

LESSON 3

Did the Founders Get it Right?



Howard Chandler Christy
Soil Dept. U.S. Navy Yard
Washington, D.C. April 18

Title Page Credits:

ARTIST Howard Chandler Christy

MEDIUM Oil on canvas

DATE 1940

COLLECTIONS House Wing, East Stairway of U.S. Capitol Building

PUBLIC DOMAIN

LESSON 3

Did the Founders Get it Right?

Introduction

It turned out to be just as difficult to create a new country as it was to secure its independence. The individual states had different ideas and interests that did not always seem compatible. In 1776, John Adams wrote a letter to Benjamin Kent in which he observed the difficulty of making thirteen clocks strike precisely at the same time. This was the great task facing the delegates that gathered in 1789 Philadelphia to find constitutional solutions for the young country. The one thing that almost every delegate could agree upon was the importance of religious freedom if the American experiment was to be successful. In fact, they thought it was so important that it would become “America’s First Freedom.”

Key Terms and Concepts

As you read through the lesson, make sure you understand the following key terms and concepts.

Abolition	Constitution	Free Exercise Clause
Amendments	Establishment Clause	Northwest Ordinance
America’s first freedom	Factions	Pure democracy
Bill of Rights	Federalism	Separation of powers
Checks and balances	Federalist Papers	Wall of separation

Key Questions

Once you complete the lesson, you should be able to answer the following key questions:

1. How does religious freedom help address James Madison’s concerns in Federalist 10 and 51?
2. How does an understanding of the Constitution as a technical blueprint explain its relative lack of moral and philosophical statements?
3. Who was John Leland and what was his role in the adoption of the First Amendment?
4. What does it mean to refer to the first 16 words of the First Amendment as “America’s First Freedom?”
5. What are the First Amendment’s two religion clauses, and how do they work together to advance religion in American public life?
6. What evidence exists to illustrate that the Founders supported religion in politics and public life?
7. Did Thomas Jefferson suggest that the Founders intended to create a wall to keep religion out of American public life?

The Constitutional Question

❖ THE FEDERALIST PAPERS ❖

The **Federalist Papers** (also known as *The Federalist*) were a series of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay. The essays were published in New York newspapers in 1787. The goal was to convince New Yorkers to formally approve the Constitution that had been recently signed in Philadelphia. James Madison's contributions to the development of the United States Constitution would eventually earn him the title "Father of the Constitution." The Federalist Papers are often considered one of the three most important documents of the American founding along with the *Declaration of Independence* and the *U.S. Constitution*. Two of the important essays are numbers 10 and 51, both written by James Madison.

Federalist Paper 10: The Union as a Safeguard Against Domestic Faction and Insurrection (1787)



In this essay, Madison describes something he calls “**factions**” which he believed were a great danger to any form of representative democracy. A faction is a group of people who are united only by their self-interest and welfare. Therefore, they may not be committed to protecting the needs of other groups or supporting the rights of those groups to express ideas different from their own. That, according to Madison, made factions potentially dangerous to democratic systems.

A **pure democracy** is a system in which power is exercised directly by the people rather than through elected representatives. The Founders considered that kind of democracy to be dangerous and Madison argues that in a pure democracy, the majority automatically becomes a faction that can be tempted to ignore the natural rights of minorities. However, Madison insisted that you can't outlaw factions (i.e. control what people think and say) without threatening liberty. The political solution to this problem was to protect all factions and make it possible for them to present their ideas to the American public, even if these ideas were unpopular. If their ideas failed to attract support, they would naturally fade away and liberty would be preserved. This helps to explain the Founders' commitment to things like free speech and free assembly.

Madison and the Founders thought the same thing would work for religion. Remember, religion was important to them and they were eager to promote its presence in society. However, they were equally concerned that an official religion would become corrupt and violate the liberties of dissenters. The

solution was to allow people of all beliefs to freely worship what their conscience tells them is true, respectfully make their case to the public, and let the people decide which competing ideas were true.

CHECK YOUR UNDERSTANDING

Question: Why was Madison concerned about factions? What was his solution for restraining dangerous factions without destroying liberty?

Federalist Paper 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments (1788)

In *Federalist 10*, Madison argues that a successful democratic republic must limit the concentrated power of the majority. In this essay, he focuses on another threat to the American political order—concentrated power in the federal government. To limit this threat, Madison believed that the Constitution must provide “**checks and balances**.” Part of Madison’s reasoning was based on his Christian belief that human nature was naturally corrupt and could not be trusted with unchecked power. He said that the “checks and balances” placed on the federal government by the Constitution were needed because of the sinful tendency of “human nature.” He famously said in this essay that “if men were angels, no government would be necessary.”

