Religious Liberty: The American Experiment

First Amendment Principles and Jefferson’s “Wall”

The First Amendment, ratified in 1791, provided that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” At the time the Constitution and Bill of Rights were ratified, the limits they placed on government applied only at the national level. States were free to maintain their own established churches, and many did.

Thomas Jefferson and the Danbury Baptists

In 1801, the Danbury Baptists of Connecticut wrote to President Thomas Jefferson. The Baptists were a religious minority in Connecticut. They expressed their hope that the ban on religious establishment at the federal level would inspire states to disestablish their churches as well. Jefferson was no stranger to debates about the relationship between religion and government. Years before, he had led his home state of Virginia in the process of ending its official church. As President, Jefferson had refused to proclaim national days of prayer or thanksgiving, something that both of his predecessors, George Washington and John Adams, had done.

In his response to the Danbury Baptists, Jefferson began by asserting his view of religion as a matter “between Man & his God.” Jefferson drew a distinction between actions and opinions, saying the government had no authority over the latter. The President continued by explaining his view of the meaning of the First Amendment. The First Amendment had built a “wall of separation between Church and State,” he wrote. Jefferson did not comment on any state matters.

The Supreme Court

In 1878, the Supreme Court first quoted Jefferson’s letter as a way of interpreting the Free Exercise Clause of the First Amendment. In this case, Reynolds v. United States, the Court upheld a federal law banning bigamy (plural marriage). The Court referenced Jefferson’s letter, asserting that Congress could not outlaw “mere opinion” but could indeed punish “actions which were in violation of social duties or subversive of good order.” Even though some believed plural marriage was a religious duty, the Court held that Congress had the constitutional power to ban marriage to more than one person. In later Supreme Court decisions, the Court clarified government’s power to regulate religious exercise if it could demonstrate a compelling interest.

The case of Reynolds v. United States concerned a federal law, and whether that law abridged the First Amendment. The Fourteenth Amendment, ratified in 1868 to protect the rights of freedmen from abuse by state governments, broadened the way the Bill of Rights would be applied. The Fourteenth Amendment contains a clause preventing states from infringing on the life, liberty, or property of individuals without due process of law. The Due Process Clause, as it is known, has been used by the Supreme Court to apply (or “incorporate”) most Bill of Rights provisions to the states.

The Supreme Court applied the First Amendment’s ban on government establishment of religion to the states in Everson v. Board of Education (1947). In this case, the Court held that New Jersey did not violate the Establishment Clause by paying back the parents of Catholic school students for the cost of busing their children to school. Quoting Thomas Jefferson, the majority wrote: “In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between church and State.’” The Court continued, reasoning that the First Amendment “requires the state to be neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor
them. Since the law was part of a general program to get all children safely to school, the Court found no First Amendment violation.

The Court used the “wall” metaphor in another landmark ruling—this time to strike down a state law. In Engel v. Vitale (1962), the Court held that New York could not constitutionally require public school students to begin each day by reciting a state-composed prayer. The Court again used Jefferson’s language, saying that “the State’s use of the Regents’ prayer in its public school system breaches the constitutional wall of separation between Church and State.” The Court reasoned that the First Amendment’s “prohibition against laws respecting an establishment of religion must at least mean that, in this country, it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.”

Jefferson’s “Wall”

Jefferson’s phrase “wall of separation between church and state” is not in the Constitution or Bill of Rights but has become so widely known that it is sometimes mistaken for the First Amendment. The Supreme Court has held that Jefferson’s writings “may be accepted almost as an authoritative declaration of the scope and effect of the [First] Amendment.” Jefferson was a leading Founder and exchanged letters with James Madison—his partner in ending the religious establishment in Virginia—on the subject of a bill of rights. In Reynolds v. United States, the Court noted that the letter came from “an acknowledged leader of the advocates” of the First Amendment.

Some scholars question the claim that Jefferson’s letter is authoritative. Jefferson did not attend the Constitutional Convention and played no formal role in drafting or debating the First Amendment. Chief Justice William Rehnquist, dissenting in Wallace v. Jaffree (1985), argued that judges should not use the metaphor as a guide: “The greatest injury of the ‘wall’ notion is its mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights.” Rehnquist points to what he believes are confusing and contradictory rulings that have proven the metaphor is “useless as a guide to judging. It should be frankly and explicitly abandoned.”

The debate about the “wall”—whether it exists and, if so, where it should stand and how high it should be—continues to this day.

**Critical Thinking**

1. What famous letter does the phrase “wall of separation between church and state” come from?
2. Name one Free Exercise Clause case and one Establishment Clause case in which the Supreme Court quoted Jefferson’s letter.
To Thomas Jefferson, Esq.,
President of the United States of America

Sir,

... Our sentiments are uniformly on the side of religious liberty—that religion is at all times and places a matter between God and individuals—that no man ought to suffer in name, person, or effects on account of his religious opinions—that the legitimate power of civil government extends no further than to punish the man who works ill to his neighbors; But, sir, our constitution of government is not specific. Our ancient charter together with the law made [at that time], were adopted as the basis of our government, at the time of our revolution; and such had been our laws and usages, and such still are; that religion is considered as the first object of legislation; and therefore what religious privileges we enjoy (as a minor part of the state) we enjoy as favors granted, and not as inalienable rights; and these favors we receive at the expense of such degrading acknowledgements as are inconsistent with the rights of freemen...

