

LIVING WITH OUR DEEPEST DIFFERENCES:

Religious Liberty in a Pluralistic Society



Teacher's resource • Lesson plans

FIRST AMENDMENT CENTER

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Religious Liberty in a Pluralistic Society

**Teacher's resource
Lesson plans**

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Introduction

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

— First Amendment, US. Constitution

“No religious test shall ever be required as a qualification to any office of public trust under the United States.”

— Article VI, US. Constitution

“[T]he First Amendment is a momentous decision for religious liberty, the most important political decision for religious liberty and public justice in the history of humankind.”

— The Williamsburg Charter

The Religious Liberty clauses of the First Amendment to the U.S. Constitution are the boldest and most successful part of the entire American experiment. Two hundred years after their enactment they shine forth in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses are a reminder that their advocacy and defense is a task for each succeeding generation.

No group plays a more central role in carrying out this task than the teachers of our nation's schools. Education for public citizenship is one of the three great purposes of education, along with education for work and education for personal development. Teachers are therefore charged with transmitting the fundamental principles of liberty and instilling in citizens of the future a commitment to democratic values. What happens in the classroom determines in large measure the vitality and strength of American democracy.

At this crucial time in our history, educating students about the principles of religious liberty is a matter of great urgency. Expanding pluralism in the United States has dramatically increased our religious and ethnic diversity. The state of California, for example, is now accepting one-third of the nation's immigration. Yet with the varied cultures of Africa, Asia and Latin America blending with those of Europe, California is only the leader of many states and school districts that have a “minority majority” in public school enrollment. At issue is a simple but profound question that runs through the modern experience: How do we live with our deepest differences?

The answer lies first and foremost in religious liberty, or freedom of conscience, which is a fundamental and inalienable right for citizens of all faiths or none. Religious liberty is our nation's “first liberty.” It undergirds all other rights and freedoms secured by the Bill of Rights. The opening 16 words of the First Amendment provide the guiding principles by which people with deep differences in faith can live together as citizens of one nation.

A New Opportunity for Teaching Religious Liberty

On June 25, 1988, leaders representing many segments of American life signed the Williamsburg Charter, a national celebration and reaffirmation of the Religious Liberty clauses of the First Amendment.¹ The signers of the Charter call for a rededication to the first principles of American democracy:

“We address ourselves to our fellow citizens, daring to hope that the strongest desire of the greatest number is for the common good. We are firmly persuaded that the principles asserted here require a fresh consideration, and that the renewal of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same.”

In that same month, an unprecedented coalition of 14 national educational and religious groups published *Religion in the Public School Curriculum*, which contains guidelines for teaching about religion in the public schools.² The coalition called attention to the necessity for ending the neglect of study about religion in the textbooks and curriculum so that students may “value religious liberty, the first freedom guaranteed by the Bill of Rights.”

Today, two decades later, teaching about religions and religious liberty has increased significantly in public schools. Although much work remains to be done, state standards and most social studies textbooks give considerable attention to the role of religion in history and society. The new climate created by these significant developments offers teachers a strategic opportunity. There is now a widespread belief among educators, parents and national leaders that education without appropriate attention to the role of religion and religious liberty in American life is incomplete.

A distinguished group of educators, scholars and educational organizations joined to develop this curriculum in order to help teachers address the principles and problems of religious liberty in a pluralistic society. The lessons follow the broad outlines of the Williamsburg Charter, working exclusively within a framework of what is educationally sound and constitutionally permissible.

The curriculum focuses on the place of religious liberty in society. The lessons are designed to provide the teacher with maximum flexibility so that they may be used either as a unit or infused separately into a course as needed. Everything that the teacher will need — lesson plans, source documents, extension activities, bibliographical materials and suggestions for evaluation — is included.

The goals of the curriculum are these:

- To explain the history and significance of the First Amendment Religious Liberty clauses and their decisive contribution to individual and communal freedom and to American democracy.
- To examine the advantages and responsibilities of living in a modern pluralistic society, and to demonstrate how practical dilemmas can be answered in terms of tolerance and mutual respect rather than bigotry and violence.
- To deepen each student's appreciation of the principles of religious liberty for peoples of all faiths and of none, and to establish a strong civic commitment to the ground rules by which all citizens can contend robustly but civilly over religious differences in public life.

We wish to underscore the fact that this is a course in religious liberty. It is not a course in world religions or even religion in America. Nevertheless, teaching the story of religious liberty in America inevitably includes some discussion of religious beliefs and practices. If the approach to these discussions is objective and sensitive, neither promoting nor inhibiting religion, teachers can foster among students understanding and mutual respect for differences of belief.

The curriculum is designed for use in both public and private schools. But public school teachers in particular should always keep in mind the difference between teaching religion and teaching about religion. The following statements, given in *Religion in the Public School Curriculum*, help to clarify this distinction that is so important in the public schools:

- The school's approach to religion is academic, not devotional.
- The school may strive for student awareness of religions, but should avoid pressing the student to accept any one religion, all religions or no religion.
- The school may sponsor study about religion, but may not sponsor the practice of religion.
- The school may expose students to diversity of religious views, but may not impose any particular view.
- The schools may educate about all religions, but may not promote or denigrate any faith.
- The school may inform the student about various beliefs, but should not seek to conform him or her to any particular belief.

² The guidelines and a list of sponsoring organizations are reproduced in the Appendix.

INTRODUCTION

In short, teaching about religious issues in American history must never be taken as an opportunity to proselytize. Teachers must make every effort to respect the beliefs of the students and their families and to avoid injecting their personal beliefs concerning religion into the discussion.

Questions from students about the various religious groups mentioned in these lessons should be answered with careful attention to historical accuracy. Historical events that raise doctrinal questions should be treated with sensitivity and balance. Teachers leading these discussions need to be fully familiar with the historical background accompanying each lesson. Keep in mind that *religious liberty*, not theology or religious practice, is the theme of every lesson.

Students should not be asked by the teacher to explain their religious or ideological beliefs. If a student offers to do so, then he or she should be treated with courtesy and respect, but should not be allowed to dominate the discussion.

Again, this curriculum focuses on the guiding principles that enable people of all faiths or none to live together as one nation. It is vital, therefore, that the lessons be taught in a manner that fosters respect for differences and appreciation for diversity as a source of national strength.

Using the Lessons

This is a challenging curriculum because it is document-based and controversial. The lessons ask for more energy and application from the student than is commonly the case. A guiding belief, however, on the part of the authors is that students can and will rise to the levels expected of them — *all* students, not just the gifted, talented or motivated — especially when the integrated activities of listening, speaking, reading, writing and thinking characterize the approach to every lesson.

In seeking to develop an awareness of the history and first principles of religious liberty in America, the curriculum is literature-based throughout. Historical documents, speeches, essays, poetry, songs and transcriptions form this body of literature. A variety of activities that engage the students' critical thinking skills form the guiding methodology in working with these documents.

Presentation

The curriculum is designed to engage both the teacher and the students in almost continual dialogue and cooperative learning. The teacher has the initial responsibility of unfolding the basic content of the "The Big Idea" at the start of the lesson, along with sharing the points of the "Historical Background" as the lesson proceeds. But other than that, the presentation rests more on student response and activity than it does on direct teacher input.

The teacher presents the material from the sections, emphasizing "The Big Idea" in his or her own style. This can be done using the techniques suggested here or one's own. Such techniques include storytelling, inquiry, reporting, listing on the chalkboard and so on. This whole process should focus on *response* and *thinking* — emphasizing *listening, speaking, reading and writing*.

Two points should be noted:

- Some teachers may use these lessons consecutively as a complete unit with their U.S. history/social science courses, while others may decide to use the lessons over a larger period of time. In the latter case, some review would be necessary before introducing "The Big Idea" section. The teaching strategies and introduction for the "Interest Hook" and "Historical Background" may be used with either approach.
- The teacher's background material is rich, detailed and written deliberately at a level that is above that of most students — especially in the "Historical Backgrounds." The anticipated student levels are reflected more accurately in the teaching strategies, the documents and the extension activities. It is therefore up to the discretion of the teacher to judge how much of the background material the students are capable of comprehending.

Three Introductory Questions

This curriculum proceeds on the assumption that religious liberty is not simply liberty for the religious. It is for those who choose to be religious and for those who do not. Freedom of conscience includes the right to deny as well as the right to affirm. But in order to understand both religious liberty and freedom of conscience properly, we need to have three questions in mind.

1. Why is religion important to people?

In the United States, discussing religion tends to be taboo in public conversations. Many believe that since there are so many different religions, saying anything is likely to offend someone. Moreover, a growing number of Americans have no religious affiliation. So it can be easier to keep peace by saying nothing.

The difficulty is, however, that discrimination through silence about faiths can become just as offensive and controversial as is open rudeness (for example, in textbooks). If we are to respect other people's freedom of conscience and understand the role of different faiths and life stances in American and all human civilizations, we need to appreciate why religious faith or deeply held beliefs — whether based on religion or not — are very important to a great many people.

Not only is it difficult to agree on a definition of religion, but even to state one can endanger religious liberty. For as soon as we define what religion is, we are also defining what it isn't; and the tendency is to exclude all who do not agree with our chosen definition. For example, if one chooses a narrow, or substantive, definition of religion rather than a broad, or functional, one, he or she depicts religion in terms of the *contents* of faith (such as "a belief in God, gods or the supernatural"). This automatically excludes a good many Buddhists and Humanists who see themselves as deeply religious without believing in God or the supernatural in the way that, say, Jews, Christians and Muslims do.

We can, however, say something like this:

Religions vary and definitions of religion differ. There are sharp disagreements over whether individual religions are true or false, beneficial or harmful. Yet what are variously termed religions, faiths, worldviews or life stances (whether naturalistic or supernatural) are simultaneously powerful and precious to human beings because they are among the deepest and the strongest sources of human meaning and belonging.

Most people make sense of life and find personal security in company with those who share their ultimate convictions. Religion, in this sense, is far more than either "beliefs" or "rites." Its perspectives, experiences and duties span all of life from the cradle to the grave; it speaks to areas such as work, politics and art as much as worship and home life. Ultimate beliefs and worldviews, whether supernatural or naturalistic, are potent and precious because they shape views about who people are, what life is about, how evil and death are to be understood and what the ideals are that make human life worthwhile.

Of course, it is this very potency and preciousness of religion that have inspired those who believe in it not only to much of the best art, literature and science but to some of the worst violations of religious liberty itself. It is important, then, to understand religious liberty for both positive and negative reasons.

In light of this first point, it should be noted clearly that *general references to "faiths" throughout the curriculum include all faiths and worldviews, whether supernatural or naturalistic.*

2. What is religious liberty?

Religious liberty is defined in the Williamsburg Charter as the right to reach, hold, exercise and change beliefs freely — freely because one chooses and exercises on the basis of freedom of conscience, independent of all outside control, especially governmental.

Many Americans today are religious believers. Others would identify with Tom Paine's famous declaration: "I do not believe in the creed professed by the Jewish Church, by the Roman Church, by the Turkish Church, by the Protestant Church, not by any church that I know of. My mind is my own church..." Believers of both kinds are included in the concerns and references of this curriculum.

Obviously there is no universally agreed-upon definition of religious liberty. But in the opinion of many supporters and students of religious liberty, the above definition would cover at least the following: Religious

liberty includes the right to believe or not to believe, to worship or not to worship, to continue one's beliefs or to change and discontinue them, to join a religious group or to refrain from joining, to express one's beliefs through any medium or not to, to attempt to persuade others of the correctness of one's beliefs or not to, to use one's home and property for religious purposes or not to, to travel for religious purposes or not to, to determine freely whether and how much one will contribute to religious institutions and to provide or not to provide religious instruction to one's children or to children for whom one is responsible — and thus to enjoy the free exercise of religion in both private and public life, within constitutional limits. A fundamental part of religious liberty articulated by Madison and Jefferson is the right not to be taxed by the government in support of religion, religions, religious teachings and religious groups.

Such contemporary definitions build on but go beyond the understanding of the Puritans, who first made freedom of their own religious faith an American concern. Yet no generation should feel superior to any other generation, because the task of ensuring freedom and justice for all is never completed. Religious liberty requires constant humility and vigilance. Our modern definition of religious liberty owes as much to the failures of the past as to its achievements. Moreover, drafting improved statements does not guarantee that we will live up to these ideals or respond rightly to present challenges.

This curriculum presents dramatic themes from the story of religious liberty in America. Underlying it are three particular principles so fundamental that we call them the “Three Rs” of religious liberty.

- **Rights:** Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right.
- **Responsibilities:** Religious liberty places on all people a universal responsibility to protect that right for others.
- **Respect:** Living with our deepest differences requires a principled respect for persons and truth, and for the guidelines by which we can conduct arguments robustly but civilly whenever those differences are in question.

3. Why does religious liberty matter today?

To many Americans, the question of religious liberty in public life has become unimportant. They view it as a non-issue or a nuisance factor — something that should be purely a private matter because it inevitable becomes messy and controversial when it enters the public arena. They therefore revert to keeping their faith private.

A more helpful way of thinking about these things would be to see that the swirling controversies surrounding religious issues and the meaning of religious liberty create a sort of sound barrier: At one level, the issue appears all passions, problems and prejudices, but break through to a higher level and it touches on several of the deepest questions of human life in the modern world. Once these are appreciated, it clearly becomes in the highest interest of the common good to resolve the problems rather than ban the topic because of personal disdain or fear. There are three central reasons why religious liberty remains a vital part of America's common vision of the common good:

- Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable human right and America's “first liberty.” It existed prior to and quite apart from the Bill of Rights protecting it. Religious liberty is not a luxury, a second-class right, a constitutional redundancy or a sub-category of free speech. Since it does not finally depend on the discoveries of science, the favors of the state and its officials or the vagaries of tyrants or majorities, it is a right that may not be subjected to any majority vote nor encroached upon by the expansion of the bureaucratic state. There is no more searching test of the health of the republic than this non-majoritarian standard: “A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.”

Unless Americans respect and protect this right for all people, they breach the nation's promise of individual freedom and justice.

- The Religious Liberty clauses of the First Amendment are the democratic world's most distinctive answer to one of the entire world's most pressing questions: How do we live with our deepest — that is, our religiously intense — differences? Some countries in the world

exhibit a strong political civility that is linked directly to their weak religious commitments, and others have strong religious commitments linked directly to their weak political civility. Owing to the manner of the First Amendment's ordering of religious liberty and public life, American democracy has afforded the fullest opportunity for strong religious commitment and strong political civility to complement rather than to threaten each other.

Unless Americans respect and protect this distinctive American achievement, the American promise of democratic liberty and justice will be betrayed.

- The Religious Liberty clauses of our Constitution lie close to the genius of the American experiment. Not simply a guarantee of individual and communal liberty, the First Amendment's ordering of the relationship of religion and public life is the boldest and most successful part of the entire American experiment. Daring in its time, distinctive throughout the world both then and now, it has proved decisive in shaping key aspects of the American story. It is not too much, perhaps, to say that as the Religious Liberty clauses go, so goes America.

Unless Americans respect and protect this remarkable American ordering, they will sap the civic vitality of the American republic.

Why then does the issue matter? The place of religious liberty in American public life is not merely a religious issue but a national and human one. It is not only a private issue, but a public one. Far from simply partisan or sectarian, religious liberty and separation of church and state are in the interests of Americans of all faiths and none. Reaffirming religious liberty or freedom of conscience should be a singular and treasured part of America's common vision of the common good.

The Big Ideas

The curriculum, *Living With Our Deepest Differences: Religious Liberty in a Pluralistic Society*, is developed around five major themes that are fundamental to religious liberty in the American experience:

1. Coming to America

Religious liberty, or freedom of conscience, is America's "first liberty." America has always been another name for freedom and opportunity, and from its beginning, religious liberty has been a driving force for individuals and groups in the nation.

2. The Constitution

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining social stability over time.

3. American Pluralism

Expanding pluralism has been a leading part of the American story. The promise and protection of freedom have attracted immigrants of all faiths from many countries and fostered a wide diversity of American-born religions. Increasing diversity has therefore presented both a contribution and a challenge to religious liberty. Religious liberty makes pluralism more likely; pluralism makes religious liberty more necessary.

4. For Better, For Worse

Due to the constitutional guarantees of religious liberty, differing faiths and worldviews have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.

5. Our Challenge Today

From the birth of this nation, America's challenge has always been to live with our deepest differences. With more than 200 years of population changes, resulting in unprecedented ethnic, cultural and religious diversity, we must renew our commitment to the nation's first principles embodied in the First Amendment. We must dedicate ourselves to conducting debates and resolving conflicts by practicing the "Three Rs" of religious liberty — rights, responsibilities and respect — and in particular to living by the Golden Rule, treating others as we ourselves would like to be treated.

Lesson 1

Two Visions of America



Overview

The Big Idea

Religious liberty, or freedom of conscience, is America's "first liberty." America has always been another name for freedom and opportunity. From its beginning, religious liberty has been a driving force for individuals and groups in the nation.

Historical Section

Key Facts

John Winthrop, Roger Williams and the Puritan contribution to religious liberty.

Many Puritans believed in freedom of conscience for themselves. The argument between them was over whether it should be applied consistently to others. The Puritans felt called by God to establish a Holy Commonwealth based on what they understood to be a covenant between themselves and God.

Roger Williams defined freedom of conscience as "soul liberty," the God-given freedom of each individual to follow his or her own convictions in matters of faith. Williams was convinced that the purity of the church required a complete separation of church and state. He believed that the government must not be involved in religious matters and churches should not be involved with affairs of state. Unlike most early settlers, Roger Williams befriended the Native Americans and learned their ways. He acknowledged their ownership of the land and treated them with respect and courtesy.

Key Terms

John Winthrop
Roger Williams
Puritan
covenant
conscience
"the elect"
Holy Commonwealth
dissenters
Native Americans
coercion

Objectives

Students can think through and explain:

1. How religious freedom has been a driving force in America and is integral to the other freedoms in the Bill of Rights.
2. How leading historical figures in Colonial times were decisive in the development of this freedom.
3. How the Puritans of Massachusetts understood their mission to found a Holy Commonwealth based on their interpretation of God's laws.
4. The essential features of Roger Williams' concept of "soul liberty."
5. Why we can appreciate the earliest pioneers of religious liberty despite their shortcomings, even when we do not fully agree with them.

The Big Idea

Religious liberty, or freedom of conscience, is America's "first liberty." America has always been another name for freedom and opportunity. From its beginning, religious liberty has been a driving force for individuals and groups in the nation.



Calls, declarations, protests and revolutions on behalf of freedom and rights are echoing around the world. Sometimes the demand is for new rights to be recognized, such as those of animals. More often, such demands are in support of old rights, asserted against unjust systems of government.

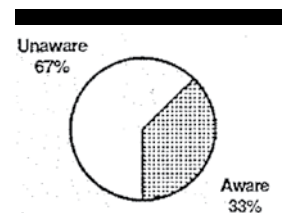
Yet oddly, religious liberty, which the framers saw as America's "first liberty," is often the orphan among humankind's agitation for civil rights. Either it tends to be overlooked — asked what "pops into their minds" when they hear the words "First Amendment," 10 times as many Americans say freedom of speech or freedom of the press as freedom of religion, and only 1 in 3 of them knows that religious liberty is guaranteed by the Bill of Rights — or else it tends to be considered a sub-category of free speech as viewed for religious persons only.

But anyone who knows American history, especially the views of the first American settlers or the framers of the Constitution, knows that the desire for religious liberty has had a central place in American thinking. The picture is far from perfect and the story of the struggle for religious liberty for all is not complete, but three themes ring out again and again:

- First, religious liberty, or freedom of conscience, is an inalienable human right and is America's "first liberty" in two senses: Logically, because freedom of conscience precedes freedom of expression, and historically, because securing religious liberty was a critical achievement in the long struggle to attain other civil rights.
- Second, religious liberty requires universal responsibility; it is for all others as well as for oneself. Since it includes the right to deny as well as the right to affirm, it is for atheists as much as for religious believers. It is for the smallest minorities and the least popular groups as much as for majorities.
- Third, religious liberty has been a persistent American theme. From the earliest Protestant pilgrim to the Jewish "refusenik" arriving from the Soviet Union in the last couple of decades, from the devoutly orthodox to the skeptic or to the atheist, freedom of conscience has been the desire of most Americans.

This first lesson goes back behind the writing of the Bill of Rights at the founding of the nation to the opening chapters of America's experiment in religious liberty. Our aim is to understand the place of freedom for their religion in the thinking of the Puritans and to feel the motivating power of religious liberty in the American experience ever since.

This can be shown dramatically through the voices of two great Puritan leaders who were close friends, but divided on their understanding of religious liberty: John Winthrop and Roger Williams. Often that is what history comes down to, two people of strong opinions who disagree. Both men's views have had a continuing influence in American history, and echoes of their views are still being voiced today.



Most Americans are unaware that freedom of religion is in the First Amendment.
 — *The Williamsburg Charter Survey on Religion and Public Life, 1988*



Historical Background

John Winthrop and Roger Williams: An Argument Between Friends

Bad Press, Scholarly Corrections

Puritans have sometimes received a bad press, as if they were all uptight killjoys with a meddlesome state that controlled their private lives. H.L. Mencken quipped that Puritanism was “the haunting fear that someone, somewhere may be happy.” Ambrose Bierce defined the Puritan as “a pious gentleman who believed in letting all people do as he liked.” Having pilloried many in their time, the Puritans have been pilloried ever since.

But like them or not, we should remember two things about the Puritans. First, for its time Puritan society was extraordinarily liberal, well-educated and much less severe than many imagine. The Mayflower arrived in 1620 with ample stocks of “hot water” (rum). The Massachusetts Bay Colony enjoyed a more widespread right to vote than England, and its clergy had less direct authority over public affairs than those in any nation in the Western world.

Second, although Puritans were only one thread in the rich tapestry of Protestant influence on the Colonies, their influence on later American history has been enormous, including such things as attitudes toward work and ideas such as national purpose and “manifest destiny.” Some have estimated that at the time of the Revolution, at least 75% of Americans came from a Reformed, or Calvinist, background of which Puritanism was the single, most decisive representative. Not far from the mark was Alexis de Tocqueville’s comment, “I think I see the destiny of America embodied in the first Puritan who landed on these shores.” As the historian Samuel Elliot Morison wrote, “Puritanism is an American heritage to be grateful for and not to be sneered at.”

The liberty America’s Puritan forebears sought was the freedom to live and worship as they believed God intended. Religious liberty meant liberty for themselves in a society of saints whom God had blessed. From the very beginning, however, strangers lived in their midst — dissenters like Quakers and Baptists who did not share their vision of God’s kingdom in Massachusetts Bay Colony.

The clash of the saints and the strangers eventually helped spawn a revolutionary new idea of religious liberty, an idea that goes much beyond the Puritan vision of liberty for themselves alone. That idea held that freedom of conscience must be extended to people of all faiths and none. The story of the Puritan leader John Winthrop and the first great dissenter, Roger Williams, shows how this deeply American idea of religious liberty first emerged in the New World.

“I think I see the destiny of America embodied in the first Puritan who landed on these shores.”
— *Alexis de Tocqueville*

“Puritanism is an American heritage to be grateful for and not to be sneered at.”
— *Samuel Elliot Morison*

The clash of the saints and the strangers eventually helped spawn a revolutionary new idea of religious liberty, an idea that goes much beyond the Puritan vision of liberty for themselves alone. That idea held that freedom of conscience must be extended to people of all faiths and none.

"A City Upon A Hill"

Before reaching the shores of New England in 1630, Governor John Winthrop stood on the deck of the ship *Arbella* and reminded his fellow Puritans of their God-given mission in the New World. The sermon Winthrop preached that day, *A Model of Christian Charity*, set forth a vision of America that has profoundly influenced this nation's self-understanding throughout its history. More than 350 years later, its themes and phrases still reverberate in the speeches of presidents and other American leaders.



"Religious freedom is my immediate goal, but my long-range plan is to go into real estate."

America was for them, as it was to become for others, a land of liberty from persecution.

Drawing by D. Reilly; ©1974 The New Yorker Magazine, Inc. Reprinted with permission.

Winthrop's listeners, like their leader, had left England behind in order to establish "a City upon a Hill" for all the world to see. They felt called by God to found a new Israel, a Holy Commonwealth ruled by divine law as they understood it to be set forth in the Bible. The foundation and authority for the new society would be an agreement between God and the people of God. "[W]e are entered into covenant with Him for this work," preached Winthrop. "[W]e have taken out a commission."

Though most of the passengers on the *Arbella* and other ships entertained some material motives, most of those who came to America as part of the Puritan migration held a deep sense of mission rooted in religious conviction. They were reformers who despaired of ever "purifying" the Church of England of the elaborate rituals and priestly hierarchy they thought were corruptions of Christ's way. As a consequence, they found themselves unwelcome and often persecuted dissenters in their native land.

America was for them, as it was to become for others, a land of liberty from such persecution. In New England they could practice their faith freely and establish congregations untainted by what they believed were the corruptions of the Anglican communion. The congregations they envisioned would consist only of "visible saints,"

LESSON ONE: Two Visions of America

those who had inwardly experienced God's call and lived in a manner consistent with it. New England offered a new beginning: They believed God had given the opportunity in these "Last Days" to establish Christ's true church.

Establishing a Covenant Community

For Winthrop, the translation of this mission into reality required that the community "be knit together in this work as one man." Only through the close cooperation and common assent of the faithful could God's kingdom be built on earth. If this sense of mission sounds strange to us today, we might think of their view of religious liberty and community building as a collective form of "doing their own thing"—of setting up an alternative community and establishing an alternative lifestyle of their own. This is rather like a modern-day group setting up a commune in the mountains. In practice, however, this meant that "the elect," those who believed they were "Christians," chose leaders of both church and state. They limited voting rights to those whom the faithful identified as elected by God for salvation. They believed the evidence of their election was to be found in signs of a conversion experience and righteous behavior.

While not a democracy in the modern sense, the Commonwealth of Massachusetts was never actually a theocracy. What most people fear in *theocracy*—literally a state under the rule of God—is technically a hierocracy, or the direct rule of priests or other religious leaders. In fact, Puritans made clear distinctions between church and state, between ecclesiastical and civil authority. Winthrop and other magistrates of early Massachusetts attempted to maintain the independence of the civil government from the churches. No church censure, for example, could remove a man from civil office. Although the clergy had no formal authority in political affairs, however, they did exercise considerable informal influence as spiritual leaders and were frequently consulted about matters of state.

Also, the separate areas of authority for church and state in Puritan Massachusetts did not preclude the state from involvement in religious matters. The new society that Winthrop and the Puritan immigrants envisioned was to offer people freedom to worship "as God commanded." This required first and foremost that all of the laws of the community be grounded in what Puritans believed was God's law. It followed, then, that civil magistrates must be directly responsible for enforcing obedience to that divine law. In the new Israel, the faithful elected leaders, but God gave them their authority.

Maintaining God's Covenant

The Puritans believed that the success of the covenant with God depended on the obedience of God's people. Obedience was rewarded by prosperity and disobedience with adversity. They understood the plague that devastated the Indians of the region, for example, as a divine affirmation of their own special covenant relationship. On the other hand, they saw drought and disease as evidence of God's displeasure.

Puritans thought that keeping the covenant and thereby retaining divine favor was a central responsibility of the state. Behavior on the Sabbath was strictly regulated and their interpretation of the teachings of the Hebrew and Christian Scriptures was written into law. Anyone who persisted in heresy could be banished from the colony.

Though laws were passed to keep the settlement holy, they also regarded individual conscience as a medium of communication between God and each person. Freedom of conscience was therefore a God-given right. Conscience, however, was still subject to error. Those who were found to be sinning against their conscience by disobeying God's ordinances had to be persuaded by reason and Scripture to correct their lives. If such persuasion failed, then the civil government was obliged to force the sinners to correct their ways.

This contradictory and incomplete view of freedom of conscience led directly to tenable violations of it—such as the banishment of Anne Hutchinson, the hanging of the Quaker Mary Dyer and the mistreatment of Indian "pagans." Puritanism has been forever associated with these events.

The holy mission Winthrop proclaimed on the Arbella placed a responsibility of overwhelming proportions on his hearers. As a covenant people, the Puritans believed that they must always be preservers of the true faith and builders of the new Israel. Massachusetts was to be nothing less than an example to the entire world of God's kingdom on earth. With so much at stake, it should not surprise us that the Puritans acted strongly, often harshly, to protect what they understood to be true religion against Quakers, Baptists and other "heretics" whom they considered to be a threat to God's rule. For the Puritans, then, freedom of worship tended to apply only to their worship.

"Absolute permission of conscience" from state coercion was something Williams called "soul liberty," the freedom of each individual to follow his or her own convictions in matters of faith.

A Troublesome Dissenter

The first dissenter to challenge Winthrop's vision of God's purpose arrived in 1631, less than a year after the landing of the *Arbella*. He was a young Puritan minister named Roger Williams. A talented and brilliant man, he was offered the prestigious post of teacher in the Boston church. Much to the amazement of Puritan leaders, he turned the offer down.

Williams' rejection of the Boston post, like everything else he was to do in the New World, rested upon his deeply held religious convictions. He took the quest for purity in the church a step further than most Massachusetts Puritans by criticizing the Boston congregation for not separating completely from the Church of England.

This demand seemed a dangerous idea to a fledgling colony concerned with keeping its royal charter. Too much heated conflict in England between King Charles I and Puritan leaders would put Massachusetts in a difficult position. Winthrop, therefore, believed it politically necessary to keep ties with the Church of England, in spite of his scorn for its corrupt condition.

Williams expressed his separationist ideas without concern for the political consequences or for his personal loss of position or money. His only abiding interest was to protect the "Garden of the Church" from being overcome by the "Wilderness of the World." He envisioned a church not only free from "Anglican corruptions" but also free from "unregenerate" souls who were not of God's elect. The true church of Christ, Williams believed, consists only of saved people who keep their faith free from all worldly contamination. His concept of an uncorrupted church required a complete separation of church and state. He was convinced that for the church to remain pure, the government must not be involved in religious matters and churches should not be involved with affairs of state.

The Puritan authorities perceived immediately that Williams' religious convictions attacked the very foundation of what they believed was their covenant with God. Williams preached that with the coming of Christ, God had dissolved the connection between church and state represented in the Israel of the Hebrew Scriptures. God had not chosen the Puritans or anyone else to establish the divine kingdom on earth. Williams saw no sign that God had sealed a covenant with Massachusetts.

While Williams did grant that God approved of government in general, he denied that any particular government can have divine sanction. Civil government originates in a covenant of the people; it has no divine authority. No government, therefore, can establish churches or control religion. The true church is a voluntary association of those who believe themselves to be God's elect. Any state involvement in the worship of God is contrary to the divine will and inevitably leads to defilement of the church.

This challenge to civil authority in matters of faith was one of the key charges that led to the banishment of Williams from Massachusetts in 1635. He had struck at the heart of the Puritan vision of a new Israel. He said at his trial,

"You in the Bay Colony do use the pattern of Israel for your actions. Moses is your leader, not Christ. I do affirm it [to] be against the testimony of Christ Jesus for the civil state to impose upon the soul of the people a religion, a worship, a ministry. The state should give free and absolute permission of conscience to all men in what is spiritual alone. Ye have lost yourselves! Your breath blows out the candle of liberty in this land."

"Soul Liberty"

With such statements, Williams underlined the Puritan concept that individual conscience was a means of communication with God. Each person, even those in error, must be allowed the freedom to accept or reject God's call to salvation. Reason and Scripture may be employed to convince sinners, but force will never work. Williams repeatedly reminded his fellow Puritans that Christ himself had forsworn coercion.

"Absolute permission of conscience" from state coercion was something Williams called "soul liberty," the freedom of each individual to follow his or her own convictions in matters of faith. Thus he limited full liberty of conscience to the first four of the Ten Commandments, which deal with correct worship of God. He thought the remaining commandments to deal with correct behavior toward one's neighbor. The state is obligated only to curb actions injurious to the public welfare. Williams summarized his view of soul liberty and the proper role of the state in a famous letter written to the town of Providence in 1655:

LESSON ONE: Two Visions of America

“...There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination of society. It hath fallen out sometimes, that both papists* and protestants, Jews and Turks,** may be embarked in one ship; upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges — that none of the papists, protestants, Jews, or Turks, be forced to come to ship’s prayers or worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this ship ought to command the ship’s course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers.”

* An offensive term used by some 17th-century Protestants to describe members of the Roman Catholic faith.

** Muslims

Williams accepted the Puritan view that the conscience could err in matters of faith; indeed he thought it was likely to do so. Nevertheless, coercion would do nothing to bring about acceptance of the divine truth of the first commandment. He held that God alone could call sinners to account for rejecting the truths found in the Bible.

Citing Europe’s long history of wars and divisions, Williams pointed out that coercion in matters of faith inevitably leads to persecution and bloodshed. Imposition of religion has only encouraged hypocrisy in those forced to convert. The conscience may err, he believed, but force only weakens it further, cutting off the soul from the power of the Word of God. In the *Bloudy Tenent of Persecution*, his famous reply to John Cotton, he went to the heart of the matter.

“It is the will and command of God that (since the coming of his son the Lord Jesus) a permission of the most paganish, Jewish, Turkish, or anti-Christian consciences and worships, be granted to all men in all nations and countries; and they are only to be fought against with that sword which is only (in soul matters) able to conquer, to wit, the sword of God’s spirit, the Word of God.”

Williams’ vision of a society that allowed soul liberty for people of all faiths or none was in direct opposition to the vision of a “new Israel” proclaimed by Winthrop on the *Arbella*. Winthrop’s vision required that all citizens in the society conform to God’s law as the state interpreted and enforced it. Williams, on the other hand, asserted that it was against God’s law for any state to interfere in the religious life of its citizens.

An Uncomfortable Friendship

Governor Winthrop and many other leaders of Massachusetts respected Williams for his religious commitment and scholarship. But they found his theology to be an intolerable challenge to the survival of the new colony.

Moreover, by arguing that God had not sanctioned the Massachusetts covenant, Williams undermined the authority of the magistrates to enforce biblical laws in religious affairs. Williams went further still, claiming that the royal charter by which the Puritans held the land was invalid. He thought no English “right to discovery” existed. The land belonged to the Indians and must be purchased from them.

In light of these radical views, it is not surprising that Massachusetts Bay, struggling to survive in the harsh conditions of New England and fearful that a hostile king would revoke their charter, decided to banish Roger Williams in 1635.

Winthrop supported the banishment in order to protect the colony. But the two remained close friends for the rest of their lives. Winthrop called on Williams to help Massachusetts in negotiations with the Indians, and Williams sought Winthrop’s advice on governing Rhode Island.

A Radical Experiment in Liberty

Soon after Massachusetts banished him in 1635, Roger Williams founded Rhode Island, a colony based on his vision of soul liberty. In an extraordinary break with the past, Rhode Island became the first colony with no established church and the first society in America to grant liberty of conscience to people of all faiths and none. Jews, Quakers and others not welcome elsewhere made their home there.

Few people in the 17th century imagined that Williams’ radical experiment could succeed. A society without divine sanction, especially one that allowed dissent, appeared to most observers to have written its own death

warrant. Typical of the scorn for “soul liberty” was a statement by a group of ministers in New Amsterdam, made after a shipload of Quakers was refused entry to that colony in 1657:

“We suppose they went to Rhode Island, for that is the receptacle of all sorts of riff-raff people and is nothing less than the sewer ... of New England. All of the cranks of New England retire thither... . [T]hey are not tolerated ... in any other place.”

Williams might have agreed that many who came to Rhode Island were “riff-raff.” He was, for example, scornful of the Quakers and their conviction about the guidance they claimed to receive from an “inner light.” What is significant, however, is that Williams’ views of other faiths, even his personal hostility to some, did not affect his wholehearted commitment to “soul liberty” for all who settled in the colony he founded.

Rhode Island soon became a haven for other dissenters not welcome in Massachusetts Bay. Anne Hutchinson and her followers first fled there after her banishment and excommunication in 1638. Her attacks on leading ministers and her theological views (combined with the fact that a woman was preaching them) challenged the power of the clergy. One of Anne’s friends, Mary Dyer, became a Quaker and resolved to preach her new faith in Massachusetts. She, too, was banished to Rhode Island. She refused to stay, however, and returned four times to the Bay Colony to spread her views. Finally, in 1660, the authorities hung her on Boston Common.

Williams succeeded in founding a society that protected freedom of conscience in matters of faith for all citizens. Without this protection written into law, he feared that those who are persecuted today might themselves become the persecutors tomorrow. As he put it in his arguments with John Cotton:

“When Mr. Cotton and others have formerly been under hatches, what sad and true complaints have they abundantly poured forth against persecution? ... But coming to the helm, how, both by preaching, writing, printing, practice, do they themselves unnaturally and partially express toward others the cruel nature of such lions and leopards?

“O, that the God of heaven might please to tell them how abominable in His eyes are a weight and a weight, a stone and a stone, in the bag of weights! One weight for themselves when they are under the hatches, and another for others when they come to the helm.”

Freedom of conscience is only possible when those who “come to the helm” of the ship of state treat others as they would have wished to be treated when they were, as Williams put it, “under the hatches.”

Roger Williams and Native Americans

One of the most attractive features of William’s life to many modern readers is his respectful treatment of what we today have come to call (Williams would certainly agree) the “Native Americans.” The first of the four offenses for which he was “enlarged” out of Massachusetts by its general court was his assertion that the land belonged to the Indians and that they should have been paid for it. Williams purchased his land from the Indians and also befriended the Narragansett sachem. “It was not price nor money that could have purchased Rhode Island,” he said. “Rhode Island was purchased by love.”

His first published work is a *Key to the Language of America* — that is, of the Indians of Narragansett Bay — written on shipboard on his way to London on his first trip (lest it be lost, before he forgot it). And it is a careful, respectful transcribing of their language, said by anthropologists today to be largely accurate. It does not include any derogation of the “heathen” Indian, although it is not sentimental about them either. He lived among the Indians, came to know them, treated them with respect, and befriended them. He was able therefore to do great service to Massachusetts as well as Rhode Island, and to all of New England, in clashes and dealings with the Indians. ...

Williams’s treatment of the Indians was respectful, courteous, and charitable throughout his *Key to the Language of America*; his comments in the Key emphasize a common humanity: “Nature knows no difference between Europe and Americans in blood, birth, bodies, God having of one blood made all mankind (Acts 17) and all by nature being children of wrath (Ephesians 2).”

(From William Lee Miller. *The First Liberty: Religion and the American Republic*).

The Lesson, The Legacy

While Roger Williams' vision of freedom of conscience was not always lived out in Rhode Island (religious tests were applied there for a period), his ideas greatly influenced the development of religious liberty in the United States. A number of scholars have demonstrated that Williams' writings helped to shape the thinking of the Enlightenment philosopher John Locke and the Baptist leader Isaac Backus. One historian argued that "just as these two lines of influence appear in important respects to issue conjointly from Williams, so they appear to converge again in their mutual impact — via Locke and the Separate Baptists — upon Jefferson and upon the deliberations concerning religious liberty that surrounded the formation of the constitutional provisions for freedom of religion."

Thus the Puritan demand for religious liberty for themselves became, in the vision of Roger Williams, a requirement of religious liberty for all. The extension of liberty to include not only ourselves but all others, even those with whom we disagree, has become a central American conviction. It is this principle of full freedom for people of all faiths and none that was embodied in the First Amendment to the Constitution 150 years later.

Put differently, the First Amendment's guarantee against a national establishment of religion and the assurance of free exercise of religion grew from this critical clash among the Puritans. When the logic of Williams' "soul liberty" was understood, religious liberty shifted from being a matter of *toleration that one enjoys* (and therefore a concession from the stronger to the weaker) to being a *right to which one is entitled* (and therefore inalienable even before the strongest power, especially the state). This shift, which broke into American public statements in the Virginia Declaration of Rights in 1776, was enacted in the First Amendment to the Constitution in 1791.

Even today, one can hear variations of the argument between Winthrop and Williams. Most people can probably appreciate the concerns of Winthrop, but modern views of religious liberty, even for Winthrop's spiritual heirs, are closer to Rhode Island's "radicalism" than to Massachusetts' "realism." Most people would agree with both men that freedom of conscience is primary, but would side with Williams in developing this right to cover others and not only themselves, "strangers" as well as "saints," dissenters as much as majorities, and skeptics along with believers. Conscience-bound "soul liberty," they believe, should be changed only through persuasion, never coercion.

When the logic of Williams' "soul liberty" was understood, religious liberty shifted from being a matter of *toleration that one enjoys* (and therefore a concession from the stronger to the weaker) to being a *right to which one is entitled* (and therefore inalienable even before the strongest power, especially the state).



Teaching Strategies

You will find the following for use in this section in the Student Documents:

1-A John Winthrop's *A Model of Christian Charity*

1-B Roger Williams' Letter to the Town of Providence, excerpt from the *Bloudy Tenet of Persecution*, 1644

Links

1. Have you ever had a close friend with whom you have had a strong disagreement over something that really mattered?
2. Have you ever known big arguments where the two people or sides were both entirely correct about half of what was disputed?

Approaches

Use Student Document Handouts 1-A and 1-B to teach two contrasting visions of America and religious liberty. Suggestions:

Reading

Using the word *voice*, prepare the class to see both Winthrop and Williams as important voices in shaping the first debate in America on religious liberty. Distribute Student Document Handouts 1-A and 1-B.

Read the two documents aloud to the students as they follow along, emphasizing important points and asking various students to assist you. Focus on the conflict between Winthrop's idea of being a covenant people in a New Israel and Williams' vision of a society with people of many faiths. Ask students in groups or pairs to pick out key phrases of opposing ideas in each reading. Begin with Winthrop's sermon. What kind of society is the New England he describes? Next, go to Williams' letter and excerpt from the *Bloudy Tenet of Persecution*. How does his view of society challenge Winthrop's vision of a "city upon a hill"?

or

Introduce Winthrop and Williams with a brief discussion of their friendship and their roles in history. Assign as homework reading Winthrop's *A Model of Christian Charity*, Williams' letter to the town of Providence and *Bloudy Tenet*.

Lead a class discussion on the meaning of covenant as found in Winthrop's sermon. Focus on the shaded areas. Discuss the reasons why Winthrop believed it was essential for everyone in the society to be faithful to the covenant with God. Then ask students working in small groups to identify places in the quotes from Williams where he gives an alternative model for establishing a commonwealth. Why did Williams believe that Winthrop's vision of a "New England" would lead to persecution?

Conclude by summarizing the students' findings from the text. More legitimate responses are apt to appear than might be expected.

The idea of *voice* will be understood more easily if real voices read much of these two documents aloud. The students will understand better the meaning of "first liberty" if the ideas are spoken, heard, read and discussed.

Discovery

After a brief introduction to the historical period, give Winthrop's sermon and Williams' statements to each student. Ask the class to read the documents silently and to underline key ideas in each document.

Ask the students to summarize the main ideas of Winthrop's vision as unfolded in his sermon. Have them finish the exercise by reading the quotations from Williams. With the class divided into groups of four or five, discuss their findings and then share with the class what you find.

Inquiry

Ask volunteers to read Winthrop's sermon and Williams' statements aloud. Have these students prepare in advance to read these documents with feeling.

Questions

1. Why did Winthrop stress that all citizens in New England must obey the law of God? What conditions must be present for such a society to work?
2. Is there any room for "dissenters," or people of other faiths, in the "city upon a hill"?
3. How was Williams ahead of his time, that is, in what ways did his view of "soul liberty" anticipate some of our ideas of religious liberty today?
4. In what ways did Williams provide a vision of freedom and dignity for all? Why was this vision difficult to fulfill in Massachusetts Bay Colony?

5. The Puritans have often suffered bad press. Do you find anything in Winthrop or Williams which contributes to this image? Explain.
6. For the earliest Americans, freedom of conscience was an inalienable right because it was “God-given.” To the framers of the Constitution, a century and a half later, it was inalienable because it was a “natural right.” This was important because it meant that the state had not given religious liberty and could not take it away. What grounds for human rights do we stand on today to guarantee that they cannot be violated by, say, the powerful modern state?



Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in this lesson indicate an understanding of why religious freedom has been so closely linked to coming to America and has been such a driving force in this nation's history? Second, have their responses, both in writing and speaking, demonstrated an empathy for the hopes and fears of the early Americans who struggled for America's “first liberty”?

Historical Empathy: Do your students appreciate the courageous stand of a few brave, vocal people and the impact they have had on winning and preserving the religious freedom we enjoy today? Can they bridge the gap across the centuries, from the hard-won early freedom to the freedom we are guaranteed but so easily take for granted today?

Civic Responsibility: Do your students understand the idea of *conscience*? Do they see any connection between the beliefs the early Americans professed, the actions they undertook and the costs they paid in order to practice their convictions? In a day when “freedom of conscience” has often been diluted into “freedom of consumer-choice,” do they feel any sense of responsibility in freedom of conscience?

Portfolio

Note: If these lessons are taught over an extended period of time, these evaluation methods may be expanded to include more than the three components below.

The students may keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so on.
- **Homework:** Any assigned homework
- **Self-Evaluation:** Finish this statement with examples: “This lesson has changed or reinforced my ideas about the importance of religious liberty in American life. For example ...”



Student Documents

Contents:

1-A John Winthrop's *A Model of Christian Charity*, 1630, p. 23

1-B Roger William's *Letter to the Town of Providence*, excerpt from *The Bloody Tenet of Persecution*, 1644, p. 24

John Winthrop
A Model of Christian Charity, 1630

Thus stands the cause between God and us: we are entered into covenant with Him for this work; we have taken out a commission, the Lord hath given us leave to draw out our own articles. We have professed to enterprise on these actions upon these and these ends; we have hereupon besought Him of favor and blessing. Now if the Lord shall please to hear us and bring us in peace to the place we desire, then hath He ratified this covenant and sealed our Commission, [and] will expect a strict performance of the articles contained in it. But if we shall neglect the observation of these articles which are the ends we have propounded, and dissembling with our God, shall fall to embrace this present world and prosecute our carnal intentions, seeking great things for ourselves and our posterity, the Lord will surely break out in wrath against us, be revenged of such a perjured people, and make us know the price of the breach of such a covenant.

Now the only way to avoid this shipwreck and to provide for our posterity is to follow the counsel of Micah: to do justly, to love mercy, to walk humbly with our God. For this end, we must be knit together in this work as one man. We must entertain each other in brotherly affection; we must be willing to abridge ourselves of our superfluities, for the supply of others' necessities; we must uphold a familiar commerce together in all meekness, gentleness, patience and liberality. We must delight in each other, make others' conditions our own, rejoice together, mourn together, labor and suffer together: always having before our eyes our commission and community in the work, our community as members of the same body. So shall we keep the unity of the spirit in the bond of peace, the Lord will be our God and delight to dwell among us, as His own people, and will command a blessing upon us in all our ways, so that we shall see much more of His wisdom, power, goodness, and truth than formerly we have been acquainted with. We shall find that the God of Israel is among us, when ten of us shall be able to resist a thousand of our enemies, when He shall make us a praise and glory, that men shall say of succeeding plantations: "The Lord make it like that of New England." For we must consider that we shall be as a city upon a hill, the eyes of all people are upon us. So that if we shall deal falsely with our God in this work we have undertaken, and so cause Him to withdraw His present help from us, we shall be made a story and a by-word through the world: we shall open the mouths of enemies to speak evil of the ways of God and all professors for God's sake; we shall shame the faces of many of God's worthy servants, and cause their prayers to be turned into curses upon us, till we be consumed out of the good land whither we are going.

And to shut up this discourse with that exhortation of Moses, that faithful servant of the Lord in his last farewell to Israel (Deut. 30). Beloved, there is now set before us life, and good, death and evil in that we are commanded this day to love the Lord our God and to love one another, to walk in his ways and to keep his commandments and his ordinance, and his laws, and the articles of our covenant with him that we may live and be multiplied, and that the Lord our God may bless us in the land whither we go to possess it. But if our hearts shall turn away so that we will not obey, but shall be seduced and worship other gods, our pleasures, and profits, and serve them; it is propounded unto us this day, we shall surely perish out of the good land whither we pass over this vast sea to possess it.

Therefore let us choose life, that we and our seed may live; by obeying His voice, and cleaving unto Him, for he is our life, and our prosperity.

Roger Williams
Letter to the Town of Providence

...There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination of society. It hath fallen out sometimes, that both papists* and protestants, Jews and Turks,** may be embarked in one ship; upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges—that none of the papists, protestants, Jews, or Turks, be forced to come to ship's prayers or worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers.

* An offensive term used by some 17th-century Protestants to describe members of the Roman Catholic faith.

** Muslims

Excerpt from *The Bloody Tenet of Persecution*, 1644

[A]ll civil states with their officers of justice in their respective constitutions and administrations are proved essentially civil, and therefore not judges, governors, or defenders of the spiritual or Christian state and worship.

THE
BLOODY TENENT.
OF PERSECUTION, for cause of
CONSCIENCE, discussed, in
A Conference between
TRUTH and PEACE.
VVIZ,
In all tender Affection, present to the High
Court of Parliament, (as the Representatives
of their Discontent) this, (amongst other
Petitions) of highest consideration.



London.

J. W. Printed in the Year 1644.

Lesson 2

From Toleration to Free Exercise

Overview

The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone and maintains stability over time.



Historical Section

Article 16 of the Virginia Declaration of Rights and the shift from "toleration" to "free exercise."

Key Facts

1. George Mason, perhaps the most overlooked framer of the Constitution, was the author of the Virginia Declaration and the "grandfather" of the Bill of Rights.
2. Virginia was the largest and most influential colony at the time of these debates. Decisions made there are therefore particularly important in the nation's story.
3. James Madison successfully proposed removing the word "toleration" and adding the words "free exercise" to the Virginia Declaration of Rights.
4. "Toleration" is the word commonly used in connection with religious liberty. Because the word suggests the granting of permission rather than the recognition of a right, it is inadequate. With the substitution of "free exercise," Article 16 became a major step forward for religious liberty.

Key Terms

James Madison	Bill of Rights	denomination
commonwealth	dissenters	guarantee
George Mason	Williamsburg	rights
framers	toleration	Baptists
Article 16	Virginia Declaration of Rights	free exercise

Objectives

Students can think through and explain:

1. The difference between "toleration" and "free exercise" in the context of the Mason-Madison documents.
2. The importance of Article 16 in the development of the First Amendment.
3. What "free exercise" would have meant to dissenters and believers in minority groups.
4. The essential features of Roger Williams' concept of "soul liberty."
5. Why we can appreciate the earliest pioneers of religious liberty despite their shortcomings, even when we do not fully agree with them.



The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone and maintains stability over time.

Opinion polls show that while most Americans believe the First Amendment is very important, they do not know very much about it. Although the freedoms of the First Amendment are widely cherished, many fail to appreciate that the Constitution represents the boldest experiment in nation-building, that America is the oldest constitutional government in the world and that America was the first country to establish religious freedom as the "first liberty." The First Amendment is a unique invention among nations of the world.

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

This first freedom is the right to exercise our freedom of conscience, one of the most precious rights of all. This amendment to the Constitution means, among other things, that the federal government cannot establish an official religion or prevent a citizen either from worshipping the way he or she wishes or from not worshipping.

These Religious Liberty clauses are especially vital, but they do not stand alone. They are bound together both in logic and practical consequences with all the other freedoms guaranteed by the first 10 amendments to the Constitution. Together, the freedoms of religion, speech, press, peaceable assembly and petition are fundamental to the ideals of the American republic.

The U.S. Constitution is a daring experiment in democratic freedom. Though built on precedents from Greece, Rome and Europe, the separation of religion from the state was a first in political history. Was freedom of conscience a gift from the majority or an inalienable right to be protected for the smallest minority? The debate over Article 16 of the Virginia Declaration of Rights brings some of the nation's best minds to bear on this question. This lesson looks at several documents, how they came to be written, how men fought for important shades of difference in their ideas — particularly how a shift from toleration to free exercise characterized the struggle to complete these documents.

