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ENTITLED: An Analysis of the Establishment Clause: From Its Creation to Modern Interpretations

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The Establishment Clause is considered a fundamental precept of American political thought. Although it means that there can be no state religion, it also has wider implications. Furthermore, the principles contained in the Clause were not always held by Americans. The ideas of religious freedom and toleration evolved over time. They continue to evolve through laws passed by legislatures and decisions rendered by courts.

The first section of this paper examines the impact of religion on the lives of the early colonists. Many came to America after being persecuted because of their religious beliefs in Europe. However, once in the New World they wanted to practice their beliefs freely, often to the exclusion of dissenters. Established churches were a natural occurrence for the colonists considering their background. Religion was the center of their lives. It was both a personal and a community commitment to the religious ideals.

However, gradually religious toleration increased and was precipitated by the advent of the Revolution. When the people banded together to fight their common enemy, religion was irrelevant. They were all Americans fighting for their independence. Fighting for political as well as religious liberty, they came to recognize that the ideas behind the words "all men are created equal" were not abstractions but were truths.
At the Constitutional Convention the men we now call the Framers attempted to create a workable government. Most of them were not religious men but were extremely rational and practical thinkers. There is only one mention of religion in the actual document. The use of religious tests to hold office was banned. This was the opposite of what many states practiced but the Framers thought it important enough to include in the Constitution. There was a lengthy debate at the Convention about whether or not to include a Bill of Rights. James Madison did not believe it was necessary because the government was one of limited powers and it could not act where it did not have an enumerated power.

Although the Bill of Rights was not a part of the original document, it was later added as the first ten amendments. Popular support for protection of individual rights against state domination necessitated the addition. The first part of the first amendment contains the Establishment Clause. Although debate about the wording of the clause was rather perfunctory, today scholars try to read much into the words to garner the authors' intentions.

Two schools of thought have developed regarding Establishment Clause theory -- the Accommodationists and the Separationists. The Accommodationist argument believes that government can interfere with religion as long as the intervention is neutral and nonpreferential. Separationists,
on the other hand, believe that there should be no interaction between government and religion. They believe that the two should remain entirely independent.

The final section of the paper examines one particular problem of establishment clause interpretation facing the Supreme Court -- that of public display of religious symbols. The Court does not have a workable standard to decide Establishment Clause cases. It uses a method that is result-oriented and therefore cannot be applied in a systematic manner. The decision the Court reached in the case involving public display of a creche is flawed. The Court is increasingly taking positions that favor accommodation of religion over separation of church and state. Without clear guidelines, though, both the public and lower courts are unable to understand what the Establishment Clause means in terms of modern constitutional interpretation.
SECTION 1

The first amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion." However, in order for the ideas behind the words to be accepted, a difficult battle was fought. Religious liberty was not always a fundamental right. However simple the concepts may seem, in reality freedom of religion has many different facets. This complexity stems from the early settlement of this country and the roots and convictions of the first colonists.

THE EARLY COLONISTS

The extent to which religion influenced the lives of the early American colonists is profound. To understand the ideology of the early colonists one must consider their background. Religious liberty was not automatic to them. They came from countries where religion was an inherent part of the culture. As Louis B. Wright explains, "religion was not merely a Sunday ritual; in the seventeenth century it was an enveloping influence seven days in the week." (1957:72) Wars were fought, peoples were persecuted, families were torn apart -- all because of religious differences. One man, Henry VIII of England, created his own church for his country because the Catholic Church would not recognise his divorce. Such was the magnitude of religion's influence on society.

Thus, the fact that an establishment clause even
exists in the United States today is rather remarkable in and of itself. For the early colonists were accustomed to established state religions. They only objected to them in Europe if the religion was not their own. Robert Cord describes the religious conditions in Europe:

"The great nations of western Europe had become internally divided owing to the allegiances of different princes to different Christian codes. Many national schisms were resolved forcefully by the institution of established religions and the suppression of minority sects."

(1982:3)

Thus, the settlers who came to America knew nothing of religious freedom. The established order was most often the religion of the ruler. The result of that was lack of expression for people with differing beliefs. Louis B. Wright explains the impact this had on their decision to emigrate:

"Although we should remember that religion was not the primary motive that led most emigrants to brave the North Atlantic, we should not underestimate its importance in their thinking and planning, and its significance in the propaganda for the settlement of British America."

(1957:73)

However, religion did play a part in many decisions to move and laid much of the groundwork for the founding of the colonies. In Europe, religious tolerance was minimal. Dissidents had to either renounce their beliefs or flee. Coming to the New World, America, offered them a chance to freely practice their religion and start a new life. As
Clinton Rossiter, delineates, thus, many of the colonies were actually born because of religion and developed with explicit religious influences:

"...religion was a leading motive in some of the most important explorations and settlements. Several colonies were established as havens for the oppressed of one persuasion, several others as havens for the oppressed of all, still others...in which toleration of dissenting consciences was encouraged..." (1953:35)

What should be emphasized is that these colonists did not intend to create a system of true personal freedom. These people were not the people who wrote the Constitution or fought the battle for independence from the British. Louis B. Wright notes that one should not overestimate the colonists' intentions:

"Let no one imagine...that our ancestors came in search of 'religious toleration.' Tolerations was a concept few of them recognized or approved. What they wanted was freedom from interference by opposing religious sects or unfriendly official authorities." (1957:73)

The ideas behind what we now know as the establishment clause were not automatically understood or embraced. In the beginning, the colonists were concerned with creating a new society. Because of the intensity of their religious beliefs they turned to them for solace in the New World. The only toleration they knew of was freedom for themselves to openly practice as they had been denied in Europe.
Colonists’ Ideas About Religion

Thus, beliefs regarding religion's place in society evolved over time. Although religious liberty was inherent to the development of the country, it was not openly embraced by most sectors of society. But such ideas slowly grew out of a necessity to survive rather than a social conscience.

Thomas Curry explains the situation the early settlers faced:

"In England 'establishment' clearly referred to the Anglican Church, officially approved and supported by the government, which excluded non-Anglicans. ...from positions of power, privilege and social influence. In America the constant need for more settlers made such exclusivity unachievable." (1986:105)

However much the colonists would have preferred to interact only with members of their own faith, it was almost impossible in the areas where more people were needed to help develop the society. Yet, people were able to isolate themselves into small groups by moving farther west into the frontier. But even in the areas where there was an established religion people of other faiths lived there as well. For into every group would come dissenters or people with a different sect or no sect at all. They could not afford to turn them away nor did they have the wherewithal. Although these people were not warmly welcomed into the communities, they forced the colonists to realize that other faiths did exist in their new country. Thus, the colonists were forced to come to grips with other types of people, even in the face of the "established" churches they created.
ESTABLISHED RELIGIONS IN THE COLONIES

Even though many colonists left Europe because they were persecuted by state churches, in the New World they replicated those systems. The colonists intertwined religion and the state just as the European nations they left had done. Leaving behind their countries, their land, and often their families, their religious beliefs were the only part of their past they had left. Religion tied them together and brought them hope. R.C. Simmons further explains this idea:

"We know that large numbers...had personal and deep religious feelings. At the same time, individual churches or congregations provided a social and intellectual focus for their members in a society where other forms of permanent association outside the household and family were relatively few and weak." (1976:206)

Thus, religion was the only constant they had in a world fraught with uncertainty. It is only natural, then, that religion would come to play a dominant role in the society. As Robert Cord notes, "...many Europeans who fled to the New World to escape established religion agreed that Church and State should be combined in their new settlements." (1982:3) This by no means implied that the colonists opposed toleration. They resented the treatment they received in Europe as a result of being members of minority groups. However, religion was an important part of their lives and they carried it over to the more secular parts of their societies.
The settlers fled Europe because they disagreed with the system. Yet, they wanted to start a new life in the New World that was consistent with their beliefs and ideas. The original intent of the early American colonists was to establish a new order to replace the one they left behind in Europe. But because a state religion was central to their conception of government as well as life, they meshed the church into their secular daily lives. In America the system could reflect their values and ideas unlike the ones Europe. Here they were their own masters so they wanted their colonies to be formed according to their beliefs. Louis B. Wright explains:

"Massachusetts Bay began as a Puritan theocracy, Maryland as a home for persecuted Catholics, Pennsylvania as a destination for Quakers and quietists of all nations." (1957:73)

However, even though they fled persecution, in many of the colonies an established religion was more the rule than the exception. Because they were accustomed to a strong relationship between church and state, they organized their societies in the same manner. They wanted their religions to be recognized as official. As Clinton Rossiter wrote, "it should therefore occasion no surprise that in nine of the thirteen colonies a state church was established and maintained. . ." (1953:38) The Church of England was established in Virginia, Maryland, North Carolina, South Carolina, and Georgia. (Levy 1986:5)
These official churches, were authorised by the state and received special privileges. Leonard Levy describes the implications of an established church:

"An establishment of religion had an official creed or articles of faith, and its creed alone could be publicly taught in the schools or elsewhere. . . Subscribers to the established faith enjoyed their civil rights, but the law handicapped dissenters, even if it tolerated their worship by the imposition of civil disabilities. . . Their religious institutions. . . had not legal capacity to bring suits, hold or transmit property, receive or bequeath trust funds." (1986:4)

It is clear that members of the established faith were in a sense "higher" or "better" citizens. In any case, they were more worthy of privileges and had more rights in the society. Robert Cord, notes with irony that the colonists treated dissenters as harshly as they themselves had been treated in Europe:

"Paradoxically many Europeans who fled to the New World to escape established religion agreed that Church and State should be combined in their new settlements. With few exceptions those who fled religious persecution were no more tolerant of religious dissenters than were those from whom they had fled." (1982:3)

Louis B. Wright confirms this view by noting that, "once firmly in the saddle themselves, sects that had been persecuted in England became equally zealous to root out heretics from their own order." (1967:73) Belief that their faith was the right path to follow caused them to develop
tunnel vision in regard to other people's right to free practice. In Europe they were persecuted and once safe they became like their persecutors.

