



A THEOLOGICAL CONGLOMERATE

The Framers Intent for Religious Freedom in Early
America

Devin Gatton

History 600-203: Seminar in History – U.S.
Constitutional History

The American discourse over religious freedoms and the metaphorical wall between church and state has been one which has been raging for over 300 years. While there had been little discussion about the Establishment and Free Exercise clause for the first 100 years of our Constitutional history, after the incorporation of the 14th Amendment, state and local government were forced to view the 1st Amendment in a light that they had never viewed it in before. Court cases began to trickle in almost immediately, starting with the 1879 Court case *Reynolds v. The United States* and continuing to today with *Hobby Lobby v. Burwell* and *Obergefell v. Hodges*. With the frequent disagreements on the intent of the Constitutional Framers, specifically when dealing with the 1st Amendment, it is imperative for historians to look back and glean the Framers intentions when on religious liberties.

Reading the Founding Fathers words, it is tough to argue with the idea that they were looking to create a nation that restricted religious activities in any way. Additionally, there can be little doubt that the writing of the Constitution, specifically the establishment and free exercise clauses, could be interpreted in no other way than the protection that right. Analyzing the primary source documents, specifically the statements given by our founding fathers, will show that the original intent of the Framers was a hodge-podge of ideas on religious freedoms, and their personal views had little to do with the ending result. In fact, many of the individuals who worked on the religious liberties clauses were personally opposites from one another – John Adams and Fisher Ames, for example. These two persons came from radically different starting points on the 1st Amendment but eventually came to agree on the necessity and the wording of the amendment.

The discussion between historians shows that the difference in opinion on the religious liberty amendments are as varied as it was during the framers time. Ranging from the letters written by Thomas Jefferson begin taken out of context to American citizens of the time were already accepting of different religious groups, the consensus is becoming increasingly polarized.

According to Daniel Dreisbach, a legal historian at Temple University, the work done in the Virginia state legislature before Constitutional Convention shows that the idea of “Wall of Separation of Church and State,” was not born out of any conceivable notation that Jefferson was looking to go nearly as far as modern day legal scholars, including the Supreme Court, has done or advocated for. In fact, the exact opposite was being pushed by the two men while working towards a modification to religious freedoms in their home state. When writing about the five consecutive bills that Jefferson and Madison had submitted for a hearing, he wrote, “They suggest a flexible church-state model that fosters cooperation between religious interests and the civil government and prescribes governmental interference with freedom of religious beliefs. In short, they illustrate that Jefferson's ultimate objective was less separation of church and state than the fullest possible expression of religious belief and opinion.”¹ Dreisbach contends that by using these five bills, in conjunction with the rest of Jefferson’s letters, we find a clear picture – Jefferson was not looking to remove religion from the public square, just the government from regulating religion.

¹ Daniel L. Dreisbach, “A New Perspective on Jefferson’s Views on Church-State Relations: The Virginia Statue for Establishing Religious Freedom in Its Legislative Context,” *The American Journal of Legal History*, Vol. 35, No. 2, (April, 1991), Pg. 183

Dreisbach, however, was willing to take it a step further than that within just a few short years. Writing in his article, "Thomas Jefferson and the Danbury Baptists Revisited," Dreisbach presented the idea that Jefferson would not only not recognize the idea of "separation of church and state," but he would actively oppose it.² According to Dreisbach, Jefferson took great stock in the idea of federalism, preferring the states to take charge of their governments and erect the wall, as Virginia had just a few years before. Scholars often echo Dreisbach's idea of federalism being at the core of the issue. "Because the Establishment clause is animated by the principle of federalism," wrote the Harvard Law Review Association, "its incorporation against the states ... is logically impossible."³ The Harvard Law Review Association continues by explaining that there can be no rational direction for the Establishment Clause to be incorporated, using the Fourteenth Amendment, because it was written specifically with a federalist view in mind, and any incorporation would destroy its original purpose.

However, not all scholars agreed with the Harvard Law Review and Dreisbach. In his article on James Madison's views on religious freedom, Paul Weber contended that the original intent of Madison was more important than any other Framer, as it was from Madison that the Establishment and Free Exercise clauses originated out.⁴ Differentiating between four different forms of separation, Weber believes that Madison fell into the category of equal separation. Equal separation "rejects all political privilege, coercion or disability based on religious

² Daniel L. Dreisbach, "Thomas Jefferson and the Danbury Baptists Revisited," *The William and Mary Quarterly*, Vol. 56, No. 4, (October, 1999), Pg. 805

³ Harvard Law Review Association, "Rethinking the incorporation of the Establishment Clause: A Federalist View," *Harvard Law Review*, Vol. 105, No. 7, (May, 1992), Pg. 1708

⁴ Paul Weber, "James Madison and the Religious Equality: The Perfect Separation," *The Review of Politics*, Vol. 44, No. 2, (April, 1982), Pg. 169

affiliation, belief, or practice, or lack thereof, but guarantees to religiously motivated or affiliated individuals and organizations the same rights and privileges extended equally to other similarly situated individuals and organizations.”⁵ In short, no one religious group was able to gain a foot above or below any other. However, achieving equal separation is difficult, as showing any preference would destroy the balance. To Weber, Madison’s only choice was to have the government stay completely out of religious matters to ensure equality.⁶

As with the Framers themselves, there is the very little consensus among historians as to why the Framers wrote what they did. Do we look towards only those Framers who wrote and debated the wording of the religious liberty clauses? Do we look towards all of the Framers, including those who were not present during the Constitutional Convention? Historians, as a whole, are unable to find an agreeable answer to these questions, and the many others, which would help us decide how we would look at this important issue. This paper will look at the history before the Revolution, between the Revolution and the Constitutional Convention, and post-Constitutional Convention. Additionally, it will focus on the men who traditionally are considered the main Framers of the Religious liberty amendments; Thomas Jefferson, John Adam, George Washington, Patrick Henry, and Samuel Adams, along with others.