Historical Background

The Great Leap Forward: Religious Liberty's Shift from "Toleration" to "Free Exercise"

Far more than is true of most countries, the United States is a nation by intention and by ideas. Ideas and ideals are therefore among the building blocks of our nation. Like a real building, the nation must have strong foundations or it will eventually crumble. So to invent a government, one must be sure that the best ideas are in place. Religious liberty is a cornerstone concept in the building of America. One of the key milestones in the history of religious liberty involved a great leap forward in understanding *toleration* versus *free exercise*.

The passage of Article 16 of the Virginia Declaration of Rights came at a crucial moment in 1776, just prior to the Declaration of Independence. The story concerns two great Americans, George Mason and James Madison. Both were to be leaders in the Revolution and pivotal in this major development.

Back to Basics

In the spring of 1776, the other 12 colonies as well as the Commonwealth of Virginia stood at a turning point. A break with the Mother Country was inevitable. Whereas the colonies had been able to rely on, as well as complain about, English laws, they were now faced with declaring their independence and establishing a new form of government for themselves.

Inventing a system of government is a monumental task. Not many have proved capable of doing it. Fortunately for the United States, she had leaders who were competent. George Mason was one such man.

George Mason was a brilliant though impatient and sickly man. He suffered from a painful form of arthritis and two years earlier had lost his wife of 23 years, Ann, to fever. Mason was dignified, but rarely smiled. But behind his quick temper and dour appearance, Mason was a man who cared deeply about the rights of others. For example, throughout his life, he argued against slavery. He was famous later for refusing to sign the Constitution because it did not include a bill of rights. But his greatest contribution of all was the Virginia Declaration of Rights.

As an inventor of government, Mason had a set principle: Always start with the basics. He wrote, "No free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles." When one invents a government, he felt, one should always begin with "fundamental principles" — the foundational building blocks of government.

When Mason arrived in Williamsburg in the muggy spring of 1776, he found that a resolution had been passed to draft a declaration of rights and a plan of government. Because it seemed like such a big job, a large committee had been selected. Mason thought they would be totally ineffective. He predicted glumly that the committee would offer "a thousand ridiculous and impracticable proposals," all of them unacceptable to people of good sense. He decided, instead, that he would have to do it himself. Edmund Randolph recalled that the plan proposed by George Mason "swallowed up all the rest, by fixing the grounds" for the final draft.

The draft of the Virginia Declaration of Rights, which Mason wrote, was the herald of the Declaration of Independence and of America's new order — that the rights and liberties of citizens would form the basis of government. Mason's draft is thus the grandfather of the Bill of Rights and a milestone in democratic freedom. The Declaration culminated in a statement on religious liberty. Its final version, which was passed unanimously on June 12, 1776, reads:

"That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other."



"It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing a government by reflection and choice, or whether they are forever destined to depend for their political constitutions on accident or force."
 — Alexander Hamilton

"No free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."
 — George Mason

Intellectual Heartburn

But the above wording is not what Mason drafted initially. There was one significant change. Where Mason wrote that “all men should enjoy the fullest toleration in the exercise of religion,” the wording became “all men are equally entitled to the free exercise of religion.” James Madison’s unrivaled contribution to the making of America began with a sentence.

Probably sitting in the back row of what had been the Hall of the House of Burgesses, “Jemmy” Madison, at age 25, was the youngest member of the upstart Virginia Convention. Here he was in Williamsburg, the seat of political power for the new Commonwealth. In the small hall in the Capitol, where the debates took place, the delegates were seated so as to face one another. This was a pivotal moment in Virginia’s history. Consequently, the room was filled with the best minds in the Commonwealth — save those in Philadelphia at the Continental Congress.

As Madison listened to the debate on Mason’s Declaration of Rights, he was troubled. He knew that Mason’s draft of Article 16 was inadequate. Mason had used the word “toleration,” which was not enough. As one historian says, the word must have given him “intellectual heartburn.”

Yet “toleration” was a pretty common word in his day. It was a look-alike concept that resembled the way most people thought about religious liberty. Years earlier, the great political philosopher John Locke had used the word in his famous treatise, *A Letter Concerning Toleration*. Mason had probably referred in his mind to Locke’s essay as he wrote. But for Madison, merely being tolerant of another’s religion or beliefs was a weak foundation for the rights necessary to sustain a free people.

A couple of years earlier, Madison had an experience that shaped his thinking. Having just graduated from Princeton University, he was doing odd jobs in Orange County, Va., near his home at Montpelier. The religious revivals that were part of the Great Awakening had left significant groups of young converts in the surrounding counties. Many of these enthusiastic young believers were finding themselves in jail for no other reason than for not getting permission from the state to meet in their own homes to worship and for listening to preaching without a state-granted license. It is said that on one occasion Madison overheard a devout Baptist preacher continuing his sermon through the bars of his jail cell. Outraged, Madison wrote his best friend from college, Billy Bradford, that he had to admit that Pennsylvania’s laws on religious liberty were more enlightened than those of his own beloved Virginia.

So the point of discussion that May in Williamsburg was not some ivory tower musings on political theory. Madison was fresh from witnessing the abuses right down the road. “Toleration” would not do.

The Wrong Word

Why was toleration inadequate? What was wrong with being tolerant toward others? Toleration, of course, is an important virtue, infinitely preferable to intolerance. But in connection with religious liberty it does not go far enough. In this regard, there are four problems with the word “toleration.”

1. Its source: Toleration implies a concession rather than a right. A group in power conceding rights to minorities is implied. For example, in a society dominated by the Church of England, Locke’s toleration did not extend to atheists or even to Catholics. Toleration suggests a willingness to “put up” with someone else. Lawyers call this “legislative grace” — a political gift to certain religious communities or types of belief.

But religious liberty, as Madison had come to see it, was not a gift of the state but an inalienable right rooted in human dignity. It was like those rights mentioned in the Declaration of Independence drafted a month later in Philadelphia. It cannot be bought or sold, doled out or taken back. We should enjoy more than “the fullest toleration of the exercise of religion.” We are entitled to the “free exercise of religion.”

As summarized in the Williamsburg Charter, religious liberty is the right to reach, hold, exercise or change beliefs freely, a right founded on the inviolable dignity of the person. It is not based on science or social usefulness and is not dependent on the shifting moods of majorities and governments. From this fundamental difference three further differences flow.

2. Its style: Toleration, being a concession by the stronger to the weaker, inevitably grows condescending. If only in appearance, it comes to have a patronizing air. Religious liberty, by

Religious liberty, as Madison had come to see it, was not a gift of the state. It was an inalienable right rooted in human dignity.

contrast, is a right for all and therefore a great leveler. Before this right there are no greater or lesser persons, no preferred or disregarded ones. All have an equal opportunity. Again as the Williamsburg Charter sums it up, “a right for one is a right for another and a responsibility for all.”

3. Its strength: Toleration, being only a concession, is precarious because it depends on the whims of the conceiver. Too many immigrants, especially Quakers, Catholics, Jews and Anabaptists, had experienced the frailty of toleration in Europe even in the safe havens they thought they had found. Sickness, death, a change of heart or ruler ... and the toleration was suddenly gone. American-style free exercise, by contrast, being a right that is “God-given” or a “natural right,” is inalienable. It is a bulwark which cannot be overcome, least of all by the government.
4. Its scope: Toleration, being only a concession, is easily limited to the private world or to matters of the heart, as if religious liberty were merely freedom to think what you want or worship as you please (a “right” which even totalitarian governments sometimes respect). But from the early 17th century onwards, religious liberty in America had been more robust. It included numerous activities by religious groups in the public world — charity, education and social reform for a start. This wider scope and tougher element, which takes religious liberty even beyond freedom of conscience, is well captured by Madison’s phrase, “free exercise.”

Too many immigrants, especially Quakers, Catholics, Jews and Anabaptists, had experienced the frailty of toleration in Europe even in the safe havens they thought they had found. Sickness, death, a change of heart or ruler ... and the toleration was suddenly gone. American-style free exercise, by contrast, being a right that is “God-given” or a “natural right,” is inalienable.

The Courage of Conviction

“Free exercise” was not entirely new. For example, the words were used in Maryland’s celebrated Act of Toleration in 1649. But because Virginia was so influential and Mason’s Declaration of Rights so decisive, Madison’s change proved somewhat radical. And remember, the idea came from the youngest person in the room — a person who was shy and short and did not speak well in front of groups. But Jemmy Madison had the courage of his convictions and overcame his natural diffidence by asking the popular “Give-me-liberty-or-give-me-death” Patrick Henry to present his proposed change for him. George Mason liked the change, and it was adopted in the final version of Article 16. Years later in 1791, Madison made the same “free exercise” phrase a major part of the Religious Liberty clauses of the Bill of Rights and the strong complement to the ban on religious tests for office, outlawed by Article VI of the Constitution (“[N]o religious test shall ever be required as a qualification to an office or public trust under the United States”).

Changing from “toleration” to “free exercise” might have looked like a small shift in words, but it is a titanic leap forward in meaning. Probably many in Williamsburg did not see the significance of Madison’s small change. But once the document was circulated throughout the state, dissenting groups such as the Baptists welcomed it enthusiastically. They saw immediately that “free exercise” meant an expansion of their freedom.

From then on, religious liberty, or freedom of conscience, could never be considered a concession or a gift. It is already ours, a right by virtue of our dignity as human beings. George Mason and James Madison got the idea right, and then the law right, and our nation’s foundation is stronger because of their careful thinking. One of them, Mason, was staunchly a man of faith whereas the other, Madison — like his good friend, Jefferson — became increasingly skeptical about religion. But together, out of this typically early American blend of faith and skepticism, they forged a freedom that has become vital for Americans of all faiths and none.



Teaching Strategies

You will find the following for use in this section in the Student Documents:

- 2-A Article 16, The Virginia Declaration of Rights, 1776 (Final Draft)
- 2-B Article 16, The Virginia Declaration of Rights, 1776 (Initial Draft)
- 2-C First Amendment, The Constitution of the United States of America

Links

1. This section shows how the battle for religious freedom, which was essentially a battle of ideas and words, came to a decisive climax. Your students may have held debates or fought battles in which everything hinged on a particular word or an idea. Ask them: Why is it that words matter so much? Why is there (as George Orwell stressed) such an important link between clear thinking, clear speaking and freedom?
2. Ask the students: How have documents such as the Religious Liberty clauses of the First Amendment guaranteed certain rights and freedoms in your life? (Think of classroom rules, school rules and so on.) How effective have spoken words been in comparison to written ones? In short, how much stock do you put in a “speech” or a “promise” guaranteeing your rights as compared to a written document?
3. Ask the students: What is a promise? Think about promises made and promises broken. Why can they be so easily broken?

Approaches

Activity: Playing the Detective

Pass out Student Document Handouts 2-A, 2-B and 2-C (all on one page). Focus on the two passages proposed for Article 16 of the Virginia Declaration of Rights, 1776. *Do not draw the class’ attention to the First Amendment at this time, other than to mention that they may use it for reference during the upcoming group activity, if they wish.* Ask the class what they notice about the dates of the document, 1776. The document was written and approved about one month before the Declaration of Independence was penned. Point out that one of the documents is not the final Article 16, which was approved in June 1776 by Virginia’s General Assembly meeting in the House of Burgesses in Williamsburg, but rather an initial draft. George Mason, one of the leading spokesmen, had proposed the following wording for part of Article 16:

“All men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience.”

As you can see, the draft Article 16 (which did not pass) includes the wording as Mason proposed. But, as outlined in the Historical Background, James Madison introduced the idea of free exercise.

The idea here is to focus on the sharpening of the idea in the drafting process and the vital difference between the two concepts, “toleration” and “free exercise,” as they are set in the contexts of the two documents.

1. Ask one or two students to read the two drafts of Article 16 aloud. Despite their brevity, these may be difficult documents for the students to understand initially. Point out that they are going to read one of the most important documents in American history! Set up the idea that one of the documents is not the final draft of Article 16, and therefore its importance lies in what “might have been.”

Tell the class: “Now you play the detective, working with other detectives, too.” Break the class into groups of four or five at this time. Working together, their task is to uncover the weaker draft that failed to be passed. They have no resources other than their own careful reading, the recollection of your introduction and the text of the First Amendment at the bottom of the page (Student Document handout 2-C). First, ask them to underline any words they do not understand. Second, ask them to write a question that they would like answered concerning Article 16. Specifically, ask them to avoid posing a question like, “What does it say?” But instead, encourage them to ask a question such as, “What does it mean to ‘owe our Creator’ or ‘be directed only by reason and conviction, not force or violence’?” In this way, the density of the sentence structure will become clearer to the students and a good thinking exercise can take place. They may want to paraphrase the document into simpler, modern English using the words they looked up in the dictionary.

2. Once they have discussed the two documents in this way, ask them to do a line-by-line comparison between them to see where the differences lie. Then, with only the evidence they have at hand, give them several minutes to discuss the relative merits of the final and the draft versions to weigh their decision. [Of course, if they read the Religious Liberty clauses of the First Amendment at the bottom of the page, they will come to the correct solution.]
3. The conclusion of this activity is to ask one spokesperson per group to give a report of the findings. Make sure they give reasons for their decisions.

Activity: Sorting Out the Battle of Words

The foregoing activity focuses the students on the two terms, “toleration” and “free exercise” — one is the “weak word” and one is stronger. Write both terms on the board.

1. Ask one or two students to look up these words in the dictionary (more, if you have the dictionaries available).
2. What are the definitions?
3. What is good about toleration? (It is, of course, infinitely better than intolerance.) But why did Madison want to improve on “toleration” by using the words “free exercise”?

Lead a discussion on the use of the word “toleration.” Use the board to elicit responses as the students talk about ways they have heard the word “tolerate” used in their own lives, with respect to their own families, parental authority, school rules and so forth. Make sure the discussion does not leave the students with the idea that “toleration” is a bad word, but that it is not the best word for the Religious Liberty clauses.

4. Conclude in the following three ways:
 - a. Underscore to your students how words and wording are extremely important (reflecting back on the initial discussion of rules spoken and rules written, for example). The Religious Liberty clauses were very carefully written. Can your students see that by changing a word here, a comma there and adding an idea or two, the Religious Liberty clauses could have said something else entirely? You might try illustrating this. See how inventive your students can be with the words, and at the same time how careful they need to be for the central concept not to be altered.
 - b. Now that the class has a better understanding of the full meaning of Article 16, direct them to the Religious Liberty clauses (Student Document Handout 2-C). Elicit responses to show how the final outcome has shaped American history.
 - c. Finally, using the full resources of Student Document Handouts 2-A, 2-B and 2-C, ask each student to write in his or her own words what the Religious Liberty clauses say. In other words, if he or she were the author, how would he or she say the same thing?

Legacy

By separating church and state, the First Amendment has the effect of shifting public rhetoric from the language of *coercion* ... to the language of *persuasion*.

It would be difficult to exaggerate the remarkable influence of the entire “first liberty project,” and especially of the First Amendment Religious Liberty clauses with their contribution to American society.

The following five points are part of their legacy:

1. The Shield of Individual and Common Rights

While there have been terrible violations of the spirit and the law of the First Amendment, they have been recognized as such. American history has no Torquemada of the Spanish Inquisition in 1487, no state persecution and no real pogroms against the Jews. For the overwhelming majority of Americans the Bill of Rights has been the effective and treasured cornerstone of individual and common freedom.

Many minority groups, such as the Jews, who have known terrible persecution in other countries live in America with relative security.

2. A Climate Favorable to All

In most modern industrialized countries in the world, the more modernized a nation has become, the less religious its people have become. The United States bucks this trend because it has become both the most modernized country yet has the most religious of modern peoples. Various explanations for this fact can be given, but the most important is the contribution of the First Amendment.

Why is this so? On the one hand, the separation of church and state removes what in other countries has been a central source of peoples’ hostility to religion — its established and therefore often repressive status. On the other hand, the separation of church and state disallows any religion from depending on federal or state power, whether through funding or special privileges, and throws each one back onto its own resources. The result is a freedom and competitiveness that has fostered a lively religious scene with equal freedom to believe anything or nothing.

3. Harmony in Society

In many countries the quest of individual liberty and the persistence of social differences have overpowered national harmony. But in America they have been kept from infringing upon each other by the First Amendment. Thus religious commitment (being true to one’s faith) and political civility (being publicly respectful of the religious rights of others) have complemented, rather than threatened, each other.

Many religious groups whose members have been or are in deep conflict with other groups elsewhere in the world are living peaceably side by side in America, as Protestants and Catholics, Hindus and Buddhists illustrate. Equally, American unbelief has generally been respectful of the freedom to believe, so the more militant hostilities between “religion” and “unbelief” that are common in many countries have not been characteristic of the United States.

4. Persuasion in Public Policy Debates

Public argument in America has always been robust and at times negative and violent. But historians have pointed out that, compared with Europe, American politics has always given a high place to persuasion, largely because of the First Amendment. Historians such as Sidney Mead have noted that, by separating church and state, the First Amendment has the effect of shifting public rhetoric from the language of *coercion* (where a church or religious group could use its official position to coerce people to its point of view) to the language of *persuasion* (where each religious group is out on its own seeking to win people to its point of view through persuasive argument).

5. National Vitality

In a statement more often quoted than understood, Alexis de Tocqueville remarked that religion in America was “the first of the political institutions.” In light of the separation of church and state, this sounds odd but is correct. Not so much *despite* disestablishment as *because* of it, the influence of different faiths on American society has become all the stronger for being indirect and unofficial.

As a result, the United States does not have “a sacred public square,” with a particular faith established as a state religion, like, say, the Church of England in Britain. Nor does it have a “naked public square” (with all religion eradicated from public life, like, say, religion in the Soviet Union or the People’s Republic of China). It has

a “civil public square” where believers in all faiths and no faith are free to enter and engage in public life within constitutional limits and according to civic guiding principles. This is a key source of liberty to individuals and communities. It is also a source of vitality for the republic.

Evaluation



Observations and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students’ comments, written responses and participation in this lesson indicate an understanding of *how* the Religious Liberty clauses are “the most daring, the most distinctive, and among the most decisive parts of the entire Constitution”? Can your students see the integral relationship of religious freedom to the other freedoms — press, speech, right to petition and assembly — found in the First Amendment? Can they create examples in their own lives and experiences that demonstrate this understanding of the process by which “toleration” was replaced by “free exercise” as these terms were used by voices in history? Can they place these concepts within the context of Article 16? Third, do your students see the concept of “invention” as it applies to the framing of the Constitution? Can they show by their own invention, or reconstruction, that they can synthesize meaning?

Historical Empathy: Do your students understand the motivations of men like Mason and Madison in their various stances toward the issue of separation of church and state on the one hand and on the issue of free exercise of religion on the other? Can your students especially appreciate the debate as it centered around Article 16?

Civic Responsibility: Do your students understand the ethical issues behind the First Amendment? In other words, do your students understand how the Religious Liberty clauses were based on beliefs about human dignity? Most importantly, can you students articulate particular ideals protected by the Religious Liberty clauses of the First Amendment? Finally, can they see how notions such as *reason*, *choice*, *decision* and *responsibility* were, for the framers, vital components of freedom of conscience, making it a far weightier matter than modern consumer-style freedom of choice?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and art work created to understand the ideas presented in this lesson.
- **Homework:** All assigned homework..
- **Self-Evaluation:** Finish this statement with examples: “The Constitution is like an invention, a machine with important parts to ‘make it go.’ One of the most vital parts that makes it work effectively can be found in the First Amendment because ...”



Student Documents

Contents:

2-A Article 16, The Virginia Declaration of Rights, 1776 (Final Draft), p. 35

2-B Article 16, The Virginia Declaration of Rights, 1776 (Initial Draft), p. 35

2-C First Amendment, The Constitution of the United States of America, p. 35

The Virginia Declaration of Rights, 1776

Article 16 (Final Draft)

That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

The Virginia Declaration of Rights, 1776

Article 16 (Initial Draft)

That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men should enjoy to the fullest toleration in the exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

First Amendment

The Constitution of the United States of America

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. (Ratified December 1791.)

Lesson 3

The Battle for Disestablishment



Overview

The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining social stability over time.

Historical Section

The triumph of disestablishment in Virginia, and the key role of James Madison in winning the battle for passage of the Virginia Statute for Religious Freedom.

Key Facts

James Madison successfully substituted "free exercise" of religion for "toleration" in the Virginia Declaration of Rights in 1776.

Patrick Henry proposed a bill in 1784 that would have provided tax support to all religions in Virginia. Madison led the fight against the bill in the legislature and stirred public opposition to the proposal by circulating his "Memorial and Remonstrance."

The decisive battle against state-supported religion was finally won in Virginia with the passage of Thomas Jefferson's "Bill for Establishing Religious Freedom" in 1786.

The eventual support of "dissenting" faiths, particularly the Baptists and Presbyterians, for Jefferson's bill was crucial to the triumph of disestablishment.

The First Amendment is the product of both faith and skepticism, just as it is the product of both the framers and ordinary people.

Key Terms

George Mason, James Madison, Thomas Jefferson, Patrick Henry, Episcopal Church dissenters, framers, free exercise, amendment, toleration, rights, guarantee, disestablishment, Memorial and Remonstrance, Virginia Declaration of Rights (1776), Bill for Establishing Religious Freedom (1777)

Objectives

Students can think through and explain:

1. The essential arguments of Thomas Jefferson and James Madison for disestablishment.
2. The importance of disestablishment, or the separation of church and state, for freedom of conscience.

3. The vital importance for religious liberty of the advance from “toleration” to “free exercise.”
4. The social and political consequences of the American way of ordering religious liberty and public life.

The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history’s “first new nation,” America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining stability over time.

As opinion polls have consistently shown, popular American attitudes toward the Constitution have always been characterized by a sort of “reverent ignorance,” that is, high esteem coupled with low knowledge. For example, in a famous experiment in Lincoln, Nebraska, in 1958, a researcher stopped 100 passers-by, explained to each one that the Bill of Rights consisted of the first 10 amendments to the Constitution, and offered to pay each interviewee one dollar if he or she could name a single provision. He paid out a total of three dollars.

One consequence of such ignorance is a failure to appreciate the uniqueness of the United States as the world’s “first new nation” or, as one framer of the Constitution called it, a “workshop of liberty.” There are many sides to what the framers called their “new science of politics.” But none was bolder and more successful than the place they accorded to religious liberty in Article VI of the Constitution and the celebrated “Religious Liberty clauses” of the First Amendment. Indeed, we can say today that because of what they intended and what they achieved, these clauses — as an integral part of the Bill of Rights — have been the most daring, the most distinctive and among the most decisive parts of the entire Constitution.

Yet the framers were deeply aware that the American experiment in constitutional government was just that — an experiment. The rights and liberties it protected were fragile and required constant, vigilant protection. Today, when domestic controversies over aspects of the Bill of Rights contrasts with growing international appreciation of their singularity, we call this lesson, “The Daring Experiment.” It aims to bring understanding of the First Amendment and of its contributions to American society, and to deepen the sense of responsibility toward the ongoing challenges of the experiment.



“Knowing well that ‘nothing human can be perfect’ and that the Constitution was not a ‘faultless work,’ the Framers nevertheless saw the First Amendment as a ‘true remedy’ and the most nearly perfect solution yet devised for properly ordering the relationship of religion and the state in a free society.”
— The Williamsburg Charter



Historical Background

The Battle for Religious Liberty: The Virginia Campaign 1776-1791

The framers of America's Constitution self-consciously built on previous models of republican government. Some aspects of these were included as they were, some improved upon and others discarded. They knew that every great republic in the past had failed. But their goal was to create a nation that would last forever.

When they came to religious liberty, however, the framers made a decisive break with the past. Here they extended the institutional implications of freedom of conscience as Americans had never done before. In a daring political experiment, they separated the institutions of religion from the federal government, but not religion from public life.

This victory was not easily won. Nor were its implications realized overnight. Long after church and state had been separated at the federal level, some state governments kept their established churches well into the 19th century. But many observers, such as Lord James Bryce, have noted that the American arrangement of church and state, found in the first 16 words of the First Amendment, have proved to be the most distinctive and among the most decisive aspects of the Constitution.

Religious liberty for all was a victory won not on fields of battle, but in the forums of public persuasion — in newspapers, open letters, sermons and speeches. It was a battle of ideas and words. Too often in parts of the world today where this victory has not been won, conflict has turned into a battle of swords. What follows is a study of the people, battles and the campaign that led to the victory of religious liberty in American history.

Cradle of the First Liberty

The decisive battles of the revolutionary era over religious liberty, or freedom of conscience, took place in Virginia. It was a difficult, long and dramatic conflict. Thomas Jefferson wrote late in his life that it was the severest contest in which he had engaged.

"It was the severest contest in which I engaged."
— *Thomas Jefferson*

Why Virginia? There were events in Massachusetts, Rhode Island, Pennsylvania and Maryland that were important for religious liberty, but few have the human drama and historical decisiveness of the battle for religious liberty that took place in Virginia at the time of the nation's founding. The Commonwealth of Virginia in general and its colonial capital, Williamsburg, in particular, have been aptly called the cradle of American religious liberty.

At the time of these debates, Virginia was the largest colony in population and in territory. It included both the most powerful established church — the Church of England, which later became the Episcopal Church in America — and at the same time a very large number of non-Episcopalians, usually called religious dissenters. There were Baptists and Methodists all over the state, while Scotch-Irish Presbyterians, German Lutherans and Mennonites settled in the Shenandoah Valley. Hanover County contained many New Light Presbyterians, Methodists, a sprinkling of Quakers, a few Jews and some others. Virginia also had great leaders, such as Patrick Henry, George Mason, Thomas Jefferson and James Madison. Many of its leaders were Deists or Unitarians. It was this combination of a state church, religious and social diversity, and passionate thinkers that fueled the battle of ideas and led to the daring experiment.

"[A]ll men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience."
— *George Mason*

Virginia had earlier made a decisive beginning. Even before Thomas Jefferson framed the Declaration of Independence from Britain, another famous Virginian, George Mason, had led the state in setting out the Virginia Declaration of Rights. The last item, Article 16, was on the troublesome topic of religious rights. Mason was an Anglican, but his first draft was a bold statement for the times. Since reason and conviction, rather than force, should govern belief, he wrote that, "all men should enjoy the fullest toleration in the exercise of religion according to the dictates of conscience." Mason was echoing the view of the political theorist, John Locke, who wrote his Letter Concerning Toleration after the terrible experience of 100 years of religious wars in Europe. Rather than fight over our religious differences, Locke said, we need to be more tolerant.

But sitting in the back of the Hall of the House of Burgesses in 1776 in Williamsburg, where these weighty matters were being discussed, was a 25-year-old named James Madison. He didn't think "toleration" was strong

enough. To be tolerant of someone else's view has a sense of condescension, of a superior granting something to an inferior. So Madison drafted alternative wording that changed "toleration" to "free exercise" — "all men are equally entitled to the full and free exercise of religion, according to the dictates of conscience." Madison's change was adopted in May 1776, two months before the Declaration of Independence [See Student Document 3-A].

Madison's change from "toleration" to "free exercise" was a small change in language, but a titanic leap in ideas. In these lessons, we do not normally use the words "toleration" or "tolerant," but "religious liberty" and "free exercise." Toleration, of course, is not wrong — it is infinitely better than intolerance, but it is weak. Freedom of conscience is an inalienable right, not a patronizing concession by the state or by a majority group toward a minority belief. The passage of the Virginia Declaration of Rights in June 1776 sets the context for our study.

"[A]ll men are equally entitled to the full and free exercise of religion, according to the dictates of conscience."

— *James Madison*

A Delayed Advance: Separation of Church and State (1777)

The next step in the story took place in the fall of 1776. Thomas Jefferson had come home to Virginia, having just penned the immortal words, "We hold these truths to be self-evident, that all men are created equal and endowed with certain inalienable rights" As the leaves began to color in Williamsburg, Jefferson set to work to apply these truths to his home country, the newly independent Commonwealth of Virginia. One of his priorities was to revise all the old laws on the statute book, including the legal code on religion. Jefferson criticized the old horrors in Virginia law publicly when he spoke to the General Assembly, saying that under those old laws:

"Heresy is a capital offense, the denial of the Trinity or the divine authority of the Scriptures is punishable by imprisonment, profanity is a crime, Roman Catholics are excluded from civil office, free thinkers and Unitarians are subject to be declared unfit and even have their children taken away from them."

But Jefferson wanted to do more than revise old laws, however rarely enforced. He wanted to separate church and state and create a new political arrangement that broke with the centuries' long understanding of the relationship between the institutions of religion and state. So sometime in 1777, probably sitting at his desk in Monticello, Jefferson composed a bill to be put before the General Assembly in Williamsburg establishing the freedom of religion [See Student Document Handout 3-D].

For all its eloquence, "A Bill for the Establishment of Religious Freedom" did not persuade the members of the Virginia Assembly. The battle would go on for almost 10 years — straight through the Revolutionary War. It was only after the distractions of the war were over and the independence of all the colonies established that Virginians would return to the question. But by this time, Jefferson was no longer a player in the debate, having accepted an appointment as Ambassador to France. His bill can be seen as pivotal, though he was forced to watch the debate from the sidelines, engaging in it only through his correspondence with his friends in Virginia.

Madison's change from "toleration" to "free exercise" was a small change in language, but a titanic leap in ideas. ... Freedom of conscience is an inalienable right, not a patronizing concession by the state or by a majority group toward a minority belief.

"We hold these truths to be self-evident, that all men are created equal and endowed with certain inalienable rights... ."

— *Thomas Jefferson*

Round Three: State Support for All Religions? (1784)

The next round in the debate was between two respected Virginians, Patrick Henry and James Madison, who had a common commitment to liberty but contrasting ideas of how religion would be best organized to support the young nation.

In one corner was Patrick Henry, the most popular politician in Virginia. He was a gifted orator who preferred to use the language of the common people rather than fancy Greek and Latin quotations that college-educated politicians often employed. He had given the Revolution its most popular slogan, "Give me liberty or give me death," and had an enormous following. He was three times elected governor of Virginia and was more popular than either Jefferson or Madison.

Henry was raised by an evangelical Presbyterian mother in tidewater Virginia but became a devout member of the established Church of England. Following the War, he saw around him a country troubled by moral and social chaos. Many of the Anglican ministers had returned to England during the war or had fled to Canada, as the war cut off congregations from the tax support on which they had depended. Churches were often empty and in disrepair. As a consequence, large numbers of people turned to other religious groups, some of which Henry thought were fanatical.

To understand his viewpoint, we must remember that in Europe for almost 1,400 years it was a commonly held belief that unity in religion and unity in society were linked. For a country to be strong and united, it needed

LESSON THREE: The Battle for Disestablishment

one official church, supported by the state. So Patrick Henry proposed a bill, progressive for his day, providing tax support to all religions in the state and allowing people without religion to support a non-religious school system. His proposal, “A Bill Establishing a Provision for Teachers of the Christian Religion,” provoked a bitter debate in the Virginia legislature in the Autumn Session of 1784. Henry’s argument was straightforward: Government by the people depends on morality in the people; and since morality depends on religion, and religion both depends on and serves the state, it deserves public support.

His opponent was James Madison. Years earlier Madison had witnessed the imprisonment of a group of Separate Baptists in western Virginia, some of whom continued to preach from jail. Their imprisonment outraged the young “Jemmy” Madison and first engaged him in the issues of religious liberty.

Madison seemed no match for Henry. He was short and shy and often sickly, his voice was weak and he was no debater. But he was a careful thinker, a clear writer and a shrewd politician. Moreover, as we have seen earlier, he wasn’t afraid to act in spite of his youth. Ironically, it was Henry whom Madison asked in 1776 to introduce his revision of Mason’s Declaration of Rights. Now, eight years later, Madison led the battle against the older, more popular Henry in favor of his friend, Thomas Jefferson, who was in France. Standing with Madison by that time were most of the dissenting religious groups in Virginia.

Madison led a daring legislative campaign. First, he managed to distract his opponent, Patrick Henry, who loved the office of governor, to which the legislators must elect someone. So Madison joined others in supporting Patrick Henry for governor. This moved Henry’s eloquent voice and leadership out of the House of Burgesses in Williamsburg and placed it instead in the Governor’s Palace down Duke of Gloucester Street. There he could no longer lead the legislative battle.

Second, Madison highlighted the dangers in Henry’s proposal by supporting a bill that incorporated the former Anglican communion as the Episcopal Church in America. The effect was to weaken Episcopalian support for Henry (because they were less dependent on Henry’s bill for tax support) and to frighten the other denominations, who had long feared an Anglican resurgence.

Third, Madison the tactician got the vote on the bill postponed until 1785 to give his side a chance to argue their case publicly. And wage a battle they did.

The Final Blow

Having delayed the decision on Patrick Henry’s bill, Madison’s allies gathered their strength in the summer of 1785, writing editorials, sermons and broadsides and especially circulating petitions to present to the Virginia Assembly in the fall. The petitions were strongly worded protests to the bill. Many of them were more widely read and supported than even Madison’s “Memorial and Remonstrance.”

At first Madison thought these other campaigns and petitions would be enough. But his friends urged him to write something too. So he produced his “Memorial and Remonstrance Against Religious Assessments” in the summer of 1785. When it was published, no one knew who wrote it. Madison wanted people to take the ideas in the letter seriously, so he didn’t put his name on it, fearing they might say, “Oh yes, that’s just Madison’s opinion” and not pay attention to the reasoning of the argument.

Madison’s central point was that state support for religion, or forcing people through their taxes to support the ministers of a faith they do not follow, is a violation of freedom of conscience. The state could not force someone to support something he or she does not believe or follow, Madison reasoned, without abusing the freedom to believe or not to believe. “Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin,” Madison wrote, “we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.”

His argument was important, both then and now. The entire letter was reprinted twice during the 20th century in opinions of the U.S. Supreme Court (*Everson v. Board of Education*, 1947, and *Walz v. Tax Commission of the City of New York*, 1970). The “Memorial” consisted of 15 points, a fusillade of arguments one after the other opposing any state support for religion, because, because, because... It sets the arguments in the context of the liberties and rights for which the American patriots had recently fought. At both the beginning and end he quoted the Virginia Declaration of Rights, written earlier by George Mason. [See Student Document Handout 3-F.]

When the Assembly came back into session in the fall of 1785 they found stacked upon their desks not only Madison’s “Memorial” but the petitions that many Baptists, Methodists and other dissenters, including

“Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.”
— James Madison

“We ask no ecclesiastical establishments for ourselves; neither can we approve of them when granted to others.”
— The Hanover
Presbytery’s Memorial to the Virginia legislature

Presbyterians, had written and many citizens had signed — a fire storm of attack on Patrick Henry's bill. The protest was so great and the likely political consequences so immense that the legislators tried to put off tackling the issue. But as the session came to a close, Madison was able to put less important bills aside and bring out Jefferson's controversial proposal for religious freedom.

The debate was heavy and a few changes were made. Negotiations had to be carried on between the Virginia Assembly and the state's other legislative house. But finally on Jan. 16, 1786, the great day came: Bill 82, Jefferson's bill for establishing religious freedom became the Virginia Statute for Religious Freedom.

So just as Roger Williams in Puritan New England took a new step in the logic of religious liberty, so James Madison took a new step in declaring its logic legally and institutionally in 1786.

When a few years later, while the new Constitution was being publicly debated, a majority in the nation called for the inclusion of a federal bill of rights, the spotlight fell once again on this short and shy leader. James Madison had to be pushed into adding the Bill of Rights to the Constitution, agreeing to do so only after popular demands that came from many states.

His initial reluctance was not because he did not believe in the rights, but because he felt such a bill was unnecessary. The rights, he believed, were already implicit in the Constitution. The first 16 words of the Bill of Rights, however, were born from these earlier battles in Virginia: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof ..." In 1791, the Bill of Rights was added to the Constitution. Over the next 50 years, state constitutions were gradually changed to conform to the national bill of rights. The established churches left over in various states disappeared one by one, the last being that of the Congregational Church in Massachusetts in 1833. Later still, following Supreme Court decisions of the 20th century, the 14th Amendment has been interpreted so as to make the Bill of Rights apply to every state.

But the decisive separation of church and state had been accomplished earlier. Six days after his Virginia triumph of 1786, Madison wrote Jefferson, "I flatter myself that — with this statute we have in this country extinguished forever the ambitious hope of making laws for the human mind." That was no exaggeration. Over the course of history, no threat to religious liberty has been greater than the coercion of conscience by the state. In one stroke, the religious liberty clauses made this impossible. Together the No Establishment and the Free Exercise clauses serve the ends of religious liberty. Freedom of the government from religious control and of religion from governmental control are a double guarantee of the protection of all rights to freedom of thought and action.

In the 18th century, the First Amendment Religious Liberty clauses formed a real bulwark against religious oppression and discrimination by the federal government. Over the past 200 years its application has extended beyond just the federal government to all the states, beyond Protestant sects to include people of all faiths and none. Today, in the closing years of the 20th century, the principle of freedom of conscience has broadened until it has become a defining principle of a pluralistic democracy that embraces all persons, regardless of their beliefs. Religious liberty in America was a hard won battle. Its victory is a story not to be forgotten. Its guarantee is not to be taken for granted

Just as Roger Williams in Puritan New England took a new step in the logic of religious liberty, so James Madison took a new step in declaring its logic legally and institutionally in 1786.

**"I flatter myself that with this statute we have in this country extinguished forever the ambitious hope of making laws for the human mind."
— James Madison**

Teaching Strategies

You will find the following for use in this section in the Student Documents:

- 3-A George Mason's The Virginia Declaration of Rights, 1776
- 3-B First Amendment to the Constitution of the United States of America
- 3-C Article VI, the U.S. Constitution
- 3-D Thomas Jefferson's A Bill for the Establishment of Religious Freedom, 1777
- 3-E Thomas Jefferson's A Bill for the Establishment of Religious Freedom, 1777 (summary)
- 3-F James Madison's A Memorial and Remonstrance, 1785 (abridged)
- 3-G James Madison's A Memorial and Remonstrance, 1785 (summary)



LESSON THREE: The Battle for Disestablishment

Links

1. This section shows how the battle for religious freedom, which was essentially a battle of ideas, came to a decisive climax. You may have had furious arguments yourself when particular words and ideas make all the difference. Why do you think slight changes in the arrangement and meaning of words make such big differences in results?
2. How have words “guaranteed” certain rights and freedoms in your own life? How effective have spoken words been in comparison to written ones? In short, how much do you value speeches and promises guaranteeing your rights as compared to a written document?
3. The Colony of Virginia had many diverse points of view. It had an “established” church, the Anglican Church, renamed in 1785 the Episcopal Church in America. A large number of others also were included: Baptists, Methodists, Presbyterians, a sprinkling of Jews, and, in the Shenandoah Valley, Lutherans, Mennonites and other German groups. In a battle of words and ideas, how did the “establishment” and the “dissenters” approach the battlefield differently? What were the strategies of each? What were they trying to protect or achieve?

Approaches

Suggestions:

Thomas Jefferson stated that the debate for the Virginia statute on religious freedom “was the severest contest in which I engaged.” Its severity reflected a society that included a wide variety of views. A clear strategy for developing the key points in this lesson is to focus on James Madison and Patrick Henry, the former representing the concern for diversity and the latter representing the concern for unity.

The stage is set: Ten years after the Revolution the government is not working well and something must be set in place to correct and save it. Patrick Henry and James Madison gave different answers to the same shared concern. Focus on Henry’s Bill of 1784 and develop the two points Henry makes: “Government by the people depends on morality in the people. And since religion depends on and serves the state, it deserves public support.” Discuss the implications of the above statement briefly.

Pass out Student Document Handout 3-F, “A Memorial and Remonstrance,” by James Madison. Divide the class into groups of five. In groups “jigsaw” the abridged two-page document by assigning portions of it to each member of the class. Each group member should be assigned three points from “Memorial.” Some would be assigned Points 1-3, others 4-6 and so forth. Once the sections have been assigned, the students are reorganized as experts in their respective “Expert Groups.” All those students who were assigned Points 1-3 in “Memorial” join the other “experts” to make a new group. Everyone in the new “Expert Groups” will then have a common task with a common text.

Next, ask them to become truly “experts” on their respective sections. They will have to know the content, the arguments, the main points and so on. They will have approximately 5-10 minutes to do this. Usually one person will read aloud his or her section while the others follow along, taking notes. They do whatever is necessary to become the “professionals” on this part of the document: discussion, taking notes, arguing and debating. At the end of this period, each “expert group” member then moves back to his “home” group which is now composed of five “experts.” Now, the students take turns sharing their understanding of their assigned section of the text.

Prior to the end of the class session and after the conclusion of the experts’ reports, distribute Student Document Handout 3-G, a summary of main points of the “Memorial.” Close the session with a reading of these points, then turn to Henry’s position. Ask the students how Madison differs from Henry and how his vision of the “machinery” of government capitalizes on diversity, rather than stifling it.

Legacy

It would be difficult to exaggerate the remarkable influence of the framers’ entire “first liberty project,” but especially of the First Amendment Religious Liberty clauses. As Lord James Bryce (Queen Victoria’s Ambassador

to the United States and a commentator on the U.S. second only to Alexis de Tocqueville) observed: Of all the differences between the United States and Europe, the Religious Liberty clauses are “the most salient.” The following five points are part of their legacy:

The Bulwark of Individual and Communal Rights

While there have been terrible violations of the spirit and the law of the First Amendment, the violations have been recognized as such. American history has no state persecution, no pogroms. For the overwhelming majority of Americans the Bill of Rights has been the effective and treasured cornerstone of individual and communal freedom.

Many minority groups, such as the Jews in the Soviet Union, Catholics in Northern Ireland, Protestants in Latin America, the Baha’i in Iran and the Seventh-day Adventists and Jehovah’s Witnesses in all countries have known terrible persecution. But they all live in America with relative security.

The Vitality of Faiths in America

In most modern industrialized countries in the world, the more modernized a nation has become, the less religious its people have become. The United States shows the opposite trend. It has become both the most modernized country yet has the most religious of modern peoples. Various explanations for this fact can be given but the First Amendment has made the most important contribution.

Why is this so? On the one hand, the separation of church and state removes what in other countries has been a central source of peoples’ hostility to religion — its established and therefore often repressive status. On the other hand, the separation of church and state disallows any religion from depending on federal or state power, whether through funding or special privileges, and throws each one back onto its own resources. The result is a freedom and competitiveness that has fostered a lively religious scene with equal freedom to believe anything or nothing.

Harmony in Society

In many countries individual liberty and the persistence of social diversity have overpowered national harmony. But in America they have been kept from infringing upon each other by the First Amendment. Thus religious commitment (being true to one’s faith) and political civility (being publicly respectful of the religious rights of others) have complemented, rather than threatened, each other.

Many religious communities who have been or are in deep conflict with other communities elsewhere in the world are living peaceably side by side in America: Protestant, Catholic and Eastern Orthodox Christians, Muslims, Jews, Hindus and Buddhists. Equally, American non-believers have generally been respectful of the freedom to believe, so the more militant hostilities between “religion” and “unbelief” that are common in many countries have not been characteristic of the United States.

Persuasion in Public Policy Debates

Public argument in America has always been robust and sometimes negative and violent. But historians have pointed out that, compared with Europe, American politics has always given a high place to persuasion, largely because of the First Amendment. Historians such as Sidney Mead have noted that, by separating church and state, the First Amendment has the effect of shifting public rhetoric from the language of coercion (where a church or religious community could use its official position to coerce people to its point of view) to the language of persuasion (where each religious community is seeking to win people to its point of view through argument and debate).

National Vitality

In a statement more often quoted than understood, Alexis de Tocqueville remarked that religion in America was “the first of the political institutions.” In the light of the separation of church and state, this sounds odd but

“What has been the effect of coercion? To make one half the world fools, and the other half hypocrites... Reason and persuasion are the only practicable instruments. To make way for these, free inquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves.”

— Thomas Jefferson

“Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for if it does not impart a taste for freedom, it facilitates the use of it.”

— Alexis de Tocqueville

LESSON THREE: The Battle for Disestablishment

is correct. Not so much despite disestablishment as because of it, the influence of diverse faiths on American society has become all the stronger for being indirect and unofficial.

As a result, the United States does not have a “sacred public square” with one religion established as a state religion like, say, the Church of England in Britain. Nor does it have a “naked public square” with all religion eradicated from public life, such as has been the case in the Soviet Union or the People’s Republic of China. America has a “civil public square” where believers in all faiths, world views and life stances are free to enter and engage in public life within constitutional limits. This is a key source of liberty to individuals and communities. It is also a source of vitality for the republic.



Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students’ comments, written responses, and participation in this lesson indicate an understanding of how the Religious Liberty clauses are “the most daring, distinctive, and among the most decisive parts of the entire Constitution”? Second, did they show an understanding of the process by which “toleration” was replaced by “free exercise” as these terms were used by voices in history, especially as concluded by Madison’s “Memorial and Remonstrance”? Third, did your students see the concepts of “invention” and “machine” as they apply to the framing of the Constitution? Can they show by their own invention, or reconstruction, that they can synthesize meaning?

Historical Empathy: Do your students understand the motivations of men like Jefferson, Henry, Mason and Madison in their various stances toward the relationship of church and state? Especially, can your students appreciate the personal efforts, notwithstanding his public stature in comparison to Henry, made by Madison in “Memorial and Remonstrance” with respect to its position on the separation of church and state?

Civic Responsibility: Do your students understand the social and national consequences that flowed from writing the First Amendment? That is, do your students understand how the Religious Liberty clauses contributed to the common good as well as to individual liberty? That they are a matter of civic first principles as well as law? That the First Amendment contributes to the free forum of democratic ideas?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so on.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Finish this statement with examples: “This lesson has shown me that the Religious Liberty clauses were a ‘daring experiment’ in liberty because ...”

Student Documents



Contents:

- 3-A** George Mason's The Virginia Declaration of Rights, 1776, p. 46
- 3-B** First Amendment to the Constitution of the United States of America, p. 46
- 3-C** Article VI, The U.S. Constitution, p. 46
- 3-D** Thomas Jefferson's "A Bill for the Establishment of Religious Freedom," 1777, pp. 47-48
- 3-E** Thomas Jefferson's "A Bill for the Establishment of Religious Freedom," 1777 (summary), p. 49
- 3-F** James Madison's "A Memorial and Remonstrance," 1785 (abridged), pp. 50-52
- 3-G** James Madison's "A Memorial and Remonstrance," 1785 (summary), p. 53

The Virginia Declaration of Rights, 1776

Article 16

[R]eligion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; ...it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

First Amendment to the Constitution of the United States of America

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. (Ratified December 1791.)

Article VI, The U.S. Constitution

No religious test shall ever be required as a qualification to any office or public trust under the United States.

Thomas Jefferson
"A Bill For the Establishment of Religious Freedom," 1777

Well aware that the opinions and beliefs of men depend not on their own will, but follow involuntarily the evidence proposed in their minds; that Almighty God had created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: **That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical: that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose power he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy of the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.**

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 shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be in infringement of natural right.

Thomas Jefferson
"A Bill For the Establishment of Religious Freedom," 1777

Summary

Argument

Divine Attitude Toward Freedom of Conscience—

- Created free and intended to remain free
- Coercion causes hypocrisy, cruelty and violates God's plan
- Change of opinion should come by reason or voluntary persuasion alone

Ruler's Attitude Toward Freedom of Conscience—

- Tend to set up own thinking as the only true way
- By imposition have sometimes maintained a favored religion

Potential Violations—

- Forcing one to give money supporting opinions and institutions in which one disbelieves
- Forcing one to give money supporting persons one does not follow
- Assuming civil rights are dependent on religious opinions
- Limiting political office to persons of particular religious opinions

Potential Consequences—

- Corrupts religion and religious leaders and believers
- Corrupts citizens' responsibilities
- Expands the governments' jurisdiction unwisely
- Expands the power of the ruler unwisely

Summary—

Truth when free to influence by persuasion will overcome error.

Proposal

- No one to be compelled to frequent or support religion
- No one to suffer because of religious opinions
- All men are to be free to profess and maintain beliefs by argument
- Religious beliefs to have no effect on the right to hold political office
- These rights are to be based not on laws but natural rights

James Madison
"A Memorial and Remonstrance," 1785 (abridged)

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the Bill,

1. Because we hold it for a fundamental and undeniable truth, "that religion or the duty which we owe our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of civil society. ... We maintain therefore that in matters of religion, no man's right is abridged by the institution of civil society and that religion is wholly exempt from its cognizance.

2. Because if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are by the creatures and viceregents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the constituents. ...

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. ...

4. Because the Bill violates that equality which ought to be the basis of every law... Above all are they to be considered as retaining an "equal title to the free exercise of religion according to the dictates of conscience." Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man. ...

5. Because the Bill implies either that the civil magistrate is a competent judge of religious truth; or that he may employ religion as an engine of civil policy. The first is an arrogant pretension falsified by the contradictory opinions of rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian religion. To say that it is, is a contradiction to the Christian religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. ...

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. ...

8. Because the establishment in question is not necessary for the support of civil government ... What influence in fact have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. ...

9. Because the proposed establishment is a departure from that generous policy, which offering an asylum to the persecuted and oppressed of every nation and religion, promised a lustre to our country, and an accession to the number of its citizens. ... Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. ... The magnanimous sufferer under this cruel scourge [Inquisition] in foreign regions, must view the Bill as a beacon on our coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his troubles.

10. Because it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish religious discord, by proscribing all differences in religious opinion. Time has at length revealed the true remedy. ...

12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first which of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. ... Instead of leveling, as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defense against the encroachments of error.

13. Because attempts to enforce by legal sanctions acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and slacken the bands of society. ...

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. ...

15. Because finally, "the equal right of every citizen to the free exercise of his religion according to the dictates of conscience" is held by the same tenure with all our other rights... . Either then, we must say, that the will of the legislature is the only measure of their authority [rights]; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred. ...We the subscribers say, that the General Assembly of this Commonwealth have no such authority. ...

James Madison
"A Memorial and Remonstrance," 1785

Summary

1. Religious liberty is an inalienable right. Religion should be based on reason and conviction, not force or violence. Consequently, every person has the right to exercise it as he or she sees fit. This right cannot be violated by the will of the majority in a society.
2. Just as a violation of conscience is wrong for society, it is also wrong for the government to violate it.
3. Violation of principle is as important as violation in practice. It is on this basis that the colonies asserted their independence.
4. Religious liberty must mean not only the free exercise of religion, but an equal freedom to those with no religious convictions.
5. The state is not to be a judge of religious truth or use religion for a political end.
6. Religion has shown historically that it flourishes without the support of the state.
7. In fact, where the state has supported religion, religion has been weaker.
8. Moreover, the state does not need the support of religion. In few cases established religions have been permanent guardians of the liberties of the people.
9. The proposed bill is a departure from the belief in religious liberty, that attracted many to America and made it an asylum to the persecuted. The bill is a beacon on the coast, warning of coming persecution.
10. Such a signal would undermine the motive for immigration.
11. Such a bill would lead to civil unrest, perhaps even to the torrents of blood spilt in Europe because religious liberty has been constricted.
12. Such a bill is adverse to the diffusion of the light of Christianity.
13. Such a bill would undermine the confidence in the authority of law.
14. Such a bill should be brought before all the people, not simply decided on by their representatives.
15. Such a bill would potentially lead to the violation of other human and civil rights.

Lesson 4

A Foreigner's View of the First Amendment



Overview

The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining social stability over time.

Historical Section

Alexis de Tocqueville on religious liberty and American democracy.

Key Facts

- The Religious Liberty clauses of the First Amendment are far more than legal guarantees — they have proved to be a decisive influence in shaping American society.
- What may be the best book ever written about America was written by a foreigner. Alexis de Tocqueville's *Democracy in America* was published in 1835, winning widespread acclaim.
- Tocqueville observed that religious liberty as defined in the U.S. Constitution contributed to the vitality of religion in America. Faith and freedom, or religious and civil liberty, are closely tied in this country.

