

The Mystery of Iniquity on the High Court

**How the United States Supreme Court Schemed
the Religion Clauses of the First Amendment**



Essential Segment from the Series —

**The Meaning of the First Amendment
at www.LoveofChrist.info**

***II Thessalonians 2:7,8 — For the mystery of iniquity doth already
work: only he who now letteth will let, until he be taken out of the way. And
then shall that Wicked be revealed, whom the Lord shall consume with the
spirit of his mouth, and shall destroy with the brightness of his coming***

**Montgomery Paul Webb
The Church of the Love of Christ**

In Memory of
William Tyndale

In early October 1536, as Tyndale was tied
to the stake to be strangled and burned, he cried out,

Lord, open the King of England's eyes

If Tyndale were alive today, he would cry out,

***Lord, open the eyes of America
to what the Supreme Court has done***

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The Mystery of Iniquity on the High Court:

How the United States Supreme Court Schemed the Religion Clauses of the First Amendment

by Montgomery Paul Webb
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Both swords, the spiritual and the material, therefore, are in the power of the Church; the one, indeed, to be wielded for the Church, the other by the Church; the one by the hand of the priest, the other by the hand of kings and knights, but at the will and sufferance of the priest.

Pope Boniface VIII, 1302

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

First Amendment

In this series on the *First Amendment*, after having examined over 40 Supreme Court cases from 1857 to 1983, we have been left only to ask — why is there no real judicial standard for interpreting the meaning of the clauses and for consistent rulings? And the very sad answer is, because the Court has been dishonest in setting out the history and purpose of the *Amendment*. The ways and devices the Court has used to change the meaning of the *Amendment* must be reviewed at this point, as the legal scheme has been established and becomes only more tiring with the cases to follow.

*[Note — *The Meaning of the First Amendment*, at www.LoveofChrist.info. The Court has admitted the decisions on the Religion Clauses are inconsistent. See — *Walz v. Tax Comm'n*, 1970; *Committee for Public Education v. Nyquist*, 1973. Quotations from these cases are set out below, in the subsection, *Was the First Amendment Poorly Written?*, under *Final Note on the Scheme of the Court*.]

Ignoring the Theory of Denominationalism

First, to set a proper overall perspective, the foundational basis of the dishonesty should be noted, of the Court just completely ignoring the manner in which **the language of the First Amendment before 1947, *Everson v. Board of Education*, was an expression of the Theory of Denominationalism**, arising out of the English Civil War in the 1640s, and reflecting one position in a great social debate on religious liberty, **from the time of Henry VIII until the *Bill of Rights in America*. Religious practice in the colonies and newly formed nation of America actually was no more than a reflection of political events and**

doctrinal views from this period of British history of more than 200 years, briefly set out below to highlight how denominationalism arose from the debate.

However, the background history put forth by the Court in *Everson* fabricated suddenly for the 20th century a new legal concept on the meaning of the *First Amendment*, imposed on a metaphor from the past of *Separation of Church and State*. However, this version of history should not be considered subtly fantasized or naively misinterpreted, but conveniently contrived, for these Justices are America's best learned, experienced, and skilled lawyers, who have extensive staff and resources. Their professionalism must have been affected by factors other than a basic misunderstanding of history. In other words, the Justices know what they are doing.

Contrary to the Court, as demonstrated below, the State of Virginia did not lead the way to solve the problem of persecution arising from government controlled religion as commonly was found in Europe, as represented by the special meaning given by the Court to a metaphor of *Separation of Church and State*. Nor was James Madison's *Memorial and Remonstrance* anything particularly unique or significant in this period of more than 200 years of conflict and debate over theology and politics. However, after the Reformation came to England, the concept of spiritual unity and religious liberty which prevailed politically, eventually known as **denominationalism, actually began with William Tyndale (whose sister very likely was a direct ancestor of James Madison), translating the Bible into English.**

Tyndale's criminal act of creating a Bible for the people in English allowed everyone to interpret Scripture according to conscience, which happened in home assemblies, rather than at a government sanctioned Church and under the authority of an official prelate. Distributing an English Bible became unstoppable due to the invention of the printing press, and interpreting Scripture according to individual conscience began to abound with the profusion of so many printed pamphlets setting out a diversity of positions, despite what a government supported Church taught as official doctrine. In English society, debate broke out such as never before in history, as the number of printing presses spread, with the Church and State increasingly unable to control the content of what was being published.