In 1688, English Parliament met and passed the Act of Toleration. The Toleration Act was one in a series of acts that the English used to prevent religious dissenters from entering the realm of political and civil works. Additionally, it also prevented many from having the opportunity to pray and practice their religion as they saw fit. Targeting Catholics, the law

⁵ Ibid., Pg. 168

⁶ Ibid., Pg. 184-185

allowed for those who pledged an oath of Supremacy to continue to practice their worship as they saw fit. However, while the law still restricted many of the abilities of those dissenters who did submit to the pledge, the law targeted those who were Catholic, atheists, or those who did not believe in the Trinity.

This law, like many others before and after it, were used by the English Protestants to prevent religious separatists from gaining a foothold in England. Many English left their homeland, leaving for other European nations, such as Belgium or the Netherlands. Many others chose to buckle down in England and try to bear out the treatments. Others still dared to sail across the ocean to the newly colonized region of the America's. Many of the regions, cities, and colonies were settled based on the religious background of those settling. Most of New England and the middle colonies were set up and perceived to be religious sanctuaries for those who believed as they believed. Looking towards the American colonies as the solution to their religious liberty problems, charters and capital were abundant in the early goings of American immigration.

Massachusetts law, home to the famous Salem Witch Trials, had written into its code, "If any man after legal conviction shall have or worship any other God but the LORD GOD, he shall be put to death."⁷ This law, along with others concerning witchcraft, blasphemy, and many others, were all based on the religious interpretations and codes of deeply held beliefs by the colonialist in America. This intolerance of those who were worship differently were brought upon them by the English, after years of second-class citizenship and punishments. As the

⁷ "Massachusetts Body of Liberties," *The Colonial Laws of Massachusetts*. . . , ed.. W. H. Whitmore (Boston, 1890), pp. 47

decades passed, and the colonies continued to change, the religious intolerance, highlighted by murders, banishments, and witch trials, become more important for individuals in the colonies. People living side by side had to learn to trust and believe in their neighbors, no matter their religious philosophy. By the late 18th century, the colonies, and later their state citizens, allowed for any religious practice within their borders, as long as they respected the civil laws of their state.

In what was previously seen as an impossibility, George Washington in 1790 to the Hebrew Congregation in Newport, Rhode Island about religious freedom, a topic of grave concern to the congregation, as they were not granted the same privileges in England. “May the child of the stock of Abraham who dwell in this land continue to merit and enjoy the goodwill of the other inhabitants – While every one shall sit in safety under his vine and fig-tree, and there shall be none to make him afraid.”⁸ The religious freedom that many saw in America culminated when Thomas Jefferson wrote to a group of Baptists in a letter that is used today as the basis for a purely secular government. The Danbury Baptists wrote to Jefferson in late 1801 to inquire as to Jefferson’s position of religious freedoms, specifically the new federal government’s role in regulating religious liberty.

Our sentiments are uniformly on the side of religious liberty – that religion is at all times and places a matter between God and individuals – that no man ought to suffer in name, person, or effects on account of his religious opinions – that the

⁸ George Washington, “George Washington on Religious Liberties”, in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1919

legitimate power of civil government extends no further than to punish the man who works ill to his neighbors; But, sir, our constitution of government is not specific.⁹

Within a few months, Jefferson responded to the Danbury Baptists with his reply. “Believing with you that religion is a matter that lies solely between Man and his God,” he wrote, “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 & State.”¹⁰

The fight for religious freedoms and liberty continues to take place today. The role of the government, specifically the federal government and its role compared to its citizens, has been under a constant bombardment by the modern day media. In the early summer of 2015, the Supreme Court ruled on the case, *Obergefell V. Hodges*. The Supreme Court ruled on the constitutionality of bans on the freedom to marry for gay couples. The case, which ruled such laws unconstitutional, opened up a window for individuals who disagree, based on religious convictions, with the freedom to marry to argue against participating within a marriage, with as something as simple as signing off on a marriage certificate. What would happen if a county clerk who issued marriage licenses felt it was against her religion to sign her name on such a marriage? This issue came to a head within a few months of the ruling. Kim Davis, an elected county clerk in Kentucky, refused to sign off of licenses for gay couples. The issue is currently working its way through the court system. In 2014, the Supreme Court ruled on a case before it

⁹ Thomas Jefferson, “Thomas Jefferson and the Danbury Baptists, 1801-1802,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 2080

¹⁰ Ibid.

dealing with the mandate of contraceptives, specifically the Plan B, or the Morning-after Pill. The pill was designed to prevent a fertilized egg from attaching itself to a uterine wall, therefore preventing pregnancy from occurring. The owners of Hobby Lobby, a Christian family, felt that paying for the insurance of their workers that was mandated by the federal government, violated their free exercise of religion. The Supreme Court ruled for Hobby Lobby.¹¹ These cases, and much more like them, are still working their way through the court systems because the founding idea for the free exercise and establishment clauses are contested on both sides of this issue.

