

# The Separation of Church and State in the United States

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## Summary

Separation of church and state has long been viewed as a cornerstone of American democracy. At the same time, the concept has remained highly controversial in the popular culture and law. Much of the debate over the application and meaning of the phrase focuses on its historical antecedents. This article briefly examines the historical origins of the concept and its subsequent evolutions in the nineteenth century.

**Keywords:** [Separation of church and state](#), [disestablishment](#), [religious liberty](#), [establishment of religion](#), [First Amendment](#)

Religion and Government are certainly very different Things, instituted for different Ends; the design of one being to promote our temporal Happiness; the design of the other to procure the Favour of God, and thereby the Salvation of our Souls. While these are kept distinct and apart, the Peace and welfare of Society is preserved, and the Ends of both are answered. By mixing them together, feuds, animosities and persecutions have been raised, which have deluged the World in Blood, and disgraced human Nature.<sup>1</sup>

John Dickinson, one of the Founding Fathers, wrote the above statement in 1768 on the advent of the American Revolution. As a Pennsylvanian, Dickinson was not criticizing his colony's religious establishment (there was none); rather he was commenting on one of the rising issues of the day: the proper relationship between religion and government in a society that increasingly identified with the principles of natural rights and rationalism originating in the Enlightenment. The immediate context was a controversy over a proposal to appoint the first American bishop of the Church of England, the presumptive established church for the British American colonies. At the time, religious establishments—that is, government support for “public ministers” and houses of worship through forced

taxation or “assessments”—existed in nine of the thirteen colonies, but the Anglican Church was only dominant in four southern colonies. Colonialists living in the remaining colonies—those residing in colonies without establishments as well as those in colonies with “multiple” establishments that favored dissenting sects such as Congregationalists, Presbyterians, and Dutch Reformed—feared that a domestic Anglican bishop would not only increase the power of the Anglican Church at the expense of other Protestant bodies, but also would threaten the civil and religious liberties that the colonialists had grown to expect over 150 years of benign neglect.

Even before the political crisis arose in 1765, these Americans overwhelmingly identified with the opposition Whigs in England, who criticized the corruption and authoritarianism of the established church. As patriots raised claims of political liberty in those formative years, matters of religious liberty and conscience were also on their minds.<sup>2</sup>

Scholars of American religion have long debated whether and to what extent religion served as an “energizing propulsion” for the American Revolution and informed the political principles that underlie the nation’s founding documents. Unquestioningly, however, matters of religious liberty were of great concern to the founding generation, though they were secondary to the more pressing issues of military success and national unity. As the new states organized their governments and experimented with various models of representative democracy, they also addressed questions about the appropriate relationship between religion and government. The change that transpired over a short period was truly remarkable. In fifteen years, after the onset of the American Revolution, the number of religious establishments was effectively reversed with ten of fourteen states (now including Vermont) either disbanding their establishments or declining to enact legislation to support their previous systems. Most states also liberalized rules that had imposed political disabilities (e.g., public office holding) on dissenting groups. At the national level, the authors of the Constitution inserted a ban on any religious test for public office holding, while the First Congress drafted a constitutional amendment prohibiting a religious establishment and protecting the free exercise of religion. By the time the last state (Massachusetts) disestablished in 1833, a phrase had arisen to represent the distinctly American pattern of church-state relations: separation of church and state.<sup>3</sup>

Separation of church and state has been part of the nation’s legal and cultural nomenclature since the early 1800s. Judges, politicians, educators, and even religious leaders have embraced church-state separation as central to church-state relations and a cornerstone of American democracy. The Supreme Court first employed the term “separation of church and state” in 1879 as shorthand for the meaning of the First Amendment’s religion clauses, stating “it may be accepted almost as an authoritative declaration of the scope and effect of the amendment.” To this day, most Americans support the principle of church-state separation as one of the hallmarks of American government. Although the phrase is not found in the Constitution, no organizing theory has had a greater impact on the way Americans conceptualize the intersection of religion, culture, and politics than the principle of church-state separation.<sup>4</sup>

Despite its inclusion in the pantheon of democratic virtues, separation of church and state did not become constitutional canon until the mid-twentieth century with incorporation of the Bill of Rights to the states through the Fourteenth

Amendment. In the modern Court's first Establishment Clause holding, *Everson v. Board of Education* (1947), Justice Hugo Black wrote:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another [...] No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion [...] 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."<sup>5</sup>

