
A Quick Review of the Separation of Church and State in the Early United States of America

An Essay For Various Essay Groups Around Atlanta
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25 May 2023

My presentation tonight is a quick review of the separation of church and state in the early United States of America. Though I enjoy legal thinking, I admit that I am no lawyer; and I am rarely well versed in matters of state. I am, of course, an ordained minister in a rather established church. And I realize that the phrase, “separation of church and state,” is not a defined legal principle. However, I am fascinated with the development of what our country calls the separation of church and state.

It is worth reminding ourselves of how this principle developed in our country, and what an incredible, distinctive, feature has become for the fledgling United States of America. A state without an established religion was unprecedented in the Western World at the time. My presentation is a quick historical review of the established religions and denominations in the early colonies of the United States.

Spirituality, of course – and even religion—was already a part of the native American populations in the 15th and 16th centuries, when European explorers arrived. Most of that spirituality and religion are now rather lost. It is a sad commentary on the aggressive and callous nature of explorers like Christopher Columbus, when we recall his attitude toward indigenous peoples.

When Columbus landed at Guanahana, and dubbed it San Salvador, he wrote to Ferdinand and Isabella, “They should be good and intelligent servants,” Columbus wrote, “for I see that they say very quickly everything that is said to them; and I believe that they would become Christians very easily, for it seemed to me that they had no religion. Our Lord pleasing, at the time of my departure I will take six of them from here to Your Highnesses in order that they may learn to speak.” He is also reported to have said, “How easy it would be to convert these people – and to make them work for us.”

Most exploratory efforts of the Spanish, the Portuguese, the English, and the French were also missionary efforts, and missionary efforts of the dominating and colonialistic type. I do note, however, some wonderful exceptions. In his book “The Old Religion in a New World” (2002), the historian Mark Noll writes:

In the New World itself, Jesuits, perhaps because of their earlier efforts to negotiate the cultural divide between European and non-European cultures in the Far East, set the pace in practical efforts to contextualize the Christian message. The most notable example of such contextualization was the French Jesuit mission to the Huron Indians in what is now Ontario, Canada. Led by Father Jean de Brébeuf (1593–1649), the Jesuits enjoyed nearly two decades of labor among the Hurons before intra-Indian warfare led to the martyrdom of Brébeuf along with several of his colleagues and to the end of the mission. Brébeuf took special pains to prepare appropriate Christian literature in the Huron language, including the Christmas carol, “Twas the moon of wintertime when all the birds had fled, That mighty Gitchi Manitou sent angel choirs instead.” He also provided specific instructions to Jesuit recruits concerning the life to which they were called: “Instead of being a great master and great Theologian as in France, you must reckon on being here a humble Scholar, and then, good God! with what masters!—women, little children, and all the Savages,—and exposed to their laughter. The Huron language will be your saint Thomas and your Aristotle; ... You must have sincere affection for the Savages,—looking upon them as ransomed by the blood of the son of God, and as our brethren, with whom we

are to pass the rest of our lives."

Nevertheless, when European settlers gathered in this new world four and five centuries ago, their religious sentiments became the drivers of their division. It was unthinkable that any state, or colony, could exist without some accompanying established religion. Thus, every new state or colony in the New World, perpetuated the same religious divisions and clashes that they brought with them from the Old World.

For better or for worse, Roman Catholicism was the first western religion to reach the New World, from the southeast part of the continent to the southwest and northern Mexico, to Quebec, and to what is now Maryland.

Recall, however, the friction between Roman Catholics and Protestants, since the Reformation of the 16th century. Since the 16th century in Europe, the religious establishment in countries was "Cuius regio, eius religio," a Latin phrase which literally means "whose realm, their religion."

Reviewing the religious identity of the original thirteen colonies, let us begin with the rather famous ones, the Pilgrims and Puritans in the Northeast, and the Anglicans in Virginia and South Carolina.

Today, of course, I am an Episcopalian, whose heritage is Anglican; and it always amuses me when the Episcopal Church keeps Thanksgiving tradition by remembering the Pilgrims and Puritans. The Massachusetts and Plymouth Bay colonies were founded by groups expressly hostile to the Church of England, the established religion. The genius of Queen Elizabeth's reign in England was to create an Anglican Church that was certainly Protestant but which also retained much of the tradition of Roman Catholicism. The extreme Puritans continued to claim that she, and her successors, were not Protestant enough.