Sir, we are sensible that the president of the United States is not the national legislator, and also sensible that the national government cannot destroy the laws of each state; but our hopes are strong that the sentiments of our beloved president, which have had such genial effect already, like the radiant beams of the sun, will shine and prevail through all these states and all the world, till hierarchy and tyranny be destroyed from the earth. Sir, when we reflect on your past services, and see a glow of philanthropy and good will shining forth in a course of more than thirty years we have reason to believe that America’s God has raised you up to fill the chair of state out of that goodwill which he bears to the millions which you preside over. May God strengthen you for your arduous task which providence and the voice of the people have called you to sustain and support you enjoy administration against all the predetermined opposition of those who wish to raise to wealth and importance on the poverty and subjection of the people. And may the Lord preserve you safe from every evil and bring you at last to his heavenly kingdom through Jesus Christ our Glorious Mediator.

Signed in behalf of the association,
Nehemiah Dodge
Ephraim Robbins
Stephen S. Nelson

Gentlemen

...Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, 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 & State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & your religious association assurances of my high respect & esteem.

Jan. 1. 1802.

Discussion Questions

1. Explain the Danbury Baptists’ view of religious liberty in your own words.
2. Does Jefferson agree or disagree with the Baptists’ view of religious liberty?
3. Is there any significance in the fact that Jefferson based his arguments on a theological assertion and/or that he closed his letter with a prayer?
4. Thomas Jefferson considered himself a champion of religious freedom. Before he became President, he had led his home state of Virginia to disestablish religion. He wrote the Virginia Statute for Religious Freedom. Why do you think he did not address the Baptists’ concerns about problems of state establishment?
5. What does Jefferson say is the “legitimate” reach of government? What does this mean? What do you believe would have been Jefferson’s response to the Robert H. Jackson quotation?
During the early colonial era, the delivery of mail was not a government function. The carrying of messages depended on the reliability of friends, travelers, merchants, sailors, and others. Some colonies established mail repositories in taverns. Local officials attempted to establish postal routes between cities. Most were inefficient and short-lived. Following the Battle of Lexington and Concord, the United States Post Office was created by the Second Continental Congress under the direction of Ben Franklin. The secure transport of letters and intelligence was vital to the cause of liberty. Article I, Section 8 of the Constitution would authorize Congress to "establish Post Offices..." and Congress enacted seven day mail service. George Washington stated that the post office was important for, "diffusing knowledge of the laws and proceedings of Government."

As the United States expanded during the 1800s and population grew by the millions, mail was critical to commercial interests and dear to those who traveled West. In many places, post offices became gathering places for people to meet, exchange information and ideas, and share news from back home. The arrival of the mail was heralded by the mail wagon driver blowing a horn or trumpet as he came into town. So anxious were people to receive their mail that even during church services, men would jump out of the pews, run down the aisle, and head for the post office. There they would collect their mail, visit with each other and join in social activities such as a game of cards.

Ministers began to complain that the mail service was disturbing their Sunday services. Postmasters agreed to keep post offices closed until after church let out. However, they refused to stop the Sunday mail wagons as this would create too much of a delay in mail service.

Committees were formed in the North and South to demand that the government halt mail delivery on Sundays. Opponents argued that stopping the mail on Sunday would hinder the efficient distribution of the mail and harm the national economy. They also made the point that the discontinuing of mail delivery on Sundays would place the government in the position of establishing which day of the week constituted the Sabbath. The measure to end Sunday mail service ultimately failed in both the House and Senate.

By the beginning of the 20th century, Sunday mail delivery varied greatly depending upon demand. In order to balance the federal budget, President Taft ordered budget requests to be "cut to the quick." The First Assistant Postmaster General stated that he thought Sunday service was not necessary except for special-delivery. Since then, local postmasters have decided whether the post offices would be open and if mail would be delivered on Sundays, thus saving elected officials from making this determination involving religious liberty.
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<th>Mail Delivery Problem</th>
<th>Post Office Policy</th>
<th>Reasoning</th>
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<td>Unlike most Christian religions, many Eastern Orthodox churches in the United States celebrate Christmas on January 7th rather than December 25th. Christians are approximately 77% of the U.S. population. Should the Post Office suspend mail service across the U.S. on January 7th, December 25th, or both days?</td>
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<td>Seventh Day Adventists celebrate the Sabbath on Saturdays. In Loma Linda, California, they make up half of the population. Should the Post Office suspend mail service on Saturdays in Loma Linda?</td>
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<td>A Day of Thanksgiving was often, but not always, proclaimed by early presidents. Thanksgiving was made a national holiday by President Abraham Lincoln in 1863. Should the Post Office suspend mail service across the U.S. on Thanksgiving?</td>
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<td>Adherents to Judaism celebrate holy days such as Yom Kippur (Day of Atonement). Judaism is the religion of approximately 1.5% of the U.S. population, yet some areas of the country contain a large Jewish population. Should the Post Office suspend mail service on Jewish holidays where there is a large Jewish population?</td>
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<td>The Holy Month of Ramadan is a time when Muslims fast during daylight hours to celebrate the revelation of the first verses of the Qu’ran, the holy Book of Islam. California, New York, Illinois, New Jersey, Indiana, Michigan, Virginia, Texas, Ohio, and Maryland are states with significant Muslim populations. Should the Post Office reduce mail service in these states during Ramadan?</td>
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