Key Terms

Alexis de Tocqueville
Democracy in America
freedom of conscience
church/state separation
First Amendment
disestablishment

Objectives

Students can think through and explain:

1. Why observers such as Tocqueville have seen the First Amendment as unique and influential on American society as a whole.
2. The role of religion in the nation's public life as observed by Tocqueville.
3. Where things have remained the same and where they have changed in the 150 years since he wrote.
4. The essential features of Roger Williams' concept of "soul liberty."
5. How history and foreign travel can give a valuable perspective on our own society and help us to see ourselves as others see us.

The Big Idea

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining stability over time.



Many well-deserved compliments have been showered on the Religious Liberty clauses of the First Amendment. They are of course integrally linked, both logically and historically, to the other basic freedoms of the Bill of Rights. Religious liberty in the American experiment is freedom of conscience, without which there would be no freedom of speech or press. At the same time, all of the other rights enumerated in the First Amendment, freedom of speech and press and the rights of assembly and petition, support and sustain the freedom of the mind guaranteed by the Religious Liberty clauses.

Because of the importance of the Religious Liberty clauses, it is no exaggeration to describe them as "the most important political decision for religious freedom and public justice in the history of humankind." Certainly they have been widely recognized as the most daring, the most distinctive and among the most decisive parts of the entire Constitution.

But if this is true, Americans often appear the last to know it. It has been said that familiarity breeds inattention. As Rudyard Kipling said of his country, "What knows he of England who only England knows?"

This means that we often understand our own country better in comparison with other countries. That is why travel and history (comparison with other places and other times) are such useful ways of coming to an understanding of our own country. It is also why we often see ourselves best in listening to what other people say about us.

Not all foreigners, of course, understand us any better than we understand them. One reason is because America is singularly a nation built on ideas, not bloodlines. This sometimes makes it appear chaotic to many visitors.

But among the top rank of observers who have given the most penetrating and accurate pictures of America are two foreigners, one French and the other English: Alexis de Tocqueville and Lord James Bryce. Both were admirers of America. But more importantly, both gave the highest place to the uniqueness of the First Amendment and saw that understanding America's distinctive separation of church and state was vital to understanding America.

This lesson looks at the works of the framers, with a double distance: first, by looking at it through the eyes of a foreigner, Alexis de Tocqueville, and second, by looking at it 50 years after the framers' work was finished. Our aim is 1) to understand the Religious Liberty clauses and their influence on American society as a whole, and 2) to learn to see ourselves as others see us.

**"Knowing well that 'nothing human can be perfect' and that the Constitution was not a 'flawless work,' the Framers nevertheless saw the First Amendment as a 'true remedy' and the most nearly perfect solution yet devised for properly ordering the relationship of religion and the state in a free society."
— *The Williamsburg Charter***



Historical Background

Alexis de Tocqueville: A Foreigner's View of the First Amendment

It is usually considered one of the best books ever written about America and Americans and it was written by a foreigner. Alexis de Tocqueville's *Democracy in America* was published in 1835 and it won instant, almost universal acclaim, including an enthusiastic review by John Stuart Mill, the celebrated English liberal. Curiously, some of its strongest early criticisms came from America, because it was published when anti-French feelings were running high. But it was soon used as a text in American schools and it has become the source of an infinite number of quotations. Far more typical than the early criticism is Woodrow Wilson's tribute (Wilson having been a scholar before being governor and president): "Tocqueville is possibly beyond rivalry."

"Tocqueville is possibly beyond rivalry."
— Woodrow Wilson

Of course, Tocqueville was not correct in all his observations and conclusions and there have been extraordinary changes in America in the century and a half since his celebrated tour to study prisons. But his book is both a fascinating snapshot that shows us life in the 1830s as well as a yardstick that helps us measure how the young republic developed in the 50 years after the framing of the Constitution and in the 150 odd years since Tocqueville wrote.

The 25-year-old author of *Democracy in America* was one of two young Frenchmen who disembarked from the steamship *President* on May 11, 1831. They came by sailing ship on a 38-day trip from Le Havre to Rhode Island and then traveled by steamer to Manhattan, where they berthed at Cortland Street. They were on an official mission for the French government and, although they were tired, were eager to see the town before they slept.

As anyone could tell by their names, Alexis Charles Henri Clerel de Tocqueville and Gustave du Beaumont were young noblemen. But 42 years had passed since the French revolution, when Tocqueville's parents had been imprisoned and his aunt and grandfather guillotined, and neither Tocqueville nor Beaumont was in good favor with the government of the day. Tocqueville's father, Herve, was only 24 years old when released from prison, but his hair had gone completely white.

As New York's *Mercantile Advertiser* reported the next day, the two young Frenchmen had been sent by the minister of the interior "to examine the various prisons in our country, and make a report on their return to France." But the trip was actually their proposal and it was paid for by their families, not the government. For beyond their immediate project on prisons was a far more adventurous goal: They wanted to analyze the young American democracy as a backdrop to discuss proposals for the development of freedom in France. They had been delighted when granted approval of an 18-month leave of absence and a government commission to study American prisons, hoping to promote prison reform in France. They had even solicited letters of endorsement from General Lafayette, who was the grandfather of Beaumont's wife.

Nine months later, on Feb. 20, 1832, Tocqueville and Beaumont re-embarked for France, their leave having been curtailed. By then they had traveled more than 7,000 miles in the United States and Canada. In the course of their travels they had used steamer, stage coach and horseback, setting out from New York and going as far north and east as Boston, then as far west as Green Bay, Wis., and as far south as New Orleans, then north again through the Old South to Washington, D.C. (See Student Document Handout 4-B.) During that time Tocqueville had filled 14 notebooks with his observations, conducted hundreds of interviews and maintained standards of research far stricter than those of most scholars of his day.

True to their commission, Tocqueville and Beaumont returned to France and drafted a comprehensive report for their government. They had visited all the important prisons in America, investigated new practices (such as the "innovation" of solitary confinement) and interviewed prison inmates and officials. Their report was the most exhaustive study of American prisons ever. When it was finished, they felt free to tackle their analysis of democracy — their real purpose in traveling to America.

A Panorama of Democracy

Earlier, the two friends had decided to write a joint work on American democracy and the political art of self-government. But somewhere along the line, and with no rift in their life-long friendship, they chose to go in two different directions. Beaumont's contribution was *Marie*, an emotionally powerful protest in the form of a novel

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about race relations in 19th-century America. It was more emotionally moving than Tocqueville's *Democracy in America*, but it was also briefer and lacked the originality and penetration of his friend's work, which was to bring Tocqueville widespread acclaim when the first of two volumes was published in 1835.

Alexis de Tocqueville's *Democracy in America* is a wide-canvas panorama of American democracy in the Andrew Jackson era, 50 years after the Revolution. Among those he interviewed were a former president, John Quincy Adams, and the last surviving signer of the Declaration of Independence, Charles Carroll of Maryland. But the work is penetrating not simply because it is so comprehensive, but because it made such a conscious comparison with Europe in general and France in particular. Tocqueville's agenda within his native France, as he wrote to a close friend a month after the publication, was two-fold: to "diminish the ardor of the republican party" and to "abate the claims of the aristocrats."

I wished to show what a democratic people really was in our day; and by a rigorously accurate picture to produce a double effect on the men of my day. To those who fancied an ideal democracy, a brilliant and easily realized dream, I endeavored to show that they had clothed the picture in false colors ... To those for whom the democracy is synonymous with destruction, anarchy, spoliation and murder, I have tried to show that under a democratic government the fortunes and the rights of society may be respected, liberty preserved and religion honored.

Tocqueville's sense of the historic moment is especially arresting to our own generation that has witnessed such powerful stirrings toward democracy in different parts of the world. He felt that he had been born between two ages, with aristocracy already dead and democracy barely born. His mission was to explore the latter, covering in his two volumes a host of topics such as universal suffrage, the rule of law, the importance of the frontier, the position of women, our gift for "association," the likelihood of a "tyranny of the majority" and so on. But none are more important than Tocqueville's discussion of the relationship of religious liberty and American democracy. Tocqueville saw this link as unique and essential to America; his comments are significant for two reasons. First, his comparisons with France highlight how utterly distinctive America's church/state relations actually were. And second, his perspective from 40 years after the passage of the First Amendment illustrates how daring the Religious Liberty clauses were at the time of their enactment and how decisive in practice they had already become since their enactment in 1791.

Tocqueville felt that he had been born between two ages, with aristocracy already dead and democracy barely born. His mission was to explore the latter.

The United States at the start of the 21st century is very different from the country Tocqueville observed nearly two centuries earlier — particularly because of the increased number of Americans with no religious affiliation. But Tocqueville's observations are an invaluable historical witness to the decisive influence of the Religious Liberty clauses 40 years after they had been framed.

The Surprise and Its Secret

Beaumont described Tocqueville's mind as a "steam engine," forever turning and turning. Tocqueville realized that he was not only a Frenchman in America, but a Roman Catholic in a largely Protestant country, and a less than fully practicing believer in a deeply devout period of American history. (His faith had been deeply shaken when, as a 15-year-old, he had come across skeptical books in his father's library. "I believe," he said, "but I cannot practice.") He was, therefore, a somewhat detached but sympathetic observer. He saw at once that the link between religious liberty and American democracy was extremely important:

On my arrival in the United States the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there, the more I appreciated the political consequences resulting from this new state of things. In France I had almost always seen the spirit of religion and the spirit of freedom marching in opposite directions. But in America I found that they were intimately united and that they reigned in common over the same country.
[Volume 1, Chapter 17, Section 6]

Protestantism in all its varieties was, of course, overwhelmingly the majority faith in America in Tocqueville's day. Much of the religion he observed was frankly not to his taste — for example, he was repelled watching the fervent intensity of a Shaker dance in a service near Albany, N.Y. But he realized its enormous political importance and he saw that it all went back to two sources.

1. The constitutional contribution of separation of church and state: "My desire to discover the causes of this phenomenon increased from day to day," he wrote. So he set out to question members of all the different sects — especially his own fellow believers, the Roman Catholics, for

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**"[T]hey all attributed the peaceful dominion of religion in their country mainly to the separation of church and state."
— Alexis de Tocqueville**

whom America was so different from Europe. The answers both astonished and convinced him. Everyone unanimously went back to the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..."):

[T]hey all attributed the peaceful dominion of religion in their country mainly to the separation of church and state. I do not hesitate to affirm that during my stay in America I did not meet a single individual, of the clergy or the laity, who was not of the same opinion on this point. [1.17.6]

2. The religious contribution of freedom of conscience: Tocqueville did not stop at the Constitution. He was convinced that there was an affinity, or a sort of magnetic attraction, between certain political arrangements and certain views of religion and religious liberty. In America's case, he — as a Catholic — became convinced that the link was through the Protestant commitment to freedom of conscience that led naturally to democracy.

The greatest part of British America was peopled by men who, after having shaken off the authority of the Pope, acknowledged no other religious supremacy: they brought with them into the New World a form of Christianity which I cannot better describe than by styling it a democratic and republican religion. This contributed powerfully to the establishment of a republic and a democracy in public affairs. [1.17.4]

First of the Political Institutions

Having seen the importance of religious liberty and having traced it back to its sources, Tocqueville moved on to investigate how the unique relationship between religious liberty and democracy was worked out in practice. His underlying stress was always on the importance and uniqueness of the relationship. He found the character of American civilization to be the result of:

... two distinct elements, which in other places have been in frequent disagreement, but which Americans have succeeded in incorporating to some extent one with the other and combining admirably. I allude to the spirit of religion and the spirit of liberty. [1.2]

There were three main consequences that Tocqueville noted growing out of that unique relationship:

1. First of the political institutions: Ironically, Tocqueville noted, the influence of faith can be all the stronger when religion is disestablished and its influence is spiritual and indirect.

Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions. [1.17.5]

In the United States religion exercises but little influence upon ... the details of public opinion, but it directs the customs of the community, and by regulating domestic life, it regulates the state. [1.17.5]

2. Religious leaders distanced from politics: In the same way, when religion is strong and civil liberty is respected, the public role of religious leaders can be limited and indirect. He noted a feature of the 1830s that was not true 30 years earlier when Jefferson ran for the White House, and which has changed again considerably in our day. The American clergy, he wrote,

... are all in favor of civil freedom; but they do not support any particular political system. They keep aloof from parties and from public affairs. ... They made it the pride of their profession to abstain from politics. [1.17.5,6]

3. Tendency to stress common morality: Just as different faiths speak to public life in mostly indirect ways, so their main emphasis in public is a general morality rather than specific religious beliefs. Innumerable sects exist in the United States, Tocqueville wrote, and each worships in its own way. But all sects preach the same moral law.

The sects that exist in the United States are innumerable. They all differ in respect to the worship which is due to the Creator; but they all agree in respect to the duties which are due from man to man. Each sect adores the Deity in its own peculiar manner, but all sects preach the same moral law in the name of God. [1.17.4]

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Alexis de Tocqueville noted many other features of American religion, above all its strength in family life and its bias toward materialism. Listen to American preachers, he wrote. "It is often difficult to ascertain from their discourses whether the principal object of religion is to procure eternal felicity in the other world or prosperity in this." [2.28]

But Tocqueville was neither a romantic nor a cynic and he was convinced to the end that American democracy was largely the result of its unique combination of religious diversity and civil liberty.

Religion perceives that civil liberty affords a noble exercise to the facilities of man. ... Free and powerful in its own sphere, satisfied with the place reserved for it, religion never more surely establishes its empire than when it reigns in the hearts of men unsupported by aught beside its native strength.

Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom. [1.2.1]

A Snapshot and a Yardstick

Many things come into focus as we study Tocqueville's snapshot of America in the 1830s. But two are especially important for today's discussion of religious liberty in a pluralistic society. First, Tocqueville underlines for us a number of historic points:

- In America, freedom of conscience was not just a religious issue or a private issue. This deeply important national issue had a strong bearing on the shape and health of national life.
- In the 1830s the separation of church and state was almost universally welcomed by religious believers — not feared or opposed.
- A keen observer like Tocqueville understood that disestablishment, or separation of church and state, was as much a contribution of faith (protecting religious liberty from state encroachments) as it was of skepticism (protecting the federal government from the encroachments of religion).

Second, his running discussion of the differences between France and the United States over the roles of church and state illustrate how such differences affected not only religious liberty but politics and the entire way of national life. France and the United States were in many ways vitally different models of church/state relations. The differences may be summarized as follows:

	France	United States
Key years	French revolution, 1789.	American Revolution, 1776, creation of the Constitution, especially the First Amendment, 1791.
Prior Situation	State church, with total monopoly that allowed little dissent (e.g. persecution of Huguenots by Louis XIV).	No state church, so pluralism and dissent were in effect established.
Outcome	Volcanic reaction to state church as well as to <i>ancien regime</i> , with the result that faith and freedom were, and are, opposed in France ("We must strangle the last king with the guts of the last priest!").	Faith and freedom, or religious liberty and civil liberty, are closely tied in America.

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Alexis de Tocqueville's observations are echoed in the Williamsburg Charter today:

Far from being a matter of exemption, exception or even toleration, religious liberty is an inalienable right. Far from being a sub-category of free speech or a constitutional redundancy, religious liberty is distinct and foundational. Far from being simply an individual right, religious liberty is a positive social good. Far from denigrating religion as a social or political "problem," the separation of Church and State is both the saving of religion from the temptation of political power and an achievement inspired in large part by religion itself. Far from weakening religion, disestablishment has, as an historical fact, enabled it to flourish.

In light of the First Amendment, the government should stand in relation to the churches, synagogues and other communities of faith as the guarantor of freedom. In light of the First Amendment, the churches, synagogues and other communities of faith stand in relation to the government as generators of faith, and therefore contribute to the spiritual and moral foundations of democracy. Thus, the government acts as a safeguard, but not the source, of freedom for faiths, whereas the churches and synagogues act as a source, but not the safeguard, of faiths for freedom.

The Religious Liberty provisions work for each other and for the federal idea as a whole. Neither established nor excluded, neither preferred nor proscribed, each faith (whether transcendent or naturalistic) is brought into a relationship with the government so that each is separated from the state in terms of its institutions, but democratically related to the state in terms of individuals and its ideas.

The result is neither a naked public square where all religion is excluded, nor a sacred public square with any religion established or semi-established. The result, rather, is a civil public square in which citizens of all religious faiths, or none, engage one another in the continuing democratic discourse.



Teaching Strategies

You will find the following for use in this section in the Student Documents:

4-B Map: "Tocqueville's Travels in America: 1831-1832"

4-C Alexis de Tocqueville: "On the Spirit of Religion and the Spirit of Liberty"

Links

1. Think of friends or acquaintances you know from other countries. Have they shared their views on America with you, specifically opinions on the area in which you live? How does their picture of America differ from yours? How do you account for this? Outsiders can be wrong on certain points, but how is it that foreigners often see us more accurately than we see ourselves? What blinds us (or them)?
2. Does your family keep a snapshot album? Look back through the early photographs of your family. These glimpses, which capture a brief moment of time, often tell us something we did not know about ourselves and our families. Yet often, too, they may not quite match our memories. Think of Tocqueville as a photographer of our early "American" family, or as a reporter covering American life, politics and institutions in the 1830s. Which of his ideas about America strike you as new and important?

Approaches

Suggestions:

Focus: Distribute Student Document Handout 4-C to each member of the class. A simple reading of the document should follow, either by the teacher or by volunteers. Hearing Tocqueville read aloud adds to the enjoyment of his marvelously clear style. Ask the students to focus on Tocqueville's ideas on religious liberty and American democracy as they read and listen, especially as these ideas relate to the extraordinary relationship he noted between these two concepts as he visited America.

Draw out responses to this initial reading by reminding the class that Tocqueville was only 25 years old when he filled his many notebooks during the nine-month trip to the United States. Do they know someone who is 25 years old? Focus initially on a few of his direct quotations. For example, what does Tocqueville mean when he says, "Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims"?

Another strong point was Tocqueville's statement, "It must never be forgotten that religion gave birth to Anglo-American Society. In the United States religious liberty is therefore mingled with all the habits of the nation and all the feelings of patriotism, whence it derives its peculiar force." Ask your students to respond to the idea that religious liberty "mingles with all the habits of the nation," particularly as freedom of conscience mingles in their own habits.

A group effort: To look at the document in greater detail, ask groups of two or three to tackle one quotation, as assigned by you, from the document. Each group's responsibility is 1) to paraphrase the quotation in their own words, 2) to explain the quotation as they understand it, 3) to remark on its application and relevance to life in America today, and 4) to discuss any bearing the quotation has on their own lives and experiences.

Each group then reports its findings to the class. The others may be encouraged to take notes or to highlight sections of Student Document Handout 4-C as they follow the reports and subsequent discussion.

Emotive response: Following the initial reading-listening activity outlined in the first paragraph above, ask the students to draw a line down the middle of a piece of notebook paper. Label the top left column "What I Learned" and the top right "How I Responded." The idea here is to elicit two kinds of learning responses, the first being the basic "knowing" and "understanding" of Tocqueville's insights in the document. The student writes short, quick notes on the content of the quotations, as he or she understands them, in the column on the left.

Immediately to the right of these entries the student responds in the second way — what does this statement mean to me? How do I respond to the ideas expressed in this particular quotation? The student is therefore asked to fuse both the analytical and personal responses to each Tocqueville quotation. The class's personal responses may yield a rich storehouse of concrete images and experiences that the students have had when they link the Tocqueville passages to their own lives.

Follow this activity with a time of sharing and discussion, with the students drawing responses from their notebooks.

Legacy

Today the uniqueness and influence of the Religious Liberty clauses are seldom appreciated as Tocqueville appreciated them. There are many reasons why this is so: ignorance, fear of controversy and the idea that religious liberty is better covered by the free speech clause. The tendency to regard them as the special preserve of historians and lawyers is to miss their extraordinary contribution to American life and society.

The following are some of the reasons why the Religious Liberty clauses are important for Americans today:

1. America's "First Liberty"

Religious liberty must never be separated from the other basic freedoms that compose the Bill of Rights. But at the same time freedom of conscience is America's "first liberty." The Religious Liberty clauses have both a logical and historical priority in the Bill of Rights. They are logically first because freedom of conscience precedes freedom of speech; the security of all rights rests upon the recognition that they are neither given by the state

LESSON FOUR: A Foreigner's View of the First Amendment

nor can they be taken away by the state. They are historically first because history demonstrates that unless religious liberty is protected, our society's slow, painful process toward freedom would not have been possible.

2. American Distinctiveness

The Religious Liberty clauses lie close to the heart of the distinctiveness of the American experiment. In particular, they are vital to harnessing otherwise centrifugal forces such as personal liberty and social diversity. They thus sustain republican vitality while making possible a necessary measure of national concord.

3. A Pressing World Question

The Religious Liberty clauses provide the United States' most distinctive answer to one of the world's most pressing questions. They address the problem: How do we live with our deepest — that is, our religiously and ideologically intense — differences? This is especially important in a world in which bigotry, fanaticism, terrorism and the state control of religion or religious control of the state are common responses to those questions.

4. American Exceptionalism

The Religious Liberty clauses give American society a unique position in relation to both the First and Third worlds. Highly modernized like most of the First World, yet not so secularized, the American people — largely because of religious freedom — remain deeply religious, like most of the Third World. This fact, whether welcomed or regretted, is important for American diplomacy and communications as well as better human understanding.

In sum, as much if not more than any other single provision in the entire Constitution, the Religious Liberty clauses hold the key to American distinctiveness and destiny.



Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in this lesson convey their appreciation of the unique qualities of the First Amendment? Can they explain why Tocqueville and other foreigners were so impressed by America's experiment when they compared it with similar arrangements in their own countries? Can your students define and clarify the problems raised by Tocqueville, and can they draw conclusions based on their own judgments? Finally, can your students reconstruct the statements of Tocqueville in their own words and analyze his views in relation to today's context?

Historical Empathy: Do your students see and feel what inspired and influenced historical figures and the challenges they faced in their times? Can your students put themselves in the position of those who felt they were between two worlds, with the old world of aristocracy dying and the new world of democracy being born?

Civic Responsibility: Do your students recognize that the Religious Liberty clauses were written for them, too? This recognition must be a genuine individual appreciation for religious diversity and civil liberty. Do your students recognize that religious liberty is not just a religious issue or a private issue but a national issue, and do they realize that their part in the texture of faiths in our country helps to determine the nation's shared ideals? (Always remembering, of course, that the term "faiths" includes secular beliefs as well as religious.)

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and other related materials.
- **Homework:** All assigned homework.

- **Self-Evaluation:** Finish this statement with examples: “Ignorance, reluctance to discuss controversial ideas, and the idea that religious liberty is better covered by the free speech clause have created a climate in which few people my age appreciate the uniqueness of the Religious Liberty clauses of the First Amendment. In my own life this is (or is not) true as the following examples will illustrate ... ”

Student Documents

Contents:

4-A The Big Ideas: Six Major Themes of Religious Liberty, p. 64

4-B Map: “Tocqueville’s Travels in America: 1831-1832,” p. 65

4-C Alexis de Tocqueville “On the Spirit of Religion and the Spirit of Liberty,” pp. 66-68



The Big Ideas

SIX MAJOR THEMES OF RELIGIOUS LIBERTY

1. The Constitution

The Religious Liberty clauses of the First Amendment are the boldest and most successful part of the American Constitution. As history's "first new nation," America was a daring political experiment set up to guarantee religious liberty within a constitutional framework of separation of church and state that protects liberty and justice for everyone while maintaining social stability over time.

2. American Pluralism

Expanding pluralism has been a leading part of the American story. The promise and protection of freedom have attracted immigrants of all faiths from many countries and fostered a wide diversity of American-born religions. Increasing diversity has therefore presented both a contribution and a challenge to religious liberty. Religious liberty makes pluralism more likely; pluralism makes religious liberty more necessary.

3. For Better, For Worse

Due to the constitutional guarantees of religious liberty, differing faiths and worldviews have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.

4. A Murderous Century

While religion and ideology have been the most precious and potent source of meaning and belonging in human experience, so that neither human life nor world civilizations are understandable without them, they have also been responsible for spilling "rivers of blood." In the 20th century, the most murderous century in history, religion and ideology are leading causes of state repression and sectarian violence, yet have also prompted courageous stands for freedom of conscience, human dignity, peace and the preservation of life.

5. Supreme Court Decisions

Supreme Court decisions since 1940 illustrate the challenges of interpreting religious liberty in modern times. But knowledge of the Religious Liberty clauses, the Supreme Court cases and the many controversies surrounding them are not for lawyers and specialists only. The Constitution's principle of "We the People" serves to make lawyers of us all.

6. Our Challenge Today

From the birth of this nation, America's challenge has always been to live with our deepest differences. With two hundred years of population changes, resulting in unprecedented ethnic, cultural and religious diversity, we must renew our commitment to the nation's first principles embodied in the First Amendment. We must dedicate ourselves to conducting debates and resolving conflicts by practicing the three Rs of religious liberty – rights, responsibilities and respect – and in particular to living by the Golden Rule, treating others as we ourselves would like to be treated.

Tocqueville's Travels in America: 1831-1832



ALEXIS DE TOCQUEVILLE

“On the Spirit of Religion and the Spirit of Liberty”

It has been called the best book ever written about America and it was written by a foreigner. Alexis de Tocqueville's Democracy In America was published in 1835 after Tocqueville had spent nine months touring America. He was only 25 years old when he made his visit—the age of many graduate students—but his insights into American life are, in the words of Woodrow Wilson, “beyond rivalry.”

Of course, Tocqueville was not correct in all his observations and conclusions and there have been many changes in America in the more than 150 years since he wrote; but his work did capture the special relationship of religion and liberty in American life. Tocqueville described the practical outworking of the First Amendment's clauses protecting freedom of conscience 40 years after their enactment in 1791.

Separation of Church and State

On my arrival in the United States the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there, the more I perceived the great political consequences resulting from this new state of things. In France I had almost always seen the spirit of religion and the spirit of freedom marching in opposite directions. But in America I found they were intimately united and that they reigned in common over the same country. My desire to discover the causes of this phenomenon increased from day to day. In order to satisfy it I questioned the members of all the different sects; I sought especially the society of the clergy, who are the depositaries of the different creeds and are especially interested in their duration. As a member of the Roman Catholic Church, I was more particularly brought into contact with several of its priests, with whom I became intimately acquainted. To each of these men I expressed my astonishment and explained my doubts. I found that they differed upon matter of detail alone, and that they all attributed the peaceful dominion of religion in their country mainly to the separation of church and state. I do not hesitate to affirm that during my stay in America I did not meet a single individual, of the clergy or the laity, who was not of the same opinion on this point. (Volume 1, Chapter 17, Section 6)

I have said enough to put the character of Anglo-American civilization in its true light. It is the result (and this should be constantly kept in mind) of two distinct elements, which in other places have been in frequent disagreement, but which the Americans have succeeded in incorporating to some extent one with the other and combining admirably. I allude to the *spirit of religion* and the *spirit of liberty*. (1.2)

Religion and the Customs of the Community

The imagination of the Americans, even in its greatest flights, is circumspect and undecided; its impulses are checked and its works unfinished. These habits of restraint recur in political society and are singularly favorable both to the tranquility of the people and to the durability of the institutions they have established. Nature and circumstances have made

the inhabitants of the United States bold, as is sufficiently attested by the enterprising spirit with which they seek for fortune. If the mind of the Americans were free from all hindrances, they would shortly become the most daring innovators and the most persistent disputants in the world. But the revolutionists of America are obliged to profess an ostensible respect for Christian morality and equity, which does not permit them to violate wantonly the laws that oppose their designs; nor would they find it easy to surmount the scruples of their partisans even if they were able to get over their own. Hitherto no one in the United States has dared to advance the maxim that everything is permissible for the interests of society, an impious adage which seems to have been invented in an age of freedom to shelter all future tyrants. Thus, while the law permits the Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash or unjust.

Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for it it does not impart a taste for freedom, it facilitates the use of it. Indeed, it is in this same point of view that the inhabitants of the United States themselves look upon religious belief. I do not know whether all Americans have a sincere faith in their religion—but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society. (1.17.5)

I have remarked that the American clergy in general, without even excepting those who do not admit religious liberty, are all in favor of civil freedom; but they do not support any particular political system. They keep aloof from parties and from public affairs. In the United States religion exercises but little influence upon the laws and upon the details of public opinion; but it directs the customs of the community, and by regulating domestic life, it regulates the states. (1.17.5)

Religious Freedom and American Democracy

Religion perceives that civil liberty affords a noble exercise to the faculties of man and that the political world is a field prepared by the Creator for the efforts of the mind. Free and powerful in its own sphere, satisfied with the place reserved for it, religion never more surely establishes its empire than when it reigns in the hearts of men unsupported by aught beside its native strength.

Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom. (1.2.1)

Habits of the Heart

I have previously remarked that the manners of the people may be considered as one of the great general causes to which the maintenance of a democratic republic in the United States is attributable. I here use the word *customs* with the meaning which the ancients attached to the word *mores*; for I apply it not only to manners properly so called—that is, to what might be termed *the habits of the heart*—but the various notions and opinions current among men and to the mass of those ideas which constituted their character of mind. (1.17.

3)

The customs of the Americans of the United States are then, the peculiar cause which renders that people the only one of the American nations that is able to support a democratic government; and it is the influence of customs that produces the different degrees of order and prosperity which may be distinguished in the several Anglo-American democracies. Thus the effect which the geographical position of a country may have upon the democratic institutions is exaggerated in Europe. Too much importance is attributed to legislation, too little to customs. These three great causes serve, no doubt, to regulate and direct American democracy; but if they were to be classed in their proper order, I should say that physical circumstances are less efficient than the laws, and the laws infinitely less so than the customs of the people. I am convinced that the most advantageous situation and the best possible laws cannot maintain a constitution in spite of the customs of a country; while the latter may turn to some advantage the most unfavorable positions and the worst laws. The importance of customs is a common truth to which study and experience incessantly direct our attention. It may be regarded as a central point in the range of observation, and the common termination of all my inquiries. So seriously do I insist upon this head that, if I have hitherto failed in making the reader feel the important influence of the practical experience, the habits, the opinions, in short, the customs of the Americans upon the maintenance of their institutions, I have failed in the principal object of my work. (1.17.8)

Lesson 5

For Better or For Worse

Overview

The Big Idea

Due to the constitutional guarantees of religious liberty, differing faiths and world views have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.



Historical Section

William Lloyd Garrison and Charles Grandison Finney, on abolition; Jacob Henry, on religious tests for public office.

Key Facts

- The great majority of movements for reform and social justice in the United States have been inspired by one faith or another.
- One of the leaders of the radical wing of the abolitionist movement was the newspaper editor William Lloyd Garrison.
- The more moderate wing of the abolitionists was led by Charles G. Finney and other evangelical Christians.
- Article VI of the Constitution (which prohibits religious tests for federal office) is the Bill of Rights writ small yet undeservedly overlooked.
- In North Carolina, Jacob Henry's election to the Legislature in 1809 was challenged because he was Jewish. Not until 1868 were all religious tests for office revoked in North Carolina.
- While disestablishment was secured by the First Amendment in 1791, the last state church disappeared in 1833 (in Massachusetts) and the last religious test for public office only in 1968 (in New Hampshire).

Key Terms

William Lloyd Garrison
Charles G. Finney
Jacob Henry
social reform
Article VI
evangelical
abolition
Christian Amendment

Objectives

Students can think through and explain:

1. How religious liberty is linked both to the best and the worst expressions of faith in public life.
2. The vital importance for religious liberty of Article VI, Section 3 of the U.S. Constitution.

3. How different faiths have inspired and influenced a variety of movements for reform and social justice.
4. How full religious liberty for all has been won only slowly and painfully.
5. The proper and the improper uses of the controversial term “Christian America.”



The Big Idea

Due to the constitutional guarantees of religious liberty, differing faiths and worldviews have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.

There are two common misunderstandings about religious liberty in American history: First, that religious freedom is solely a matter of the freedom to worship because church/state separation makes religion a purely private affair; and second, that the “most nearly perfect” solution of the First Amendment has successfully guaranteed religious liberty for everyone in American history. In contrast to these misconceptions are the facts that religious liberty in America — while inviolably personal — has never been purely a private matter and that it has always had to be both guarded and extended. The story of faiths in America includes some of the bravest and most inspiring struggles for public reform and social justice in the nation’s history. It also includes some of the darkest and most repugnant outrages against freedom and human dignity.

There are several reasons for the confusion over the “purely private” character of faiths in America.

1. Constitutional: The First Amendment prohibits any official national church or religion, at the very least; but the separation of church and state has not meant the separation of religion from public life.
2. Institutional: The two institutions — church and state — have in effect reversed roles since the First Amendment was framed. In 1791, the churches and religious communities were widely involved in education, social welfare and shaping public opinion, while the fledgling federal government was small. Today, most of those activities have been taken over by a greatly expanded state, giving the impression that what one believes is now only a question of private preference and activity.
3. Linguistic: Several linguistic confusions promote the impression that people’s beliefs should be purely private. One example is the confusion of “public” with “governmental,” as when it is forgotten that there is a great deal of life that is public but not governmental and that religious influence is quite permissible in that life.

Freedom of conscience means that faiths are inviolably private. For some believers, private freedom is the only religious liberty they would require at any time. But this has not been the case with most believers in America. It is important to recognize the main reasons why religions in America have been able to play such a public role.

1. Constitutional basis: From Article 16 of the Virginia Declaration (1776) onward, the key concepts “no establishment” and “free exercise” have always protected the legitimate constitutional place of religious liberty in public life.
2. Philosophical basis: Many of the major faith communities in America, including Protestant, Catholic, Jewish, Mormon and Humanist, require an integration of faith and life as an article of faith itself.

Today we are living in a time of clarification as to what is the role of religious liberty in public life. This lesson, “For Better or For Worse,” aims

“It was religious zeal and the religious conscience which led to the founding of the New England colonies nearly three centuries ago — those colonies whose spirit was in such a large measure passed into the whole nation. Religion and conscience have been a constantly active force in the American commonwealth ever since; not, indeed, strong enough to avert many moral and political evils, yet at the worst times inspiring a minority with a courage and ardour by which moral and political evils have been held at bay, and in the long run generally overcome.”
— James Bryce, *The American Commonwealth*

1. To develop an understanding of the actual role played by diverse faiths in American public life and how this is a natural outcome of religious liberty as guaranteed by the Constitution and
2. To deepen a realistic appreciation of the tensions and contradictions represented by the best as well as the worst expressions of faith in public life.

Historical Background

FOR BETTER —

William Lloyd Garrison, Charles G. Finney and Abolition

In 1840 Ralph Waldo Emerson wrote to his friend Thomas Carlyle in England, “We are a little wild here with numberless projects of social reform. Not a reading man but has a draft of a new community in his waistcoat pocket.” It was the age of the “benevolent empire.” From diet and dress to the role of women and social structure itself, nothing in society was safe from the burning gaze of the early 19th century American reformers. Education, women’s rights, penal reform, peace, communitarian experiments — all were tackled with a crusading zeal inspired by religious fervor, moral urgency and a vision of human perfection.

But the cause that overshadowed all others was the abolition of slavery. Earlier, Quakers and members of Pennsylvania’s “peace churches” had been the dominant abolitionists. But in the 19th century, the groups best illustrating the powerful influence of religious liberty on public life were the Unitarians and the Evangelicals, and the two men who were a leading inspiration in the struggle for abolition were William Lloyd Garrison and Charles Grandison Finney.

In the “peculiar institution” of slavery, the United States faced its first fundamental moral encounter as a nation — massive social evil, compounded by tragedy and irony. Western nations had turned Africa into a hunting ground for slaves. The world’s “first new nation” and “workshop of liberty” had one of the largest and most cruel slave systems. (Ironically both the institution of representative government and of black servitude go back in America to the same year — 1619.) Deeply entrenched in stereotypes and social arrangements, slavery was nowhere more heavily institutionalized than in America, yet it was a great moral contradiction with the nation’s ideals. The studious avoidance of the word slavery in the Constitution was no accident. But by 1820 even Thomas Jefferson had come to be haunted by the inexpedient expediency. “This momentous question,” he announced, “like a fire bell in the night, awakened and filled me with terror.”



“This momentous question like a fire bell in the night, awakened and filled me with terror.”
— *Thomas Jefferson*

A Doubly “Divided House”

It was bad enough that revolutionary leaders such as George Washington and Thomas Jefferson had actually lived from slave labor. Far worse was the fact that clergymen and lay people of all the colonial churches — the Mennonites, Amish and the Church of the Brethren excepted — had been slaveholders and traders at one time. Every single colony had used slave labor. In the early 19th century devout Christians in the South were riding patrol, serving as constables and administering private and public punishments to slaves. Worst of all, the deep structures of slavery had been painstakingly grounded in an elaborate “scriptural argument.” Arguments from Negro inferiority, the curse of Ham, patriarchal and Mosaic sanction and alleged apostolic acceptance were stock-in-trade on behalf of its “positive good.” The pro-slavery use of the Bible was often reckoned to be more sophisticated than the direct moral appeals of the abolitionists.

Today it seems almost beyond belief that a brutal war that claimed 600,000 lives and more than a million casualties could have been baptized in piety on both sides. Yet that fact underscores the extent of the intertwining of Protestantism and American culture in the early 19th century. Some faith communities were overwhelmingly behind abolition, but Protestantism paid a heavy toll, both in terms of divided denominations (including the three largest Protestant denominations — the Methodist, the Baptist and the Presbyterian) and the severe loss of spiritual and cultural authority.

“Both read the same Bible.”
— *Abraham Lincoln, Second Inaugural, 1865*

LESSON FIVE: For Better or For Worse

By the mid-1830s, however, leaders in almost all Northern churches were beginning to argue that slavery was evil. A sharp hardening occurred on both sides, triggered by propaganda as well as economic interests and a fear of slave insurrections. But by the outbreak of the war, all the emancipation societies in the South had closed their doors. The divided denominations had shown themselves even less effective as instruments of moderation and national reconciliation than the political parties. As Sydney Ahlstrom wrote, "When the cannons roared in Charleston harbor, two divinely authorized crusades were set in motion, each of them absolutizing a given social and political order. The pulpits resounded with a vehemence and absence of restraint never equaled in American history."

God's Goads

**"Men never do evil so completely and cheerfully as when they do it from religious conviction."
— Blaise Pascal, *Pensees***

On the anti-slavery side, there were several kinds of abolitionists. The movement was itself a "house divided." One leading group was the "radical" wing led by William Lloyd Garrison (1805-1879). As a son of an alcoholic sea captain who abandoned his family, Garrison's childhood was filled with hardship. He then spent many uncertain years as a printer's apprentice and editor. His mother, Fanny, had been expelled from her Episcopalian father's home for conversion to strict Baptist evangelicalism and, like her, Garrison was consumed by the doctrine of Christian perfectionism, which brooked no compromise with evil. Garrison was running a little Baptist temperance journal when he was converted to the anti-slavery cause in 1829. He was a born writer and speaker. Jailed for libel, he returned to Boston on his release and founded what became the flagship of radical abolitionism: *The Liberator*. In its very first issue (Jan. 1, 1831) [See Student Document Handout 5-A] he took the stand that was to make him both famous and infamous.

"I will be as harsh as truth, and as uncompromising as justice. On this subject I do not wish to think, or speak, or write, with moderation. I am in earnest — I will not equivocate — I will not excuse — I will not retreat a single inch — AND I WILL BE HEARD."

Opinion is divided over the eventual influence of the radical reformers. Garrison used denunciation as his chief weapon and had a genius for infuriating his opponents. His deliberate aim was to make the slaveholder as odious as slavery. His campaign was an attack upon personal character. He was never a supporter of the repatriation of slaves to Africa, nor even of political action, but was out to transform the character and will of Americans. As he grew in his scorn for "gradualism," which he called emancipation "between now and never," he also shifted toward Unitarianism and developed views then considered radically anti-clerical and pacifist. In 1843, he joined those who demanded Northern secession on grounds that the Constitution was a compact with evil.

Pro-slavery critics in the South depicted Garrison and his fellow radical abolitionists as blood-thirsty agitators, responsible for the increasing intensity of slave revolts in the West Indies and America. Nat Turner's revolt occurred only eight months after Garrison's first editorial. One of Turner's lieutenants was allegedly inflamed by a pamphlet, "the tone of which was unmistakable," sent to the South from Boston. Feeling ran high against the abolitionists even in the North. On Aug. 3, 1835, Boston's elite crowded into Faneuil Hall to pass resolutions denouncing them. Garrison and his fellow agitators were accused of "wishing to scatter among our Southern brethren firebrands, arrows, and death, and of attempting to force abolition by appeals to the terror of the masters and the passions of the slaves."

Some historians have charged that the radical abolitionists' absolutism, self-righteousness, humorlessness and astounding lack of charity, even to fellow abolitionists, were both hypocritical and counter-productive. Hatred of the South, the critics said of them, had supplanted love for the Negro. One historian wrote of Garrison that "he did far more than any other man to heighten Southern opposition to emancipation." Another concluded that, "While disdaining the muck of politics, the transcendentalist agitators thereafter threw muck by the wheelbarrow at all who did not occupy their 'lofty ground.' "

Garrison's supporters, on the other hand, from Harriet Martineau onward, have argued that the evil he opposed more than justified the rhetoric he used. As one wrote, "In the Peaceable Kingdom, the lamb and the lion may lie down together; but in the history of human repression, the ox and its driver seldom have." Moreover, the strategic effect of radicalism was to draw the fire of the apologists of slavery and thus push the debate beyond its earlier limits.

Besides, far from being the bloodthirsty agitator of Southern rhetoric, Garrison was resolute in his commitments to equality for all (including freedom for women) and to pacifism. He practiced the principle of non-retaliation repeatedly, even at the risk of his own life. One time, in 1835, he was stripped, beaten and dragged by

a mob across Boston Common with a hangman's noose around his neck — only to get back up, rush back to his desk and pen another of the flaming editorials that had almost secured his lynching.

At the very least, Garrison is a prominent protagonist of the vital stream of American reform that is radical in both religious and social vision. He was one of “God’s goads” to the American conscience, even if greatly in advance of his time. Those who have traced the influence of Garrison’s non-violent direct action from Adin Ballou’s *Christian Non-Resistance* (published in 1846 by Garrison’s friend, a universalist and fellow-radical) to Tolstoy, Gandhi and Martin Luther King would go further. Paradoxically, they claim, the man said to have been more inflammatory in his own time than any other is the one who should be credited with extending non-violent action for human rights around the world.

Moderates, but not Mild

The other leading abolitionist group was the “moderate” wing led by Charles Grandison Finney and certain prominent evangelicals. No less aggressive in their opposition to slavery, they were quite different in their basis and style. They were deeply aware of being caught between the conflicting pulls of “immediatism” and “gradualism.” The pro-slavery church called for “peace” when there was none and the other cried “war” but refused to fight when war came. For this reason, some have drawn links between the evangelicals and Lincoln’s enigmatic stand. But the difference of the evangelical approach from the radical abolitionists grew from two things:

1. They had been influenced by the approach of British evangelical abolitionists such as William Wilberforce, who were more committed than the radical abolitionists to persuasion and political action. And
2. Their roots were deeply in orthodox Christian convictions, whose stress on sin required that one must always love the sinner even while attacking such sins as slavery.

Charles Grandison Finney was born in 1792 and, after a conventional youth, underwent a deep conversion experience in the fall of 1821. Commissioned as an itinerant home missionary in western New York state, he rejected Old School Calvinism and the idea of election, adopted Methodist theology and certain “new measures” of evangelism (such as protracted meetings, use of women speakers and an “anxious seat”) and became the premier evangelist and leader of “revivals” in the 30 years after 1823.

Finney was tall and graceful, with a clear voice and blazing eyes. When he spoke, his direct approach and blunt language were perfectly attuned to the populist climate of the Jacksonian era. Moving to New York City, where he became the pastor of Broadway Tabernacle, his speaking took him across the country and to Europe. However, the last 40 years of his life he centered his activities in Oberlin College in northern Ohio, the largest theological seminary in the nation. Oberlin was the first college to admit black students and in 1850 it also became the first to grant theological degrees to women. Under Finney’s influence, it became the radiating center of the evangelical abolition movement. A group of mature students gathered around Finney and used his religious ideas as the basis for attacking all kinds of social evil.

Because of his extraordinary appeal as an evangelist, Finney probably inspired more converts to the cause of abolition than any other leader. The most prominent of these was Theodore Dwight Weld, who was said to have all the gifts of organization and grace that Garrison lacked and to be as “eloquent as an angel and powerful as thunder.” Other celebrated evangelicals included the New York businessmen, Arthur and Lewis Tappan, founders of what has since become the firm Dun and Bradstreet, and Harriet Beecher Stowe, the author of *Uncle Tom’s Cabin*.

Together the evangelical abolitionists awakened the nation’s conscience and carried the brunt of the religious attack on slavery. They paid a tremendous cost, as did the radicals. Being an abolitionist in Boston, Philadelphia or Cincinnati meant courting social ostracism, business ruin and even physical assault.

Opponents tried to isolate Finney by intense criticism, but in the decades before the Civil War he with his students and followers traveled all over the states of the Northeast. They also influenced the slaveholding South, but for an opposite reason. There, Christian abolitionists provoked a storm of reaction. On the surface, that reaction seemed to solidify support for slavery (as the more radical abolitionists had), but because of Finney’s moral arguments, he provoked a crisis of conscience in the mind of Southerners at deeper levels. People became aware of the great moral impasse between Christian and democratic ideals and the practice of enslaving human beings.

“Both North and South have been guilty before God; and the Christian church has a heavy account to answer. Not by combining together, to protect injustice and cruelty, and making a common capital of sin, is this Union to be saved, — but by repentance, justice and mercy; for, not surer is the eternal law by which the millstone sinks in the ocean, than that stronger law, by which injustice and cruelty shall bring on nations the wrath of Almighty God!” — Harriet Beecher Stowe, *Uncle Tom’s Cabin*

LESSON FIVE: For Better or For Worse

An example of Finney's position and style can be seen in a lecture he delivered to the Oberlin community in 1838, actually a sermon. That year, he was moving decisively to enlarge his absorption of John Wesley's ideas of Christian perfection, a doctrine that Methodist preachers were at that time spreading throughout the nation — North, South, East and West. Central to that doctrine, as Finney pointed out, was the commandment of both Moses and Jesus that God expects us to love him with all of our heart and soul and strength and to love our neighbors as ourselves. This love, Finney said, meant much more than emotional attachment. "By the heart I mean the will," he wrote; "Emotions, or what are generally termed feelings ... do not govern the conduct. ... It is, therefore, of course, the love of the heart or the will that God requires." Then he came to his climatic point [See Student Document Handout 5-B]:

... 7. You see why there is so little conviction among men, both in and out of the church. It is because they judge themselves by a false standard. If they live in conformity with human laws and keep up the morality of public sentiment, they feel in a great measure secure. But be assured that God will judge you by another standard.

8. In the light of this law [God's], how perfectly obvious is it that slavery is from hell. Is it possible that we are to be told that slavery is a divine institution? What! Such a barefaced, shameless, and palpable violation of the law of God authorized by God himself? And even religious teachers, gravely contending that the Bible sanctions this hell-begotten system?

'O shame, where is thy blush?' What! Make a man a slave, set aside his moral agency, treat him as a mere piece of property, 'Chain him-and task him, And exact his sweat, with stripes That Mercy, with a bleeding heart, weeps When she sees inflicted on a beast' and then contend that this is in keeping with the law of God which, on pain of death, requires that every man should love his neighbor as himself! This is certainly, to my mind, one of the most monstrous and ridiculous assertions ever made. It is no wonder that slaveholders are opposed to the discussion of this subject. It cannot bear the light; it retires from the gaze and inspection and reprobation of the law of God, as darkness retires before the light. ...

Revival and Reform

The general reforming impulse in America can be traced to three chief sources — Puritanism, Enlightenment rationalism and the ideals of the American Revolution, which are themselves a combination of the other two. But Charles Finney and other revivalist reformers in the early 19th century owed more to four things: 1) John Wesley, George Whitefield and the colonial revivals, 2) the impetus toward reform given by expectations of the imminent return of Jesus Christ, 3) the newly developing doctrine of Christian perfection (a belief in the possibility of God freeing human beings from the power of sin and evil), and 4) the precedent of British evangelicals in using specialized agencies of reform. William Wilberforce was a member of 69 such organizations. In a day when preaching was still as influential as the press, revivalists emphasized that to repent of sin required renouncing acts of evil that were social as well as individual — not just alcoholic beverages and dishonesty, but oppression of all sorts, including slavery, land-speculation, male domination of womanhood and the neglect of education. Since selfishness was the heart of sin, they believed, to be freed from sin was to be freed for "disinterested benevolence."

Oberlin and the Underground Railroad

During the period before the Civil War, the Underground Railroad was a secret organization designed to aid the escape of runaway slaves. Though it wasn't a railroad with engines, cars, passengers, conductors and depots, the organizers used railroad language. Operators were called "conductors" or "agents" and the slaves who were moved between "stations" were called "passengers." Oberlin College was one of its important stations.

All who participated in the underground railroad were in danger — they could be fined or imprisoned if caught. The runaway slaves were punished cruelly when they were returned to slavery. The slaves were moved at night, often by foot. During the day they were hidden in homes, stores, caves and barns. The slaves were often disguised with wigs, mustaches, veils and talcum powder to make them appear white.

Because of their danger and to ensure secrecy, most of the workers on the railroad knew only about their small part. It freed at least 1,000 slaves a year. Many others made the journey with only the North Star as their guide.

Many blacks participated as conductors. The most famous was Harriet Tubman, who, after making her own escape in 1849, returned to the South 19 times on dangerous missions to lead other slaves to freedom. Because of these missions, she earned the nickname “Moses.”

The contribution of Garrison, Finney and the other religiously inspired abolitionists in the years before the Civil War underscores a number of lessons regarding religious liberty and public life:

First, a leading theme of both this period and of American history is generally incomprehensible if the links between religion, religious liberty and social reform are overlooked.

Second, there is a directly observable tie, made all the more pronounced in the Jacksonian “era of the common man,” between religious liberty and volunteerism. The moral and voluntary influence of all faiths was greater because of the legal separation of church and state.

Third, the tragedy of the Civil War and the failure of Reconstruction illustrate the need for responsibility in introducing religious issues into public life. The Civil War was in large part a moral war, but not because one side was good and the other bad. It was moral because there would have been no war without slavery and the moral condemnation of slavery. But equally, both the conflict itself and the failure of reconstruction afterward might have been handled differently if slavery had not been condemned in the strident manner it sometimes was. As Harriet Beecher Stowe wrote, “Is there but one true anti-slavery church and all the rest infidels?”

FOR WORSE —

Sleeping Thunder In North Carolina

Jacob Henry and Religious Tests for Public Office

“These men loved religious liberty so much that they desired to keep it all for themselves.” This old jibe about the Puritans hits the mark, but its punch reaches further than the original target. Religious liberty is far more than a matter of conscience and individual rights. It is about consistency too, for it is a universal right that carries with it a universal responsibility to respect that right for everyone else. Like all freedoms, freedom of conscience is indivisible. If it is for anyone fully, it is for everyone freely — for Catholics as well as Protestants, for Jews, Mormons, Buddhists, Muslims, for atheists and agnostics as much as religious believers.

The trouble is, such assertions trip off the tongue too lightly. Recite them fast and we forget the long, hard struggle by which they were won. The fact is that the enactment of the Article VI in 1787 and the Religious Liberty clauses in 1791 no more won instant, complete religious liberty for minorities such as the Jews than the passing of the Bill of Rights won civil rights for blacks. Just as with civil rights, what was true for most Americans had to be secured for slaves and their descendants. So too with religious liberty: What could be taken for granted early on by the Protestant community had to be secured painstakingly by citizens of other faiths and life stances — especially those who were in a minority or whose faith was unpopular.

