

Establishment and Free Exercise: Separation of Church and State
Rev. Carol Bodeau
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Establishment and Free Exercise: Just What is Separation of Church and State?

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Okay, we started with Jefferson today because he's really at the center of the debates—from the 1770s to the present day—over just what the phrase “separation of church and state” means. I'm going to attempt to outline some of this debate for you today, but let me say a couple of things first.

To start with, there is no way at all that I can give a comprehensive overview of this topic in 20 minutes, so I'm hoping to merely spark your interest, and give you some things to think about.

Second, I want to give credit where credit is due: a huge thank you to Merry Levering, who sent me a link to a Harvard Divinity School article that came out this week, and that you'll be hearing about in a few minutes.

Finally, our basic journey through this topic is going to have 3 parts today: a brief history lesson, about the various documents and arguments that happened early in our nation's formation, and that are essential to understanding what those documents mean for our current experience. After a quick history review, we'll talk about the actual language of the documents, and what the author's meant by them. And then we'll spend a few minutes considering just how these documents are being applied today, by very different groups with different goals.

As we heard, Thomas Jefferson was a key figure in the formation of our nation, and one of his most important concerns was what the relationship between religion and government. He was particularly concerned with what is called “disestablishment,” and

Establishment and Free Exercise: Separation of Church and State

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July 21, 2019

in order to understand that we have to get rid of a very common misunderstanding about American history. We have a tendency to think of the earliest days of this nation as being rooted in a search for religious freedom. After all, didn't the Pilgrims come here seeking it? Well, yes and no.

They came here seeking the right to practice *their* religion, but they certainly didn't intend to establish a nation where anyone could practice any religion they liked without interference. That wasn't the plan at all.

And the Pilgrims, who were Puritans (later called Congregationalists) were only one group seeking to 'establish' a place where their religion could be the formal religion of their world. In Maryland, the church of the state was originally the Catholic church. In New York, originally called New Amsterdam, it was the Dutch Reformed Church. Later, both of these colonies, and many others, including the Carolinas and Virginia, were Anglican states. In New Hampshire, Connecticut, and Massachusetts, the state religion was Congregationalism. In Pennsylvania, there were many Quakers, who held sway in civic life as well. And in most of the colonies for the first couple hundred years, church attendance was mandatory and tax monies were collected to support whatever church was deemed acceptable by the government.

So, in the colonies, it was the norm to have an 'established' connection between the church (or churches) and the state. Jefferson was a proponent of 'disestablishment'—disconnecting these things once and for all. While he was a member of the Virginia House of Burgesses, he drafted two bills on the subject, both of which failed to pass. He wrote one called "A Bill for Establishing Religious Freedom," and another to disestablish the Anglican Church as the state religion. Though these didn't pass at the time he authored them, they were important in the formation of later documents, which would be adopted later.

Establishment and Free Exercise: Separation of Church and State
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Where Jefferson lived, in Virginia, at the time leading up to the Revolution, there was a strong tension between the Anglican church—the formal religion, which everyone had to pay to support—and a growing population of Baptists, Presbyterians and Methodists, especially in the frontier regions. Scholars have long noted that the zeal for religious liberty in these groups was absolutely essential fuel to the Revolutionary fire that led to American independence from Great Britain. This was also somewhat true in other regions, but it was especially true in the center of activity where Patrick Henry, Thomas Jefferson, and others were working and writing the pamphlets and declarations that were so formative to our nation. From the beginning, then, the debate over how government and various religions interacted was central not just to the religions themselves, but also to how our very government was formed.

In 1777, during the Revolutionary War, Jefferson wrote his bill for Establishing Free Religion (or Bill 82) now called “The Virginia Statute for Religious Freedom” or “The Statue of Virginia for Religious Freedom.” (It went through many iterations in its long journey towards adoption.) A copy of it actually hangs on the wall of our classroom wing, and I’ll be quoting it shortly, so you may want to take a look at it sometime. It’s actually far more powerful in terms of the history of separation of church and state, in many ways, than even the Constitution itself. This is because it is used to help *interpret* just what the founding fathers *meant* in the First Amendment’s ‘freedom of religion’ statements.

