One Nation Under God: The Relationship of Church and State in American History

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"As the government of the United States of America is not in any sense founded on the Christian Religion," begins Article 11 of the Treaty of Tripoli, an accord made by the United States with the Dey of Algiers in 1796 (Miller). Yet, it must be said that this document spoke of sentiments not to appear for several centuries to come. In 1796, the legacy of established religion still loomed large over many of the colonies. Measures such as the Virginia Statute for Religious Freedom vied against memories of the First Great Awakening, now over half a century past. Even with the first amendment's ratification in 1791 (Kennedy 192), the question of religious freedom was not heard in the Supreme Court until 1947 ("Everson"). Since then, a string of cases have defined a more rigid separation of church and state than had ever been known before. Despite the perception that it was a strong colonial value, the firm separation of church and state has only begun to appear in the United States in the past sixty years.

The notion that the thirteen colonies were built on principles of religious freedom is one widely popularized – from the heart-wrenching tale of the Pilgrims to the Maryland Act of Religious Toleration to the religious freedom granted to the settlers of Rhode Island and Pennsylvania. The reality, however, is a far harsher history. The Pilgrims sought religious freedom only for themselves, that they might be kept apart from the corrupt masses; later absorbed into the Puritanical Massachusetts Bay Colony, religious freedom was granted – to all Puritans (Matthews). "We shall be as a city upon a hill," proclaimed Massachusetts Bay Colony Governor John Winthrop (Kennedy 47): a shining example of a theocratic society for all to see. Religious freedom was valued only in that the Puritans were free from the religion of the Church of England; not for other settlers to be free of the religion of the Puritans.

The same model repeated itself in the colony of Maryland. Founded by Lord Baltimore in 1634, its intent was in part to provide a haven for his Roman Catholics, widely persecuted in

England at the time (Kennedy 33-34). As increasing numbers of Protestants immigrated to the colony, drastic action had to be taken lest the persecution begin once more. The result was the Maryland Toleration Act, "An Act Concerning Religion" ("Maryland"). Far from being an act of toleration, four of the six main paragraphs treat instead with punishments for crimes of a religious nature ("Maryland"). They hand down punishments from fines to whipping and imprisonment to death for such various and sundry crimes as "prophan[ing] the Sabbath", "utter[ing] any reproachfull words or speeches concerning the blessed Virgin Mary the Mother of our Saviour", and "deny[ing] our Saviour Jesus Christ to be the son of God" ("Maryland"). Aside from the complete disregard for Jews, atheists, and other non-Christians, the Act is in fact very tolerant – of Protestants and Catholics. "[T]he better to preserve mutual love and amity among the inhabitants thereof," freedom of religion was effectively established for all Christians ("Maryland"). In establishing freedom for his own denomination, Lord Baltimore furthered the current American tradition of religious intolerance.

The supposed religious toleration present in Pennsylvania was likewise lukewarm, if not so harsh on nonbelievers. In the first article of the "Charter of Privileges" granted by William Penn to the settlers, declared religious freedom for all people "who shall confess and acknowledge One almighty God, the Creator" (Thorpe – "Charter of Privileges"). Although once more excluding atheists, this clause largely granted a freedom of worship with little precedent. However, only those "who also profess to believe in *Jesus Christ*, the Saviour of the World" were allowed to hold government office (Thorpe – "Charter of Privileges"), likely a concession to King Charles II, granter of the charter (Kennedy 53, 60). Although this first article was specifically mentioned to be kept, "without any Alteration, inviolably for ever" (Thorpe – "Charter of Privileges"), a legislature composed only of Christians is likely to further Christian

interests. The one place in which an experiment in true religious freedom was found in colonial America was in Rhode Island. In the charter granted to Rhode Island by King Charles II in 1663, the King states, “noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion” (Thorpe – “Charter of Rhode Island”). Calling it a “livlie experiment”, no mention of requirements of Christianity is found within the charter (Thorpe – “Charter of Rhode Island”). Considering, however, that Rhode Island and Pennsylvania were some of the most liberal, independent-minded colonies (Kennedy 48, 60), religious freedom in America still had a long ways to go.