For approximately fifty years, separation of church and state was the touchstone for church-state jurisprudence, endorsed by liberal and conservative justices alike. Particularly in the earlier years, justices opined that the separation must be "absolute," "uncompromising," "high and impregnable," and "complete and permanent," although the rhetoric was usually more absolute than the ultimate holdings. (In fact, in *Everson*, the Court upheld the state reimbursement of transportation expenses for children to attend parochial schools.) While some judges and lawyers may have disagreed with the Court's rhetoric, few contested the underlying principle.<sup>6</sup>

The pedigree of separation of church and state says little about its content, however. Like judges, many Americans have disagreed about what the principle means in practice. For some, it means that religious bodies have no official status or formal role in the government, such that each institution acts independently of the other. The government may not maintain a state religion, directly finance religious activities, or coerce actions either on behalf of or against religion. Beyond these core prohibitions, however, the government has significant leeway to interact with religion: it may acknowledge religious traditions and customs, use religious symbols and discourse in ecumenical ways, and financially assist activities of religious bodies that advance the commonweal. The Constitution does not prohibit communal expressions of faith, such as prayers in legislative halls or on public school football fields. This view also permits the government to facilitate private religious activity as a means of enhancing the religious liberty right contained in the Free Exercise Clause. Here, separationism becomes the rationale for protecting the independence of religious institutions, such as by preventing civil courts from adjudicating internal church disputes and affording religious bodies broad discretion over employment matters. Under this perspective, the superior value inherent in "separation" is the goal of minimizing government interference with religious actions and choices. One could term this a minimalist view of church-state separation.<sup>7</sup>

The more familiar understanding of separation of church and state, however, has been the so-called "strict separationist" position, represented in the above language from the *Everson* decision. This perspective is weighted toward the nonestablishment side of the religion clauses, and it advocates a broader understanding of separation to ensure that all government functions remain secular. The government may not encourage religious fealty, support religious institutions financially or otherwise, or use religious means to accomplish public policy. In practical terms, this has meant prohibiting public school-sponsored religious expression, disallowing government financial aid to religious schools and charities, prohibiting the government's use of religious symbols and discourse,

and reducing if not eliminating regulatory exemptions for religiously based conduct. From the late 1940s to the late 1980s, the Supreme Court adhered to the stricter separationist position, striking prayer and Bible reading in the public schools, barring most funding of parochial schools, and striking the government's display of the Ten Commandments and other religious symbols.<sup>8</sup>



[Open in new tab](#)

A controversial tablet displaying the Ten Commandments, located on the grounds of the Texas State Capitol in Austin, TX. Courtesy of the Office of the Texas Attorney General.

Criticism of the modern Court's separationist approach has existed since the 1940s, but gained momentum as a result of the resurgence of conservatism during the 1980s and the appointment of constitutional conservatives to the Supreme Court. Today, it is not uncommon for religious, legal, and cultural conservatives to criticize the concept of church-state separation. Critics charge that a separationist perspective imposes a regime of secularism, one that is not neutral toward religious matters but that privatizes and marginalizes religion. Yale law professor Stephen L. Carter argued that the separationism promoted "a culture of disbelief," while Catholic theologian Richard John Neuhaus claimed that it created a religiously "naked public square."<sup>9</sup> Such critics have argued that a minimalist view of church-state separation is more consistent with our history, the intent of the framers of the First Amendment, and constitutional doctrine.

More recently, a group of scholars has challenged the historical *bona fides* of separationism, arguing that the concept was not only foreign to members of the founding generation, but also that it emerged in the nineteenth century as a means to maintain Protestant dominance at the expense of Catholics and other religious minorities. In this telling, church-state separation is a profane and illiberal concept.<sup>10</sup> Even Supreme Court justices now criticize the doctrine, not just their predecessors' interpretation of it. Now the church-state decisions do not include laudatory references to separation, and they often express open hostility to the concept. Former Chief Justice William Rehnquist wrote: "There is simply no historical foundation for the proposition that the Framers intended to build the 'wall of separation' that was constitutionalized in [1947]. No amount of repetition of historical errors in judicial opinions can make the errors true." And more recently, Justice Antonin Scalia criticized lawyers for making allusions to the "so-called 'wall of separation between church and state.'" Separation of church and state, it seems, remains controversial.<sup>11</sup>

## The Historical Antecedents of Church-State Separation

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The idea of separating the functions and powers of the sacred and the profane reaches far back into Western history. In his writings in the fifth century,