In theory, the colonists should have been willing to allow free practice. However, some justification can be found for their behavior by realizing that the colonists knew no other system. Established churches were the norm for them. True, they should have been compassionate considering their own pasts, but they really believed they had the power to control what went on in their area. Just as they had known the truth in Europe, they walked the correct path in America as well. Change does not come easily, especially for people who had left familiarity to create their own system and way of life. Consequently, they arranged to have free practice for themselves, as they believed they should. They blinded themselves to the needs of others. To them, their religion was superior. While they perhaps did not intentionally set out to impose their beliefs on others, the effect was the same. Just as Henry VIII had deemed the Anglican Church the law of the land in England, they believed that they had the same rights in the colonies.

The Puritans

The first immigrants to America were Calvinists, also known as Congregationalists or Puritans who settled in the Massachusetts area. Their values reflected the importance of marriage, family, hard work and discipline.
There was also a militant element that was emphasized in their preachings. As Henry Parkes wrote, "in certain directions, for example, it encouraged individuals to repudiate external authority and to have confidence in their own judgments and intuitions." (1955:65) This confidence allowed them to leave the country in which they were born to create a new society, New England. Yet, they also had confidence in their religion and in the superiority of their views. They wanted a society based on their principles.

However, past oppression and persecution was remembered by some settlers and reflected in the systems they created. The Puritans, for example had fled from the persecution of the Anglican Church. In England, the state had control over the church and there the Puritans had accepted this arrangement, partly because they had had no other choice. However, because of their suffering, they changed the system in the New World. Thomas J. Curry explains:

"The emigrants to America, however, having suffered at the hands of church authorities in the Mother Country, avoided imitating what they regarded as the worst features of the English arrangement. Thus the New England clergy limited themselves to religious affairs." (1986:5)

Rather than set up one large church, the Puritans relied on local congregations. This allowed religion to flourish within a community without any central religious authority. But the Puritans believed in advancing their own faith.
Consequently, the Puritans were not necessarily tolerant of other beliefs. To them, they possessed ultimate truth. "... They were certain that their colonies, in order to prosper, must be united in that truth." (Curry 1986:5) Such a stance is contradictory to the ideas of religious freedom, supposedly the reason that they established their colony in the first place. Instead of allowing free expression, they were attempting to enforce their ideas on others. The Puritans denied the accusation. The Puritans, who are Calvinists, believe that there are two groups of people, the elect and the damned. Only true believers were among the elect. Consequently, "it was the duty of the elect to impose their way of life upon the rest of the human race, if necessary by force, and to see to it that the will of God was obeyed." (Parkes 1955:64) Although this seems antithetical to their original purpose, it is consistent with their religious ideology.

However, because religion was the center of their life, they wanted to maintain control over it. Local branches were not in their interests because "the semi-independent congregations were undoubtedly apt to degenerate rapidly into religious pluralism, a condition Puritans considered synonymous with anarchy." (Curry 1986:6) As a result, the civil authority began exerting more control over religion. A law was passed stating that no new churches could be created without the approval of the government.
Thus, as Thomas Curry concluded:

"Consequently, in their efforts to maintain and promote uniform religious practice, Puritan governments gradually began to assume roles reminiscent of those of English ecclesiastical authorities." (1986:6)

Although they did not have explicit laws, there was an understanding between those learned in Puritan principles as to what was or was not acceptable. Civil intervention in the workings of the church was not unwelcome. Rather, "the numerous churches were happy to leave the task of ensuring consistency of religious practice to the magistrates. Ministers agreed that secular authority could correct erring congregations..." (Curry 1986:7) In other words, they enmeshed religion with the state affairs, creating the type of system that they rejected in Europe. However, the Puritans in Massachusetts Bay had to co-exist with members of other faiths. The Anglicans and other sects, including Quakers and Baptists did not want to pay taxes to the state to support a church to which they did not belong. Thus, battles continued over secular matters that stemmed from religious differences.

Dissenters and Diversity

Such intermingling of church and state was not applauded by all members of colonial society. Many of the colonists did not ascribe to any religion. Just because there was a state religion did not mean that everyone had to
Religion was clearly a matter of individual choice. As Clinton Rossiter notes, "by the middle of the eighteenth century there was a larger percentage of "non-professing Christians" in the American colonies than in any state in Western Europe." (1953:43) Consequently, an established religion was not in the interests of many people. Some could not afford to support a church, while others were personally opposed to the ideas. They were an impetus to cries for total religious freedom:

"All these men -- the frontier farmer in his harsh poverty, the tavernkeeper in his worldly apathy, the merchant in his rationalized indifference -- were foes of establishment, tithes, intolerance, and doctrinal dispute." (Rossiter 1953:43)

As people came from all over, the number of religions represented increased. Such diversity spawned changes in the way religion was treated. "The great religious problem of colonial America was to create an environment in which men of differing faiths could live together in peace." (Rossiter 1953:41) This led to toleration. The individual groups could no longer have control over religion as they had wished. In order to co-exist one had to appreciate the beliefs of others. Free practice and expression became a necessary ingredient for life in colonial America. As Rossiter wrote, "the Catholic in seventeenth century Maryland and the Anglican in eighteenth century Massachusetts plumbed as hard as any Baptist for religious freedom, not out of conviction but in
the interests of self-preservation." (1953:41) Thus, the calls for religious freedom and increased toleration came from various sectors of the society. They later led to the movement for legislation after the Constitutional Convention.
Although religion remained a central fixture in the lives of the colonists, their attentions turned to another front -- their battle with the King of England. Instead of internal in-fighting over religious matters, they now had external forces to contend with and their fight became one of mere survival. Political tyranny, threatening their very existence, was their enemy.

Although they did not initially want a revolution, the actions of the King gave them no other alternative. He had violated the social contract that they thought was inherent in their relations by virtue of the Magna Carta. Because he broke the common law they were forced to rebel. Fighting for individual rights, and political as well as economic freedom, they came together as before they had been divided and driven apart.

After they won the Revolution of 1776 the colonists had to come to terms with their freedom and independence. They had to focus on what they wanted a government to do, and, more importantly, what they did not want it to do. The disastrous Articles of Confederation led to a call for a new forum to try once again to create a nation out of 13 separate entities. Thus, the idea of the Constitutional Convention was born.
THE CONSTITUTIONAL CONVENTION

Assembling in Philadelphia, these men we now call the Framers had a difficult task. Their purpose was to integrate the needs, beliefs, and desires of a wide variety of people with varying political and moral ideologies. Yet, it was made even harder because there was not even consensus within the group as to what should be done. Although each Framer had his own set of priorities, they were held together by their common vision of a working, growing nation that they hoped to create. Clinton Roseiter explains this inner desire that binds Americans to their country:

"...It takes more than a perfect plan of government to preserve that state of ordered liberty which is the mark of the good society. Something else is needed, some quality of mind and heart diffused among the people to strengthen the urge to peaceful obedience...In a republic that 'something else' is, quite simply, public and private morality. Free government rests at bottom on the moral basis of decent, brave, honest, liberty-loving, industrious, patriotic men."

(1966:63)

The Framers and Religion

The men at the Convention had this spirit, the desire to serve their country. They had the interests of what would become the United States of America in their minds and in their hearts. Although most ascribed to one religion or another, they did not let their religious principles guide their decisions at the Convention. They were determined to
act in a practical and rational manner without interference from something as personal as religion. Rossiter explains the characters of the men:

"Although it had its share of strenuous Christians, . . . the gathering at Philadelphia was largely made up of men in whom the old fires were under control or had even flickered out." (1966:147-8)

While they may have been a member of a religious order, they did not let their religious ideals determine their political ideology. As Walter B. Mead explained, "while many of them were foreign-born, it was their grandparents, not they, who had struggled against religious persecution." (1987:38) The days of Puritans fighting with Anglicans, while not necessarily over, were tabled so that a government could be formed. Their priorities were clear.

However, some religious groups did hold meetings before the Convention started:

"For even as the delegates waited for the federal convention to begin . . . conventions of Presbyterians and Baptists were being held in the city to 'clean and distribute the streams of religion throughout the American world,' as the Pennsylvania Packet put it." (Peters 1987:20)

Yet, none of the framers would have dared to insinuate that their ideas had the support of God. (Rossiter 1966:148) As Rossiter concluded, "the Convention of 1787 was highly rationalist and even secular in spirit." (1966:148) For the Framers were a select group. Most had served in the Revolution and many like Madison had been instrumental in its
inception. These were the men who created the rhetoric that is recited. They developed the ideas behind the Declaration of Independence and later brought them to fruition in the form of the Constitution. They attended to their tasks like scientists rather than moral theologians. Whatever, the ideas of the "masses," the Framers thought and worked in concrete terms and didn't let the religious demonstrations interfere with their goals. Their work was too important to be influenced by emotion. They recognised that religion was an extremely sensitive issue and they were determined not to let it interfere with their greater objective of creating a government. They did not want to open any new battles by acknowledging any religious ideas in their document.