Article VI of the U.S. Constitution states: No religious test shall ever be required as a qualification to any office or public trust under the United States. It was a revolutionary step itself, and made all the clearer by the fact that the states did not immediately follow suit. Something of its radical significance 200 years ago can be gauged by the fact that Article VI of the Soviet Constitution (renounced in February 1990) granted power only to the Communist Party, the Soviet equivalent of an established church.

Viewed from the overall perspective of the two centuries since the passage of the Bill of Rights, two principal obstacles have prevented the achievement of religious liberty for all: nativism and legally grounded discrimination, our focus of concern here. It is important to note that the ratification of the Constitution and

The moral and voluntary influence of all faiths was greater because of the legal separation of church and state.

“But how is it possible to exclude any set of men without taking away the principle of religious freedom, which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the work. The people in power were always in the right and everybody else wrong. If you admit the least difference, the door to persecution is opened.”

— John Iredell, North Carolina, 1788

LESSON FIVE: For Better or For Worse

“Those who have long enjoyed such privileges as we enjoy forget in time that men have died to win them.”

**— Franklin D. Roosevelt,
Bill of Rights Day,
December 15, 1941**

the enactment of the Bill of Rights set a decisive example for four states. Between 1789 and 1792, Delaware, Georgia, Pennsylvania and South Carolina all followed the lead of Virginia and the federal government. South Carolina and Georgia struck down all religious restrictions on holding office. Delaware gave up its requirement of a Trinitarian oath. Pennsylvania allowed Jews to hold office by removing its references to the New Testament, but continued to bar atheists.

Other states, however, did not change. The story of the triumph over legal discrimination was completed only in 1968 when New Hampshire approved the deletion of religious restrictions just 19 years before the bicentennial of the Constitution. Each of the recalcitrant states — Connecticut, Maryland, Massachusetts, New Hampshire, New York and North Carolina — had their own distinct character and therefore their local reasons for the inconsistencies and delay.

The original 13 states made their own impact for better or worse as they entered the union. Kentucky, for example, was soon influenced by Virginia and followed its liberal precedent. Tennessee, on the other hand, had strong Presbyterian roots linking it to North Carolina. It therefore followed the example of the latter and maintained an outright contradiction between its proposed bill of rights in the 1790s (“No religious test shall ever be required as a qualification to any office of public trust under this state”) and its proposed constitution (“No person who publicly denies the being of a God, and future rewards and punishments, or the divine authority of the old and new testaments, shall hold any office in the civil department of this state”).

The bitter fruit of such legal inconsistencies was a reinforcement of prejudice that went hand in hand with nativism. But the inconsistencies were rooted elsewhere, in a premise deeply held by many who were not themselves prejudiced or unreflective: that no human society could be strong, good or lasting without a basis in an official national religion. In a balder version, the Know-Nothing party platform stated that Protestant Christianity was “an element of our political system.” What this long-held conviction overlooked was the uniqueness and daring of Article VI and the Religious Liberty clauses in separating church and state. The Williamsburg Charter declares,

“The Founders knew well that the republic they established represented an audacious gamble against long historical odds. This form of government depends upon ultimate beliefs, for otherwise we have no right to the rights by which it thrives, yet rejects any official formulation of them. The republic will therefore always remain an ‘undecided experiment’ that stands or falls by the dynamism of its non-established faiths.”

1. Disestablishment by Inches

The struggle for religious liberty and freedom of conscience has extended to rooting out any discrimination on the basis of religion that had the sanction of law or policy — whether a marriage law in Georgia, an incorporation law in the District of Columbia or a law of evidence in Maryland. But there have been three main legal barriers to complete equality of religious freedom under law, two of which will be covered only in summary. Our focus of concern is the third. The first barrier was the persistence of established churches in various states. Curiously, the American revolutionary period initiated a wholesale re-ordering of church-state relationships while simultaneously enhancing the role of religion in American public life. One reason was that church-state separation was born simultaneously of both faith and skepticism, and not just one or the other. The first source is exemplified by the influence of Roger Williams and Isaac Backus and the second by Thomas Paine.

There is no question, however, that the re-ordering pivoted on the perceived anomaly between the remaining state establishments and the new federal prohibition of establishment. The most decisive act of disestablishment was passed in Virginia in 1786. Only in Massachusetts, Connecticut and New Hampshire were the old colonial establishments continued. Eventually Connecticut disestablished its state church (Congregationalism) in 1818, followed by New Hampshire in 1819 and Massachusetts in 1833.

2. Christ in the Constitution?

The second barrier to religious liberty for all (or, more accurately, a threatened but never completed barrier) was the Christian Amendment movement. This centered on the attempt to amend the Constitution so that it would contain a specific, explicit reference to Jesus Christ as “supreme king” and the Bible as “supreme law” in America. The idea went back to the debates surrounding the ratification of the Constitution, when the omission of explicit references to God was variously attacked as “the sinful omission,” a “capital defect,” “a degree of ingratitude, perhaps without parallel” and “a national evil of great magnitude.” Periodic laments such as these

did not unduly trouble members of the various Christian denominations until after the Civil War. There emerged a small Protestant movement to define America officially as Christian and put “Christ into the Constitution.” The movement led to the creation of the inter-denominational National Reform Association in 1863, chiefly sponsored by a small Presbyterian group and its organ, *The Christian Statesman*.

Despite an initial surge of support, the movement eventually went nowhere. In 1874, the House Judiciary Committee considered and rejected the proposed amendment because it was incompatible with the intent of the framers (whose concern, said the committee, was for believers of all kinds, “whether Christian or pagan”). Like the state churches, the concept of the Christian Amendment was an anomaly that flew in the face of American pluralism and the distinctive American separation of church and state. As the 19th century closed, the movement faded further, its numbers dwindling and its goals becoming even less realistic.

The issue is not likely to rear its head again in its original form. But while it has always been defeated on legal grounds, it has still been sustained by recurring small waves of popular sentiment. Today it bears on current debate due to confusion over the emotionally charged term “Christian America.” Most Americans would surely agree that the label is understandable if it is used to refer to 1) the historical fact that the republic’s roots were primarily (though not exclusively) Christian, or 2) the statistical fact that the Christian faith has been the faith for most Americans in most periods. But it is neither constitutionally justifiable nor historically accurate to use the term “Christian America” to 3) assert or imply any official national establishment or partial establishment of the Christian faith. It was in this sense that President John Adams signed a treaty with (Muslim) Tripoli in 1797 that declared that “the Government of the United States is not, in any sense, founded on the Christian religion”

“As the government of the United States is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion or tranquility of Musselmen ... it is declared ... that no pretext arising from religious opinion shall ever produce an interruption of the harmony existing between the two countries.”

— John Adams, *Treaty with Tripoli*, 1797

3. The Bill of Rights Writ Small

The third and the most powerful and enduring barrier to the achievement of religious liberty for all was the persistence of religious tests for public office at the state level, a holdover from the European experience. Even where it was impossible to preserve the privileged status of established churches, it seemed possible and wise, many thought, to recognize the superior rights of Protestants, or at least Christians, at the state level. In time, Baptists, Unitarians and Catholics were recognized, but many thought for a long time that to accord recognition to “Jews, Turks and infidels” was going too far.

In the early days of the Continental Congress, John Adams had expressed the hope that “Congress will never meddle with religion further than to say their own prayers, and to fast and to give thanks once a year.” At the Constitutional Convention in Philadelphia, Charles Pinckney of South Carolina had tried to make the absence of prayer specific and explicit. His proposed provisions were eventually to reappear, almost without change, in the Bill of Rights, but they were turned down at the Convention because they seemed unnecessary.

The reason was that the framers believed overwhelmingly that Article VI was all that was needed: “No religious test shall ever be required as a qualification to any office or public trust under the United States.” Even Joseph Story, a 19th-century professor of law and Supreme Court Justice who opposed the separation of church and state, recognized that Article VI had “a higher object: to cut off forever every pretense of any alliance between church and state in the national government.”

“No religious test shall ever be required as a qualification to any office or public trust under the United States.”

— The U.S. Constitution, Article VI

Dismantling the varied religious tests for office was a slow, checkered process which was completed by the 19th century in all but eight states. In Maryland, for example, the contradiction between the state and federal constitutions became immediately apparent when Thomas Jefferson appointed a Jew, Reuben Etting, to the position of U.S. marshal for Maryland. (Under state law no Jew could serve in any office, or be commissioned in the state militia or become a lawyer.) A bill was repeatedly brought to vote over more than a quarter of a century, but was repeatedly defeated until it finally passed in January 1826. Its eventual champion was Thomas Kennedy, a devout Scottish Presbyterian. For his pains, he was labelled “an enemy of Christianity,” “Judas Iscariot,” “one half Jew and the other half not a Christian.” He was also defeated in the next election, as were 24 of the other 40 supporters of the bill.

“If there was only one — to that one, we ought to do justice.”

— Thomas Kennedy, *Maryland Legislator*, 1826

Fortunately, Kennedy’s principles were as clear as his courage was strong. There was no political advantage in his stand because there were no Jews in his district and few in Maryland. Nevertheless, he declared to the Assembly that: “If there was only one — to that one, we ought to do justice.” He was also an amateur poet. In a poem entitled “To the Children of Israel in Baltimore,” he promised better days:

LESSON FIVE: For Better or For Worse

*Your suffering and your persecution tends
To increase the zeal and number of your friends,
They will increase until your feeble foes
Your claims to justice shall no more oppose.*

Elsewhere, the heroes in the struggle were more often the Jews themselves. This was the case in North Carolina which was the next to the last of the original 13 states to grant full political equality to Jews. Despite all the appeals to remove the restrictive provisions of the state's Constitution, written in 1776, the law went unchanged for nearly a century. Originally, the concern was only theoretical, as no Jews resided permanently in North Carolina. But slowly, as small numbers drifted into the state following the Revolution it became practical. One such was Jacob Henry whose stand was an important milestone on the road to freedom.

North Carolina was part of a grant made by Charles II. Its original constitution had been drawn up by John Locke, the eminent philosopher and apostle of toleration. Early in the 18th century, however, the Episcopal Church became the established church. There was, therefore, religious toleration of dissenters but not religious liberty in the broadest sense. All citizens were required to pay toward the support of the Anglican Church. Even the King's representative, Governor Tryon, admitted that "by many of the inhabitants, the Establishment was regarded as even more oppressive than the Stamp Act."

"That no person who shall deny the being of God or the truth of the Protestant religion or the Divine Authority, either of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office or place of trust or profit in the Civil Department within this state."

— The North Carolina Constitution, Article 32, 1776

When the dissenters won and disestablishment was completed, they took as decided a stand against Roman Catholics, Jews and others as had been taken against themselves. Thus, when the state constitution was discussed in December 1776, Article 32 (framed by a Presbyterian, the Reverend David Caldwell) read: "That no person who shall deny the being of God or the truth of the Protestant religion or the Divine Authority, either of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office or place of trust or profit in the Civil Department within this state."

Article 32 is a sweeping prohibition. It excludes Jews, Quakers, Muslims, deists and others, though it was aimed primarily at Roman Catholics. To be fair, Governor Johnston and other leading sons of North Carolina spoke courageously against the restriction, but they were defeated. Later, in 1787, Madison reported that North Carolina was the one state to vote against Article VI. Fueled by pamphleteering, popular excitement was running high. Someone pointed out in all seriousness that, should the federal Constitution be adopted, the Pope could be elected President. Liberality, said the Reverend David Caldwell, was "an invitation for Jews and Pagans of every kind to come among us."

Despite all this prejudice, Article 32 seemed to be fading into irrelevance as the years passed. Both Catholics and Jews were elected to the Legislature and one Catholic, Thomas Burke, was even elected Governor in 1781. It was therefore something of a surprise when Jacob Henry's election to the Legislature was challenged in 1809 because he was Jewish.

Henry was about 60 years old at the time. He was born and raised in Carteret County and had actually been elected a member for the county in 1808 and then re-elected in 1809. Only then did a spiteful fellow-member, Hugh C. Mills, a Republican from Rockingham County, ask to have Henry's Federalist seat declared vacant on the ground that he "denies the divine authority of the New Testament, and refused to take the oath prescribed by law for his qualification."

"The persecuted Pilgrims of Massachusetts were such zealous lovers of civil and religious freedom that they would fain keep it all to themselves."

— William Gaston, Legislator, North Carolina

Henry was popular outside the House. He also had strong friends within, including two prominent Roman Catholics who were vulnerable to the same charge. One of them, Hon. William Gaston, delivered a stinging rebuke to both the Puritans and his immediate foes in one blow, "The persecuted Pilgrims of Massachusetts were such zealous lovers of civil and religious freedom that they would fain keep it all to themselves." Gaston's own loophole over Article 32 was semantic: He did not "deny" the truth of Protestantism. He simply did not "affirm" it.

Mills' attack came without warning and overnight Henry composed an address that was both principled and eloquent, ending with a moving appeal to the Golden Rule. He said in concluding,

I do not seek to make converts to my faith, ... nor do I exclude anyone from my esteem or friendship, because he and I differ in that respect. The same charity, therefore, it is not unreasonable to expect, will be extended to myself, because in all things that relate to the state and to the duties of civil life I am bound by the same obligations with my fellow-citizens, nor does any man subscribe more sincerely than myself to the maxim, 'Whatever ye would that men should do unto you, do ye so even unto them, for such is the law and the prophets.' [See Student Document Handout 5-C.]

The speech was called a minor masterpiece and was subsequently reprinted in a widely read work called *American Orator*. It made a profound impression outside North Carolina. In both 1818 and 1824 it was cited in debates on Maryland's bill.

Jacob Henry prevailed on that day and was allowed to stay on, though his victory was only personal and rather hollow. Commitment to Article 32 was actually reinforced. In a far-fetched interpretation, the legislators solemnly reaffirmed the religious restriction, but argued that the words "civil department of the state" did not apply to Henry as legislator. Years later, in 1835, the issue came to a head again at a constitutional convention. Impassioned speeches were made on behalf of religious liberty, but the Anti-Liberal party still held firm. Article 32 should be held in reserve, James S. Smith, one of its leaders, argued. He was "not willing by expunging this article to let in Turks, Hindoos, and Jews. They might call him a bigot as much as they pleased, but he would not consent to this." Article 32 should be retained, as "sleeping thunder."

The inconsistencies of Article 32 were pointed out by many. Religious testing, for example, cannot bar the dishonest. It reinforces insincerity because, to pass muster, one must be either a saint approved by law or a hypocrite.

But Jewish emancipation in North Carolina was not accomplished until after the Civil War, at the constitutional convention of 1868. And not until 1961 (in *Torcaso v. Watkins*) did the Supreme Court make the ban on religious tests decisive for non-believers too. Strangely enough, when political equality did come for the Jews, there was little debate. Nearly a century after Article VI of the federal Constitution was passed, though, a full century before New Hampshire acted, North Carolina's "sleeping thunder" was taken out of reserve and scrapped. An instrument of discrimination had gone forever.

With the hindsight of history, a number of lessons can be drawn from the struggle to overcome religious tests for political office:

- At its heart, all unjust discrimination in law grows from a profound inconsistency in principle. As Judge Levi Woodbury argued in the face of xenophobic nativism in New Hampshire in 1850, "In the bill of rights you pledge to all sects equality, but afterward by this [religious] test you make all but Protestants unequal. You promise entire freedom of conscience to all and treat it as so high a privilege as not to be in any way inalienable, and yet you leave other than Protestants defenseless by disenfranchising them from filling offices."
- Today, there are no religious restrictions left in law in any state, but it is worth noting that there are persisting but milder forms of each of the three barriers: Fears of a "semi-establishment" replacing those of an establishment (for example, in schools), fears of their idea of "Christian America" being replaced, and frustrations over a subtler form of religious testing affecting public debate. An example of the latter is what Saul Bellow describes as a prevalent type of modern reductionism — "Tell me where you're coming from and I'll tell you what you are." If we recognize a person's faith commitment (for instance, if he or she is a "fundamentalist" or a "humanist") we sometimes end in judging everything on our favorable or unfavorable reaction to his or her religion or lack of one.
- The last lesson is that the acid test of inalienable rights is not a nation's rhetoric or even its laws, but its behavior toward those furthest from the sources of power. The Williamsburg Charter sets out this searching test of religious liberty: "A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities."



Teaching Strategies

Note: This lesson is on the “for better, for worse” consequences of leaving diverse faiths free to enter public life. It contains enough material for two separate lessons on the same Big Idea, one covering the positive and the other the negative.

You will find the following for use in this section in the Student Documents:

5-A William Lloyd Garrison in *The Liberator* [note also facsimile]

5-B Charles G. Finney, “Excerpt from Lecture 6: The Law of God”

5-C Jacob Henry’s Speech to the North Carolina Legislature, 1809

Links

1. When it comes to religious liberty, every era contains examples of both moral courage and appalling prejudice. This lesson examines cases of each that shed light on the benefits and challenges of religious liberty.
2. Religion in public life is often perceived as controversial, as captured in the old adage, “Don’t talk about sex, religion or politics in public.” Today we talk about all three. An important requirement for such openness is a recognition of the best and the worst of such involvement in the past.

Approaches

Introduce the subject to your students as material for separate lessons, but at the conclusion of the “for worse” section there should be an opportunity to compare and contrast the “for better” and the “for worse” sections.

Suggestions:

FOR BETTER

Analysis: Two styles: discuss beforehand how style of delivery or tone, the manner in which someone pleads his or her case in speaking or writing, creates different responses in the listener or reader. Draw out practical examples of this in your own classroom, community and state. Ask the students to discuss from personal experience how they have reacted to different styles of speaking as seen on television, or rhetorical modes used in magazine or newspaper articles, and the reasons for these responses.

Next, use Student Document Handouts 5-A and 5-B, both statements made against slavery by two different abolitionists, to conduct the following:

1. Determine the motivation of each writer. Why is each man writing? The students will see that both have basically the same motivations, although there may be minor differences. Draw out several responses on the motivations, as this will focus the discussion on the content of the two documents.
2. Ask the students to look at the two styles closely. How do they personally react to the difference in the styles of each man? What are the positive and negative attributes of each? Which style do they personally prefer? Is one more effective than the other? Why? What are the consequences of using a particular style in setting forth an argument on a particular issue? In other words, how does the issue change for those receiving the arguments by the particular style used? You may wish to speculate on this issue. What do you think were the responses of those listening to the arguments of Garrison and Finney? Which man may have been more effective in those times?

3. What are the applications today? What can we learn from Garrison's and Finney's contrast in styles? Carry the discussion forward to the arena of public debate today. Ask the students to reflect on the public conflicts which rage over deeply felt religious convictions of one kind or another (abortion, creationism in science texts and so on). How are we influenced by the manner in which these adversarial lines are drawn? How does the manner in which a person conveys a deeply held conviction color our perception not only of the issue but also of the group he or she represents?

Roles: Divide the class into two groups. One half of the class will take the role of the oppressed slaves, while the other half will take the role of the reformers. Give students enough information from the Big Idea and Historical Background to understand how to assume these roles. Everyone on one side of the room, for example, will assume the role of William Lloyd Garrison or Charles G. Finney, while everyone on the opposite side will assume the role of the slaves.

1. Start the activity with the general introduction to the section, giving the students the historical background they need to complete the assignment.
2. Ask one student from the abolitionist team to stand and read the Garrison or Finney document to the other side of the class. He or she should do this with flair and feeling, as though he or she were actually the reformer.
3. Ask the members of the group for whom the speech was given to write immediately a short reaction. They are slaves in the midst of a monumental national struggle. After four or five minutes, some of these reactions should be shared with the class as a whole.
4. While the "slaves" are completing their writing, the "reformers" are completing their own essay which shows how they feel about the positive action they are taking. Their short pieces should reflect on the motives for such an action. They should imagine why abolitionists did what they did.

Conclude this phase of the activity with a short question: What did the students learn about the positive effects of our constitutionally guaranteed freedom to enter the public square with proposals inspired and shaped by one faith or another? How does religious liberty result in a more vital democratic society for everyone, regardless of the differences in faith?

Discussion: Use the following questions to shed light on the issues in the passage.

1. Finney refers to "this law." What does he mean and how is it perfectly obvious from this law that "slavery is from hell"?
2. Finney attacks those who said that slavery is a "divine institution." Who were they? How do you think they might have made their arguments?
3. What are Finney's moral and theological objections to slavery that you can find in this passage?
4. If an evil (such as slavery) is absolutely wrong, does it matter how we oppose it? Do you agree with the view that moderation is weak, or, alternately, with the view that absolutism is counterproductive?
5. Finney here is speaking to his own supporters. Do you think his argument or style would or should have been different if he were in a public situation and were speaking to his opponents?
6. Did Garrison or Finney miss anything? As courageous and outspoken as they were, they may, in your view, have missed some important points. First, highlight or underline important points that Finney makes in his lecture. Second, based on the information your teacher has given you and the knowledge you have gained about slavery and the Civil War, write a short list of ideas that Finney might have included. This, too, can be shared with the rest of the class.

LESSON FIVE: For Better or For Worse

FOR WORSE

Roles: Conduct the role-playing activity as in the “for better” section, but this time reverse the roles. Those who were reformers become the members of the North Carolina Legislature in 1809, including those who were against Jacob Henry. Similarly, those who were the slaves take the role of the other side — Jacob Henry defending himself with an eloquent account of freedom of conscience. In this activity, ask those playing Jacob Henry to imagine what might be the laws in North Carolina that necessitated Henry’s speech. Ask the “legislators” to respond to the speech. What action will they take as a result of Henry’s arguments and why? Conduct the activity much like the steps outlined above.

A variation on the above: Ask one student a day or two before this lesson is taught to practice the reading of Henry’s speech. Ask two others to read it too — but with a view to rebutting it briefly. When ready, ask the first student to deliver the speech in the way Henry might have delivered it before the assembled legislature, and the other two to represent his opposition. The activity could then continue as outlined above.

Writing: Duplicate and pass out the documents to the class after a brief introduction of the historical background. Ask the students to complete the following:

Using Henry’s resolution as a model, write your own speech in which you deal not with fellow members of a legislature, but with a law or set of membership rules that discriminates on the basis of religious belief. In your speech you will to attack a particular type of hatred, prejudice and religious discrimination that excludes people from membership or office. Write a statement using exactly Henry’s form that sets forth both the offense and why you believe it should be rejected roundly. Ask to read your document aloud.

Discussion: In his powerful speech opposing religious testing, Jacob Henry closed by citing the Golden Rule. [See shaded area of Student Document Handout 5-C.] Conduct a class discussion using questions as the following:

1. Why is the Golden Rule so important to religious liberty, involving as it does the rights of others? Why is it so important for minority groups? Explain.
2. How does the Golden Rule reinforce the consistency of the principle of religious liberty? [It applies to those in the minority, as well as those in the majority — those with a popular, as well as unpopular, faith or worldview.]

Summary

Conclude by going over the Legacy and discussing these points.

Legacy

It would be impossible to draw up a complete balance sheet of the assets and liabilities of religious liberty in public life, if only because outcomes are differently assessed so that one group's "victory" may be another group's "defeat." There are, however, certain broad conclusions that come from an appreciation of the story as a whole.

1. Achievements

When all the struggle, din, conflict, villainy and heroism is over, it is unquestionably clear that the constitutional guarantees of religious liberty are linked to many of the most striking movements for reform in American history — from various sides — including abolition, the women's movement, the temperance movement, civil rights, the peace movement, penal reform and the anti-drug crusade (always remembering, of course, that if many of the reformers were inspired by their respective faiths, so also were many of their bitterest opponents; and if many of the reformers were propelled by their religious beliefs, others were secular in their affiliation).

2. Realism

For all of the constitutional guarantees and public celebration of religious liberty and the undoubted superiority of America's record to that of Europe, it is also clear that violations of religious liberty are an undeniable fact of the American past and an ever-present menace requiring profound realism and untiring vigilance.

The American experiment was called into question once when faced with deep moral and cultural differences — a failure known as the Civil War. The differences then were not specifically over religion, but in a parallel way all violations of religious liberty are a bone-deep reminder of how difficult it has been to preserve civilization and to better human life. Those who understand this point are not surprised when bad times teach us more than good times or when the nation can pass from triumph to folly without noticing it.

3. Wisdom

There is an elementary but important lesson to be learned from the record of all the best and worst. The real issue behind controversies over religious liberty and public life is not whether faiths have a place in public life, but how and to what end they should exercise that role. Knowledge of history is a first step toward political intelligence and maturity.

4. Empathy

Many of the public positions taken by individuals and groups are shaped by perceptions, memories and scars from terrible violations of freedom of conscience from their memories of the past, whether from America or (more likely) elsewhere in the world. These justifiably threatening perceptions should be taken into account if religious liberty is to be respected and policy proposals are to be considered on their merit.

The American experiment was called into question once when faced with deep moral and cultural differences — a failure known as the Civil War. The differences then were not specifically over religion, but in a parallel way all violations of religious liberty are a bone-deep reminder of how difficult it has been to preserve civilization and to better human life.

Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in this lesson indicate an understanding of the profound emotions on both sides of many American reform movements, as different faiths have inspired visions of social reform as well as prejudice and hostility? Did the students show an ability to recreate similar situations for discussion in a modern, local context?

Historical Empathy: First, do your students understand the motivations of the leaders in the great movements for social reform, particularly the abolition of slavery and the freedom from being subject to religious



LESSON FIVE: Teacher Resource Materials

testing? Can they explain the constitutional reasons why religious liberty has always been more than a private affair, despite the fact that the First Amendment calls for separation of church and state? Do your students understand the distinction between religion in government and religion in public life?

Civic Responsibility: Do your students see that they are part of modern variations of the “better or worse” movements discussed in this lesson? Above all, do they know the difference between using faith legitimately and constructively in order to influence public life and using faith illegitimately, unwisely or in an inflammatory way?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so forth.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Finish this statement with examples: “I can see why for some religious believers private freedom is the only religious liberty they would require at any time, but I can also see why for most religious believers it is important to be able to participate in the public arena. For example ...”



Student Documents

Contents:

5-A William Lloyd Garrison in *The Liberator*, Jan. 1, 1831, pp. 85-87

5-B Charles G. Finney, Excerpt from “Lecture 6: The Law of God, Number 2,” March 13, 1839, p. 88

5-C Jacob Henry’s “Speech to the North Carolina Legislature,” 1809, pp. 89-91

William Lloyd Garrison

Opening Statement of the First Issue of *The Liberator*, Jan. 1, 1831

In the month of August, I issued proposals for publishing "THE LIBERATOR" in Washington City; but the enterprise, though hailed in different sections of the country, was palsied by public indifference. Since that time, the removal of the *Genius of Universal Emancipation* to the Seat of Government has rendered less imperious the establishment of a similar periodical in that quarter.

During my recent tour for the purpose of exciting the minds of the people by a series of discourses on the subject of slavery, every place that I visited gave fresh evidence of the fact, that a greater revolution in public sentiment was to be effected in the free States – and particularly in New-England – than at the South. I found contempt more bitter, opposition more active, detraction more relentless, prejudice more stubborn, and apathy more frozen, than among slave-owners themselves. Of course, there were individual exceptions to the contrary. This state of things afflicted, but did not dishearten me. I determined, at every hazard, to lift up the standard of emancipation in the eyes of the nation, *within the sight of Bunker hill and in the birthplace of liberty*. That standard is now unfurled; and long may it float, unhurt by the spoliations of time or the missiles of a desperate foe – yea, till every chain be broken, and every bondman set free! Let Southern oppressors tremble – let their secret abettors tremble – let their Northern apologists tremble – let all the enemies of the persecuted blacks tremble.

I deem the publication of my original Prospectus unnecessary, as it has obtained a wide circulation. The principles therein inculcated will be steadily pursued in this paper, excepting that I shall not array myself as the political partisan of any man. In defending the great cause of human rights, I wish to derive the assistance of all religions and of all parties.

Assenting to the "self-evident truth" maintained in the American Declaration of Independence, "that all men are created equal, and endowed by their Creator with certain inalienable rights – among which are life, liberty and the pursuit of happiness," I shall strenuously contend for the immediate enfranchisement of our slave population. In Park-Street Church, on the fourth of July, 1829, in an address on slavery, I unreflectingly assented to the popular but pernicious doctrine of *gradual* abolition. I seize this opportunity to make a full and unequivocal recantation, and thus publicly to ask pardon of my God, of my country, and of my brethren the poor slaves, for having uttered a sentiment so full of timidity, injustice, and absurdity. A similar recantation, from my pen, was published in the *Genius of Universal Emancipation* at Baltimore, in September, 1829. My conscience is now satisfied.

I am aware that many object to the severity of my language; but is there not cause for severity? I will be as harsh as truth, and as uncompromising as justice. On this subject, I do not wish to think, or speak, or write, with moderation. No! no! Tell a man whose house is on fire to give a moderate alarm; tell him to moderately rescue his wife from the hands of the ravisher; tell the mother to gradually extricate her babe from the fire into which it has fallen; – but urge me not to use moderation in a cause like the present. I am in earnest – I will not equivocate – I

will not excuse – I will not retreat a single inch – AND I WILL BE HEARD. The apathy of the people is enough to make every statue leap from its pedestal, and to hasten the resurrection of the dead.

It is pretended, that I am retarding the cause of emancipation by the coarseness of my invective and the precipitancy of my measures. *The charge is not true.* On this question my influence, – humble as it is, – is felt at this moment to a considerable extent, and shall be felt in coming years – not perniciously, but beneficially – not as a curse, but as a blessing; and posterity will bear testimony that I was right. I desire to thank God, that he enables me to disregard “the fear of man which bringeth a snare,” and to speak his truth in its simplicity and power. ...

Charles G. Finney

Excerpt from "Lecture 6: The Law of God, Number 2"
March 13, 1839

You see why there is so little conviction among men, both in and out of the church. It is because they judge themselves by a false standard. If they live in conformity with human laws and keep up the morality of public sentiment, they feel in a great measure secure. But be assured that God will judge you by another standard.

In the light of this law [God's], how perfectly obvious is it that slavery is from hell. Is it possible that we are to be told that slavery is a divine institution? What! Such a barefaced, shameless, and palpable violation of the law of God authorized by God himself? And even religious teachers, gravely contending that the Bible sanctions this hell-begotten system?

"O shame, where is thy blush?" What! Make a man a slave, set aside his moral agency, treat him as a mere piece of property,

"Chain him – and task him,
And exact his sweat, with stripes
That Mercy, with a bleeding heart, weeps
When she sees inflicted on a beast"

and then contend that this is in keeping with the law of God which, on pain of death, requires that every man should love his neighbor as himself! This is certainly, to my mind, one of the most monstrous and ridiculous assertions ever made. It is no wonder that slaveholders are opposed to the discussion of this subject. It cannot bear the light; it retires from the gaze and inspection and reprobation of the law of God, as darkness retires before the light.

Jacob Henry

Speech to the North Carolina Legislature, 1809

I certainly, Mr. Speaker, know not the design of the Declaration of Rights made by the people of this State in the year 1776, if it was not to consecrate certain great and fundamental rights and principles, which even the Constitution cannot impair; for the 44th section of the latter instrument declares that the Declaration of Rights ought never to be violated, on any pretense whatever; if there is any apparent difference between the two instruments, they ought, if possible, to be reconciled; but if there is a final repugnance between them, the Declaration of Rights must be considered paramount; for I believe it is to the Constitution, as the Constitution is to law; it controls and directs it absolutely and conclusively. If, then, a belief in the Protestant religion is required by the Constitution to qualify a man for a seat in this house, and such qualification is dispensed with by the Declaration of Rights, the provision of the Constitution must be altogether inoperative; as the language of the Bill of Rights is, "that all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences." It is undoubtedly a natural right, and when it is declared to be an inalienable one by the people in their sovereign and original capacity, any attempt to alienate either by the Constitution or by law, must be vain and fruitless.

It is difficult to conceive how such a provision crept into the Constitution, unless it is from the difficulty the human mind feels in suddenly emancipating itself from fetters by which it has long been enchained; and how adverse it is to the feelings and manners of the people by glancing at the religious belief of the persons who fill the various offices in this State: there are Presbyterians, Lutherans, Calvinists, Mennonists, Baptists, Trinitarians, and Unitarians. But, as far as my observation extends, there are fewer Protestants, in the strict sense of the word, used by the Constitution, than of any other persuasion; for I suppose that they meant by it, the Protestant religion as established by the law in England. For other persuasions we see houses of worship in almost every part of the State, but very few of the Protestant; so few, that indeed I fear that the people of this State would for some time remain unrepresented in this House, if that clause of the Constitution is supposed to be in force. So far from believing in the Thirty-nine Articles, I will venture to assert that a majority of the people never have read them.

If a man should hold religious principles incompatible with the freedom and safety of the State, I do not hesitate to pronounce that he should be excluded from the public councils of the same; and I trust if I know myself, none would be more ready to aid and assist than myself. But I should really be at a loss to specify any known religious principles which are thus dangerous. It is surely a question between a man and his maker, and requires more than human attributes to pronounce which of the numerous sects prevailing in the world is most acceptable to the Deity. If a man fulfils the duties of that religion, which his education or his conscience has pointed to him as the true one, no person, I hold, in this our land of liberty, has a right to arraign him at the bar of any inquisition; and the day, I trust, has long passed, when principles merely speculative were propagated by force; when the sincere and pious were made victims, and the light-minded bribed into hypocrites.

The purest homage man could render to the Almighty was in the sacrifice of his passions and the performance of his duties. That the ruler of the universe would receive with equal benignity the various offerings of man's adoration, if they proceeded from the heart. Governments only concern the actions and conduct of man, and not his speculative notions. Who among us feels himself so exalted above his fellows as to have a right to dictate to them any mode of belief? Shall this free country set an example of persecution, which even the returning reason of enslaved Europe would not submit to? Will you bind the conscience in chains, and fasten convictions upon the mind in spite, of the conclusion of reason and of those ties and habitudes which are blended with every pulsation of the heart? Are you prepared to plunge at once from the sublime heights of moral legislation into the dark and gloomy caverns of superstitious ignorance? Will you drive from your shores and from the shelter of your constitution, all who do not lay their oblations on the same altar, observe the same ritual, and subscribe to the same dogmas? If so, which, among the various sects into which are divided, shall be the favored one?

I should insult the understanding of this House, to suppose it possible that they could ever assent to such absurdities; for all know that persecution in all its shapes and modifications, is contrary to the genius of our government and the spirit of our laws, and that it can never produce any other effect than to render men hypocrites or martyrs.

When Charles V, Emperor of Germany, tired of the cares of government, resigned his crown to his son, he retired to a monastery, where he amused the evening of his life in regulating the movements of watches, endeavoring to make a number to keep the same time; but, not being able to make any two to go exactly alike, it led him to reflect upon the folly and crimes he had committed, in attempting the impossibility of making men think alike!

Nothing is more easily demonstrated than that the conduct alone is the subject of human laws, and that man ought to suffer civil disqualification for what he does, and not for what he thinks. The mind can conceive laws only from Him, of whose Divine essence it is a portion; He alone can punish disobedience; for who else can know its movements, or estimate their merits? The religion I profess, inculcates every duty which man owes to his fellow men; it enjoins upon its votaries the practice of every virtue, and the detestation of every vice; it teaches them to hope for the favor of heaven exactly in proportion as their lives have been directed by just, honorable, and beneficent maxims. This, then, gentlemen, is my creed; it was impressed upon my infant mind, it has been the director of my youth, the monitor of my manhood, and will, I trust, be the consolation of my old age. At any rate, Mr. Speaker, I am sure that you cannot see anything in this religion, to deprive me of my seat in this house. So far as relates to my life and conduct, the examination of these I submit with cheerfulness to your candid and liberal construction. What may be the religion of him who made this objection against me, or whether he has any religion or not I am unable to say. I have never considered it my duty to pry into the belief of other members of the house. If their actions are upright and conduct just, the rest is for their own consideration, not for mine.

I do not seek to make converts to my faith, whatever it may be esteemed in the eyes of my officious friend, nor do I exclude anyone from my esteem or friendship, because he and I differ in that respect. The same charity, therefore, it

is not unreasonable to expect, will be extended to myself, because in all things that related to the State and to the duties of civil life, I am bound by the same obligations with my fellow-citizens, nor does any man subscribe more sincerely than myself to the maxim, "Whatever ye would that man should do unto you, do ye so even unto them, for such is the law and the prophets."

Lesson 6

Nativism in America



Overview

The Big Idea

Expanding pluralism has been a leading part of the American story. The promise and protection of freedom have attracted immigrants of all faiths from many countries and fostered a wide diversity of American-born religions. Increasing diversity has therefore presented both a contribution and a challenge to religious liberty. Religious liberty makes pluralism more likely; pluralism makes religious liberty more necessary.

Historical Section

The story of America's four major waves of immigration and the nativist reaction.

Key Facts

- America has always been pluralistic, but has now moved beyond a Protestant pluralism to a multi-faith pluralism to include all the world's religions and a number of people with no religious affiliation.
- Pluralism is both a product of religious liberty (through freedom of conscience) and the source of a pressure reinforcing religious liberty.
- Growing tolerance usually follows growing pluralism, but only after a period of tension and adjustment.
- Nativist reaction to immigration in the 19th century spawned anti-Catholic propaganda and violence.

Key Terms

pluralism
immigration
diversity
consensus
conformity
nativism
oppression
melting pot
E Pluribus Unum
Know-Nothings

Objectives

Students can think through and explain:

1. The central outline of the expansion of American pluralism.
2. How pluralism has fostered a social climate favorable to religious liberty and diversity.

3. How adjustments have to be made after each new wave of immigration, and how nativism as well as anti-Semitism are serious forms of maladjustment.
4. How religious diversity has been offset by a distinctive way of achieving “consensus” in America and its “common core” values.
5. One particular contribution and one particular challenge of pluralism to American society.

The Big Idea

Expanding pluralism has been a leading part of the American story. The promise and protection of freedom have attracted immigrants of all faiths from many countries and fostered a wide diversity of American-born religions. Increasing diversity has therefore presented both a contribution and a challenge to religious liberty. Religious liberty makes pluralism more likely; pluralism makes religious liberty more necessary.

Religious liberty and pluralism have had a vital relationship in American history, above all because pluralism has been a leading contributor to religious liberty and has confronted the nation with a continuing challenge to expand and apply the logic of religious liberty in changed circumstances.

Expanding pluralism has been a major theme in America's story, with toleration generally expanding a little behind it as the nation accommodated successive waves of immigrants. This is one reason why religious liberty has been a continuing challenge to the American experience and not just a feature of its earliest days. It is also why today such liberty is integral to many distinctive American responses to pluralism, such as the public school movement. As a “nation of nations” and a “race of races,” America has always had to respect and promote religious freedom as part of the challenge of sorting out how we live with our deepest — that is, our religiously or ideologically intense — differences.



Historical Background

Natives and Newcomers

America's Waves of Immigration and the Nativist Reaction

President John F. Kennedy titled a book he wrote after graduating from Harvard College *A Nation of Immigrants*. Both the grandson of Irish newcomers and a Roman Catholic who had often experienced discrimination by Protestants, Kennedy came to see America differently from most students of the nation's history. From the time of European settlements, he realized, this country had been occupied by successive waves of immigrants who had come from many nations and several continents. More than any other country on earth, our character (as a “nation of nations”) and our strength (as an “opportunity society”) comes directly from our immigrant heritage and our capacity to welcome people from other lands.

Religious liberty has played a central role in this stirring saga, both as an ideal beckoning people to come and as a component of the practical solutions required when greater and greater numbers did come.



“Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants were American history.”
— *Oscar Handlin*

Four Human Waves

Apart from Native Americans, all Americans have an immigrant background if their roots are traced back far enough. The different heritages stem from the different circumstances in the countries they came from and the different periods in which they arrived. Though immigrants have been a constant characteristic of the American experience, it is easiest to understand their impact on American society in terms of the four main waves of their arrival.

The First Wave (1630-1790)

The original settlers, who constitute the first wave, came during the 17th and 18th century. These earliest settlers were mainly from the British Isles, but were also German and Dutch. The dominant faith of this wave was Protestant, but it included a wide diversity of denominations, sometimes called sects.

During this period, the largest influx of those who were not British consisted of black people abducted from Africa as slaves — about half a million “forced immigrants.” The perils of the Atlantic crossing, particularly those of hunger and disease, took the lives of new arrivals from all points of origin, but especially of the slaves. Ship captains often chained them to a small space of deck during the voyage. During the colonial period the slaves made up about 15% of the total population of the new nation.

The Second Wave (1790-1870)

In the 19th century, immigration was almost entirely unrestricted. Only in 1819 did the numbers of immigrants begin to be recorded. The second wave began in earnest in the 1840s, when there was a steep rise in immigrants because of two factors. First, the famous potato famine in Ireland drove some 2 million Irish to America. Second, Germans and German Jews left their home country in large numbers, especially after the revolutions there in 1848.

Consequently, the dominant groups making up the second wave were Irish, German and Scandinavian. The Irish, who were mainly poverty-stricken peasants, provided much of the manual labor required for railroad building and industrialization. They congregated in large eastern cities such as Boston and New York. The Scandinavians tended to move to frontier farmsteads, while the Germans often stayed together in newly-founded farm communities or in smaller cities, such as Milwaukee. A bit later, large numbers of Chinese and Japanese were brought into California to work in mines and on the western transcontinental railroads. The dominant religious orientation of the second wave immigrants was Catholic (both from Ireland and Germany) and Lutheran (from Scandinavia and Germany). The rise in Irish anti-Catholic nativism (which is discussed later) occurred during this wave, as the increase in total population during these years due to immigration was approximately 19%.

The Third Wave (1870-1930)

Before 1890, most immigrants came from North and West Europe. After 1890, the majority of immigrants came from South and East Europe, particularly the countries of Russia, Italy, Greece and Austria-Hungary. It is estimated that in the 1880s 28% of immigrants were German-speaking, while in 1910, 23% were Italian-speaking. The third wave was the all-time peak in immigration with 1.3 million immigrants arriving in 1907 alone. It is estimated that one-third of all Americans living today can trace their origins to the third wave of immigrants.

When these immigrants arrived, cities were developing, absorbing the bulk of the newcomers. During the early years of the 20th century, Poles and Jews made up a high proportion of immigrants as they were escaping religious persecution in Russia. The dominant religious faiths in this wave were Catholicism, Eastern Orthodoxy and Judaism. During this period there was a second outbreak of nativism, particularly anti-Semitism, as this wave constituted the largest demographic growth in population due to immigration in American history — approximately 22%.

The Fourth Wave (1930-1980)

After World War I, the influx of immigrants continued but became increasingly regulated by immigration quotas, which limited the number of immigrants allowed from each country. More recently, the predominantly European origin of the earlier immigration has shifted to Asian and Latin American. In the 1960s and 1970s, about 30% of immigrants were from Spanish-speaking countries. After the Korean and Vietnam Wars, Koreans, Vietnamese, Myong, Thai and Indonesian immigrants helped make the cities of San Francisco and Los Angeles the dominant port of entry for immigrants. In fact, Los Angeles International Airport is now what Ellis Island, New York, was in earlier waves. Today, one-third of the entire country's immigrants are coming into California.

In the earlier waves the immigrants tended to be under 30 years old and from peasant or labor backgrounds, whereas after World War II many of the immigrants had professional or technical skills. The dominant religious faiths of the recent immigrants tend to be Catholicism in the case of Latin American immigrants and Buddhism in the case of Asian immigrants, though many of them had been converted to Christianity in their homelands. This fourth wave, though large in total number and particularly significant in California, Texas and Florida, has been responsible only for an approximate 10% shift in population during this period.

Ever Changing Kaleidoscope

The mosaic — one might say the changing kaleidoscope — of culture that these successive waves of immigration has produced in America was what President Kennedy had in mind in writing his book *A Nation of Immigrants*. He realized that each wave of newcomers both contributed much as well as received much.

The result, greatly augmented by such culturally inclusive media as newspapers, magazines, radios and now television, was an ethnic melting pot. The leaders of each ethnic group and particularly religious leaders, however, insisted that America was a kaleidoscope of competing national cultures. Champions of both concepts were partly right. The American pattern of separation of church and state made it possible for each group to preserve some of its distinctiveness, especially in religion, while its members thought of themselves as full citizens of a constitutional democracy. All groups, however, rested the rights of individuals on the principle of freedom of conscience and of religious expression.

What are some of the lessons of the story of pluralism for the maintenance of religious liberty today? Here are the main ones:

1. Religious liberty and pluralism have a mutually reinforcing relationship. Freedom of conscience, the deepest principle behind religious liberty, is perhaps the greatest generator of choices in history and thus a prime contributor to the growth of modern pluralism. Religious liberty is therefore a moral principle that makes pluralism more likely, just as pluralism creates a social pressure that makes religious liberty more necessary.
2. The present stage of expanding pluralism means that no single church, denomination or particular religious community commands the allegiance of a majority of Americans. Thus through a long process of painful adjustments, America has shifted over 300 years from a generally Protestant pluralism to a multi-faith pluralism in which Protestantism itself is only one part, even if historically and numerically an important part.
3. Our nation's recent experience of expanding pluralism suggests that the common notion of the "melting pot" is no longer accurate nor desirable to many people. They prize distinctive beliefs and practices and appreciate diversity itself more, so the ideal of cultural assimilation is no longer as appealing. Pluralism is the right word to describe the overall scene, but needs to be balanced by understanding the strong particularity that describes the identity of the different groups.
4. Expanding pluralism, based on openness to immigration and opportunities within American society, represents a deep source of American richness and strength. Immigration not only remakes the immigrant, it remakes the country. Specifically, it has contributed to American self-understanding and enterprise as well as to particular skills and achievements. For example, more than 30% of all living American Nobel Prize winners are immigrants.

"If we cannot now end our differences, at least, we can help make the world safe for diversity."
— **President John F. Kennedy**

Religious liberty is a moral principle that makes pluralism more likely, just as pluralism creates a social pressure that makes religious liberty more necessary.

A Nation of Nations (and Nativists)

Expanding pluralism is also the source of the main type of tension that stemmed from individuals, groups and the nation at large when they encountered the problems of adjustment to successive waves of newcomers. “Nativism” is the term used to describe the blend of exaggerated patriotism and intense opposition directed at an internal minority on the grounds of its “foreign” and supposedly “un-American” connections. It is part of a reactionary response of those who view new waves of immigration as a menace to their monopoly or social dominance of our way of life. It can range from the crude, populist hate-mongering of the Ku Klux Klan to sophisticated theoretical analyses of the supposed evil influence of the newcomers in question.

“Nativism” is the term used to describe the blend of exaggerated patriotism and intense opposition directed at an internal minority on the grounds of its “foreign” and supposedly “un-American” connections.

The wide range of victims in the 19th century included Native Americans, Chinese and Mormons, as well as German and Irish Catholics.

Since Protestants were the original majority faith in America, nativism has generally been cast in a Protestant mold. And since Roman Catholics brought the first massive challenge to the Protestant monopoly, the first and prototypical nativism was anti-Catholic. The list of both perpetrators and victims has widened since the 1830s and 1840s, but the concerns and consequences remain much the same.

The great heyday of 19th-century nativism was between the 1830s and the 1850s. Earlier, in 1755, Gov. Robert Hunter Morris of Pennsylvania had made a ridiculous statement when he wrote to Gov. Robert Dinwiddie of Virginia that “The French might march in and be strengthened by the German and Irish Catholics who are numerous here.” There were, at most, only 1,300 Catholics in America at that time! But by the early 1830s, it appeared no laughing matter. Catholics, who had numbered 35,000 in 1790, were 1.75 million in 1850 and double that in 1860. Immigrants were pouring in at the rate of 600,000 per decade in the 1830s, 1,700,000 in the 1840s and 2,600,000 in the 1850s. Many Americans thought that the country was being swamped.

Prompted by this apparently overwhelming tide of immigration, the age-old prejudice of anti-Catholicism that appeared to have been sleeping, if not dead, suddenly woke in a ferocious rage. Before its rampage was over, many of the worst violations of religious liberty in American history had been perpetrated.

“Know-Nothing” Equals “No-Popery”

Nineteenth-century nativism was the product of two forces — the old antipathy to Catholicism and the new fear of foreign immigration. There is no question that the latter created real problems. It didn’t take a lurid imagination to see the links between immigration and pauperism, political corruption, crime and foreign entanglements. Propagandists included distinguished preachers such as Lyman Beecher and rabble-rousing Americanists such as “Butcher Bill” Poole of New York. But the average American only had to look around to realize that the nation faced a great adjustment.

Quiet streets were degenerating into unsightly slums. Corrupt political machines such as Tammany Hall were thriving on foreign votes. Drunkenness, illiteracy, poverty and lawlessness were all rising along with the rise of foreigners. Above all, there were the “Paddies” (the Irish were 42% of the foreign-born) with their undying allegiance to the Pope and the “auld sod” (Ireland). The old lie that Europe was intentionally weakening America by sending the worst elements of its society became plausible again. As one nativist complained, “America has become the sewer into which the pollutions of European jails are emptied.” Or as another queried, “Have we not a right to protect ourselves against the ravenous dregs of anarchy and crime, the tainted swarms of pauperism and vice Europe shakes on our shores from her diseased robes?” In 15 years, the alarmists said, the foreign population would exceed the native. Immigrants were simply building in the United States “a crystal palace of Nothing to Do in an El Dorado of Much to Get.”

The most infamous outburst of nativism came in the 1850s with the meteoric rise and fall of the Native American Party, or Know-Nothings — so called because of an alleged rule which ordered members, when asked by strangers for membership details, to say, “I know nothing about it.” Virtually unknown in 1854 and waning in 1856, the Know-Nothings were a dazzling combination of nativism, secrecy and politics. Know-Nothing was really a covering for No-Popery. Riddled with tensions, the party held together in part by antipathy to the Catholic Church.

The Know-Nothings declined rapidly when it was clear they could not produce results in Congress on their anti-Catholic and anti-foreign propaganda. Half a century of tumult and shouting against “Popery” had resulted in little more than a few impassioned speeches. But around the country the results were not so benign. Americanist

clubs and gangs roamed the cities with names (more like modern rock groups) such as the Wide Awakers, Plug Uglies, Blood Tubs, Red Necks, Rip Raps and Screw Boats. Four men were killed in New Orleans. In Lawrence, Mass., 1,500 stormed the Irish section, destroying homes and churches. In a riot in St. Louis, 10 were killed and many wounded. In Louisville, Ky., the No-Popery campaign climaxed in a “Bloody Monday” with 20 killed and several hundred wounded.

The worst incident of all was in Philadelphia in the summer of 1844. It was touched off by Bishop Francis Patrick Kenrick’s request that Catholic children in public schools be allowed to read the Bible in the Douay version, rather than the King James Version that most Protestants used. His plea was the spark to nativist rage. This, they said, was the beginning of the Inquisition, the signal for a massacre like the anti-Protestant one in France in August 1572 in which 3,000 died in Paris alone. Protestants rose to wreak vengeance on the Irish. Three months later the smoldering ruins of two churches, a seminary and whole rows of Irish homes were all that was left to bear witness to the riots. Thirteen had died and over 50 were wounded, with the blame for the tragedy placed on the Catholics.

The Know-Nothing phase of nativism died with the Civil War, as slavery, not Catholicism, became the issue. But the eventual champion of the slaves had seen very early the links between the two inequalities. At a meeting in Springfield, Ill., during the Philadelphia riots in 1844, Abraham Lincoln, then a rising young lawyer, submitted a resolution:

“Resolved, That the guarantee of the rights of conscience, as found in our Constitution, is most sacred and inviolable, and one that belongs no less to the Catholic, than to the Protestant; and that all attempts to abridge or interfere with these rights, either of Catholics or Protestants, directly or indirectly, have our decided disapprobation, and shall ever have our most effective opposition.”

Eleven years later, on Aug. 24, 1855, with Know-Nothings again on the rise, Lincoln stated:

“As a nation we began by declaring that all men are created equal. We now practically read it: All men are created equal except Negroes. When the Know-Nothings obtain control, it will read: All men are created equal except Negroes, foreigners and Catholics.”