So the Virginia Statute for Religious Freedom was written just a year after the Declaration of Independence—a Declaration which asserts as its foundation “the Laws of Nature and Nature’s God”—heralding Jefferson’s Deistic view of God as a natural force, rather than a controlling figure. The Virginia Statute was written before the U.S.

Establishment and Free Exercise: Separation of Church and State
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July 21, 2019

Constitution, which was signed by the Constitutional Convention in 1787, and before the First 10 Amendments were adopted by the U.S. Congress in 1789.

But just what exactly do these documents say?

The Constitution itself contains one reference to the relationship between religion and government. Article 6 stipulates that no “religious test shall ever be required as a qualification to any office or public trust under the United States.” Unlike the ‘freedom of religion’ section, this provision is a little less difficult to interpret. But the brief First Amendment is a little more problematic on the subject of church and state:

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

Scholars all agree that this first ‘freedom’ was not intended to be a prohibition against state’s having formally established religions. If it had been, there wouldn’t have been the sort of on-going concerns with various groups attempting to *dis-establish* state religions. Although the state of Virginia did end requiring its citizens be Anglican in October of 1776, they nonetheless continued to debate how to fund various social and civic concerns through taxes that paid various churches, which were often the agents of social welfare programs. And other states didn’t disestablish their state religions until later.

No, the First Amendment was meant to say that the *national government* could not make a national religion. States, however, were free to continue the practice until the adoption of the 14th Amendment to the Constitution, in 1868. As Diane L. Moore, the Director of Harvard Divinity School’s Religious Literacy Project points out, religious

Establishment and Free Exercise: Separation of Church and State
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July 21, 2019

hegemony and persecution were the accepted norm in this country for its first 300 years. She also, by the way, argues that this is still implicitly the case, if not explicitly.

Those 16 words in the First Amendment leave a lot of room for interpretation. Jefferson's writings, however, were much more detailed and explicit. It is even from Jefferson that we get the phrase "separation of church and state" in the first place. That line is actually a recycled version of a much earlier phrase, spoken by Roger Williams, the founder of the Baptist church in America, who referred to the "hedge or wall of separation between the garden of the church and the wilderness of the world." When Jefferson recycled the phrase in 1802, he used it in a letter to the Danbury, CT, Baptist Association, agreeing with their complaint that Connecticut didn't have any laws providing for religious liberty or disestablishing Anglicanism as the state religion. Remember, this occurred during Jefferson's first year as President, so he was essentially interpreting the Constitution from the office of the President at this point.

In the letter, he says this:

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 opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature would "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State.

So, you see, it was Jefferson's own *interpretation* of the First Amendment that got that phrase into our collective consciousness. And it is to his other writings, specifically the Virginia Statute, that we often turn to interpret the meaning of that First Amendment. But that's tricky business.

Establishment and Free Exercise: Separation of Church and State
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July 21, 2019

In the Virginia Statute, Jefferson says some things that many of us might not agree with, with regard to the relationship between religion and government. For example. He begins by asserting that,

“Almighty God hath created the mind free, *and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint*; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, *but to extend it by its influence on reason alone*,”

To parse this out: God, lord of all in both body and mind, created us with free will and free minds. Coercion through punishments, burdens, or civil penalties, don't work—they backfire, and are not God's plan. Reason, then, is God's tool for maintaining good and order. Note that me paraphrasing Jefferson is comparable to untold numbers of theologians, politicians, and lawyers paraphrasing Jefferson in attempts to make sense of the First Amendment (though they surely do it with more sophistication).