To understand why the Framers wrote the words to the First Amendment the way that they did, it is necessary to look at where they had begun. Protestant England was a relatively new idea when the American Colonies was first founded. The Church of England was founded by King Henry the 8th in usurping of the Popes authority about the Christian Church. Radical, who would control the country off and on for decades, did what they could to eradicate the Catholic Church from England, along with any dissenting churches. Forbidden from participating in civil affairs, many religious dissenters chose to leave England and immigrate elsewhere; Belgium, the Netherlands, and the American colonies were ordinary refugees. The American colonies provided the best escape for many of those leaving England, as it had loosely formed governments, barely attached to the British crown and those who looked to persecute them. However, as the immigrants arrived, they quickly realized that few of their religions meshed well with others, and they began to divide the land up based on religious ties.

¹¹¹¹ Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).

Puritans landed in New England and created a colony in Massachusetts. Puritans, a group of religious fanatics, did all that they could to stamp out practices that they deemed impure. Most famous for the Salem witch trials, the colonialists who landed there wrote into their religion into their laws, offering no quarter to those who dissented. "If any man or woman be a witch (that is, hath or consulteth with a familiar spirit), they shall be put to death."¹² The laws written by the Puritans in New England were brutal and harsh, but they were a reflection of what they saw across the ocean in England. However, just south of Massachusetts, the Connecticut was unusual for a colony in New England. Completely devoid of any exact specifications, the settlement was allowed for a tolerance of Christian religious theology.¹³

The Middle Colonies had similar splits. In Maryland, the laws were just as strict as they were in Massachusetts. Passed on September 21, 1649, the Maryland legislature made religious denials, denial of the trinity, or blaspheming a capital crime. Not only would an individual lose monetary values, but beatings and the capital punishment were acceptable for them as well. Additionally, the colonialists of Maryland pronounced that only certain faiths were acceptable to settle in Maryland territory. Furthermore, if you spoke ill of the essential doctrines, then you were fined ten shillings.¹⁴ These laws were in contrast to Pennsylvania, where the Quaker religion would take hold. It has long been thought that the originating place for philosophy for religious tolerance and freedom came from Pennsylvania and their religious

¹² Massachusetts Body of Liberties

¹³ "The Fundamental Orders of Connecticut," Fundamental Orders of Connecticut (1639), United States State Department, accessed November 16, 2015, <http://usa.usembassy.de/etexts/democrac/demo.htm>

¹⁴ "The Maryland Toleration Act: An Act Concerning Religion," The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School, Lillian Goldman Law Library, accessed on November 16, 2015, http://avalon.law.yale.edu/18th_century/maryland_toleration.asp

acceptance. The Quaker religion believes that everyone has to seek out God in his or her way, in a spiritual journey, not through the mediation of a civil government. As such, all religions and philosophical thought were acceptable in Pennsylvania.¹⁵

In the South, the religious acceptance differed just as significantly as it did in their Northern counterparts. Virginia, the citizens, were forced to attend the Anglican church and financially support it. While enforcement of this law hardly pushed for, it showed that early Virginians accepted that the state had a part to play in religious institutions.¹⁶ Similar ideas took place in the Carolina's, specifically South Carolina, where the official church of the colony was the Christian Protestant Religion. Protestantism was supported financially by its citizens, although the colonists there were not mandated to attend religious services.¹⁷

The final major concept that the American Founding Fathers was the philosophical and theological reasoning of Deism. Deism rose during the Age of Enlightenment and borrowed an enormous amount from that school of thought. Focusing on reason and logic, Deism was championed by John Locke, the philosopher from Britain, who many of the Framers looked towards when writing the Constitution. As it pertained to the government and religious coercion, Locke wrote a piece called the *Letter Concerning Toleration*, to which he addressed three points against the government's involvement in religious activities. First, at no point does

¹⁵ "Charter for the Province of Pennsylvania – 1681," The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School, Lillian Goldman Law Library, accessed on November 16, 2015, http://avalon.law.yale.edu/17th_century/pa01.asp

¹⁶ "The First Charter of Virginia; April 10, 1606," The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School, Lillian Goldman Law Library, accessed on November 16, 2015, http://avalon.law.yale.edu/17th_century/nc01.asp

¹⁷ "Charter of Carolina – March 24, 1663," The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School, Lillian Goldman Law Library, accessed on November 16, 2015, http://avalon.law.yale.edu/17th_century/nc01.asp

the Bible require local governments to harness the religious authority and use it towards the conversion of man. “It is in vain,” Locke wrote, “for any many to usurp the name of Christian, without holiness of life, purity of manners, benignity, and meekness of spirit.”¹⁸ Second, force is the only power that a government has, which is contrary to the ideas of religious thought – the authority and power of persuasion.¹⁹ Third, because many magistrates have many different religions, it’s impossible for them all to have the true faith. As such, it would require someone to be wrong in their theological perspective.²⁰ These ideas laid the groundwork for the religious tolerance and liberty that many colonialists were yearning.

