

Understanding the First Amendment

By Gary DeMar

How many times have you heard someone say the reason Christians cannot be involved in proposing public policy is because the Constitution mandates a “separation between Church and State”? The separation between church and State language translates into, “Religion can have nothing to do with politics and anything politics touches.” But few Americans have actually read the Constitution, and there’s good reason to believe that only a small percentage of Americans have actually studied it. So it’s not surprising that many people, Christians included, fail to recognize the following constitutional language:

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 he people peaceably to assemble, and to petition the Government for a redress of grievances.

The following points can be made about the First Amendment:

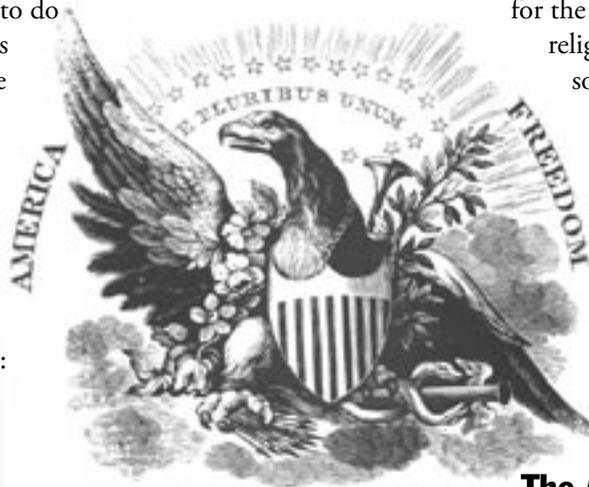
First, this amendment makes no mention of Church or State or a separation between the two jurisdictions. Church-State separation was an operating principle in the colonies. A number of colonial constitutions prohibited ministers from simultaneously holding ministerial credentials and running for political office. For example, Delaware’s constitution (1776) established the Christian religion (Art. 22) while not elevating “one religious sect” in the “State in preference to another” (Art. 29)¹. A jurisdictional separation between Church and State was maintained by prohibiting a “clergyman or preacher of the gospel, of any denomination” from “holding any civil office” in the state, “or of being a member of either of the branches of the legislature, while they continue in the exercise of the pastoral function” (Art. 29).²

Second, included in the amendment are items which relate to the “the free exercise” of religion clause: the right

to talk about religion (freedom of speech), the right to publish religious works (freedom of the press), the right of people to worship publicly, either individually or in groups (freedom of assembly), and the right to petition the government when it goes beyond its delegated constitutional authority in these areas (the right of political involvement).

Third, the prohibition is addressed to Congress, the only national law-making body in our nation. Individual states are not included in the prohibition. If a state wanted the same freedoms that are included in the Bill of Rights, they had to write them into their own constitution, which they did.³

Fourth, there is no mention of a freedom from religion, that is, people cannot protest and ask for the national government to outlaw religion just because it exists in the society in which they live and offends those of a different religion or who have no religion at all (atheists). Many people object to the freedom to own firearms, a right set forth in the second amendment. This objection does not in any way nullify the right to “bear arms.” “Being offended” is not a constitutional issue.



The Amendment’s History

With this introduction, let’s look into the history and meaning of this much referenced but usually misquoted, misunderstood, and misapplied amendment. When the Constitution was sent to the states for ratification, there was fear that the new national government still had too much power. It was then proposed that specific prohibitions should be listed in the Constitution to add further restrictions on the national government’s power and jurisdiction.

The area of religion was important since a number of the states had established churches, that is, churches that were supported with taxes. There was concern that a national church (e.g., Anglican, Presbyterian, or Congregational) would be funded by tax dollars thereby disestablishing the different religious expressions in the various state constitutions. So then, the First Amendment was designed to protect the states against the very thing that is happening today--a federalization of issues related to religion. The amendment was not designed to disestablish the Christian religion which was predominate in the colonies. Justice Joseph Story, a Supreme Court justice of the nineteenth century, offers the following commentary on the amendment’s meaning.



Joseph Story

[T]he real object of the [F]irst Amendment was not to countenance, much less to advance Mohammedanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among Christian sects [denominations] and to prevent any national ecclesiastical establishment which would give to an hierarchy the exclusive patronage of the national government.⁴

Story's comments are important. He states that the amendment's purpose was "to exclude all rivalry among Christian sects." This presupposes that Christianity was the accepted religion of the colonies but that no single denomination should be supported by the national government. The amendment was not designed to make all religions equal by excluding everything religious from topics related to civil government.

The Amendment prohibits not the establishment of religion by Congress (religion in general) but an establishment of religion (a Christian denomination in particular, what our founders called a "sect"). There is nothing in the First Amendment restricting the states.

If the amendment was constructed to remove religion from having even the slightest impact on civil governmental issues, then it seems rather strange that on September 24, 1789, the same day that it approved the First Amendment, Congress called on President Washington to proclaim a national day of prayer and thanksgiving. The First Congress resolved:

That a joint committee of both Houses be directed to wait upon the President of the United States to request that he would recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness.

This proclamation acknowledges "the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness." This is rather strange language for a group of men who supposedly just separated religion from government at all levels, a government they would not have had if God had not made it possible.

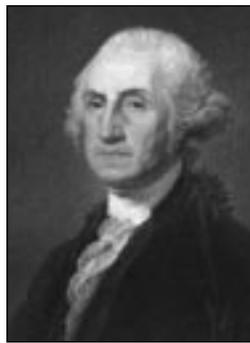
The first congress also established the congressional chaplain system by which official daily prayers to God are

still offered. In the entire debate on the First Amendment, not one word was said by any Congressman about a "wall of separation between Church and State." At the time of the drafting of the First Amendment, a number of the thirteen colonies had established churches.