Therefore, the men at the Convention were determined to be objective and not let questions of religion impede their mission. They attended to their task by questioning proposals on their merit and not whether they ascribed to any "higher" order. While they still spoke of God and other religious concepts, they viewed them, "within the context of a universe more rational than revelational, more humanly deductive than divine." (Mead 1987:38) To them, the positions of their ancestors were historical not practical:

"Their fascination was with the unfolding wonders of the physical world revealed through the steady advances of scientific inquiry. Orthodoxy, in the mind of the educated, tended to be equated with superstition." (Mead 1987:38)
Thus, the framers were able to put their personal religious views aside in order to create a rational, practical foundation for a government.

However, many of the Framers held religious beliefs that lent themselves to practicality and order. Since, as a whole, religion did not have the same fervor and momentum as it did for previous generations, they were more inclined to question their religious foundations. Men like John Adams, Benjamin Franklin, Thomas Jefferson, and James Madison would not be expected to accept anything on faith -- even religion. Every concept had to have a rational basis. Thus, they studied the school of deism, which took a cautious and skeptical attitude towards religion. They subsequently became Unitarians, an expression of deism. Deists essentially believe that after God created the world he no longer influences or controls what happens. These ideas were popular at the time:

"According to this view, God created this world but, having thus acted once and for all time, did not further interfere with its workings." (Mead 1987:39)

Thus, they had no reason to believe that God could interfere with what they did. Their minds and bodies were in control and they could make their own destiny. When Benjamin Franklin uncharacteristically suggested that they open the Convention each day with a prayer, "his piety appeared to be regarded by the vast majority of the delegates as that of an "old fogey."

(Mead 1987:39)
In sum, the framers were most concerned with what they could accomplish on earth instead of attaining to succeed in the afterlife, which was the goal of their ancestors. However, they respected the views of others and many later worked to ensure freedom of religious expression:

"Their famed tolerance of religion was rooted less in a concern that religion be allowed to flourish than in a desire that dissident and unorthodox ideas be protected from excessive and dogmatic expressions of religion." (Mead 1987:39)

However, most of them had no lofty notions or ideals. They did not wish to create a religious government and they acted accordingly. Although most were not atheists and were nominal members of some religious order, "the... faith of our Founding Fathers was a very unorthodox and cautious faith." (Mead 1987:39) Nevertheless, just as they recognized one's right to be pious, their right to be skeptical must also be acknowledged and accepted.

Religion and the People

This inclination for reason and secularism was found not only in the constituency of the framers but throughout the country as well. Although there was not complete harmony and brotherhood in certain volatile areas, religious wars were no longer fought with the vigilance of the late sixteen and early seventeen hundreds. Not only had church attendance dropped but "the evidence suggests that the emphasis on religious doctrine, which early in the century
had dominated instructional materials in the schools, all but disappeared after 1776." (Mead 1987:205)

The Revolution brought death and turmoil on such a large scale that no religious order was unaffected. Whether their town would be demolished was a greater concern than establishing their order as the official religion. In essence they realized that political liberty transcends religious lines. As Walter B. Mead concluded:

"As the war wound down, it was the task of nation building that took precedence over the 'fine points' of theology. . . The new nation with its new Constitution. . . seemed to make politics and law more interesting and rewarding pursuits than religion." (1987:205)

In addition, the problems they had with England caused somewhat of a common bond to develop. The devastating effects of the war were not limited to people of only one faith. All were equally affected by the turmoil they faced. In order to develop a working political order and to resume management of their lives some sort of peaceful co-existence was necessary however difficult it was for some to admit. Rossiter explains how the once prevalent ideas of integration of church and state had waned noting that "the Old World pattern of state-church relations had been hurried toward its doom by the Revolution." (1968:113) This is not to say that Americans had given up religion. Religious sects still flourished and members still believed that their beliefs were superior. But emotions were tempered by the slowly growing
respect they had for each other's right to practice freely. However, common to all was a mutual morality gleaned from their religious backgrounds:

"Even though Americans...had...turned away from the more doctrinal concerns of the earlier, seventeenth-century colonial period, their concerns continued to be nonetheless intensely moral...Morality, and therefore religion...were still regarded as crucial to civil order." (Mead 1987:206)

As noted, the Revolution was a political one. The colonists did not overthrow the existing regime in order to gain power and institute their ideals as is popular of many revolutionary movements. Rather, they had been to a certain extent content with the government they had. It was only when King George began using oppressive measures did they question his actions:

"It is often said that the American Revolution was not a social revolution: It did not mean to replace the established ruling class with some other group." (Mead 1987:10)

Yet inherent in American thinking are certain fundamental ideas that are inalienable. These were later expressed in the documents written to justify the Revolution. It can be argued that the religious, particularly Protestant, influences from the early colonies contributed to the political ideas later expressed in the constitution. Clinton Rossiter defines this point:

"In its best aspects and moments Protestantism was a main source of these great political principles of Americans..."
democracy: freedom of thought and expression, separation of church and state, local self-government, higher law, constitutionalism, the American Mission, and the free individual." (1953:40)

RELIGIOUS TOLERATION

In addition, the Revolution caused people to re-evaluate their opinions of each other and what they wanted from government. Developing slowly was the idea that government should withdraw from interfering in religious affairs. Religion in itself did not lessen in importance from the pre-war days but the mood of the country was not as accepting to the established religions as it once was. In order to develop a working political order people of different faiths had to interact. Without this interaction they would have had to remain independent communities without any common political thread to tie them together. Thus, tolerance was grudgingly, not openly or warmly accepted. Gradual acceptance of different views and ideologies was clearly evident after the Revolution:

"Although America was still largely a nation of believers in 1787, many of the believers... were thoroughly tolerant of the beliefs of others." (Rossiter 1966:35)

Even before the war there was evidence of increased tolerance towards people with divergent religious beliefs. Those who believed in separating church and state believed that if people could become accepting of other people their goal
could be realized. Toleration was the first step towards separating the church from involvement in government affairs:

"Toleration rather than separation was the immediate goal of the Quaker in Massachusetts, Anglican in Connecticut, Presbyterian in Virginia, and Catholic everywhere. . . . Hardly less important was the spread of live-and-let-live, which meant, for example, that dozens of severe laws punishing all manner of alleged heresies were rarely enforced in the eighteenth century." (Rossiter 1953:44)

A large part of this toleration was justified on commercial grounds. Choosing business associates on the basis of religious preferences was not profitable. Therefore, the people learned to live with one another in order to facilitate a functioning society.

". . . the increasing variety of religious elements . . . accustomed colonials to live on mutually respectful . . . terms with men whose creeds were different from their own. . . . Religious diversity taught individuals as well as governments the practical advantages of toleration . . . A man who does business . . . with . . . heretics may come in time to suspect that they are not heretics at all." (Rossiter 1953:41)

**Separation of Church and State**

In addition, the problems with England and the resulting war also led to a desire to lessen the influence the church played in governmental affairs. In earlier times the colonists' worlds had centered on their religion. The years preceding and during the Revolution helped to redefine their priorities:
"The special privileges that the church had enjoyed for instance, were seen as inconsistent with the Revolution; and in the new Constitutions that the states drew up at the time of the war, a number of them drafted articles that emphatically separated church and state." (Mee 1987:27)

Furthermore, several colonies abandoned their established churches: "The Anglican Church had been disestablished in Virginia in 1786, and in New York, Maryland, and North Carolina during the Revolutionary War." (Cord 1992:4) In fact, at the time the Convention assembled only Georgia, South Carolina, Connecticut, Massachusetts, and New Hampshire had retained their religious establishments. (Cord 1982:4)

After the ratification of the Constitution states continued to separate their religious affairs from governmental control. As Robert Cord noted, the trend "culminated in the disestablishment of the Congregational Church in Connecticut in 1818, in New Hampshire in 1819, and in Massachusetts in 1833." (1982:4)

The separation of church and state was further necessitated by the large number of sects prevalent in America. Such diversity lent itself to liberty and freedom of expression:

"The rapid multiplication of the sects made toleration, and in time religious liberty, a social necessity. The doctrine of political equality of faiths was not the result of sweet reasoning about the brotherhood of man, but of the plain necessity that each sect in order to live had also to let live." (Rossiter 1953:41)
However, this diversity was evident in other areas of life in America as well. They were a group of thirteen colonies, each with its own customs, ideology and heritage. Yet the success of the Revolution proved that they could cooperate and achieve mutual ends regardless of their ideological positions. Religion was only one area in which this multiplicity of ideas was displayed.

Thus, the people of America were inherently a nation of factions based only partly on their religious differences. The idea of factions and their importance to the political growth of the country were particularly important to James Madison. He saw them as essential for ensuring liberty for all people, whatever their views:

"To James Madison. . . as the keenest student then living of the causes and consequences of 'faction,' the cross-cutting tensions of American society were a source of wonder and worry." (Rossiter 1966:39)

Madison worried about the majority infringing on the rights of the minority because the Constitution was designed to protect minority rights. However, he believed that inherent in a pluralistic society are so many different groups that no one group could ever be in the majority on every issue. As he concluded:

"All civilized societies. . .will be divided into different sects, factions, and interests as they happen to consist of rich and poor, debtors and creditors. . .the disciples of this religious sect or that religious sect." (Peters 1987:62)
Madison acknowledged, however, that there was the risk that religion could lead to oppression if used wrongly. Thus, in order to survive different sects had to co-exist and be tolerant, if not accepting, of other views. According to Rossiter, "live-and-let-live, worship-and-let-worship was the essence of religion in this land of vast distances and a hundred religions." (1966:36) Tolerance and respect for different ideas, especially religious ones, was essential to a functioning nation. The religious battles of the early colonial period had been counterproductive to progress. Tolerance was essential and was the first step toward complete religious liberty.

