

The Emergence of Modern Protestantism
1725 - 1850

Lecture 8 – The Constitution

Dr. Dave Doughty

Outline

- The state of the States (redux)
- Actions of Congress
- The Constitution on Religion
- The First Ammendment

The State of Things - 1774

- In 1774, eight of the 13 colonies had state churches
 - NH, MA, CT – Congregationalist
 - MD, VA, NC, SC, GA – Church of England
 - NY, NJ – no established church at this time
 - RI, PA, DE – never had an established church
- Many had religious tests for holding office
 - MD, MA – belief “in the Christian religion.”
 - GA, NH, NJ, NC – protestant tests
 - Delaware – “faith in God the Father, and in Jesus Christ, His only Son, and in the Holy Ghost, One God, blessed forever more.”
 - PA – belief that God was “the rewarder of the good and the punisher of the wicked.”

The State of Things

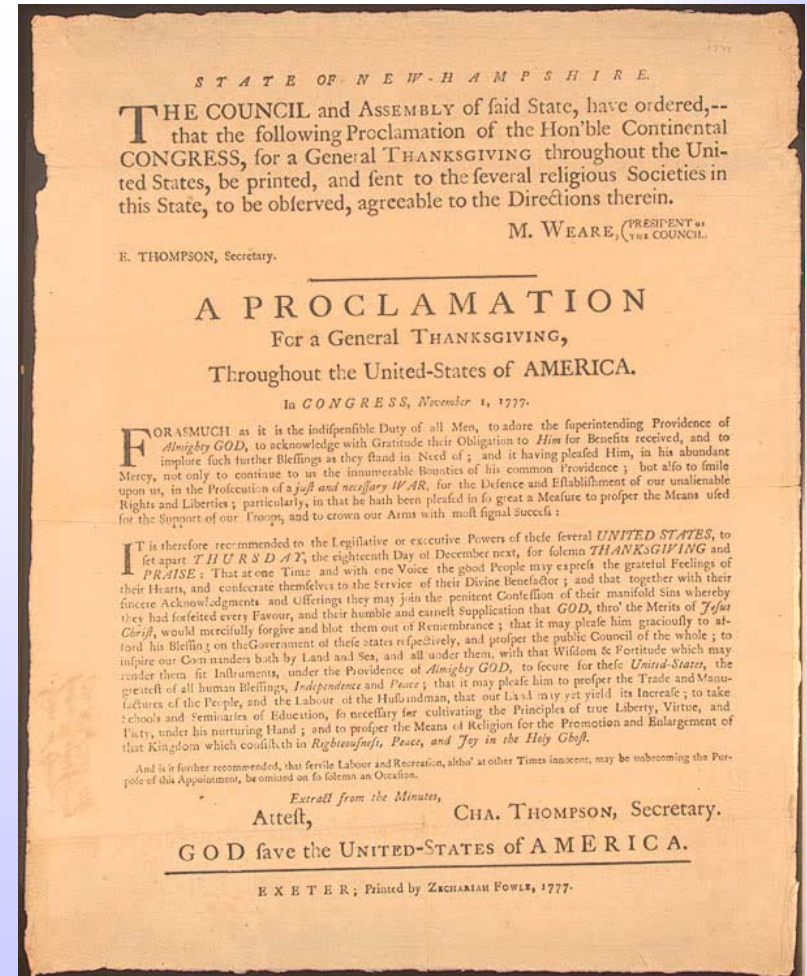
- Population – 3,500,000
- Number of Catholics – 20,000
- Number of Jews - 6000
- Church Membership
- 1776 – 5 %
- 1800 – 6.9%
- 1850 – 15.5 %
- 1900 – 35.7 %
- 1926 – 50+ %
- 1960 – 60+ %

Actions of Continental Congress

- In 1774, during the first session of Continental Congress, a proposal was made to open the session with prayer
 - Proposal carried, although some opposition by John Jay – based on religious diversity of the body
- Continental Congress issued four fast-day proclamations – most significant on July 12, 1775
 - John Adams wrote to his wife, “We have appointed a Continental fast. Millions will be upon their knees at once before their great Creator, imploring His forgiveness and blessing; His smiles on American Councils and arms.”