There are many lessons from the Know-Nothing movement. One is that nativism is an “unnecessary tension” in the sense that it is not only evil and a denial of the promise that America represents, but is futile. The attempt to make history stand still and to freeze in place specific religious patterns simply does not work. Ironically, groups which attempt it end up reducing their influence, not extending it. Nativism must be combated resolutely for the evil it is. But its sources need to be understood. No one should underestimate how difficult it is to counter nativism with the principles of religious liberty. For example, religious freedom prospers when the Golden Rule is followed. But the nativist, however religious, characteristically disregards the Golden Rule because he or she sees “newcomers” as “foreigners” and anything but “neighbors.”

Religious liberty prospers when the Golden Rule is followed. But the nativist, however religious, characteristically disregards the Golden Rule because the “native” sees the “newcomer” as a “foreigner” and anything but a “neighbor” like himself or herself.

Teaching Strategies

You will find the following for use in this section in the Student Documents:

- 6-A Immigration Charts
- 6-B “More Free Than Welcome,” 1855
- 6-C “The American River Ganges,” 1871
- 6-D “Romish Politics — Any Thing to Beat Grant,” 1872
- 6-E “The Public School Question,” 1873
- 6-F “ ‘Every Dog’ (No Distinction of Color) ‘Has His Day,’ ” 1879
- 6-G “The Last Yankee,” 1888

Links

1. Background on nativism: In the 19th century, America received hundreds of thousands of immigrants who moved directly into the expanding industrial work force. Immigration reached its peak in the 19th century in 1882, when almost 800,000 immigrants arrived, and then leveled off to approximately 400,000 per year, until the largest one-year increase in 1907, when 1,285,000 arrived.



LESSON SIX: Nativism in America

In all, some 20 million immigrants came to the United States between 1865 and 1914, most settling in eastern cities and living in their own ethnic communities. They were isolated from the English language until their children enrolled in the public schools. The six political cartoons used in this lesson (Student Document Handouts 6-B through 6-G) trace the characteristic attitudes of many toward “foreigners.” Students should be reminded that one out of every three Americans living today is descended from those who came to this country during the third wave of immigration.

2. Background on political cartoons: A cartoon originally was a drawing or a full-size pattern for a painting, tapestry, mosaic or other art form. The origins of the modern political cartoon stem from caricatures that were a product of the Renaissance and Reformation emphasis on the importance of the individual. Since the late 16th century, there has been a rich tradition of individual and social satire-expanded greatly by the advent of the printing press. In the early 1840s, cartoons acquired a new potency through their use in magazines as a pictorial parody sharpening the public view of a contemporary event or custom.

Cartoons can be divided into three groups: 1) comic art, whose goal is to entertain; 2) social cartoons, whose goal is to illuminate social life, if only for the purpose of making it and its irritations easier to take; and 3) political cartoons, whose goal is to comment on or further a political point of view. Political cartoons are a vital communication link between the people and those in power.

A political cartoonist uses three elements to communicate his or her message: 1) a picture of reality that is presented as truth; 2) a message of what is to be done; and 3) an impression of how the audience is supposed to feel. Give the students an example of a contemporary political cartoon and ask them to identify these three elements.

Approaches

Following is background information on the political cartoons (Student Document Handouts 6-B through 6-G).

“More Free Than Welcome,” 1855, by Peter Smith (also known as Nathaniel Currier)

This anti-Catholic cartoon reflects the nativist perception of the threat posed by the Roman Catholic Church’s influence in the United States through Irish immigration and Catholic education. The “Propagation Society” is probably a title for the Catholic organization the Society for the Propagation of the Faith.

At the right, on a shore marked “United States,” Brother Jonathan leans against a flagpole flying the stars and stripes and whittles. “Young America,” a boy in a short coat and striped trousers, stands on the left and holds out a Bible toward Pope Pius IX, who steps ashore from a boat at the left. The latter holds aloft a sword in one hand and a cross in the other. Five bishops remain in the boat. One holds the boat to the shore with a crosier hooked around a shamrock plant.

Pope: “My friend, we have concluded to take charge of your spiritual welfare, and your temporal estate, so that you need not be troubled with the care of them in future; we will say your prayers and spend your money, while you live, and bury you in the Potters Field, when you die. Kneel then! and kiss our big toe in token of submission.”

Brother Jonathan: “No you don’t, Mr. Pope! You’re altogether too willing; but you can’t put the ‘mark of the beast’ on Americans.”

Young America: “You can neither coax, nor frighten our boys, Sir! We can take care of our own worldly affairs, and are determined to know nothing but this book, to guide us in spiritual things.” (“Know nothing” has a double meaning, alluding to the nativist political party of the same name.)

First Bishop: “I cannot bear to see that boy, with that horrible book” (Note: The Catholic (Douay) version of the Bible differed slightly from the Protestant (King James) version and the difference was at the heart of Catholic objections to the “Protestant” public schools.)

Second Bishop: “Only let us get a good foot-hold on the soil, and we’ll burn up those Books and elevate this

Country to the same degree of happiness and prosperity, to which we have brought Italy, Spain, Ireland and many other lands.”

Third Bishop: “Sovereign Pontiff! Say that if his friends have any money, when he dies they may purchase a hole, for him in my cemetery, at a fair price.”

Fourth Bishop: “Go ahead Reverend Father, I’ll hold our boat by this sprig of shamrock.” (Note: Shamrock was an Irish plant, used here to make them the butt of prejudice.)

“The American River Ganges,” 1871, by Thomas Nast

This cartoon suggests the decline in the quality of the public school system because of Irish Catholic influence. A typical fear is reflected in the following statement from the article “The Priests and the Children” by Eugene Lawrence, which accompanied Nast’s cartoon in the Sept. 30, 1871, issue of *Harper’s Weekly*: “To destroy our free schools, and perhaps our free institutions, has been for many years the constant aim of the extreme section of the Romish Church.” Some even believed that the Catholics in New York City wanted to deliver the city into the Pope’s hands because they controlled Tammany Hall, seen in the background next to a new Catholic school. Note the image of predator priests, the public school in the image of the Alamo and Tammany Hall shown as a combination of the U.S. Capitol and St. Peter’s Cathedral in Rome.

“Romish Politics — Any Thing To Beat Grant,” 1872, by Thomas Nast

This cartoon suggests both the fear of Catholicism in public schools and the degree to which Protestantism was unofficially established within public education. Here a whiskey-toting Irishman confronts a school official while a Catholic priest lurks behind the door and an innocent public school child looks on.

Irish Roman Catholic Invader: “*The Y.M.C.A wants the Bible in the public school, assuming that this is a Christian country. We want the Priest, the Brother, and the Sister in our public schools, not assuming, but endeavoring to effect, that this is a Catholic country.*”

“The Public School Question,” 1873, by Bellew

This cartoon expands from the Protestant fears and suspicion of Irish Catholics in the East, adding the anti-Chinese feelings which were rising in the West, as large numbers of Chinese came to work on the railroad and in gold mines. The cartoon suggests that using public school money for religious groups such as Catholics may lead to Confucianism being taught in public schools.

“ ‘Every Dog’ (No Distinction of Color) ‘Has His Day,’ ” 1879, by Thomas Nast

This cartoon suggests that the problem stemming from immigration is really a problem of respecting minority rights — including those of blacks and Native Americans. The caption for the cartoon reads: “Red Gentleman to Yellow Gentleman: ‘Pale face’ afraid you crowd him out, as he did me.’ ” Notice the impact of the railroad, driving the Indians West and the Chinese East. Also suggested is the hypocrisy of earlier immigrants — particularly the Irish and Germans — in their intolerant attitudes toward the even-more-newly-arrived Chinese.

The message of the cartoon is that nativism can be turned toward any group which is disliked by some. A letter appeared in the *San Francisco Chronicle* from Walter Echo-Hawk, a Missouri Indian, in 1957. Echo-Hawk commented: “I notice that another Mayflower has landed. Inasmuch as my folks are still smarting from the arrival of the last Mayflower passengers, I hope this group has just come along for the ride.”

“The Last Yankee,” 1888, by Matt Morgan

This cartoon raises the fear of unrestricted immigration resulting in a possible curiosity of the 20th century — the last Yankee. Note how the “immigrant” Americans are portrayed and how the lanky Yankee stands head and shoulders taller than they. The Yankee’s features resemble those of Uncle Sam. This cartoon raises the important question of what it means to be an American. America is not like many other countries. It is not a nation of “bloodlines,” but of “beliefs.”

LESSON SIX: Nativism in America

Discussion

Divide the class into three groups:

Group One: “More Free Than Welcome,” 1855
“The American River Ganges,” 1871

Group Two: “Romish Politics — Any Thing to Beat Grant,” 1872
“The Public School Question,” 1873

Group Three: “ ‘Every Dog’ (No Distinction of Color) ‘Has His Day,’ ” 1879
“The Last Yankee,” 1888

Duplicate and distribute copies of the cartoons to each group. Have the students discuss their perceptions of 1) the picture of reality being presented; 2) the message of what ought to be done; and 3) the conveyance of a mood telling us how we should feel about what is happening. In other words: What is, what ought to be and how we should feel about it, as portrayed in the cartoon. Have each group report their findings back to the class. Relate these findings to the background material on nativism in this period as found in the Historical Background.

Research

With the class, list on the chalkboard the images included in the cartoons. Assign a different topic of research to each student. Ask the students to gather information on their topics from the library, answering the question of what was happening in America at the time of this cartoon. How might the initial viewers have reacted? The students should convey their findings either in a descriptive paragraph, a drawing, a dialogue, a skit or a cartoon.

Civic Responsibilities

Discuss with the students what lessons they learned from these cartoons regarding attitudes toward others. Have them draw a cartoon of the attitudes we should have toward new Americans. Post the results on the bulletin board along with a set of the original cartoons.

Legacy

Once again, it would be difficult to exaggerate the powerful and mutually reinforcing influence of religious liberty and pluralism on American history. The following four points depict part of that legacy.

1. Freedom for New Faiths

The First Amendment’s separation of church and state has created a political and social climate favorable to faiths and worldviews of all kinds as well as to people with no religious affiliation at all, such as Humanists and Freethinkers.

Not only have traditional religions flourished here, but America has proved particularly fertile to the breeding of new ones, sometimes described as “Made in America.” Among the strongest and best known of these from the 19th century are the Church of Jesus Christ of Latter-day Saints (the Mormon church), founded by Joseph Smith in 1830, the Seventh-day Adventist Church and the Church of Christ, Scientist, which was incorporated by Mary Baker Eddy in Boston in 1879. Recent years have seen a strong growth of new religious and semi-religious movements, such as the many forms of the New Age movement.

2. The “Americanizing” of Old Faiths

One of the persistent fears surrounding religious liberty and pluralism is that openness would allow some religious communities to take advantage of freedom until they could take control and limit the freedom of others. So far, this fear has proved groundless, with the trend going in the opposite direction. Having to confront American-style religious liberty; groups have come to accept the “American way” in religious pluralism as a part of their experience of Americanization. “Americanization” in this sense is not a form of cultural co-optation but a word that describes the acceptance of the first principles of liberty and justice underlying the American experiment.

From the early 19th century right down to the election of John F. Kennedy as president in 1960, many Protestants and some Jews suspected the Roman Catholic Church of being a menace to religious liberty. The suspicions have proved ungrounded. American Catholics have joined with many other American religious communities in championing “religious liberty for all” within America and (through the role of Father John Courtney Murray and other Americans at Vatican II, 1961 to 1964) in changing the official position of their church so as to support religious pluralism.

3. Distinctive American Responses

Several important features of American society have grown as a response to the challenges of pluralism. Probably the most important is the public school. For pioneer educators such as Horace Mann, who was Massachusetts’ superintendent of public schools in the 1830s, public schooling meant far more than free, universal education. The purpose of the public schools was to provide education for all children that would move beyond instruction in “reading, writing and arithmetic” to education in character, ideals and loyalties. The schools were thus to be a moral force, forming the character of young people who would then help build the nation.

Above all, the public school was to be a place where the spiritual divisiveness, born of creeds, and the social divisiveness, born of classes, would be reconciled, as in the national motto, *E Pluribus Unum* (Out of many, one). Thus religious liberty and pluralism have been and remain themes that are central to the character and purpose of the public schools.

4. Consensus of a Special Kind

Certain facts of American life, such as the First Amendment (in law) and pluralism (in society), make it unjust and impossible ever to expect to achieve a consensus about religious beliefs. There are just too many beliefs and the differences between them are too great. Yet this has not meant that America has had no moral consensus, or that a consensus has disappeared as diversity has expanded.

What it does mean is that no faith or world view is excluded from contributing to the consensus, and that the consensus must be built at the level of shared values rather than at the level of divergent beliefs. These commonly accepted values have been called “consensual” or “common core” values. They seem to most citizens of this country “American” and “democratic.” They include such things as honesty, loyalty, hard work, community, responsibility, fairness and compassion. Of course, since they do not rest on a consensus of religious beliefs, they can never be taken as a given. They are always a goal for each generation to achieve through reasoning and acting together.

“Schools cannot avoid teaching values. It’s a question of which values are taught. Without going into great detail, most of us should be able to agree that there are common, civilized, democratic values which can and should be taught — through example and through curriculum. There are common values which peoples of all religious and ideological persuasions should be able to agree on, values embodied in the Declaration of Independence, the Constitution, the Bill of Rights, and ethical teachings of most religions and life stances.”

— Edd Doerr, American Humanist Association

Challenge

The old truism that “eternal vigilance is the price of liberty” is especially relevant for those who advocate religious liberty and pluralism. Not only is there the basic problem of complacency — taking freedom for granted— but there is also the added problem that ever-expanding pluralism requires fresh solutions to fresh problems in every generation.

Here, for example, are two of the many current challenges facing thoughtful citizens:

1. What is the best metaphor for pluralism today?

One indication of the challenge of pluralism has been the images or metaphors it has triggered. The most famous is “the American melting pot,” which came from the title of a play Israel Zangwill staged in New York in 1909. (“[Here] all the races of Europe are melting and re-forming ... God is making the American.”)

Such metaphors are a form of shorthand that is power-packed and suggestive, but they can obscure as well as communicate. “Melting pot” was popular in an era which tended to prize unity above diversity, but it has been unpopular in other times (like our own) that prize diversity as much as unity, and which stress both particularity and pluralism at the same time.

In other words, when the national scene is examined from afar with a wide-angle lens, pluralism is the fitting term of description. But when the same scene is examined with a close-up lens, any impression of relativism or indifference to truth is quickly dispelled. All the diverse faiths and worldviews affirm their distinctives. Almost all of them appear to believe in their own faith in absolute terms. Even some believers in relativism hold to their relativism as if it were the last remaining absolute.

LESSON SIX: Nativism in America

Among current alternatives to “melting pot” that do better justice to particularities and distinctives are “mosaic,” “salad bowl,” “patchwork quilt” and “kaleidoscope.” Each such image speaks volumes about the period in which it was coined and the people and groups for whom it was powerful.

2. Are there limits to pluralism?

Even to raise this question is troubling — almost taboo — for some people. But it needs tackling, because of the sense of open-minded thinking that sustains religious liberty. On the one hand, it is plain beyond question that, constitutionally speaking, there are absolutely no limits to pluralism in terms of the number of beliefs allowable (which is why discussion of the question should not be as troubling as people fear). On the other hand, there are conceivable conditions under which religious liberty and pluralism could become self-defeating.

One such condition concerns the possibility raised earlier of a group “playing the game” of American pluralism only until it can gain sufficient power to seize control and put others out of the game. A second possibility concerns a stage in the development of pluralism that allows concern for “all those others” to slump into a massive indifference to any claim to truth or values. Both outcomes would mean the betrayal of religious liberty as we now know it.

It is plain beyond question that, constitutionally speaking, there are absolutely no limits to pluralism in terms of the number of beliefs allowable.



Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students’ comments, written responses and participation in this lesson indicate an understanding of the dramatic saga of the four human waves of American immigration? Second, were the students able to make links and draw responsible conclusions from the study of the beginnings of religious diversity to current levels of diversity, perhaps reflected even in your own classroom and school?

Historical Empathy: First, do your students appreciate how religious pluralism has its problems as well as its possibilities — above all when it triggers a reaction of prejudice and nativism? Second, have the students shown an appreciation for their own place in this story? Have they become involved to the point that they know and appreciate where they and their families fit into this pluralistic picture?

Civic Responsibility: Have the students shown an understanding of the concepts of tension and adjustment and, therefore, of “living with each other’s differences”? Or the concept of “common core” values and their importance for community (including schools) and the nation? Do your students see how American pluralism has expanded to produce a social climate favorable to faiths and worldviews of all kinds?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so on.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Finish this statement with examples: “I can see now why pluralism is both a contribution and a challenge to religious liberty...”

Student Documents

Contents:

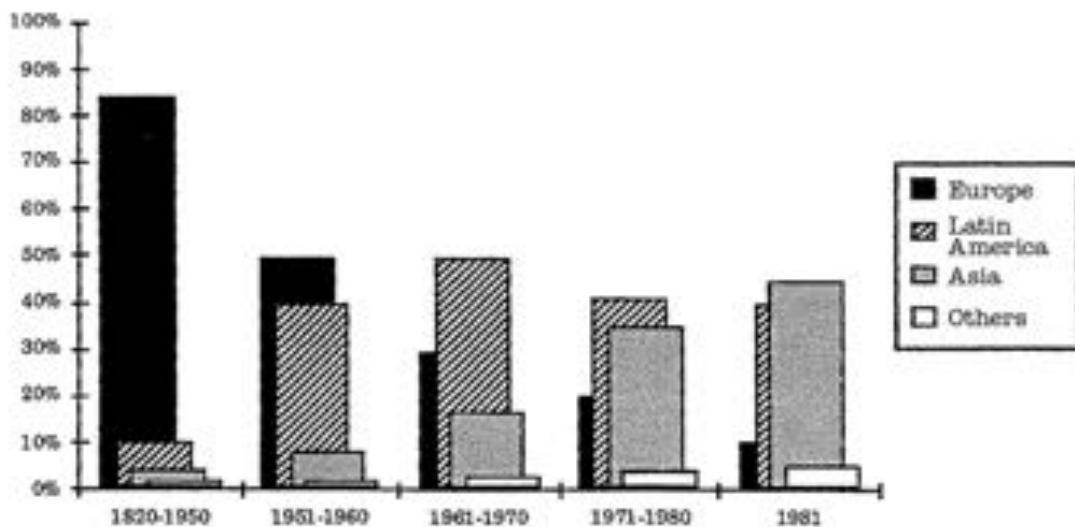
- 6-A** Immigration Charts, p. 104
- 6-B** “More Free Than Welcome,” 1855, p. 105
- 6-C** “The American River Ganges,” 1871, p. 106
- 6-D** “Romish Politics — Any Thing to Beat Grant,” 1872, p. 107
- 6-E** “The Public School Question,” 1873, p. 108
- 6-F** “Every Dog Has His Day,” 1879, p. 109
- 6-G** “The Last Yankee,” 1888, p. 110



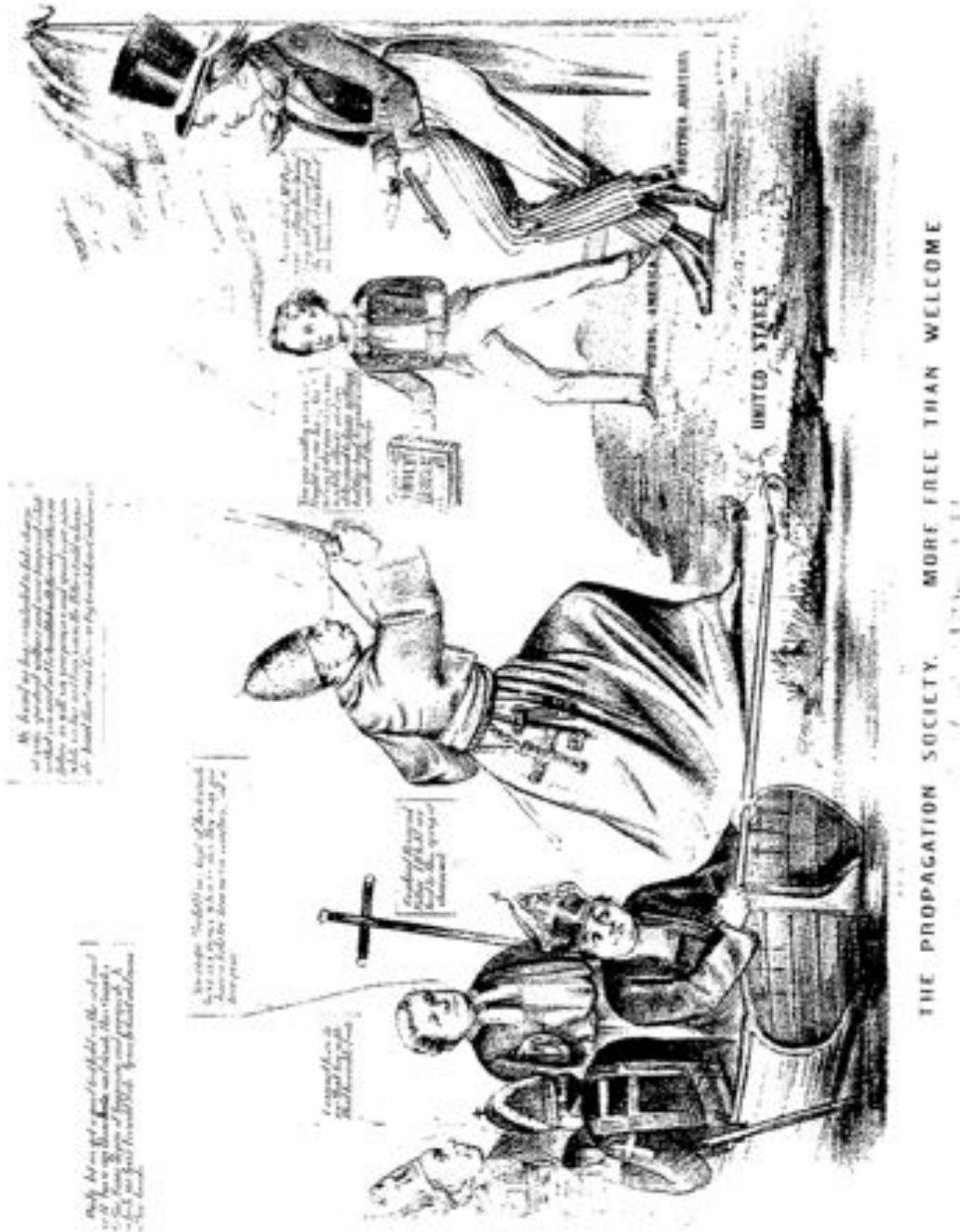
THE MAIN WAVES OF IMMIGRATION

	Years	Chief Origin	Increase in Population
Wave One	1600-1790	Northwestern Europe (Diverse Protestant)	85%
		Africa	15%
Wave Two	1790-1870	Ireland, Scandinavia & Germany (Catholic, Jewish and Lutheran)	19%
Wave Three	1870-1930	Eastern & Southern Europe (Catholic, Jewish and Eastern Orthodox)	22%
Wave Four	1930-1980	Latin America & Asia (Catholic, Buddhist and Protestant)	10%

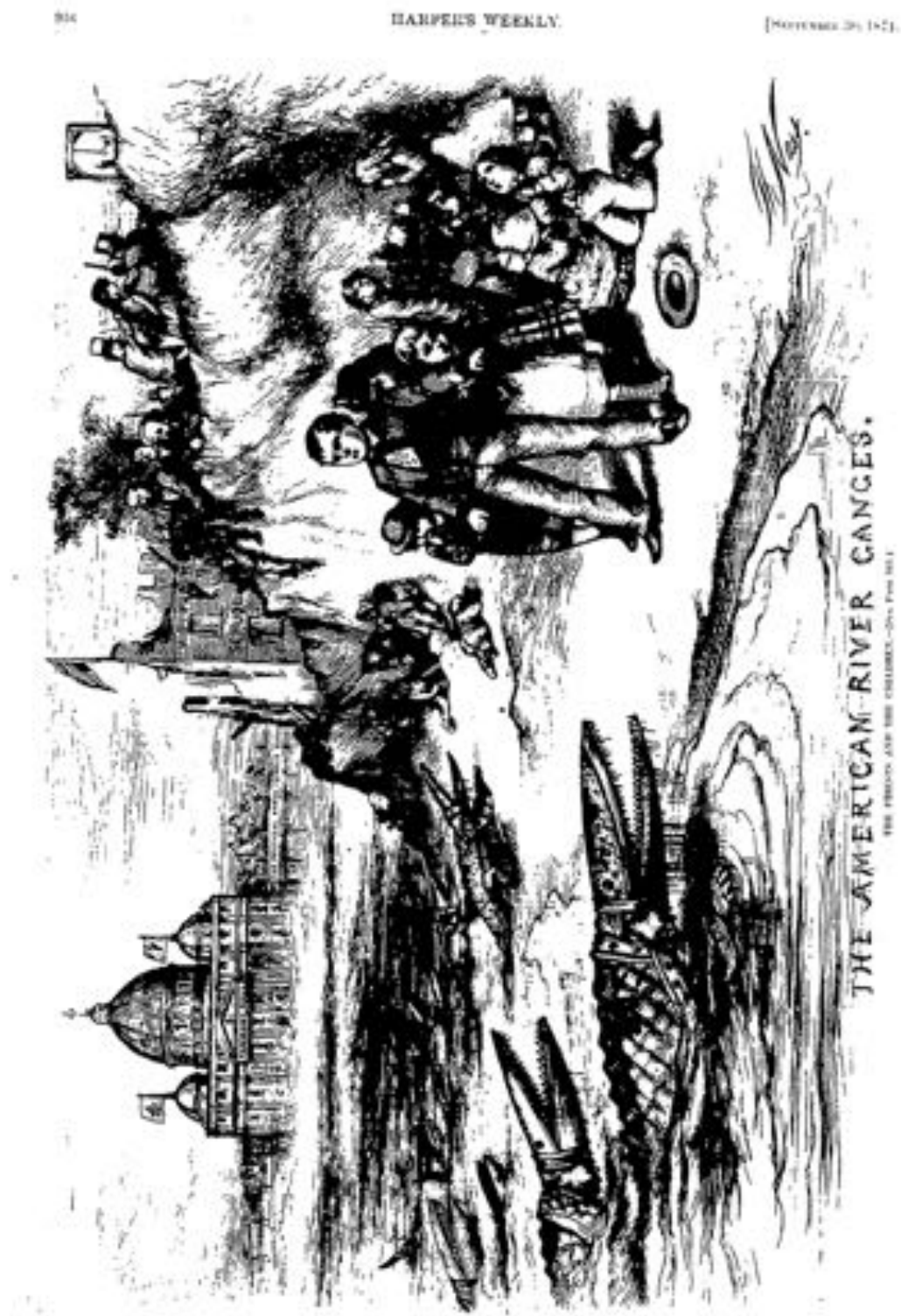
Immigration to the United States, 1820-1981



Source: U.S. Bureau of the Census



“The Propagation Society — More Free Than Welcome,” 1855, by Peter Smith (i.e., Nathaniel Currier). Lithograph on wove paper. Reproduced from the collections of the Library of Congress, by permission.



"The American River Ganges." Thomas Nast. Sept. 30, 1871, in *Harper's Weekly*. Wood engraving. Reproduced from the collections of the Library of Congress, by permission.

August 17, 1872.]

HARPER'S WEEKLY.



ROMISH POLITICS—ANY THING TO BET GRANT.

FROM ROMAN CATHOLIC INVASION. "The Y. M. C. A. want the Bible in the public school, assuming that this is a Christian country. If, next to that, the Priest, the Bishop, and the State in our public schools, not assuming, but endeavoring to effect, that this is a Catholic country."—St. Louis Western Worker, July 15, 1872.

"Romish Politics — Any Thing to Bet Grant." Thomas Nast. Aug. 17, 1872, in *Harper's Weekly*. Reproduced from the collections of the Library of Congress, by permission.



WHAT SECTARIAN APPROPRIATION OF THE SCHOOL FUND IS DOING—

THE PUBLIC-SCHOOL QUESTION.—[See "A DEGREE OF TUNES AND STREET'S ESCORTS," PAGE 114.]



AND WHAT IT MAY LEAD TO

"The Public School Question — What Sectarian Appropriation of the School Fund is Doing — And What in May Lead to." Bellevue. Aug. 30, 1873, in *Harper's Weekly*. Pen & ink drawing. Reproduced from the collections of the Library of Congress, by permission.



"EVERY DOG" (NO DISTINCTION OF COLOR) "HAS HIS DAY."
 REP. GENTLEMAN BY YELLOW GENTLEMAN: "Pah! You 'said you would beg out, as he did me."

"'Every Dog' (No Distinction of Color) 'Has His Day.'" Thomas Nast. Feb. 8, 1879, in *Harper's Weekly*.
 Reproduced from the collections of the Library of Congress, by permission.



UNRESTRICTED IMMIGRATION AND ITS RESULTS—A POSSIBLE CURIOUSITY OF THE TWENTIETH CENTURY.
THE LAST YANKEE.
1888.

"Unrestricted Immigration and its Results — A Possible Curiosity of the Twentieth Century, the Last Yankee."

Matt Morgan. Sept. 8, 1888, in *Frank Leslie's Illustrated Newspaper*. Pen & ink drawing. Reproduced from the collections of the Library of Congress, by permission.

Lesson 7

An Expanding Mosaic

Overview

The Big Idea

Due to the constitutional guarantees of religious liberty, differing faiths and worldviews have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.



Historical Section

John Courtney Murray and Catholic commitment to religious liberty; the dangers of majoritarianism and the *Gobitis* flag salute case.

Key Facts

- Most American reform movements, including the abolition of slavery and the campaigns for civil rights, were inspired and often directed by one faith or another.
- At Vatican Council II (1962-65) an American priest, John Courtney Murray, was the chief architect of the Catholic Church's historic statement on religious liberty, Declaration on Religious Freedom.
- The Supreme Court ruled in *Minersville School District v. Gobitis* (1940) that school boards could require all students to salute the flag. After the ruling, Jehovah's Witnesses, who believe that pledging allegiance to the flag violates their religious beliefs, were attacked, sometimes violently.
- In 1943, the Supreme Court reversed itself in *West Virginia State Board of Education v. Barnette*, ruling that compelling the flag salute violates the First Amendment

Key Terms

John Courtney Murray, articles of faith/articles of peace, loyalty testing, Free exercise, No establishment, *West Virginia State Board of Education v. Barnette*, Roman Catholic Church, Vatican Council II (1962-1965), Declaration of Religious Freedom, Jehovah's Witnesses, *Minnersville School District v. Gobitis*

Objectives

Students can think through and explain:

1. The Roman Catholic Church's position on religious liberty as given at Vatican Council II.
2. John Courtney Murray's understanding of citizenship and civil unity.
3. The dangers of majoritarianism, especially in times of national stress.
4. How the First Amendment protects freedom of conscience for people of all faiths or none.



The Big Idea

Due to the constitutional guarantees of religious liberty, differing faiths and worldviews have been at the heart of some of the best and some of the worst movements in American history. Church and state have been separated by the First Amendment, whereas religion and public life have not.

Religion and politics are often treated as unmentionable in polite conversations — and with good reason. When religion and politics enter discussions together, voices and blood pressures seem to rise on all sides. Not surprisingly, many people would prefer to see religion sticking to the private sphere. Public life would be safer and quieter.

"It was religious zeal and the religious conscience which led to the founding of the New England colonies nearly three centuries ago — those colonies whose spirit has in such a large measure passed into the whole nation. Religion and conscience have been a constantly active force in the American commonwealth ever since; not, indeed, strong enough to avert many moral and political evils, yet at the worst times inspiring a minority with a courage and ardour by which moral and political evils have been held at bay, and in the long run generally overcome."
— James Bryce, *The American Commonwealth*

But for those who know American history and take religious liberty and freedom of conscience seriously, this is unwise and, in fact, impossible. Citizens might regard religious liberty as a sort of "sound barrier issue." On one side it does seem to be all passions, prejudices and problems. But break through the barrier and it will be seen to affect directly many of the deepest human rights and freedoms. So it is no solution to keep faith strictly out of public issues. We might thus reduce discussion of many of the dark spots in American history, such as the anti-Catholic riots, the persecution of the Mormons in the 19th century and the defense of slavery. But we would also cut out many bright spots like the abolition of slavery. We might shut down some of the activities of people we disagree with today, but then we might shut out our "own side" tomorrow. As Alexis de Tocqueville observed, "No sooner do you set foot upon American ground than you are stunned by a kind of tumult; a confused clamor is heard on every side, and a thousand simultaneous voices demand the satisfaction of their social wants."

There are two main reasons why, for better or for worse, we are stuck with a noisy "public square." 1) Constitutional: The First Amendment prohibits any national establishment of religion, but in separating church from state it has not separated religion from public life. From Article 16 of the Virginia Declaration of Religious Freedom onward, the call for the "free exercise" of religious views has always protected the place of religious liberty in American public life. 2) Philosophical: Many of the major faiths and faith communities in America, whether Protestant, Catholic, Jewish, Eastern Orthodox, Mormon or Muslim, stem from the biblical tradition which requires as an article of faith integration of belief and life. Many secular beliefs equally prize such a consistency in integration (for example, the "humanist frame").

For Americans, then, the issue is not whether faiths are free to play a part in the public square, but how and to what end. This lesson, "The Noisy Public Square," aims 1) to develop understanding of some of the best and the worst actions in the public sphere that were grounded in different faiths; and 2) to deepen appreciation for participation in public life as not simply permissible but constitutionally responsible.

"Men never do evil so completely and cheerfully as when they do it from religious conviction."
— Blaise Pascal, *Pensees*

For Americans, then, the issue is not whether faiths are free to play a part in the public square, but how and to what end.

Historical Background

FOR BETTER —

Fanning the Human Rights Revolution

John Courtney Murray and Catholic Commitment to Religious Liberty

“Can a free government possibly exist with the Roman Catholic religion?” John Adams’ question, raised in a letter to Thomas Jefferson, is more than an expression of longstanding American prejudice against Catholicism. The Catholic Church has too often been regarded as a worldwide “monolith” and then charged with all sorts of real or imaginary evils, from Spanish Catholic intolerance to Italian Catholic corruption. The very notion “American Catholic” has sometimes been taken as a contradiction in terms. In effect, critics have raised a challenge: What do Washington, Jefferson and Madison have in common with Savonarola and St. Ignatius Loyola? What has the Supreme Court to do with the Curia? What has the world of the First Amendment to do with the world of the Papal Index?

Catholic writers, in reply, once used to remind Americans of their medieval origins, which were earlier than Puritan ones. A Catholic, they said, inspired Columbus with his dream; Columbus and his Catholic crew first crossed the uncharted ocean; a Catholic queen made the expedition possible; and the name of a Catholic has been given to the entire continent.

Slowly, however, the argument from earlier Catholic history shifted to an argument on behalf of American democracy. Alexis de Tocqueville gave much thought to the latter on his travels in 1831. He concluded: “I think that the Catholic religion has erroneously been regarded as the natural enemy of democracy. Among the various sects of Christianity, Catholicism seems to me, on the contrary, to be one of the most favorable to equality of condition among men.” In the 1850s Orestes Brownson, the maverick Catholic convert, made the same point in a public argument with Bishop John Hughes of New York. Americans would soon recognize that only through Catholicism he said, could the country “fulfill its mission.” At the time, Brownson’s expectation sounded extraordinary. And what seemed to ditch his chances of success was the proviso he added: Americans would all become Catholics if all Catholics would stop acting like immigrants and become Americans.

From then on the argument about the fit between the Catholic faith and American democracy seemed to be caught in the crossfire between Catholic “Americanizers” and Catholic “non-Americanizers.” Thus, when Pope Leo XIII delivered his notorious strictures on “Americanism” in a letter in 1899, the Church’s pro-American party seemed to have lost and the Church’s progress in American society was set back two generations.

Yet by the end of 1960, the picture had changed completely. The reason lay deeper than John F. Kennedy’s razor-thin victory as the first Catholic President. Ever since 1850 the Catholic Church had been the largest denomination in the United States. It had become a formidable political force in certain states and cities. Historians such as Daniel Boorstin have argued that the advances of American Catholics after World War II represent a significant chapter in the history of American institutions. A new era had dawned for the relationship between Catholics and America’s doctrine of the separation of church and state. The person chiefly responsible was a tall, thin, patrician-looking Jesuit priest, Father John Courtney Murray.

A Shy Hero

John Courtney Murray was born in 1904 in Manhattan, the son of a Scottish lawyer and an Irish mother. After graduating from high school, where he specialized in debate and drama, he abandoned his aim of going into medicine, and joined the Jesuit order instead. He gained degrees from Boston College, taught for three years in the Philippines, studied in Rome and then took up his lifework as a professor of theology at a rural Maryland seminary, Woodstock College.

Even in his most influential days, Murray was relatively unknown. Shy by nature, he was a man of ideas more than action. His writing appeared mostly in specialized or esoteric journals having a limited circulation. If he moved in the councils of the mighty, it was largely those of the intellectual mighty, such as among the distinguished fellows at the Center for the Study of Democratic Institutions. At Vatican Council II (1962-1965), where his influence was decisive, he always moved behind the scenes, a non-voting figure who shunned the



“I think that the Catholic religion has erroneously been regarded as the natural enemy of democracy. Among the various sects of Christianity, Catholicism seems to me, on the contrary, to be one of the most favorable to equality of condition among men.”

— Alexis de Tocqueville

LESSON SEVEN: An Expanding Mosaic

One of his colleagues recalled, “John Courtney Murray needed no periodic excursions into the limelight, no plaudits, no curtain calls. The performance was what counted; more particularly, the results.”

spotlight of public debate. One of his colleagues recalled that “John Courtney Murray needed no periodic excursions into the limelight, no plaudits, no curtain calls. The performance was what counted; more particularly, the results.”

Murray’s “results” were his contribution to religious freedom in two areas: He reconstructed a Catholic statement of religious liberty and argued the overall importance and its place in the relation between church and state in American democracy. He set out the heart of these arguments in a series of articles between 1946 and 1954, the fertile period he used to refer to as “that eight years of my life.” Working through a deep sense of dissatisfaction and confusion, he formulated new proposals, criticized the dominant conservative Catholic position and then restated and defended his new position systematically.

For 15 years Murray was often suspect to his superiors at the Jesuit headquarters in Rome. In July 1955, he was warned that he should not continue his work on these questions. Believing that he had been defeated in the debate, he emptied his study of all books and research material on church-state topics. Later, he was “disinvited” to the first session of Vatican II. He was only included at the second session because Cardinal Spellman of New York sensed that religious liberty would be “the American issue” at the Council and that Murray was the most able person to advance it. Spellman proved correct. Despite the opposition and setbacks, Murray emerged as the chief intellectual architect of Vatican II’s celebrated Declaration on Religious Freedom.

Articles of Faith, Articles of Peace

Murray believed that the Council’s Declaration on Religious Freedom was “a milestone in human history” and “the most controversial document of the whole Council.” In all honesty, he admitted that the Catholic Church had been late in acknowledging the validity of religious liberty. But Vatican II decisively renounced two errors. One was the old double standard, which Murray described as “freedom for the church when Catholics are in a minority, privilege for the Church and intolerance for others when Catholics are a majority.” The other was the formula which in fact underlay the Inquisition that “error has no rights.”

“The Church does not make, in a matter of right or of divine law, the claim that she should be established as ‘the religion of the state.’ Her claim is freedom, nothing more.”

In an address to political leaders, Pope Paul VI underscored how new the Declaration was. “And what is it that this Church asks of you, after nearly two thousand years of all sorts of vicissitudes in her relations with you, the powers of earth? What does the Church ask of you today? In one of the major texts of the Council she has told you: she asks of you nothing but freedom Implicit in it is the renunciation by the Church of a condition of legal privilege in society. The Church does not make, in a matter of right or of divine law, the claim that she should be established as ‘the religion of the state.’ Her claim is freedom, nothing more.”

Behind this astonishing statement lay the powerful mind and work of John Courtney Murray. Three strands of his argument deserve attention. First, Murray provided a Catholic case for the separation of church and state. He argued that the American system, though opposed by traditional Catholic positions, was actually in line with such early papal statements as that of Gelasius I in AD. 494. “Two there are,” Gelasius insisted, referring to the spiritual and temporal powers.

Murray persuaded Catholics to renounce centuries of a false and dangerous understanding, in which the tendency was either for the church to swallow up the state, as in a theocracy, or for the state to swallow up the church, as in an absolute monarchy or totalitarian state. Long before, in ancient Greece, Plato had recommended in his Laws that all citizens refusing to accept the state religion should be imprisoned for 5 years, each day of which they should listen to one sermon.

Against these errors, which destroyed freedom from one or the other of two sides, Murray argued that religious liberty was best guaranteed when the civil order and the religious order were separated and both were distinct but related. As a consequence, Murray went on, the separation of church and state was an “instrumental companion-doctrine” to religious liberty. The power of religion in a pluralistic society should never be legal and direct; but spiritual and indirect.

Second, Murray argued that the Religious Liberty clauses of the First Amendment should be regarded as “articles of peace” rather than as “articles of faith.” If the clauses were taken as matters of dogmatic belief, whether sectarian or secular, then they would run afoul of the first clause itself, the one which forbade establishment.

Besides, if the clauses were made articles of faith, the question could always be raised: Whose beliefs? And who is excluded by them? A new religious test would have been smuggled into the Constitution. However sincerely different people may hold their interpretations of the First Amendment, those who deny religious liberty to anyone or any group on the basis of disagreement with its clauses are automatically suspect.

We have to resist all doctrines, Murray argued, that “would make a religion out of freedom of religion and a dogma out of separation of church and state.” The Religious Liberty clauses are the work of lawyers, not of theologians. They are not dogma, only good law, and therefore always have to be interpreted in relation to their vital contribution to the public good. In a pluralistic society that takes differences seriously and does not seek to reduce them to a final unity, articles of peace are essential to the American consensus and to public harmony.

Third, Murray argued that democracy was a form of ongoing debate in which genuine disagreement would be regarded as an accomplishment. Instead of the bitter warfare of conflicting philosophies, democratic argument is the essence of a civilized society. Unless citizens make a commitment to talk to one another in the language of the common good, the result will be confusion rather than agreement. Religious believers are as much to blame as anyone on this point. For example, one who claims to derive his or her public policy directly from the Bible “without further exegetical ado,” as Murray put it, makes a hash of both the Bible and his or her public policy. Democracy is a non-stop conversation in which citizens are locked in public arguments over convictions that make a deep difference. Disagreement, in this sense, becomes an achievement; diversity a source of strength.

Murray was not thought right about everything, and he faced strong critics on all sides. He was constantly aware that, because he was a priest, his statements were specially searched for a hidden agenda. He knew too that all of his support for religious liberty was dogged by the church’s long, spotty record on the issue. This was most obvious when he faced non-Catholic opponents like Paul Blanshard, whose book *American Freedom and Catholic Power* (1949) raised the old specter that the Church was unAmerican, that it was “a state within a state and a state above the state.” Such stuff, Murray said, was the same old argument in a new guise, a form of “new nativism.” Churchmen assailed him strongly, too. From their point of view his position seemed too “liberal,” “more American than Catholic,” or simply biased toward liberty at the expense of justice.

Today, a generation after his death in 1967, John Courtney Murray’s contribution to religious freedom and human rights is recognized as singular. Professor Michael Howard, Regius Professor of Modern History at Oxford, has argued that one of the two great revolutions in the 20th century was the transformation of the Roman Catholic Church from a bulwark of the status quo into one of the world’s foremost institutional advocates of human rights.

The principle of religious liberty is decisive for the human rights revolution in three ways. First, it establishes within every person a sanctuary that no power — not even the state — has the right to violate. Second, it commits its supporters to active advocacy of religious freedom for all, not just as a matter of individual habit but as a legal guarantee that is part of ordered institutions. Third, it commits its supporters to promoting all the fundamental freedoms, especially freedom of speech and assembly, which are integrally tied to religious liberty.

Through his influence on Vatican II, John Courtney Murray was a leader in that human rights revolution. The developing line in his thinking from human dignity to religious liberty to the separation of church and state to ordered freedom in a pluralistic democracy is a vital part of a human rights revolution around the world. Vatican II fanned it.

Untold millions will never know how much their freedom is owed to the mind and pen of a man who could draft declarations such as this: “The right to religious freedom has its foundation,” not in the church or society or the state, but “in the very dignity of the human person.”

“The first two articles of the First Amendment are not articles of faith. Like the rest of the Constitution these provisions are the work of lawyers, not of theologians or even of political theorists. They are not true dogma but only good law. That is praise enough.”

— John Courtney Murray

Unless citizens make a commitment to talk to one another in the language of the common good, the result will be confusion rather than agreement.

“The right to religious freedom has its foundation,” not in the church or society or the state, but “in the very dignity of the human person.”

— John Courtney Murray

FOR WORSE —

Loyalty Testing and the Dangers Of Majoritarianism

“America — Love It or Leave It”

To Americans, freedom of conscience is a highly prized right that goes all the way back to the Protestant Reformation and in particular to the famous incident at the Diet of Worms in 1519. Martin Luther refused to renounce his allegedly “heretical” views and bow to Charles V, the Holy Roman Emperor, because he felt conscience-bound to obey the Bible as he understood it. “Here I stand,” he said. “So help me God; I can do no other.”

LESSON SEVEN: An Expanding Mosaic

"I cannot and will not recant, for it is neither safe nor honest to violate one's conscience."

— *Martin Luther*

American law is color-blind to faiths. It knows no such notion as "heresy" or "dissent," because where there is no "orthodoxy," there can be no "heresy," "heresy-hunters" or "loyalty leagues."

Of course, if we should look at the same incident from the point of view of the Emperor, our evaluation would be quite different. Dissent becomes disloyalty. Freedom of conscience becomes subversive; to respect it is a recipe for chaos. That sort of tension — between individual conscience and national security or majority orthodoxy — surfaces again and again in American history, often in a deep concern for patriotism that results in a formal or informal testing of loyalty.

From one perspective, it might seem surprising that freedom of conscience ever became an issue in America. It is rooted in the Reformation and protected by the Bill of Rights. The First Amendment prohibits the establishment of any religion and therefore of any state-established orthodoxy. American law is color-blind to faiths. It knows no such notion as "heresy" or "dissent," because where there is no "orthodoxy," there can be no "heresy," "heresy-hunters" or "loyalty leagues."

But from another perspective it does not seem so surprising. The United States is a nation like any other with an obvious and valid interest in its own security. Because we are a nation of immigrants, patriotism to Americans is more a matter of beliefs than bloodlines. So it has become natural to state our patriotism verbally in ways that may seem strange to citizens of other countries. Most European countries have no Pledge of Allegiance like ours.

Such tensions became a problem in times of national stress such as the Civil War, World Wars I and II, the Cold War and the Vietnam War. Seeing a threat to the nation, many have reacted by demanding loyalty statements from everyone. In the process, they have often mistaken independent thinking for disloyalty and termed the latter "un-American." In this way, they injured many innocent people, confused and manipulated the general public, overrode both the law and the spirit of the Bill of Rights and violated the principle of freedom of conscience. In the great scramble to prove ourselves more patriotic than others, we can actually make loyalty a political weapon to use against fellow citizens. A bumper sticker common during the Vietnam War put the attitude straightforwardly, "America — Love It or Leave It."

Children Refusing to Salute the Flag

Many religious liberty cases before the Supreme Court have pitted freedom of individual conscience against state interest. None were more important and dramatic than the two flag salute cases during World War II.

In 1936, with public anxiety mounting over fascism and the world moving to the verge of war, two young children, Lillian and William Gobitis, aged 12 and 10, were expelled from the Minersville, Pa., public school for refusing to participate in the ceremony of saluting the flag. The state had been historically famous for having championed religious liberty. But the children were Jehovah's Witnesses who believed that pledging allegiance to the flag violated their religious instruction not to worship any "graven image."

Their parents appealed to the local school board to grant an exception for their children, but were refused. So the parents placed the children in a private school and sued both to recover the additional school costs and to stop the school board from requiring the Pledge of Allegiance as a condition for public school attendance. Their position was upheld by the District Court in Philadelphia and then by the Court of Appeals.

But when the school board appealed to the Supreme Court in the spring of 1940 (*Minersville School District v. Gobitis* [1940]), the Court, by a vote of 8-1, reversed the lower courts and sustained the school board's right to require saluting the flag. Religious liberty must give way to political authority, wrote Justice Felix Frankfurter. "Mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibility."

The public response was immediate and destructive. The Court decision appeared to classify all Jehovah's Witnesses as un-American. Attacks against Witnesses were frequent and violent. In the weeks that followed, the press reported hundreds of physical attacks on them. In Kennebunk, Maine, their Kingdom Hall was burned. In Rockville, Md., the police assisted a mob in breaking up a Bible study. In Jackson, Miss., members of a veterans' organization dragged the trailer homes of Witnesses out of town. In West Virginia, the police and the sheriff's department made a group of Witnesses drink large amounts of castor oil then paraded the victims through the town bound in ropes. In Nebraska, a Witness was abducted and castrated.

Thoughtful Americans were critical of the *Gobitis* decision all along, including the editors of Catholic publications whose followers had been the chief target of Jehovah's Witnesses' doctrines. But the appalling firestorm unleashed by the decision helped the Supreme Court justices to change their minds. In 1943 they reversed *Gobitis* in *West Virginia State Board of Education v. Barnette*. In the 6-3 decision, Justice Robert Jackson wrote:

We can have intellectual individualism and the rich cultural diversity that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. ... But freedom to differ is not limited to things that do not matter much. That would be a mere shadow freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

Never Say Never

Incidents such as the *Gobitis* case serve as reminders of the constant need to protect the freedom of all Americans. Here are three of the most basic lessons:

1. Inalienability of Rights: Religious liberty, or freedom of conscience, is a fundamental and inalienable right. This freedom, and the Bill of Rights that secures it, therefore, benefits the smallest minorities and least popular groups, not just the majority and those who hold widely shared opinions. It is for times of crisis and stress, not just for periods of peace and prosperity.

2. Security of Freedom: In a free democracy like the United States, security does not ultimately lie in loyalty testing any more than in surveillance. It lies in the strength of the commitments and sacrifices that free citizens offer freely. In the long run these voluntary commitments are even more important than the Bill of Rights itself. As the great broadcaster Edward R. Murrow declared about the Supreme Court in 1948, “Nine men in Washington cannot hold a nation to ideals which it is determined to betray. Whether justice is done to the particular defendant is important, but in the long run less important than whether a nation does justice itself.”

3. The Crisis Behind the Crisis: Whatever the original occasion for a particular crisis, it can develop into a crisis for freedom of conscience too if the Bill of Rights is ignored and public responses are allowed to grow unchecked. Sen. Sam Ervin used to tell the cautionary tale of a U.S. military commander who had copies of the Constitution stamped with the disclaimer, “This document does not necessarily reflect the views of the commander of this unit.” Sen. Ervin (one of the staunchest defenders of religious liberty in the U.S. Congress) said of two of President Nixon’s appointees who were convicted for their part in the Watergate scandal, “If either of them ever read the Constitution, he didn’t understand it.”

“It is not a crime to believe anything at all in America.”

— *E.B. White*

Security does not ultimately lie in loyalty-testing any more than in surveillance. It lies in the strength of the commitments and sacrifices that free citizens offer freely.

Teaching Strategies

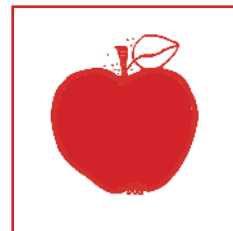
Note: This lesson is on the “for better, for worse” consequences of leaving diverse faiths free to enter public life. It contains enough material for two separate lessons on the same Big Idea, one covering the positive and the other the negative.