Augustine of Hippo distinguished the authority and duties of the sacred and temporal worlds. The ideas of church–state separation that were most influential during the founding period, however, can be traced chiefly to the Protestant Reformation, the Enlightenment, and Whig politics. Arguments for disengaging secular authority from the church arose during the Reformation, largely in response to the arrangements that had arisen between the Catholic Church and various kingdoms. Much of this emphasis on separation was theologically based. John Calvin, in his *Institutes of the Christian Religion*, wrote that the “spiritual kingdom” and the “political kingdom [...] must always be considered separately,” due to the “difference and unlikeliness between ecclesiastical and civil power.” Yet, even though Protestant leaders such as Calvin and Martin Luther emphasized that the church and the state were distinct institutions with separate spheres, they viewed them as based in the same divine authority and engaging in complementary roles. The institutional distinction between church and state did not lead to disestablishment or any practical sense of separation. Only radical reformers such as the Anabaptists rejected the idea of religious establishments, with Anabaptist leader Menno Simons calling for a “separating wall” between the regenerate church and the corrupting world.<sup>12</sup>

British and American Puritans also insisted on distinct civil and religious institutions, denying political authority to church leaders. But the Puritans did not forswear formal establishments or the state support of religion, tying many of their civil laws to biblical mandates and maintaining a system of taxes to support religion. Public officials were to be “nursing fathers” of the regenerate church, reinforcing its mission. It fell to radical Separatist and some–time Baptist Roger Williams to make the most complete argument for church–state separation in early colonial America. In a famous passage, Williams argued for a “wall of Separation between the Garden of the Church and the Wilderness of the world.” Rhode Island, the colony established by Williams, rejected a religious establishment and enforced a high degree of separation between governmental and ecclesiastical institutions. (Quaker Pennsylvania also forswore a religious establishment, though it did not go as far as Rhode Island in rejecting any government role in reinforcing religious morality.) Although Williams is now viewed as a visionary, his influence at the time was limited; during the Revolutionary era, separationist Baptist Isaac Backus preferred to point to Pennsylvania as the model of religious liberty, instead of “irreligious” Rhode Island.<sup>13</sup>

Many of the founders knew of this history, though it is less likely they were familiar with the writings of reformers like Roger Williams. Rather, the Founders’ ideas about church–state relations came principally from the works of Enlightenment and Whig writers.<sup>14</sup> John Locke, author of the highly influential *Second Treatise on Government* (1690) and *A Letter Concerning Toleration* (1689), refuted the doctrine of the divine right of kings and replaced it with a theory of a “social contract” by which people—the ultimate sources of authority—delegated to government the responsibility to create an ordered society. Locke’s theories stood in sharp contrast to the notion that secular law was subject to religious mandates. In his *Letter Concerning Toleration*, Locke wrote that “the care of souls is not committed to the civil magistrate [...] [Thus] the civil power ought not to prescribe articles of faith or doctrines, or forms of worshipping God, by civil law.” Rather, “the whole power of civil government is concerned only with men’s civil goods, is confined to the care of the things of this world, and has nothing whatever



to do with the world to come.” It is true that Locke did not dispute all forms of government support for religion or advocate disestablishing the Church of England. But Locke’s writings must be viewed within the context of their time when notions of religious toleration and a division of ecclesiastical and civil functions were in their nascent stages. Locke envisioned a situation which would restrict the influence of each on the other. The “bounds of the church” cannot “in any manner be extended to civil affairs,” Locke insisted, “because the church itself is a thing absolutely separate and distinct from the commonwealth and civil affairs. The boundaries of both sides are fixed and immovable.”<sup>15</sup>

