

In 1962 Madalyn Murray O'hair Kicked God, The Bible, And Prayer Out Of Public Schools...

10 Myths about the Separation of Church and State

Misguided clerics and short-sighted politicians sometimes say things like this about the constitutional principle of church-state separation. But a quick review of history demonstrates that these charges just aren't true. To help Americans be on guard against such distortions, Americans United for Separation of Church and State has compiled a list of the most common myths about separation of church and state along with the facts.

MYTH:

Thomas Jefferson's 1802 letter to the Danbury Baptists was a mere courtesy and should not be regarded as important.

Religious Right activists have tried for decades to make light of Jefferson's "wall of separation" response to the Danbury Baptists, attempting to dismiss it as a hastily written note designed to win the favor of a political constituency. But a glance at the history surrounding the letter shows they are simply wrong.

As church-state scholar Pfeffer points out, Jefferson clearly saw the letter as an opportunity to make a major pronouncement on church and state. Before sending the missive, Jefferson had it reviewed by Levi Lincoln, his attorney general. Jefferson told Lincoln he viewed the response as a way of "sowing useful truths and principles among the people, which might germinate and become rooted among their political tenets."

At the time he wrote the letter, Jefferson was under fire from conservative religious elements who hated his strong stand for full religious liberty. Jefferson saw his response to the Danbury Baptists as an opportunity to clear up his views on church and state. Far from being a mere courtesy, the letter represented a summary of Jefferson's thinking on the purpose and effect of the First Amendment's religion clauses.

Jefferson's Danbury letter has been cited favorably by the Supreme Court many times. In its 1879 *Reynolds v. U.S.* decision the high court said Jefferson's observations "may be accepted almost as an authoritative declaration of the scope and effect of the [First] Amendment." In the court's 1947 *Everson v. Board of Education* decision, Justice Hugo Black wrote, "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.'" It is only in recent times that separation has come under attack by judges in the federal court system who oppose separation of church and state.

MYTH:

Separation of church and state is not in the U.S. Constitution.

It is true that the literal phrase "separation of church and state" does not appear in the Constitution, but that does not mean the concept isn't there. The First Amendment says "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...."

What does that mean? A little history is helpful: In an 1802 letter to the Danbury (Conn.) Baptist Association, Thomas Jefferson, then president, declared that the American people through the First Amendment had erected a "wall of separation between church and state." (Colonial religious liberty pioneer Roger Williams used a similar phrase 150 years earlier.)

Jefferson, however, was not the only leading figure of the post-revolutionary period to use the term separation. James Madison, considered to be the Father of the Constitution, said in an 1819 letter, "[T]he number, the industry and the morality of the priesthood, and the devotion of the people have been manifestly increased by the total separation of the church and state." In an earlier, undated essay (probably early 1800s), Madison wrote, "Strongly guarded...is the separation between religion and government in the Constitution of the United States."

As eminent church-state scholar Leo Pfeffer notes in his book Church, State and Freedom, "It is true, of course, that the phrase 'separation of church and state' does not appear in the Constitution. But it was inevitable that some convenient term should come into existence to verbalize a principle so clearly and widely held by the American people....[T]he right to a fair trial is generally accepted to be a constitutional principle; yet the term 'fair trial' is not found in the Constitution. To bring the point even closer home, who would deny that 'religious liberty' is a constitutional principle? Yet that phrase too is not in the Constitution. The universal acceptance which all these terms, including 'separation of church and state,' have received in America would seem to confirm rather than disparage their reality as basic American democratic principles."

Thus, it is entirely appropriate to speak of the "constitutional principle of church-state separation" since that phrase summarizes what the First Amendment's religion clauses do they separate church and state.

MYTH:

Separation of church and state is not an American principle but is found in Article 53 of the constitution of the Soviet Union.

This lie about separation of church and state still frequently espoused by religious broadcaster Pat Robertson is perhaps the most offensive to church-state separationists because it attempts to taint a vital American principle with the brush of communism.

Even a brief review of the facts proves that this statement is nonsense. The modern Soviet state came into being after the Russian Revolution of 1917. The Soviet constitution was rewritten several times, and more recent versions included American-style guarantees of freedom of speech, press, religion and assembly. (These provisions, of course, were never obeyed by the Soviet government.)