You will find the following for use in this section in the Student Documents:

7-A General Principle of Religious Freedom, Vatican II

7-B John Courtney Murray, “The Return to Tribalism,” an address to the John A. Ryan Forum, Chicago, April 14, 1961

7-C *West Virginia State Board of Education v. Barnette*, 1943



Link

Ask students to think about the picture of democratic life as dealings and debates in “a public square.” Suggest that they think how religious liberty makes this public square a lively, sometimes noisy place. Help them to reflect on their own experiences in their community and schools, and on experiences portrayed on television and in the newspapers. And urge them to think through how these experiences would have been different without religious liberty and the pioneers of ideas and laws who made it possible.

Approaches

FOR BETTER: Supporting the Human Rights Revolution

Introduce the content of the Historical Background and distribute Student Document Handouts 7-A and 7-B to the class.

Step One

One way to use these documents is to select one to study carefully — for example, the speech by John Courtney Murray, which is little known to the general public. Reproduce the speech without title or speaker name, so that students are reading the document without the benefit of historical or personal reference.

Ask one student to read the speech aloud or read it yourself, while the others follow along. A discussion should follow which addresses the following topics:

- Identity of the speaker (the students will probably not know Murray)
- Time and place
- Historical Context
- The Problem
- The Proposed Solution

Step Two

The key point of Murray’s speech is contained in the three-fold option for participation in the public square: Tribesperson, Idiot or Citizen?

- Search for his definitions of these three positions, state them in your own words and discuss how Americans fit into these categories several decades after he gave his speech.
- What are some of the forces in our society that help make us think and act “tribally”? The word tribe is used loosely here for groups with strong solidarity — for example, the “Protestant and Catholic tribes” in Ulster. What is the impact of things such as music, slogans and flags in cementing this solidarity?
- What are the forces in our society that encourage us to be “idiots” in the sense of purely private people with no interest in public affairs? How do you and your friends measure up according to these standards?
- Why does Murray believe that our country badly needs a special kind of unity? Distinguish tribal unity as outlined early in the speech from civic unity, which Murray discusses toward the close of his speech. What are the essential features of each and how does one’s faith relate to each kind of unity?
- Murray’s speech is an eloquent plea for citizenship of a very special kind. In groups of three or four discuss what specific responses you could make to Murray’s arguments. For example, how can religious diversity contribute to creating a strong sense of the common vision of the common good and, therefore, to achieving civic unity?

FOR WORSE: The Danger of Loyalty Testing

Distribute Student Document Handout 7-C, the *Barnette* case. Share with the class the background material from the Historical Background and ask one or two students to read the document aloud. Discuss the case, noting especially:

- Protestantism, which was America's earliest and predominant faith, claims the notion of freedom of conscience as a founding principle. Martin Luther refused to recant before the Emperor on the basis of conscience: "Here I stand. So help me God." On the basis of such freedom of conscience Protestants got their name, for they became "protesters." Yet today some Americans act as if they were deaf to the importance of religious liberty to contemporary minority groups.
- We need to be careful about using the term "minority" too lightly today. As the United States becomes more of a "minority majority" in overall make-up, some minorities are actually quite powerful, and it is important, moreover, not to forget the smaller, weaker and less popular minorities. No one feels his or her vulnerability more keenly than the person who is "a minority of one in a small town."

Questions

- What are the main reasons for the *Gobitis* decision being overturned by the Supreme Court in the *Barnette* decision?
- In your own experience what is meant by the term "whipping boy"? Were the Jehovah's Witnesses made whipping boys? If so, why?

Dramatizing

- You be the judge. Ask one of your students to be Justice Jackson. Distribute *West Virginia State Board of Education v. Barnette* (Student Document Handout 7-C). While the class follows along reading this majority opinion of the court, the judge reads aloud. Students should check or underline those sections and statements that they would like to learn more about.
- Have students write the opinion. Direct them to think through how they would write it. Give them three or four minutes to write the beginning of their argument and one reason for it. Ask for volunteers to share their opinions. Compile the points chosen and the reasons given.
- Conclude by discussing these questions:
 1. What is the conclusion of the Court regarding saluting the flag?
 2. Give two or three reasons why the Court reached this decision based on the Religious Liberty clauses of the First Amendment.
 3. What is the Supreme Court protecting in a decision of this kind and why is it critical for religious liberty?
 4. How does this important protection of the right of freedom of conscience differ from a casual indifference to patriotic commitments?

A Double-Entry Journal

Have the students write an item for their folders using the double-entry method. On the left side of the students' papers they are to write "What I Learned" from the *Gobitis* document. On the right side, exactly opposite, they are to describe "How I Responded," including their thoughts and feelings about what they learned and any resolutions about future behavior. These can be shared during a discussion time, if you wish.

Legacy

It would be impossible to draw up a complete balance sheet of the assets and liabilities of religious liberty in public life, if only because different outcomes are differently assessed, making one group's "victory" another's "defeat." There are, however, certain broad conclusions that come from an appreciation of the story as a whole.

1. Achievements

When all the struggle, din, conflict, villainy and heroism is over, it is unquestionably clear that the constitutional guarantees of religious liberty are linked to many of the most striking movements for reform in American history — from various sides — including abolition, the women's movement, the temperance movement, civil rights, the peace movement, penal reform and the anti-drug crusade. Always remember, of course, that if many of the reformers were inspired by their respective faiths and worldviews, so also were many of their bitterest opponents.

2. Realism

For all of the constitutional guarantees and public celebration of religious liberty and the undoubted superiority of America's record to that of Europe, it is also clear that violations of religious liberty are an undeniable fact of the American past and an ever-present menace requiring realism and untiring vigilance.

The American experiment was called into question once when faced with deep moral and cultural differences. That event is known as the Civil War. The differences then were not specifically over religion, but in a parallel way all violations of religious liberty are a bone-deep reminder of how difficult it has been to preserve civilization and to better human life. Those who understand this point are not surprised when bad times teach us more than good times or when the nation can pass from triumph to folly without noticing it.

3. Wisdom

There is an elementary but important lesson to be learned from the record of all the best and worst. The real issue behind controversies over religious liberty in public life is not whether faiths have a place, but how and to what end they should exercise that role. Knowledge of history is a first step toward political intelligence and maturity.

4. Empathy

Many of the public positions individuals and groups take are shaped by perceptions, memories and scars from terrible violations of freedom of conscience to them or their communities in the past, whether in American history or elsewhere in the world. These justifiably threatening perceptions should be taken into account if religious liberty is to be respected and policy proposals are to be considered on their merits.

In addition, if this lively tradition of the "noisy public square" is to be maintained, two particular developments will have to be watched:

5. The Decline of Volunteerism

Religious liberty makes a two-fold contribution to a society committed in principle to the notion of a limited state. First, because freedom of conscience is an inalienable right that even the state cannot take away or override, it represents a curb on the state. Second, because the No Establishment and Free Exercise clauses have been closely tied throughout history to the American tradition of volunteerism, they foster those voluntary initiatives in public service that go hand in hand with government action.

Thus, while church and state have almost reversed their roles since the First Amendment was framed, a danger arises whenever the modern bureaucratic state is allowed to encroach on religious liberty with more and more regulations. The effect is to undermine American volunteerism as well as religious liberty.

6. The Growth of Cultural Divisions Over Religion

When we sustain a widespread public agreement over the do's and don'ts to be followed when different faiths enter public life, the issue need not be religion itself. Instead, it can be the merit or demerit of political proposals that the faiths have inspired. On the other hand, when such agreements break down, the tendency is 1) for faith, or the lack of it, to become the issue and 2) for religion then to act as an agent that inflames in public discussion.

In some European nations this has even led to a “two-nation division” with conservative forces tending to align themselves with religion and progressive forces against it. This division has never occurred in America, but in conditions where such public agreements have broken down, widespread dismay has arisen at the contentiousness of religion and politics. The present situation, therefore, must be watched.

Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in this lesson indicate an understanding of how the “noisy public square” is filled with both the best and worst movements in American history? Do their writings and comments in class show the ability to reconstruct those movements in light of today's freedoms, using historical, geographical and economic reference points?

Historical Empathy: Do your students understand the motivations, goals and sacrifices of historical figures and the challenges they faced in making their stands in the public square? Can they see how passing contemporary events raise profound constitutional first principles? Do they appreciate how pivotal are the stands of individuals such as Father Murray or the decisions of groups such as the Supreme Court?

Civic Responsibility: Do your students understand the implications of their own behavior? Have they come away with a deepened sense of realism, in the light of the best and the worst? And with a greater sense of responsibility, because their own actions will be the “for better, for worse” in their generation? Do your students see the importance of community involvement, of public service, as an important expression of citizenship that helps maintain human rights for all?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so forth.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Finish this statement with examples: “Religion may be controversial, but it should not be thought of as a taboo subject in the political arena; nor should it be unmentionable in polite conversations for the following reasons ... ”





Student Documents

Contents:

7-A General Principle of Religious Freedom, Vatican II, p. 123

7-B John Courtney Murray, "The Return to Tribalism," an address to the John A. Ryan Forum, Chicago, April 14, 1961, pp. 124-126

7-C *West Virginia State Board of Education v. Barnette*, 1943, pp. 127-129

General Principle of Religious Freedom Vatican II

2. This Vatican Synod declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. ...

John Courtney Murray
"The Return to Tribalism"

From an address to the John A. Ryan Forum, Chicago, April 14, 1961

Never before has the nation stood in greater need of unity. Let it not be the unity of tribalism—one welded by fear, intolerant of all alien to itself. While it is good to know what we are against, it is far better to realize what we are for. The real enemy within the gates of the city is not the Communist, but the idiot ... the man who does not possess the public philosophy (or common vision of the common good).

Is there some danger that a false, fallacious or fictitious unity might be foisted on the American people? I think there is! I think there are two dangers and both of them are clear and both of them are present.

One of them is historical; it is the product of the contemporary historical moment of world crisis. The other is more inherent, a derivative from the very nature of political society itself.

Let's think for the moment of the first danger, that which is induced by the present world crisis. The fact is, that, as of the moment, the United States is confronted by an enemy, an external enemy, the Communist empire, the Communist ideology, the whole revolutionary movement in history that is associated with the word "communism."

The danger is that this country may be driven into a unity based simply on negation, on anti-communism, and the danger of this is greater in proportion as the opposition to communism is more passionate and less intelligent. This would be a shame because such unity would be one born of fear, one born of a sense of menace. It is good indeed to know what we are against, but far more important is it for us to know what we are for.

Moreover, this enemy is a very special one; his tactics are those of infiltration and subversion. He can, therefore, and does become an internal menace in our country, and the danger, as we confront the menace of communism within our own borders, is that we may be driven to some manner of unity that I will characterize as "tribal."

The unity of a tribe, as you know, is based on kinship—on kin and kind—and the enemy tribe is the stranger. No matter who the stranger is, as a stranger, he is the enemy. The tribe seeks security in sheer solidarity, a solidarity that is absolutely intolerant of anything alien to itself. Those in the tribe speak in terms of "we" and "they." The members of the tribe tend to huddle, to get close together, to close up, to close ranks.

The tribe cannot deal with the stranger in any other terms or by any other means except those of force and violence. The ideal of the tribe, of course, is the ideal of the warrior. The tribe is essentially a war-making group.

Is there some danger of this "tribalism" in America? I rather fancy there is, and it appears in the debased concept of loyalty that has become current among us, especially in the more fanatic, the more passionate, and also, the more unintelligent opponents of communism. Loyalty is a sentiment proper to the family, proper to the clan, proper to the tribe. It is something that one expects from one's friends. One finds it in the minor types of social groupings—the corporation, the union, the club. Loyalty is the sentiment that one shows toward one's kin and one's kind.

I don't think that loyalty is the proper bond of civil society. Good citizenship is tested by other standards and more rigid standards than the shifting standard of loyalty. Loyalty and disloyalty—I don't think it is at all useful to divide citizenship into these categories. Moreover, I am quite convinced that the dichotomy between "we" and "they" has no place whatever among the people temporal, within the body politic as such.

When the Constitution was being written, it started off: "We, the people,"; it did not start off: "We, the tribe." We are not a tribe, we are a people. What is the danger here? Well, I suppose we have seen it, have we not? It is the danger of indicting ignorance and error and political stupidity, which are commodities hardly in short supply—the danger of indicting these things as disloyalty.

This is useless; it just doesn't get us anywhere at all. Moreover, it confused the whole issue of communism because the issue of communism, if I understand it at all, is an issue first, of understanding, and secondly, of action based upon understanding. Moreover, all this tribal cultivation of loyalty leads to a stupidity that is itself dangerous. I mean the stupidity of mistaking the real domestic issue. Who is the real enemy within the gates of the city?

I suggest that the real enemy within the gates of the city is not the Communist, but the idiot. Here I am using the word "idiot" not in its customary, contemporary vernacular usage of one who is mentally deficient. No, I am going back to the primitive Greek usage; the "idiot" meant, first of all, the private person, and then came to mean the man who does not possess the public philosophy, the man who is not master of the knowledge and the skills that underlie the life of the civilized city. The idiot, to the Greek, was just one stage removed from the barbarian. He is the man who is ignorant of the meaning of the word "civility." ...

I would suggest that the premises of any national unity that we want in this country are two: the first is the simple fact that there is no religious unity in this country. We exist in a state of religious division.... Nevertheless, these religious divisions are not to be blurred, they are not to be transcended in the name of some common secular democratic faith and they are not to be reduced to some religious common denominator. This would, of course, be the end.

Secondly, regardless of our religious divisions, civil unity among us is necessary. Therefore, the only question that confronts us is this: What is civil unity in itself, and in its relation to religious pluralism in society? And secondly, how is it to be achieved?

Well, if this be the question, the outlines of the answer are not unclear. They are to be found quite readily in what we like to call the "liberal tradition of the West," the tradition that has dictated the norms for the creation of civil unity; the unity of a people. And it was said long ago by the Stoics, and even before them, that civil unity is based on two things, first upon a constitutional consensus, and secondly, upon a community of interests. If you want the Latin, first, *consensus juris*, and secondly, *utilitatis communio*.

Civil unity, therefore, is established by two things. First of all, by the rule of law, the rule of a common law, and secondly, by the rule of law that serves as the framework for the orderly pursuit of a common good. And when you speak of civil unity, the enemy to it is not the stranger nor the religious heretic; the enemy of civil unity is the outlaw, whether he exists in the criminal underground or in the areas of criminality that today are appearing overground—some great corporations, for instance. Or whether he exists in the international scene, like the Communist, who is, by definition, the outlaw—one who stands beyond the bounds, the horizons of civilized community as such. ...

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West Virginia State Board of Education v. Barnette, 1943

Mr. Justice Jackson delivered the opinion of the Court.

... The Board of Education adopted a resolution ordering that the salute [and pledge of allegiance] to the flag become "a regular part of the program of activities in the public schools," that all teachers and pupils "shall be required to participate in the salute honoring the Nation represented by the Flag; provided however, that refusal to salute the flag be regarded as an Act of insubordination, and shall be dealt with accordingly." ...

Appellees, citizens of the United States and of West Virginia brought suit in the United States District Court for themselves and for others similarly situated asking an injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superior to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says: "Thou shalt not make unto thee any graven image, or any likeness of anything which is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them." They consider that the flag is an "image" within this command. For this reason, they refuse to salute it.

Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted and are threatened with prosecutions for causing delinquency. ...

The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude. ...

The *Gobitis* decision, however, assumed, as did the argument in that case and this, that power exists in the State to impose the flag salute discipline on school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. The question which underlies the flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be committed to any political organization under our Constitution. We examine rather than assume existence of this power and, against this broader definition of issues in this case, re-examine specific grounds assigned for the *Gobitis* decision. ...

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and of all its creatures—Boards of Education not excepted. These

have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Lastly, and this is the very heart of the *Gobitis* opinion, it reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment," and hence reaches the conclusion that such compulsory measures toward "national unity" are constitutional. Upon the verity of this assumption depends our answer in this case.

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate means to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure towards unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature of the origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

The decision of this Court in *Minersville School District v. Gobitis* and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is affirmed.

Justices Frankfurter, Roberts and Reed dissented

Lesson 8

Courage to Care



Overview

The Big Idea

While religion and ideology have been the most potent sources of meaning and belonging in human experience, so that neither human life nor world civilizations are understandable without them, they have also been responsible for spilling “rivers of blood.” In the 20th century, the most murderous century in history, religion and ideology were leading causes of state repression and sectarian violence; yet, they also prompted courageous stands for freedom of conscience, human dignity, peace and the preservation of life.

Historical Section

Twentieth century atrocities: the significance of individual stands and the growing achievements of guaranteeing rights by law.

Key Facts

- Absolutist governments killed more people in the 20th century than all the international and civil wars together, and more people died because of their religious convictions last century than in any previous one.
- Freedom of conscience and the totalitarian claim are diametrically opposed.
- The greater the freedom within two nations, the less military violence there has been between them.
- Religious liberty or freedom of conscience has been kept alive throughout the world by heroic examples of people who risked their lives to speak and work for freedom and justice, such as Alexandr Solzhenitsyn in the Soviet Union and the many ordinary citizens of Europe who aided the Jews during World War II.

Key Terms

Alexandr Solzhenitsyn
gulag, ideology
Elie Wiesel
totalitarianism
repression
Fascism
Communism
indifference

Objectives

Students can think through and explain:

1. An outline of the 20th century death toll and the role of contributing factors such as totalitarianism and technology.
2. In direct opposition of totalitarianism is freedom of conscience.
3. The importance of the codification of rights in law.

4. The danger to freedom of conscience when citizens are indifferent to violations of human rights.
5. How the Religious Liberty clauses of the First Amendment are the most successful safeguards against violations of freedom of conscience in the history of humankind.

The Big Idea

While religion and ideology have been the most potent sources of meaning and belonging in human experience, so that neither human life nor world civilizations are understandable without them, they have also been responsible for spilling “rivers of blood.” In the 20th century, the most murderous century in history, religion and ideology were leading causes of state repression and sectarian violence; yet, they also prompted courageous stands for freedom of conscience, human dignity, peace and the preservation of life.

The 20th century was hailed in 1900 as “the Christian Century” in which we would begin “the era of Man come of age.” The century was believed to hold the prospect of unprecedented peace, prosperity and progress. Contrary to such expectations, it proved to be the most murderous century in human history. Staggering human achievements, such as the discovery of penicillin and landing a man on the moon, were offset by equally staggering human evils, ranging from the death camps of Adolf Hitler and Josef Stalin to religious atrocities that took literally millions of lives around the world.

Today, totalitarian fascism has been decisively defeated and totalitarian communism is visibly failing. But immense threats to religious liberty still remain. Along with state repression, the most obvious threats come from forces such as terrorism and the sectarian violence caused by militant religious fanaticism. The worldwide explosion of pluralism therefore represents an important challenge. Through the effect of factors such as travel, television and immigration, it may be said that “everyone is now everywhere.” The result is a massive reinforcing of the age-old human problem of living with our deepest differences.

This lesson, “Courage to Care,” aims 1) to deepen an understanding of the dark record of human evil and oppression in the 20th century, and 2) to develop an appreciation for the individuals who had the courage to make a stand for freedom and justice.



Historical Background

Gulags, Gas Chambers and the Courage to Care

It was the best of times, it was the worst of times. It was the age of wisdom, it was the age of foolishness, it was the epoch of belief it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way (Charles Dickens, *A Tale of Two Cities*, 1859.)

These haunting words written about the era of the French Revolution, which occurred near the end of the 18th century, capture the essence of the 20th century as well. For on a scale never before known in the history of the human race, last century was shot through with both the ecstasy of human achievement and the agony of human suffering.



The inability of human justice to keep pace with the technological progress of the era set the scene for the slaughter of human beings.

For Whom the Bell Tolls and Tolls

It was not supposed to be like this. In fact, at the end of the 19th century, Western nations showed an irrepressible optimism about the future. The scourges of the past — ignorance, disease and war — seemed destined to disappear forever.

But World War I changed all of that. Civilized nations found themselves engaged in a bloody and seemingly pointless slaughter that destroyed the cream of the younger generation in both Europe and the United States. Twelve million people died between 1914 and 1919.

Even the settlement of the war in the Versailles Treaty helped to set the stage for another more devastating world conflagration two decades later. The suffering that Adolf Hitler and Benito Mussolini unleashed had an almost diabolical character that cannot be explained simply by a failure of the diplomats in 1919. Of the 55 million deaths that occurred because of World War II, 11 million perished simply because Hitler wanted whole ethnic groups exterminated or enslaved. Six million Jews were systematically gassed or otherwise executed in what the Nazis called “the final solution.”

Not since the time of the plague called the Black Death in the 14th century had such a time of suffering descended on the world. But unlike the earlier outbreak of disease, the contemporary tragedy was rooted in human decisions.

The white crosses of cemeteries commemorating the final resting places of the war dead stand as mute witnesses to the unjustified optimism of an earlier age. Evil and inhumanity were rampant in the 20th century despite staggering intellectual and technological breakthroughs. In fact, the inability of human justice to keep pace with the technological progress of the era set the scene for the slaughter of human beings.

In addition to world wars, there were and continue to be dozens of regional conflicts or civil wars that have collectively taken the lives of several million people.

The Totalitarian Claim

Totalitarian regimes on both the Right and the Left of the political spectrum killed more of their own citizens than those who died in all the armed battles between countries in the 20th century.

The 20th century is far more complex than it may first appear. Despite the millions who died in wars last century, military violence was not the primary cause of death and suffering. Battle deaths from all wars are estimated to be around 35,654,000. But 20th-century totalitarian regimes on both the Right and the Left of the political spectrum killed more of their own citizens than those who died in all the armed battles between countries. Totalitarian communism, which on a per capita basis is at least 20 times deadlier than war, was responsible for the deaths of at least 95,153,600 people in the 20th century.³

Totalitarian states proved to be a threat not only to their own people but to their neighbors as well. They have invariably been an aggressive obstacle to international peace. Many of the deaths in the wars of the last century were the direct result of the rest of the world trying to defend itself against the totalitarian menace. Adolf Hitler, for example, was bent on world conquest. Only military force seemed able to end his drive for world domination.

At the heart of such a regime is the totalitarian claim: “Everything in and through the state. Nothing outside the state.” The totalitarian regime covets absolute power, not just to exploit a citizen’s resources but to control absolutely his or her entire being. Thus totalitarianism is the absorption of all human life by the state. The control of freedom of conscience and speech is key to that total claim. In its Nazi and Communist embodiments there was a conscious desire to create a “new person,” either through cultivating ethnic purity or carefully designing and utilizing propaganda. The state coveted the total loyalty of its citizens. Dimensions of human life that earlier rulers traditionally considered “private” or unimportant were brought directly under the heel of the state.

George Orwell’s *1984* and *Animal Farm* provide a chilling fictional picture of this all-too-real 20th-century phenomenon.

Though in past centuries a few rulers may have had totalitarian inclinations, before the 20th century the technological means did not exist to implement such a controlling power. Most previous rulers, therefore, did not even seek such a total control of their subjects.

Contrary to what many people believe, Hitler was not a historical aberration, nor was he the greatest mass murderer of the modern era. The Soviet leader, Josef Stalin, easily surpassed the German leader. The death toll

during Mao Zedong's reign in China ran into the millions as well. Both he and Stalin, of course, were in power for longer than Hitler. The statistics are staggering. Scholars estimate that the number who perished in the Soviet Union during Stalin's rule (1928-1953) ranged from 20 to 65 million people.⁴ This is far more than the Russian Empire and the USSR lost in both world wars combined. Millions died from executions and in forced collectivization and artificial famines. Millions more suffered in the Gulag — the labor camp system that dotted the Soviet landscape with islands of terror. Under Mikhail Gorbachev, the Soviets themselves shed important insight on these terrible crimes.

In June 1989, the world was shocked by the scenes of several thousand unarmed Chinese students crushed by tanks or mowed down by troops with orders to shoot to kill. Yet, by 20th-century Chinese standards, this hardly compared with the decades of violence to which the Chinese people had long been subjected by their own rulers.

Mass death in China occurred before the Communists took power in 1949, as well as after. Between 1925 and 1930, for example, the population declined by about four million because of famine and exposure directly related to the spreading revolution and to Chiang Kai Check's effort to suppress it. Later, several hundred thousand Chinese men, women and children were killed because of Japanese aggression. But the quantity of deaths climbed sharply higher as a result of the Communist rise to power at the end of World War II.

Several million were killed or executed during the earliest years of Mao's reign. For example, during the period of February to October 1951, at least 135,000 were executed. Lists of the victims were included each day in the newspapers. The "Great Leap Forward" (1957-59) and subsequent attempts to impose Communism on the Chinese economy not only did great damage to industry and agriculture but also caused an artificial famine which lasted until 1962. Millions of people died from starvation alone. The famine in 1958-1959 was the worst in all history. The Chinese government itself now admits that over 10 million died, but responsible estimates range between 25 and 45 million.⁵

Mao epitomized a 20th-century belief common to many radical reformers — destructive revolution is the only way to produce a more humane and just world. However, Hannah Arendt, a much respected contemporary scholar of revolutions, has argued that most revolutions have made matters worse, not better. Last century provided considerable evidence in support of that assertion. In Mao's view, "poor people want to change, want to do things, want revolution. A clean sheet of paper has no blotches and so the newest and most beautiful words can be written on it." For millions in China, the "beautiful words" of revolutionaries have often been a death warrant or a prison sentence.

In the mid-1970s in Cambodia, the Communist Khmer Rouge sought to accelerate — even faster than Mao — attempts at a radical reconstruction of society. An incredible 20 percent of the population, 1.2 million people, were killed between April 1975 and the beginning of 1977. Rulers from Laos and Vietnam also made brutal attempts at "re-education." Hundreds of thousands of Vietnamese risked almost certain death by fleeing in small boats in hopes of escaping the suffering of their homeland. Many are now citizens in our own country, though as many as 100,000 may have died trying to get here.

Overall, then, Hitler was responsible for the mass murder of about 17 million people, Stalin killed a minimum of 20 million and Mao perhaps as many as 45 million. The figures stagger both one's imagination and conscience.

Religious Liberty and Totalitarianism

Not surprisingly, both Communist and Fascist totalitarian regimes have adamantly opposed religious liberty. In fact, scholars estimate that in the 20th century, more people suffered persecution for their religious convictions than in any century in history. The reason is not simply that 20th-century totalitarianism was often militantly atheistic as an ideology: Freedom of conscience is intolerable to totalitarian ideology. By invoking a claim that transcends social and political considerations, the right to religious liberty curbs the pretensions of the state and sets up a competing focus of the citizen's allegiance. A jealous totalitarian state, which brooks no rival, finds such a situation intolerable.

Freedom of conscience is intolerable to totalitarian ideology. By invoking a claim that transcends social and political considerations, the right to religious liberty curbs the pretensions of the state and sets up a competing focus of the citizen's allegiance. A jealous totalitarian state, which brooks no rival, finds such a situation intolerable. Conversely, non-violence is inherent in freedom because freedom of conscience is diametrically opposed to coercion.

⁴ Russian scholar Josef Dyadkin estimates 29 million non-battle deaths under Stalin, while the very high number of 65 million comes from Russian historian A. Antonov-Ovseyenko. Their findings are summarized in Eugene H. Methvin, "20th Century Superkillers," *National Review*, 31 May 1985, p. 24. Other Soviet and Western estimates are found in Thomas Sherlock and Vera Tolz, "Debates over Number of Stalin's Victims in the USSR and in the West," *Report on the USSR*, Radio Free Europe/Radio Liberty, vol. 1, no. 36, 8 September 1989, pp. 10-14.

⁵ Paul Johnson, *Modern Times* (New York: Harper and Row, 1983), pp. 200, 318, 548, 551.

LESSON Eight: Courage to Care

Conversely, non-violence is inherent in freedom because freedom of conscience is diametrically opposed to coercion. Statistics demonstrate beyond doubt that the greater the freedom within two nations, the less military violence has occurred between them.

Two things, however, should be added to this understanding: First, totalitarian states do not always violate freedom of conscience by seeking to destroy religion completely. Frequently, the state seeks to co-opt or control religion for its own purposes, just as religion sometimes has tried to co-opt or control the state. Totalitarian regimes may allow or even encourage a domesticated religion that is supportive of the state. But this can be an even more insidious violation of religious liberty than direct confrontation; for true human dignity only exists where a citizen has complete freedom to seek his or her own relationship with the transcendent world or to deny it altogether. The framers' action in forbidding an establishment of religion has the warrant of both past and present to underscore the urgency of separating church and state.

Second, a large part of the suffering and death in the 20th century stemmed from sectarian violence rather than state repression. For example, the last century saw tragic conflicts between Protestants and Catholics in Ulster, Jews and Muslims in the Middle East, and Muslims and Hindus in what was formerly East Pakistan. In the latter country, an initially well-planned massacre of 1971 killed one to three million Bengalis.

The Courage to Care

Though the 20th century witnessed terrible examples of inhumanity, it also spawned heroic examples of individual human courage. Out of the depths of the Nazi nightmare, Anne Frank, Dietrich Bonhoeffer, Elie Wiesel and a host of allies of the refugees shine forth to this day as examples of irrepressible courage and hope. From the Soviet Union, the names Alexandr Solzhenitsyn, Andrei Sakharov and Natan Sharansky stand out similarly. Solzhenitsyn in particular survived the Gulag to create a body of literature that testifies to both the crimes and the valor of his era and has inspired people around the world. In Cuba, Armando Valladares was able to endure Castro's prisons and write *Against all Hope*, a moving tribute to the power of the human spirit to bend and not break under the pressure of state tyranny.

Of course, it is easy but wrong to have double standards that cause us to imagine an absolute division between East and West or between totalitarianism and liberal democracy. That way lies the hypocrisy of the Cold War. It is important to say that violations of human dignity have and do exist within democratic regimes as well, even though less frequently and on a smaller scale. The French were responsible for mass killings in Algeria. The Americans and British handed over two and a quarter million people to Stalin after World War II, knowing what they would face: an estimated 795,000 were executed or died in camps almost immediately.

The advocacy of non-violence by Ghandi, Martin Luther King and such peace sects as the Quakers and Mennonites achieved considerable success in dealing with the injustices of the British Empire, Germany and the United States. Though some have argued that such tactics have the best chance of working in relatively just and democratic societies, the example of Lech Walesa, leader of the recent popular uprising in Poland, has provided inspiration for millions of people throughout the world, regardless of the kind of government under which they happen to live.

In sometimes far less democratic settings, those who have denounced at considerable personal risk human rights violations in Poland, South Africa, Uganda, Mozambique, Chile, Panama, El Salvador, Nicaragua and South and North Korea have done much to embolden the human spirit. Some of these countries are progressing toward greater recognition of human rights, while others are not.

Though the 20th century left a sad legacy of evil and repression, there have been important strides forward since World War II, especially in the area of international agreements. Courageous stands against repression by individuals have been critical to freedom. But to encode freedoms and rights within law is to begin the process of putting them beyond the reach of governments and majorities. This is the assumption on which our Constitution rests.

The advent of the United Nations and the Universal Declaration of Human Rights (1948) ushered in an era when most of the world's countries, regardless of political or religious heritage, acknowledged certain fundamental human rights as innate to human beings. The International Covenant on Civil and Political Rights (1966/1976), the Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Accords, 1975), and the U.N. Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief (1981) were important landmarks in recognizing the importance of human rights. Though action has often

not matched rhetoric, the verbal and written affirmation of these rights was an important step toward their realization.

The Unfinished Task

The dark record of the 20th century has been intensified by those who refuse to face fully the great ethical dilemmas of our era as well as by those who apply double standards to the several violations. Not only are some atrocities “acceptable” and some not, some are “media fashionable” and some not. For example, it is irresponsible to be so obsessed with the inhumanity of totalitarian regimes that we fail to acknowledge the tremendous dangers inherent in the nuclear and conventional weapons of mass destruction developed in recent decades. On the other hand, an obsession with the potential of nuclear annihilation that blocks recognition of the death and suffering actually inflicted on our world by unchallenged totalitarianism is also dangerous.

At one time or another human beings in the 20th century stood in the shadow of both the bomb and the Gulag. We advance neither peace nor human dignity by closing our eyes to one or the other. But to face both threats is to be constrained to abandon the illusion of simple answers.

The debate over freedom of religion is destined to continue in the years ahead; for to say one is for human rights, peace and freedom is only the first small step in coming to grips with the moral questions of our age. Whose human rights take precedence? Should freedom be sacrificed for the sake of peace? Does it make any sense to talk of a quest for freedom if the continuation of the planet is in jeopardy? Is life worth living if there is little or no human dignity?

The debate will also continue as to how best to ensure the rights of conscience. Some with naturalistic worldviews will argue that it is quite possible to defend them against the pretensions of the state without any reference to religious assumptions. Religious persons often reply that the dignity of human beings can only be adequately safeguarded by recognizing that individuals have a value that is rooted in what their creator, as they put it, has said.

But all supporters of human rights, whether they are secular or religious, will be able to join hands to advance the cause of freedom through encouraging the development of democratic institutions and declarations of rights that protect minorities against the arbitrary will of a government or a majority.

The 20th century indeed was “the best of times” and “the worst of times.” The optimism of 19th century faded into the soberness of 20th-century realities. But in the wake of this soberness, a new and prudent vision can match our technological progress with moral idealism. Along with democratic institutions, the first principles of freedom of conscience and a profound awareness of the realities of pluralism must be at the heart of this new vision.

At the beginning of the 21st century the entire world faces many of the challenges and opportunities that the framers of the American Constitution faced in the 18th century. It is important to remember that religious liberty and freedom of conscience are not empty ideals or simply a response to the moral imperative of justice. They are a key to establishing humane societies and to preserving peace and life itself.

At one time or another human beings in the 20th century stood in the shadow of both the bomb and the Gulag. We advance neither peace nor human dignity by closing our eyes to one or the other. But to face both threats is to be constrained to abandon the illusion of simple answers.

But all supporters of human rights, whether they are secular or religious, will be able to join hands to advance the cause of freedom through encouraging the development of democratic institutions and declarations of rights that protect minorities against the arbitrary will of a government or a majority.

Teaching Strategies

You will find the following for use in this section in the Student Documents:

8-A Alexandr Solzhenitsyn on the Writer Underground (from *The Oak and the Calf*)



Links

1. Ask the students to reflect on the theme of indifference in the face of violence. Do they see any current examples?
2. Ask students to recall recent leading news stories that show a courageous stand — for example, in China during the turbulent weeks of May and June 1989, recently revisited as the world marked the 20th anniversary of those events.

Approaches

The following are three suggestions for opening up the theme:

Class Discussion

Surveying: What do the students know and not know about “Courage to Care”? Review briefly the Big Idea and survey general knowledge in the room. You might start with the quotation from Dickens that begins this lesson (“It was the best of times ...”).

Summarizing: List important facts the students come up with on the board. Cross out incorrect information and try to implant in their minds correct dates, places and people. Highlight with geography and historical personalities.

Unfolding: Begin the Historical Background with this question: “What is totalitarianism?” Obtain a copy of George Orwell’s 1984. Select a portion of the book to read aloud to the class, such as the following:

Behind Winston’s back the voice from the telescreen was still babbling away about pig iron and the overfulfillment of the Ninth Three-Year Plan. The telescreen received and transmitted simultaneously. Any sound that Winston made, above the level of a very low whisper, would be picked up by it; moreover, so long as he remained within the field of vision which the metal plaque commanded, he could be seen as well as heard. There was of course no way of knowing whether you were being watched at any given moment. How often, or on what system, the Thought Police plugged in on any individual wire was guesswork. It was even conceivable that they watched everybody all the time. But at any rate they could plug in your wire whenever they wanted to. You had to live — did live, from habit that became instinct — in the assumption that every sound you made was overheard, and, except in darkness, every movement scrutinized.

Elicit responses from the students. Why was Orwell able to predict that the world was heading in this direction? What was his warning? How does Orwell envision evil? According to him, what is its essential nature? How do recent, decentralized technologies, such as fax machines, reverse this trend and actually favor greater freedom? Above all, draw out the total opposition between the totalitarian claim (“Everything in and through the state. Nothing outside the state.”) and freedom of conscience. At the end of the discussion, summarize the main points and issues of the teacher’s material.

Alexandr Solzhenitsyn (Literary Option)

Alexandr Solzhenitsyn stands in the rich tradition of Russian writers — Dostoyevsky, Tolstoy and Pasternak. He is a writer following the 19th-century tradition whose work challenges the reader with its large canvas, enormous detail and moral scope.

But Solzhenitsyn’s power lies not simply in his literary greatness or the tradition of which he is a part. It lies, instead, in the courage of his lifework, which was to describe in detail the evils of communism. Solzhenitsyn’s writings were for many years the lone voice of opposition to Soviet totalitarianism.

Solzhenitsyn’s achievement was recognized first in 1960 with the publication of *One Day in the Life of Ivan Denisovich*. The power of the book was derived in part from his own eight years in concentration camps, which stemmed out of derogatory remarks about Stalin he made in correspondence with a school friend. Until recently this was his only novel to be published in his native land.

In 1970, Solzhenitsyn was awarded the Nobel Prize for Literature but did not leave the Soviet Union to receive the prize for fear authorities might not let him return. Continually ostracized and persecuted for his writings, he nonetheless produced *The Gulag Archipelago*, a book which gives the historical account of the Soviet secret police, prison camps and system of terror. Much of what he wrote about was already known in the West, but its cumulative effect, particularly among European intellectuals, was decisive in changing their view of the Soviet Union.

On Feb. 3, 1974, the Soviet Union deported Solzhenitsyn from his homeland and stripped him of his citizenship. He moved to Vermont where he completed an epic cycle, *The Red Wheel*, which began the first volume of August 1914.

Solzhenitsyn was a spokesman for a pre-Soviet Russian culture in which the Orthodox Church played a dominant role. Consequently, he was critical of both secular Western democracy and Soviet Marxist Leninism. This, coupled with a deep spirituality, made him an uncomfortable and confusing writer to many Western critics, as illustrated in his 1978 speech at Harvard University.

The Oak and the Calf describes his calling as a writer — the power of the written word against a totalitarian state, the courage of a single individual compelled by the memory of those who died and those who continue to live without freedom.

Directions

Distribute Solzhenitsyn's excerpts from *The Oak and the Calf* (Student Document Handout 8-A). Assign a student to read these excerpts aloud, or ask for volunteers. Discuss questions such as following:

- What evidence do you find here of the motivations which inspired Solzhenitsyn to take a stand?
- Why would Solzhenitsyn's writings have been inspiring to others in the Gulag?
- Would you be prepared to undertake the extreme requirements he did just to preserve and get his writings out?
- How, in Solzhenitsyn's view, are words weapons?
- How is it that words (and therefore writers, novelists and poets) are so revolutionary in regimes that seek to censor thought and words, whereas they can be so weak and empty in our Western societies where words are free, easy and often overpowered by images, as in commercial and political advertising?
- What can we learn from Solzhenitsyn's stand?

Challenge

Responsible citizenship is hard enough in our own country. It is even harder for those who consider themselves responsible citizens of the world. The general challenge has been summed up in the maxim “Think globally, act locally.” But from this unit, we can emphasize three lessons about false ways of responding to the evils that persist around the world.

1. Indifference

Indifference is not the main story in American experience. But when it occurs, Americans can easily find excuses to explain their indifference to what is going on in the rest of the world. With its short history, two-ocean buffer, abundant natural resources and military strength, the United States has no historical or geographic reason to think itself seriously threatened. A poor grasp of history and geography and a reliance for information on media preoccupied with “scoops” and the “latest news” means that many Americans simply do not know enough about the world or the past to take an intelligent and courageous stand against evil. The most remarkable example is the failure of many Americans to take seriously Stalin’s purges in the 1930s, Hitler’s “final solution” of the early 1940s, or China’s massacre of her own citizens in the 1980s .

2. Hypocrisy

One strand of American thinking, flowing from the Protestant vision of sin and depravity, has always been realistic and non-utopian. Another strand has been more optimistic, more celebratory of America and more confident in the idea of progress. Unchecked, this sunnier face of Americanism has sometimes slipped over into hypocrisy — as if America were naturally superior to other countries and quite exempt from the evils and injustices apparent elsewhere. Dangers occur in both these extreme responses to patriotism. The “boosters” see nothing wrong with America and the “blamers” see nothing right. The accomplishments of freedom in America are indeed extraordinary. There is no doubt that on balance the U.S. has been a powerful force for good in the world. But Americans who stand against injustices everywhere must never forget injustices within our own nation — for example, the treatment of Native Americans, of blacks, of Hispanics and of the Japanese community during World War II. The problem is with “us” as much as with “them.”

3. Glibness about Change

A variation on the previous point is the tendency for Americans to view America’s role as that of pioneering freedom, thus assuming that it is desirable and easy to export American freedoms like commodities to other countries. But experience shows that 1) it is far easier for Americans to export products such as Coca-Cola, blue jeans, hamburgers, rock music and soap operas than the Constitution and that 2) it is also easier to export American institutions, such as recurring free elections and the separation of executive and judiciary, than American ideals and values, such as the inalienable freedoms of a person.

Of course, for any nation to borrow from another nation is neither good nor bad in itself. It all depends on what is borrowed, how it is used and the values of the culture that is doing the borrowing. Most Americans forget how difficult it is to export constitutions and freedoms. In 1983, El Salvador adopted its 36th constitution since 1824; of the 160 national constitutions existing in 1989, more than 100 had been established since 1974. So today new constitutions are being introduced at a rate of more than 5 a year, and the median life expectancy of a constitution is only 15 years.

Standing against evils and standing for ideals needs to be tempered with realism. We Americans will encounter problems whenever other countries do not share or appreciate the ideals that made our liberties possible. But we will also create our own problems if we do not take care to sustain today the ideals that contributed to the Constitution’s declaration of our own freedoms.

It is easier to export American institutions, such as recurring free elections and the separation of executive and judiciary, than American ideals and values, such as the inalienable freedoms of a person.

Evaluation



Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation demonstrate an understanding of the sobering contrast between the list of unprecedented human achievements in the 20th century and the list of nearly incomprehensible human evils? Can your students rebuild the issues, the moment, the reasons for such atrocities and losses of freedom on such a scale? Can your students see the creeping dangers of indifference and the heroism of resistance by "little people"? Although on a smaller scale, can they hypothesize similar problems and solutions using the documents in this lesson?

Historical Empathy: Can your students show in writing and speaking in class activities that they understand how the inviolability of freedom of conscience is a frontal offense to all forms of totalitarianism and tyranny? Can they appreciate and understand the suffering of those in Nazi Europe, Soviet Russia and Communist China, to mention just a few, who have lived under those regimes? Through reading the Solzhenitsyn writings, can your students understand the nature of repression by a dictatorial ruler and empathize with the indifferent subject of that repression who takes his or her freedoms for granted?

Civic Responsibility: Can your students appreciate what Solzhenitsyn means when he says, "I was disgusted with myself. The most terrible danger of all is that you do violence to your conscience, sully your honor. No threat of physical violence can compare to it." Have your students respond to the Challenge: Not to be indifferent, to make excuses; not to slip into becoming people who are "blamers" or "boosters," as outlined in this section. Do they understand the importance of not being naive about America's ability to export freedom around the world?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so forth.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Do you agree or disagree with Walter Lippmann's statement about Americans becoming "a people who inhabit the land with their bodies without possessing it with their souls"?

Student Documents



Contents:

8-A Alexander Solzhenitsyn on the Writer Underground (from *The Oak and the Calf*), pp. 140-143

Alexandr Solzhenitsyn on the Writer Underground

Alexandr I. Solzhenitsyn (1918–2008) was a living legend. A survivor of Stalin's infamous Soviet Corrective Labor Camps, the Gulag, he turned his pen into a sword, his books into military divisions and became not only a Nobel Prize winner but a one-man resistance movement against communist totalitarianism. Running a personal blockade of terror and enforced silence from the authorities and the secret police, his writings have given life to suppressed realities of the past and names to countless unnamed victims. He thus reinvested distorted events with the weight of truth and justice. Behind all the courage of his stand was his unshakable commitment to truth and conscience.

These excerpts are from *The Oak and the Calf* (1979), a memoir in which he describes the life of "the writer underground."

The Writer Underground

... Underground is where you expect to find revolutionaries. But not writers.

For the writer intent on truth, life never was, never is (and never will be!) easy: his like have suffered every imaginable harassment—defamation, duels, a shattered family life, financial ruin or lifelong unrelieved poverty, the madhouse, jail. ... (p. 1)

... I drifted into literature unthinkingly, without really knowing what I needed from it, or what I could do for it. I just felt depressed because it was so difficult, I thought, to find fresh subjects for stories. I hate to think what sort of writer I would have become (for I would have gone on writing) if I had not been *put inside*.

Once arrested, once I had spent two years in prisons and camps, depressed now by the mountainous overabundance of subjects, I accepted as effortlessly as the air I breathed, accepted with all the other unchallengeable realities before my eyes, the knowledge that not only would no one ever publish me, but a single line could cost me my life. Without hesitation, without inner debate, I entered into the inheritance of every modern Russian writer intent on the truth: I must write simply to ensure that it was not all forgotten, that posterity might someday come to know of it. Publication in my own lifetime I must shut out of my mind, out of my dreams.

I put away my idle dream. And in its place there was only the surety that my work would not be in vain, that it would someday smite the heads I had in my sights, and that those who received its invisible emanations would understand. I no more rebelled against lifelong silence than against the lifelong impossibility of freeing my feet from the pull of gravity. As I finished one piece after another, at first in camps, then in exile, then after rehabilitation, first verses, then plays, and later prose works too, I had only one desire: to keep all these things out of sight and myself with them.

In the camp this meant committing my verse—many thousands of lines—to memory. To help me with this I improvised decimal counting beads and, in transit prisons, broke up matchsticks and used the fragments as tallies. As I approached the end of my sentence I grew more confident of my powers of memory, and began writing down and memorizing prose—dialogue at first, but then, bit by bit, whole densely written passages. My memory found room for them! It worked. But more and more of my time—in the end as much as one week every month—went into the regular repetition of all I had memorized.

Then came exile, and right at the beginning of my exile, cancer. In autumn 1953 it looked very much as though I had only a few months to live. In December the doctors—comrades in exile—confirmed that I had at most three weeks left. ...

... All that I had memorized in the camps ran the risk of extinction together with the head that held it.

This was a dreadful moment in my life: to die on the threshold of freedom, to see all I had written, all that gave meaning to my life thus far, about to perish with me. The peculiarities of the Soviet postal censorship made it impossible for me to cry out for help: Come quickly, take what I have written, save it! You can't very well appeal to strangers anyway. My friends were all in camps themselves. My mother was dead. My wife had married again. All the same, I sent for her to say goodbye, thinking that she might take my manuscripts away with her, but she did not come. ...

... In those last few weeks that the doctors had promised me I could not escape from my work in school, but in the evening and at night, kept awake by pain, I hurriedly copied things out in tiny handwriting, rolled them, several pages at a time, into tight cylinders and squeezed these into a champagne bottle. I buried the bottle in my garden—and set off for Tashkent to meet the new year (1954) and to die.

I did not die, however. With a hopelessly neglected and acutely malignant tumor, this was a divine miracle; I could see no other explanation. Since then, all the life that has been given back to me has not been mine in the full sense: it is built around a purpose. ... (pp. 2-4)

An Urgent Mission

My plan was an immensely ambitious one; in another ten years' time I should be ready to face the world with all that I had written, and I should not mind if I perished in the flames of that literary explosion—but now, just one slip of the foot, one careless move, and my whole plan, my whole life's work had come to grief. And it was not only my life's work but the dying wish of the millions whose last whisper, last moan, had been cut short on some hut floor in some prison camp. I had not carried out their behests, I had betrayed them, had shown myself unworthy of them. It had been given to me, almost alone, to crawl to safety; the hopes once held in all those skulls buried now in common graves in the camps had been set on me—and I collapsed, and their hopes had slipped from my hands. (pp. 103-104)

From dawn to dusk the correction and copying of *Gulag* went forward; I could scarcely keep the pages moving fast enough. Then the typewriter started breaking down

every day, and I had either to solder it myself or take it to be repaired. This was the most frightening moment of all: we had the only original manuscript and all the typed copies of *Gulag* there with us. If the KGB suddenly descended, the many-throated groan, the dying whisper of millions, the unspoken testament of those who had perished, would all be in their hands, and I would never be able to reconstruct it all, my brain would never be capable of it again. (p. 212)

I could have enjoyed myself so much, breathing the fresh air, resting, stretching my cramped limbs, but my duty to the dead permitted no such self-indulgence. They are dead. You are alive: Do your duty. The world must know *all about it*. (p. 218)

They could take my children hostage—posing as “gangsters,” of course. (They did not know that we had thought of this and made a superhuman decision: our children were no dearer to us than the memory of the millions done to death, and nothing could make us stop that book. (p. 360)

The Word as Weapon

It is infinitely difficult to begin when mere words must move a great block of inert matter. But there is no other way if none of the material is strength on your side. And a shout in the mountains has been known to start an avalanche. (p. 151)

Books are like divisions or army corps: at times they must dig themselves in, hold their fire, lie low; at times they just cross bridges in the dark and noiselessly; at times, concealing their preparations to the last dribble of loose earth, they must rush into a concerted offensive from the least expected quarter at the least expected moment. While the author is like a commander in chief, here throwing in a unit, there moving up another to wait its turn. (p. 313)

Faith and Conscience

I was disgusted with myself. The most terrible danger of all is that you may do violence to your conscience, sully your honor. No threat of physical destruction can compare with it. (p. 211)

Once again, my vision and my calculations are probably faulty. There are many things which I cannot see even at close quarters, many things in which the Hand of the Highest will correct me. But this casts no cloud over my feelings. It makes me happier, more secure, to think that I do not have to plan and manage everything for myself, that I am only a sword made sharp to smite the unclean forces, an enchanted sword to cleave and disperse them.

Grant, O Lord, that I may not break as I strike! Let me not fall from Thy hand! (p. 379)

Conclusion

How simply it is all ending. The calf has butted and butted the oak. The pygmy would stand up to Leviathan. Till the world press fulminated: "... the only Russian whom the regime fears! He is undermining Marxism — and he walks around central Moscow a free man!" (p. 412)

Excerpt from *The Oak and the Calf* by Alexandr Solzhenitsyn, translated by Herry Willetts. Copyright © 1975 by Alexandr Solzhenitsyn. English language translation copyright © 1979, 1980 by Harper & Row, Publishers, Inc. Reprinted by permission of HarperCollins Publishers.

Lesson 9

Keeper of the Nation's Conscience



Overview

The Big Idea

Supreme Court decisions since 1940 illustrate the challenges of interpreting religious liberty in modern times. But knowledge of the Religious Liberty clauses, the Supreme Court cases and the many controversies surrounding them are not for lawyers and specialists only. The Constitution's declaration of "We the People" serves to make lawyers of us all.

Historical Section

The Supreme Court and religious liberty cases since 1940.

Key Facts

- The framers believed that the Constitution should be understood and accessible to all citizens.
- In the first 150 years under the Constitution the Supreme Court handed down only 6 decisions involving the Religious Liberty clauses; in the last 70 years, they have reviewed more than 90.
- The Supreme Court has ruled that the 14th Amendment to the Constitution makes the First Amendment applicable to the states. Thus the Religious Liberty clauses now limit the powers of state and local governments as well as the federal government.
- The two principal schools of interpretation of the meaning of the Religious Liberty clauses are the separationists and the accommodationists.
- Together the Religious Liberty clauses safeguard religious liberty by limiting the power of government either to involve itself in religion or to infringe upon the rights of those who do.

Key Terms

Everson v. Board of Education (1947), *Engel v. Vitale* (1962), *Wisconsin v. Yoder* (1972), *United States v. Lee* (1982), 14th Amendment, accommodationists, separationists, *Lemon v. Kurtzman* (1971), *Sherbert v. Verner* (1963), Supreme Court, establishment, free exercise

Objectives

Students can think through and explain:

1. Several key Supreme Court decisions interpreting the Religious Liberty clauses in the last generation.
2. The two main schools of interpretation.
3. The Supreme Court's role as a custodian of freedom under law.
4. How both Religious Liberty clauses are essentially one provision for preserving religious liberty.

