

THE METAPHORICAL WALL:

By Edward F. Harrington

When a member of the clergy or a spokesman for a religious denomination forcefully expresses an opinion on a matter of public import, such as just war and just peace, public welfare and private charity, civil rights and civil disobedience, capital punishment and abortion, traditional and same-sex marriage, racial and gender equality and other issues with a moral connotation, invariably someone will angrily respond with the accusation that the “wall of separation between church and state” has been breached, quoting Thomas Jefferson. The metaphor, “wall of separation,” has long been used by some political figures and commentators as a call to exclude the teachings of religion and of religious-rooted morality from participating in the political debate in the formulation of public policy. And those who espouse such moral teachings in an attempt to shape the public agenda are scorned and ridiculed for infecting the public forum with their sectarian and, by implication, un-American discourse and an effort is made to expel them from the public square. But, as Justice Reed stated in McCullum v. Board of Education, 333 U.S. 203, 247 (1948), “a rule of law should not be drawn from a figure of speech.”

The metaphorical “wall of separation” was coined by Roger Williams, the pioneer of religious freedom and defender of liberty of conscience, in the Seventeenth Century before the independence of the United States and the ratification of the United States Constitution. Williams’ phrase was “wall of separation between the garden of the church and the wilderness of the world.” Mr. Cotton’s Letter Lately Printed, Examined and Answered (1644). Williams believed no civil government could compel adherence to a religious doctrine without endangering free will and liberty of conscience.

President Thomas Jefferson then used the familiar version of the metaphor in a private letter to the Danbury (Conn.) Baptist Association in 1802 as follows: “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 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.”

Jefferson’s words were cited by Justice Black in a Supreme Court opinion in 1947, Everson v. Board of Education, 330 U.S. 1, which upheld, under the “No Establishment” clause, the constitutionality of the reimbursement of costs of transportation of church-affiliated school students. Both Williams and Jefferson used the metaphor “wall of separation” as a short-hand formula to endorse religious liberty against the power and control of the State and solely as an aid to religious belief. Although the “Free Exercise of Religion” clause was not at issue in the Everson case, public aid to parochial school students was sanctioned under the “No Establishment” clause.

However, to clearly grasp the essential meaning of the legal principles of religious liberty, one should go directly to their origin and source and not to an interpretive poetic phrase which has been used to distort that meaning. That ultimate source is the religious clauses of the United States Constitution, from which the principles of individual religious liberty are derived, “the most inalienable and sacred of all human rights,” as extolled by Jefferson. To truly comprehend the nature of religious liberty, one must return to the fundamental law from which it had its origin.

Historical fact and the basic rule of constitutional construction is that all of the first Ten Amendments to the United States Constitution, the “Bill of Rights,” were enacted to erect a bulwark, a “wall,” as it were, against the State to secure certain enumerated fundamental individual rights, including the rights to religion. The “Bill of Rights” were not designed to shield the State and its policies and practices from the exercise of those individual rights by its citizens, but rather to protect the exercise of those individual rights from infringement by the State.

Jefferson’s letter to James Madison of December 20, 1787, stated: “A bill of rights is what the people are entitled to against every government on earth.”

Justice Jackson in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943) wrote: “The very purpose of a Bill of Rights was . . . to place [certain subjects] beyond the reach of majorities and officials and to establish them as legal principles. . . .”

The individual rights to religion are the very first rights defined and secured by the First Amendment. Even the “Free Speech” and “Free Press” clauses come after the “No Establishment” and “Free Exercise of Religion” clauses in that most esteemed of Amendments.

The “No Establishment” clause reads: “Congress shall make no law respecting an establishment of religion.” It means that Government shall not establish a religion, nor enforce its observance by law, nor compel any citizen to worship in a manner contrary to his conscience. The “No Establishment” clause was designed to prohibit the Government from establishing a state-sponsored church or a national religion and from placing any religious denomination in a preferred legal status.

The “Free Exercise of Religion” clause prohibits Government from restricting a citizen’s free exercise of his religion. It was designed to prevent the State from restraining a citizen’s unfettered choice to believe the tenets of his faith and to worship in accordance with his conscience.

The New York Constitutional Ratifying Convention set forth the doctrine of individual religious liberty in succinct and lucid language: “That the people have an equal, natural, and unalienable right freely and peacefully to exercise their religion according to the dictates of conscience; and no religious sect or society ought to be favored or established, by law, in preference to others.”