Thanksgiving Proclamation of 1777

Congress set December 18, 1777, as a day of thanksgiving on which the American people "may express the grateful feelings of their hearts and consecrate themselves to the service of their divine benefactor" and on which they might "join the penitent confession of their manifold sins . . . that it may please God, through the merits of Jesus Christ, mercifully to forgive and blot them out of remembrance." Congress also recommends that Americans petition God "to prosper the means of religion for the promotion and enlargement of that kingdom which consisteth in righteousness, peace and joy in the Holy Ghost."



God in the Declaration (1776)

- “the separate and equal station to which the Laws of Nature and of **Nature's God** entitle them.”
- that all men are created equal, that they are endowed by their **Creator** with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.
- We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the **Supreme Judge of the world** for the rectitude of our intentions, do...solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States,
- And for the support of this Declaration, with a firm reliance on the protection of **Divine Providence**, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

The Bible Ordinance - 1777

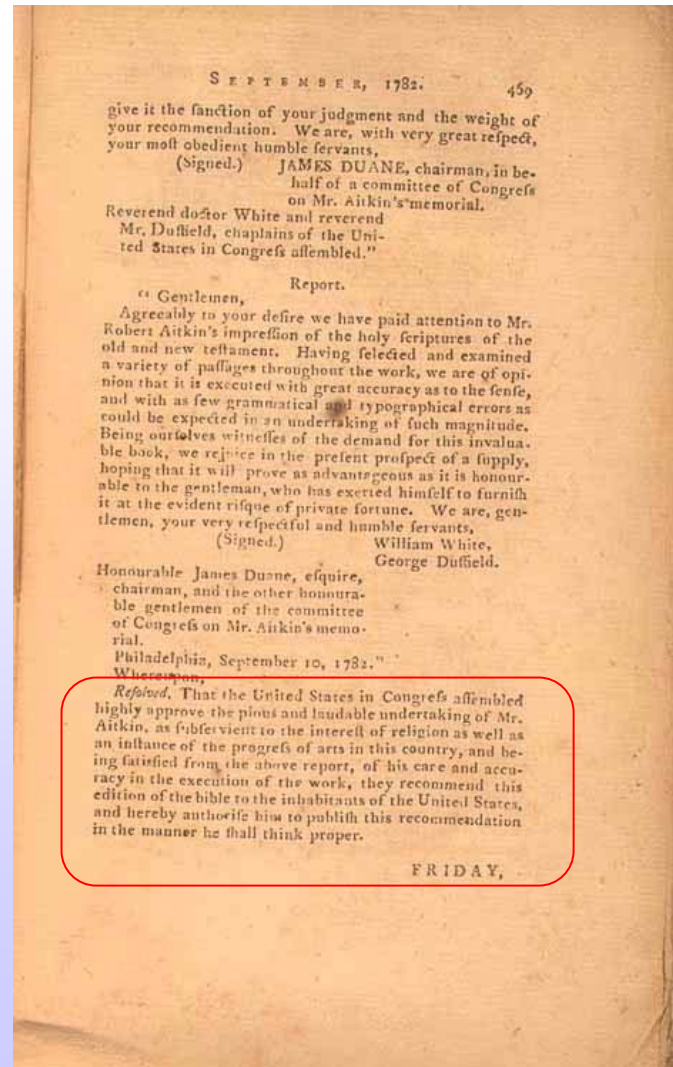
- The war with Britain cut off the supply of Bibles to the US
- On Sept. 11, 1777 Congress instructed its Committee of Congress to import 20,000 Bibles from Scotland, Holland or elsewhere.
- **“The use of the Bible is so universal and its importance so great that your committee refers the above to the consideration of Congress, and if Congress shall not think it expedient to order the importation of types and paper, the Committee recommends that Congress will order the Committee of Commerce to import 20,000 Bibles from Holland, Scotland, or elsewhere, into the different parts of the States of the Union.**
Whereupon it was resolved accordingly to direct said Committee of Commerce to import 20,000 copies of the Bible.”

The American Bible

On January 21, 1781, Philadelphia printer Robert Aitken (1734-1802) petitioned Congress to officially sanction a publication of the Old and New Testament which he was preparing at his own expense.