Other influential Enlightenment works included Baron Montesquieu’s *Spirit of the Laws* (1748), which advocated toleration of religious belief and freedom of worship, and the writings of Henry St. John, Lord Bolingbroke, who discounted the divinity of the scriptures and a religious basis of the law. Montesquieu and Bolingbroke were read by the founding generation, particularly Thomas Jefferson.<sup>16</sup> The works of the radical Whig philosophers, such as the authors of *Cato’s Letters* (1720–1723) John Trenchard and Thomas Gordon, were also influential during the founding era. In addition to advocating freedom of conscience, Trenchard and Gordon spoke out against corruption in the Anglican Church. John Cartwright, Richard Price, and Joseph Priestly were later opposition writers who advocated for political and religious reform. Priestly, who corresponded with many of the founding generation before fleeing to America, called for repeal of the Test and Corporation Acts (which imposed a religious test for public officeholding) and disestablishment of the Church of England, insisting on an even greater separation of religious and secular realms. A final Whig writer particularly influential among many Founding Fathers was theorist James Burgh, author of *Political Disquietations* and *Crito*. Like other radical Whigs, Burgh spoke out against religious establishments, warning of “a church getting too much power into her hands, and turning religion into a mere state engine.” In *Crito*, Burgh called for building “an impenetrable wall of separation between things sacred and civil,” the likely source for Jefferson’s famous 1802 [letter to the Danbury Baptists](#) where he uses the same metaphor. Burgh’s fans and subscribers also included George Washington, John Adams, John Hancock, John Dickinson, Benjamin Rush, Roger Sherman, and James Wilson, a veritable “who’s who” of the founding generation.<sup>17</sup>

Because these writings were so popular among members of the founding generation, intellectual historians consider them central to political thought when revolutionary leaders began the process of creating republican states out of former British colonies. To be sure, other ideological strains influenced the founding generation, including classical republicanism, the common law, natural law, and even Protestant evangelical and Puritan covenantal thought. The Founders synthesized these seemingly disparate ideological strains into a comprehensive republicanism. No one during the founding generation argued in favor of *increasing* church–state ties, and only a small number advocated retaining the status quo of religious establishments. The point is that the Founders imbibed multiple sources that promoted various conceptions of religious toleration, freedom of conscience, disestablishment, and church–state separation. What was important to the Founders—and is important to modern efforts to understand the period—is that the ideas about church and state were dynamic and unfolding. Because of that fluid environment, it should not be surprising that few of the Founders offered a complete understanding of church–state arrangements. But

most important, there was a clear progression in favor of greater separation.<sup>18</sup>

## The Separationist Impulse

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Several factors support claims of a clear direction toward separation during the founding period. First, the American Revolution followed a period of religious experimentalism and expansion commonly called the First Great Awakening. Although known for its emotional revivals that challenged the staid religious practices of the established churches, the Great Awakening was equally significant for breaking down forces of religious uniformity and substituting notions of religious equality and volunteerism. Historians have documented how democratic ideas flowed into the religious movement and out again, undermining assumptions about the necessity of state supported religion. The Great Awakening cemented the notion that participation in, and support of, religious worship should be voluntary, not compulsory.<sup>19</sup>

With the advent of the Revolution, New York and North Carolina quickly abolished their religious establishments, joining the ranks of New Jersey, Pennsylvania, Delaware, and Rhode Island. Granted, church establishments had never worked well in any of those former colonies (or had not worked at all), so disestablishment was not controversial. But none of these new states considered moving in the opposite direction toward increasing church-state ties, even though they were theoretically free to do so. Most disestablished states retained other practices inconsistent with a modern understanding of separation, such as religious requirements for holding public office and participating in legal proceedings (i.e., oaths), official acknowledgments of religion, and religiously based sumptuary laws (e.g., blasphemy and Sabbath laws). Nonetheless, all states had taken the first steps toward separation; before long many had abolished other religious disqualifications they had retained from the colonial era. For example, in 1786 Pennsylvania liberalized its religious requirements for public officeholding, and its constitution of 1790 omitted earlier references to “Almighty God” as the source for republican government. The clear trend was toward liberalizing religious disqualifications.<sup>20</sup>

Initially, the remaining eight states retained or reauthorized their existing structures of religious assessments and legal preferences for Christianity. By the end of the Revolution, however, even the formal Anglican establishments in Virginia and South Carolina had given way to “multiple establishments” where a taxpayer could have his assessment paid to his own church or, as was common in New England, to that church chosen by the majority vote of the parish. But this description does not indicate the ongoing dynamism in those states. In 1786, Virginia rejected a bill to allow tax assessments for religious worship, adopting in its stead Jefferson’s Act for Establishing Religious Freedom. By 1789, four additional states had abandoned their religious establishments (or had neglected to fund them), thus allowing them to die. The first Georgia and Maryland Constitutions had allowed for religious assessments but neither state instituted a system. Maryland voters rejected a proposed assessment in 1785, indicating a quick reversal of opinion, while a Georgia law of the same year apparently never went into effect. The new Georgia Constitutions of 1789 and 1798, respectively, removed the religious test for officeholding and abolished all assessments. Although the 1778 South Carolina Constitution declared a “general establishment”

