

APPENDIX H

THE DEFINITION OF THE SEPARATION OF CHURCH AND STATE

BY DAVID BARTON (PUBLISHED ON WALLBUILDERS.COM)

In 1947, in the case *Everson v. Board of Education*, the Supreme Court declared, "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." The "separation of church and state" phrase which they invoked, and which has today become so familiar, was taken from an exchange of letters between President Thomas Jefferson and the Baptist Association of Danbury, Connecticut, shortly after Jefferson became President.

The election of Jefferson – America's first Anti-Federalist President – elated many Baptists since that denomination, by-and-large, was also strongly Anti-Federalist. This political disposition of the Baptists was understandable, for from the early settlement of Rhode Island in the 1630s to the time of the federal Constitution in the 1780s, the Baptists had often found themselves suffering from the centralization of power.

Consequently, now having a President who not only had championed the rights of Baptists in Virginia but who also had advocated clear limits on the centralization of government powers, the Danbury Baptists wrote Jefferson a letter of praise on October 7, 1801, telling him:

Among the many millions in America and Europe who rejoice in your election to office, we embrace the first opportunity . . . to express our great satisfaction in your appointment to the Chief Magistracy in the United States. . . . [W]e have reason to believe that America's God has raised you up to fill the Chair of State out of that goodwill which He bears to the millions which you preside over. May God strengthen you for the arduous task which providence and the voice of the people have called you. . . . And may the Lord preserve you safe from every evil and bring you at last to his Heavenly Kingdom through Jesus Christ our Glorious Mediator.¹

However, in that same letter of congratulations, the Baptists also expressed to Jefferson their grave concern over the entire concept of the First Amendment, including of its guarantee for "the free exercise of religion":

Our sentiments are uniformly on the side of religious liberty: that religion is at all times and places a matter between God and individuals, that no man ought to suffer in name, person, or effects on account of his religious opinions, [and] that the legitimate power of civil government extends no further than to punish the man who works ill to his neighbor. But sir, our constitution of government is not specific. . . . [T]herefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as

¹ Letter of October 7, 1801, from Danbury (CT) Baptist Association to Thomas Jefferson, from the Thomas Jefferson Papers Manuscript Division, Library of Congress, Washington, D. C.

inalienable rights.²

In short, the inclusion of protection for the "free exercise of religion" in the constitution suggested to the Danbury Baptists that the right of religious expression was government-given (thus alienable) rather than God-given (hence inalienable), and that therefore the government might someday attempt to regulate religious expression. This was a possibility to which they strenuously objected-unless, as they had explained, someone's religious practice caused him to "work ill to his neighbor."

Jefferson understood their concern; it was also his own. In fact, he made numerous declarations about the constitutional inability of the federal government to regulate, restrict, or interfere with religious expression. For example:

[N]o power over the freedom of religion . . . [is] delegated to the United States by the Constitution. *Kentucky Resolution, 1798*³

In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the general [federal] government. *Second Inaugural Address, 1805*⁴

[O]ur excellent Constitution . . . has not placed our religious rights under the power of any public functionary. *Letter to the Methodist Episcopal Church, 1808*⁵

I consider the government of the United States as interdicted [prohibited] by the Constitution from intermeddling with religious institutions . . . or exercises. *Letter to Samuel Millar, 1808*⁶

Jefferson believed that the government was to be powerless to interfere with religious expressions for a very simple reason: he had long witnessed the unhealthy tendency of government to encroach upon the free exercise of religion. As he explained to Noah Webster:

It had become an universal and almost uncontroverted position in the several States that the purposes of society do not require a surrender of all our rights to our ordinary governors . . . and which experience has nevertheless proved they [the government] will be constantly encroaching on if submitted to them; that there are also certain fences

² *Id.*

³ *The Jeffersonian Cyclopaedia*, John P. Foley, editor (New York: Funk & Wagnalls, 1900), p. 977; see also *Documents of American History*, Henry S. Cummager, editor (NY: Appleton-Century-Crofts, Inc., 1948), p. 179.