The Puritans in Nottinghamshire had wanted, first, to go to Holland, but they found Dutch culture unappealing and sailed for Virginia. Blown off course, they landed on Cape Cod in 1620. Those Puritans were both blessed and cursed by the dominant personalities of John Winthrop, John Cotton, Cotton Mather, who were highly verbal and carried strenuous moral vision. The Puritanism of Massachusetts stressed conversion, and a credible testimony was required before one could join the church – and society. There had to be evidence of the covenant of grace, qualifying a person for both church membership and a voting role in the colony's public life. Church and state were meant to be a unified whole.

One preacher, named Increase Mather, wrote a pamphlet called "The Unlawfulness of Common Prayer Worship," in which he claimed that Anglican worship was papacy and idolatry, and its prayer was "broken responses and shreds of prayer which the priests and people toss between them like tennis balls." The Plymouth and Massachusetts Bay Colonies prohibited the presence of the Church of England.

Down in Jamestown, of course, established in 1607, Virginia's earliest legal code made attendance at Sunday services compulsory and contained harsh laws prohibiting violations of the sabbath, adultery, and excessive dress. Taxes maintained the local Anglican Church and paid the local ministers. In Virginia, one could vote only if one were an Anglican. The Church of England would be the major church in Virginia, the Carolinas, and Georgia. It would also become the major church in Maryland after 1691 and in New York City after 1693.

South Carolina would actually become a bit more progressive. There, in the late 17th Century, the Lord Proprietors put forth something called "The Fundamental Constitutions," which never became law but which presented some important principles. Among them were these: The Church of England would be the established church in the colony, but religious freedom would be given to anyone who believed in God. Also, any seven individuals could form a "church or a profession" which would be officially recognized. Also, "no person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion, or his way of worship." Affirmation was given to both the Quakers and the Huguenots. And, here is a shock: Jews would be welcome, since all that was required was belief in God, but Roman Catholics would not be recognized!

That is too bad about the Roman Catholics, because a rather tolerant Roman Catholicism had found a foothold in Maryland. George Calvert, the first Lord Baltimore, had been an Anglican Secretary of State under King James I in England. But, in those fractious Roman Catholic versus Protestant times in seventeenth century England, George Calvert had converted to Roman Catholicism. Even though George Calvert could not swear allegiance to the Church of England, the new king, Charles I, wanted to repay the Calverts; and he gave them the large proprietary grant in the New World. George Calvert, Lord Baltimore, named the land for the Roman Catholic queen of the Protestant king. The queen's name was Maria Henrietta of France. Remember, then, that Maryland is not named for the Virgin Mary, but for Queen Maria Henrietta!

Maryland, however, had lots of Protestants. The second Lord Baltimore, Cecil Calvert wanted to reassure English Protestants that Maryland would not become a hostile Roman Catholic enclave. It was in Maryland,

then, that an important mark in New World religion was made. In 1649, Cecil Calvert issued the "Act Concerning Religion," which outlined an intriguing freedom of religion. Of course, it not only bowed to the Protestants, but it also protected Roman Catholic interests against the Puritan parliament in England.

As I quote from this act, do note its fascinating similarity to our current attitudes of political correctness! The act stipulated penalties for "those who blasphemed the Trinity, cast aspersions on the Virgin Mary, or employed such terms as heretic, schismatic, idolater, puritan, Independent, presbyterian, popish priest, Jesuit, Jesuit papist, Lutheran, Calvinist, Anabaptist...or any other name or term in a reproachful manner relating to matters of Religion."

But for the rest, "no person or persons whatsoever within this province, or the islands, ports, harbors, creeks, or havens thereunto belonging professing to believe in Jesus Christ shall from henceforth be any wise troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof." Still, this tolerance extended only so far; also on the books was a law which decreed the death penalty for anyone who denied the Trinity or the divinity of Christ.

In addition to being Puritan, or Anglicans, or Roman Catholic, or Jewish, one could be Baptist in this new world. The Baptists, too, were separating from the Church of England. In exact opposition to the Puritans, the Baptists preached strict separation of church and state.