The colonies before the Revolutionary war politically, and religiously, had very little in common with one another. Often, their laws and customs were directly in conflict with one another, leaving individuals traveling from state-to-state in a very precarious situation. Death was the potential punishment. As Steven Waldman wrote in his book, *Founding Faith*, “It seventeenth-century New England, it was illegal to be a Quaker ... the punishment on the first offense was usually whipping; on the second offense, an ear was cut off. For a third offense, the criminal would be executed.”²¹ Most of the states, except Rhode Island, experimented with laws making Christianity the state church, with religious discrimination being prevalent within those states. However, with the rise of Deism in the American colonies, religious freedoms were quickly becoming en vogue.

¹⁸ John Locke, “Letter Concerning Toleration”, A Letter Concerning Toleration by John Locke 1689, Constitution Society, accessed on November 16, 2015, <http://www.constitution.org/jl/tolerati.htm>

¹⁹ Ibid.

²⁰ Ibid.

²¹ Steven Waldman, *Founding Faith: Providence, Politics, and the Birth of Religious Freedom in America*, (New York: Random House, Inc., 2008), Loc. 326

Within a few years after the Revolutionary War, the American Confederation Congress passed the Northwest Ordinance of 1787. The ordinance put together a package of articles that allowed for land outside of the original Thirteen Colonies to become a territory, bound by law to the United States. The Congress did not shy away from moral issues, specifically religious topics, in their law, writing, "Religion, morality and knowledge being necessary to a good government and the happiness of mankind, schools and the means of education shall forever be encouraged."²² With public schools being rare during this time, the Confederation Congress felt it necessary to promote religious schools to be set up in the new territories.

However, taking a close look at the state Constitutions, similar ideas creep up as well. Each state had their ideas for religious freedoms; Pennsylvania and Vermont had religious tests that included oaths. Pennsylvania's oath included specific wording which acknowledged God and Christianity. "I do believe in one God, the creator, and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine Inspiration."²³ Other states chose to sponsor religions, both morally and financially. In South Carolina, it was declared that the "Christian Protestant religion" was the religion of the state.²⁴ Maryland levied a tax on its people, offering that money only to Christian churches, specifically the Church of England. Still others chose an

²² "The Northwest Ordinance, 1787," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 573

²³ Pennsylvania Constitution, "State Constitutions, 1776-1778," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 598

²⁴ South Carolina Constitution, "State Constitutions, 1776-1778," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 625

entirely different path for religion. New York focused on religious tolerance within its borders, with their constitution saying, “ ... that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all humanity.”²⁵ North Carolina, in direct contrast to its southern neighbor, disavowed any established religion by the state constitution. “That there shall be no establishment of any one religious church or denomination in this State, in preference to any other.”²⁶ The states, having no strong government above them, were inconsistent and erratic with their declarations of religious liberties.

One of the most unusual cases for state laws about religious freedoms was the arguments between two political heavyweights in Virginia; James Madison and Patrick Henry. Henry, fighting for an assessment to provide for teachers of the Christian faith, was opposed by James Madison. Madison felt that the establishing a state-sponsored tax, which could only go to Christian denominations, would open the door for the Virginian government to begin deciding not only which faiths get it, but also which denominations would receive that money. “Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us (Sic).”²⁷ In the end, due to

²⁵ New York Constitution, “State Constitutions, 1776-1778,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 625

²⁶ North Carolina Constitution, “State Constitutions, 1776-1778,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 675

²⁷ James Madison, “James Madison, Memorial and Remonstrance, 1787,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 900

political suave, Madison was able to help Henry reach the governorship, allowing Madison to guide the process and pass his version instead. In addition to the fight between Madison and Henry, another founder laid his mark into religious history. Thomas Jefferson, one of the most divisive Presidents in American history, was often at the forefront of the role of government in religion. In the *Virginia Statute for Religious Freedom*, Jefferson laid out the basis for separation of Church and State.

That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and who powers he feels most persuasive to righteousness. (Sic)²⁸

The work of Jefferson and Madison is in direct opposition to what was done by Samuel Adams in *The Rights of the Colonists*. Adam's, while writing about Natural rights, consistently spoke on how Catholics should not be included within the natural laws, as their teachings subvert "the civil government under which they live."²⁹

The years after the Revolutionary War to the Constitutional Convention were filled with states working under the Articles of Confederation, to which they had varying degrees of

²⁸ Thomas Jefferson, "The Virginia Statute for Religious Freedom," Virginia Statute for Religious Freedom, Bill of Rights Institute, accessed on November 16, 2015, <http://www.billofrightsinstitute.org/founding-documents/primary-source-documents/va-statute/>