Government leaders, like citizens in a faction, will naturally be tempted to abuse their power and violate people’s natural rights. The solution was to impose limits on the federal government in at least two ways. The first limit is known as the “**separation of powers**” that divides up political power between three “branches” of government: legislative, executive, and judiciary. Each branch has its own authority in the Constitution. When that authority is exercised properly, the other branches keep one another from obtaining too much power and threatening the rights of the people. The second limit is the “division of powers” between the federal and state governments. This is a system known as **federalism**. The Founders hoped to prevent the national government from obtaining too much power by giving authority over most political matters to the states and local communities. The Founders believed the same thing would work for religion in America and that belief became an important part of the nation’s new constitution.

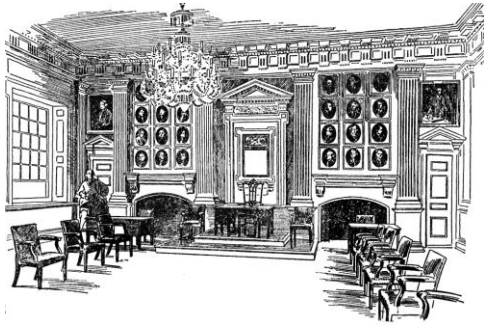
CHECK YOUR UNDERSTANDING

Question: What were two ways the Constitution was supposed to prevent the federal government from becoming too powerful?

❖ UNITED STATES CONSTITUTION ❖

In 1787, fifty-five individuals traveled to Philadelphia to attend a Constitutional Convention. The young country’s first political system wasn’t working very well, and each state sent delegates to this convention

to fix the problem. The result was a new document known as the **Constitution** that was signed on September 17, 1787. By June 1788, enough state legislatures had approved the document for it to become



the “supreme law of the land.” You might remember from Lesson 2 that the opening paragraphs of the Declaration of Independence became a moral blueprint that explained the philosophical ideas behind the American Revolution. The new Constitution was more of a “technical blueprint” which is to say that it spends less time explaining ideas and more time outlining the practical function of the new government.

Article VI of the Constitution: One way the Constitution continued the Founders’ commitment to religious freedom is found in Article VI. This section of the Constitution prevents religious tests from being used to disqualify someone from public office. In other words, anyone can seek to run for public office regardless of their religious background or identification. That means people of all religions, or no religion at all, are free to run for public office. Like their solution for the danger of factions, the Founders wanted to protect the right of the people to decide if someone is fit to lead them, not a powerful, central government.

CHECK YOUR UNDERSTANDING

Question: Why does the Constitution spend less time on philosophical and religious ideas than the Declaration of Independence?

❖ THE BILL OF RIGHTS ❖

John Leland and James Madison: John Leland was born in 1754, in Grafton, Massachusetts. He became a Baptist pastor in 1775 and promptly left for the colony of Virginia where he actively preached in a local church for the next 16 years. As a religious leader, Leland was interested in two great social causes and devoted much time and energy to see both advanced. The first was the end of chattel slavery in America. He was an outspoken **abolitionist**, and his anti-slavery views may have led to his departure from Virginia in 1791.

The second was his strong support for religious freedom (or what he called “liberty of conscience”) for all individuals and communities, regardless of their beliefs. In fact, his most famous writing was titled *The rights of conscience inalienable, and therefore religious opinions not cognizable by law*. The main question of this book was simple: “Does a man, upon entering into social compact, surrender his conscience to that society?”

Here lies the body of John Leland, who labored 67 years to promote piety and vindicate the civil and religious rights of all men.

John Leland reportedly wrote the inscription on his own tomb

In this book, Leland explains why individuals in society retained their “rights of conscience.” His argument was simple. On the “day of judgment” every individual “must give an account of himself to God.” Therefore, Leland reasoned, since government can’t answer for individuals at the day of judgment, they should not try to control religion in society now. In short, Leland was saying that religion is a matter between God and individuals and the government has no just reason for controlling people and their religious preferences. Later, in a July 4, 1802 sermon, Leland would pronounce “Never promote men who seek after a state-established religion; it is spiritual tyranny — the worst of despotism.”