of Protestantism, limiting church incorporation and public officeholding to Protestants, it inconsistently provided that no person could be compelled to support any religious body. As a result, South Carolina's "establishment" amounted chiefly to a method of incorporating churches, and no church received public tax support. South Carolina's Constitution of 1790 omitted the remaining reference to an establishment and removed earlier religious restrictions on public officeholding. Finally, Vermont in 1786 rewrote its constitution of 1777, reaffirming that "no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience," but now removing a previous contradictory provision requiring "support" of public worship. All of these developments reveal a progression of thought about the meaning of church-state separation and freedom of conscience at the state level.<sup>21</sup>

To be sure, tepid religious establishments continued into the nineteenth century in three states (Connecticut, Massachusetts, New Hampshire). But even in those states, the idea of a religious establishment was not particularly popular, and opposition to tax assessments and religious preferences was strong and growing. Experiencing pressure from within and without, officials in Massachusetts, Connecticut, and New Hampshire denied they even had a religious establishment. John Adams referred to the Massachusetts arrangement as "a very slender one, hardly to be called an establishment,"<sup>22</sup> whereas New Hampshire Chief Justice Jedediah Smith declared in an 1803 decision that

a religious establishment is where the State prescribes a formulary of faith and worship for the rule and government of all the subjects. Here the State do [sic] neither. It is left to each town and parish, not to prescribe rules of faith or doctrine for the members of the corporation but barely to elect a teacher of religion and morality for the society, who is to be maintained at the expense of the whole. The privilege is extended to all denominations. There is no one in this respect superior or inferior to another.<sup>23</sup>

And in commenting on the Connecticut establishment, jurist Zephaniah Swift wrote in 1791 that "every Christian may believe, worship, and support in such manner as he thinks right, and if he does not feel disposed to join public worship he may stay at home as he pleases without any inconvenience but the payment of his taxes to support public worship in the located society where he lives." Smith denied that Connecticut maintained a religious establishment, which he associated with systems that favored one church exclusively.<sup>24</sup>

By the final decade of the eighteenth century, however, the New England argument that nonpreferential establishments did not violate rights of conscience was losing ground to the more compelling arguments found in Jefferson's Act for Establishing Religious Freedom and Madison's *Memorial and Remonstrance, against Religious Assessments*. Increasingly, early Americans believed that tax support of one religion or of religion generally violated rights of conscience. By the time of the writing of the Constitution, "the belief that government assistance to religion, especially in the form of taxes, violated religious liberty had a long history," writes Thomas Curry. The movement away from religious assessments and toward expanding notions of rights of conscience demonstrates the transformation in attitudes about church-state arrangements.<sup>25</sup>



# Church-State Separation in the Nineteenth Century

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Whether the prevailing regime is best represented by the Jeffersonian impulse of a “high wall of separation” or by a more accommodationist impulse that acknowledges the role of religion in public life through actions such as presidential proclamations of days of prayer and thanksgiving, there is little question that the separationist narrative runs into difficulties once one considers the nineteenth century. Indeed, the impetus toward achieving a more complete form of disestablishment foundered early in the next century. Attitudes about disengaging religious and temporal realms shifted as natural rights rationalism lost favor to a new Protestant evangelical ethos that came to dominate the nation culturally by the second third of the century. This attitudinal shift affected perspectives toward church-state relations.

Several factors contributed to this transformation in attitudes. First was the American reaction to the French Revolution and the subsequent decline in deistic thought in the United States. That reaction coincided with the wide-scale outbreak of evangelical revivals after 1800, commonly called the Second Great Awakening. Spurred on by spiritual longing, frontier conditions, and the vacuum left by disestablishment, America entered a period of religious experimentation, what historian Jon Butler has termed a “spiritual hothouse” and what Shakers called a period of religious “democratization.” While many people experimented with heterodox forms of spirituality such as Mormonism, transcendentalism, and Mesmerism, the clear winners were Methodists and Baptists. Church membership tripled, and Protestant evangelicalism quickly became the dominant cultural expression in America, fueled by a post-millennialist eschatology (which taught that the Second Coming of Jesus would occur at the conclusion of a thousand-year golden reign). Society was, in a sense, perfectible, and America would be at the vanguard of bringing about Christ’s Kingdom. To facilitate the Second Coming, evangelical leaders created voluntary organizations designed to reform society by addressing issues such as intemperance, biblical illiteracy, and Sabbath observance. Evangelical leader Lyman Beecher believed that moral reform assisted the government by ensuring public piety. Reform societies would “constitute a sort of moral militia, prepared to act upon every emergency, and repel every encroachment upon the liberties and morals of the State,” Beecher insisted. “In a free government, moral suasion and coercion must be united.” These efforts brought reunited civil and religious functions in America. Even though this engagement now operated on an informal level, not officially, the middle third of the nineteenth century (more than the colonial period) was truly a “Protestant Ages,” the historian Robert T. Handy has noted.<sup>26</sup>