In brief, the First Amendment is a barrier against the State, not against the people; it sets limits on governmental power and guarantees individual liberties, including religious liberty. It requires the State to be neutral in religious matters, to “keep its hands off” religious choices and leave decisions of conscience to the people. Each of the religious clauses reinforces the other – that all men have a right to freedom of conscience and its logical corollary that the State did not have the right to impose a state-sponsored religion on its citizens.

Since the First Amendment was designed to protect religion from governmental encroachment and not to protect the State and its policies and practices from religion and its teachings, the metaphorical “wall of separation,” a condensed formula for the First Amendment, (President Jefferson explicitly defined the “wall of separation” phrase as encompassing both religious clauses of the First Amendment.) must similarly be construed to mean a “wall” protecting religion from the State and not the State from religion. The “wall” permits the maximum freedom to religious ideas and expression and deprives the State of any power to curtail

that freedom; the “wall” insures that every member of society has the freedom from governmental restraint to practice his faith and to express fidelity to its tenets.

Although the “No Establishment” clause forbids the State from imposing its religious views on its citizens, it does not prevent a citizen from professing his religious beliefs. To the contrary, a citizen’s advocacy of a political view, infused by his faith, is protected and encouraged by both the “Free Exercise” and “Free Speech” clauses of the First Amendment and the State is impotent to impose any restriction on such free expression.

Since the Government is barred from curbing a citizen’s exercise of his religious beliefs, ministers of religion of every creed and sect can freely engage in public debate in an endeavor to influence governmental policy in accordance with their religious-based moral values. The religious clauses of the First Amendment dictate a simple, but profound injunction: Religion shall have the power to persuade; Government shall lack the power to compel.

It is evident that a vibrant public policy can long endure only if grounded on fundamental moral values, such as equality, fairness, freedom, love of neighbor and compassion for the poor, the sick and the aged. Yet morality is inseparable from the teachings of religion on the nature and condition of the human person and a person’s relationship to his Creator. The moral values of the great religious traditions, which have sustained and enriched world cultures through the ages, should not be exiled from the public square because of a limping metaphor whose true meaning has been distorted by some who are possessed by an abiding hostility to religion’s influence on the public agenda. The public square needs to hear the voices of a religious-based morality so that public affairs might be nourished by ideals of justice and equity, such as those which inspired the struggle for emancipation of the slave, integration of the races and equality of the sexes.

No one has ever advanced the argument that the State and its policies and practices should be immune from the criticism and censure of “Free Speech” and “Free Press,” even when the exercise of such rights conveys mistakes of fact or errors in judgment or is actuated by bias or personal animosity. On what basis, then, do some contend that the State is entitled to or requires protection from the beneficent influence of the exercise of religion? There is no constitutional authority for such a thesis; there remains only the misinterpretation of a figure of speech penned originally by a resolute advocate of absolute religious toleration.

It is most crucial for the lasting vitality of individual liberties that the metaphorical “wall of separation” be understood in accordance with its historical and true meaning and that religion be properly regarded as possessing rights of the same scope as “speech” and the “press,” as all three ultimate rights flow from the same constitutional source – the First Amendment. A figure of speech, whose root meaning has become obscured over time, should not be utilized to curtail religion, the first and most precious right of a free people. The Constitution is the foundation of individual religious rights, not a misleading and now hackneyed rhetorical formula.

If, however, one is to use the formula as a short-hand definition of the foundation of religious rights, it should be understood as it was understood by Jefferson and as explicitly expressed by him – that it was the First Amendment which built a wall of separation between church and state.

For in its true and original meaning the “wall of separation between church and state” still stands “high and impregnable.” It stands strong on that one side which faces out towards and confronts the State and away from the public forum, which it shields and where the people engage in protected public discourse. The Church stands firm behind the “wall,” secure because of the

“wall’s” bulwark against the State, with its members having free access to the open forum. “Free Speech” and “Free Press” also flourish behind the “wall” in the open and protected forum. It is the very same “wall” which secures “Free Speech” and “Free Press” which also defends the “Free Exercise of Religion” against the State. That same “wall,” erected by the First Amendment, is the sole and organic source of all three sacred individual liberties – speech, press and religion. The rostrum in the forum is open to all three.

In that Jefferson expressly equated the “wall of separation” metaphor with both religious clauses of the First Amendment, the “wall,” like the First Amendment itself, protects religion from the State and not vice versa. Thus, every person, even one who professes the values of his faith, is free to fully exercise his right to espouse his moral vision for society in the open and protected public square. Reverend Martin Luther King, Jr., whose passion for racial justice was inspired by the scriptures and spirituals of his religion, fought zealously to achieve for all men the equality created by God and promised by the Declaration of Independence.

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