The Big Idea

Supreme Court decisions since 1940 illustrate the challenges of interpreting religious liberty in modern times. But knowledge of the Religious Liberty clauses, the Supreme Court cases and the many controversies surrounding them are not for lawyers and specialists only. The Constitution's declaration of "We the People" serves to make lawyers of us all.

Just as war is too important to be left to generals, so the Constitution is too important to be left to attorneys. "We the People" is a far cry from "We the judges, attorneys and law professors." As President Theodore Roosevelt said, "I am not a lawyer, but I have never believed that a layman who thought soberly was incompetent to express a judgment on the Constitution."

That is why our chief interest in these lessons has been the first principles of religious liberty rather than the intricacies of constitutional law. The framers of the Constitution differed over many things, but they were united on one conviction: The document should be comprehensible to the people. In his first inaugural address, Thomas Jefferson described the Constitution as "the text of civil instruction — the touchstone by which to try the services of those we trust."

But the role of the Supreme Court is unquestionably important and was meant to be. What exactly is that role? On the one hand, constitutional history has sometimes been confused with the history of Supreme Court decisions. On the other hand, the relationship between the Constitution and the Court has often been highly controversial, even among people who share similar conservative or liberal philosophies. "In good truth, the Supreme Court is the Constitution," Felix Frankfurter declared in 1930, though President Franklin Roosevelt declared the opposite seven years later. We have reached the point as a nation, Roosevelt said, "where we must take action to save the Constitution from the Court and the Court from itself. ... We want a Supreme Court which will do justice under the Constitution — not over it." However one views the relationship between the Constitution and the Court, the Court has become the final arbiter of what is constitutional or unconstitutional.

Many clashes of interpretation have marked Supreme Court decisions on religious liberty in the last generation. Important differences of interpretation have emerged. Important decisions remain to be handed down. But whether one agrees with particular decisions or not, both their volume and significance are critical to the future of religious liberty.

This ninth lesson, "Keeper of the Nation's Conscience," examines the main Supreme Court cases surrounding the two Religious Liberty clauses that have occurred in the last generation. Our aims are to understand the issues and significance of the leading cases, to assess the two main schools of interpretation and to appreciate the importance of the Court as the ultimate custodian of freedom under law.



"I am not a lawyer, but I have never believed that a layman who thought soberly was incompetent to express a judgment on the Constitution."
— *President Theodore Roosevelt*

"In good truth, the Supreme Court is the Constitution."
— *Felix Frankfurter*

"We want a Supreme Court which will do justice under the Constitution — not over it."
— *President Franklin Roosevelt*

Historical Background

Keeper of the Nation's Conscience: The Supreme Court and Religious Liberty Since 1940

Americans have used many metaphors and images to describe the Constitution — "instrument," "anchor," "machine," "body," "organism," "ark of the covenant" and so on. But one of the most apt is Justice William O. Douglas' comparison to a conscience. "The Court is really the keeper of the conscience," he remarked in an interview with Eric Sevareid in 1972, "and the conscience is the Constitution."

The image of the Constitution as the public's conscience is not exact. The Constitution is not the Ten Commandments, and its early use in supporting the evil of slavery is one of the greatest contradictions of conscience in American history. But neither is the Constitution simply dry law or political theory. What are encoded in its clauses are the first principles that undergirded human rights in the minds and hearts of



"The Court is really the keeper of the conscience and the conscience is the Constitution."
— *Justice William O. Douglas*

LESSON NINE: Keeper of the Nation's Conscience

the nation's founders. The Constitution stands in the tradition that goes back through the Declaration of Independence to the Magna Carta and beyond. To appeal to it is to reach beyond law to the wellsprings of ordered liberty itself. This is also why, in Woodrow Wilson's words, the statement "We the People" makes "lawyers of us all." More importantly still, the statement pushes each of us to accept our responsibility for the quality of our representative democracy.

If we are to understand the various Supreme Court decisions concerning religious freedom, we need a map or a "Citizen's Guide" to help us find our way around. The place to start is the text of the Constitution. The first 16 words of the First Amendment read:

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

Because there are two provisions in the text that refer to religion, the cases arising under these provisions are typically divided into two distinct categories, but we may add a third. First, some cases challenging government aid to religion, whether financial or otherwise, arise under the Establishment clause. Second, other cases challenging governmentally imposed burdens on religion generally arise under the Free Exercise clause. Third, still others call into question the relationship between the two Religious Liberty clauses. This lesson will present a guide to all three kinds of cases.

The Court, as keeper of the nation's conscience, has been far busier interpreting the meaning of the Religious Liberty clauses in the last 70 years than it was in the first 150 years that followed the adoption of the First Amendment.

Since 1940, the volume and importance of cases involving the relationship between church and state has increased enormously. Before that date, only a half-dozen cases under the Religious Liberty clauses — all involving the federal government — had come before the Court for review. In the last 70 years the Court has reviewed hundreds of these kinds of cases, issuing formal opinions in more than 90. In other words, the Court, as keeper of the nation's conscience, has been far busier interpreting the meaning of the Religious Liberty clauses in the last 70 years than it was in the first 150 years that followed the adoption of the First Amendment.

One reason for this burgeoning of church/state cases is the expanded coverage of the Religious Liberty clauses. These clauses originally applied only to the federal government. After the Civil War, the 14th Amendment was adopted. It provides, in part, that "No state shall ... deprive any person of life, liberty, or property without due process of law ..." In 1940, the Court ruled that one of the liberties "incorporated" and applied to the states by the 14th Amendment's due process clause was free exercise of religion (*Cantwell v. Connecticut*, 310 U.S.296 (1940)). Seven years later, the Court similarly incorporated the Establishment clause (*Everson v. Board of Education*, 330 U.S. 1 (1947)). Thus the Religious Liberty clauses now limit the powers of state and local governments as well as the federal government.

Many of these modern cases were controversial both on the Court itself, where the Justices have often been closely divided, and throughout the nation, where segments of the public have greeted many of the Court's decisions with debate and sharp criticism. Nevertheless, the Court has had a decisive social influence through its opinions on religious freedom.

Two Clauses, Two Main Schools

There are many schools of interpretation of the meaning of the Religious Liberty provisions of the First Amendment. This guide cannot describe all of them. The two principal schools of thought are:

1. The Separationists: Separationists favor religious liberty and believe that religious institutions are best left independent of government and vice versa. They therefore pursue the "free exercise" of religion by supporting a strict separation of church and state and oppose virtually all forms of state aid to religion. Separationists also oppose, as they did in the school prayer debate, any state endorsement of religion or sponsorship of religion or religious exercises. They maintain that government neutrality between religion and irreligion is consistent with the original intent of the Framers. The term separationism is based on Jefferson's famous letter to the Danbury Baptist Association, in which he described the First Amendment as "building a wall of separation between church and state." Since 1940, the Supreme Court has tended toward the separationist position, although not uniformly. (For this reason, most of the student materials in this assignment reflect this tendency.)

2. The Accommodationists: Accommodationists also favor religious liberty and urge that free exercise be seen as the central purpose and value of the Religious Liberty clauses. In their view, "Free exercise is the end" and "No establishment" is simply the means to that end. They, therefore, favor separation of church and state when it enhances religious liberty, and oppose it when they believe it diminishes religious liberty. In the school prayer controversy, for example, an accommodationist might argue that allowing teachers to lead public school

classes in prayer is not state “establishment” of religion. Such prayer merely allows the majority to participate in an activity that represents the values of most Americans. Within this group are the non-preferentialists who would permit government aid to religion as long as it shows no favoritism among religions. Although still a minority view on the Court, this school of interpretation has gained strength since the 1980s.

The Williamsburg Charter expressly avoids any pretense that its signers all agree over matters of legal interpretations. It does not take sides over these differences of legal interpretation, any more than it does over differences about religious beliefs or political policy. The Charter is a compact reaffirming the first principles of religious liberty that in spite of such differences are common to both sides.

In keeping with that understanding, this lesson does not attempt to promote one interpretation over another or to urge teachers to do so in a school classroom. Neither does it prescribe which emphasis is correct in the application of principle to the complexities of particular modern circumstances. The lesson does, however, illustrate that various interpretations of the Religious Liberty clauses are often at odds with one another and cannot be easily reconciled. It also suggests strongly that it is a mistake to think that the two Religious Liberty clauses themselves are hostile to one another. In the words of the Charter, the clauses are mutually reinforcing provisions that act as a “double guarantee of religious liberty.”

Establishment Clause

The Establishment clause sets up a line of demarcation between the functions and operations of the institutions of religion and government in our society. It does so because the framers of the First Amendment recognized that when the roles of the government and religion are intertwined the result too often has been terrible violations of human rights. This principle is so important that even though the phrase “separation of church and state” does not appear in the text of the Constitution, some scholars refer to the No Establishment clause as the “separation clause.”

Addressed to government, the Establishment clause bars the making of any law “respecting an establishment of religion.” It does not forbid religious individuals from seeking public office or religious institutions from attempting to influence public policy. In *McDaniel v. Paty* (1982) the Court invalidated the state laws — some of them dating back to the colonial period — that had excluded members of the clergy from holding political office. To restrict the freedom of religious bodies to participate in politics is not one of the aims of the First Amendment, for it protects freedom of speech for all. In the words of the Williamsburg Charter, “all faiths are free to enter vigorously into public life and to exercise such influence as their followers and ideas engender. Such democratic exercise of influence is in the best tradition of American volunteerism and is not an unwarranted ‘imposition’ or ‘establishment.’ ”

The Establishment clause, however, does prohibit government from advancing religion, especially by financial support of religious activity. The controlling principle in recent decisions has been a “benevolent neutrality” which permits religious exercise to exist but denies it government sponsorship.

Government Aid to Church-operated Schools

Perhaps because *Everson v. Board of Education* (1947) was the first case to apply the No Establishment clause to state action, Justice Black wrote a lengthy opinion setting out the Court’s views on state aid to religion. In this opinion, Justice Black borrowed a metaphor from an early 19th-century letter of Thomas Jefferson which described the No Establishment clause as erecting “a wall of separation between church and state.” Relying also upon the writings of James Madison in the struggle for disestablishment in Virginia, Justice Black 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. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance, or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.

“We readily acknowledge our continuing differences. Signing this Charter implies no pretense that we believe the same things or that our differences over policy proposals, legal interpretations and philosophical groundings do not ultimately matter. The truth is not even that what unites us is deeper than what divides us, for differences over belief are the deepest and least easily negotiated of all.”
— *The Williamsburg Charter*

The Establishment clause sets up a line of demarcation between the functions and operations of the institutions of religion and government in our society.

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Despite the separationist sentiment in this opinion, the Court in *Everson* upheld (in a 5-4 vote) the provision of free public transportation to children attending primary and secondary schools sponsored by a religious congregation. The Court reasoned that it is the children, not the parochial schools, who directly benefit. The Court has also upheld the state's provision of secular textbooks and standardized testing services to students attending religious schools.

Later, in *Lemon v. Kurtzman* (1971), the Court fashioned a three-part test to evaluate cases arising under the Establishment clause. In order to pass muster under the *Lemon* test, a government action must 1) have a legitimate secular purpose, 2) have a primary effect that neither advances nor inhibits religion, and 3) not foster excessive entanglement between government and religion. In the years following, the Court has used one or another of these criteria to invalidate virtually every form of state aid to church-operated schools. It failed to utilize the *Lemon* test on only one occasion, when it upheld the long-standing tradition of legislative chaplaincies in *Marsh v. Chambers* (1983). The Court noted that the same Congress which drafted the First Amendment also authorized the first legislative chaplaincy, thereby indicating that it viewed the practice as constitutional.

Aguilar v. Felton (1985) provides an excellent example of divergent interpretations of the Religious Liberty clauses. In it, the Court struck down a congressional program of remedial education in subjects like reading and mathematics that were to be provided to parochial school students by public school employees. In a 5-4 decision, the Court found that 1) the program, if unmonitored, had the primary effect of advancing religion, and 2) it would be impermissible to monitor such a program, in order to prevent that abuse, because the monitoring itself created an excessive government entanglement with religion. The Court did indicate that such remedial services could be provided to parochial school students as long as the services were provided off-campus.

For separationists, *Felton* represented the high-water mark in the Court's prohibition of government assistance to church-operated schools. Accommodationists, on the other hand, accused the Court of penalizing poor families who chose to educate their children in religious schools.

Some argued that the decisions of the Court lacked consistency and, therefore, provide little guidance for the Congress and the states as they legislate in this sensitive area. For example, loans of textbooks to parochial schools are permissible (*Board of Education v. Allen*, 1968), but loans of charts, maps and other instructional materials are not (*Meek v. Pittenger*, 1975). Similarly, transportation to parochial schools may be provided at public expense (*Everson v. Board of Education*, 1947), but transportation for field trips may not (*Wolman v. Walter*, 1977).

After this patchwork of "parochial aid" decisions, confusion reigned about what was and was not permissible under the First Amendment. The constitutionality of school vouchers was one of the key unanswered questions. One side argued that states may give parents a "voucher" to pay for private school tuition, even when parents send their children to a religious school. The other side countered that such payments constitute direct aid to religion in violation of the Establishment clause. In 2002, the Supreme Court sided with the accommodationists, upholding a voucher program as "true private choice" for parents and entirely neutral toward religion (*Zelman v. Simmons-Harris*).

The Court's decision upholding school vouchers may open the door to other forms of indirect aid to religious institutions. Under *Zelman*, as long as the government aid is understood as direct assistance to citizens, then the fact that recipients may decide to use that aid at a religious institution does not imply state endorsement of religion. According to the majority in *Zelman*, such indirect aid is neutral toward religion.

Religion in Public Schools

The most controversial of the Court's decisions involving the Establishment clause came not in the cases involving aid to church-operated schools but in those dealing with government-sponsored religious exercises in the public schools. In *Engel v. Vitale* (1962), the Court struck down the practice of reciting a state-composed "non-denominational" prayer. The next year in *Abington v. Schempp* the Court invalidated the devotional reading of the Bible in the public schools. The fact that students could be excused from participating in these school-sponsored religious exercises did not make these practices constitutional. In *Engel* the Court said: "[I]t is not part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." These decisions provoked bitter controversies throughout the land, including unsuccessful efforts from the 1960s onward to amend the Constitution so as to overturn these decisions.

Although the Supreme Court remains divided about how to interpret the Establishment clause, “neutrality” is a principle applied consistently in cases involving public schools. A majority of the Court agrees that school officials must be neutral among religions and between religion and non-religion. This means that under the First Amendment school officials may neither inculcate nor inhibit religion; they must protect the religious-liberty rights of students of all faiths or none.

Free Exercise Clause

The Free Exercise clause prohibits, as far as possible, state interference with religious belief and conduct. Although the Free Exercise clause has generated far fewer cases in the Supreme Court, the Court's handling of those claims can be just as controversial as the handling of those that involve the Establishment clause.

A time-honored test for evaluating free exercise claims was first announced in *Sherbert v. Verner* (1963), where the Court ruled that a state could not deny unemployment compensation benefits to a person merely because her religion prohibited her from working on Saturdays. The government was barred from making a person choose between observance of his or her religious beliefs and the enjoyment of government benefits to which he or she is otherwise entitled. The case is important for the ruling that the government must show a very important reason, sometimes called a “compelling state interest,” before it can prevail against a person claiming a violation of the Free Exercise clause. The government also must show that it had no alternative means of achieving its interest that would be less restrictive, or less burdensome, of religious freedom.

The statement of abstract principle is one thing; however, its application to specific cases is another. The high-water mark thus far for free exercise claims occurred in *Wisconsin v. Yoder* (1972). The Court in *Yoder* found that the state's compulsory school attendance law violated the Free Exercise clause by forcing Amish parents to send their children to school beyond the eighth grade. In explaining the Court's decision, Chief Justice Burger wrote:

We must not forget that in the Middle Ages important values of the civilization of the Western world were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is “right” and the Amish and others like them are “wrong.” A way of life that is odd or even erratic but interferes with no rights or interest of others is not to be condemned because it is different.

Since that case, the Court has rejected virtually every claim by an individual to a free exercise exemption from the laws of the state. A religious community in which members worked for the church and believed that acceptance of wages would be an affront to God was forced to comply with the minimum wage laws (*Tony and Susan Alamo Foundation v. Secretary of Labor*, 1985). Uniformity of the military dress code was thought important enough to prevail over the claim of an Orthodox Jew to wear a yarmulke under his military cap (*Goldman v. Weinberger*, 1986). Muslim prisoners were denied the right to challenge prison regulations that conflict with their obligation of Friday prayer, despite the fact that accommodations were made for the religious practices of Christian and Jewish prisoners (*O'Lone v. Estate of Shabazz*, 1987). And Native Americans have been unable to stop the construction of a mining road over public lands, even if those lands are sacred to that tribe's religion (*Lyng v. NW Indian Cemetery, etc. Assn.*, 1988). The only notable exceptions to the Court's free exercise holdings have been religion-based claims for unemployment compensation, the controlling opinion being *Sherbert*, as verified by *Thomas v. Review Board*, 1981, *Hobbie v. Unemployment Commission*, 1987 and *Frazee v. Illinois Dept. of Employment Security*, 1989.

The Court's rationale for denying these free exercise claims has been its view either that the government's interests were “compelling” under *Sherbert* or that those interests were thought “reasonable” under the less rigorous standard of review applicable to prisoners and military personnel.

In *Employment Division v. Smith* (1990), the Court expanded the reasonableness test to unprecedented limits and severely curtailed the use of the more protective compelling state interest test. The case involved two men who were fired from their jobs as drug rehabilitation counselors for using peyote (an illegal drug) and later were denied unemployment compensation benefits. As members of the Native American church, the men claimed they had a constitutional right to ingest peyote in their worship services.

In a decision that provoked widespread consternation, the Supreme Court held that the denial of compensation benefits was reasonable and did not violate the Free Exercise clause. More importantly, the Court indicated that the compelling state interest test is applicable only when a law is specifically targeted at a religious practice or when a free exercise claim is linked with another constitutional right such as free speech.

The Free Exercise clause prohibits, as far as possible, state interference with religious belief and conduct.

LESSON NINE: Keeper of the Nation's Conscience

Since few, if any, laws single out religious practices for discriminatory treatment, the compelling state interest test is likely to be of little practical use outside the unemployment compensation area.

In the first three years following the *Smith* decision, more than 50 cases were decided against religious groups and individuals. As a result, a broad coalition of civil liberties and religious organizations joined to support passage by Congress of the Religious Freedom Restoration Act (RFRA). Signed into law by President Bill Clinton in 1993, RFRA restored the compelling interest test and ensured its application in all cases in which religious exercise is substantially burdened.

RFRA, however, did not last long. In 1997, the U.S. Supreme Court struck down the act in *City of Boerne v. Flores*. The Court ruled that Congress went beyond its powers by forcing states to provide more protection for free exercise of religion than the First Amendment, as interpreted by the Supreme Court in *Smith*, requires. Although RFRA no longer applies to the states, the Court subsequently ruled that it is still applicable to the federal government (*Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, 2006).

In 2000, Congress tried again to restore the compelling interest test by passing a more targeted law, the Religious Land Use and Institutionalized Persons Act (RLUIPA), requiring the use of the compelling interest test in cases involving land use and institutionalized people. In 2005, the Supreme Court held in *Cutter v. Wilkinson* that the RLUIPA provision involving prisoners does not violate the Establishment clause. But the law is still being challenged on other grounds by some state and local officials. Though *Cutter* did not concern RLUIPA's land-use provisions, both the prisoner and land-use portions of RLUIPA share much the same language. This similarity leads many to believe that the Court's rationale in the prisoner context will readily be usable in the land-use arena.

After the Court's decision in *Boerne* striking down RFRA, some states passed their own Religious Freedom Restoration Acts to reinstate the compelling interest test. In other states, some courts have held that the compelling interest test must be applied to religious claims under the state constitution. But in many states, the level of protection for free exercise of religion remains unclear.

Relationship Between the Religious Liberty Clauses

In an important case in 1970 allowing property tax exemptions for churches, *Walz v. Tax Commission of the City of New York*, the Court acknowledged that the two Religious Liberty clauses "would tend to clash with one another" if either or both of them were "expanded to a logical extreme." But in the same breath, the Court recognized the need for "room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without [state] sponsorship and without interference."

It is not always an easy task to harmonize the principles protected by the two provisions of the Religious Liberty clauses. Much of the time they are thought to exist in a state of tension with one another, or even as polar opposites in a grand tug-of-war. According to this mistaken view, the Establishment clause forbids any government accommodation of religion or at least a preference of one religious group over another, and the Free Exercise clause mandates special consideration for religiously motivated dissent from generally applicable law. The one is thought to make the state aloof from the churches, and the other to make the state deferential to them.

Once the First Amendment is thought of in this way, then the chief task of interpreting it is to devise a means of keeping one clause from swallowing the other. The view that the Religious Liberty clauses are at war with one another is not supported by the text of the First Amendment itself, which contains only one main clause ("Congress shall make no law ...") and only one mention of the word "religion." It is unlikely that the framers intended to write a contradiction into what is essentially the Religious Liberty clause (in the singular — one provision being opposed to religion, and the other being in favor of it).

Neither does the history surrounding the adoption of the First Amendment support the view of such an intrinsic tension. The framers recognized the historical danger of fusing church and state and they strove to prevent it. But they did so by placing at the head of the civil liberties protected in the First Amendment that of religious freedom. By limiting governmental authority that would unduly diminish that precious freedom, they hoped to secure it.

A more sensible view of the text and history of the Religious Liberty clauses, then, is that both provisions safeguard religious liberty by limiting the power of government either to involve itself in religion or to infringe upon the rights of those who do. The two clauses should be read as parallel and complementary. Taken together, both clauses now serve to ensure that religion remain free from coercion, both at the state and federal level.

It is not always an easy task to harmonize the principles protected by the two provisions of the Religious Liberty clauses. Much of the difficulty, however, stems from imagining that the two clauses exist in a state of tension with one another, or even as polar opposites in a grand tug-of-war.

The Religious Liberty clauses should not be thought of as at odds with one another — one favoring freedom of religion and the other opposed to an establishment of it. The framers wrote the provision forbidding establishment in order to safeguard the principle of religious liberty. Both secure the rights of believers and non-believers alike to be free from government coercion in matters of conscience. Both together secure the civil liberty of religious freedom. In the words of the Williamsburg Charter, the two Religious Liberty clauses are “mutually reinforcing provisions [that] act as a double guarantee of religious liberty.” It declared that the two clauses were: essentially one provision for preserving religious liberty. Both parts, No establishment and Free Exercise, are to be comprehensively understood as being in the service of religious liberty as a positive good. At the heart of the Establishment clause is the prohibition of state sponsorship of religion and at the heart of Free Exercise clause is the prohibition of state interference with religious liberty.

A more sensible view of the text and history of the Religious Liberty clauses, then, is that both provisions safeguard religious liberty by limiting the power of government either to involve itself in religion or to infringe upon the rights of those who do.

Teaching Strategies

You will find the following for use in this section in the Student Documents:

9-A *Everson v. Board of Education*, 1947

9-B *Engel v. Vitale*, 1962

9-C *Wisconsin v. Yoder*, 1972

9-D *United States v. Lee*, 1982



Links

1. Ask students to think about recent controversial cases in which the Supreme Court has handed down a decision (for example, over “equal access” in schools, or the smoking of peyote in Native American rites). Elicit several responses before moving on.
2. Determine what your students know and do not know about the way the Supreme Court works. For example, ask them how cases are brought before the Supreme Court. It may be helpful to review Article III, Section 2 of the Constitution before proceeding.

Approaches

Suggestions:

1. **Summarizing:** Briefly summarize the main points of the Historical Background before going on with the documents. A good focal point might be to have the students examine one of the cases, for example, *Engel v. Vitale* (Student Document Handout 9-B). Ask for their response to the case; why was it controversial?
2. **Focusing:** Discuss the main legal theories of the two approaches to cases involving the Religious Liberty clauses: the Separationist and the Accommodationist.

Student Document Handouts 9-A and 9-B deal with the Establishment clause (“Congress shall make no law respecting an establishment of religion ...”). Read the clause aloud and begin by discussing it, asking the students to respond with their views of the framers’ context, concerns and objections. Distribute Student Document Handout 9-A to each student. Ask the class to read the document carefully, noting the following:

1. What does Justice Black mean by a “wall of separation between church and state”?
2. According to Black, in what ways might state aid to religion be a clear violation of the Constitution? What are the various ways one might interpret state aid?
3. In your reading of the strongly separationist majority opinion, what accommodationist provisions were upheld?

LESSON NINE: Keeper of the Nation's Conscience

Next, distribute Student Document Handout 9-B, *Engel v. Vitale*, to each student. This case addresses one of the most emotional and long-lasting controversies relating to the Establishment clause. Again, ask the class to read the document and note the following:

1. In what essential ways does this decision, which defines what it means for the government to “make no law respecting an establishment of religion,” differ from *Everson v. Board of Education*?
2. Why does *Engel v. Vitale* provoke bitter controversy? Can you think of ways to avoid this controversy? What is in store for this issue, since it still flares up periodically?
3. Do you think the Supreme Court will have future cases testing these issues? If so, how is religious freedom “an unfolding drama” with chapters yet to be written? Would you describe yourself as a separationist or an accommodationist? Give the reasons for your choice.

Student Document Handouts 9-C and 9-D cover the Free Exercise clause (“or prohibiting the free exercise thereof”). Again, read the clause aloud and begin by discussing it, asking for responses centered on the framers’ concerns and goals over free exercise and how these differed from those over no establishment. Distribute Student Document Handout 9-C to every student. Ask the class to read the document carefully, noting the following:

1. If parents object on religious grounds to the participation of their children in schooling after the eighth grade, may a state enforce its compulsory school attendance laws against those parents? (See *Wisconsin v. Yoder*.)
2. If a person opposes the payment of Social Security taxes because of a sincerely held belief that the religious community should take care of its own members who are elderly or needy, may the government force that person to pay Social Security taxes even if he or she does not participate in their benefits? (See *United States v. Lee*.)

Reporting: As outlined in the above exercise, all of these documents can be handled in a group setting. Divide the class into several groups and distribute the documents, one set to a group. Each group should then read the respective document, summarize the Court’s decision and list the main points on which the decision was based. Each group should review that portion of the Religious Liberty clauses to which their case refers first, and then prepare their response. The idea in this exercise is to engage every member of the group in expressing his or her opinions.

After five to 10 minutes, a group leader or reporter should share the group’s findings with the rest of the class.

Concluding Discussion Questions:

1. Should the government encourage or promote religion? Why or why not?
2. Is the “wall” a useful metaphor for understanding church-state relations? What other metaphors might be useful? What is your rationale for choosing them?
3. Should the intent of the framers bind us in interpreting the Constitution? Give reasons for your choice.
4. Are there limits to how far society can go in accommodating free-exercise claims? What should those limits be? Are there limits to how far a religious group or institution should go in pushing for free-exercise claims? What should these limits be?
5. How would you define the essential balance or relationship that should be maintained between freedom of conscience and the state?

Evaluation



Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in this lesson demonstrate an understanding of the historical significance of major Supreme Court cases concerning religious liberty in the last 70 years? Can the students synthesize information relating to the Supreme Court's reasons for the decisions mentioned in this lesson, and can they put themselves in the justices' places in deciding the cases as they have? More importantly, can your students appreciate the need for all citizens to understand the Constitution and "become lawyers" in the sense that Woodrow Wilson believed?

Historical Empathy: Do your students understand what inspired and influenced the prime movers who brought these cases to the Court's attention? Why did the *Engel* or the *Yoder* cases come before the Supreme Court, for example, and what new interpretations came about as a result of the Court's decisions? What impact do such decisions have upon our freedom today?

Civic Responsibility: To what degree are your students aware of the civic values, rights and responsibilities in their own community? Can your students see that these court cases touch upon us all, not just those "others"?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so on.
- **Homework:** All assigned homework.
- **Self-Evaluation:** Finish this statement with examples: "There are/are not limits on how far society can go in accommodating free exercise claims..." Evaluate your response once you have finished in light of the material covered in this lesson.

Student Documents



Contents:

9-A *Everson v. Board of Education*, 1947, pp. 154-155

9-B *Engel v. Vitale*, 1962, pp. 156-157

9-C *Wisconsin v. Yoder*, 1972, pp. 158-159

9-D *United States v. Lee*, 1982, pp. 160-161

Excerpt from *Everson v. Board of Education*, 330 U.S. 1 (1947)

Mr. Justice Black delivered the opinion of the Court.

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation to and from schools. The appellee, a township board of education, acting pursuant to this statute, authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular buses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

The appellant, in his capacity as a district taxpayer, filed suit in a State court challenging the right of the Board to reimburse parents of parochial school students. He contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions....

This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute.... Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states. Most of them did soon provide similar constitutional protections for religious liberty. But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups. In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect. Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith. The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds from the welfare of the general public and that which is designed to support institutions which teach religion. ...

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. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or

secretly, participate in the affairs of any religious organizations or groups and vice versa. 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..."

This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose."

It appears that these parochial schools meet New Jersey's requirements. The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

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. New Jersey has not breached it here.

Excerpt from *Engel v. Vitale*, 370 U.S. 421 (1962)

Mr. Justice Black delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system. These state officials composed the prayer which they recommended and published as a part of their "Statement on Moral and Spiritual Training in the Schools," saying: "We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program." ...

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this and the trial court expressly so found. ...

The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. ...

The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say—that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe

by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

There can be no doubt that New York's state prayer program officially established the religious beliefs embodied in the Regents' prayer. The respondents' argument to the contrary, which is largely based upon the contention that the Regents' prayer is "non-denominational" and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. ...

To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

"[I]t is proper to take alarm at the first experiment on our liberties. ...Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of this property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"

Excerpt from *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

Mr. Chief Justice Burger delivered the opinion of the Court.

On petition of the State of Wisconsin, we granted the writ in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions of violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the State by the Fourteenth Amendment. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade. The children were not enrolled in any private school, or within any recognized exception to the compulsory attendance law, and they are conceded to be subject to the Wisconsin statute.

On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory attendance law in Green County Court and were fined the sum of \$5 each. Respondents defended on the ground that the application of the compulsory attendance law violated their rights under the First and Fourteenth Amendments. ...

Amish objection to formal education beyond the eighth is firmly grounded in ... central religious concepts. They object to the high school and higher education generally because the values it teaches are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, world success, and social life with other students. Amish society emphasizes informal learning-through-doing, a life of "goodness," rather than a life of intellect, wisdom, rather than technical knowledge, community welfare rather than competition, and separation, rather than integration with contemporary worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs not only because it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners and ways of the peer group, but because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. ...

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the "three Rs" in order to read the Bible, to be good farmers and citizens and to be able to deal

with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period. ...

There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. ... [A] State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of *Pierce*, "prepare [them] for additional obligations." ...

It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. ...

But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. ...

Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary. Recognition of the claim of the State in such a proceeding would, of course, call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. It is clear that such an intrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom comparable to those raised here.... On this record we neither reach nor decide those issues. ...

For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16. ...

Excerpt from *United States v. Lee*, 102 S. Ct. 1051 (1982)

Chief Justice Burger delivered the opinion of the Court.

We noted probable jurisdiction to determine whether imposition of social security taxes is unconstitutional as applied to persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds. The District Court concluded that the Free Exercise Clause prohibits forced payment of social security taxes when payment of taxes and receipt of benefits violates the taxpayer's religion. We reverse.

Appellee, a member of the Old Order Amish, is a self-employed farmer and carpenter. From 1970 to 1977, appellee employed several other Amish to work on his farm and in his carpentry shop. He failed to file the quarterly social security tax returns required of employers, withhold social security tax from his employees or pay the employer's share of social security taxes.

In 1978, the Internal Revenue Service assessed appellee in excess of \$27,000 for unpaid employment taxes; he paid \$91—the amount owed for the first quarter of 1972—and then sued in the United States District Court for the Western District of Pennsylvania for a refund, claiming that imposition of the social security taxes violated his First Amendment Free Exercise rights and those of his Amish employees...

The preliminary inquiry in determining the existence of a constitutionally-required exemption is whether the payment of social security taxes and the receipt of benefits interferes with the Free Exercise rights of the Amish. The Amish believe that there is a religiously based obligation to provide for their fellow members the kind of assistance contemplated by the social security system...

We... accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violated Amish religious beliefs, compulsory participation in the social security system interferes with their Free Exercise rights.

The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional...

Because the social security system is nationwide, the governmental interest is apparent. The social security system in the United States serves the public interest by providing a comprehensive insurance system with a variety of benefits available to all participants, with costs shared by employers and employees...

Mandatory participation is indispensable to the fiscal vitality of the social security system. "[W]idespread individual voluntary coverage under social security... would undermine the soundness of the social security program." Moreover, a comprehensive

national social security system providing for voluntary participation would be almost a contradiction in terms and difficult, if not impossible, to administer. Thus, the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high. ...

The remaining inquiry is whether accommodating the Amish belief will unduly interfere with fulfillment of the governmental interest. ...

Congress and the Courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs. When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity. Granting an exemption from social security taxes to an employer operates to impose the employer's religious faith on the employees. Congress drew a line exempting the self-employed Amish but not all persons working for an Amish employer. The tax imposed on employers to support the social security system must be uniformly applicable to all, except as Congress provides explicitly otherwise. ...

Lesson 10

Tribespeople, Idiots or Citizens?



Overview

The Big Idea

From the birth of this nation, America's challenge has always been to live with our deepest differences. With more than 200 years of population changes, resulting in unprecedented ethnic, cultural and religious diversity, we must renew our commitment to the nation's first principles embodied in the First Amendment. We must dedicate ourselves to conducting debates and resolving conflicts by practicing the "Three Rs" of religious liberty — rights, responsibilities and respect — and in particular to living by the Golden Rule, treating others as we ourselves would like to be treated.

Historical Section

Contemporary challenges to religious liberty and a constructive response.

Key Facts

- From the Mayflower Compact on, notions of a charter have been common in the American experience.
- We are now living in the midst of an important new wave of pluralism.
- Disputes involving religion and politics have created confusion over the relationship of religion to public life.
- Led by former Presidents Gerald R. Ford and Jimmy Carter, the Williamsburg Charter (1988) was drafted as a charter on religious liberty as the United States entered its third century of constitutional government.
- Religious liberty is not only a universal right but it depends upon universal responsibility to respect that right for others, treating others as we ourselves desire to be treated.

Key Terms

Williamsburg Charter
"common core" values
consensus
commitment
Golden Rule
persuasion
generation
public philosophy
experiment
civility
chartered pluralism

Objectives

Students can think through and explain:

1. How to demonstrate practically the responsibilities to protect freedom of conscience among their classmates, community and the nation.
2. How the common vision for the common good helps each generation live with its deepest differences.
3. How religious liberty entails not only a universal right but a universal responsibility to respect that right for others, treating others as we ourselves desire to be treated.

The Big Idea

From the birth of this nation, America's challenge has always been to live with our deepest differences. With more than 200 years of population changes, resulting in unprecedented ethnic, cultural and religious diversity, we must renew our commitment to the nation's first principles embodied in the First Amendment. We must dedicate ourselves to conducting debates and resolving conflicts by practicing the "Three Rs" of religious liberty — rights, responsibilities and respect — and in particular to living by the Golden Rule, treating others as we ourselves would like to be treated.



Question: When is a constitution not a constitution?

Answer: When it is only a list of names, dates, slogans, formulas and laws to learn by heart and a historical document for lawyers to argue over.

In 1931, Yale Law School professor Walton H. Hamilton described constitutionalism as "the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order." The framers would have agreed that constitutionalism is a matter of fundamental principles and civic trust, not simply laws. Freedom is sustained not just by legislating rights but by cultivating roots, by nourishing those beliefs and first principles that give life to law and make a constitution more than a "parchment barrier" (Madison).

Without strongly held beliefs and principles, constitutions are easily brushed aside or fall into disuse. "What's the Constitution between friends?" a corrupt Tammany Hall congressman reportedly said to President Grover Cleveland. Oliver Cromwell retorted to his opponents in 1658. "The Magna Carta? Their magna farta [sic] should not control his actions." And as blatantly racist Governor Cole L. Blease of South Carolina exclaimed to reporters in 1912, "To hell with the Constitution."

Times of constitutional celebration are therefore important. But equally important are times of conflict and confusion, especially if they are used to clarify and deepen understanding of the Constitution and commitment to the principles behind it. Today, more than two centuries after the framing of its First Amendment, we can better use both the celebrations and the controversies to understand modern challenges to freedom of conscience and develop our responses to them.

By such responses we demonstrate in turn whether we are "tribespeople," in the sense of those who react purely emotionally and in lockstep with their tribe or group; "idiots," in the original Greek sense of the word referring to those who react purely as isolated individuals; or "citizens of the Commonwealth" — those who act not only in their own interest but in the interests and according to the ideals of the people at large and the republic itself.

This lesson, "Tribespeople, Idiots or Citizens?" aims 1) to expand understanding of the difficult challenges to religious liberty in our time; 2) to win commitment to the fundamental principle of respecting religious liberty in a pluralistic society; and 3) to deepen a sense of practical responsibility in each student for his or her part in protecting religious liberty for this generation and in our own community.

"Constitutionalism is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order."

— *Walton H. Hamilton*

"No society can make a perpetual constitution, or even a perpetual law. The earth always belongs to the living generation."

— *Thomas Jefferson*

"For if we should perish, the ruthlessness of the foe would be only the secondary cause of the disaster. The primary cause would be that the strength of a giant nation was directed by eyes too blind to see all the hazards of the struggle; and the blindness would be induced not by some accident of nature or history but by hatred and vainglory."

— *Reinhold Niebuhr*



Historical Background

Freedom's Three Rs: Rights, Responsibilities and Respect

George Washington's home, Mount Vernon, is among the nation's most visited historical sites. But one of the most fascinating things at Mount Vernon is one of the least noticed — the key to the Bastille, the forbidding Paris fortress whose fall on July 14, 1789, became the symbol of the French revolution.

The key hangs in the hall at Mount Vernon, oversized for its classically proportioned surroundings and often overlooked. But it once spoke eloquently for the highest hopes in both nations. Six weeks after the ratification of the U.S. Constitution in September 1787, Jefferson rejoiced at the meeting of the Estates General and the prospect of applying revolutionary American principles to France. In that same spirit two years later, the Marquis de Lafayette took the key to the Bastille and sent it to his good friend Washington as a symbol of their common vision of the future.

Their hopes were to be dashed. Sobered by the reign of terror and the revolutionary ugliness that persisted from Robespierre and Danton to Napoleon, both Americans and French supporters of the United States revised their views. Gouverneur Morris, for example, the U.S. Ambassador to France, wrote home in disgust: "They want an American Constitution without realizing they have no Americans to uphold it."

More than 200 years later, we are witnessing powerful stirrings toward democracy around the world. Old hopes are alive again. But in an era clouded by state repression and sectarian violence, no part of the Constitution stands out more uniquely yet is less copied as a key to humankind's troubles than the Religious Liberty clauses of the First Amendment.

As we have seen, the first 16 words of the Bill of Rights are the cornerstone of American religious liberty and the boldest and most successful part of the constitutional experiment. As the experiment is ongoing, we must ask how we are doing in affairs of church and state as we navigate the nation's third century. Does the U.S. Constitution still have sufficient "Americans to uphold it"?

"It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government by reflection and choice, or whether they are forever destined to depend for their political constitutions on accident or force."

— *Alexander Hamilton*

Does the American Constitution still have sufficient "Americans to uphold it"?

Contemporary Challenges

In democratic societies, political debate and activity is always rowdier and more vigorous than some would like. But vitality apart, consider some of the challenging facts that appear on our nation's religious liberty report card.

Increase in litigation

American freedom is freedom under law, and the right to resort to law is a precious right, especially for members of minority groups who risk the "tyranny of the majority." But consider the following fact: In the first 150 years of life under the First Amendment six cases involving the relationship of churches and the government were brought before the Supreme Court, two under the No Establishment clause, three under the Free Exercise clause and one under both. In the last 70 years there have been approximately 90 such cases.

What explains this enormous increase in cases? In large part, it stems back to the Supreme Court's 20th-century interpretation of the 14th Amendment applying the Bill of Rights to all of the states. But how far does the increase also reflect a tendency to resort to litigation more, and how far does it reflect growing tensions over religion in public life?

Controversies over everything

In the last 25 years political and legal disputes have broken out over almost everything imaginable having to do with religion. The following are a few of the central questions addressed in some of the best known cases involving religion. You could easily add to it from your own list:

- Should prayer, or meditation, or a moment of silence be required in public schools?
 - Is it proper to teach “creation science” as well as evolution in science classes?
 - Do public school textbooks contain the teaching of “secular humanism”?
 - Is it lawful to have an official prayer before a high school sporting event?
 - Can the Ten Commandments be hung on the wall of a public school?
 - Should students be allowed to form religious groups and hold religious meetings on school premises after school hours?
 - Is it right for the government to pay for Buddhist chaplains in the military?
 - Should Muslims be provided space for prayer mats in government departments?
 - Should parochial schools receive state aid, and should parents who send their children to parochial schools receive state aid?
 - Is it legal for groups like the Hare Krishnas to solicit money at airports?
 - Should the “free exercise” of religion permit drug takers to use drugs such as peyote as part of their worship rituals?

(For a discussion of the vital constitutional aspects of such cases, see Lesson 9.)

Of course, the relationship of religion to politics always tends to be controversial. Those following the recent controversies in election campaigns, court cases, lobbying appeals, media confrontations and direct mail battles know that the disputes have been bitter and the conflicts seemingly endless. The contention leads us to wonder if there is any public issue touching on religion that will not turn into litigation. What does this contentiousness show about our current understanding of the relationship between religious liberty and public life?

Differences more varied than ever

As we have seen, the story of pluralism in America is not just a matter of history. We are now living in the midst of a major new wave of its growth. Three factors are important:

1. Religious pluralism has expanded since the 1950s. American pluralism is no longer simply Protestant or Catholic or “Judeo-Christian” or even loosely “biblical.” That term would include, say, Jehovah’s Witnesses as well as Jews and Christians. It has expanded in the last generation to include a growing number of believers from all the world’s religions, especially Buddhists and Muslims, and a growing number of people with no religious affiliation, such as Humanists and Freethinkers.
2. Immigration continues at a high level, with a significant increase in the numbers of Latin Americans and Asians coming to the United States. California, the nation’s most diverse as well as largest state, is the destination of one third of the entire country’s immigrants.
3. Television, radio, travel and other developments of modern mass culture since World War II have reinforced the awareness and intensity of pluralism, giving the sense that “everyone is now everywhere.”

This latest expansion of pluralism means that our generation is facing opportunities and challenges similar to those felt by New York in the late 1800s and by Boston in the 1830s and 1840s. At profound levels, the general challenge is that of living with our deepest differences.

“Modem politics is a civil war carried on by other means.”
— *Alasdair Macintyre*

Clash of special interest groups

The last generation has seen a growing reliance on single issue politics and a spectacular rise of special interest groups. Operating on a national scale but with explicitly focused objectives, groups having a special interest in religion have been an important part of this development. One estimate in the mid-1980s put the number of national non-profit organizations concerned with religious issues at more than 800. More than half of these came into existence since the early 1960s, and more than one in five adult claims membership to such an organization.

LESSON TEN: Tribespeople, Idiots or Citizens?

The overall effect of this political mobilization has been to intensify perspectives of the mutual influence of politics and religion, whether for better or for worse. This is especially true when the reinforcing influence of television and computerized direct-mail is taken into account. While different groups have shown varying degrees of responsibility and irresponsibility, there is no question that certain styles of activism have contributed significantly to the confusion surrounding the idea of freedom of conscience in public life.

Gauging the seriousness of the problem

How serious is this overall picture? Opinions vary, but several people have pointed out two areas of concern:

First, if the controversies are looked at with a wide-angle lens, we can see a set of problems for the nation at large.

1. The recurring conflicts tend to be bitterly and fruitlessly polarizing.
2. Protagonists have sometimes expressed extreme positions.
3. For some people, the resort to law has shifted from being a last resort to a first resort.
4. The two Religious Liberty clauses have been pitted against each other as if they were contradictory rather than complementary.
5. Much of the commitment to what is in the interest of the republic itself or of all Americans of whatever faith or none gets drowned in the noisy din of charge and countercharge.

Second, if the controversies are looked at with a close-up lens, we can see a further set of problems that tend to emerge when politicians badly handle particular cases of public policy.

1. People overlook the practical aspects of issues involving the relationship of religion and the state (judgments about the pros and cons, pluses and minuses of the policy proposals) and thus do not deal with them on their merits.
2. Religion itself becomes the direct focus of attention, the prime political issue, instead of exerting a moral and indirect influence upon public decisions.
3. Religious or non-religious affiliation becomes an unofficial test for public office especially when people cannot get over the hurdle of deciding “where a person is coming from.”
4. The effect is to make political issues more inflammatory and divisive than they would have been if religion were left out of it.
5. Persons on both sides end up all the more hardened in their opinions while those not involved in a controversy react by saying “A plague on both your houses!”

We are living in a time of confusion over religious liberty. Previous understandings of the relationship of religious liberty and public life appear to have broken down and urgently require renewal and clarification.

In sum, the United States needs a fresh clarification of the place of religious liberty in public life — one that reaffirms the Constitution in the changed circumstances of our time. One lesson of recent conflicts is that magnifying the influence of religion on public policies may be politically irresponsible, even where it is constitutionally legitimate and morally justified. When issues having to do with freedom of conscience are handled poorly, a recoil against activity by any and all faiths in public life tends to take place — a recoil contradicting the guarantees of the Religious Liberty clauses as well as the best traditions of American history.

Differences of opinion over the challenges mentioned here will undoubtedly occur. But one thing remains clear: We are living in a time of confusion over religious liberty. Previous understandings of the relationship of religious liberty and public life appear to have broken down. They urgently require renewal and clarification.

A Charter for the Third Century

With diversity so wide, differences so deep and disputes so vehement, the idea of tackling these challenges seems to some people about as futile as squaring the circle. But in fact, the history of religious liberty in the United States demonstrates two requirements for meeting these challenges.

One requirement is a return to the Constitution and to the first principles of freedom of conscience, or what George Mason called a “recurrence to fundamental principles.” The other is a strengthening of what has been

called the “common vision of the common good,” a voluntary, shared agreement on what we believe to be the common interests of all Americans, despite deep and important differences. From the Mayflower Compact onward, this tradition of consensus-building has been one of America’s greatest achievements as well as her greatest need. As the framers understood it, constitutionalism is a compact that binds the living to the dead across different generations, as well as binding the living to the living across different regions, classes, races, genders and creeds.

Recognition of these two requirements lies behind several initiatives late last century tackling different aspects of the controversies over religious liberty and public life. One such initiative is the Williamsburg Charter, presented to the nation on June 25, 1988, on the occasion of the 200th anniversary of Virginia’s call for a bill of rights.

The Williamsburg Charter was drafted by representatives of America’s leading faiths and revised over the course of two years, in close consultation with political leaders, scholars and leaders of many faith communities. Far from redrafting the First Amendment, its purpose was to reaffirm and celebrate it. Led by former Presidents Gerald R. Ford and Jimmy Carter, it was signed by nearly 200 leaders of national life, including two chief justices of the United States and many prominent Americans. (See Appendix.)

But more important than the Charter’s story are the first principles it sets forth and its vision for the continuing place of religious liberty in American public life. These principal themes set forth in the Williamsburg Charter are so fundamental and enduring that they may be called the “Three Rs” of Religious Liberty.

Rights

Religious liberty, or freedom of conscience, is a precious, basic and inalienable right — the right to reach, hold, exercise or change our beliefs independent of all, and especially government, control. Two aspects are important today:

1. Religious liberty is not a concession and therefore a matter of exception, exemption or toleration. It is a right and therefore independent of all other authority, whether that of the government or a democratic majority.
2. The test of religious liberty is not theory but practice — in particular the way it is respected in practice in one’s relationships to members of minority groups.

The Williamsburg Charter states:

Religious liberty finally depends on neither the favors of the state and its officials nor the vagaries of tyrants or majorities. Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.

The right to freedom of conscience is premised not upon science, nor upon social utility, nor upon pride of species. Rather, it is premised upon the inviolable dignity of the human person. It is the foundation of, and is integrally related to, all other rights and freedoms secured by the Constitution. This basic civil liberty is clearly acknowledged in the Declaration of Independence and is ineradicable from the long tradition of rights and liberties from which the Revolution sprang.

Responsibilities

Religious liberty is not only a universal right but it depends upon a universal responsibility to respect that right for others, treating them as we ourselves desire to be treated. Two aspects of this sense of responsibility are important today:

1. Historically, the inconsistencies in not extending to others the rights claimed for ourselves have been a prime source of violations of religious liberty. This is how even victims of religious discrimination can themselves become perpetrators.
2. Ethically speaking, the Golden Rule carries a special power not only because it is deeply rooted in American life but because it appeals openly to human self-interest as much as to high ideals.

“No free government, or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.”
— George Mason, 1776

“Without common belief no society can prosper; say, rather, no society can exist; for without ideas held in common there is no common action, and without common action there may still be men, but there is no social body.”
— Alexis de Tocqueville

“It behooves every man who values liberty of conscience for himself to resist invasions of it in the case of others, or their cases may, by change of circumstances, become his own.”
— Thomas Jefferson

LESSON TEN: Tribespeople, Idiots or Citizens?

Just as ethics shows that not all that is legally permitted is morally wise, so American history shows that not all that is constitutionally permitted is civically wise.

The Williamsburg Charter states:

...[W]e affirm that a right for one is a right for another and a responsibility for all. A right for a Protestant is a right for an Orthodox is a right for a Catholic is a right for a Jew is a right for a Humanist is a right for a Mormon is a right for a Muslim is a right for a Buddhist — and for the followers of any other faith within the wide bounds of the republic.

That rights are universal and responsibilities mutual is both the premise and the promise of democratic pluralism. The First Amendment, in this sense, is the epitome of public justice and serves as the golden rule for civic life. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves. Whereas the wearer of the English crown is officially the Defender of the Faith, all who uphold the American Constitution are defenders of the rights of all faiths.

Respect

A combination of the logic of the principles of religious liberty and the lessons of more than 200 years of constitutional experience shape certain practical guidelines by which civil discourse must be sustained in a society that wishes to remain free. Two aspects of such respect are important here.

1. Civility should not be dismissed out of regard for constitutionality. Just as ethics shows that not all that is legally permitted is morally wise, so American history shows that not all that is constitutionally permitted is civically wise.
2. Civility should not be dismissed out of regard for conflict. Many people reject the term “civility” because they fear it is based on a fear of conflict and competition. Far from it. Constitutionalism at its best is a form of conflict within consensus, just as civility is a citizen’s way of dealing with other citizens in the public arena based on a principled respect for persons, truth and the common good.

The Williamsburg Charter states:

Central to the difference between genuine and debased tolerance is the recognition that peace and truth must be held in tension. Pluralism must not be confused with, and is in fact endangered by, philosophical and ethical indifference. Commitment to strong, clear philosophical and ethical ideas need not imply either intolerance or opposition to democratic pluralism. On the contrary, democratic pluralism requires an agreement to be locked in public argument over disagreements of consequence within the bonds of civility.

No, Not That

Ours is a period committed to the importance of diversity in strongly held and distinctive positions. We are therefore wise to be cautious of false kinds of consensus, such as majoritarianism. It is important, therefore, to say what the Williamsburg Charter isn’t arguing as well as what it is.

