

How has your right to freedom of religion been guaranteed?

Purpose of Lesson 28

The importance of freedom of religion to the Founders can be seen by the fact that the first phrase of Amendment I of the Bill of Rights says "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" This and the following lesson will explain the importance of your right to freedom of religion. It will also describe how this right has been applied since the founding of this nation and some of the current controversies about it.

When you complete this lesson, you should be able to describe some of the important events in the history of the relationship between church and state (or government) in the United States. You should also be able to explain some of those reasons why Americans have believed that freedom of religion is one of the most important liberties to be protected by the Constitution. Basic ideas and terms introduced in the lesson which you should be able to explain are listed below.

religious intolerance
establishment of religion
free exercise of religion
"wall of separation"

Religious intolerance and persecution in the early American colonies

The degree of religious freedom that you have today did not exist in Europe, the colonies, or the states formed after the Revolutionary War. Often only one official or "established" religious group was allowed to practice its beliefs. Every subject had to attend its church, obey its requirements, and pay taxes to support it.

Few of the earliest English colonies in North America allowed religious freedom. In fact, in several colonies, especially those in New England, a dominant and intolerant religious group insisted on strict conformity to its own ideas of proper belief and worship.

Dissenters were persecuted. In the early days, some dissenters simply went off into the wilderness and began new colonies of their own. For example, the Reverend Thomas Hooker disagreed with the religious beliefs in Massachusetts. He and his followers left the colony and settled Connecticut. However, their new colony soon became as intolerant in its own way as Massachusetts. The only colonies that tolerated a relatively free expression of religious beliefs and practices were Pennsylvania, Rhode Island, Delaware, and New Jersey.



HOOKER'S EMIGRATION TO CONNECTICUT

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Thomas Hooker seeks religious freedom

By the end of the colonial period, people had become more tolerant of religious differences. Many different religious groups existed together in the same communities and people became used to living and working with others who held different beliefs. In some of the colonies, most notably in New England, many people had become less strict about their own religious beliefs and were more willing to accept different points of view. Consequently, with an increased tolerance of religious differences there came greater demands for genuine religious freedom, which were increasingly made by Quakers, Baptists, Catholics, and others.

There was also widespread opposition to the establishment of one church as the official national church. By the time of the ratification of the Constitution and the Bill of Rights, there was a widely held belief that the federal government should not be allowed to establish an official church for the nation. Many agreed that an established church was harmful to religion and bad for the nation.

Finally, some leaders, notably Thomas Jefferson and James Madison, were greatly concerned about the dangers of religious intolerance. They were well aware that throughout history, religious intolerance had often led to conflict rather than cooperation and to a violation of the basic rights of individuals.

The establishment of religion in the state governments

Even though many of the Founders believed strongly in religious tolerance, a number of the state constitutions deprived members of some religious groups of the rights people who were members of other religious groups had. For example, some states did not allow Catholics or Jews to vote or hold public office. In Massachusetts and Maryland, no one but a Christian was allowed to become governor. For many years, New Hampshire, New Jersey, Massachusetts, and North Carolina required that office holders be Protestants. Even Pennsylvania, which had a bill of rights protecting the "inalienable right of all men to worship God according to the dictates of their own conscience," still disqualified Jews and non-Christians from public office. New York and Virginia were the only states that did not have any restrictions on religious beliefs for persons serving in their state governments.

However, soon after 1776, important changes began to be made in those states in which religion had been established as an official part of the government.

Between 1776 and 1789, New York, Virginia, and North Carolina eliminated state-established religion. Massachusetts, Connecticut, and New Hampshire decided to allow Anglicans and other Protestants to join Congregationalists as a part of the established church. In Maryland, the Constitution written in 1776 gave the legislature the right to tax citizens to support the Christian religion. However, each person was free to decide which denomination should receive his tax money.

The Constitution of South Carolina, written in 1778, said that the Protestant Christian religion was to be the established religion of the state and all Protestant groups would have equal rights and privileges including financial support from tax funds.

These changes meant that in some states there was still an established religion, but it was not just one church or denomination. The established religion, however, was Protestant Christianity. Catholics, Jews, and members of other religions were not entitled to tax support. It was not until 1833 when Massachusetts changed its constitution to separate church and state that the last established religion in the states was eliminated.



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Anne Hutchinson was banished from Boston for advocating unpopular religious ideas

The Founders' religious beliefs promote freedom of religion

Most of the Founders were religious people. Despite the history of intolerance, the influence of some of their religious beliefs resulted in promoting the freedom of religion which we have today.

The Founders believed that you have certain natural rights simply because you are a human being. This belief developed in part out of the Puritan idea that God has given you a moral sense and the ability to reason which enables you to tell the difference between what is right and wrong. Philosophers such as John Locke argued that society should allow you to live the way your moral sense, guided by the Bible, tells you is right. The best government, therefore, they believed, is the one that interferes as little as possible with your beliefs, including religious belief, although many did not support tolerance for you if you did not believe in God.