At the beginning of the Revolution established churches existed in nine of the colonies. . . . The first amendment in large part was a guarantee to the states which insured that the states would be able to continue whatever church-state relationship existed in 1791. Maryland, Virginia, North Carolina, South Carolina, and Georgia all shared Anglicanism as the established religion common to those colonies. Congregationalism was the established religion in Massachusetts, New Hampshire, and Connecticut. New York, on the other hand, allowed for the establishment of Protestant religions. Only in Rhode Island and Virginia were all religious sects disestablished. But all of the States still retained the Christian religion as the foundation stone of their social, civil, and political institutions. Not even Rhode Island and Virginia renounced Christianity, and both states continued to respect and acknowledge the Christian religion in their system of law.⁵

A summary reading of some of the state constitutions will easily prove this point. Older versions of state constitutions were explicit about the Christian faith.

For example, up until it was changed in 1876, North Carolina's Constitution read: "That no person who shall deny the being of God, or the truth of the Protestant religion, or the divine authority of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State."



George Washington

Since the First Amendment prohibits Congress from establishing a religion, the states were free from national control when it came to religious issues. That's why there was nothing unconstitutional about North

Carolina's provision. Today's courts have reinterpreted the First Amendment to mean that any law that has any religious reference is unconstitutional. For example, if a school teaches that abstinence is the best method to prevent pregnancy, or that premarital sex is immoral, and such views are the teaching of major religions (Protestants and Catholics), then abstinence cannot be taught in public schools.

Historical Fiction

The present Church/State debate is historical fiction. The origin of the “separation between Church and State” phrase can be found in the writings of Roger Williams, founder of Rhode Island, and in a letter Thomas Jefferson wrote to a group of Baptist pastors in Danbury, Connecticut, in 1802. Jefferson’s use of the phrase, “a mere metaphor too vague to support any theory of the Establishment Clause,”⁶ has been adopted as the standard interpretation of the First Amendment. If the constitutional framers had wanted to use Williams’ phraseology (later picked up by Jefferson), they could have done so. Instead, they chose a more specific phraseology to convey a specific meaning.

The meaning, as history will attest, had nothing to do with separating the moral aspects of religion as they relate to civil issues from State affairs as the Northwest Ordinance of 1787 attests: “Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.” As constitutional scholar Leo Pfeffer writes: “[F]or all practical purposes Christianity and religion were synonymous. . . .”⁷

Our founders, Jefferson included, never supposed that moral precepts founded on religion were to be excluded from policy making.

Jefferson’s own conception of the wall of separation between church and state did not prevent him from advocating and implementing government for religious education in the state of Virginia. After he retired as President, Jefferson wrote a bill for Virginia providing for the creation of public elementary schools, which the state passed in 1817. The bill provided that “no religious reading, instruction or exercise, shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination.” This law still allowed nondenominational religious activities.⁸

“Jefferson’s Bible,” officially titled by Jefferson as “The Morals of Jesus,” was a compilation of “the very words of Jesus.” Jefferson stated that “there will be found remaining the most sublime and benevolent code of morals which has ever been offered to man.”⁹ So, what was designed to keep the national government from establishing a national church is now being interpreted to keep even religious precepts from entering the realm of politics.

Conclusion

“Separation between Church and State” has become the agreed upon substitute for the language of the First Amendment. But as it stands, the phrase outlines the proper role of the two institutions. The most basic and legitimate definition is that the institution of the church is separate from the institution of civil government. The church as an institution cannot mingle in the institutional affairs of civil government. Neither can its officers. In the same way, civil government cannot disturb the ministry and operation of the church. This does not mean that laws having a religious foundation cannot be adopted and implemented by the State. For example, biblical laws against theft, murder, polygamy, abortion, homosexuality, and perjury have been accepted by civil governments as having a civil application with no transgression of the First Amendment.

The State, however, does not have the jurisdictional right to compel people to believe the gospel, confess the true religion, pay tithes, or attend church. Neither can the civil magistrate declare any single Christian denomination to be the nationally established denomination.



Thomas Jefferson’s “separation of Church and State” was borrowed from Roger Williams

Notes

1. Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Nor or Heretofore Forming the United States of America* (Washington, D.C.: Government Printing Office, 1909), 1:566.
2. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies*, 1:567-568.
3. See Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies*.
4. Quoted by Judge Brevard Hand, in *Jaffree v. Board of School Commissioners of Mobile County*, 544 F. Supp. 1104 (S. D. Ala. 1983) in Russell Kirk, ed., *The Assault on Religion: Commentaries on the Decline of Religious Liberty* (Lanham, NY: University Press of America, 1986), 84.
5. Hand, *Jaffree v. Board of School Commissioners of Mobile County*, 22-23.
6. Peter J. Ferrara, *Religion and the Constitution: A Reinterpretation* (Washington, D.C.: Free Congress Research & Education Foundation, 1983), 34-35. For a comprehensive study of the historical meaning of the separation of Church and State, see Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002).
7. Leo Pfeffer, *Church, State and Freedom* (Boston, MA: Beacon Press, 1953), 98.
8. Ferrara, *Religion and the Constitution*, 36.
9. From a letter to John Adams, October 12, 1813.