1. *Unity is over the “Three Rs,” not over religious beliefs.* The Charter does not pretend to include agreement over religious beliefs, political policies or constitutional interpretations. It recognizes that differences between citizens in all these things will remain deep, important and lasting. In this sense, religious liberty is prior even to different interpretations of it, such as “separationism” and “accommodationism,” and common to people on both sides of such divides. Instead, the Charter builds an overlapping consensus on the “Three Rs” of religious liberty, within which to deal with our deepest differences.
2. Debate must be strengthened, not stifled. The Charter does not desire to stifle debate, but to strengthen it. Many people who view civility as a wimp-word fear that the aim of the signers of the Charter was to smother tough disagreements. Quite the contrary. Civility, being a respect for persons, truth and the common good, leads to a civil but robust debate that turns disagreement into an achievement and ensures that diversity remains a source of richness and strength.

Let Candles be Brought

As we come to the conclusion of these studies on religious liberty, here is a final thought to ponder. There are many today so caught up by particular controversies involving the relationship of religion to politics that all that matters is who wins and who loses. There are others so appalled by the style and consequences of such conflicts that they fear we will all be the losers. To many of each camp, talk of rebuilding the first principles of religious liberty while the controversies continue seems a form of fiddling while Rome burns.

President Kennedy returned repeatedly to the dangers of such an impasse in his election campaign of 1960. To varied audiences along his campaign trail, he shared an incident from 1780 that Alistair Cooke had discovered in the records of the Connecticut House of Representatives. It formed the climax of Kennedy's last campaign speech, televised from Madison Square Garden.

The time was the 19th of May, 1780. The place was Hartford, Conn. The day has gone down in New England history as a terrible foretaste of Judgment Day. For at noon the skies turned from blue to gray and by mid-afternoon had blackened over so densely that, in that religious age, men fell on their knees and begged a final blessing before the end came. The Connecticut House of Representatives was in session. And as some men fell down and others clamored for an immediate adjournment, the Speaker of the House, one Colonel Davenport, came to his feet. He silenced them and said these words: "The Day of Judgment is either approaching or it is not. If it is not, there is no cause for adjournment. If it is, I choose to be found doing my duty. I wish, therefore, that candles may be brought."

As we consider the task of sustaining and passing on freedom of conscience, it would be difficult to improve on that spirit. The questions and controversies surrounding religious liberty are tangled and thorny, but the stakes are high for individuals as well as the nation. Regardless of what other people choose to do, we each have a part to play. Let candles be brought.

Teaching Strategies

You will find the following for use in this section in the Student Documents:

- 10-A Quotations, "Influencing Without Inflaming"
- 10-B Summary of Principles of the Williamsburg Charter
- 10-C Graphic Visualization: The Double Expansion of Pluralism



Approaches

Discussion: Distribute Student Document Handout 10-A, which begins with six quotations from crusading groups followed by two paragraphs from the Williamsburg Charter. The six quotations are from actual groups, sent out in the last couple of decades. Ask the students to read them and then discuss the following questions:

LESSON TEN: Tribespeople, Idiots or Citizens?

1. Sort out some of the following components of the charges:
 - a. Core objections
 - b. Sensational, exaggerated or untruthful remarks
 - c. Similarities between the two sides
2. Describe what you think it would be like to:
 - a. Receive such views and build your views of the other camp solely from such information.
 - b. Be described by such views and have to live with the distortions you believe they contain. How would it make you feel and how would you be tempted to respond?
3. Suggest as many reasons as you can why such charges happen (such as in the dynamics of direct-mail appeals to anger and fear) and how political debate changes when they do happen.
4. Hand out Student Document Handout 10-C, which illustrates the double expansion of pluralism in the last generation. Have students share their own awareness of this expansion and discuss its implications for the challenge of “living with our deepest differences.”
5. How do the paragraphs from the Williamsburg Charter illustrate the third R — respect? Use the principle to work out how you would discuss an emotion-laden topic, such as school prayer or abortion, “robustly but civilly.”

Essay Question: Using the Summary of Principles of the Williamsburg Charter, write an essay that discusses how one or more of the principles helps us to live with each other’s deepest differences in a pluralistic society. How does protecting the rights of the least popular groups in the community protect our own rights? Why is it so important to be able to debate civilly, yet robustly, the beliefs that are the most important to us?

The Task Ahead

More than 200 years of constitutional history reveal a number of glaring discrepancies in popular attitudes toward the Constitution and the Bill of Rights. For example, the discrepancy between the tributes to the framers’ achievements (Justice Johnson: “the most wonderful instrument ever drawn by the hand of man,” 1823) and the overlooking of the framers’ insistence on the ongoing experiment. Another discrepancy is between the declarations of near-reverence for the Constitution (Congressman Caleb Cushing called it in 1834 “Our Ark of the Covenant”) and the fact that most of us show a lack of understanding of it.

All such discrepancies serve as a reminder that the American experiment in constitutional government is just that — an experiment. So far it has not failed. But being an experiment it is open-ended and comes with no guarantees that some day it will not fail. Each generation of Americans, therefore, is responsible to help sustain its proclamation of the “first liberty,” freedom of conscience. The following are some key issues that require attention today.

The American experiment in constitutional government is just that — an experiment. So far it has not failed. But being an experiment it is open-ended and comes with no guarantees that some day it will not fail.

1. The Right to Rights

An important current discrepancy is the gap between the growing assertion of rights and the declining ability to defend or justify them. For example, many people today do not share the earliest American conviction that religious liberty is “God-given” or possess the framers’ belief that religious liberty is a “natural right” and a “self-evident truth.” Yet clearly rights are not a discovery of science. They are reduced to nothing if one views them simply as a form of human conceit or as a gift conferred by the state or any democratic majority. On what do you ground the right to freedom of conscience? How do you defend it against attacks and encroachments? How do you think it should be asserted as a “universal human right”?

2. Maintaining Common Core Values

If presented with pairs of preferences such as community and individuality, tradition and change, most Americans tend to understand their culture as governed by the second part of each pair, individuality and change, rather than the first, community and tradition. They often do not realize the strength and importance of community and tradition in American history and society.

Similarly today, American pluralism is so strong that it would be impossible as well as unjust to impose consensus on religious beliefs. But that does not mean it is unimportant or impossible to achieve a consensus of values that are “American” and “democratic.” This common core of values includes such shared ideals as honesty, loyalty, hard work, community responsibility, fairness and compassion.

What this means is that the consensus has been built at the level of social ideals, rather than at the level of social beliefs. The latter are deeply divergent. Because such a consensus does not rest on a unity of beliefs, it can never be taken as a given. Shared values are always, therefore, a goal for each generation to work out through conversation, persuasion and action.

3. Limits to Pluralism

For many Americans, the question “Are there limits to pluralism?” has been put off-limits — and for a good reason. Constitutionally speaking, there are absolutely no limits to pluralism in the number of allowable beliefs. But that, of course, is also the reason why people should not fear discussion of the question. It needs tackling, both in the interest of open-minded thinking and sustaining religious liberty.

To repeat, constitutionally speaking there are absolutely no limits to pluralism in the number of allowable beliefs. But on the other hand, there are conceivable conditions under which religious liberty and pluralism could undermine each other and become self-defeating.

One such condition concerns the possibility raised earlier of a group “playing the game” of American pluralism only until it can gain sufficient power to seize control and put others out of the game. A second possibility concerns a stage when pluralism and concern for the rights of others slump into a massive indifference toward any claim to particular truths or values. Both outcomes would mean the betrayal of religious liberty and pluralism as we now know it.

4. Each Generation a New People

It is interesting that, as forces of change and development speed up, many traditional labels such as “class” and “economic status” have become less useful. They are too static. In their place the tendency is to stress “age” and “generation,” and to define people according to their times and their links to shared public events and musical styles. Scholars point for illustration of this fact to the presumed unity of a “silent generation” in the 1950s, the “Me Generation” in the 1970s and “Yuppies” in the 1980s.

Alexis de Tocqueville foresaw this development when he said that “Among democratic nations, each generation is a new people.” It is vital to constitutional freedoms that we understand this because 1) It lies behind the framers’ insistence that each generation should be held responsible for sustaining freedom. Thomas Jefferson wrote of having a revolution “every twenty years” and George Mason of a “frequent recurrence to fundamental principles.” 2) It also lies behind the framers’ judgment that the Constitution is not “a machine that would go of itself.” As Jefferson observed, “No society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation.”

Because such a consensus does not rest on a unity of beliefs, it can never be taken as a given. Shared values are always, therefore, a goal for each generation to work out through conversation, persuasion and action.

**“Among democratic nations, each generation is a new people.”
— Alexis de Tocqueville**

The Williamsburg Charter declares in its conclusion:

True to the ideals and realism of that vision, we who sign this Charter, people of many and various beliefs, pledge ourselves to the enduring precepts of the First Amendment as the cornerstone of the American experiment in liberty under law.

We address ourselves to our fellow citizens, daring to hope that the strongest desire of the greatest number is for the common good. We are firmly persuaded that the principles asserted here require a fresh consideration, and that the renewal of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same.

To agree on such guiding principles and to achieve such a compact will not be easy. Whereas a law is a command directed to us, a compact is a promise that must proceed freely from us. To achieve it demands a measure of the vision, sacrifice and perseverance shown by our Founders. Their task was to defy the past, seeing and securing religious liberty against the terrible precedents of history. Ours is to challenge the future, sustaining vigilance and broadening protections against every new menace, including that of our own complacency. Knowing the unquenchable desire for freedom, they lit a beacon. It is for us who know its blessings to keep it burning brightly.



Evaluation

Observation and Anecdotal Records

The teacher keeps records of:

Imaginative Reconstruction: First, considering the objectives stated in the Overview, did the students' comments, written responses and participation in the lesson indicate an understanding of the contemporary challenges to religious liberty and the constructive actions that they might take? Do the students demonstrate an appreciation for America's "greatest achievement and special need" — the building of the common vision of the common good, from the Mayflower Compact or William Penn's plans for the settlement of Pennsylvania onward? Can they see the importance for the common good of reaffirming our generation's rights and responsibilities under the First Amendment's Religious Liberty clauses? Did your students express an appreciation for the underlying importance of freedom of conscience as basic to all other freedoms?

Historical Empathy: Do your students understand the motivations of new immigrants today as they, too, seek to enjoy the religious freedom the U.S. Constitution offers?

Civic Responsibility: Do they understand the importance of identifying a common core of values on which people from various faith communities can agree? Do they demonstrate by their work, their writing and their interests that civic responsibility is the only way for these freedoms to be maintained — that securing them in the first place was the effort of the framers, but that citizens in each succeeding generation must understand the rights the Constitution guarantees, the respect for all persons that should result, and the responsibilities they have to reaffirm them through both words and action?

Portfolio

The students keep a folder that contains:

- **Activities:** All written responses, notecards, worksheets, notes made on documents and so forth.
- **Homework:** All assigned homework.

Final Essay Questions

A closing activity for this unit should focus on questions such as the following:

1. What religious liberty, or freedom of conscience, freely bestowed on you is important in your life?
2. Reflect on the lessons we have studied. What movements or historical figures have had a strong impact on your thinking about religious liberty?
3. What new or changed attitudes concerning religious freedom have you adopted as a result of this course?
4. Select one of the Williamsburg Charter's principles (Student Document Handout 10-B) and write on its practical importance.

Student Documents

Contents:

10-A Quotations, “Influencing Without Inflaming,” pp. 174-175

10-B Summary of Principles of the Williamsburg Charter, p. 176

10-C Graphic Visualization: Double Expansion of Pluralism, p. 177



Influencing Without Inflaming

By a Conservative Spokesperson—

"They are using the same tactics as the Communists use. ... They're about as non-partisan as Josef Stalin. ... [A]nd those of the humanistic stripe, want to see all Bibles banned in America. They would really like to see all church doors closed."

By a Liberal Spokesperson—

"The new right, consciously or not, is stealing not only the tactics but the philosophy of Communism. They are poisonous toadstools, which, if not plucked and discarded in the bud, could well grow into an American-style totalitarianism."

By a Conservative Spokesperson—

"... [Their a]ctivities pose a serious threat to America's freedom. The position this organization has taken in lawsuits is anti-freedom, anti-life, anti-moral, anti-Christian, and anti-American. If we do not start reaffirming Judeo-Christian values, we will soon be a country without any religious freedoms."

By a Liberal Spokesperson—

"And it is these ignorant people, the most uneducated, the most unimaginative, the most unthinking among us, who would make of themselves the guides and leaders of us all; who would force their feeble and childish beliefs on us; who would invade our schools and libraries and homes. ... And what does the Bible say? 'If the blind lead the blind, both shall fall into the ditch.' (Matthew 15:14)"

By a Conservative Spokesperson—

"Your tax dollars are being used to pay for grade school education that teach our children that CANNIBALISM, WIFE-SWAPPING and the MURDER of infants and the elderly are acceptable behavior."

By a Liberal Spokesperson—

"The result of a political takeover by the religious right might bring into existence a kind of Christian Nazism (with the Bible as *Mein Kampf*) whose manipulated multitudes goosestep mercilessly over the godless."

From the Williamsburg Charter—

"Those who claim the right to influence should accept the responsibility not to inflame: Too often in recent disputes over religion and public affairs, some have insisted that any evidence of religious influence on public policy

represents an establishment of religion and is therefore precluded as an improper 'imposition.' Such exclusion of religion from public life is historically unwarranted, philosophically inconsistent, and profoundly undemocratic. ...

"Religious liberty and democratic civility are also threatened, however, from another quarter. Overreacting to an improper veto on religion in public life, many have used religious language and images not for the legitimate influencing for policies but to inflame politics. Politics is indeed an extension of ethics and therefore engages religious principles; but some err by refusing to recognize that there is a distinction, though not a separation, between religion and politics. As a result, they bring to politics a misplaced absoluteness that idolizes politics, 'Satanizes' their enemies and politicizes their own faith."



THE WILLIAMSBURG CHARTER (1988)

SUMMARY OF PRINCIPLES

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

The Religious Liberty clauses of the First Amendment to the Constitution are a momentous decision, the most important political decision for religious liberty and public justice in history. Two hundred years after their enactment they stand out boldly in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses are a reminder that their advocacy and defense is a task for each succeeding generation.

We acknowledge our deep and continuing differences over religious beliefs, political policies and constitutional interpretations. But together we celebrate the genius of the Religious Liberty clauses, and affirm the following truths to be among the first principles that are in the shared interest of all Americans:

1. Religious liberty, or freedom of conscience, is a precious, fundamental and inalienable right. A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.
2. Religious liberty is founded on the inviolable dignity of the person. It is not based on science or social usefulness and is not dependent on the shifting moods of majorities and governments.
3. Religious liberty is our nation's "first liberty," which undergirds all other rights and freedoms secured by the Bill of Rights.
4. The two Religious Liberty clauses address distinct concerns, but together they serve the same end – religious liberty, or freedom of conscience, for citizens of all faiths or none.
5. The No Establishment clause separates Church from State but not religion from politics or public life. It prevents the confusion of religion and government which has been a leading source of repression and coercion throughout history.
6. The Free Exercise clause guarantees the right to reach, hold, exercise or change beliefs freely. It allows all citizens who so desire to shape their lives, whether private or public, on the basis of personal and communal beliefs.
7. The Religious Liberty clauses are both a protection of individual liberty and a provision for ordering the relationship of religion and public life. They allow us to live with our deepest differences and enable diversity to be a source of national strength.
8. Conflict and debate are vital to democracy. Yet if controversies about religion and politics are to reflect the highest wisdom of the First Amendment and advance the best interests of the disputants and the nation, then *how* we debate, and not only *what* we debate, is critical.
9. One of America's continuing needs is to develop, out of our differences, a common vision for the common good. Today that common vision must embrace a shared understanding of the place of religion in public life and of the guiding principles by which people with deep religious differences can contend robustly but civilly with each other.
10. Central to the notion of the common good, and of greater importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right joined to a universal duty to respect that right. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

We are firmly persuaded that these principles require a fresh consideration, and that the reaffirmation of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same, now and in generations to come.

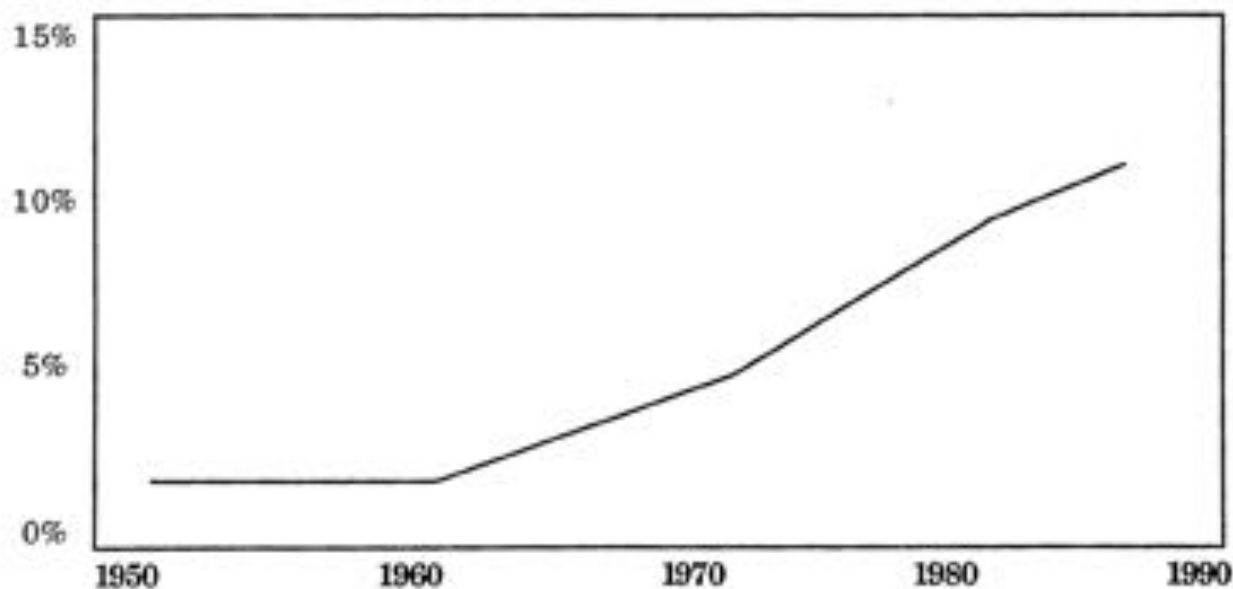
Double Expansion of Pluralism

Trends In Religious Preference, 1952-1985

	1952 (%)	1985 (%)	Percentage Change
Protestant	67	57	-15
Catholic	25	28	+12
Jewish	4	2	-50
Other	1	4	+300
None	2	9	+350

Source: *Emerging Trends*, vol. 8, no. 2 (February 1986). Published by Princeton Religion Research Center

Percentage Of Those With No Religious Affiliation, 1959-1990



Source: *The Williamsburg Charter Survey on Religion and Public Life*, 1988.

Appendix

THE WILLIAMSBURG CHARTER

This introduction to the Williamsburg Charter is taken from Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy. Hunter, James Davison and Os Guinness, eds. Washington: The Brookings Institution, 1990.

The Williamsburg Charter was written and published expressly to address the dilemmas, challenges, and opportunities posed by religious liberty in American public life today.

Beginning in the fall of 1986, the charter was drafted by representatives of America's leading faiths — Protestant, Catholic, Jewish, and secularist, in particular. It was revised over the course of two years in close consultation with political leaders, scholars from many disciplines, and leaders from a wide array of faith communities. Named after Williamsburg in honor of the city's role as the cradle of religious liberty in America, it was presented to the nation in Williamsburg on June 25, 1988, when the first 100 national signers signed it publicly on the occasion of the 200th anniversary of Virginia's call for the Bill of Rights.

The stated purpose of the charter is fourfold: to celebrate the uniqueness of the First Amendment religious liberty clauses; to reaffirm religious liberty — or freedom of conscience — for citizens of all faiths and none; to set out the place of religious liberty within American public life; and to define the guiding principles by which people with deep differences can contend robustly but civilly in the public arena.

There are three main sections in the charter: first, a call for a reaffirmation of the first principles that underlie the religious liberty in American experience; second, a call for a reappraisal of the course and conduct of recent public controversies; and third, a call for "reconstitution" of the American people, in the sense of this generation reappropriating the framers' vision and ideals in our time.

Numerous individual points could be highlighted in a document that has much to say on current issues in law and society — the place accorded to naturalistic faiths, the delineation of the relationship of the two religious liberty clauses, the mention of the menace of the modern state, the insistence on the danger of "semi-establishments," and so on. But the two principal themes of the charter center on the importance of religious liberty as America's "first liberty," and on the religious liberty clauses as the "golden rule" for civic life. These themes — the inalienable right and the universal duty to respect that right — are developed in various ways, ranging from exposition of first principles to contemporary guidelines, but the overall effect is a powerful restatement of a critical aspect of America's public philosophy.

SUMMARY OF PRINCIPLES

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

The Religious Liberty clauses of the First Amendment to the Constitution are a momentous decision, the most important political decision for religious liberty and public justice in history. Two hundred years after their enactment they stand out boldly in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses are a reminder that their advocacy and defense is a task for each succeeding generation.

We acknowledge our deep and continuing differences over religious beliefs, political policies and constitutional interpretations. But together we celebrate the genius of the Religious Liberty clauses, and affirm the following truths to be among the first principles that are in the shared interest of all Americans:

1. Religious liberty, freedom of conscience, is a precious, fundamental and inalienable right. A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.
2. Religious liberty is founded on the inviolable dignity of the person. It is not based on science or social usefulness and is not dependent on the shifting moods of majorities and governments.
3. Religious liberty is our nation's "first liberty," which undergirds all other rights and freedoms secured by the Bill of Rights.
4. The two Religious Liberty clauses address distinct concerns, but together they serve the same end — religious liberty, or freedom of conscience, for citizens of all faiths or none.
5. The No Establishment clause separates Church from State but not religion from politics or public life. It prevents the confusion of religion and government which has been a leading source of repression and coercion throughout history.
6. The Free Exercise clause guarantees the right to reach, hold, exercise or change beliefs freely. It allows all citizens who so desire to shape their lives, whether private or public, on the basis of personal and communal beliefs.
7. The Religious Liberty clauses are both a protection of individual liberty and a provision for ordering the relationship of religion and public life. They allow us to live with our deepest differences and enable diversity to be a source of national strength.

8. Conflict and debate are vital to democracy. Yet if controversies about religion and politics are to reflect the highest wisdom of the First Amendment and advance the best interests of the disputants and the nation, then how we debate, and not only what we debate, is critical.

9. One of America's continuing needs is to develop, out of our differences, a common vision for the common good. Today that common vision must embrace a shared understanding of the place of religion in public life and of the guiding principles by which people with deep religious differences can contend robustly but civilly with each other.

10. Central to the notion of the common good, and of greater importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

We are firmly persuaded that these principles require a fresh consideration, and that the reaffirmation of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same, now and in generations to come.

THE WILLIAMSBURG CHARTER

Keenly aware of the high national purpose of commemorating the bicentennial of the United States Constitution, we who sign this Charter seek to celebrate the Constitution's greatness, and to call for a bold reaffirmation and reappraisal of its vision and guiding principles. In particular, we call for a fresh consideration of religious liberty in our time, and of the place of the First Amendment Religious Liberty clauses in our national life.

We gratefully acknowledge that the Constitution has been hailed as America's "chief export" and "the most wonderful work ever struck off at a given time by the brain and purpose of man." Today, two hundred years after its signing, the Constitution is not only the world's oldest, still-effective written constitution, but the admired pattern of ordered liberty for countless people in many lands.

In spite of its enduring and universal qualities, however, some provisions of the Constitution are now the subject of widespread controversy in the United States. One area of intense controversy concerns the First Amendment Religious Liberty clauses, whose mutually reinforcing provisions act as a double guarantee of religious liberty, one part barring the making of any law "respecting an establishment of religion" and the other barring any law "prohibiting the free exercise thereof."

The First Amendment Religious Liberty provisions epitomize the Constitution's visionary realism. They were, as James Madison said, the "true remedy" to the predicament of religious conflict they originally addressed, and they well express the responsibilities and limits of the state with respect to liberty and justice.

Our commemoration of the Constitution's bicentennial must therefore go beyond celebration to rededication. Unless this is done, an irreplaceable part of national life will be endangered, and a remarkable opportunity for the expansion of liberty will be lost.

For we judge that the present controversies over religion in public life pose both a danger and an opportunity. There is evident danger in the fact that certain forms of politically reassertive religion in parts of the world are, in principle, enemies of democratic freedom and a source of deep social antagonism. There is also evident opportunity in the growing philosophical and cultural awareness that all people live by commitments and ideals, that value-neutrality is impossible in the ordering of society, and that we are on the edge of a promising moment for a fresh assessment of pluralism and liberty. It is with an eye to both the promise and the peril that we publish this Charter and pledge ourselves to its principles.

We readily acknowledge our continuing differences. Signing this Charter implies no pretense that we believe the same things or that our differences over policy proposals, legal interpretations and philosophical groundings do not ultimately matter. The truth is not even that what unites us is deeper than what divides us, for differences over belief are the deepest and least easily negotiated of all.

The Charter sets forth a renewed national compact, in the sense of a solemn mutual agreement between parties, on how we view the place of religion in American life and how we should contend with each other's deepest differences in the public sphere. It is a call to a vision of public life that will allow conflict to lead to consensus, religious commitment to reinforce political civility. In this way, diversity is not a point of weakness but a source of strength.

A TIME FOR REAFFIRMATION

We believe, in the first place, that the nature of the Religious Liberty clauses must be understood before the problems surrounding them can be resolved. We therefore affirm both their cardinal assumptions and the reasons for their crucial national importance.

With regard to the assumptions of the First Amendment Religious Liberty clauses, we hold three to be chief:

1. The Inalienable Right

Nothing is more characteristic of humankind than the natural and inescapable drive toward meaning and belonging, toward making sense of life and finding community in the world. As fundamental and precious as life itself, this "will to meaning" finds expression in ultimate beliefs, whether theistic or non-theistic, transcendent or naturalistic, and these beliefs are most our own when a matter of conviction rather than coercion. They are most our own when, in the words of George Mason, the principal author of the Virginia Declaration of Rights, they are "directed only by reason and conviction, not by force or violence."

As James Madison expressed it in his Memorial and Remonstrance, “The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.”

Two hundred years later, despite dramatic changes in life and a marked increase of naturalistic philosophies in some parts of the world and in certain sectors of our society, this right to religious liberty based upon freedom of conscience remains fundamental and inalienable. While particular beliefs may be true or false, better or worse, the right to reach, hold, exercise them freely, or change them, is basic and non-negotiable.

Religious liberty finally depends on neither the favors of the state and its officials nor the vagaries of tyrants or majorities. Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.

The right to freedom of conscience is premised not upon science, nor upon social utility, nor upon pride of species. Rather, it is premised upon the inviolable dignity of the human person. It is the foundation of, and is integrally related to, all other rights and freedoms secured by the Constitution. This basic civil liberty is clearly acknowledged in the Declaration of Independence and is ineradicable from the long tradition of rights and liberties from which the Revolution sprang.

2. The Ever Present Danger

No threat to freedom of conscience and religious liberty has historically been greater than the coercions of both Church and State. These two institutions — the one religious, the other political — have through the centuries succumbed to the temptation of coercion in their claims over minds and souls. When these institutions and their claims have been combined, it has too often resulted in terrible violations of human liberty and dignity. They are so combined when the sword and purse of the State are in the hands of the Church, or when the State usurps the mantle of the Church so as to coerce the conscience and compel belief.

These and other such confusions of religion and state authority represent the misordering of religion and government which it is the purpose of the Religious Liberty provisions to prevent.

Authorities and orthodoxies have changed, kingdoms and empires have come and gone, yet as John Milton once warned, “new Presbyter is but old priest writ large.”

Similarly, the modern persecutor of religion is but ancient tyrant with more refined instruments of control. Moreover, many of the greatest crimes against conscience of this century have been committed, not by religious authorities, but by ideologues virulently opposed to traditional religion.

Yet whether ancient or modern, issuing from religion or ideology, the result is the same: religious and ideological

orthodoxies, when politically established, lead only too naturally toward what Roger Williams called a “spiritual rape” that coerces the conscience and produces “rivers of civil blood” that stain the record of human history.

Less dramatic but also lethal to freedom and the chief menace to religious liberty today is the expanding power of government control over personal behavior and the institutions of society, when the government acts not so much in deliberate hostility to, but in reckless disregard of, communal belief and personal conscience.

Thanks principally to the wisdom of the First Amendment, the American experience is different. But even in America where state-established orthodoxies are unlawful and the state is constitutionally limited, religious liberty can never be taken for granted. It is a rare achievement that requires constant protection.

3. The Most Nearly Perfect Solution

Knowing well that “nothing human can be perfect” (James Madison) and that the Constitution was not “a faultless work” (Gouverneur Morris), the Framers nevertheless saw the First Amendment as a “true remedy” and the most nearly perfect solution yet devised for properly ordering the relationship of religion and the state in a free society.

There have been occasions when the protections of the First Amendment have been overridden or imperfectly applied. Nonetheless, the First Amendment is a momentous decision for religious liberty, the most important political decision for religious liberty and public justice in the history of humankind. Limitation upon religious liberty is allowable only where the State has borne a heavy burden of proof that the limitation is justified — not by any ordinary public interest, but by a supreme public necessity — and that no less restrictive alternative to limitation exists.

The Religious Liberty clauses are a brilliant construct in which both No establishment and Free exercise serve the ends of religious liberty and freedom of conscience. No longer can sword, purse and sacred mantle be equated. Now, the government is barred from using religion’s mantle to become a confessional State, and from allowing religion to use the government’s sword and purse to become a coercing Church. In this new order, the freedom of the government from religious control and the freedom of religion from government control are a double guarantee of the protection of rights. No faith is preferred or prohibited, for where there is no state-definable orthodoxy, there can be no state-punishable heresy.

With regard to the reasons why the First Amendment Religious Liberty clauses are important for the nation today, we hold five to be pre-eminent:

1. The First Amendment Religious Liberty provisions have both a logical and historical priority in the Bill of Rights. They have logical priority because the security of all rights rests upon the recognition that they are neither given by the state, nor can they be taken away by the state. Such rights are inherent in the inviolability of the human person. History demonstrates that unless these rights are protected our society's slow, painful progress toward freedom would not have been possible.

2. The First Amendment Religious Liberty provisions lie close to the heart of the distinctiveness of the American experiment. The uniqueness of the American way of disestablishment and its consequences have often been more obvious to foreign observers such as Alexis de Tocqueville and Lord James Bryce, who wrote that "of all the differences between the Old world and the New, this is perhaps the most salient." In particular, the Religious Liberty clauses are vital to harnessing otherwise centrifugal forces such as personal liberty and social diversity, thus sustaining republican vitality while making possible a necessary measure of national concord.

3. The First Amendment Religious Liberty provisions are the democratic world's most salient alternative to the totalitarian repression of human rights and provide a corrective to unbridled nationalism and religious warfare around the world.

4. The First Amendment Religious Liberty provisions provide the United States' most distinctive answer to one of the world's most pressing questions in the late twentieth century. They address the problem: How do we live with each other's deepest differences? How do religious convictions and political freedom complement rather than threaten each other on a small planet in a pluralistic age? In a world in which bigotry, fanaticism, terrorism and the state control of religion are all too common responses to these questions, sustaining the justice and liberty of the American arrangement is an urgent moral task.

5. The First Amendment Religious Liberty provisions give American society a unique position in relation to both the First and Third worlds. Highly modernized like the rest of the First World, yet not so secularized, this society — largely because of religious freedom — remains, like most of the Third World, deeply religious. This fact, which is critical for possibilities of better human understanding, has not been sufficiently appreciated in American self-understanding, or drawn upon in American diplomacy and communication throughout the world.

In sum, as much if not more than any other single provision in the entire Constitution, the Religious Liberty provisions hold the key to American distinctiveness and American destiny far from being settled by the interpretations of judges and historians, the last word on the First Amendment likely rests in a chapter yet to be written, documenting the unfolding drama of America.

If religious liberty is neglected, all civil liberties will suffer. If it is guarded and sustained, the American experiment will be the more secure.

A TIME FOR REAPPRAISAL

Much of the current controversy about religion and politics neither reflects the highest wisdom of the First Amendment nor serves the best interests of the disputants or the nation. We therefore call for a critical reappraisal of the course and consequences of such controversy. Four widespread errors have exacerbated the controversy needlessly.

1. The Issue Is Not Only What We Debate, But How

The debate about religion in public life is too often misconstrued as a clash of ideologies alone, pitting "secularists" against the "sectarians" or vice versa. Though competing and even contrary worldviews are involved, the controversy is not solely ideological. It also flows from a breakdown in understanding of how personal and communal beliefs should be related to public life.

The American republic depends upon the answers to two questions. By what ultimate truths ought we to live? And how should these be related to public life?

The first question is personal, but has a public dimension because of the connection between beliefs and public virtue. The American answer to the first question is that the government is excluded from giving an answer. The second question, however, is thoroughly public in character, and a public answer is appropriate and necessary to the well-being of this society.

This second question was central to the idea of the First Amendment. The Religious Liberty provisions are not "articles of faith" concerned with the substance of particular doctrines or of policy issues. They are "articles of peace" concerned with the constitutional constraints and the shared prior understanding within which the American people can engage their differences in a civil manner and thus provide for both religious liberty and stable public government.

Conflicts over the relationship between deeply held beliefs and public policy will remain a continuing feature of democratic life. They do not discredit the First Amendment, but confirm its wisdom and point to the need to distinguish the Religious Liberty clauses from the particular controversies they address. The clauses can never be divorced from the controversies they address, but should always be held distinct. In the public discussion, an open commitment to the constraints and standards of the clauses should precede and accompany debate over the controversies.

2. The Issue Is Not Sectarian, But National

The role of religion in American public life is too often devalued or dismissed in public debate, as though the American people's historically vital religious traditions were at best a purely private matter and at worst essentially sectarian and divisive.

Such a position betrays a failure of civil respect for the convictions of others. It also underestimates the degree to which the Framers relied on the American people's religious convictions to be what Tocqueville described as "the first of their political institutions." In America, this crucial public role has been played by diverse beliefs, not so much despite disestablishment as because of disestablishment.

The Founders knew well that the republic they established represented an audacious gamble against long historical odds. This form of government depends upon ultimate beliefs, for otherwise we have no right to the rights by which it thrives, yet rejects any official formulation of them. The republic will therefore always remain an "undecided experiment" that stands or falls by the dynamism of its non-established faiths.

3. The Issue Is Larger Than the Disputants

Recent controversies over religion and public life have too often become a form of warfare in which individuals, motives and reputations have been impugned. The intensity of the debate is commensurate with the importance of the issues debated, but to those engaged in this warfare we present two arguments for reappraisal and restraint.

The lesser argument is one of expediency and is based on the ironic fact that each side has become the best argument for the other. One side's excesses have become the other side's arguments; one side's extremists the other side's recruiters. The danger is that, as the ideological warfare becomes self-perpetuating, more serious issues and broader national interests will be forgotten and the bitterness deepened.

The more important argument is one of principle and is based on the fact that the several sides have pursued their objectives in ways which contradict their own best ideals. Too often, for example, religious believers have been uncharitable, liberals have been illiberal, conservatives have been insensitive to tradition, champions of tolerance have been intolerant, defenders of free speech have been censorious, and citizens of a republic based on democratic accommodation have succumbed to a habit of relentless confrontation.

4. The Issue Is Understandably Threatening

The First Amendment's meaning is too often debated in ways that ignore the genuine grievances or justifiable fears of opposing points of view. This happens when the logic of opposing arguments favors either an unwarranted intrusion of religion into public life or an unwarranted exclusion of religion from it. History plainly shows that with religious control over government, political freedom dies; with political control over religion, religious freedom dies.

The First Amendment has contributed to avoiding both these perils, but this happy experience is no cause for complacency. Though the United States has escaped the worst excesses experienced elsewhere in the world, the republic has shown two distinct tendencies of its own, one in the past and one today.

In earlier times, though lasting well into the twentieth century, there was a de facto semi-establishment of one religion in the United States: a generalized Protestantism given dominant status in national institutions, especially in the public schools. This development was largely approved by Protestants, but widely opposed by non-Protestants, including Catholics and Jews.

In more recent times, and partly in reaction, constitutional jurisprudence has tended, in the view of many, to move toward the de facto semi-establishment of a wholly secular understanding of the origin, nature and destiny of humankind and of the American nation. During this period, the exclusion of teaching about the role of religion in society, based partly upon a misunderstanding of First Amendment decisions, has ironically resulted in giving a dominant status to such wholly secular understandings in many national institutions. Many secularists appear as unconcerned over the consequences of this development as were Protestants unconcerned about their de facto establishment earlier.

Such de facto establishments, though seldom extreme, usually benign and often unwitting, are the source of grievances and fears among the several parties in current controversies. Together with the encroachments of the expanding modern state, such de facto establishments, as much as any official establishment, are likely to remain a threat to freedom and justice for all.

Justifiable fears are raised by those who advocate theocracy or the coercive power of law to establish a "Christian America." While this advocacy is and should be legally protected, such proposals contradict freedom of conscience and the genius of the Religious Liberty provisions.

At the same time there are others who raise justifiable fears of an unwarranted exclusion of religion from public life. The assertion of moral judgments as though they were morally neutral, and interpretations of the "wall of separation" that would exclude religious expression and argument from public life, also contradict freedom of conscience and the genius of the provisions.

Civility obliges citizens in a pluralistic society to take great care in using words and casting issues. The communications media have a primary role, and thus a special responsibility, in shaping public opinion and debate. Words such as public, secular and religious should be free from discriminatory bias. "Secular purpose," for example, should not mean "non-religious purpose" but "general public purpose." Otherwise, the impression is gained that "public is equivalent to secular; religion is equivalent to private." Such equations are neither accurate nor just. Similarly, it is false to equate "public" and "governmental." In a society that sets store by the necessary limits on government, there are many spheres of life that are public but non-governmental.

Two important conclusions follow from a reappraisal of the present controversies over religion in public life. First, the process of adjustment and readjustment to the constraints

and standards of the Religious Liberty provisions is an ongoing requirement of American democracy. The Constitution is not a self-interpreting, self-executing document; and the prescriptions of the Religious Liberty provisions cannot by themselves resolve the myriad confusions and ambiguities surrounding the right ordering of the relationship between religion and government in a free society. The Framers clearly understood that the Religious Liberty provisions provide the legal construct for what must be an ongoing process of adjustment and mutual give-and-take in a democracy.

We are keenly aware that, especially over state-supported education, we as a people must continue to wrestle with the complex connections between religion and the transmission of moral values in a pluralistic society. Thus, we cannot have, and should not seek, a definitive, once for all solution to the questions that will continue to surround the Religious Liberty provisions.

Second, the need for such a readjustment today can best be addressed by remembering that the two clauses are essentially one provision for preserving religious liberty. Both parts, No establishment and Free exercise, are to be comprehensively understood as being in the service of religious liberty as a positive good. At the heart of the Establishment clause is the prohibition of state sponsorship of religion and at the heart of Free Exercise clause is the prohibition of state interference with religious liberty.

No sponsorship means that the state must leave to the free citizenry the public expression of ultimate beliefs, religious or otherwise, providing only that no expression is excluded from, and none governmentally favored, in the continuing democratic discourse.

No interference means the assurance of voluntary religious expression free from governmental intervention. This includes placing religious expression on an equal footing with all other forms of expression in genuinely public forums.

No sponsorship and no interference together mean fair opportunity. That is to say, all faiths are free to enter vigorously into public life and to exercise such influence as their followers and ideas engender. Such democratic exercise of influence is in the best tradition of American voluntarism and is not an unwarranted “imposition” or “establishment.”

A TIME FOR RECONSTRUCTION

We believe, finally, that the time is ripe for a genuine expansion of democratic liberty, and that this goal may be attained through a new engagement of citizens in a debate that is reordered in accord with constitutional first principles and considerations of the common good. This amounts to no less than the reconstitution of a free republican people in our day. Careful consideration of three precepts would advance this possibility:

1. The Criteria Must Be Multiple

Reconstitution requires the recognition that the great dangers in interpreting the Constitution today are either to release interpretation from any demanding criteria or to narrow the criteria excessively. The first relaxes the necessary restraining force of the Constitution, while the second overlooks the insights that have arisen from the Constitution in two centuries of national experience.

Religious liberty is the only freedom in the First Amendment to be given two provisions. Together the clauses form a strong bulwark against suppression of religious liberty, yet they emerge from a series of dynamic tensions which cannot ultimately be relaxed. The Religious Liberty provisions grow out of an understanding not only of rights and a due recognition of faiths but of realism and a due recognition of factions. They themselves reflect both faith and skepticism.

They raise questions of equality and liberty, majority rule and minority rights, individual convictions and communal tradition.

The Religious Liberty provisions must be understood both in terms of the Framers’ intentions and history’s sometimes surprising results. Interpreting and applying them today requires not only historical research but moral and political reflection.

The intention of the Framers is therefore a necessary but insufficient criterion for interpreting and applying the Constitution. But applied by itself, without any consideration of immutable principles of justice, the intention can easily be wielded as a weapon for governmental or sectarian causes, some quoting Jefferson and brandishing No establishment and others citing Madison and brandishing Free exercise. Rather, we must take the purpose and text of the Constitution seriously, sustain the principles behind the words and add an appreciation of the many-sided genius of the First Amendment and its complex development over time.

2. The Consensus Must Be Dynamic

Reconstitution requires a shared understanding of the relationship between the Constitution and the society it is to serve. The Framers understood that the Constitution is more than parchment and ink. The principles embodied in the document must be affirmed in practice by a free people since these principles reflect everything that constitutes the essential forms and substance of their society — the institutions, customs and ideals as well as the laws. Civic vitality and the effectiveness of law can be undermined when they overlook this broader cultural context of the Constitution.

Notable, in this connection is the striking absence today of any national consensus about religious liberty as a positive good. Yet religious liberty is indisputably what the Framers intended and what the First Amendment has preserved. Far from being a matter of exemption, exception or even toleration, religious liberty is an inalienable right. Far from being a sub-category of free speech or a constitutional redundancy, religious liberty is distinct and foundational. Far from being simply an

individual right, religious liberty is a positive social good. Far from denigrating religion as a social or political “problem,” the separation of Church and State is both the saving of religion from the temptation of political power and an achievement inspired in large part by religion itself. Far from weakening religion, disestablishment has, as an historical fact, enabled it to flourish.

In light of the First Amendment, the government should stand in relation to the churches, synagogues and other communities of faith as the guarantor of freedom. In light of the First Amendment, the churches, synagogues and other communities of faith stand in relation to the government as generators of faith, and therefore contribute to the spiritual and moral foundations of democracy. Thus, the government acts as a safeguard, but not the source, of freedom for faiths, whereas the churches and synagogues act as a source, but not the safeguard, of faiths for freedom.

The Religious Liberty provisions work for each other and for the federal idea as a whole. Neither established nor excluded, neither preferred nor proscribed, each faith (whether transcendent or naturalistic) is brought into a relationship with the government so that each is separated from the state in terms of its institutions, but democratically related to the state in terms of individuals and its ideas.

The result is neither a naked public square where all religion is excluded, nor a sacred public square with any religion established or semi-established. The result, rather, is a civil public square in which citizens of all religious faiths, or none, engage one another in the continuing democratic discourse.

3. The Compact Must Be Mutual

Reconstitution of a free republican people requires the recognition that religious liberty is a universal right joined to a universal duty to respect that right.

In the turns and twists of history, victims of religious discrimination have often later become perpetrators. In the famous image of Roger Williams, those at the helm of the Ship of State forget they were once under the hatches. They have, he said, “One weight for themselves when they are under the hatches, and another for others when they come to the helm.” They show themselves, said James Madison, “as ready to set up an establishment which is to take them in as they were to pull down that which shut them out.” Thus, benignly or otherwise, Protestants have treated Catholics as they were once treated, and secularists have done likewise with both.

Such inconsistencies are the natural seedbed for the growth of a de facto establishment. Against such inconsistencies we affirm that a right for one is a right for another and a responsibility for all. A right for a Protestant is a right for an Orthodox is a right for a Catholic is a right for a Jew is a right for a Humanist is a right for a Mormon is a right for a Muslim is a right for a Buddhist — and for the followers of any other faith within the wide bounds of the republic.

That rights are universal and responsibilities mutual is both the premise and the promise of democratic pluralism. The First Amendment, in this sense, is the epitome of public justice and serves as the Golden Rule for civic life. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves. Whereas the wearer of the English crown is officially the Defender of the Faith, all who uphold the American Constitution are defenders of the rights of all faiths.

From this axiom, that rights are universal and responsibilities mutual, derives guidelines for conducting public debates involving religion in a manner that is democratic and civil. These guidelines are not, and must not be, mandated by law. But they are, we believe, necessary to reconstitute and revitalize the American understanding of the role of religion in a free society.

First, those who claim the right to dissent should assume the responsibility to debate: Commitment to democratic pluralism assumes the coexistence within one political community of groups whose ultimate faith commitments may be incompatible, yet whose common commitment to social unity and diversity does justice to both the requirements of individual conscience and the wider community. A general consent to the obligations of citizenship is therefore inherent in the American experiment, both as a founding principle (“We the people”) and as a matter of daily practice.

There must always be room for those who do not wish to participate in the public ordering of our common life, who desire to pursue their own religious witness separately as conscience dictates. But at the same time, for those who do wish to participate, it should be understood that those claiming the right to dissent should assume the responsibility to debate. As this responsibility is exercised, the characteristic American formula of individual liberty complemented by respect for the opinions of others permits differences to be asserted, yet a broad, active community of understanding to be sustained.

Second, those who claim the right to criticize should assume the responsibility to comprehend: One of the ironies of democratic life is that freedom of conscience is jeopardized by false tolerance as well as by outright intolerance. Genuine tolerance considers contrary views fairly and judges them on merit. Debased tolerance so refrains from making any judgment that it refuses to listen at all. Genuine tolerance honestly weighs honest differences and promotes both impartiality and pluralism. Debased tolerance results in indifference to the differences that vitalize a pluralistic democracy.

Central to the difference between genuine and debased tolerance is the recognition that peace and truth must be held in tension. Pluralism must not be confused with, and is in fact endangered by, philosophical and ethical indifference. Commitment to strong, clear philosophical and ethical ideas need not imply either intolerance or opposition to democratic pluralism. On the contrary, democratic pluralism requires an

agreement to be locked in public argument over disagreements of consequence within the bonds of civility.

The right to argue for any public policy is a fundamental right for every citizen; respecting that right is a fundamental responsibility for all other citizens. When any view is expressed, all must uphold as constitutionally protected its advocate's right to express it. But others are free to challenge that view as politically pernicious, philosophically false, ethically evil, theologically idolatrous, or simply absurd, as the case may be seen to be.

Unless this tension between peace and truth is respected, civility cannot be sustained. In that event, tolerance degenerates into either apathetic relativism or a dogmatism as uncritical of itself as it is uncomprehending of others. The result is a general corruption of principled public debate.

Third, those who claim the right to influence should accept the responsibility not to inflame: Too often in recent disputes over religion and public affairs, some have insisted that any evidence of religious influence on public policy represents an establishment of religion and is therefore precluded as an improper "imposition." Such exclusion of religion from public life is historically unwarranted, philosophically inconsistent and profoundly undemocratic. The Framers' intention is indisputably ignored when public policy debates can appeal to the theses of Adam Smith and Karl Marx, or Charles Darwin and Sigmund Freud but not to the Western religious tradition in general and the Hebrew and Christian Scriptures in particular. Many of the most dynamic social movements in American history, including that of civil rights, were legitimately inspired and shaped by religious motivation.

Freedom of conscience and the right to influence public policy on the basis of religiously informed ideas are inseparably linked. In short, a key to democratic renewal is the fullest possible participation in the most open possible debate.

Religious liberty and democratic civility are also threatened, however, from another quarter. Overreacting to an improper veto on religion in public life, many have used religious language and images not for the legitimate influencing of policies but to inflame politics. Politics is indeed an extension of ethics and therefore engages religious principles; but some err by refusing to recognize that there is a distinction, though not a separation, between religion and politics. As a result, they bring to politics a misplaced absoluteness that idolizes politics, "Satanizes" their enemies and politicizes their own faith.

Even the most morally informed policy positions involve prudential judgments as well as pure principle. Therefore, to make an absolute equation of principles and policies inflates politics and does violence to reason, civil life and faith itself. Politics has recently been inflamed by a number of confusions: the confusion of personal religious affiliation with qualification or disqualification for public office; the confusion of claims to divine guidance with claims to divine endorsement; and

the confusion of government neutrality among faiths with government indifference or hostility to religion.

Fourth, those who claim the right to participate should accept the responsibility to persuade: Central to the American experience is the power of political persuasion. Growing partly from principle and partly from the pressures of democratic pluralism, commitment to persuasion is the corollary of the belief that conscience is inviolable, coercion of conscience is evil, and the public interest is best served by consent hard won from vigorous debate. Those who believe themselves privy to the will of history brook no argument and need never tarry for consent. But to those who subscribe to the idea of government by the consent of the governed, compelled beliefs are a violation of first principles. The natural logic of the Religious Liberty provisions is to foster a political culture of persuasion which admits the challenge of opinions from all sources.

Arguments for public policy should be more than private convictions shouted out loud. For persuasion to be principled, private convictions should be translated into publicly accessible claims. Such public claims should be made publicly accessible for two reasons: first, because they must engage those who do not share the same private convictions, and second, because they should be directed toward the common good.

RENEWAL OF FIRST PRINCIPLES

We who live in the third century of the American republic can learn well from the past as we look to the future. Our Founders were both idealists and realists. Their confidence in human abilities was tempered by their skepticism about human nature. Aware of what was new in their times, they also knew the need for renewal in times after theirs. "No free government, or the blessings of liberty," wrote George Mason in 1776, "can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles."

True to the ideals and realism of that vision, we who sign this Charter, people of many and various beliefs, pledge ourselves to the enduring precepts of the First Amendment as the cornerstone of the American experiment in liberty under law.

We address ourselves to our fellow citizens, daring to hope that the strongest desire of the greatest number is for the common good. We are firmly persuaded that the principles asserted here require a fresh consideration, and that the renewal of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same.

To agree on such guiding principles and to achieve such a compact will not be easy. Whereas a law is a command directed to us, a compact is a promise that must proceed freely from us. To achieve it demands a measure of the vision, sacrifice and perseverance shown by our Founders. Their task was to defy the past, seeing and securing religious liberty against the terrible

precedents of history. Ours is to challenge the future, sustaining vigilance and broadening protections against every new menace, including that of our own complacency. Knowing the unquenchable desire for freedom, they lit a beacon. It is for us who know its blessings to keep it burning brightly.

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Dr. Charles C. Haynes is senior scholar at the First Amendment Center. He writes and speaks extensively on religious liberty and religion in American public life.

Haynes is best known for his work on First Amendment issues in public schools. Over the past two decades, he has been the principal organizer and drafter of consensus guidelines on religious liberty in schools, endorsed by a broad range of religious and educational organizations. In January 2000, three of these guides were distributed by the U.S. Department of Education to every public school in the nation. (See also *A Parent's Guide to Religion in the Public Schools*, *A Teacher's Guide to Religion in the Public Schools* and *Public Schools & Religious Communities*.)

Haynes is the author or co-author of six books, including *First Freedoms: A Documentary History of First Amendment Rights in America* (2006) and *Religion in American Public Life*. His column, *Inside the First Amendment*, appears in newspapers nationwide.

He is a founding board member of the Character Education Partnership and serves on the steering committee of the Campaign for the Civic Mission of Schools and the American Bar Association Advisory Commission on Public Education. He chairs the Committee on Religious Liberty of the National Council of Churches.

Widely quoted in news magazines and major newspapers, Haynes is also a frequent guest on television and radio. He has been profiled in *The Wall Street Journal* and on ABC's "Evening News." In 2008 he received the Virginia First Freedom Award from the Council for America's First Freedom.

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