

The Separation of Church and State

∞ The
Separation of
Church and State

WRITINGS ON A FUNDAMENTAL FREEDOM
BY AMERICA'S FOUNDERS

Edited by
Forrest Church



Beacon Press
Boston

Beacon Press
25 Beacon Street
Boston, Massachusetts 02108-2892
www.beacon.org

Beacon Press books
are published under the auspices of
the Unitarian Universalist Association of Congregations.

© 2004 by Forrest Church
All rights reserved
Printed in the United States of America

07 06 05 04 8 7 6 5 4 3 2 1

This book is printed on acid-free paper that meets
the uncoated paper ANSI/NISO specifications
for permanence as revised in 1992.

Design and composition by Yvonne Tsang
at Wilsted & Taylor Publishing Services

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

The separation of church and state : writings on
a fundamental freedom by America's founders /
edited with commentary by Forrest Church.— 1st ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-8070-7722-4 (cloth : alk. paper)

1. Church and state—United States—History—
18th century—Sources. 2. Freedom of religion—
United States—History—18th century—Sources.

I. Church, F. Forrester II. Title.

BR516.S46 2004
323.44'2'0973—dc22
2004006382

Contents

INTRODUCTION • VII

1. Patrick Henry
In Defense of Religious Liberty • 1
2. Samuel Adams
The Rights of the Colonists • 7
3. Isaac Backus
Baptist Appeals for Religious Liberty • 16
4. George Mason
Colonial Declarations of Rights: Virginia
John Adams
Colonial Declarations of Rights: Massachusetts • 26
5. Caleb Wallace
Memorial of the Hanover Presbytery • 36
6. Thomas Jefferson
Notes on the State of Virginia • 45
7. James Madison
Memorial and Remonstrance
Against Religious Assessments • 56
8. Thomas Jefferson
Virginia Statute for Religious Freedom • 72

9. Oliver Ellsworth
The Landholder, No. 7 · 78
10. John Leland
The Rights of Conscience · 87
11. George Washington
Letters on Religious Laws · 104
12. George Washington
Farewell Address (Selections) · 112
13. Treaty of Tripoli, Article 11 · 121
14. Thomas Jefferson
A Wall of Separation · 124

EPILOGUE

- James Madison
A Detached Memorandum · 131

APPENDIX

- Richard Price
Of Liberty of Conscience and
Civil Establishment of Religion · 145

SOURCES · 158

ACKNOWLEDGMENTS · 160

∞ Introduction ∞

One chapter in the saga of our country's birth—the dramatic debate over church-state separation—illustrates the founders' gathering vision more vividly than almost any other. It spans three decades, from 1772 (with Samuel Adams's broadside linking religious and civil liberty) to 1802 (with Thomas Jefferson's declaration that, in the Bill of Rights, a "wall of separation" has been built between church and state). Starring several of the new nation's leading protagonists, it also sets the tone for their experiment in governance. During the course of this debate, religious liberty becomes the cornerstone of *e pluribus unum*—"out of many, one."

Arguments over church-state separation didn't end once the language of state and national constitutions was finally hammered out. They continue to this very day, with partisans (from the pulpit to the oval office) interpreting the founders' and framers' actual intent. People ask, should a judge be permitted to express his reverence for religious laws by posting the Ten Com-

Introduction

mandments in his courtroom? Are “faith-based” initiatives appropriate when generated out of the White House? Under the Constitution, can state or federal prisoners be organized according to faith and given special privileges for spiritual achievement? Should we restore the Pledge of Allegiance to its original language by removing the phrase “under God?” Is there a place for any kind of prayer in the public schools? Does church-state separation discriminate against religion, or, to the contrary, is organized religion increasingly trespassing on secular ground? Should marriage rights be extended to all couples, regardless of gender? And, finally, is the lack of any mention of God or Christ in the Constitution intentional, or did the founders assume that everyone understood that the United States of America was a Christian nation? With issues such as these dividing the American people right down the middle, to address them with better justified confidence we must reopen the first chapter of our history.

