

アメリカの公立学校における憲法と宗教

The Constitution and Religion in American Public Schools

トマス・ジェファースンの遺産
The Heritage of Thomas Jefferson

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ABSTRACT

合衆国憲法修正第一条には、アメリカ型民主主義の原理として、教会と公共機関の分離という意図が込められていた。ジェファースンによって憲法に組み込まれたこの条項は、他の条項と共にホレーズ=マンによる公立学校でも生かされ、南北戦争の頃から各地に浸透していったが、ここで言う教会はキリスト教の一宗派のことであった。しかし、公立学校で行われていた聖書の朗読や主の祈りが、この修正第一条に抵触するという訴訟が児童の母親から出され、1963年、連邦最高裁はこれまでの認識を覆えず判決を出すことになった。この際、原告側は憲法修正第十四条をその根拠として争うことになったが、各種人権を保証したこの修正第十四条は、南北戦争後に自由の身となった黒人の基本的権利を保証するもので、本来宗教とは無関係のものであった。最高裁は原告側の訴えを認め、その後修正第一条はマン以来の公立学校の有り様を否定する法的根拠へと変容していった。

During the 21st Century the United States Supreme Court will inevitably rule on various legal cases concerning the role of religion in the American public schools from a constitutional interpretation. The Court's decisions will focus on a brief but profound phrase in the First Amendment to the United States Constitution. Tucked in amidst the well known four freedoms guaranteed by the Constitution is the following simple statement, the interpretation of which will form the Court's final decision on virtually all relevant litigation concerning public education.

Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof.

The so-called "establishment clause" was originally intended by the designers of the Constitution during a tumultuous era of American history to guarantee freedom of religion as one of four rights of every citizen. In addition to freedom of religion, they included freedom of speech, the press and the right to assemble. Of paramount importance the issues surrounding the Supreme Court's interpretation of the "establishment clause" must be seen, then, as part of a much broader guarantee of human rights as stipulated in the Constitution.

The original intention of the framers of the American Constitution when they drafted the freedom of religion clause was to essentially separate religion from the new government of the United States. It was not intended to restrict religious belief or practice but rather guarantee its "free exercise thereof," with one important restriction. The state in the form of the United States Congress empowered to

draw up the laws of the land, could not enact legislation establishing an official state religion. Since public education is a function of the state, the law was intended to prohibit the government from promoting religious beliefs as part of a state religion in public institutions including the nation's schools.

At the time of the drafting of the United States Constitution in the late 1880s, any reference to religion served as a code word referring, in fact, to the Christian religion. In essence the First Amendment clause was intended to separate the Christian church from public institutions as a fundamental principle of American democracy. It was bred among controversy in the late 19th Century. It remains one of the most contentious issues in the 21st Century.

One of the pivotal figures in the original drafting of the "establishment clause" was Thomas Jefferson. A decade earlier he had written the Declaration of Independence of 1776 declaring freedom of the thirteen colonies from the King of England. In it he declared that "all men are equal," a daring conclusion at the time when his state of Virginia recognized the institution of slavery, and Jefferson himself was a slave owner. Be that as it may, his declaration of independence laid the framework for the ensuing Constitution with its inclusions of the four freedoms including religion.

Thomas Jefferson's thought concerning freedom of religion was formed during his tenure as a representative to the Virginia Assembly during the Colonial Period prior to the formation of the United States. Although Virginia was then a colony of England, it nevertheless had its own deliberative body, as did all thirteen colonies, empowered to

formulate basic laws in spite of its colonial status under England. The colonies consequently functioned as semi-autonomous states located far from the mother country.

Virginia, as did many of the colonies at the time of the revolution, formed an institutional relationship with a Christian denomination, in this instance the Anglican Church, that some historians characterize as a state church. The definition of a state church, whether it involved a single Christian denomination or multiple denominations, was one that received the distribution of state taxes for the furtherance of their particular religious beliefs. In practice this meant that those citizens of the state who were not members of the officially approved denomination(s) nevertheless paid taxes to support those who were.

As a member of the General Assembly of Virginia, Thomas Jefferson, destined for greatness, attempted to rectify this situation as an offense to his belief that all men are created equal. Under the prevailing laws of Virginia, all Virginians were not equal from a religious perspective. He placed a proposal before the Assembly that laid the basis for the First Amendment that would follow the War of Independence.

We, the General Assembly of Virginia, do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor otherwise suffer, on his religious opinions or beliefs; but that all men shall be free to profess, and by argument to maintain their opinions in matters of religion.¹⁾

Thomas Jefferson's proposal was not approved. It was far too radical for a society that was so deeply imbedded in the Christian faith. Nevertheless the concept of freedom of religion was now in play through his proposal regardless of its immediate fate. The next step, then, was the Declaration of Independence of 1776 in which Jefferson employed the opportunity to declare that all men are created equal. This rousing call carried the implication that the new American Republic was not only politically independent from England but religiously independent from Christian denominations as well.