Leland’s message was well received by many people in Virginia. In fact, Leland was sufficiently admired to have enough support to be a serious candidate for various elections in the 1780s. This included the election to be a Virginia delegate to the Constitutional Convention and a representative to the First Congress under the new Constitution (1788). However, Leland decided to step aside in each case and use his influence to support another individual running for the position—his friend James Madison. Leland agreed to use his influence as a religious leader to promote Madison’s election in exchange for Madison’s guarantee to include a strong protection for religious liberty in a new Bill of Rights that Congress had promised to add to the Constitution. Madison was more than willing to honor this promise to Leland as Madison was a strong supporter of religious freedom himself.

The Desire for a Bill of Rights: The reason many Americans wanted a Bill of Rights was simple. With the new Constitution, many Americans feared that their rights were threatened by the power given to the national government. To satisfy these concerns, the Founders debated the possibility of adding a series of **amendments** to the original Constitution that would strengthen the young country’s commitment to protecting the rights of the people. Eventually, 10 amendments were approved by the state legislatures. These first 10 amendments to the Constitution became known as the **Bill of Rights**.

The First Amendment: The first of these amendments contains what could be described as the foundational rights of the American people. These rights included things like freedom of speech, press, and assembly. There was widespread agreement that without protecting these rights, the American experiment was unlikely to work. Thus, it is particularly interesting to note the focus of the first 16 words of the First Amendment—a section that can be rightly described as “**America’s First Freedom.**”

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

1st Amendment to the US Constitution

The very first freedom acknowledged in the Bill of Rights is religious freedom. At 16 words long, the right is traditionally understood to contain two parts. The first is known as the **Establishment Clause**—Congress shall make no law respecting an establishment of religion. The second is known as the **Free Exercise Clause**—or prohibiting the free exercise thereof.

CHECK YOUR UNDERSTANDING

Question: What are the names given to the two “religion clauses” of the First Amendment?

Disestablishment: Many today claim that the Founders meant for the Establishment Clause to keep religion and religious ideas out of government. We know this is not true based on their own words. They also claim that the First Amendment was an attempt to protect government from religion. We also know this is not true. In fact, it is accurate to say that the Founders were trying to protect religion from government. The Founders knew that a hostile government (such as a king) or private group (such as the factions Madison described) would likely try to control or even eliminate religion one day to advance their own agenda.

Free Exercise: The Founders also understood from history that any form of democratic government would fail without virtuous people. They were convinced that religion was essential for promoting virtue in society. Therefore, they wanted people to “freely exercise” their religion which is a way of saying they valued religion and wanted religious people to freely practice their faith, in private and public, without interference from the government. This included classrooms, courtrooms, and all parts of the political process.

America’s First Freedom: America’s First Freedom was the perfect solution. The First Amendment would prevent the federal government (specifically Congress) from controlling people through an established religion that they were required to support. The First Amendment would also ensure all people were free to express their ideas, religious or not, in all areas of public and private life. The Founders believed this would ensure the presence of virtuous voices and healthy debate in American life and politics.

I therefore . . . move that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business

Benjamin Franklin, Constitutional Convention Address on Prayer, Thursday, June 28, 1787

As Ben Franklin's words at the Constitutional Convention suggest, the Founders clearly did not intend for the First Amendment to shield the government from all religious activity. Let's consider just a few other examples.

- The First Amendment permitted state governments to have official religions and some did for more than 4 decades after the First Amendment became law.
- The first U.S. Congress employed chaplains to be sources of spiritual guidance for members of Congress and opened each session of Congress in prayer (a practice continued to this day).
- As President, George Washington issued a proclamation designating a national day of thanksgiving acknowledging that "both Houses of Congress . . . requested me to recommend to the People of the United States a day of public thanksgiving and prayer to be observed by acknowledging with grateful hearts the many signal favors of Almighty God."
- George Washington took the first Presidential Oath of Office with his hand on a Bible, a tradition continued by almost every President since then.
- The First Congress included the phrase "So help me God" in judicial oaths in the Judiciary Act of 1789.

The full list of ways the Founders actively involved religion in the affairs of government would take many pages. What is important to note is that all of these things took place after the formal adoption of the First Amendment to the U.S. Constitution.

CHECK YOUR UNDERSTANDING

Question: What evidence is there to suggest that the Founders approved of religion in politics and public life?

Is there a "Wall of Separation?"