How citizens today view the founders’ intent is as much a Rorschach test of our personal religious and civic views as it is a true picture of what such men as Thomas Jefferson, James Madison, and even George Washington had in mind when they drew up their blueprint for the nation and began building state and federal institutions according to its design. On both the religious right and the secular left, much contemporary confusion stems from an inability to distinguish between: 1) the universal spiritual values that

Introduction

underlie the American experiment in democracy, and 2) the role assigned to government to advance those same values by protecting freedom of conscience and belief.

The American Revolution was not driven by the anti-religious pathos that powered the French Revolution a decade later. In the Declaration of Independence, its draftsman (our most secular founder) emphatically proclaims, “We hold these truths to be self-evident, that all men are created equal and endowed by their creator with certain inalienable rights.” Citing as his authority “nature and nature’s God,” Thomas Jefferson establishes for liberty and equality a clear metaphysic, grounded in nature itself as part of the Creator’s plan. The founders’ professed goal was to establish a nation true to the spirit of divine law, a spirit some understood in Christian terms and others according to the canons of Enlightenment philosophy. These two streams met to affirm the dual imperatives of equality and liberty, best expressed in the above-mentioned motto of *e pluribus unum*. And the first liberty the founders endeavored to ensure—articulating in the First Amendment what already was enshrined in their hearts—was religious liberty. Sworn (“on the altar of God” as Jefferson put it) to protect freedom of conscience, they established a clear line of demarcation between church and state, not to abridge but to fulfill the nation’s spiritual mandate.

One British observer, G. K. Chesterton, memorably defined America as “a nation with the soul of a

Introduction

church.” His characterization is 100 percent half-right. By the founders’ design, we embody both the soul of a church *and* a resolutely secular mind. I tell here the story of how this unique development in the history of governance occurred, highlighting, in their own words, its champions’ understanding of the essential significance full religious liberty held then and continues to hold for the future of our nation.

As was true of the broader American struggle for freedom, the revolution that led to religious liberty was powered by two very different engines: one driven by eighteenth-century Enlightenment values, the other guided by Christian imperatives that grew out of the Great Awakening, a spiritual movement that spread like wildfire across the American colonies throughout the middle decades of that same century. The former movement, emphasizing freedom of conscience as both a political and a philosophical virtue, stressed freedom *from* the dictates of organized religion. The latter, stemming from a devout reading of the gospels (especially their proclamation of spiritual liberty from bondage to the world’s principalities and powers), demanded freedom *for* religion. Those who embraced Enlightenment teachings included the men most responsible for drafting our foundational documents (Thomas Jefferson, John Adams, John Jay, James Madison, and Alexander Hamilton). And many so-called “New Light” or “Dissident” ministers formed what one Tory referred to as the “Black Regiment,” stirring people up by preaching the gospel of liberty.

Introduction

Together, these seemingly opposite world-views collaborated brilliantly and effectively to establish the separation of church and state in America.

Though new in the annals of statecraft, the American experiment in religious liberty was not without foundation, both in British Common Law and Christian Reformation teachings. And certainly the quest for religious freedom was instrumental to early American colonization, beginning with the Pilgrims of Plymouth and the Puritans of Massachusetts Bay, many of whom crossed the Atlantic in order to practice their faith more freely. Nonetheless, Great Britain maintained a church establishment; the leading Reformers replaced long-standing ties between European governments and the Roman Catholic Church with a Protestant church-state connection; and the Puritans, as President Howard Taft once put it, "came to this country to establish freedom of their religion, and not the freedom of anybody else's religion." In fact, the first major reform of the church establishment in Massachusetts was imposed by England. In 1684, King James II temporarily revoked Massachusetts' royal charter, due to restrictions the Puritans had imposed on their fellow Protestants limiting religious freedom and the right to worship. To receive their charter back, the leaders of the colony had to cede to all Protestants within their jurisdiction the right to worship as they pleased.