²⁹ Samuel Adams, "The Rights of the Colonist," The Rights of the Colonists, Bill of Rights Institute, accessed on November 16, 2015, <http://www.billofrightsinstitute.org/founding-documents/primary-source-documents/the-rights-of-the-colonists/>

religious tolerance. However, Virginia was the gold standard to which the Constitution would eventually rest the idea of church and state relations. James Madison, a lawyer, and Virginia delegate had a front row viewing to the religious discrimination that was happening down in Virginia to local Baptists. There were 46 serious instances of religious oppression within a 30-mile radius of Madison's Virginia home, shaping Madison's political stance on religious liberties.³⁰ The situation down in Virginia would give rise to Virginia becoming only the second state in the Confederacy which had full, and completely, religious tolerance.³¹

The collapse of the Articles of Confederation gave way to a whole new process. A strong federal government, which would be weighted down by a bill of rights, in an attempt to provide stability within the new country. However, the idea of a federal government that had powers was unconscionable, and delegates on both sides of this issue fought loudly for their opinions. During the convention itself, there was a call from Benjamin Franklin, a known Deist, to pray at the beginning of each session in an attempt help the convention get through their issues. "I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth – that God governs in the affairs of men."³² While the motion received a vote, it was eventually struck down, due to many feeling that it would seem unsightly if the delegates received outside help.³³

³⁰ Waldman, Loc. 1998

³¹ Ibid, Loc. 2175

³² Max Farrand, "Benjamin Franklin's Prayer request at the Constitutional Convention – and the Response, 1787" in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1144

³³ Ibid., Location 1120

The request for a daily prayer was not the only problems with the Constitutional Convention. When it came to religion and God, the American Constitution hardly mentioned it at all. The lack of God being mentioned anywhere within the Constitution was enough for some Ministers to rage about it years down the road. During the War of 1812, two pastors, three years apart, argued that the reason for the war was because God had turned his back on the country for their refusal to acknowledge him in their founding document. Franklin's rejected request to prayer every morning was spoken about by Timothy Dwight, the President of Yale College and a Christian Minister. "The Convention, by which it was formed, never asked, even once, (God's) direction, or his blessing upon their labours."³⁴ This sentiment was echoed just three years later by another minister, Alexander McLeod when he preached, "The public immoralities of the constitution of our federal government, may, although more numerous in detail, be classed under two heads, viz. Disrespect for God – and violation of human liberty. By terms of the national compact, God is not at all acknowledged ..."³⁵ Pastors were hardly the only individuals to notice this lack of involvement of God within the Constitution. Benjamin Rush, a signer of the Declaration of Independence, wrote to Vice President John Adams in 1789 about the issue. "Many pious people wish the name of the Supreme Being had been introduced somewhere in the new Constitution. Perhaps an acknowledgment may be made of his

³⁴ Timothy Dwight, "Ministers Lament the 'Godless' Constitution, 1812, 1815," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1437

³⁵ Alexander McLeod, "Ministers Lament the 'Godless' Constitution, 1812, 1815," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1437

goodness or of his providence in the proposed amendments. In all enterprises, and parties I believe the praying are better allies than the fighting part of the community. (Sic)”³⁶

With the absence of God within the Constitution, the discussion began to evolve around the idea of religious oaths, specifically towards the Protestant heritage that some believed the American government should be founded upon. This debate took place in a large number of states, including Massachusetts, Vermont, and even Virginia. However, the argument was best preserved in Connecticut, where Oliver Ellsworth and William Williams, both delegates to the state ratifying convention, wrote in the *Connecticut Courant* about the issue. Ellsworth’s argument was that a religious oath would be utterly ineffectual as people with “loose principles” would be more than willing to violate that oath anyhow.³⁷ Additionally, there could be no test that would satisfy all Christian denominations, which would exclude large portions of the country from public office.³⁸ Finally, Ellsworth argues that it is not the job of a civil government to opine into the personal beliefs of its citizens, as that is the realm of God.³⁹ This idea did not sit well with many who supported a religious test, including Williams. Writing in response to the letter written in the *Connecticut Courant*, Williams accuses Ellsworth of

³⁶ Benjamin Rush, “Benjamin Rush Wishes God was Mentioned in the Constitution, 1789,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1352

³⁷ Oliver Ellsworth, “Oliver Ellsworth and William Williams Debate the Absence of a Religious Oath in the Constitution, 1787-1788,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1305

³⁸ *Ibid.*, Location 1280

³⁹ *Ibid.*, Location 1305

creating a “man of straw,” to which did not truly exist.⁴⁰ Williams, instead of a specific religious oath, pens that the preamble of the Constitution should read,

We the people of the United States, in a firm belief of the being and perfections of the one living and true God, the creator and supreme Governour of the world, in his universal providence and the authority of his laws: that he will require of all moral agents an account of their conduct, that all rightful powers among men are ordained of, and mediately derived from God, therefore in a dependence on his blessing and acknowledgment of his efficient protection in establishment our Independence, whereby it is become necessary to agree up and settle a Constitution of federal government for ourselves ...⁴¹

This amendment to the Preamble was never taken up at the state ratifying convention.

However, the debate between Ellsworth and Williams was not the sole argument about the strict forbiddance of a religious oath within the Constitution. Speaking to the Maryland legislature during their ratifying process, Luther Martin ridiculed those at the convention who accepted the forbidding of a religious oath, saying, “... it would be at least decent to hold out some distinction between the professors of Christianity and downright infidelity or paganism.”⁴²

⁴⁰ William Williams, “Oliver Ellsworth and William Williams Debate the Absence of a Religious Oath in the Constitution, 1787-1788,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1331

⁴¹ Ibid.