Thus, creating a government that would function and prosper became the mission of the colonists who before had clamoured to establish their religion as the official one of their community or colony. Consequently, the revolution changed the priorities of the colonists. They turned inward and worked together irrespective of religious differences. The needs of the group, the community, or the state were more important than the needs of the individual. In order to create a society they had to make sacrifices. The common goal of the revolution was to triumph over the political tyranny England had imposed. Without victory no religious group, however privileged they thought they might be, would have been safe. Although feuds between groups still existed, this realization guided their actions to build a society.
Thus, although religion still was a major force in colonial life, it did not play a major role in the framers' deliberations. A major reason for this was the fact that the framers did not want to deal with the issue. When it came to religion people were extremely sensitive. The framers did not want to risk rejection of their document because they had offended one or more religious groups. They believed that government really did not have a place meddling in religious matters. Thus, they debated logistical and ideological political matters including whether the executive should be strong or weak, whether or not the legislature should be bicameral, and whether representation in it should be equal or based on a state's population.

THE CONSTITUTION

Abolition of Religious Tests

In the original version of the Constitution there is only one reference to religion. In Article VI, Paragraph 3, "they concluded the sentence requiring the oath of political allegiance with the prohibition that 'no religious test ever be required as qualification for [federal] office.'" (Mead 1987:194) The Convention approved this with surprisingly little discussion after Charles Pinkney proposed it. (Peters 1987:181) Although the framers did not heavily debate this issue, what they enacted was the opposite of what many of the states practiced:
"...it represented a distinct change from the practice of the states. Every state constitution except those of New York and Virginia contained some kind of religious qualification for representation in its state legislature." (Peters 1987:181)

Thus, although they acted without much fanfare, the Framers clearly added a significant provision to the Constitution. This provision clearly prohibits discrimination on the basis of religion.

Although most of the state laws were general in nature, all required one to be a Christian to hold office. Some were more specific and limited offices to Protestants. This excluded Catholics and Jews, among others, from serving in state government. Religious tests at the state level are one example of how toleration was not as widespread as supporters would have liked. This legal discrimination was allowed and the people never clamored for its overthrow. Thus, inclusion of the provision outlawing religious tests in the Constitution was intended to prevent this from happening at the federal level:

"...in the absence of the clause Congress might have had the power to require an oath or subscription to the articles of faith of some particular church...or to Christianity generally." (Levy 1986:64)

These types of laws were the type for which the Revolution was fought. The colonists had rebelled against repression. Clearly, the state laws oppressed certain groups and worked to the advantage of others. However, it is interesting that
they would so staunchly repudiate a common state practice without much dissension. Yet, as the framers discovered, they were not the only ones who believed the issue merited attention:

"Nor was this a matter of concern to the Convention delegates alone. For on September 7, a week and a day after they adopted Charles Pinckney's proposal, Jonas Phillips, a Philadelphia Jew, wrote the Convention delegates urging them to do precisely what they had already done." (Peters 1987:182)

**Decision Against Adding a Bill of Rights**

However, the other mention in the Constitution of religion -- in the first amendment -- was not drafted at the Convention in Philadelphia. For, after some debate, the framers decided not to add a Bill of Rights to the Constitution they were presenting to the people. Although this was not a passionate issue at the actual Convention, in the months after it became a matter of great concern.

When the work in Philadelphia was nearly over, Colonel Mason, author of Virginia's Bill of Rights, proposed that one be added to the federal constitution. Believing it was necessary to ensure rights, he noted, "a bill of rights. . . would give great quiet to the people." (Mee 1987:271)

The Framers, however, preferred to leave this area to the states to legislate as they saw fit. For although the Framers were creating a national government, they did not want to usurp too much power from the states. A major fault
of the Articles of Confederation had been a weak central government but the Framers did not want to infringe on territory previously covered by the state legislatures:

"...Roger Sherman opposed the idea. The State declarations of rights 'are not repealed by this Constitution... and being in force are sufficient.'" (Mee 1987:271)

Although Mason and other proponents understood their reasoning, they believed a re-affirmation of certain ideals at the federal level was necessary. As both symbols and practical documents, he believed that they were integral to free government as they were evidence of the commitment to individual rights.

"Seven of the States had bills of rights protecting fundamental liberties from government infringement: declarations guaranteeing the right to a trial by jury and to freedom of speech, of the press, of religion. Bills of rights were often breached, sometimes in the same documents in which they were proclaimed, but they stood nonetheless as powerful symbols." (Barbash 1987:194)

Thus, Mason's pleas were not rewarded by his fellow delegates. Since their work was nearly done many did not want to remain to haggle over the nature of a bill of rights. In addition, they wanted their document to be practical and objective. "It was just such flourishes as a bill of rights that the Committee of Style had avoided." (Mee 1987:271)

Thus, from the start the idea was discouraged. Mason, having already authored such a document, argued that he could create
one rather quickly. However, agreeing on a final proposal would not be completed quickly. It was the nature of the Convention proceedings that every element of major proposals had to be considered in detail to create the proper wording:

"Mason might have been correct that it would take only a few hours to draw up a bill of rights, but no one who had been through the argument, bargaining, and compromise that had greeted far less controversial subjects could have believed that acceptance of the language of a bill of rights by the Convention would be an easy matter." (Peters 1987:201)

However, because of the inherent nature of the government they had created, the framers did not think a bill of rights was necessary. Although they were not opposed to the ideas behind a bill of rights in principle, they did not think the document needed to be included:

"The members of the convention did not oppose personal liberties; in the main they simply regarded a bill of rights as superfluous." (Levy 1986:65)

They created a government with limited and delegated powers. It could not infringe any area over which it did not have power. As Alexander Hamilton explained, "the Constitution created a government of limited powers, and... why declare that things shall not be done, which there is no power to do?" (Peters 1987:201) On the same level, the framers were afraid that if they listed rights it would be interpreted as absolute and would preclude liberty rather than preserve it:
"If a list of rights were enumerated, Sherman argued, it might appear that the framers positively meant to exclude some rights that they had just inadvertently overlooked (or they might be forced by a few states to exclude something most states already had and cherished." (Nee 1987:271)

Therefore, rather than pick and choose among various individual rights, the framers opted to leave the Bill of Rights out of the original document completely. They believed that every individual had inherent rights in the common law that did not need to be enumerated in order to be protected:

"All powers not specifically granted to the government were, in any case, reserved to the people. A bill of rights was not necessary -- since the basic rights of the Magna Carta and the common law were so deeply ingrained in America-- and might do more harm than good." (Nee 1987:271)

Thus, many believed that the additions were not only unnecessary but also impractical. As James Wilson said, "Enumerate all the rights of men? I am sure that no gentleman in the late Convention would have attempted such a thing." (Drinker Bowen 1966:246) The Constitution was a framework for the application of political theory. Thus, Wilson made the distinction that the Constitution was not similar to common law but was law made by men for men to use in their every day lives:

"The new Constitution in Wilson's view was not a body of fundamental law which would require a statement of natural rights. Rather it was municipal law,
positive law. . . ‘Not a declaration of eternal rights but a code for reference.’” (Drinker Bowen 1966:246)

Notably, one argument against the inclusion of the bill of rights made during a ratification debate in South Carolina was an allusion to slavery. Charles Pinckney, speaking to the legislature questioned how a nation could guarantee fundamental rights while people were owned as private property:

"Bills of rights. . . generally begin with declaring that all men are by nature born free. Now, we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves.” (Drinker Bowen 1966:247)

Although he had not brought up this argument at the Convention (mainly because the sentiment against considering a bill of rights at all had been unanimous), his statement would come back to haunt the nation later through the Civil War. In order to recognize the true importance of individual liberty the country had to fight a bitter war. Long after the bill of rights were finally enacted, the nation ensured the rights of all people through the Reconstruction Amendments, the 13th, 14th and 15th. Today, courts generally consider the bill of rights to be incorporated by the 14th amendment to apply to the states, thus ensuring that no individual’s fundamental rights can be abridged by governmental action.
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Popular Support for a Bill of Rights

However, although sentiment at the Convention favored exclusion of a bill of right, the Framers were later assailed for their actions. Edmund Randolph, a Framer himself, could not bring himself to accept the Constitution without it. He agreed with Colonel Mason that it was necessary to the purpose and implementation of the document. Many opponents thought that the Constitution was not complete without it. They did not accept the Framers argument that the limited powers of the federal government precluded infringing individual rights. Their experience with England led to a decided lack of trust of governmental institutions. Thus, to them, enumerated rights were a necessity to prevent further encroachment of rights. The anti-Federalists who were trying to derail the ratification process were especially outraged at the lack of a bill of rights.

Thomas Jefferson, who was Minister to France during the Convention proceedings, was equally outraged when he read a copy of the proposed document. To him, the omission of a bill of rights was the major fault of the plan. He hoped Congress would be swayed to action during ratification:

"He hoped, Jefferson wrote. ...that 'the first nine conventions may receive, and the last four reject [the Constitution]. The former will secure it finally, while the latter will oblige them to offer a declaration of rights in order to complete the Union. We shall thus have all its good, and cure its principal defects." (Mee 1987:285)
His prophecy would later be proven correct. Many people were outraged at the omission. Several state legislatures would not ratify the Constitution without a guarantee that a Bill of Rights would be added by Congress.

