

Constitution Class Handout
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Lesson 13

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.

Freedom of Religion

The first part of the 1st Amendment addresses religion. The frame of reference of the Founding Fathers was Europe, and more specifically, England. In Europe, a movement to reform the Church began in 1517, influenced by Martin Luther's critiques of the Roman Catholic Church. The movement led to the **Protestant Reformation**. After the Pope denied the King of England the permission to divorce his wife, the English king created the Church of England, and established himself as head of the church, so that he may grant to himself the allowance to seek a divorce. In England the Church of England greatly influenced the centralized governmental system, and the politicians greatly influenced The Church. There was no separation between powers of the king and the church, a problem that revealed itself with the **1559 Act of Uniformity**. According to the Act of Uniformity, it was illegal to not attend Church of England services. A fine was imposed for each missed Sunday and holy day. Penalties also existed if one decided to have church services not approved by the government, which included arrest, and larger fines. The problem, the Founding Fathers reasoned, was not faith in God, but the establishment of a State Church. Therefore, to protect the governmental system from the influence of religion, while also protecting the various religious sects from a government that may give preferential treatment to an established religion, the Founders determined that the federal government must not establish a state religion (Establishment Clause).

The second part of that clause, however, was clearly designed to protect the various religious exercises by Americans from the government by instructing government to not prohibit the free exercise of religion.

Freedom of religion was a big deal with those early Americans. The importance of religious freedom during that time period is common knowledge. Even the textbooks in today's public school system reveals the Pilgrims first came to the New World in search of religious freedom.

Through the passage of time secular forces in our society have worked to undermine the first clause of the 1st Amendment. Americans have been conditioned to believe in a concept known as the **Separation of Church and State**. The concept has determined the church is to have no influence, no matter how subtle, on government for any reason. Therefore, reason the secularists who support the modern concept of the separation of church and state, any mention of God in the same breath with the federal government is in direct violation of the 1st Amendment.

To understand the error of the concept of Separation of Church and State in today's society, we must go back and discover the origination of the idea. The truth demands we recognize the language used in the writings of the Founders, as well as grasp the history of the colonies - including a series of letters between the federal government and the Danbury Baptists of Connecticut, culminating in the letters to Thomas Jefferson after he became President of the United States after the Election of 1800.

Each of the colonies began as a collection of like-minded religious folk who wanted freedom for their religion (not necessarily freedom of all religions). In Jamestown, in 1610, Dales Law mandated the Jamestown colonists to attend Anglican worship. The law went so far as to have provisions against criticism of the church. Violation of Dales Law could even lead to death. The Puritan Colonies to the north had similar laws, even setting up their governments in accordance with Puritan Law. Connecticut was one of those Puritan Colonies, and in 1639 the colony enacted "The Fundamental Orders of Connecticut." The law set Connecticut up as a **theocracy**, disallowing non-Puritans from holding office. The government was the church, and the church was the government.

The practice of religious preference was not limited to Connecticut. All of the States enforced established religions, except Pennsylvania and Rhode Island.

Though Pennsylvania was largely a Quaker dominated State, William Penn believed that religion should be free from state control, so Pennsylvania did not persecute non-Quakers. However, in Pennsylvania, in order to hold office, you still had to be a Christian.

Rhode Island, founded in 1636 as a colony, was based on the principle of true religious liberty, and took in folks who were trying to escape the religious persecution of the other colonies.

Connecticut's Puritan dominated landscape included a group of Baptists in Danbury, Connecticut who were tired of being treated like second class citizens.

Thomas Jefferson drafted the Virginia Act For Establishing Religious Freedom in Virginia, and with James Madison's assistance, finally got it enacted into law in 1786. After many letters to President Adams that resulted in no assistance, the Danbury Baptists were excited about Jefferson winning the presidential election in 1800. Finally, they would have someone in office who would help them in their fight for religious freedoms in Connecticut.

The Danbury Baptists wrote to Jefferson to congratulate him for his win, and to appeal to him for help. Thomas Jefferson responded with a letter that carries the line, "a wall of separation between church and state," which has become the source from which the infamous concept of Separation of Church and State was eventually derived.

The Founding Fathers desired that Americans be free to worship as they wished, without being compelled by government through an established religion. The key, however, is that they not only did not want the federal government compelling a person through laws regarding religion, but the government shall not "prohibit the free exercise thereof."

Thomas Jefferson, as indicated in his letter to the Danbury Baptists, and his other writings, was against the government establishing a "State Church." However, he also believed that men should be free to exercise their religion as they deem fit, and not be forced to follow a government mandate that may prohibit religion.