One of the factors holding the true separation of church and state back was the continued legacy of the First Great Awakening. The traditional parish system in England, wherein religious communities were formed by location around a central church, was difficult to transfer to the spread-out American lifestyle (Matthews). The usual location-based sense of community – and of religious discipline – was not to be found in the farm or frontier life of most Americans (Matthews). One of the first large reactions against this was found in the person of Jonathan Edwards, a resident of Northampton, MA in 1734 (Kennedy 96). Reacting to the shrinking gap between God and man caused by the Enlightenment and its emphasis on reason rather than faith, Edwards began one of the first mass movements to sweep America – one based firmly upon religion.

Fearing for the fate of the religion of his fathers, Edwards saw around him a decline in the power of the church and a striking increase in such travesties as late-night, co-ed parties and – God forbid – extramarital sex (Matthews). Preaching hellfire and brimstone, one of his most famous sermons was entitled “Sinners in the Hands of an Angry God” (Kennedy 96). In it, he

stated, “The God that holds you over the pit of hell, much as one holds a spider or some loathsome insect over the fire, abhors you, and is dreadfully provoked” (Kennedy 97). Despite this fiery rhetoric, Edwards became immensely popular – mainly because he was misunderstood (Matthews). While preaching on God’s ultimate power to save an individual, his parishioners heard that they could become part of the “elect” and achieve salvation (Matthews). This perception resulted in a great leap in church membership, effectively kicking off the Great Awakening (Matthews).

Taking up Edwards’s mantle in 1738, the itinerant preacher George Whitefield explosively entered the Awakening scene (Kennedy 96-97). A dramatic and highly regarded orator (it was said he always used the word “Mesopotamia” in his speeches, regardless of the topic, simply for effect), Whitefield traveled up and down the East Coast preaching Edwards’s revivalist message (Matthews). Focusing on the emotional aspects of religion, he downplayed denominational differences – preaching that “sinners who love Jesus will go to heaven” – and used everyday experiences to relate to the common man (Matthews). Whitefield brought the movement from the North, where it was mainly centered in urban areas and served to restore the body of Saints against the half-way covenant, to the South, where it became an immigrant-based frontier phenomenon (Matthews). Preachers such as Samuel Davies and Shubal Stearns brought the movement forward, bringing it from Calvinist venues to Presbyterian and Baptist ears, respectively (Matthews).

The results of the Great Awakening were many and varied. Religiously speaking, sects split between “Old Lights” that retained cerebral, Calvinist philosophies and “New Lights” that embraced the new emotionalism in religion, most predominately Baptists and Methodists (Kennedy 97). Dissent gained more than a modicum of respect, as these smaller sects – such as

the Presbyterians, Baptists, and Methodists – gained more of a mainstream regard (Matthews). Even though the theocratic governments of states like Virginia and North Carolina were largely turned democratic, the movement still served to unite some 80% of Americans in their newly zealous Christian faith (Matthews). It is this effect most of all that dampened the strength of the sentiment for the firm separation of church and state. What a vast majority subscribe to, a vast majority has no wish to alter.

Indeed, by 1775, eight of the thirteen British-American colonies had established, tax-supported churches (Kennedy 95). The Anglican Church was established in Maryland, Virginia, North Carolina, South Carolina, Georgia, and New York City and three adjacent counties (Kennedy 95). Despite the fact that there was no American bishopric, the Church of England still represented kingly authority to many colonists (Kennedy 95). Its continual worldly doctrines after the Great Awakening in addition to its failure of a clergy (the College of William and Mary was founded in 1693 specifically to train better clergymen) did not help its reputation any (Kennedy 95). In Massachusetts, Connecticut, and New Hampshire, the Congregational Church was established – although in Massachusetts, other popular denominations were exempted from the tax (Kennedy 95). Clearly, the intertwining of church and state was still strongly present even on the eve of revolution. Something drastic had to change before the sentiments appearing in the first amendment could appear.

Passed on January 16, 1786 at the urgings of Thomas Jefferson, the Virginia Statute for Religious Freedom represented such a radical attempt ("Virginia"). Appealing to Jefferson's favorite fallback – natural right – the Statute argued for freedom of conscience ("Virginia"). Although slightly hypocritical in its premise – "Whereas, Almighty God hath created the mind free" – the act still asserted that one's religious beliefs ought to have no bearing on one's civil

rights (“Virginia”). Additionally, in a reaction against established religion, the Statute stated that contributing money to an organization that goes against one’s innermost beliefs is wrong, thereby effectively disbanding established religion in Virginia (“Virginia”).