Roger Williams, the Baptist, began his ministry in the Puritan colonies, but the Puritan did not like Roger Williams. Williams threatened the Puritans, saying that the state had no role to play in the churches. In fact, he claimed that the Puritans had no right to Indian lands in the New World. This did not go over well! Finally, Williams said it was wrong to enforce attendance at church, since true Christian action springs from the heart.

So, Roger Williams was banished from Plymouth and from Salem. In 1639, Roger Williams helped form the first Baptist Church in the new World, in Rhode Island. Anne Hutchinson ended up there, too. She had started mid-week fellowships to discuss her pastor's sermon (John Cotton), and she was accused of going against the law. Rhode Island ended up with all sorts of free thinkers, so free and so strange that it was said, "If a man had lost his religion, he would be sure to find it in some Rhode Island village."

Meanwhile, Presbyterians were emigrating from Scotland and Ireland. New York was strictly a Dutch Reformed colony. They resented the Quakers, who therefore, went to Southern New Jersey and, of course, to Pennsylvania. George Washington could tolerate the Roman Catholics, but not the Quakers – who professed pacifism; Washington feared that they were Tory. Later, of course, the Methodists would split off from Episcopalians.

It is worth hearing again from Mark Noll about the influence of William Penn in Pennsylvania and Delaware.

In Pennsylvania and Delaware, the effects of William Penn's more liberal attitudes made a difference.... Penn did envisage Quaker control of the colony, but also a wide measure of toleration for other Christians. Quakers dominated the Pennsylvania assembly from the colony's founding in 1681 until 1756. In later years, a crisis brought on by warfare with France and its Indian allies made it impossible for Quaker pacifists to continue to govern. But from the start, Penn's policy of religious toleration encouraged the settlement of diverse groups from Britain and the Continent. The "Pennsylvania Charter of Liberty" (1682) provided that all officials of the colony "shall be such as possess faith in Jesus Christ." But it also stated without equivocation, "That all persons living in this province, who confess and acknowledge the one Almighty and eternal God, to be the Creator, Upholder and Ruler of the World; and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall, in no ways, be molested or prejudiced for their religious persuasion, or practice, in matters of faith and worship, nor shall they be compelled, at any time, to frequent or maintain any religious worship, place or ministry whatever." Unlike Maryland's similar declaration in 1649, the Pennsylvania proclamation of toleration stuck.

In 1776, two-thirds of the signers of the Declaration of Independence were Anglican, at least nominally, like George Washington. Benjamin Franklin, of course, was a rationalist, and Thomas Jefferson had gone so far as to excise those parts of the New Testament that he found unbelievable and non-rationalist. They claimed, that "we are teaching the world the great truth that Governments do better without Kings and Nobles, than with them. The merit will be doubled by the other lesson that Religion flourishes in greater purity, without the aid of Government."

So, the United States Constitution, written in 1787, contains almost no mention of religion. Mark Noll notes that, "Political leaders at the time took for granted that this document was intended to define the powers of the national, or federal, government. Under the Constitution, the individual states retained wide latitude to

determine many matters for themselves, including religion. Thus it was that, when the First Amendment to the United States Constitution went into effect in 1791, contemporary observers realized that its provisions for the separation of church and state applied only to the national government."

The amendment's famous stipulation was that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This provision guaranteed that the federal government would not be entangled with the institutions of religion. At the level of the states, however, it was a different story. Five of the nation's fourteen states (Vermont had joined the Union earlier that year) made provision for tax support of ministers, and those five plus seven others continued religious tests for public office. Only Virginia and Rhode Island practiced the kind of separation of church and state that has since become common in America—where government provides no money for churches and poses no religious conditions for participation in public life. With less than a handful of exceptions, even the defenders of religious liberty in Rhode Island and Virginia did not object when Congress or the president proclaimed national days of prayer, when branches of the federal government began their meetings with prayer, when Roman Catholics were discriminated against in state and federal public life, or when military chaplains were appointed and funded by law. (Noll, "The Old Religion in a New World," 2002).

Yes, there were certainly grievous sins. Native Americans were being forced off their homeland and into reservations. And, yes, the entire new country's economy benefitted from the slave trade; it wasn't just a "southern thing." Many of the new world's citizens came here voluntarily, but the ancestors of American blacks came involuntarily. The slave trade, too, was often justified in the name of religion. It is one of the great miracles of religion that African-Americans actually found a source of salvation within the white man's religion; they took the story of slavery in Egypt, the Exodus, the flight to freedom and into the promised land -- and they made it theirs. Such is the way of God. God tends not to let salvation be confined to only the powerful few.