The Founders, it is important to remember, believed that religion is extremely important in developing the kind of character citizens of a free society needed to have in order to remain free. For example, George Washington said in his farewell address that virtue and morality are necessary for a government run by the people. He also believed that morality could not be maintained without religion. At the same time, he joined Thomas Jefferson and James Madison in opposing a bill introduced into the Virginia legislature which would have used tax money to pay for religious teachers.

Madison had been the author of the parts of the Virginia Declaration of Rights, passed in 1776, that provided for freedom of religion. Religion, he insisted, "can be directed only by reason and conviction." Jefferson later wrote the Act for Establishing Religious Freedom which led to the end of an established church in Virginia. Both were acting on the basis of their belief that our right to liberty includes the liberty to believe as our conscience and reason direct. Established churches, they insisted, violate this basic right.

It is clear that the Founders thought religion was an important part of the society. At the same time, they believed strongly that each person has a natural right to his or her own religious beliefs. The separation of the church and state required by the First Amendment is an expression of this belief.

The "establishment" and the "free exercise" clauses

The Framers included two clauses in the First Amendment that protect your religious freedom. These are the establishment clause and the free exercise clause. The establishment clause prohibits the federal government from establishing an official religion for the nation. In the words of Thomas Jefferson, this clause creates a "wall of separation between church and state." However, controversies arise in trying to decide what this separation of church and state should mean. Some people argue that it should be interpreted to mean that the government should have almost nothing to do with religion. This could mean anything from not allowing prayers in public buildings to eliminating tax exemptions for churches and to taking the phrase "In God we trust" off of all money issued by the government. Others argue that the Framers were only opposed to a single national church and the favoring of one religion over another. The next lesson will deal with some of the current controversies over the establishment clause in situations with which you may have first-hand experience. These are issues over religion and the schools.

The free exercise clause protects your freedom to believe or not to believe as well as your freedom, in most cases, to practice your beliefs. For example, if your religion requires you to wear certain kinds of clothing or not to eat certain foods, your freedom to practice these beliefs is protected. In past years, cases involving the free exercise of religious beliefs have involved a wide variety of religious groups such as Mormons, Jehovah's Witnesses, the Amish, and Seventh Day Adventists.

Conflicts between the establishment and free exercise clauses

The problem of protecting religious freedom under the First Amendment is often complicated by the fact that at times there may be a conflict between the establishment clause and the free exercise clause. For example, consider the following problem from a case heard not long ago by the Supreme Court. (*Marsh v. Chambers*, 1983) A state legislature had used tax funds to hire a chaplain to open its sessions with a prayer. This was challenged as being a violation of the establishment clause requiring the separation of church and state. It was defended with the argument that to deny the legislators this right was to violate their right to the free exercise of their religious beliefs.

Article I of the Bill of Rights increased the protection of religious freedom. However, this protection was only from the actions of the federal government, not those of the states. Since there were several state-supported churches, it was generally believed that the First Amendment left the state governments free to support religious groups if they wished to. And some people supported the First Amendment in order to protect the state religious establishments from interference by the federal government.

In the late 1940s, however, the Supreme Court decided two cases that extended the First Amendment's protections of religious liberties against state action by incorporating them under the Fourteenth Amendment's guarantee of liberty. The interpretations of the Constitution in these cases increased the power of the federal courts over state government's activities in the area of religion.

Limitations upon the free exercise of religious beliefs

In 1961, the Supreme Court heard a case involving the state of Maryland. If you had been a citizen of Maryland at that time, you would have had to swear that you believed in God before you could hold a public office. The Supreme Court ruled that this part of Maryland's law violated the protection of freedom of belief guaranteed to every person by the First Amendment. This decision meant that each person has an absolute right to hold any or no religious belief and that no government in the United States has the right to force anyone to accept any religious beliefs or to censor such beliefs.

However, while you have the right to hold any religious belief you wish, this does not mean that the federal government or state governments cannot make and enforce laws controlling your religious practices. Religious practices may be limited if they offend public morals, jeopardize public health, or in other ways endanger the common welfare. For example, according to court rulings, religious practices involving polygamy or handling rattlesnakes may be forbidden without violating citizens' constitutional rights. Couples who wish to marry may be required by state law to take blood tests before being given a marriage license. Children may be required to be vaccinated for small pox before being admitted to school, even if these requirements violate their religious beliefs.

Reviewing and using the lesson

1. The First Amendment forbids both an "establishment of religion" and any attempt by government at "prohibiting the free exercise [of religion]." Distinguish between these two prohibitions. Select laws or practices from history which would not be permissible under the First Amendment's "~~establishment clause~~" or the "~~free exercise clause~~" ^{establishment clause} or the "^{free exercise clause}".
2. List some colonial or early state laws which show what an "established" religion is.