The Danbury Baptists were concerned over local religious freedoms, but Jefferson was clear, the federal government could not mandate anything in regards to religion. It is a State issue, and the Danbury Baptists needed to address the issue themselves through their State government. Jefferson's reference to a wall of separation was an explanation that the federal government cannot prohibit the free exercise of

religion for any reason, including on public grounds, but if a State was to prohibit the free exercise of religion, or establish a state church, it was an issue that must be resolved at the State level.

Freedom of Speech and Freedom of the Press

The point of including in the Bill of Rights the freedom of speech, and of the press, was specifically designed to protect political speech, though other speech is protected by this clause as well. The Founding Fathers believed that freedom hinged on the freedoms of political speech and the press. Benjamin Franklin wrote in the Pennsylvania Gazette, April 8, 1736, regarding the American doctrine behind freedom of speech and of the press:

“Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins. Republics and limited monarchies derive their strength and vigor from a popular examination into the action of the magistrates.”

James Madison in 1799 wrote, *“In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law.”*

Freedom of the Right of the People To Peaceably Assemble, and to Petition the Government for a Redress of Grievances

The right to peaceably assemble means that citizens may peacefully parade and gather, and demonstrate support or opposition of public policy. This part of the 1st Amendment is closely tied to Freedom of Speech, guaranteeing one's ability to express one's views by freedom of speech and the right to peaceably assemble.

The need to protect the right to peaceably assemble was not a new concept during the Constitutional Convention. Before the Bill of Rights, the Declaration and Resolves of the First Continental Congress declared on October 14, 1774:

The inhabitants of the English colonies in North-America, by the immutable laws of nature, the principals of the English constitution, and the several charters or compacts, have the following rights: They have a right peaceably to assemble, consider their grievances, and petition the king: and that all prosecutions, prohibitory proclamations, and commitments for the same are illegal.

In 1776, Pennsylvania's declaration of rights guaranteed peaceable assembly. Pennsylvania was the first State to recognize this right.

Originally, the right to assemble was considered less important than the right to petition. Now, many historians consider the two to be equally important, and to actually complement each other.

The Founding Fathers felt that the right to assemble, and petition the government for a redress of grievances, were important keys to protecting States' Rights, and the rights of the people, from the federal government. The need to assemble, to come together and share common beliefs and act upon those beliefs, is what began the drive for independence, and ultimately what led to the American Revolution. The right to assemble and petition the government for a redress of grievances, the Founding Fathers believed, was one of the primary tools available to the citizens in their drive to stop tyrannies before they could take hold.

The right to peaceable assembly provides the opportunity for all citizens to participate in America's political life and in the electoral process. A recent example of this inalienable right in action is the Tea Party Movement. The Tea Party rallies are peaceful assemblies. These rallies are protected by the

Constitution when they are for a lawful purpose, are conducted in an orderly manner, and publicize some type of grievance. Many groups and organizations use assembly as a way to show support for an idea, or dispute, as characterized by the Tea Party.

Terms:

1559 Act of Uniformity - In Britain it was illegal not to attend Church of England services, with a fine imposed for each missed Sunday and holy day. Penalties for having unofficial services included arrest and larger fines.

Protestant Reformation - Movement of the Church Reform begun in 1517 that was influenced by Martin Luther's critiques of the Roman Catholic Church. The movement led to the formation of the Protestant Christian groups.

Separation of Church and State - Distance in the relationship between organized religion and the nation state.

Theocracy - Form of government in which a state is as governed by religion, or by clergy who believes they are under immediate divine guidance.

Questions for Discussion:

1. How does today's definition of the separation between church and state differ from the attitude towards religion by the Founding Fathers?
2. Why did the Danbury Baptists appeal to Thomas Jefferson for help?
3. Why do you think that the Founding Fathers believed that our freedoms hinged on the freedoms of political speech and the press?
4. What are examples of the people peaceably assembling in protest?

Resources:

Danbury Baptist Association's letter to Thomas Jefferson, October 7, 1801: http://www.stephenjaygould.org/ctrl/dba_jefferson.html

Jefferson's Final Letter to the Danbury Baptists, January 1, 1802: <http://www.loc.gov/loc/lcib/9806/danpre.html>

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010).

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution – Volume Five - Amendments I-XII*; Indianapolis: Liberty Fund (1987).

The Declaration and Resolves of the First Continental Congress declared on October 14, 1774, U.S. History dot org: <http://www.ushistory.org/Declaration/related/decres.htm>

Thomas Jefferson, The Virginia Act For Establishing Religious Freedom, 1786: <http://religiousfreedom.lib.virginia.edu/sacred/vaact.html>