In addition, some people, most notably Patrick Henry questioned the lack of a provision for religious freedom which would be ensured by a bill of rights. At that time James Madison argued that a large number of sects would ensure religious freedom better than a bill of rights. He said, "if a majority were of one sect, liberty would be poorly protected by a bill of rights." (Levy 1986:70) Thus, rather than a specific enumeration of the right, people, by their own actions and beliefs would protect religious liberty. Madison went on to note that the underlying roots of the people's conscience's and their commitment to preserving the divergence of views will prevail:

"But the United States abound in such a variety of sects, that it is a strong security against religious persecution; and it is sufficient to authorize a conclusion that no one sect will ever be able to outnummber or depress the rest." (Levy 1986:70)

However, eventually most dissenters were persuaded that the bill of rights could only do good and no harm. As Jefferson posited, "...A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference." (Barbash 1987:196) Jefferson persuaded even
James Madison who originally had thought that a government of delegated powers could not infringe individual rights. Madison concluded:

"...the political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion." (Peters 1987:202)

Thus, the protections in the bill of rights would further prevent oppression of the minority or tyranny by the majority that Madison so feared. Because they are central tenets of American political thinking, they protect all people and are as avowed and respected as any Article of the original document.

Thus, the Constitution survived its first test. Not only was it ratified but eventually the battle was won to add the bill of rights. This debate proved that the system could work because the people called for the amendments and through the democratic process, they were enacted. In conclusion, Colonel George Mason's ideas about the feelings of the American people were correct:

"So strong was the sentiment for a bill of rights that five of the state conventions that ultimately ratified the Constitution did so with recommendations that amounted in some cases almost to demands that a bill of rights be added." (Peters 1986:202)

These demands proved that the people wanted their protections enumerated and that they were willing to fight to get them
accepted and implemented. This was the first test of the Constitution and it proved that the process could work.

Therefore, one of the first orders of business for the Congress was to create a bill of rights. True to their word, with much debate and discussion, they formulated a set of amendments.

"These were framed, like the Constitution itself, in plain, frugal, and laconic language that contrasted sharply with the purple prose of the state declarations of rights." (Rossiter 1966:302)

If nothing else, the fulfillment of the promises to the states ensured acceptance of the Constitution itself as fundamental law. There was no longer any basis for a claim to call a second constitutional convention. As Rossiter concluded, "the Constitution was not more than three or four years old when men of all political faiths began to acclaim it gladly." (1966:305) Thus, the process of creating a new government was complete.
THE WORDING OF THE ESTABLISHMENT CLAUSE

Debate over the wording of the amendments in the Bill of Rights was as heated as the discussion at the Constitutional Convention. Precision was necessary to avoid misconstruction of ideas. What became known as the Establishment Clause of the First Amendment was extremely difficult to write. Michael Malbin, a distinguished scholar of the Constitution, has studied the actual debate from the records taken known as the Annals of Congress. His is the most detailed study of the debate and he tries to provide insight into the motives for their actions. As he discovered there was not a general consensus about what the amendment should mean or what its intentions should be. Because of its ambiguity modern interpreters have no clear standards by which to abide.

James Madison proposed the first version of what eventually became the Establishment Clause of the First Amendment. Madison's opposition to the need for a clause preventing governmental intervention in religious affairs was well known. Because of the nature of the limited government he did not believe such protection was necessary. Although he did not believe that government had any power to legislate regarding religion, he still played a leading role in the creation of the clause. His initial recommendation read:
"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, nor 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." (Malbin 1978:4)

In this proposal he wanted to prohibit both the states and the federal government from infringing a person's free expression of beliefs. However, only the federal government was precluded from establishing an actual religion in this version.

However, Roger Sherman was the spokesman for the group who did not believe that any protection was necessary at all. He advanced the same argument the Framers did—that Congress was a body of delegated powers and that nowhere were they delegated power to legislate over religious affairs. James Madison, however, whatever his personal preferences, justified the need for an amendment because the states desired it. Those states were afraid that Congress could infer such power and exercise it unfairly:

"[The State Conventions]. . .[entertain] an opinion that under the clause, . .which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws under it, enabled them to make laws of such a nature as might infringe the rights of conscience and establish a national religion." (Malbin 1978:8)

Even though many state constitutions protected religious
expression for all people, some citizens, afraid of abuse of governmental power, would not be pacified unless a guarantee was made by the federal Constitution:

"These suggestions clearly indicated that the States wanted to prevent the establishment of a national religion or the elevation of a particular religious sect to preferred status as well as to prohibit interference by the national government with an individual's freedom of religious belief." (Cord 1982:6)

However, despite the important implications of their task, the members of Congress were not particularly interested in their project. Leonard Levy explains the conditions:

"The debate was sometimes irrelevant, usually apathetic and unclear. Ambiguity, brevity, and imprecision in thought and expression characterize the comments... That the House understood the debate, cared deeply about its outcome, or shared a common understanding of the finished amendment seems doubtful." (1986:79)

Thus, when modern jurists and scholars claim to know the true intentions of these people, they cannot make an accurate statement. Ironically, Americans in general hold these creators of the documents central to our governing system in such high esteem. They are almost superhuman. Yet, in reality, they were merely legislators trying to accomplish their task as expeditiously as possible. Apparently, as a whole, they lacked the intellectual passion and social conscience that has mythically been attributed to them. Even James Madison was only working out of a sense of duty to give
the States what they wanted in order to ensure ratification of the Constitution. Furthermore, the absence of a clear record on the meaning of their words seems to imply that there was no general consensus as to how broad they intended the application of the clause to be. It is entirely possible that they wanted future generations to apply the words of the clause to situations as they saw fit.

What appears to be of great concern to the members of the First Congress was the need to prevent the creation of a national religion while still allowing government to aid religion in a non-discriminatory manner. Thus, many of the objections and suggestions for revision were presented with these considerations in mind. For example, Elbridge Gerry, the anti-Federalist leader who had been a chief proponent of the need for a Bill of Rights, "urged the Congress to reword the amendment to read 'no religious doctrine shall be established by law.'" (Malbin 1978:7) He believed that this would effectively prohibit the formation of an official creed while still allowing government to help religious groups.

For they could not even agree on the difference between establishing and assisting. According to Madison, the words meant that Congress could not establish a religion nor force men to observe any ideas against their beliefs. However, as Malbin noted, "to say that Congress should not establish a religion differs from saying it should not assist religion as such." (1978:8) This distinction forms the basis
for two differing theories of Establishment Clause interpretation which will be considered in greater detail later. Basically they are known as the Separationists and the Accommodationists. Both groups try to use the intentions of the authors to advance their claims.

In addition to ambiguity over what an establishment actually was, there was the ever present nation-state controversy. Some members wanted to preserve the state's independence over regulating religious affairs while taking the domain away from the federal government. A few states at this time still had state religions. People interested in preserving states' rights did not want these powers encroached by a strong national government. Even Madison thought that the word 'national' should be included in the clause:

"Madison 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 that if the word national was introduced, it would point the amendment directly to the object it was intended to prevent." (Malbin 1978:9)

Fisher Ames of Massachusetts offered the following compromise that he thought resolved the issue of whether the federal government could interfere in the religious affairs of the state:

"Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." (Malbin 1978:11)
However, this was not entirely true, because there were no assurances that would preclude Congressional involvement in state action.

Upon reaching the Senate the bill was further amended and revised. The version they sent back to the House read:

"Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion." (Malbin 1978:13)

The Conference Committee agreed on the final version which we know today as the first part of the First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (Malbin 1978:14)

Although this version was eventually ratified by the necessary number of states and added to the Constitution, the authors were sufficiently ambiguous to preclude any clear cut interpretation. Consequently, scholars differ on what the true intentions of the authors were. For they believe those intentions should serve as a guide to apply the Clause.

Unfortunately, the Supreme Court, the interpreter of the Constitution, has been anything but definitive in rendering decisions involving the Establishment Clause. However, first it is necessary to have some background in the two main schools of thought regarding the relationship between Church and State. Each school can find support from both early Congressional Statements and pure reason.
TWO INTERPRETATIONS OF THE ESTABLISHMENT CLAUSE

In their search for the "correct" meaning of the Establishment Clause, modern scholars rely heavily on their interpretation of the framers' intent. It is argued that if we are aware of the situations they intended to preclude we can apply them to current predicaments. Such a system is never as simple as it appears. Not only was there not a consensus among the framers but there are few clear records of what they actually thought the Clause meant. The drafting and ratification processes were rather perfunctory considering the ideas are so controversial today. Therefore, any discussion of intent must be placed in the proper context. While we may put the framers on pedestals and think of them as soothsayers who foresaw future situations that could arise from their ambiguous language, the reality is that they were motivated by their own political concerns. They needed to get a bill of rights drafted in order for the Constitution to be ratified. The language they chose did not have any special significance -- it was just able to garner a consensus. Thus, it is important to recognise that there are no absolutes because no one knows the framers' intentions. In this light we can look at the opposing schools of thought.