⁴² Luther Martin, “Luther Martin Questions Why There is No Religious Oath in the Constitution, 1787,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1168

It's not a coincidence that the First Amendment dealt with religious freedom. The vast majority of American population wanted to see some protection for their religion freedom over the tyranny that they had to deal with from England. The entire notion of religious freedom in the American Constitution comes from these words – "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁴³ However, the wording of the Constitution had not always read this way, as it went through, at least, five different changes between the House and Senate before it was voted on. During the debates, it was questioned whether or not an Amendment was warranted, as the Constitution did not expressly grant that power to the federal government.⁴⁴ James Madison, one of the delegates who felt that the Bill of Rights was unnecessary, was ever the statesmen at these proceedings, worked to ensure that protections under the Bill of Rights would include the greatest protections possible for religious freedom.⁴⁵

However, the passage of the Bill of Rights would have been impossible without the men who worked tirelessly to frame and define what was inside of the amendments. Additionally, without looking at the words and thoughts of our most famous Framers, we could not hope to understand what the intent was for the First Amendment. Each Framer had their ideas, not only one personal religious thought but the relationship between federal and state governments and religion.

⁴³ United States Government, "First amendment," *United States of American – Constitution*, (Philadelphia: 1791)

⁴⁴ "Debates on the Religion Clauses of the First Amendment, 1789," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1375

⁴⁵ *Ibid.*, Location 1375-1404

The Father of our Nation, George Washington, had every little time after the passage of the First Amendment to show and explain his views on it. However, he left a lifetime of a legacy on how he felt about religion, and it's relationship with government. It was no secret that Washington was a Christian, however, his level of religiosity remains one of contention. Writing about Washington's faith, Steven Waldman penned, "One has a sense that were he alive today, he absolutely would head to church, unless there was a really good football game on."⁴⁶ Washington was a devout man, but he was also a realist and someone who understand that the government was not good for religion. Many of his presidential speech's included religious overtones, including his Thanksgiving Proclamation of 1789 and his farewell address.⁴⁷⁴⁸ However, Washington's support for religious freedom was every constant. In a letter written to the United Baptists in Virginia, Washington expressed his disdain for individuals looking to cross the threshold that he felt impeded upon the First Amendment. "... if I could now conceive that the general Government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny."⁴⁹ Nevertheless, Washington did not view religious liberty and freedom the same way as some as his successors.

⁴⁶ Waldman, Location 1188

⁴⁷ George Washington, "George Washington's Thanksgiving Proclamation, 1789," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1617

⁴⁸ George Washington, "George Washington's Farewell Address, 1796," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1641

⁴⁹ George Washington, "George Washington on Religious Liberty, 1789-1790," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1893

John Adams, Washington's Vice President, succeeded Washington and was well known to be a friend towards the federalist's view of religion in his public life, but in private writings after his Presidency, they showed him to be a man of religious confliction. When speaking about the distribution of Bibles to other peoples, he said, "Would it not be better, to apply these pious Subscriptions, to purify Christendom from the Corruptions of Christianity; than to propagate those Corruptions in Europe, Asia, Africa, and America!"⁵⁰ However, Adams greatest two contributions to the historical context of religious freedoms came during his presidency – The Treaty of Tripoli and the Presidential election of 1800. The Treaty of Tripoli, negotiated at the end of Washington's presidency, was signed by Adams in 1797 and had some explosive language within it when dealing with the Framer's state of mind after the ratification of the First Amendment. "As the Government of the United States of America is not, in any sense, founded on the Christian religion."⁵¹ These words, written in Article 11 of the new treaty, were written in response to the United States Marine Corps defeating the Barbary Pirates and were meant to seal a relationship between Tripoli and the United States.

The Presidential election of 1800 between incumbent John Adams and his Vice President, Thomas Jefferson, was an election that brought personal religious thought into the forefront. Adams, a man who despised both Calvinists and Catholics, soon became characterized as the candidate who will establish Presbyterianism as the national religion. Jefferson was labeled as something even worse for the time – an Atheist. Neither of these

⁵⁰ Waldman, Location 776

⁵¹ "Treaty of Tripoli, 1797," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1707

accusations was true, but it shows the contempt on both sides of the campaign. Jefferson went on to win the election, but the damage to both his personal psyche and his professional career was done. William Linn, writing in opposition to Jefferson's presidential aspirations, attacked Jefferson in a statement said during the State of Virginia. "But it does me no injury for my neighbor to say there are twenty Gods, or no God. It neither picks my pocket nor breaks my leg."⁵² Linn picked up this statement and ran with it. " ... let my neighbor once persuade himself that there is no God, and he will soon pick my pocket, and break, not only my leg but my neck."⁵³ Those words, written in an attempt to sink the Jefferson Presidential, backfired on Linn, as Jefferson won the election in 1800.