Article 124 of the country's 1947 constitution has been translated by some scholars to read, "In order to ensure to citizens freedom of conscience, the church in the USSR is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens."

Since Jefferson coined the phrase "wall of separation between church and state" in 1802, a full 145 years before the Soviet provision was written, it is obviously incorrect to suggest that the Soviets pioneered the separation principle. If anything, the Soviets stole the concept from the United States, not the other way around. In any case, what the Soviet constitution said about religious freedom has no bearing on U.S. constitutional provisions. The Soviet document also guaranteed free speech, but no one has labeled freedom of expression a communist idea.

MYTH:

The United States was founded as a Christian nation.

Those who make this assertion confuse the founding of the United States as a political unit with the settlement of North America. It is true that a number of the first Europeans to arrive on our shores were religious dissenters who sought freedom to worship. Many of these people believed they were establishing some type of Christian utopia, and many supported religious liberty only for themselves. Most of the early colonies were theocracies where only those who worshipped according to state orthodoxy were welcome.

Following the American Revolution, political leaders began to construct the new U.S. government. Although a minority clung to European notions of church-state union, a general consensus emerged that the new country should steer clear of officially established religion. States with government-favored religions gradually began moving toward separation also. Massachusetts, the last state to maintain an official religion, disestablished its state church in 1833.

During the Constitutional Convention, a minority faction favored some recognition of Christianity in the Constitution. In a report to Maryland lawmakers, delegate Luther Martin asserted that "in a Christian country, it would be at least decent to hold out some distinction between the professors of Christianity and downright infidelity or paganism." His views were rejected, and the Constitution was adopted as a secular document.

Incidentally, Ben Franklin did indeed urge the delegates of the Constitutional Convention of 1787 to open their sessions with morning prayers, as many Religious Right activists point out. However, the Convention, which had been meeting for a month without invocational prayers, did not concur. The Convention's records show that the delegates voted to adjourn rather than debate the issue. The matter was not brought up again when the Convention reconvened.

Further proof that the founders did not intend for the government to be Christian is found in the Treaty of Tripoli, a trade agreement signed between the United States and the Muslim region of north Africa in 1797 after negotiations under George Washington. The document, which was approved by the Senate under John Adams, states flatly, "[T]he Government of the United States is not, in any sense, founded on the Christian religion...." (The assertion remained a part of the trade agreement for eight years, until the treaty was renegotiated.)

The framers wrote the Constitution as a secular document not because they were hostile to Christianity but because they did not want to imply that the new federal government would have any authority to meddle in religion.

MYTH:

The Supreme Court has declared that Secular Humanism is a religion, and Secular Humanism is the established religion of the public schools.

In a footnote to the Supreme Court's 1961 *Torcaso v. Watkins* decision, Justice Hugo Black wrote, "Among religions in this country which do not teach what would generally be considered a belief in the existence of God is Buddhism, Taoism, Ethical Culture, Secular Humanism, and others." The *Torcaso* case dealt with religious tests for public office; it had nothing to do with public schools. The justice's comment is far from a finding that humanism is being taught in the schools.

The Supreme Court and lower federal courts have ruled repeatedly that public schools and other government agencies may not establish "a religion of secularism" any more than they can promote any other religious viewpoint. The courts have decreed that public schools must be religiously neutral. Government neutrality toward religion is not the same thing as government hostility toward religion. They are synonymous only in the view of Religious Right groups that label as hostility any action by government that does not favor their beliefs.

Furthermore, the percentage of Americans who call themselves secular humanists is very small. It is not possible that such a minuscule group could take control of the entire public school system, which is highly decentralized and controlled by local school boards chosen by the voters or their representatives. "Secular humanism" is a bogeyman the Religious Right uses to attack public education.

MYTH:
The Supreme Court has declared the United States a Christian nation.

In the Supreme Court's 1892 Holy Trinity Church v. United States decision Justice David Brewer wrote that "this is a Christian nation." Brewer's statement occurred in dicta, a legal term meaning writing that reflects a judge's personal opinion, not an official court pronouncement that sets legally binding precedent.