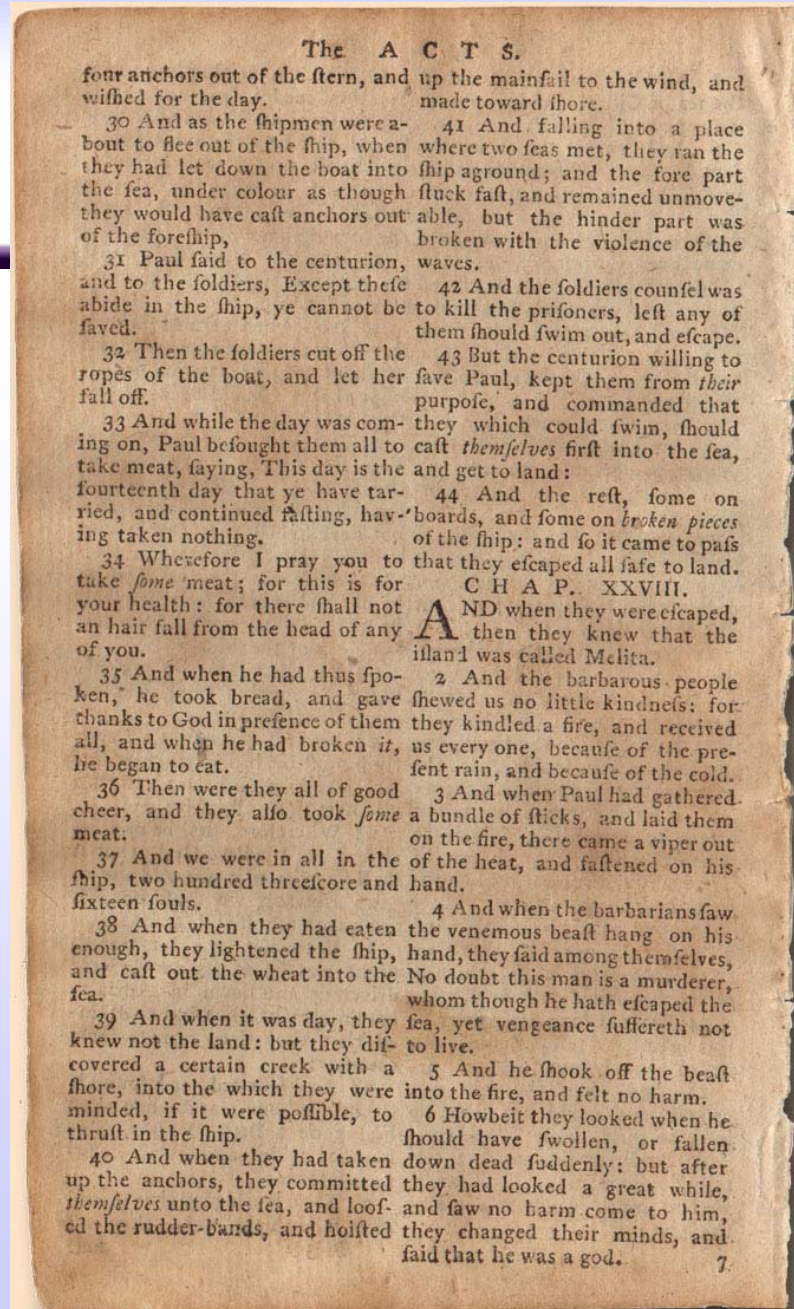
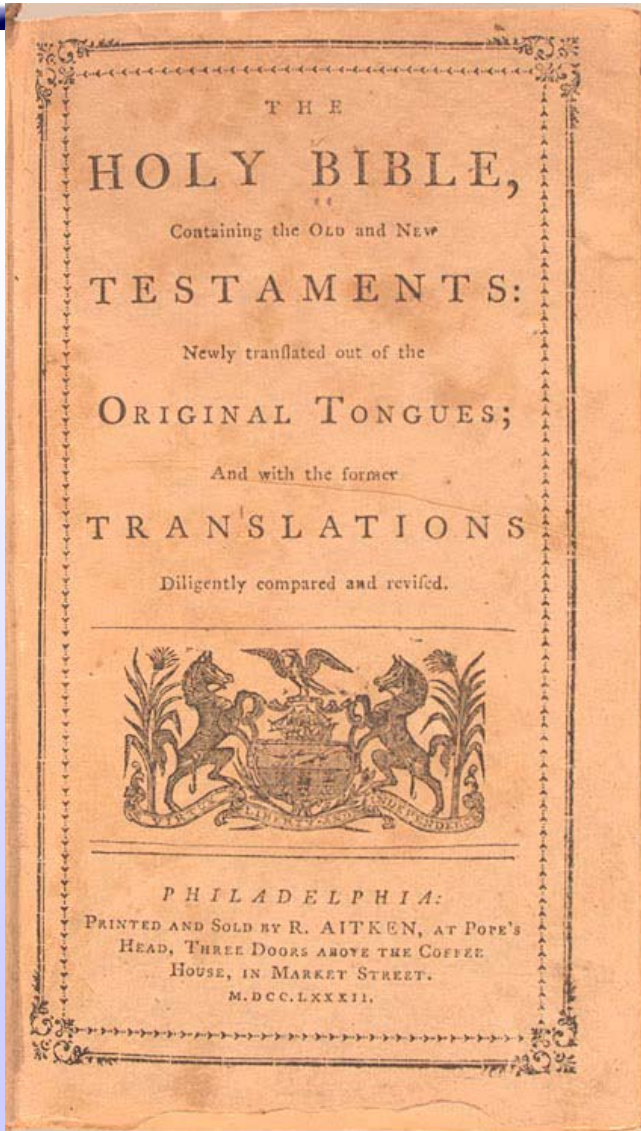
On Sept. 12, 1782 Congress passed a resolution, "That the United States in Congress assembled highly approve the pious and laudable undertaking of Mr. Aitken, as subservient to the interest of religion . . . in this country, and . . . they recommend this edition of the bible to the inhabitants of the United States."