However, Jefferson's time had just started as the President of the United States. Jefferson, as many Presidents do, received multiple letters from his supporters within the first few months of his election. One of these letters would receive a response that became the most influential pieces of evidence on religious liberties in American history – the letter to the Dansbury Baptists. Writing in an attempt to discuss Jefferson's views on religious liberties, the Dansbury Baptists were staunch supporters of the idea of which would later become known as "separation of Church and State." "Our Sentiments are uniformly on the side of religious liberty; that religion is at all times a places a matter between God and the individuals .. But, sir, our constitution of government is not specific [towards what religious freedom is]." Jefferson,

⁵² Thomas Jefferson, "William Linn Opposes Thomas Jefferson's Candidacy for President, 1800," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1846

⁵³ William Linn, "William Linn Opposes Thomas Jefferson's Candidacy for President, 1800," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1846

knowing that the support of the many different congregations of Baptists had lifted him up in the election, wrote back to the Dansbury Baptists,

Believing with you, that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise therefor;' thus building a wall of separation between church and state.⁵⁴

These words have etched themselves onto the halls of history, passed down to a Supreme Court, who took them and used them in a court ruling that affects us still today. However, this was not the first draft of the letter that he sent to the Baptists. His original letter contained such combative language that when he brought it before his attorney general, Levi Lincoln, Lincoln responded that the President risked not only alienating the Federalists to the north but also potentially damage his support with Republicans.⁵⁵

Despite the wording that ended up in the final draft, individuals who look at it and say that it prevents all religion to be removed from the public square, clearly do not understand what was written. On the original document, Jefferson underlined the word 'their' when speaking about the wall of separation. The 'their' that he is speaking of was the plan when

⁵⁴ Thomas Jefferson, "Thomas Jefferson and the Danbury Baptists, 1801-1802," in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 2095-2122

⁵⁵ Waldman, Location 3450-3478

looked at in context – ‘their’ was the federal government. As such, President Jefferson believed in a federalist approach to the First Amendment. The states still had full authority to regulate religion, as they had always done. Nonetheless, Jefferson’s personal views on the federal government and religion held no room for movement. Days of prayer and fast, which, under his predecessors, had been a yearly event, were no longer ordered by the office of the President. “Fasting and prayer are religious exercises; the enjoining them an act of discipline,” Jefferson wrote to Reverend Samuel Miller on the issue, “Be this as it may, every one must act according to the dictates of his own reason, and mine tells me that civil powers alone have been given to the President of the United States and no authority to direct the religious exercises of his constituents.”⁵⁶

In spite of the rumors about Jefferson’s religious views, he always considered himself a Christian, in the broad sense. Writing to Benjamin Rush in 1803, Jefferson was again forced to defend his religious views. Known to be a combination between a Deist and a Christian, Jefferson explained to Rush that he actively opposed the “corruptions of Christianity,” not Christianity itself.⁵⁷ Additionally, writing to his nephew in 1787, he told him to question everything dealing with religion. According to Jefferson, only through reason would one be able to bring himself to a true religion.⁵⁸ He told his nephew not to fear the questioning, as God existed, he would applaud his creation using their reasoning.⁵⁹ Jefferson also did something

⁵⁶ Thomas Jefferson, “Thomas Jefferson Refuses to Declare Days of Prayer and Fasting, 1808,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 2115-2142

⁵⁷ Thomas Jefferson, “Thomas Jefferson, 1787, 1803,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 2228

⁵⁸ *Ibid.*, Location 2203

⁵⁹ *Ibid.*, Location 2179

that would terrify most Christians – he cut up a Bible. Known as the Jeffersonian Bible, Thomas Jefferson went through the bible and took out all of the passages that he believed were the true stories of Jesus. Focusing on the moral teachings, not the divine or supernatural, Jefferson felt that Jesus’s worth was not religious in nature, but moralistically.⁶⁰ “Jefferson was driven to edit the Bible the way a parent whose children had been kidnapped is driven to find the culprit,” writes Steve Waldman, “Jefferson *loved* Jesus and was attempting to rescue him.”⁶¹

No matter how Jefferson has come through history and played his part, there is little doubt that the Framers most important for the religious freedom clauses was James Madison. Madison, a sickly adult, entered into law because his poor health would not allow him to join up with the Army. Becoming a delegate for Virginia in 1776, Madison was subject to an increasing number of religious attacks towards people who fell outside of the norm, most notably Baptists. Offering his time as a pro bono lawyer, Madison soon became radicalized on the issue of church and state. Not only did Madison believe that the federal government should stay out of religious issues, but Madison also believed that the state and local governments also should be barred from any participation in the religious sphere. Madison, not Jefferson, was the individual who came up with the strict separation of church and state.

Chaplains had been a part of the federal government since the ratification of the Constitution and had been accepted by every President, including Thomas Jefferson and James Madison. However, within 15 years of leaving office, Madison would challenge the idea of chaplains playing a part in the federal government.