By the time our chapter in the tale of growing religious freedom in America opens, the spirit of reli-

Introduction

gious liberty has already made great strides. In the vanguard were Rhode Island and Pennsylvania. The Reverend Roger Williams, a fiery Baptist with an inviolable conscience, bequeathed Rhode Island with a charter guaranteeing freedom of conscience to all its citizens. Williams considered it “against the testimony of Christ Jesus for the civil state to impose upon the soul of the people a religion, a worship, a ministry.” Calling for “free and absolute permission of conscience,” he was banished from Massachusetts in 1635, to establish complete religious freedom in Rhode Island the following year. Half a century later, William Penn established Western New Jersey and then Pennsylvania on many of the same liberal principles. Nonetheless, in the early eighteenth century the overwhelming majority of American citizens lived under an established state religion. The Anglican church held this franchise in Maryland, Delaware, North Carolina, South Carolina, and Virginia (and to a lesser extent, New York), with the Congregational Church established in Massachusetts, New Hampshire, and Connecticut. By the time our story begins in the 1770s, most notably Massachusetts and Virginia—commonwealths whose leading citizens proved instrumental to the Revolutionary cause and took leading roles in shaping the new nation—still levied taxes to support both the established church and its clergy. As the new nation began to take shape, the combustible combination of state laws supporting religion and leading citizens from these same states

Introduction

passionate in their advocacy for such laws' abolition turned Massachusetts and Virginia into the principal laboratories for church-state reform.

Throughout the following pages, this dramatic story unfolds, not without its moments of ambivalence. In Virginia, Patrick Henry (whose immortal words, "Give me liberty or give me death," became a rallying cry for the rebellion) was both a valiant champion of religious liberty and also among the most persistent supporters of an, albeit reformed, established church. George Washington (with Thomas Jefferson perhaps the most secular-minded of the founders) closes his presidency with a paean to the central importance of morality and religion for the future survival of the state. Jefferson's chief lieutenant, the diminutive and brilliant James Madison (principle policy wonk among the nation's architects), studied for the ministry, became a dogged secular advocate of church-state separation, and then, during his tenure as the nation's fourth president, reversed Jefferson's precedent by declaring national days of fasting and prayer.

Some of the figures you will meet here are less well-known: Baptist ministers Isaac Backus and John Leland for instance, and Presbyterian ministers Caleb Wallace and John Witherspoon (though Witherspoon, president of Princeton and a signer of the Declaration of Independence was a major player on the national scene). Each a devoutly Christian champion of church-state separation, their words

Introduction

serve as a continuing reminder of the danger any hint of collusion between church and state poses to the attainment and maintenance of full Christian liberty.

I arrange the following documents in chronological order, framing the debate with two writings that precede and follow it: the former, a ringing court summation by Patrick Henry in defense of three preachers charged with witnessing to heterodox religious views, and the latter, James Madison's bitter-sweet late-life reflections on the battle he and others waged for religious liberty, interlaced with his concerns about ongoing dangers that might jeopardize the integrity of church-state separation in the future. Between these bookends is a brief, yet complete basic library of the most illustrative and significant documents to emerge from the original church-state debate (including Madison's "Memorial and Remonstrance," Jefferson's "Statute for Religious Freedom in America," and selections from Washington's "Farewell Address."). In practical terms, perhaps the most important papers I include are six letters from President Washington to religious leaders affirming his sworn fidelity to church-state separation, and the 11th Article of the Treaty of Tripoli—presented by President John Adams and ratified by the entire U.S. Senate—which opens with the words, "As the government of the United States of America is not in any sense founded on the Christian religion. . . ."

I follow these documents with an appendix: observations on the American experiment in grant-

Introduction

ing religious liberty to its citizens written by a sympathetic British observer, the Unitarian minister Richard Price.

In my running commentary I attempt to bring these addresses, papers, statutes, and letters to life, weaving them into a single story by relating its chapters to one another as best I can. Whether I have succeeded in this endeavor or not, the documents stand on their own as vivid testimony to the passion, vision, and faith of these extraordinary citizens, the civic artists who forged our nation, entrusting to the care of succeeding generations the protection and further implementation of their ideals.

Before I turn to the documents themselves, one final observation: Advocates for a so-called return to the values upon which the United States of America was founded speak with heartfelt sincerity of the need to reestablish a Christian nation to restore the founders' vision. The arguments they raise are perhaps the clearest reminder that we must revisit our early history to recover—and thereby keep from betraying—the founders' original script.