Historians debate what Brewer meant by the statement, some claiming that he only intended to acknowledge that Christianity has always been a dominant force in American life. Research by Americans United shows that five years after the Trinity ruling, Brewer himself seemed to step away from it in a case dealing with legalized prostitution in New Orleans.

The New Orleans dispute arose when a Methodist church sought an injunction to bar implementation of a city ordinance allowing prostitution in one zone in the city. The Methodists argued the measure would "destroy the morals, peace and good order of the neighborhood."

Citing the Trinity decision, church officials insisted that the ordinance encouraged prostitution, an activity inconsistent with Christianity "which the Supreme Court of the United States says is the foundation of our government and the civilization which it has produced...."

Writing for a unanimous court, Brewer completely ignored the church's religious argument and upheld the New Orleans law. Brewer's bypass suggests that he did not mean to assert in the Trinity case that the United States should enforce Christianity through its laws.

In any case, the Trinity decision is a legal anomaly that has been cited by the court only once since then. And obviously the opinion of one obscure Supreme Court justice does not amount to an official decree that the United States is a Christian nation. If a Christian republic had been the goal of the framers, that sentiment would have been included in the Constitution.

MYTH:
The First Amendment was intended to keep the state from interfering with the church, not to bar religious groups from co-opting the government.

Jefferson and Madison held an expansive view of the First Amendment, arguing that church-state separation would protect both religion and government.

Madison specifically feared that a small group of powerful churches would join together and seek establishment or special favors from the government. To prevent this from happening, Madison spoke of the desirability of a "multiplicity of sects" that would guard against government favoritism.

Jefferson and Madison did not see church-state separation as an "either or" proposition or argue that one institution needed greater protection than the other. As historian Garry Wills points out in his 1990 book *Under God*, Jefferson believed that no worthy religion would seek the power of the state to coerce belief. In his notes he argued that disestablishment would strengthen religion, holding that it would "oblige its ministers to be industrious [and] exemplary." The state likewise was degraded by an established faith, Jefferson asserted, because establishment made it a partner in a system based on bribery of religion.

Madison also argued that establishment was no friend to religion or the state. He insisted that civil society would be hindered by establishment, charging that attempts to enforce religious belief by law would weaken government. In his 1785 Memorial and Remonstrance, Madison stated flatly that "Religion is not helped by establishment, but is hurt by it."

MYTH:

The First Amendment's religion clauses were intended only to prevent the establishment of a national church.

If all the framers wanted to do was ban a national church, they had plenty of opportunities to state exactly that in the First Amendment. In fact, an early draft of the First Amendment read in part, "The civil rights of none shall be abridged on account of religious belief, nor shall any national religion be established...." This draft was rejected. Following extensive debate, the language found in the First Amendment today was settled upon.

The historical record indicates that the framers wanted the First Amendment to ban not only establishment of a single church but also "multiple establishments," that is, a system by which the government funds many religions on an equal basis.

A good overview of the development of the language of the First Amendment is found in scholar John M. Swomley's 1987 book Religious Liberty and the Secular State. Swomley shows that during the House of Representatives' debate on the language of the religion clauses, members specifically rejected a version reading, "Congress shall make no law establishing any particular denomination in preference to another...." The founders wanted to bar all religious establishments; they left no room for "non-preferentialism," the view touted by today's accommodationists that government can aid religion as long as it assists all religions equally. (The Senate likewise rejected three versions of the First Amendment that would have permitted non-preferential support for religion.)

MYTH:

Madalyn Murray O'Hair, an atheist, single-handedly removed God, the Bible and prayer from public schools in 1962.

Atheist leader Madalyn Murray O'Hair played no role in the Supreme Court's school prayer decision of 1962. In the *Engel v. Vitale* case, the U.S. Supreme Court ruled 8-1 against New York's "Regents' prayer," a "nondenominational" prayer state education officials had composed for public schoolchildren to recite. The government-sponsored religious devotion was challenged in court by a group of parents from New Hyde Park, some atheists, some believers. O'Hair was not involved in the case at all.