As you can see, Jefferson can be read in many ways. God isn't *out* of the story; we just have to understand his role *in* the story. This is why Atlantic Monthly writer Mattathias Schwartz this week referred to the phrase “separation of church and state” as “a rhetorical Swiss army knife on the world stage.” In other words, it can be used in many ways, to serve many purposes. It is the ultimate multipurpose tool.

Establishment and Free Exercise: Separation of Church and State
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July 21, 2019

So how is that happening right now, in specific? It just so happens that this week saw the second annual U S State Department Ministerial on Religious Freedom. That's a conference, hosted by the Secretary of State, with the purpose of bringing world civic and religious leaders together to discuss challenges facing religious freedom in the world, and to 'promote greater respect and preservation of religious liberty for all.'

Keynote speakers at the Ministerial included Secretary of State Michael Pompeo, who mimicked Jefferson's language in his speech, and pointedly referred to a statue of Jefferson, the first to hold the same office, just a short walk from where the conference was being held.

Vice President Mike Pence also spoke, and introduced himself as both the Vice President, and as someone whose "faith in Jesus Christ has brought meaning and purpose to him and his family every day of his life." He ended his talk by saying, "May God bless all of your nations. And may God continue to bless the United States of America."

Wait, is that what we meant by separation of church and state? Is that what Jefferson meant? Well, now that's a subject that is still hotly debated. The Atlantic's Schwartz notes the prevalence of elected officials referring to the Bible when explaining the relocation of embassies, and the movement of troops. He also notes elected officials' reference to God's intervention in election outcomes. Clearly, what some people mean by "freedom of religion" isn't the same as what others mean.

So here's the thing. The ACLU interprets the First Amendment differently than the religious right. And this is partly rooted in the ambiguity created by modern people reading the words of 18th century leaders. Diane Moore of Harvard Divinity says that

Establishment and Free Exercise: Separation of Church and State
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July 21, 2019

the phrase ‘freedom of religion’ is a function of the ‘dominant discourse,’ meaning we have to interpret these vague words based on what the cultural norms are today. And in our culture today, we have a war going on to decide just how much religion should influence policy.

Health care benefits to support abortions; travel bans targeting Muslim countries; government officials referring to religious views as support for their policies. Do these violate ‘separation of church and state’ or don’t they? At present, folks don’t agree on the answers to those questions.

I’ve heard it articulated most clearly this way:

Whereas the First Amendment specifically says you can’t establish a state religion, and the 14th Amendment protects civil rights, neither of these say that *politics and religion can’t mix*. They say that the government and churches can’t mix. They don’t prohibit politicians from being religious—that could be, and often is, interpreted as a violation of the freedom of religion. That no elected official can be required to pass a test of religion does *not* mean that elected officials can’t be religious; it simply means no one can tell them how religious they should be, or what sort of religion they should adhere to.

So it’s a messy, mucky mire, and still very much a matter of public, and legal debate. We’re still trying to figure out what the founding fathers (and, yes, we are only really looking to the founding *fathers* for guidance on this one, legally speaking) what they meant. But I’m not even sure that’s a good idea. As Diane Moore says, this is a matter of the ‘dominant discourse.’ Isn’t that discourse different now than it was 250 years ago?

Or maybe *that’s* the point. Maybe there are some of us who want a new dominant discourse, and others who do not. Maybe many Americans want to preserve an older discourse model, while others want it to change. Unfortunately, there are no easy

Establishment and Free Exercise: Separation of Church and State

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July 21, 2019

answers to that conundrum. And while we do have guiding documents, they don't always give us as much guidance as we might like.

So perhaps the best we can do is educate ourselves as much as possible and, as Jefferson urged us, rely on the reasoning abilities of our free minds for counsel. But, of course, whether or not Jefferson's God is at the root of that free mind, is another matter open for debate. Take a look at his Virginia Statute in the hallway, if you get a chance, and I urge us all to continue pursuing *our* fourth principle: a free and responsible search for truth and meaning.