The presidential election of 1800 was full of tension. Thomas Jefferson eventually won, but his reputation during the campaign had been severely damaged with all sorts of rumors swirling about how he would use his power as President once he took office. One group that stood by Jefferson during the campaign was the New England Baptists associated with Jefferson's old friend, John Leland. To congratulate Jefferson on his victory, this group sent him a 1200-pound block of cheese which must have been quite a

sight as it rolled into Washington on a cart after completing its 400-mile journey. In gratitude, John Leland was invited to preach a message of religious liberty to the Congress with the President in attendance.

Apparently, Jefferson never lost his gratitude for the New England Baptists and their support. A year after the election, the Baptist congregation in Danbury, Connecticut wrote him a letter. They were concerned about the tendency of government to overstep its authority and attempt to regulate the religious life of its citizens. They were all too familiar with the persecution of their group in recent years. They wanted to know—would Thomas Jefferson keep his promise to protect the religious freedoms of all Americans?



The letter he sent back was a warm one. He began by noting the goodwill they had expressed toward him and assuring them the feeling was mutual. He then addressed their main concern by noting that “religion is a matter which lies solely between Man & his God” and that government has no role in regulating how people wish to worship. Thus, he continued, “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 & State.”

In using the “wall of separation” language, it is abundantly clear from the context that Jefferson’s main concern was to assure the Danbury Baptists that they were safe from government intrusion, and not to inform them that it was impermissible for them to express their religious ideas in any political setting. Remember this was the same President that had recently invited a Baptist pastor to speak to Congress and had consistently expressed in his writings the necessity of free and open participation of all ideas in public debates, religious or otherwise.

Despite this fact, many modern groups try to claim that this wall of separation was created by the Founders to keep religious ideas and people out of government activity even though the wall language appears nowhere except in Jefferson’s private letter. When it appears there, it is an assurance of keeping religion safe from government and not government safe from religion.

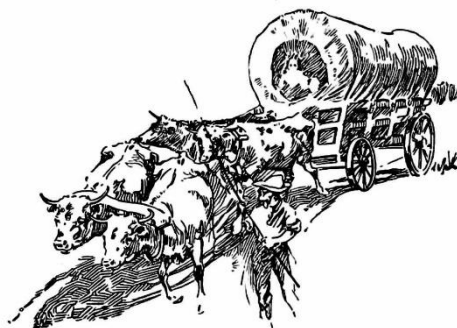
CHECK YOUR UNDERSTANDING

Question: If a “wall of separation” was built by the First Amendment, what does Jefferson’s letter suggest it was built to protect?

❖ *NORTHWEST ORDINANCE OF 1787* ❖

Even before the new Constitution was formally approved and two full years before the addition of the Bill of Rights, the U.S. Congress was busy affirming the new country’s commitment to religious freedom. As the nation expanded westward into new territories, it was apparent that a formal method for admitting new states to the Union was needed.

In July 1787, a new law, commonly referred to as the **Northwest Ordinance**, was passed by the Confederation Congress, the one-house legislature operating under the Articles of Confederation that preceded the Constitution. This ordinance provided a formal process for admitting a new state into the Union and guaranteed what type of government it would enjoy once admitted. It also identified some of the foundational ideas of the new country and a list of rights that belonged to the American people including the citizens of each territory.



The language of the ordinance sounded very similar to the language that would be used in the first ten amendments to the Constitution. Section 13 of the ordinance declared the guarantees of the ordinance were for the purpose of “extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected.” It continued in Section 14, Article 1 that “no person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments.” As the nation expanded west, it meant to assure that religious freedom would go with it.

The Declaration of Independence, Articles of Confederation, Northwest Ordinance, and Constitution may be rightly called the “organic documents” as these were the documents on which the country was built. Alongside the public and private correspondence of the Founders, these documents help us understand America’s First Principles and the key ideas on which the country was founded. America’s First Freedom

is a prominent feature throughout. The Founders believed that the young republic was unlikely to survive, much less thrive, without a strong commitment to religious freedom.

So, were the Founders right? Is religious freedom a force for good that protects other civil liberties and leads to healthy families and communities? Is the American Experiment safest when religion is valued in society and religious freedom is protected in law? That is the question we will explore in the next lesson.

IMAGE CREDITS

ClipArt ETC, https://etc.usf.edu/clipart/30400/30404/slought_sgn_30404.htm

ClipArt ETC, https://etc.usf.edu/clipart/21900/21926/convention_21926.htm

Piwigo, <https://www.clipart-history.com/picture.php?/2946/search/4982>

Piwigo, <https://www.clipart-history.com/picture.php?/7397/search/4648>