The Separationists

The Separationists believe that government and religion should be entirely independent of each other. No
interaction is constitutionally allowed. In order to maintain strict separation of church and state, not only can there be no national religion but also no state action regarding religion. James Madison thought that governmental absence from religious affairs was the solution most likely to benefit religion:

"History had demonstrated, he further maintained, that the public subsidizing or endorsement of religion, whether general or particular, was unnecessary; civil society prospered in those colonies that did not provide such support; Christianity was most vigorous in its primitive phase before it received political recognition. . . ." (Mead 1987:199)

Religion is extremely personal. An individual should not have to fear that his rights to his religion could some day be taken away by a state establishment. Madison and Jefferson believed that religion should be controlled by the individual and not the state:

"James Madison and Thomas Jefferson had been the leaders of the disestablishment movement in Virginia. . . . The two felt that religious beliefs were the product of one's own conscience and were not to be interfered with by the state." (Boatti 1984, 37:105)

Separationists believe that neutrality on the part of the state in dealing with religion was best for both parties. Thomas Jefferson, in fact, "argued that religion itself was not indispensable to a healthy society." (Mead 1987:201) Although few would agree with him, many agreed with Madison that religion would be best able to flourish if
left to itself. He maintained that, "if religion were to remain healthy, it had to be kept free from governmental intervention." (Mead 1987:201-2) Separation of church and state protects each from the evils of the other as the Supreme Court wrote in Watson v. Jones:

"The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasions of the civil authority." (Lockhart et al. 1986:695)

The metaphor of a wall is used to describe the ideas of the Separationists. In his opinion in Everson v. Board of Education, Hugo Black wrote, "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.'" (Lockhart et al. 1986:695) Proponents of this view maintain that the church and the state should be separate and distinct entities. Separationists believe that government cannot distinguish between religious groups and prefer one over the other. Further, even when the government does not act with the intention of advancing one ideology, the action is unallowable. And, when the government can accomplish its goals in a manner other than one favoring religion (religion in general, not one particular faith), it is obliged to do so. Therefore, it is better to have no governmental presence in religious affairs. Leonard Levy, interpreting one of Madison's statements about the issue of
governmental preference in two different states, Rhode Island, which had no state religion and Connecticut which did, made the following observation:

"That is, Madison may have been saying, in effect, "what the people fear. . .is not the situation in Rhode Island but that in Connecticut where one sect has obtained a preeminence, or two, the Congregationalists and Episcopalians, have combined together and compel others to conform." (Levy 1986:81)

In other words, the people have greater reason to fear a government that approves one sect over another than one that approves none at all.

James Madison clearly believed in a government of limited powers. Initially, he did not even favor a bill of rights because he did not believe it was necessary since Congress had no power to legislate on the matters in question. Thus, the whole purpose of the bill of rights was to define the limits of Congressional power:

"The 'great object' of the Bill of Rights, as Madison explicitly said, . . .was to 'limit and qualify the powers of Government' for the purpose of making certain that the powers granted could not be exercised in forbidden fields, such as religion." (Levy 1986:84)

The framers, as were many of the people, fearful of a powerful government. They did not want to give them the ability to act without check. These views support the separationist interpretation of the Establishment Clause. As Leonard Levy concluded, "every bit of evidence goes to prove that the First Amendment, like the others, was intended
to restrict Congress to its enumerated powers." (1986:84)

And, Congress was not able to act if it did not have explicit authority to do so. "The Bill of Rights, as Madison said, was not framed 'to imply powers not meant to be included in the enumeration.'" (Levy 1986:84) Therefore, since Congress had no enumerated power to legislate on matters of religion, even in the absence of the First Amendment they would be powerless to act. Yet, in light of the First Amendment they are explicitly taken out of the legislative arena in this area. Accepting this view, even nonpreferential aid to religion is invalid.

The Accommodationists/Nonpreferentialists

Accommodationists, on the other hand, believe that the Establishment Clause means only that the government cannot favor one religious group over another but that neutral government support for religion is allowed. For support they turn to the fact that religion was still a major influence in people's lives at the time the Bill of Rights was drafted. Many of the principles in the Bill of Rights have religious roots. A group of people at the Massachusetts convention believed that the state should not reject religious principles simply because they come from religion. Mead explains their reasoning:

". . .it was thought only reasonable that the government should lend its support to those values and practices deemed crucial for the maintenance of general civility
Thus, while they believed in the importance of religion, they did not want one dominant sect. As Mead noted, "their concern was that religion be allowed to flourish, and this required. . .that none be allowed to use the powers of government to assert its ascendancy over the others." (1987:204) But they wanted government in any case to be able to support religion in general because they believed in its importance to society. In other words they were interested in protecting their own sects from domination by another. Their cause was not that of the irreligious:

". . .it was not the freedom of the irreligious that was being championed. To the extent that their chief aim was, indeed, religious freedom, the two religion clauses . . .can then be seen to be essentially consistent and mutually supportive." (Mead 1987:204)

This argument maintains that the authors of the clause intended to support religion and not to erect a wall between religion and the state as Separationists claim.

Another name for Accommodationists is Nonpreferationalist. As the name implies, they believe that any governmental support of religion is allowed as long as it is neutral and does not favor one specific religious group. In his analysis of the Establishment Clause, Michael Malbin argues that this is the purpose of the amendment:
"Aid to religion was to be permitted as long as it furthered a purpose the federal government legitimately could pursue and as long as it did not discriminate in favor of some sects or against others." (1978:ii)

They imply that the Separationists are against religion and that their view allows the government to show support for religion by giving aid in a nondiscriminatory manner. In a dissenting opinion of 1985 then Justice Rehnquist wrote that the establishment clause does not create a wall separating church and state:

"... the 'well accepted meaning' of the establishment clause is that it prohibited the establishment of a 'national religion,' ... The clause also forbade preference among religious sects or denominations. But it created no wall of separation between government and religion, not even between church and state." (Levy 1986:92)

Rehnquist holds the opinion that the framers wanted to intertwine government and religion. He believes that it did not require neutrality between religion and irreligion and that it could also provide aid without preference to religious groups. His thesis is the opposite of Separationists who believe that all aid to religion violates the establishment clause regardless of the intentions of the legislation.

The Nonpreferationalists draw support from the semantics of the establishment clause. Of great significance is the fact that the final version reads "an establishment of religion." In his original version Madison wrote "nor shall
any national religion be established." (Levy 1986:93) "...In the debate that followed he explained himself by saying that his proposal meant 'that Congress shall not establish a religion.'" (Levy 1986:94) His use of the word "a," as opposed to "the," is crucial to the Nonpreferentialist's argument as Leonard Levy explains:

"They emphasize the fact that in the debate Madison wished to proscribe 'a national religion,' that is, a single or exclusive religion preferred over all others 'and nothing else.'" (Levy 1986:94)

They believe that use of the word "a" justifies nondiscriminatory aid to religion. In other words, if they had used "the," there could be reason to believe that they were prohibiting a broad range of official activities in regard to religion. "But by choosing 'an establishment' over 'the establishment,' they were showing that they wanted to prohibit only those official activities that tended to promote the interests of one or another particular sect." (Levy 1986:95)

**Problems with the Accommodationist Approach**

Several flaws exist with this argument, though. First of all, the records of the debates are not accurate. They are not verbatim transcriptions but are from notes that were later paraphrased. Therefore, "any interpretation of the debate that turns on single words or precise nuances of phrasing must be suspect." (Levy 1986:95) Furthermore, any
argument that hinges on the use of a definite or indefinite article must be rejected entirely. Although an indefinite article is used in the actual Establishment Clause, it is impossible to know what was actually said in the debates since the reporter used shorthand and did not record articles. (Levy 1986:95)

The Separationists use the fact that Congress has no enumerated power to legislate over religion as their basis for analysis. Leonard Levy explains their position:

"The First Amendment does not say that Congress shall not establish a religion or create an establishment of religion. It says Congress shall make no law respecting an establishment of religion. That means that Congress shall make no law on that subject." (1986:95)

So, if Congress can make no law regarding religion the issue of preferential and non-preferential treatment is irrelevant. If the issue of religious legislation is forbidden from the forum of policymaking in the first place the issue of what type of aid should never have to be addressed. This is the fundamental difference between Accommodationists or Nonpreferentialists and Separationists. They have different conceptions of what the purpose of government is in regard to religion. The Separationists believe that they should operate as distinct entities while the Accommodationists believe that state support of religion is allowed and essential as long as it is done in a neutral manner.
However, by supporting nonpreferential aid to religion, they are supporting religion. Nonpreference is a euphemism for actual preference. They are telling the government that they believe that it should support religion instead of remaining apart. They do not believe that religion can stand alone, independent of the government. Madison and Jefferson believed that religion was a personal matter between an individual and his conscience. They did not believe the state had the right to interfere with that relationship. Accommodationists demand interference. Leonard Levy notes that they really are preferationalists by saying:

"Nonpreferationalists prefer government sponsorship and subsidy of religion rather than allow it to compete on its merits against irreligion and indifference. They prefer government nurture of religion because they mistakenly dread government neutrality as too risky." (1986:118)

The Revolution was fought so that people could be able to live in a free country. Although the soldiers in 1776 did not live through the religious persecution of their grandparents, they fought for it. Leonard Levy believes that nonpreferationalists want to "turn the clock back to the time when religion did not have to rely on private, voluntary support." (1986:118) He believes they support the idea of state religions like the colonies had. He believes in the words of Madison and Jefferson who created a limited government that would ensure the rights of all the people.
Our country was founded with the idea that the individual should have liberty and freedom to choose what he believed. Thus, the correct interpretation of the Establishment Clause should be one that declares invalid all intervention by government in strictly religious matters.