⁴ *Annals of the Congress of the United States* (Washington: Gales and Seaton, 1852, Eighth Congress, Second Session, p. 78, March 4, 1805; see also James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (Published by Authority of Congress, 1899), Vol. I, p. 379, March 4, 1805.

⁵ Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Ellery Bergh, editor (Washington D. C.: The Thomas Jefferson Memorial Association, 1904), Vol. I, p. 379, March 4, 1805.

⁶ Thomas Jefferson, *Memoir, Correspondence, and Miscellanies, From the Papers of Thomas Jefferson*, Thomas Jefferson Randolph, editor (Boston: Gray and Bowen, 1830), Vol. IV, 103-104, to the Rev. Samuel Millar on January 23, 1808.

which experience has proved peculiarly efficacious [effective] against wrong and rarely obstructive of right, which yet the governing powers have ever shown a disposition to weaken and remove. Of the first kind, for instance, is freedom of religion.⁷

Thomas Jefferson had no intention of allowing the government to limit, restrict, regulate, or interfere with public religious practices. He believed, along with the other Founders, that the First Amendment had been enacted *only* to prevent the federal establishment of a national denomination – a fact he made clear in a letter to fellow-signer of the Declaration of Independence Benjamin Rush:

[T]he clause of the Constitution which, while it secured the freedom of the press, covered also the freedom of religion, had given to the clergy a very favorite hope of obtaining an establishment of a particular form of Christianity through the United States; and as every sect believes its own form the true one, every one perhaps hoped for his own, but especially the Episcopalians and Congregationalists. The returning good sense of our country threatens abortion to their hopes and they believe that any portion of power confided to me will be exerted in opposition to their schemes. And they believe rightly.⁸

Jefferson had committed himself as President to pursuing the purpose of the First Amendment: preventing the "establishment of a particular form of Christianity" by the Episcopalians, Congregationalists, or any other denomination.

Since this was Jefferson's view concerning religious expression, in his short and polite reply to the Danbury Baptists on January 1, 1802, he assured them that they need not fear; that the free exercise of religion would *never* be interfered with by the federal government. As he explained:

Gentlemen, – The affectionate sentiments of esteem and approbation which you are so good as to express towards me on behalf of the Danbury Baptist Association give me the highest satisfaction. . . . Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties. I reciprocate your kind prayers for the protection and blessing of the common Father and Creator of man, and tender you for yourselves and your religious association assurances of my high respect and esteem.⁹

Jefferson's reference to "natural rights" invoked an important legal phrase which was part of the rhetoric of that day and which reaffirmed his belief that religious liberties were

⁷ Jefferson, *Writings*, Vol. VIII, p. 112-113, to Noah Webster on December 4, 1790.

⁸ Jefferson, *Writings*, Vol. III, p. 441, to Benjamin Rush on September 23, 1800.

⁹ Jefferson, *Writings*, Vol. XVI, 281-282, to the Danbury Baptist Association on January 1, 1802.

inalienable rights. While the phrase "natural rights" communicated much to people then, to most citizens today those words mean little.

By definition, "natural rights" included "that which the Books of the Law and the Gospel do contain."¹⁰ That is, "natural rights" incorporated what God Himself had guaranteed to man in the Scriptures. Thus, when Jefferson assured the Baptists that by following their "natural rights" they would violate *no* social duty, he was affirming to them that the free exercise of religion was their inalienable God-given right and therefore was protected from federal regulation or interference.

So clearly did Jefferson understand the Source of America's inalienable rights that he even doubted whether America could survive if we ever lost that knowledge. He queried:

And can the liberties of a nation be thought secure if we have lost the only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath?¹¹

Jefferson believed that God, not government, was the Author and Source of our rights and that the government, therefore, was to be prevented from interference with those rights. Very simply, the "fence" of the Webster letter and the "wall" of the Danbury letter were *not* to limit religious activities in public; rather they were to limit the power of the government to prohibit or interfere with those expressions.