As part of this transformation, evangelicals redefined popular and legal understandings of disestablishment. Early historians had already begun reevaluating the nation’s founding, identifying the hand of Providence in American history, sanctifying its leaders (particularly George Washington, the “American Moses”) and their accomplishments (e.g., the Constitution). Evangelical historians joined in this revisionism, helping to construct, in Jon Butler’s words, “a myth of the American Christian past.” Evangelical writers claimed that the nation’s Founders had not sought to disassociate religion from the state; rather, they sought to avoid rivalry among Protestant denominations while ensuring that America remained a “Christian nation” through government patronage of a general Protestantism.<sup>27</sup> In a widely circulated 1832 sermon, the

Reverend Jasper Adams claimed that Christianity “was intended by [the Founders] to be the corner stone of the social and political structures which they were founding.” Adams concluded that “the people of the United states have retained the Christian religion as the foundation of their civil, legal and political institutions.” This new interpretation soon dominated popular attitudes.<sup>28</sup>

A final factor that contributed to the attitudinal shift involved the legal community. Many judges of the antebellum period shared the emerging evangelical perspective. These judges enforced laws prohibiting blasphemy and Sunday activities based on religious grounds while declaring that “Christianity formed part of the common law.” This belief in the Christian nature of America affected interpretations of constitutional provisions as well. In 1824, the Pennsylvania Supreme Court rejected a claim that blasphemy laws violated the religious liberty provisions of the state constitution. While declaring that “complete liberty of conscience” existed in the state, the court also explained that “no free government now exists in the world, unless where Christianity is acknowledged, and is the religion of the country.”<sup>29</sup>

The most complete example of this view is found in Supreme Court Justice Joseph Story’s 1833 treatise on constitutional law:

The real object of the [First] amendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity: but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government.<sup>30</sup>

For Story and others, the government could advance Christianity generally to the exclusion of other religions. “It is impossible for those who believe in the truth of Christianity as a divine revelation to doubt that it is the especial duty of government to foster and encourage it among all the citizens and subjects,” Story declared.<sup>31</sup>

These factors have led most modern scholars to assert that the model for church-state separation during the nineteenth century more closely tracked the minimalist approach discussed above. Public acknowledgments of religion were commonplace. When church-state separation did arise, according to Philip Hamburger, it was used to justify Protestant dominance over public institutions—particularly public schooling and its funding source—at the expense of Catholics and other immigrants. Church-state separation prohibited the funding of Catholic parochial schools and readings from the Catholic Douay Bible, but not the “nonsectarian” Protestant exercises in the public schools. This truncated understanding of separation during the nineteenth century can also be seen in the federal government’s punishment of the Mormon polygamists and support for efforts by missionaries to Christianize Native Americans.

On the positive side, the Supreme Court relied on the notion of church-state separation to restrict civil courts from adjudicating internal theological disputes of church bodies. In many respects, however, separation of church and state during the nineteenth century more closely tracked Justice Story’s description than it did the ideal advanced by Jefferson and Madison.<sup>32</sup>

That said, it is wrong to view nineteenth-century attitudes toward church-state matters as static. Prosecutions for blasphemy petered out after the 1830s, and

Sunday law enforcement declined as the century progressed. By the last quarter of the century, judges generally rejected arguments that courts were obligated to uphold behavioral laws on religious grounds. In public education, the notion of nonsectarian instruction went through several stages, with many school districts minimizing the religious content of the exercises in response to complaints by Catholics, Jews, and other religious minorities. A handful of state courts even struck down the religious exercises as being inconsistent with separation of church and state. By late century, many Protestant leaders complained that public schools were being “secularized.” In contrast, a growing number of educators, intellectuals, and freethinkers commended the changes to public education, calling for a more rigorous application of church–state separation. Like the founding period, therefore, the nineteenth century was a dynamic period for church–state development.<sup>33</sup>

Thus when the Supreme Court became engaged in church–state controversies in the mid–twentieth century, it could draw on various models of church–state relations. In choosing the more separationist paradigm, the modern Court did not create new law; rather, it built on an evolving tradition, one with a long legacy. While the debate continues over which model is more historically accurate, the idea of separation of church and state remains a core concept in the American experience.