This resolution was a result of Aitken's successful accomplishment of his project.



Calvary Presbyterian Church

The American Bible



Calvary Presbyterian Church

Treaty with Netherlands - 1782

- “there shall be an entire and perfect liberty of conscience allowed to the subjects and inhabitants of each party, and their families, and no one shall be molested in regard to his worship, provide he submits, as to the public demonstration of it, to the laws of the country.”
- Similar treaties with Sweden and Prussia

Northwest Ordinance - 1787

- (Northwest being the area that would become the states of Ohio, Indiana, Illinois, Wisconsin, Minnesota)
- “No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiment in the said territory.”
- “Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

After the constitution

- Congressional resolution – after the oath of office (for George Washington) “divine services” to be held in St. Paul’s Chapel, “performed by the Chaplain of Congress.”

Treaties of Tripoli (1797, 1805)

- The “Barlow” or English translation, as presented to Congress had Article 11
- “As the government of the United States is not, in any sense founded on the Christian Religion, as it has in itself no character of enmity against the laws, religion, or tranquility of Musselman; and as the said States never heave entered into any way or act of hostility against any Mahometan nation, it is declared by the parties that no pretext arising from religious opinion shall ever produce an interruption of harmony existing between the two countries.”
- Not clear whether this phrase was in the arabic
- In the second treaty, the phrase “is not in any sense founded on the Christian religion” was omitted.

After the constitution – Jefferson, Madison

- Jefferson broke with the Washington-Adams tradition of the Federal Government proclaiming days of national prayer and thanksgiving.
- In a letter to a Presbyterian clergyman in 1808 he wrote:
- “I consider the government of the United State as interdicted by the Consitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the States the power not delegated to the United States. Certainly no power to prescribe any religious exercise, or to assume authority in religious discipline has been delegated to the General Government.
- Madison did proclaim several days for fasting and thanksgiving...

The Constitution

- No references to deity (in contrast to Declaration)
- Much criticized in state conventions
- Two decades later it was criticized by President Timothy Dwight of Yale (grandson of Jonathan Edwards – more on him in future weeks)
- “There are some defects in our constitution – great ones: but I believe it is the best we can get under existing circumstances. The framers of it always thought it imperfect; and since its formation, one of its most important parts has been destroyed: the independence of the judiciary. If Mr. Jefferson had done but this only, he would deserve disapprobation to the end of time. It is highly discreditable to us that we do not acknowledge God in our Consitution. Now it is remarkable that the grossest nations...always recognize the superintendency of a supreme being. Even Napoleon does it.”

Calvary Presbyterian Church

Why little discussion of religion?

- Possibly the Constitutional Convention was not much concerned with the question of religion because it assumed that this was a matter under state rather than Federal jurisdiction.
- In the 85 Federalist Papers, by Hamilton, Madison and Jay, which appeared in the six months beginning in October, 1787 there is only one reference to religion or the church, by Madison, in Federalist #10.

Federalist # 10 - Madison

- “The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good...But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society.”