The ultimate stage in the development of the principle of freedom of religion presented itself when the founding fathers met in Philadelphia in the late 1780s to draw up a constitution. It would unite the thirteen former colonies into a new union, the United States of America. A constitution was necessary to delineate the rights of each of the thirteen new states and the rights of the new central government in the great experiment in western democracy.

In an historical irony, Thomas Jefferson happened to be stationed in Paris as the American Ambassador to France when the constitution was being formulated in Philadelphia. In another irony of the time, he witnessed before his very eyes the great French Revolution underway based very closely on the rights of man that Jefferson declared in the Declaration of Independence. The two revolutions in the United States and France separated by a few years were based very much on the common theme of freedom politically and religiously.

Accommodating Jefferson's undisputed reputation and role in the American revolu-

tion, the primary architect of the United States Constitution, James Madison also from Virginia, sent him a draft of the Constitution for his reaction. One can only imagine how Jefferson felt when reading the draft of the American Constitution as the French Revolution was underway in the chaotic streets of Paris, eventually forcing the American Ambassador to evacuate and return home.

Thomas Jefferson, as Ambassador to France, carefully read the draft of the United States Constitution reacting in a manner that would have enormous influence on American society to this very day. In a reply from France to Madison in Philadelphia, December 20, 1787, Jefferson first listed those features of the draft constitution that he liked. Passionately devoted to the principle of freedom, he then added a critical opinion of enormous consequence to the new republic that reverberates through the American legal system of the 21st Century. "I will now add what I do not like. First the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion."²⁾

Freedom of religion, then, became the basic principle set forth by Jefferson that will forever be associated with his name. The concept was not viewed by him as a separate entity, however. Freedom of religion was one among those "principles in which all agree, and which all cherish as vitally essential to the protection of the life, liberty, property, and safety of the citizen."³⁾

Reacting to Jefferson's catalytic role in Paris, the framers of the Constitution in Philadelphia then added the first ten amendments to the Constitution known as the Bill of Rights. The First Amendment may be the most important of the ten. It is reproduced in

order to fully appreciate and understand the general context for the most controversial phrase concerning freedom of religion, championed by Jefferson from his days in the General assembly of Virginia which ultimately emerged in the final version of the Constitution.

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

With this historical background, we are now in position to pursue the path of Jefferson's intent to separate church and state as it played out in the public school system of America in a series of never-ending controversies. The first stage unfolded in the early 1800s, within several decades of the Constitution of 1789. It emerged with the early development of the American common public elementary school in Massachusetts by Horace Mann, Secretary of the Board of Education.

Horace Mann became deeply concerned over the social trends underway in his state that provoked divisive influences on local communities with the potential to destroy the fragile social fabric. Thousands of poor Catholics from Ireland were flooding the streets of Boston, many unable to find work and unable to fit into a protestant society and government dominated by the Puritan Church. The immigrants aggravated the gap not only between the rich and poor but also within Christianity between Catholics and

Protestants. Fledging organizations of workers were also protesting against the new entrepreneurial movements in industry. A variety of factors in Massachusetts as well as the other new states were at work dividing rather than uniting the new republic.

Horace Mann conceived the idea of a common American public elementary school as an instrument of social unity in a diverse society. Among the basic factors of his new school was the common language of English, and a common interpretation of American history centered on the Declaration of Independence and the War of Independence. Lessons on such provocative historical accounts of John Adams' memorable declaration "give me life or give me death" upon signing the new Constitution permeated the curriculum.

Among the "common features" of Mann's common school was "the inculcation of a common code of Christian morality."⁴⁾ He realized that his school would not receive the popularity required for acceptance, since the government had no Ministry of Education that could legislate it, without a religious, that is Christian, foundation. At the time there were several hundred Christian sects in America. The common factor among them, according to Mann, "were the great principles of 'natural religion' — those truths which had been given in the Bible and demonstrated in the course of history."⁵⁾ What divided the Christian movement were the incompatible interpretations of the Bible by the many sects.

Mann's ingenious solution to the issue of religion in public education in the early 1800s was to include the daily reading of the Bible in the new public schools of Massachusetts. The simple stipulation, "without comment,"

was added meaning that no interpretation of the Bible would be made by the teacher thereby avoiding the divisions that characterized the Christian movement.⁶⁾ The result was widespread acceptance of the common American public elementary school that included an integral role for the Christian faith through the reading of the Bible and the recitation of the Lord's Prayer taken from the Bible.