It was this newfound sentiment that led to the adoption of the First Amendment’s protection of freedom of religion in 1791, to wit: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” (Kennedy A44). It was this newfound sentiment, however idealized, that led to the statement in the Treaty of Tripoli that “[T]he government of the United States of America is not in any sense founded on the Christian Religion” (Miller). It was this newfound sentiment that would not to begin to be fully realized until midway through the twentieth century, when it was first called into question before the highest court of the land.

In this first case in 1947, *Everson v. Board of Education of Ewing*, the question was presented before the Court of whether it was constitutional for the state of New Jersey to provide public funds to bus students to parochial schools (“Everson”). Applying the establishment clause of the first amendment to the states by route of the fourteenth amendment (as it had previously with other such clauses), the Court ultimately allowed the bussing of students to continue (McCloskey 199). Justice Black, delivering the majority opinion in a narrow 5-4 decision, referenced the tradition of the Virginia Statute of Religious Freedom in his decision, saying, “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. […] 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’” (“Everson”). Although this wall of separation was set up, Black ruled that it did not apply because the bussing was provided to all public and private

school students and did not seek to favor the parochial school students ("Everson"), and did not give money directly to said schools (McCloskey 199). Although a clear delineation appeared to have been set up as a precedent for future cases, such was destined not to be the case.

The next few major cases dealing with the separation of church and state proved only to be "a series of inconsistent and almost inexplicable decisions" (Quoted in McCloskey 200). For instance, in *McCollum v. Board of Education* in 1948, the Court dealt with the question of voluntary religious instruction in public schools, while other students were given a free period ("McCollum"). This time, Justice Black built higher the "wall of separation", and decried the use of the "compulsory public school machinery" for religious purposes ("McCollum"). Four years later, in *Zorach v. Clauson*, the Court was presented with a case wherein students in a New York school district released students on a voluntary basis during the school day for religious instruction at private institutions ("Zorach"). Justice Douglas allowed this practice to continue, stating in his opinion that the policy was neutral rather than beneficial or hostile towards religion ("Zorach"). He argued that there were the two specific separations between church and state – those of free exercise and establishment – and, given that the policy occurred without the use of public money or classrooms, no constitutional issues were present ("Zorach"). Likening it to asking absence for a religious event like Yom Kippur or a Holy Day of Obligation, such a similar practice to that in *McCollum* was firmly upheld.

The next two cases, although consistent in their decisions, clearly showed the need for a solid precedent on which to decide future cases. In 1962, the Court heard *Engel v. Vitale*, dealing with voluntary prayer in public schools ("Engel"). Justice Black reversed the practice, on the basis of the fact that prayer is fundamentally religious – thereby violating the Establishment clause ("Engel"). Even though it is voluntary, he claimed that it placed a pressure to fit in upon

the religious minorities who might not wish to pray in such a setting or manner ("Engel"). Black hearkened back to how, in 1549, the Book of Common Prayer set out the mode of prayer in the established Church of England – and how, but a few years later, the Act of Uniformity was passed requiring all Englishmen to be members of that selfsame Church ("Engel"). Were school prayer, even voluntary, to be allowed, a precedent could be established to enable the same path to unfold all too easily in modern times.

A similar case came up a year later in *Abington School District v. Schempp*, decided in conjunction with *Murray et al. v. Curlett et al.* ("Abington"). The cases dealt respectively with the reading of Bible verses and the recitation of the Lord's Prayer in public school ("Abington"). Justice Clark, writing the majority opinion, also made use of the fact that such acts might be psychologically harmful, such as readings from the New Testament contradicting Jewish beliefs taught in the home ("Abington"). However, the main crux of his opinion was that the policies were biased to the Christian religion by the presence of the Lord's Prayer and the requirement of the Bible ("Abington"). Arguing that the law must respect absolute equality amongst all religions, he stated that, "the government is neutral, and, while protecting all, it prefers none, and it disparages none" ("Abington"). Despite the similarities between *Abington* and *Engel* and the identical rulings, the thought processes behind the rulings were still inconsistent and no solid precedent had yet been established.

Fortunately, such a deterministic method was soon to be created. In 1971, in the decision for *Lemon v. Kurtzman*, the Court put forth a three-pronged test to determine whether an issue between church and state runs afoul of the Establishment Clause ("Lemon"). The law in question must have a clear, secular purpose; the primary purpose of the law cannot be to advance or inhibit religion; and there can be "no excessive government entanglement with religion"

("Lemon"). Using this test, it determined that laws in Rhode Island and Pennsylvania giving direct state aid to religious schools was prohibited, as it involved "excessive government entanglement" ("Lemon"). This so-called "Lemon test" was a boon to future justices. No more would there be nearly contradictory decisions wherein the state can supply textbooks to religious schools, but not maps or other instructional materials (McCloskey 200). Although the precise definition of "excessive entanglement" might still be at issue, at least there were clear guidelines for the Court to follow in issuing future decisions.