The Constitution

- Adopted September 17, 1787, by the Constitutional Convention in Philadelphia.
- Subsequently ratified by conventions in each state (DE, PA, NJ, GA,...)
- Article 6 is the only place in the main body of the constitution where religion is mentioned
 - All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.
 - This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.
 - The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; **but no religious test shall ever be required as a qualification to any office or public trust under the United States.**

The Bill of Rights

- Came about because of dissension over the constitution – no protection of individual rights
- i.e. nothing similar to Virginia's Declaration of Rights
- Introduced by James Madison to the first Congress in 1789
- Came into effect on Dec. 15, 1791, after ratification by $\frac{3}{4}$ of the states
- The First Amendment
 - **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.

The 1st Amendment – How did we get there?

- On June 8, 1789, Madison offered a series of Constitutional Amendments for approval by the House of Representatives
- Among them was this statement, to be added in Article 1, Sections 9, 10
- **“The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.**
- **“No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.”**
- Note that the word “national” is in there, in deference to states with an established church.
- Note also that the last clause goes further than the 1st amendment.

The 1st Amendment– The Debate - 1

- Mr. Sylvester had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to have a tendency to abolish religion altogether.
- Mr. Vining suggested the propriety of transposing the two members of the sentence.
- Mr. Gerry said it would read better if it was, that no religious doctrine shall be established by law.
- **Mr. Sherman thought the amendment altogether unnecessary, inasmuch as Congress had no authority whatever delegated to them by the constitution to make religious establishments; he would, therefore, move to have it struck out.**

The Debate - 2

- **Mr. Carroll.** As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the Government than almost any other amendment he had heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community.

The Debate - 3

- **Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.**

The Debate - 4

- **Mr. Huntingdon said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia, but others might find it convenient to put another construction upon it.** The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meetinghouses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed into a religious establishment.

By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. **He hoped, therefore the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.**

The Debate - 5

- **Mr. Madison thought, if the word national was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought if the word national was introduced, it would point the amendment directly to the object it was intended to prevent.**
- **Mr. Livermore was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.**

The Debate - 6

- My Gerry did not like the term national, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the conventions at the time they were considering the present constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union; the honorable gentleman's motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done them by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made. Their names then ought not to have been distinguished by federalists and antifederalists, but rats and anitrats (evidently ratificationists and antiratificationists)
- Mr. Madison withdrew his motion, but observed that the words, “no national religion shall be established by law,” did not imply that the Government was a national one; **the question was then taken on Livermore's motion, and passed the affirmative, thirty-one for, and twenty against it.**

The Debate - 7

- In the House – August 15 – Madison
- I appeal to the gentlemen who have heard the voice of the country, to those who have attended the debates of the State conventions, whether the amendments now proposed are not those most strenuously required by the opponents to the constitution?...Have not the people been told that the rights of conscience, the freedom of speech, the liberty of the press, and trial by jury were in jeopardy? that they ought not adopt the constitution until those important rights were secured to them?

The Debate- 8

- On August 17 - The committee then proceeded to the fifth proposition:
- **Article I section 10, between the first and second paragraph, insert, “no State shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right of trial by jury in criminal cases.”**
- **Mr. Tucker – This is offered I presume, as an amendment to the constitution of the United States, but it goes only to the alteration of the constitutions of particular States. It will be much better, I apprehend, to leave the State Governments to themselves, and not to interfere with them more than we already do; and that is thought by many to be rather too much. I therefore move, sir, to strike out these words.**
- **Mr. Madison conceived this to be the most valuable amendment in the whole list. If there was any reason to restrain the Government of the United State from infringing upon these essential rights, it was equally necessary that they should be secured against State Governments. He thought that if they provided against the one, it was as necessary to provide against the other, and was satisfied that it would be equally grateful to the people.**

The Debate - 9

- **Mr. Livermore had no great objection to the sentiment, but he thought it not well expressed. He wished to make it an affirmative proposition; “the equal right of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any State.”**
- This transposition being agreed to, and Mr. Tucker’s motion being rejected, the clause was adopted.

The Debate - 10

- On August 19 Roger Sherman of Connecticut again pressed his idea that the amendment should not be inserted in the original Constitution but placed in separate articles in a supplement, and won his point, supported by Livermore and others. **The next day, August 20, the supplement idea for all the amendments was adopted.**
- **On motion of Fisher Ames of Massachusetts the amendment regarding religious freedom was altered so as to read, “Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.”**
- On August 25 the Senate received a communication from the House requesting its concurrence with the amendment adopted.