⁶⁰ Waldman, Location 1454

⁶¹ Waldman, Location 1467

The Constitution of the U.S. forbids everything like an establishment of a national religion. The law appointing Chaplains establishes a religious worship for the national representatives, to be performed by Ministers of religion, elected by a majority of them; and these are to be paid out by the national taxes. Does not this involve the principle of a national establishment, applicable to a provision for religious worship for the Constituent as well as the representative Body, approved by the majority, and conducted by Ministers of religion paid by the entire nation. The establishment of the chaplainship to Congs is a palpable violation of equal rights, as well as of Constitutional principles.⁶²

In conclusion, there can only be said one thing for certain about the Framers intent on religious freedom and liberties – there is absolutely no consensus on the issue. From Patrick Henry to James Madison, every Framer had a different view and outtake on how the religious liberty clauses should look like. Furthermore, The arguments that we are participating today were the same arguments that we were participating in then. What constitutes an establishment of religion? It is a question that has been sought to be answered for the two and a half centuries since the founding of our country. I suspect that it will continue to be asked for another two and a half centuries.

⁶² James Madison, “James Madison’s ‘Detached Memoranda,’ Circa 1817-1832,” in the *Founding Fathers and the Debate over Religion in Revolutionary America: A History in Documents*, ed. Matthew L. Harris and Thomas S. Kidd (New York: Oxford University Press, Inc., 2012), Location 1494-1520

When I signed the Declaration of Independence, I had in view, not only our independence from England, but the toleration of all sects professing the Christian religion, and communicating to them all equal rights.

Charles Carroll

Works Cited

- Barton, David. 2011. *Original Intent: The Courts, The Constitution, and Religion*. Aledo, Tx: WallBuilders.
- Burwell v. Hobby Lobby Stores, Inc.* 2014. 134 S. Ct. 2751 (The Supreme Court, June 30).
2015. "Charter for the Province of Pennsylvania - 1681." *The Avalon Project*. November 16.
http://avalon.law.yale.edu/17th_century/pa01.asp.
- Curry, Thomas J. 1989. "Church and State in Seventeenth and Eighteenth Century America." *Journal of Law and Religion*, Vol. 7, No. 2 14.
- Dreisbach, Daniel. 1991. "A New Perspective on Jefferson's Views on Church-State Relations: The Virginia Statue for Establishing Religious Freedom in Its Legislative Context." *The American Journal of Legal History*, Vol. 35, No. 2 34.
- Dreisbach, Daniel L. 1999. "Thomas Jefferson and the Danbury Baptists Revisited." *The William and Mary Quarterly*, Vol. 56, No. 4 13.
- Freemen, Maryland. 2015. "Maryland Toleration Act; September 21, 1649." *The Avalon Project: Documents in Law, History, and Diplomacy*. November 16.
http://avalon.law.yale.edu/18th_century/maryland_tolerantion.asp.
2015. "Fundamental Orders of Connecticut." *US Embassy*. November 16.
<http://usa.usembassy.de/etexts/democrac/demo.htm>.
- Hamburger, Philip. 2002. *Separation of Church and State*. Cambridge: Harvard University Press.
2012. "The Northwest Ordinance, 1787." In *The Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L Harris and Thomas S Kidd, Location 573. New York: Oxford University Press, Inc.
2012. "Pennsylvania Constitution." In *The Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 598. New York: Oxford University Press, Inc.
2012. "New York Constitution." In *Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 598. New York: Oxford University Press, Inc.
2012. "North Carolina Constitution." In *Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 675. New York: Oxford University Press, Inc.
2012. "South Carolina Constitution." In *Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 625. New York: Oxford University Press, Inc.
- Harvard Law Review Association. 1992. "Rethinking the Incorporation of the Establishment Clause: A Federalist View." *Harvard Law Review*, Vol. 105, No. 7 21.

- Jefferson, Thomas. 2012. "Thomas Jefferson and the Danbury Baptists, 1801-1802." In *The Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 2079. New York: Oxford University Press, Inc.
- . 2015. "Virginia Statue for Religious Freedom." *Bill of Rights Institute*. November 16.
<http://www.billofrightsinstitute.org/founding-documents/primary-source-documents/va-statute/>.
- Jeffries, John C, and James E. Ryan. 2001. "A Political History of the Establishment Clause." *Michigan Law Review*, Vol. 100, No. 2 93.
- Locke, John. 2015. "A Letter Concerning Toleration." *Constitutional Society*. November 16th.
<http://www.constitution.org/jl/tolerati.htm>.
- Madison, James. 2012. "Memorial and Remonstrance against Religious Assessments." In *Founding Fathers and the Debate over Religion in Revolutionary America*, by Matthew L. Harris and Thomas S. Kidd, Location 900. New York: Oxford University Press.
1641. "Massachusetts Body of Liberties." *Constitution.org*.
<http://www.constitution.org/bcp/mabodlib.htm>.
- Neem, Johann N. 2007. "Beyond the Wall: Reinterpreting Jefferson's Danbury Address." *Journal of the Early Republic*, Vol. 27, No. 1 17.
- Waldman, Steven. 2008. *Founding Faith: Providence, Politics, and the Birth of Religious Freedom in America*. New York: Random House Publishing Group.
- Washington, George. 2012. "George Washington on Religious Liberty, 1789-1790." In *The Founding Fathers and the Debate Over Religion in Revolutionary America: A History in Documents*, by Matthew L. Harris and Thomas S. Kidd, Location 1919. New York: Oxford University Press, Inc.
- Weber, Paul J. 1982. "James Madison and Religious Equality: The Perfect Separation." *The Review of Politics*, Vol. 44, No. 2 25.