Mann was well aware of the First Amendment to the Constitution that the state was prohibited from establishing a religion. Religion to Mann, however, meant sectarian Christianity. By reading the Bible acceptable to all Christian sects without comment in the public schools of Massachusetts, he believed that he his solution transcended the Constitution. "If the word of God — personified in the King James Bible — were taught without comment, how could that conceivably be sectarian ?"⁷⁾

Mann's model of the American common public school, including his interpretation of the First Amendment, became widely recognized throughout the country by the beginning of the great Civil War in the early 1860s.⁸⁾ It continued well into the 20th Century. By the mid-1960s, the role of religion in the public schools of America was most evident in the state of Pennsylvania where Horace Mann's interpretation of the First Amendment became the focus of the landmark case that reached the United States Supreme Court. The Pennsylvania school law under review mandated that:

At least ten verses from the Holy Bible shall be read or caused to be read, without comment, at the opening of each public school on each school day.⁹⁾

The school day in every Pennsylvania public school did indeed begin with the reading of ten verses from the Holy Bible without comment. However it was then followed by the Lord's Prayer and the Pledge of Allegiance to the Flag. With that the daily lessons began. The symbolism in the unity of the American flag with the Bible added a dimension to the controversy over religion in public schools. The morning ceremony clearly identified America as a Christian nation, a cherished notion that permeates American society to this day. That in itself made it more difficult to remove religion from the public schools that advocates of the separation of church and state championed, based on the First Amendment.

Under provisions of the Pennsylvania law, whether the public school student was a Christian or not, he or she was subjected to the morning ritual. It was further reinforced with the provision that any teacher who failed to follow the provisions of the law, whether a Christian or not, faced dismissal.¹⁰⁾ In the adjoining state of Maryland, however, the law requiring Bible reading in that state's public schools included one very important condition. Any parent who objected had the right to have the child excused from the exercise by sending a note to the school. Every teacher had to comply with the parental request without question.

In 1963 the most important litigation seriously challenging the hallowed tradition of religion in American public schools was heard by the Supreme Court in a landmark case combining two lower cases: *The School District of Abington Township, Pennsylvania versus Schempp*; *Murray versus Curlett* (Maryland). The Maryland case was initiated

by the mother of a child in an elementary school who objected to the daily Christian ceremony on the grounds that she was an atheist. She argued that the Maryland law violated the "establishment clause" of the First Amendment to the Constitution crafted in the 1880s by the founding fathers; that the legal requirement that every teacher must read the Christian Bible in a morning ceremony was a clear violation of the principle of separation of church and state intended by Jefferson codified in the First Amendment.

The State of Maryland argued in defense of the law that the First Amendment was not violated since every parent had the right to request that their child be exempt from the ceremony, which had to be honored. With the right to opt out, the State reasoned, the ceremony could not be considered an act of establishing a religion in a public institution in violation of the Constitution. The long-established practice of Bible reading in the school, following in the tradition of Horace Mann of the 1880s, should not be revised.

The lawyers for the mother then invoked another clause of the Constitution to reinforce the case against the daily religious, that is, Christian, ceremony mandated in Maryland state law. They argued that the ceremony also violated the "due process" provision of the Fourteenth Amendment to the Constitution that guaranteed that all citizens have "equal protection of the law. .

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the law.

The Fourteenth Amendment was added to the Constitution in 1868, three years after the American Civil War that brought to an end the institution of legalized slavery. It was intended to guarantee the fundamental rights of former slaves now recognized as citizens with the same rights guaranteed to all citizens in the Constitution. It was specifically worded so that the individual southern state governments that previously supported slavery could not infringe upon the rights of former slaves after slavery was abolished. In many egregious instances they were. For example, in not a few local communities illiterate ex-slaves were denied the right to vote by officials in charge of the voting process on the grounds that they could not answer technical questions about the Constitution or other laws of the state. By the mid-1900s the Fourteenth Amendment, unrelated to religion in its origin, had become the basic law applied to defend human rights in all areas of litigation, including religious cases.

The Pennsylvania-Maryland cases concerning Bible reading and prayer were now argued not only on the provisions of the First Amendment prohibiting the establishment of religion, but also on the provisions of the Fourteenth Amendment guaranteeing due process. Henceforth the case entered the realm of human rights, that is, the right not to be compelled to participate in a religious ceremony at a public institution supported by public taxes. The Maryland child in question, according to his lawyers, did not have “due

process” in guaranteeing equal protection of the law.