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10. Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002); Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation of Church and State* (New York: New York University Press, 2002).
11. *Wallace v. Jaffree*, 472 U.S. 38, (1985) (Rehnquist, J., dissenting); *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009).
12. St. Augustine, *City of God* (410–426 CE), and Martin Luther, *Works* (1523 CE), in *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*, ed. Daniel L. Dreisbach and Mark David Hall (Indianapolis: Liberty Fund, 2009), 16, 19–21; John Calvin, *Institutes of the Christian Religion*, in *The Founders' Constitution*, ed. Philip Kurland (Chicago: University of Chicago

Press, 1987), 5:1; Douglas Laycock, "The Many Meanings of Separation," *University of Chicago Law Review* 70 (2003): 1667–1701; John Witte Jr., *Religion and the American Constitutional Experiment*, 2nd ed. (Boulder, CO: Westview, 2005).

13. Laycock, "The Many Meanings of Separation," 1687–92; Edwin S. Gaustad, *Liberty of Conscience: Roger Williams in America* (Grand Rapids, MI: William B. Eerdmans, 1991), 38–44; Edmund S. Morgan, *Roger Williams: The Church and the State* (New York: W. W. Norton, 1967), 86–141; William G. McLoughlin, *Soul Liberty: The Baptists' Struggle in New England, 1630–1833* (Hanover, NH: University Press of New England, (1991), 257–258

14. See Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967), 26–30, 34–45. "More directly influential in shaping thought of the Revolutionary generation than classical writers," Bailyn writes, "were the ideas and attitudes associated with the writings of Enlightenment rationalism (26).

15. Sanford Kessler, "Locke's Influence on Jefferson's 'Bill for Establishing Religious Freedom,'" *Journal of Church and State* 25 (1983): 231; John Locke, *Two Treatises of Government*, ed. Peter Laslett (New York: New American Library, 1965), 408–12; John Locke, *A Letter on Toleration*, ed. Raymond Klibansky (Oxford: Oxford University Press, 1968), 67–71, 85; Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 57–58.

16. See Montesquieu's *Spirit of the Laws* (1748), in *Founders' Constitution*, 5:12; Bailyn, *Ideological Origins*, 27–29; Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton, 1969), 152–153; Allen Jayne, *Jefferson's Declaration of Independence* (Lexington: University of Kentucky Press, 1998), 19–40.

17. Bailyn, *Ideological Origins*, 35–54; Wood, *Creation of the American Republic*, 291–305; Isaac Kramnick and R. Laurence Moore, *The Godless Constitution* (New York: W. W. Norton, 1996), 80–82. Carla H. Hay, *James Burgh: Spokesman for Reform in Hanoverian England* (Washington, DC: University Press of America, 1979), 42–43; Oscar Handlin and Mary Handlin, "James Burgh and American Revolutionary Theory," *Proceedings of the Massachusetts Historical Society* 73 (1961): 38–57; James Burgh, *Crito, or Essays on Various Subjects*, 2 vols. (London, Dodsley, Becket, and de Hondt, 1766, 1767), 1:7, 2:119

18. Bailyn, *Ideological Origins*, 22–54; Wood, *Creation of the American Republic*, 1–124. The leading exception being the orthodox Congregationalist Timothy Dwight, later president of Yale College. See Timothy Dwight, *The Duty of Americans, at the Present Crisis* (1798), in Ellis Sandoz, *Political Sermons of the American Founding Era* (Indianapolis: Liberty Fund, 1991), 1363–94; Green, *The Second Disestablishment*, 31–51.

19. See Sidney E. Mead, *The Lively Experiment* (New York: Harper & Row, 1976), 16–43; Jon Butler, *Awash in a Sea of Faith: Christianizing the American People* (Cambridge, MA: Harvard University Press, 1990), 164–224; Nathan O. Hatch, *The Democratization of American Christianity* (New Haven, CT: Yale University Press, 1989).