The United States, then, has had its share of violent and oppressive history, often justified by religion. But something new happened in this country, for which I give gracious thanks. The founders of our country figured out a way to separate church and state in a way that gave enormous freedom to each.

Martin Marty calls the principle of the separation of church and state as large a revolution as was the War of Independence: "The statesmen founders of the United States... set out to convince churchly citizens that religion was larger than their own sects. ...They sundered what both tribal and church-minded people had kept bound together of thousands of years. No shots were fired, but in their own ways these achievements amounted to an American revolution as much as did the War of Independence." (Marty, *Pilgrims in Their Own Land*, p. 155).

By the time of the American Revolution and the Declaration of Independence, Americans knew first-hand what religious *int*olerance was like. They knew what happened when a colony or state or a country tried to impose its own particular brand of Christianity on its people. Such behavior did not lead to liberty, freedom, and independence. It led to dissension, oppression, and even death.

Part of the great American experiment, then, promulgated with the Declaration of Independence and in the United States Constitution, was the *dis*-establishment of religion. No one religion, or one group's form of religion, would be the standard of government in this new land. Religious tolerance would be the rule and basis for this country's freedom and independence.

In fact, this decision was a beautiful one, for it allowed the brilliant diversity of American religion to flourish. It was influenced, I might add, by some specifically *non*-religious principles, principles of liberty and freedom which emerged from Enlightenment thinkers such as John Locke and even Thomas Jefferson. Jefferson and others hearkened back to the classics of Greece and Rome for guidance. That is why our dollar bill, even though it says "In God we trust," also includes the Great Seal of the United States with these two sayings: *Novus Ordo Seclorum* "A New Order of the Ages," and *Annuī Coeptis*, "He has favored our undertakings." Both these sayings come from the Roman poet Virgil, who lived before the time of Christ.

Of course, our country's legal processes continued to develop, and the notion of the dis-establishment of religion continued to be interpreted.

Mark Noll notes that, *"From the mid-twentieth century, important changes in American jurisprudence have significantly altered the way in which the separation of church and state is practiced. The first important judicial move was the application of the Fourteenth Amendment of the Constitution to the religious provisions of the First Amendment. The Fourteenth Amendment had been passed after the Civil War in 1868 with the intent of guaranteeing civil rights to freed slaves. This Amendment prohibited the states from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States" and further restrained them*

from denying any of their citizens "life, liberty, or property, without due process of law." In 1940 the U.S. Supreme Court ruled that by the application of this Fourteenth Amendment, the First Amendment's prohibition of a religious establishment and its guarantee of religious "free exercise" must apply to state laws as well."

Mark Noll continues: *A second key ruling came in 1947, in a case concerning a New Jersey law providing bus transportation for students in private, religious schools as well as for students in public schools. Although the court upheld the law, it also made an extreme claim about the implications of the First Amendment. In a judgment overlooking 150 years of American practice, the Court used a phrase that Thomas Jefferson once wrote in a private letter to say that the Constitution had erected "a wall of separation between church and state." With these two judgments opening the door, the American courts began vigorously to adjudicate many aspects of religion and public life that had hitherto been left mostly to the individual states.*

Yes, that phrase, "the separation of church and state" never appeared in United States law until the Supreme Court used it in 1947. It was Thomas Jefferson who had used the phrase in a letter to the Danbury Baptists in 1802. Today, some on the religious right claim that Jefferson was writing the letter because the Danbury Baptists had asked him to issue a proclamation calling for a national day of prayer and fasting. That is incorrect; Jefferson was specifically avoiding issuing a national proclamation.

Jefferson wrote, on January 1, 1802, "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 legitimate 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 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."

As a Christian in this relatively new world of the United States of America, as an Episcopalian in this country, I give thanks today for the separation of church and state, a separation which allows religion to be truly free. This spirit of religious toleration is the same spirit which allows Americans from all sorts of other countries to celebrate their cultural heritages *without ceasing to be American*. I even believe that some cultures who have had their lives damaged in this nation, cultures such as the Native American or the African American help heal that damage by their ability to celebrate heritage. This is our country's genius.

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25 May 2023

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