The state, in this case the defendant, argued that “due process” was provided through the “opt out” provision which gave every child the opportunity to be excused from the daily ceremony. The opposing lawyers admitted that the mother had submitted a letter to the teacher requesting that her child be excused from the ceremony according to the law, and that her child did in fact walk out of the classroom every morning during the ceremony. Upon completion another student would then notify the child in question, waiting in the hall, to return to his seat to begin class. In other words the child at the center of the dispute did not listen to the Bible or repeat the Lord’s prayer, the very ceremony to which his mother objected. In the deliberations the state claimed, therefore, that the boy’s right not to participate in the daily Christian ceremony in the public school was thus protected. Not only was his freedom of religion respected, the state complied with the “due process” clause stipulated in the Constitution.

The litigation as played out at the state level in Pennsylvania and Maryland finally reached the decisive stage before the Supreme Court. In an emotionally charged debate, the mother’s lawyers argued that although the child followed the “opt out” clause thus avoiding the mandated Christian ceremony, the fact that he was compelled to walk out of his class each morning to avoid it set him apart from his classmates. He was subjected to ridicule by other students for being different. In other words, as a non Christian, in this case an atheist, in a public institution, he was being treated as an outcast by his peers due to his beliefs, or non-beliefs, concerning

religion. He was, consequently, deprived of the equal protection of the law.

In a moment of great historical consequence the United States Supreme Court in 1963 ruled in favor of the child. The state of Pennsylvania and Maryland, and all other states with similar laws, were declared in violation of the United States Constitution. The act of Bible reading and reciting the Lord's Prayer as a religious ceremony in the public schools was construed as advancing religion. It was declared unconstitutional.

From that moment onward, the morning ceremony in the public schools of Pennsylvania, Maryland and many other states was forever changed. The United States Supreme Court in this decision made a simple but profound conclusion that, in effect, paid tribute to Thomas Jefferson's proposal to the Virginia General Assembly on Religious Freedom during the Colonial Period, as well as his Declaration of Independence in 1776 declaring that all men are created equal. The verdict, based on the First Amendment to the Constitution that Jefferson championed, was a repudiation of Horace Mann's common public school. The following prophetic phrase in the decision, that once again brought into prominence the heritage of Thomas Jefferson, set the standard for future cases involving the role of religion in American public schools.

In the relationship between man and religion, the State is firmly committed to a position of neutrality.¹²⁾

The Court's opinion, written by Justice Hugo Black, further reasoned that:

It is neither sacrilegious nor anti-religious

to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.¹¹⁾

Although the Supreme Court decision of 1963 was considered a turning point in the dispute over religion in the public school by overturning a long-established practice, the basic controversy continues to percolate through the American judicial process. In some instances the issue of contention is profound. In others it is, seemingly, bizarre. In the most recent case that has carried over into the 21st Century, the litigation concerns student prayer before a high school football game. In a small community in Texas, it was customary for a student to pray over the public address system just prior to the kickoff. Parents of another student brought suit against the school board of this public institution for establishing a religious atmosphere at an official school-sponsored event. The Supreme Court ruled that such prayers violate the separation of government and religion provided in the First Amendment to the Constitution.

In summary the Supreme Court of the United States has ruled on a variety of cases involving Christianity in the public schools during the past century. There are a number still in the lower courts that will eventually reach the highest court in the land during this century. For example the use of school vouchers financed by tax funds that provide capable but needy students from inner city schools to enter private schools, mostly Catholic, to receive a better education will

soon be reviewed by the top court. Although there seems to be no end to the litigation stemming from the controversy over the role of religion in the American public school, based on the decisions handed down so far, the Supreme Court has been consistent. With minor variations it has reaffirmed Thomas Jefferson's intent to build a wall of separation between the church and state dating back to his proposal before the Virginia Assembly during the Colonial Period.

No man shall be compelled to frequent or support any religious worship, nor otherwise suffer on his religious opinions or beliefs; but that all men shall be free to profess ... their opinions in matters of religion.¹³⁾

Notes

- 1) Lee, Gordon, ed., *Crusade Against Ignorance*, Teachers College Press, 1961, p. 68.
- 2) *loc. cit.*, p. 35
- 3) *loc. cit.*, p. 16
- 4) Binder, Frederick, *The Age of the Common School, 1830-1865*, John Wiley and Sons, 1974, p. 48.
- 5) Cremin, Lawrence, *The Republic and the School: Horace Mann On the Education of Free Men*, Teachers College, Columbia University, 1957, pp. 12-13.
- 6) *ibid.*
- 7) *ibid.*
- 8) Cremin, Lawrence, *The Transformation of the School: Progressivism in American Education, 1876-1957*, Alfred Knopf, p. 13.
- 9) Tiedt, Sidney, *The Role of the Federal Government in Education*, Oxford University Press, 1966, p. 122.
- 10) *ibid.*
- 11) *ibid.*
- 12) *National Education Journal*, September, 1963, p. 7.
- 13) *loc. cit.* Gordon, p. 68.