**THE SUPREME COURT AND THE ESTABLISHMENT CLAUSE**

The diverging views of the Separationists and the Accommodationists have been evolving through Supreme Court decisions in recent years and they are represented by the positions of opposing groups of Justices. A divided court has begun to take an accommodationist approach under the premise that the government is supporting religions without bias or prejudice. Government does not just have to tolerate religion, it can help it as well. As a result, the Court is tearing down the wall separating church and state that was build by the framers. They are leaving a conglomeration of decisions that reflect their own values and ideals and leave government and the people with little dogma on which to act.

The Court has had difficulty creating Establishment Clause case law. For the first 150 years of the nation, the Supreme Court did not hear one Establishment Clause case. Their first major decision came in 1947 in *Everson v. Board of Education*. For the first time the Court declared that even nonpreferential aid to religion was not allowed. Hugo Black in his majority opinion, wrote:
"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." (Malbin 1978:2)

A strong commitment to the separation of church and state was also exemplified as Black implored, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." (Lookhart et al. 1986:696) However, after this decision, the Court analyzed on a case-by-case basis with no clear guidelines as to what was and was not a violation.

**The Lemon Test**

Ultimately, the Court developed a test to decide Establishment Clause cases. However, this test merely standardizes the case-by-case method for it allows the Justices to interpret the results in a subjective manner. In *Lemon v. Kurtzman*, decided in 1971, the Court created the three-pronged test. They announced that their "Lemon test" would be the exclusive standard used to decide Establishment Clause cases. The first prong of the test asks if there is a secular purpose behind the government action in question. The second prong forbids the government from either advancing or inhibiting religion. The third precludes the state from becoming excessively entangled with religion. While on the
surface the test appears objective, it can be interpreted and applied according to the Justices' individual attitudes, values, and beliefs. Furthermore, the Court has strayed from using the Lemon test on two notable occasions.

The Court rejected the Lemon test when deciding the controversial *Marsh v. Chambers* in 1982. The Court applied a historical test to uphold the use of a chaplain at sessions of the Nebraska legislature. The decision was based on no objective standards or guidelines. Rather, it was decided on ambiguous historical evidence that the Court deemed controlling. The Court concluded that since at the time of the adoption of the First Amendment, Congress also enacted legislation providing for congressional chaplains, the Nebraska law is constitutional. The Court failed to consider the contradictory evidence raised by the dissent. Furthermore, the dissent believed the practice in Nebraska was unconstitutional under the Lemon test because legislative prayer has a fundamental religious purpose. This is an example of how the Court manipulates their tests in order to be able to rule as they please. By rejecting *Lemon* on an ad-hoc basis they make it more difficult to determine coherent case law on the issues.

Another break from Lemon was made in *Larson v. Valente*, also decided in 1982. Minnesota churches that received more than fifty percent of their contributions from private members were exempted from public disclosure
requirements. Consequently, churches that relied mainly on contributions from public solicitations were affected. Although the Court believed that the state had an interest in protecting against fraud, the interest was not compelling. The law did not sufficiently serve to advance the state's goal. The Court applied strict scrutiny analysis and ruled that the law discriminated against certain religious groups. As a result, it is unconstitutional. Larson is the only Establishment Clause case that the Court has decided in this manner.

Although the Court initially implied that Lemon would be the governing test for Establishment Clause cases, the Court has since modified its view. Although constitutional interpretation is not scientific in nature, Supreme Court opinions should not be wholly subjective. Nor should they be based on random guidelines because both lower courts and the public need standards in order to make informed decisions. By not adhering to Lemon, the Court is further confusing the situation by failing to determine clear precedential frameworks. Workable standards are needed to mark what is and is not constitutional grounds for action.

However, when using the Lemon test the Justices are able to reach the decision they want regardless of the facts of the particular case. It is easier for them to decide on a case-by-case basis, rather than having clear standards of proof, so that they can rule according to their whims.
Inconsistency is easier to justify when it is done on a consistent basis. The Court, therefore, is fortunate because the Lemon test inherently lends itself to result-oriented decisions because the Justices are given a great deal of leeway to determine if a case fits the three prongs. It is clear that the Court needs to make decisions regarding what kinds of tests it is going to use in different types of Establishment Clause situations. The trend is to use whatever test will give the outcome they desire and that is not justice, but rather a form of tyranny.

**Public Display of Religious Symbols**

An example of the Court's inability to create consistent case law is the 1984 case of *Lynch v. Donnelly*. In a 5-4 decision, the Supreme Court held that Pawtucket, Rhode Island could display city-sponsored creche in the center of the downtown shopping district. To attract shoppers, for forty years the town had erected a display that included a Santa house, plastic reindeer, a Christmas tree, and other holiday decorations. At the center was a life-sized nativity scene. It was purchased and maintained by the city and was lit each year in a city-sponsored ceremony. A group of citizens sued because they believed that the creche violated the establishment clause of the Constitution and the unwritten tenet of separation of church and state. Unlike the other items in the display which do have a secular
purpose (like the Santa Claus and the reindeer), the creche is an inherently religious symbol. As a result, it should not be associated with nor supported by the government. The two opposing groups in Pawtucket represent the Separationists and the Accommodationists. The people suing believe that the city should have nothing to do with the religious aspects of a holiday. It should remain neutral. The people who back the city believe that Christmas has evolved into a secular holiday and that the city has an interest in supporting it.

Thus, because of the Court's inability to make a clear commitment to the Lemon test, the lower courts were not obliged to use it in the Lynch decision. However, the strict scrutiny test for discrimination used in Larson would be superior to the Lemon test in deciding a case like Lynch. Accordingly, the Court of Appeals used the analysis in Larson to affirm the lower court's decision to forbid the creche from being displayed. As the opinion noted, the city displayed the symbols of only one religion, Christianity. Therefore, this preference had to be measured against the state's claim of a compelling interest. The court found that the state interest could not be upheld because the discrimination was too great. This court believed that public display of the symbol of one religion was a violation of the Establishment Clause.

Government should not be able to constitutionally prefer one religion over another -- in any instance. The
test used in Larson would be a more workable standard for the Court in situations like Lynch. The Court would have to weigh whether the state interest was justified by the state-imposed discrimination. Although there would be an element of subjectivity similar to the Lemon test, the risk of result-oriented decisions wouldn't be as high. Presumption should be against the discrimination and for the rights of the religious group affected. The government should have the burden of proving that the preference it is according to one group is justified.

Instead, in Lynch the Court applies both the historical analysis and the Lemon tests. Consequently, they are able to direct their reasoning to achieve the outcome they desire. By not using one definitive standard to decide a case with important precedential implications the Court did the public a great disservice. Not only did it rely on unconvincing historical evidence but it decreased the importance of the Lemon test as a tool for future decisions as well. By not relying exclusively on Lemon the Court is advancing the idea that Lemon does not have the same value it once did in the decision making calculus.

According to the majority of the Court the nativity scene passes the first prong of the Lemon test because the purpose of the entire display is secular -- to promote business shopping and holiday spirit. The Court considered the creche in the context of the whole display instead of
judging whether it had a secular value of its own. Consequently, the analysis of the Court is flawed. First of all, the mayor of Pawtucket argued that petitioners want to "take the Christ out of Christmas." (Dorsen and Sims 1985:840) This statement clearly conveys that there is a blatantly religious purpose behind the display. There is no evidence that the nativity scene itself increases business in the district. The display, without the creche would still capture the spirit of the holiday season without offending any religious groups. Because the city chose to continue displaying the creche once the protests began it is obvious that they had no regard for the feelings of members of other religious groups and did intend to advance Christian ideology.

Furthermore, according to the Court, the city only has to have one secular purpose regardless of any religious purpose that can also be determined. The government objectives need not be exclusively secular. They only have to be proven to exist. With this statement the Court is eradicating the purpose behind the Establishment Clause. Government should not involve itself with religion no matter what the purpose. Church and state should remain independent. Although the state could have a secular purpose in depicting the origins of a holiday, a fundamental religious purpose is also involved. The two cannot be reconciled. The state cannot portray the story of the birth
of Christ without advancing, whether intentionally or not, the ideas and beliefs of the Christian religion. Consequently, because of the inherent religious nature of the content such displays should be unconstitutional on their face regardless of any state purpose that may be involved.

Although, as the Court notes, many workers are given the day off to celebrate Christmas, it is not a national holiday. Furthermore, Christmas was not even recognized as a public holiday until the middle of the last century. As Norman Dorsen and Charles Sims point out, "large Christian sects, including Presbyterians, Congregationalists, Baptists, and Methodists, opposed the celebration itself, much less public recognition of the holiday, until well into the nineteenth century." (1986, 4:847) Therefore, since Christmas is not a national holiday like Thanksgiving or Memorial Day, there is no justification for public display of religious symbols associated with Christmas. Thanksgiving is an American holiday, regardless of its religious roots, and Thanksgiving symbols are part of American culture. Christmas symbols, on the other hand, are significant only to people who adhere to the Christian faith.

Certain aspects of Christmas have become secularized and many non-Christians do exchange gifts and hold celebrations. However, the holiday still contains a significant religious element that is separate and distinct from the secularization of Santa and his reindeer. At the
trial on the district court level, a religion professor testified about the religious importance of Christmas:

"Christmas is in part a secular celebration belonging to the whole American culture. Nonetheless," he insisted, 'that parts remained deeply religious and associated only with Christianity,' and expressed 'dismay that the City had demeaned this Christian symbol by setting it in the midst of other, non-religious symbols.'" (Dorsen and Sims 1985, 4:841)

Although no one would consider the celebration of Christmas to be a violation of separation of church and state, display of a religious symbol offends both Christians and non-Christians alike. By sponsoring a nativity scene the government is giving support not only to the secular but also to the religious aspects of the holiday. Although the government isn't establishing a religion, they are showing preference to one group and according to the Separationist view, are violating the Establishment Clause.