One year later, a case originated by a Philadelphia-area man named Ed Schempp challenging mandatory Bible reading in Pennsylvania schools reached the Supreme Court. At the same time, Murray O'Hair was challenging a similar practice as well as the recitation of the Lord's Prayer in Maryland public schools. The Supreme Court consolidated the cases and in 1963 ruled 8-1 that devotional Bible reading or other government-sponsored religious activities in public schools are unconstitutional.

The *Engel* and *Schempp* cases were a result of the changing religious landscape of the United States. As religious minorities grew more confident of their rightful place in American society, they came to resent the de facto Protestant flavor in many public schools. Litigation was inevitable. The high court's rulings striking down mandatory prayer and devotional Bible reading in public schools would have occurred if O'Hair had never been born. The controversial Texas atheist serves as a convenient villain for Religious Right propagandists who hate religious liberty and church-state separation.

It is also important to remember that neither of these rulings removed prayer or Bible reading from public schools. Truly voluntary religious exercises in public schools have never been held illegal. The rulings of the early '60s simply prevented the government, through the public schools, from intervening in sensitive religious matters. Voluntary student-initiated Bible study and prayer clubs were reaffirmed by the Supreme Court in 1990, when the justices upheld the Equal Access Act, a federal law that permits students to form religion clubs at public high schools under certain conditions.

The rulings from the 1960s are also not hostile toward religion, as the justices took pains to point out. In the *Abington* decision, Justice Tom Clark wrote for the court majority, "[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment."

MYTH:

Ever since prayer was removed from schools, public school performance has declined and social ills have increased.

This argument is a common fallacy of logic known as post hoc ergo propter hoc, or, the assumption that if two events occur in sequence, that the first must have caused the second. (The phrase is Latin for "after this, therefore on account of this.")

It is true that some indices of school performance have decreased since 1962, but absolutely no evidence exists linking these developments to the school prayer issue. In fact, the drop has been caused by wholly unrelated factors. SAT scores, for example, are lower today simply because more students from a wider variety of socio-economic backgrounds take the test. In the years preceding 1962, the SAT was taken almost exclusively by upper class, well-educated students from wealthy backgrounds.

The problems experienced in American society today are due to complex socio-economic factors. It is simplistic thinking to blame every societal problem from the increase in teenage pregnancies to the escalating divorce rate on a lack of required prayer in schools.

It should also be pointed out that not all indicators of American society have declined since 1962. Life expectancy, for instance, is up, as is the average standard of living. Impressive medical advances have occurred in the past 30 years, and labor-reducing technologies are commonplace. School prayer advocates are quick to blame every bad thing that has occurred since 1962 on the prayer ruling, but they never mention the positive developments, which, under their premise, must also be a result of the decisions.

The prayer and Bible reading decisions did cause two clear-cut results: Families gained greater religious liberty and the right to decide which religious exercises their children participate in, and church-state separation was strengthened.

MYTH:

School-sponsored prayer and Bible reading took place in all public schools before 1962.

Several state supreme courts had already removed government-sponsored school prayer and Bible reading from public schools prior to 1962. The Illinois Supreme Court, for example, declared mandatory public school religious exercises unconstitutional in 1910. By the time of the Engel decision, public school-sponsored religious exercises were most common in North-eastern and Southern states. Some Western and Midwestern states had already removed the practices.

A 1960 survey by Americans United determined that only five states had required Bible reading laws on the books. Twenty-five states had laws authorizing "optional" Bible reading. Eleven states had declared the practice unconstitutional. (The remaining states had no laws on the subject.) The trend was clearly running in favor of a voluntary phase out of these practices.

The constitutional principle of church-state separation has given Americans greater religious freedom than any people in history. Thanks in large part to this concept, citizens from many different religious backgrounds live together in peace. The right of each individual to join and support a religious group or not do so is protected. Americans United urges you to help spread the truth about church-state separation. If you see myths about separation repeated in local newspapers, magazines and other mass media, write in and set the record straight. Americans deserve to know the true story of the origins of religious liberty.

Thomas Jefferson said it best: "To penetrate and dissipate these clouds of darkness, the general mind must be strengthened by education."

If you would like to learn more about religious liberty, please contact:

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