20. See J. William Frost, *A Perfect Freedom: Religious Liberty in Pennsylvania* (New York: Cambridge University Press, 1990), 60–78 (noting that after a restrictive trend during the Revolutionary War with the enforcement of religious behavioral laws, Pennsylvania adopted a constitution in 1790 that was quite "radical" on issues of disestablishment and toleration.); "William Penn, Essay 2" in Herbert J. Storing, *The Complete Anti-Federalist*, Vol. 3 (Chicago: University of Chicago Press, 1981), 171–75: "[W]e find it declared in every one of our [state] bill of rights, 'that there shall be a perfect liberty of conscience, and that no sect shall ever be entitled to a preference over the others.' Yet in Massachusetts and Maryland, all the officers of government, and in Pennsylvania the members of the legislature, are to be of the Christian religion; in New-Jersey, North-Carolina, and Georgia, the protestant, and in Delaware, the Trinitarian sects, have exclusive right to public employments; and in



South-Carolina the constitution goes so far as to declare the creed of the established church. Virginia and New-York are the only states where there is a perfect liberty of conscience.” Benjamin Rush to Richard Price, April 22, 1786, in *Founders’ Constitution*, 4:636.

21. See “Act for Establishing Religious Freedom” (1785) in *Founders’ Constitution*, vol. 5:84; Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United . . . States of America* (Washington, DC: U.S. Government Printing Office, 1909), 789, 800–801, 3255–56, 3664, 3752; Curry, *First Freedoms*, 135–89; Leonard Williams Levy, *The Establishment Clause: Religion and the First Amendment* (Chapel Hill: University of North Carolina Press, 1994), 47–51; Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776–1787* (Charlottesville: University of Virginia Press, 1977), 144–72; William G. McLoughlin, *New England Dissent, 1630–1833* (Cambridge, MA: Harvard University Press, 1971), 2:800–801.

22. Curry, *First Freedoms*, 162–92; McLoughlin, *New England Dissent*, 2:610–11; Isaac Backus, *A History of New England, 1774–1775*, in *Founders’ Constitution*, vol. 5:65.

23. *Muzzy v. Wilkins*, 1 Smith’s N.H. 1, 9 (1803).

24. Zephaniah Swift, *A System of the Laws of the State of Connecticut*, Vol. 1 (Windham, CT: Author, 1795), 146, Levy, *Establishment Clause*, 42–43; Curry, *First Freedoms*, 172–75.

25. James Madison, *A Memorial and Remonstrance*, ¶¶ 3 and 4 (arguing that enforced assessments violates rights of conscience); Vermont Constitution of 1786, chap. 1, art. 3: “[T]hat no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience.” Curry, *First Freedoms*, 217.

26. Robert T. Handy, *A Christian America: Protestant Hopes and Historical Realities*, 2nd ed. (New York: Oxford University Press, 1984), 24–56; Lyman Beecher, “A Reformation of Morals Practicable and Indispensable,” in *Lyman Beecher and the Reform of Society: Four Sermons, 1804–1828*, ed. Edwin S. Gaustad (New York: Arno Press, 1972), 17–19; Robert T. Handy, “The Protestant Quest for a Christian America, 1830–1930,” *Church History* 22 (1953): 8–20, 12.

27. Robert Baird, *Religion in the United States of America* (Glasgow: Blackie and Son, 1844); Stephen Colwell, *The Position of Christianity in the United States* (Philadelphia: Lippincott, Grambo & Co., 1854); B. F. Morris, *Christian Life and Character of the Civil Institutions of the United States* (Philadelphia: George W. Childs, 1864); Butler, *Awash in a Sea of Faith*, 285.

28. Jasper Adams, *The Relation of Christianity to Civil Government in the United States* (Charleston, SC: A. E. Miller, 1833), 12–13.

29. *Updegraph v. Commonwealth*, 11 Serg. & Rawl. 394, 406–407 (Pa. 1824); *People v. Ruggles*, 8 Johns. 290, 295–96 (N.Y. 1811).

30. *Commentaries on the Constitution of the United States* (Boston: Hilliard, Gray, and Co., 1833), § 1877.

31. *Commentaries* § 1871.

32. *Watson v. Jones*, 80 U.S. 679 (1872).

33. Green, *The Second Disestablishment*; Steven K. Green, *The Bible, the School, and the Constitution: The Clash That Shaped Modern Church-State Doctrine* (New York: Oxford University Press, 2012).