In addition to Christmas being a religious holiday, the creche itself is an important religious symbol. There is nothing secular about the portrayal of the birth of Christ. Unlike Santa and his elves which are cultural creations, the nativity scene has its roots in the Bible. To put it in a display with elves and reindeer decreases its significance and demeans its religious impact. Having the creche on display will not make any Christians more devout. To the contrary, it appears to trivialize the most important event in their history. People of all religions see the creche as
a sacred symbol and public display as the desecration of what it stands for. Furthermore, the city did nothing to disclaim sponsorship of the creche, nor did it display symbols of any other religious group. The religious connotations behind the creche prevent it from being considered a cultural symbol in any context.

The opinion for the Court also argued that a creche is similar to religious artwork displayed in a museum. The Court's analysis is wrong. First of all, there is a difference between a museum display which is intended for cultural value and a display in a downtown area designed to promote business and the holiday spirit. Clearly, the city's display sought to advance the views of one particular religion. Museums usually don't concentrate on showing the work of only one artist, religious or not. Furthermore, art has merit on its own regardless of the religious implications. The majority isn't recognising the difference between religious displays and art. As Robert Beatti explains, "The comparison between classical paintings and seasonally displayed creches is a bold one; the paintings referred to by the Court are in fact artistic 'masterpieces' first and depictions of Christian messages second." (1984, 37:124) The atmosphere of a museum leads one to study a painting for its artistic value. However, a nativity scene displayed during Christmas causes one to consider the religious implications and significance of the object.
Unlike Thanksgiving, which began as a religious holiday but is now an American tradition, Christmas is a celebration of religious beliefs. Thanksgiving has been able to transcend its religious origins to become a holiday that all people celebrate regardless of their denomination. Christmas and Thanksgiving cannot be compared. They have different genealogies and different purposes. The pilgrims held a celebration to thank God for what he gave them and through the years it has evolved into a day of general thanks. Christmas, however, has retained its religious significance for Christians. The Court argues that we have retained references to religion in some secular aspects of American culture but Robert Boatti disagrees with their reasoning:

"As for other official acknowledgements of religion, they are just that--acknowledgements that religion has always been and is a part of the lives of many Americans. The Thanksgiving holiday, our traditional national motto 'In God We Trust,' and the prayers recited by legislative chaplains are nondenominational. There are no references to Jesus Christ on our coins, in the Pledge of Allegiance, or in the invocation opening every Supreme Court session. They all refer to God." (1984, 57:133)

Americans can't deny that religion is important to many people. However, there is a clear difference between recognising a fundamental, underlying belief in God and advocating the beliefs of one specific sect. That difference was the basis for the creation of the Establishment Clause.
Essentially, the Court's decision has the effect of preferring Christianity over other religions. Even Accommodationists allow that it is only non-preferential aid that is valid. Thus, *Lynch* means that government is allowed to help one religion at the expense of another. The City of Pawtucket showed preference for Christian views by erecting their display and the Court ruled that such preferences are constitutional. Now government can openly endorse a religion by displaying the symbols of that faith. No disclaimers or concurrent displays of other groups are necessary. Every city is free to act on its own.

One potential impact of the Court's decision could be to encourage alienation and hostility between different religious groups. The *Lynch* decision alienates those in Pawtucket who do not hold Christian beliefs and who do not want the creche displayed. The city is telling them, as is the Court, that their views are not worthy of being heard. In addition, the city and the Court are forcing them to view a symbol of the "dominant" religion every time they go into the downtown area despite their objections. This is exactly what Madison and those in the First Congress intended to prevent. But the city has shown its preference for Christianity through the creche display and this only reinforces the alienation that non-Christians feel when they go to the downtown area and find a prominent religious symbol displayed in a public area. Many believe that such a display
signifies a government endorsement of religion and thus feel offended and stigmatized. As Justice William Brennan stated in his dissent:

"For those who do not share [Christian] beliefs, the symbolic re-enactment of the birth of a divine being who has been miraculously incarnated as a man stands as a drastic reminder of their differences." The effect on minority religious groups, as well as on those who reject all religion, is to 'convey the message that their views are not similarly worthy of public recognition nor entitled to public support." (Doreen and Sims 1985, 4:859)

**Government and Religion**

The purpose of the Establishment Clause was not only to ensure that no state religion was established but also that no religion was preferred over another and that no state advocation of religion occurred. Norman Doreen and Charles Sims explain the implications of the Clause for members of minority denominations:

"Although the establishment clause cannot erase the experience that Jews or atheists face in a sometimes hostile Christian community, or persuade them that they are not outsiders, this fact does not prevent the clause from serving an important role in precluding the state from reinforcing that hostility and social ordering." (1985 4:363-4)

Every person is entitled to their own beliefs and values. The state has a duty to remain neutral and not advocate the views of any particular group. However, they are not entitled to force their views unto others who do not share
them. Furthermore, the state should not have any part in an attempt to disparage the rights of minority groups.

Government should not be merely an agent of the majority. Government should be the protector of individual rights and freedoms for all people. The state should safeguard the rights of the individual as was Madison's original intention. Constitutional protections exist to benefit those who do not have a large enough voice to speak for themselves. They exist to protect the minorities from domination by the majorities. The state should not be able to be an oppressor. It should be the servant of the minority, shielding it from domination by the majority. With the Lynch decision, minorities in Pawtucket lost freedom from domination by the majority ideology. Private displays of religious convictions are allowed for they are the cornerstone of the American democratic ideology. But government support of religion should not be tolerated.

America is a melting pot of different groups with different ideas and values. Diversity is a factor that should be appreciated because it leads to innovation and creativity. If the views of minorities are subjugated, the underlying principles of American government will be put in jeopardy. We cannot let this become a nation where individual beliefs and ideas cannot be heard. The initial purpose behind the Establishment Clause was to ensure that there would be no official state religion. However, even
unofficial proclamations cannot be tolerated. Robert Boatti summarizes this idea:

"The dissent correctly stated that Lynch comes dangerously close to signifying that government may properly declare that 'this is a Christian nation.' While this scenario may never occur, Lynch v. Donnelly is a step towards it, and in Madison's words, it is proper to take alarm with the first experiment on our liberties." (1984, 37:136)

The Court is saying to cities that they are allowed to designate a dominant religion regardless of the views of others in the community. This is a clear example of the Court advancing the interests of the majority to override the rights of the minority. The Court is reverting back to the days of Plessy v. Ferguson when equality wasn't the norm or even the goal. As Dorsen and Sims write, "the countervailing force of the Constitution and Judicial review exist principally for the benefit of minorities." (1985, 4:861) By allowing the display of the creche, the Court is acting to the detriment of minorities and clearly is denying them their Constitutional rights.

Had the Court applied the test used in Larson, they would have found that the City of Pawtucket was discriminating in favor of Christianity. They were showing preference to one group without any regard for the other groups that may be affected. People are sensitive about their religious beliefs. No group wants to be exploited or used to another's advantage. Although the government of Pawtucket
may have just wanted to celebrate the Christmas holiday, the Court should not have allowed the creche to stand. Religion and government should remain independent. What people do on their own property should be their choice. But government should not have a choice. Government has a duty to its citizens to remain neutral. Memories of the horrors of Nazi Germany trying to establish a dominant race are too clear to allow this sort of behavior to occur in Rhode Island. The rights of the minority must prevail to ensure equality for everyone.
CONCLUSION

Scholars and judges ponder the meaning of the establishment clause, unable to develop a consistent interpretation. Proponents on all sides of the issue believe vehemently in their positions. The emotional bent of the questions is one reason why clear interpretation is elusive. Religion is so individual and so personal that it cannot be legislated. The framers, understanding this, wanted to avoid the issue altogether in the Constitution. Religious sensitivity is as powerful today as it was two-hundred years ago. Although the Court at the moment issues many decisions that tend to accommodate religion rather than separate it from governmental interference, history and reason are on the side of the separationists who believe that church and state should be entirely independent.

Religion is important to some people and irrelevant for others. This discrepancy accounts for the need to keep religion independent of state affairs. Clearly, the Establishment Clause prohibits the creation of an official state religion. But it also implies much more. It means that Congress shall not enter the area of legislating for religious groups. In a pluralistic society such protection against majority domination is necessary. Since the drafting and ratification of the Constitution the United States has been a leader in giving its citizens individual rights and freedoms.
From a small group of colonies dominated by different established religions, the United States is truly a nation of many peoples and many ideas. Yet it is not perfect. Inequality still exists as does prejudice. But every religious group is guaranteed certain rights that directly stem from the establishment clause of the Constitution. The framers did not know what type of nation would develop. They could not foresee the future. Their words have to be applied to modern circumstances and situations. Coherent case law regarding the establishment clause does not appear to be forthcoming. But the powerful ideas behind it are clear. "Congress shall make no law respecting an establishment of religion" essentially means that Congress shall withdraw itself from the forum of religious legislation. Modern application has not always accepted this view. Yet, the most important aspect of the relationship between church and state is the guarantee of the individual right to believe what one wants without interference from the government.
REFERENCES