Earlier courts long understood Jefferson's intent. In fact, when Jefferson's letter was invoked by the Supreme Court (only twice prior to the 1947 *Everson* case – the *Reynolds v. United States* case in 1878), unlike today's Courts which publish only his eight-word separation phrase, that earlier Court published Jefferson's entire letter and then concluded:

Coming as this does from an acknowledged leader of the advocates of the measure, it [Jefferson's letter] may be accepted almost as an authoritative declaration of the scope and effect of the Amendment thus secured. *Congress* was deprived of all *legislative power* over mere [religious] opinion, but was left free to *reach actions which were in violation of social duties or subversive of good order.* (emphasis added)¹²

That Court then succinctly summarized Jefferson's intent for "separation of church and state":

[T]he rightful purposes of civil government are for its officers to interfere when principles break out into overt acts against peace and good order. In th[is] . . . is found the true distinction between what properly belongs to the church and what to the State.¹³

¹⁰ Richard Hooker, *The Works of Richard Hooker* (Oxford: University Press, 1845), Vol. I, p. 207.

¹¹ Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia: Matthew Carey, 1794), Query XVIII, p. 237. 12. *Reynolds v. U. S.*, 98 U. S. 145, 164 (1878). 13. *Reynolds* at 163.

¹² *Reynolds v. U. S.*, 98 U. S. 145, 164 (1878).

¹³ *Reynolds* at 163.

With this even the Baptists had agreed; for while wanting to see the government prohibited from interfering with or limiting religious activities, they also had declared it a legitimate function of government "to punish the man who works ill to his neighbor."

That Court, therefore, and others (for example, *Commonwealth v. Nesbit* and *Lindenmuller v. The People*), identified actions into which – if perpetrated in the name of religion – the government **did** have legitimate reason to intrude. Those activities included human sacrifice, polygamy, bigamy, concubinage, incest, infanticide, parricide, advocacy and promotion of immorality, etc.

Such acts, even if perpetrated in the name of religion, would be stopped by the government since, as the Court had explained, they were "subversive of good order" and were "overt acts against peace." However, the government was **never** to interfere with **traditional** religious practices outlined in "the Books of the Law and the Gospel" – whether public prayer, the use of the Scriptures, public acknowledgements of God, etc.

Therefore, if Jefferson's letter is to be used today, let its context be clearly given – as in previous years. Furthermore, earlier Courts had always viewed Jefferson's Danbury letter for just what it was: a **personal, private** letter to a specific group. There is probably no other instance in America's history where words spoken by a single individual in a private letter – words clearly divorced from their context – have become the sole authorization for a national policy. Finally, Jefferson's Danbury letter should never be invoked as a stand-alone document. A proper analysis of Jefferson's views must include his numerous other statements on the First Amendment.

For example, in addition to his other statements previously noted, Jefferson also declared that the "power to prescribe any religious exercise. . . . **must rest with the States**" (emphasis added). Nevertheless, the federal courts ignore this succinct declaration and choose rather to misuse his separation phrase to strike down scores of State laws which encourage or facilitate public religious expressions. Such rulings against State laws are a direct violation of the words and intent of the very one from whom the courts claim to derive their policy.

One further note should be made about the now infamous "separation" dogma. The *Congressional Records* from June 7 to September 25, 1789, record the months of discussions and debates of the ninety Founding Fathers who framed the First Amendment. Significantly, not only was Thomas Jefferson not one of those ninety who framed the First Amendment, but also, during those debates not one of those ninety Framers ever mentioned the phrase "separation of church and state." It seems logical that if this had been the intent for the First Amendment – as is so frequently asserted-then at least one of those ninety who framed the Amendment would have mentioned that phrase; none did.

In summary, the "separation" phrase so frequently invoked today was rarely mentioned by any of the Founders; and even Jefferson's explanation of his phrase is diametrically opposed to the manner in which courts apply it today. "Separation of church and state" currently means almost exactly the opposite of what it originally meant.