The Debate in the Senate – Sept. 3

- On motion to amend article third, and to strike out these words: “religion, or prohibiting the free exercise thereof,” and insert “one religious sect or society in preference to others:”
- It passed in the negative (i.e. failed)
- On motion for reconsideration:
- It passed in the affirmative
- On motion that article the third be stricken out;
- It passed in the negative
- On motion to adopt the following, in lieu of the third article: “Congress shall not make any law infringing the rights of conscience, or establishing any religious sect or society.”
- It passed in the negative
- On motion to amend the third article to read thus: “Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.”
- It passed in the negative.

The Debate in the Senate – Sept. 9

- **On motion to amend article the third to read as follows: “Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and petition to the government for the redress of grievances.”**
- **It was passed in the affirmative**
- There was then a conference committee appointed, and alas, the deliberations of that committee have been lost. On Sept. 24 report said,
- “That it will be proper for the House of Representatives to agree to the said amendments, proposed by the Senate, with an amendment to their fifth amendment, so that the third article shall read as follows: “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”

Jefferson on the First Amendment

To messers Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson a committee of the Danbury Baptist association in the state of Connecticut.

Gentlemen

The affectionate sentiments of esteem & approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction. my duties dictate a faithful & zealous pursuit of the interests of my constituents, and in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more & more pleasing.

Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, 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.**

Calvary Presbyterian Church

Jefferson's Letter – con't

[Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from presenting even occasional performances of devotion presented indeed legally where an Executive is the legal head of a national church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect.] Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

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

(signed) Thomas Jefferson

Jan.1.1802.

Justice Story

- Justice Story was Associate Justice of the Supreme Court, and author of *Commentaries on the Constitution* (1833)
- "Probably at the time of the adoption of the Constitution, and of the amendment to it now under consideration, the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. Any attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."
- "It yet remains a problem to be solved in human affairs, whether any free government can be permanent, where the public worship of God, and the support of religion, constitute no part of the policy or duty of the state in any assignable shape. The future experience of Christendom, and chiefly of the American states, must settle this problem, as yet new in the history of the world, abundant, as it has been, in experiments in the theory of government."

Stokes and Pfeiffer on the 1st

- “It would be almost impossible to establish such a [state] Church, since no Church has more than a fifth of the population. Congress as constituted of men and women from all denominations could never unite in selecting any one body for this privilege. This has been so evident from the time of the founding of the government that it is one reason why the First Amendment must be interpreted more broadly than merely as preventing the State establishment of religion, which had already been made practically impossible.

The 1st Amendment and the States

- Since the 1920's the Supreme Court has held that because of the 14th amendment, the freedoms guaranteed by the 1st amendment are equally guaranteed against infringement by the states.
- *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
- From Stokes and Pfeiffer
 - “The opportunities and temptations for violation of Church-State separation are many times more numerous on the state than on the Federal level. The foremost arena of Church-State conflict today is in the field of education, whether with regard to religion in public education or public financing of private religious educational institutions, and under our system education is primarily a state rather than Federal responsibility.”

Everson v. Board of Education - 1947

- Justice Black penned one of the foundational standards for future establishment-clause jurisprudence.
- “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. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. 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. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. 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.”

John Kennedy – Houston Speech (1960)

- "I believe in an America where the separation of church and state is absolute; where no Catholic prelate would tell the President -- should he be Catholic -- how to act, and no Protestant minister would tell his parishioners for whom to vote; where no church or church school is granted any public funds or political preference, and where no man is denied public office merely because his religion differs from the President who might appoint him, or the people who might elect him.

Hmm.

- On its face, the language in this case set the wall separating religion and government very high, forbidding direct government funding to religious institutions, including religious schools. It should be noted that while the majority opinion in *Everson* set a stringent standard, five justices found that the facts in the case did not violate this principle. They held the program in question provided transportation assistance to the children, not the school. Since the benefit flowed to the individual instead of the religious institution, no establishment-clause violation occurred.

Final Thoughts

- Clearly, right from the founding, there were strong differences of opinion on the relationship between the state (both federal and literal state) and the church.
- Although neither the “wall of separation” nor prohibition on the states are in the constitution, over time they have been enshrined as sacred.
- Forefront of this battle, in the near future – vouchers.

Next Week

- William Carey and Missions