

Philip Hamburger: The Separation of Church and State

by Joseph De Feo

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In defending school choice or God in the Pledge of Allegiance, it is too easy to find oneself on the wrong side of the “wall of separation” between church and state. But as Professor Philip Hamburger reveals in his timely and well-researched tome, *Separation of Church and State*, few know the secret history of this American doctrine.

The phrase “separation of church and state” was employed most famously by President Thomas Jefferson in his letter to the Danbury Baptist Association in 1802; he asserted that the principle was established by the First Amendment. According to the “separation myth,” there is a straight line from Jefferson’s letter to Justice Hugo L. Black’s 1947 decision in *Everson v. Board of Education*, in which the “wall of separation” became official constitutional law. But Hamburger shows that the real truth is rarely pure and never simple.

Far from being the intention of the Founders, the idea of separation of church and state began as a slur. Though the First Amendment guaranteed religious freedom and prohibited the federal establishment of any church, the states were free under the Constitution to have officially supported churches. Most states had established churches with ministers receiving state salaries. Dissenters, members of religions that were not officially sanctioned, had often to pay taxes to support the ministers of the established churches; these often urged disestablishment. In a gross caricature of the dissenting position, establishment ministers accused dissenters of

attempting to separate church and state, undermining the foundations of the state. Far from it, the dissenters railed against the union of church and state, which they associated with Catholic Europe and Anglican England, while maintaining that there existed an important sociological connection between religion and government. They believed that religion provided a moral foundation for government, which should govern in a manner consistent with Christianity while not tampering with religious freedom. The antiestablishment position was to restrain government, but not churches. There was, in other words, a complex middle ground between union and separation of church and state; but heated rhetoric and wild accusations made it difficult to see.

Interestingly enough, the letter Jefferson sent to the Danbury Baptists was nearly forgotten. The Baptists who received the letter had been pressing merely for disestablishment of the Congregational church in Connecticut. But in Jefferson's letter they got more than they bargained for; perhaps conscious of their delicate position and not wanting to espouse anything so radical as to expose them to public backlash, they demurred and never advertised that President Jefferson supported them. For decades afterward, dissenters who did not want a union of church and state still wanted some elements of religion reflected in government, such as prosecution for blasphemy and obscenity, the appointment of government chaplains, and presidential proclamation of fast days and days of thanksgiving (something Jefferson steadfastly refused to do).

Although the separation myth treats the separation as an established principle since the passing of the Bill of Rights, the evidence shows otherwise. Various parties proposed amendments to the Constitution to secure the separation of church and state, since the First Amendment clearly was not sufficient to do so. After attempts to amend the Constitution, champions of separation adopted a new tactic: historical

revision. They declared that separation had been implied by the First Amendment all along, and that everyone knew it.

The idea of separation only gradually lost its status as a slur in American politics. Democratic-Republicans pressed for a version of it in the election of 1800, both to silence largely Federalist establishment clergy who assailed Jefferson for his ungodliness, and to attract the votes of dissenting clergy. Although many thought the language of separation extreme, an interesting reversal occurred. The idea gained ground among dissenting Protestants, who wanted both disestablishment and a further check on the more organized established churches. The dissenters offered a particularly Protestant and increasingly anticlerical reading of "separation of church and state," in contradistinction to "separation of religion and state." Organized, hierarchical churches (such as the Catholic and Episcopalian churches) would be restrained from influencing the regime, while the private judgement of individual Protestants would be incorporated into government.

This interpretation of separation caused a sordid turn in the development of separation. Hamburger deftly details the reconceptualization of what it meant to be American in the 19th century. The glorification of egalitarianism, individualism, and mental independence from authority and superstition ushered in an expanded anticlericalism. No longer was it merely a non-conforming Protestant ideal to reject the clergies of the hierarchical churches; it became an American value. To this day, Hamburger remarks, groups supporting separation of church and state rely on the implicit characterization of their opposition as "un-American."

In the 19th century an increasing specialization was encouraged, calling for clergy to stick to their business of saving souls while governors would do the governing. This set limits on the functions of the clergy, calling for them not to preach on political matters as though there were areas where

God did not matter. It tended to create a sphere of government impenetrable to religion; governors would have to leave their religion at home.

These cultural changes accompanied shifting immigration patterns that brought in increasing numbers of Irish and German Catholics. These immigrants with their foreign religion provided an easy target: the hierarchy with foreign ties, rigid claims of authority, and apparent superstition to boot. In addition, Protestants viewed Catholics as enslaved by their clergy and lacking individual judgement. This represented the very antithesis of the newly reformulated Protestant American ideal. Separation of church and state became a separation of *the Church* and state. Fears of "Romish" ambitions in the government of the United States gave the move for separation extra momentum. Generic anti-clericalism erupted into anti-Catholicism. What had once been a struggle among various brands of Protestantism became a convenient vent for anti-Catholic and nativist fears, and lent some unity to American Protestantism in the process.

Hamburger notes that the extent of the connection between anti-Catholicism and the growth of the ideal of separation of church and state has been expunged from the separation myth. But the facts are undeniable—and not without irony. Among various proposed safeguards of religious liberty were loyalty tests and oaths for Catholics, barring them from office or voting, and even a proposed constitutional amendment that would sever the American Catholic Church from Rome. Public monies were denied to Catholic schools from the 1840s onward, although it was granted to the public schools, which taught Protestant doctrine. The difference, the reasoning went, was that public monies could not be used to educate children according to the dictates of the Catholic Church, although it could be used to educate children according to the dictates of the majority of individual Protestant consciences.

Many nativist and racist organizations naturally saw a way to

limit the power of Catholics in promoting separation. The Ku Klux Klan included a promise to uphold separation in its membership oaths, and campaigned heavily against the Catholic Church and for separation. Even the man who finally made separation official federal law, Supreme Court Justice Hugo Black, was a prominent Klansman.

Other groups that supported separation were the secularists. They and other non-Christians wished to eliminate the Protestant interpretation of the First Amendment and instead sever government connections to all religion whatsoever. With their help, separation ultimately grew from a restraint placed only on the government to a restraint applied discriminatorily to a few churches, to a restraint replaced on all churches. By the time this evolution occurred, Hamburger comments, it was too late for the Protestants who opened this door to do anything about it.

Despite the almost irresistible opportunities for irony provided by his material, Hamburger's tone is sober. He points out that the idea of separation has prevented clearly constitutional transactions between church and state, has worked to restrain rather than protect religion, and has become an instrument for enforcing "a majority's oddly conformist demands for individual independence and strangely dogmatic rejections of authority." Although skeptical of the wall of separation's ultimate value, Hamburger concentrates more on history than polemics.

Hamburger does not concentrate heavily on more recent applications of the separation principle. The fact that it is still used in a less-than-scrupulous manner supports his case. Separation supporters wink at candidates canvassing for votes in black churches while they scream bloody inquisition over the Catholic Church's opposition to abortion. And the principle of separation is not even applied consistently against the Catholic Church: although her position on abortion is met with cries of violation of the separation of church and

state, her stance on social justice and the pope's position on the death penalty are quoted without qualms.

In his effort to remove some of the whitewash slapped over the history books, Professor Hamburger is moderate and exacting. He identifies a conspicuous gap in the scholarship of American religious freedom scholarship, and fills it ably.

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