The use of the Lemon Test can clearly be seen in future decisions treating on the Establishment clause. For instance, in 1980, the Court heard the case *Stone v. Graham*, wherein a Kentucky law required each classroom to post the Ten Commandments on the wall ("Stone"). The state argued that, "the secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States" ("Stone"). Unfortunately for Kentucky, this argument did not persuade the judges, who concluded that the act served no secular purpose, serving rather only to advance religion ("Stone"). The same principle was applied in *Edwards v. Aguillard* in 1987 ("Edwards"). Louisiana's Creationism Act stated that whenever either evolution or "creation science" was taught, the other must be taught as well ("Edwards"). The Court, under Justice Brennan, ruled the act unconstitutional because it served no secular purpose, rather favoring Creationism in its application and explicitly endorsing religion ("Edwards").

The second prong of the Lemon Test was applied in *Allegheny County v. Greater Pittsburgh ACLU* in 1989 ("Allegheny"). A crèche with the words "Gloria in Excelsis Deo" (or "Glory to God in the Highest") was displayed prominently in the county courthouse ("Allegheny"). Outside, in a public park, a large Christmas tree and menorah stood along with a

sign calling for liberty ("Allegheny"). Justice Blackmun wrote the majority opinion, holding that the crèche is unconstitutional – as it serves to advance the Christian faith to the exclusion of others ("Allegheny"). The Court also held that the Christmas tree and menorah are constitutional, as there is no more secular substitute for the menorah and the primary purpose of the display is one of secular plurality and multiculturalism rather than one of advancing particular religions or religion in general ("Allegheny").

The third prong was brought into the case *Lee v. Weisman* in 1992 ("Lee"). In this case, despite a more conservative Court, the Court still ruled that prayers could not be read at public school graduation ceremonies (McCloskey 199). Justice Kennedy held that the government was identifying with religion – whether a priest, rabbi, or imam performed the prayer service – and therefore both advancing religious causes and excessively entangling itself with religion ("Lee").

With all of these cases focused on the Establishment Clause, the Free Exercise Clause was not left out entirely. In 1972, before practical application of the Lemon Test, the Court considered the case *Wisconsin v. Yoder* (McCloskey 201). In the case, the Amish requested that their children be exempted from compulsory education to the age of sixteen, as it contravened their religious beliefs. The Court ruled in their favor, although limited such exceptions to groups like the Amish, with long histories and good records of behavior (McCloskey 201). Although this case had no general consequences, the case *Employment Division, Department of Human Resources of Oregon v. Smith* in 1990 did (McCloskey 201). The state of Oregon had criminalized the use of peyote despite its sacred use in Native American religious ceremonies (McCloskey 201). Native American groups protested this law, specifically the fact that they did not receive unemployment compensation as a result of the use of peyote (McCloskey 201). Justice Scalia was able to apply the Lemon Test to the Free Exercise clause as well, determining

that the law had a legitimate secular purpose, that it did not involve excessive entanglement with religion, and that it in fact served neither to advance nor prohibit religion (McCloskey 201). Because a religious minority was not "selected out" by the law, which was rather a piece of general legislation that did not specifically target the Native American ceremonies (McCloskey 201).

In the words of James Madison:

> [I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever? ("Engel")

It cannot be said that the separation between church and state today is quite firm nor as solid as it might be. We still strive to live up to the principles laid down by Jefferson in the Virginia Statute of Religious Freedom. However, the relationship between church and state is far more distanced today than ever it was centuries ago when Jefferson called upon the ideal of freedom of conscience. The legacies of established religion and the Great Awakening are now far behind us in our cultural memory, and we have the ability to work towards that ideal. We have the ability to seek full religious equality for all of our citizens. We have the ability to, even as Jefferson, seek the achievement of higher goods. The Virginia Statute ends thusly: "yet we are free to declare, and do declare that the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act

will be an infringement of natural right.” Jefferson and the Virginia legislature had some hope that their principles might live on. It is now our duty to see that those liberties are preserved, to see that the Founding Fathers did not found this country in vain.

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