was written to provide the maximum freedom of religion possible. Philip Schaff once called it "the Magna Carta of religious freedom," and "the first example in history of a government deliberately depriving itself of all legislative control over religion."

How have these founding ideas about church and state been applied recently in our society? Not very well according to Mr. Carter. The Supreme Court, whose duty it is to interpret the Constitution, has arrived at something called the Lemon test, an appropriate name because it is nearly impossible to apply. It includes three criteria for a statute to satisfy the requirements of the First Amendment. First, the law must have a secular purpose; second, it must neither advance nor inhibit

religion; and finally, it must not cause excessive state entanglement with religion.

It is apparent to many that this ruling by the Court works in favor of those trying to build an impenetrable wall between religious belief and our government. Professor Carter notes that if this ruling is taken seriously one would have to question the legality of religiously motivated civil rights legislation. Another question is whether or not one can act in a manner that neither advances nor inhibits religion? For instance, does the government advance religion if it grants tax relief to parents who send their children to private schools? If so, does denying the tax relief inhibit religion by causing parents to be taxed twice for their children's education?

Carter notes that even the Court has had difficulty in applying this set of standards, mainly because of the way it has defined what is meant by a secular purpose. The Court often focuses on the motivation for a piece of legislation, rather than its political purpose. In other words, the criteria that many would like the Court to use in determining secular purpose would be to ask if the legislation is pursuing a legitimate goal of government or not, rather than inquiring into the religious motivation of the bill's sponsors. As Professor Carter writes, "The idea that religious motivation renders a statute suspect was never anything but a tortured and unsatisfactory reading of the [establishment] clause... What the religion clauses of the First Amendment were designed to do was not to remove religious values from the arena of public debate, but to keep them there."

Mr. Carter understands the difficulty and complexity of law and notes that simply removing the Lemon test would not solve our legal inequities regarding religious belief in America. The legal community is very much split over what should replace the test. Yet he argues that we must not give in to the current notion that the Establishment Clause of the First



Amendment was written to protect the secular from the religious for this would lead to establishing "religion as a hobby, trivial and unimportant for serious people, not to be mentioned in serious discourse. And nothing could be further from the constitutional, historical, or philosophical truth."

## **The Accommodation of Religion**

Although Professor Carter does not agree with positions held by conservative evangelicals on moral issues, he argues eloquently, not only for our right to hold these positions, but to take part in the public debate over them and, if possible, to convince our fellow citizens of the rightness of our policies.

Mr. Carter sees the current culture war as a result of a collision between the ever expanding welfare state and religious autonomy. In its attempt to enforce gender, racial, and sexual preference equity, the government was bound to clash with the discriminatory practices that are part of religious belief. This, in itself, is a remarkable admission from someone who generally agrees with the policies of the current welfare state. Fortunately, Professor Carter values freedom of religion and fears secular governmental tyranny enough to prefer that we err on the side of freedom rather than government control.

How then should the courts rule when religious groups balk at compliance to government established policies like anti-housing discrimination laws? Recent court cases have tended to ignore the significance of religious belief. Carter, however, contends that religious groups ought to be able to establish when and how they are called to discriminate in public settings, with some limitations. He would place a high standard, that of compelling interest, between government policy and religious observance. In other words, government should not be able to force a Christian couple to rent their apartment to two homosexual men unless the it can prove that

it has a compelling interest in the issue. Doing so under the standard Carter proposes would be much more difficult than under current standards. Yet without this high standard, or something similar, government will continue to virtually ignore religious faith in creating its rules and regulations.

Professor Carter is very cognizant of the power government has to control or destroy groups via taxation, regulation, or the threat of secular leveling. That occurs when government tries to force every organization to reflect current government policy within its own internal organizational structure and practice. Unfortunately, Mr. Carter's plan for implementing protection of religious groups is not as satisfying as his defense of religious freedoms. In fact, he comes to the conclusion that satisfying both equality and religious autonomy may not be possible. In one obvious example, that of homosexual employment rights versus the rights of religious groups not to hire homosexuals, Carter's rejection of biblical constraints on homosexual behavior leaves him without direction. Even so, conservative readers will want to note his fine defense of religiously motivated actions in society.

Carter believes that it is difficult "to see how the law can protect religious freedom in the welfare state if it does not offer exemptions and special protection for religious devotion." Unfortunately, he never questions the wisdom of the welfare state in general. However, he does see the need for autonomous religious groups that challenge the moral and political orthodoxies of the day, whether they be religiously motivated civil rights groups in the 50s and 60s or anti-abortion groups in the 90s. Government neutrality is a myth, and without religious freedom whatever orthodoxy currently exists in government might be sustained via coercion and intimidation if religious groups are not given sufficient power to act as mediating structures.

Professor Carter's book is an important one merely because it takes religious belief seriously even though it is sometimes

inconsistent and strident in its treatment of conservative evangelicals. Next we will look at another model that some feel is a more biblical approach to the problem of unconstrained government and at what might replace the notion of a welfare state.

## **Another Model**

Although written from a liberal perspective, both politically and theologically, the book argues very effectively for a return to a form of religious freedom that better reflects our Founding Fathers' thinking. Once the reader gets past the author's general disregard for what he calls the "Christian Right," a great deal of helpful material can be garnered for the support of a society which respects religious belief and allows those who are religious full participation in the public affairs of the nation. In light of recent attacks on the role of Christians in politics by the media, this defense by a Yale law professor couldn't come at a more opportune time.

Professor Carter charges that unless secular liberal theory finds a way to include religious participation in the public moral debate, political disaster may be the result. The outcome will be a narrowly focused elitist theory of government and public life that would indeed inflame the current culture war and drive a greater wedge between those who are religious and those who are not.

Conservative evangelicals should applaud Mr. Carter's view of religious freedom. His emphasis on religious groups acting as mediating structures between the individual and government and on the rights of families to direct the education of their children are a much needed message for our society. All societies need to determine the distribution of power and authority among its citizens. Many supporting the current welfare state argue that government and individuals should possess the bulk of decision-making ability in our political

and judicial framework. This leaves out mediating structures, such as the church, which serves the vital role of challenging both political tyranny and individual anarchy. Professor Carter rightly sees the danger in this position. If authority is focused on state power and individual rights, the state will eventually extinguish the voices of individuals it finds antagonistic to its plans.

Mr. Carter is closer to a Calvinistic view of society than the welfare state model many liberals find comforting. Professor Carter seems to endorse the concept of spheres of influence, the idea that government, the church, and the family all have legitimate, in fact, God-given, authority in their respective domains.

Romans 13 and 1 Timothy 2 declare that God's purpose for government is to maintain order by punishing the wrongdoer and thus create a peaceful society in which we might live in all godliness and holiness. Ephesians 5, 1 Timothy 3, as well as other passages, lay out the structure and importance of the family in God's plan for human society. The origin and purpose of the Church is referred to throughout the New Testament. First Timothy 3:15 talks of God's household, which is the church of the living God, the pillar and foundation of the truth. Those with a high view of Scripture believe that God has ordained these structures within society for good reason. If any of these three spheres try to function outside of its God-given role, the society will suffer as a whole.

The value of Professor Carter's book is that he is warning society that it has placed far too much authority and power in the hands of our government at the expense of religious groups and families. This is an important message that counters the often held belief that government is the only agent in our culture that can bring about change.