In 1536, when State and Church officials lit the wood faggots to burn William Tyndale at the stake for his criminal translation, they believed the flames would destroy his soul. Instead, the fire spread throughout England, and then, to America to become the soul of the new nation, through **the *First Amendment* expressing the main precept behind denominationalism, that in a free and fair debate, the truth will win, (for Jesus Christ is Lord), known as the Truth Triumphant.** However, with the 20th century legal concept of Separation of

Church and State, the Justices of the Court made an engine to extinguish what still was burning, setting out a mythology to persistently persuade the nation to ignore the original meaning of the *First Amendment* and to establish Secular Humanism as America's belief system.

The Truth Triumphant

The historical period necessary for review to establish the basis of the *First Amendment* is long and complex, requiring many years of study to master. **Today, the average person knows almost nothing of the Amendment's true historical background.** Public schools no longer provide information on foundational British history and barely cover relevant American colonial events. **When Everson came out in 1947, the Court easily could conform their historical review to suit their own purpose, without concern over public reaction.**

And conveniently for the Court, almost all Americans, even the average church attender, no longer know what the Theory of Denominationalism is. Most Christians think of denominationalism as divisive, rather than a theory based on a concept of *spiritual unity*, which ended religious wars and persecution, for which many believers gave up their lives to realize. According to denominationalism, all Christians agree on the core doctrine of Scripture and are united spiritually in regard to essential truth. Beliefs may differ between different church groups on outward religious expression and comprehensive theology, but separation is not schism. Christians can be divided in a complete understanding of spiritual matters, while still being united on essential truth, and all believers should have an inner religious experience in common.

When Catholics, Anglicans, and Puritans (Presbyterians) assumed the power of government in England, they adhered to the theology of Augustine on the Christian State, which gave civil magistrates the right to enforce the dogma and practice of the Church by law, even to become party to the settlement of doctrinal disputes, and to persecute any dissent based on freedom of conscience. However, beginning with home church conventicles, utilizing William Tyndale's translation of the Bible, dissenting groups arose from the common people who argued the Augustinian position was not scriptural — Brownists, Quakers, Anabaptists, Mennonites, Baptists, Independents, Levellers, etc., who essentially can be referred to as Freewillers or Free Churchers. (By tradition, the views of these dissenters were basically the same as John Wycliffe and the Lollards of 14th century England, who laid the foundation for the Reformation, and who were severely persecuted by the Roman Catholic Church).

*[Augustinian theology on the union between the Church and State is based primarily on *The City of God*. Augustine held that the State only exists in the

fullest sense when true justice is achieved, which can be accomplished exclusively by following the precepts of Christ, by being a *Res Publica Christiana*, a Christian Affair. The Church and State must be united to provide genuine happiness to the citizens, which is found by a correct faith in God. Thus, the State must impose decrees of doctrine and sponsor places of worship and ceremonies. And thus, for example, Augustine approved of the government of the Roman Empire becoming involved in the resolution of the Donatist controversy, over reinstating clergy lapsed in faith during persecution. However, by the time of the Middle Ages, the Augustinian position was expanded upon to include holding that enforcement of correct beliefs by the State was necessary to avoid total social upheaval and chaos.]

These dissenting church groups noted Bible verses supporting the view that Christ upheld freedom of choice, and that only by debate could differences of beliefs in conscience and distinctive theological views eventually be resolved in society. Every person had the right to participate in the conversation and to decide personal beliefs according to the dictates of conscience, even atheists and non-Christians, which was not to be feared by the State or any church, as Jesus Christ himself controlled the outcome when the overall debate was free and fair. However, besides the biblical support for encouraging freedom of debate in all matters, the denominational position came about at this time as a necessity due to printing presses becoming more common and proliferating so many new ways of thinking.

*[Examples of Bible verses cited by dissenting sects to support liberty of conscience include — Matthew 13:30,38: *Parable of the Tares*, let the children of God grow with the children of wickedness until final judgment. Luke 9:54,56: on asking Christ to send fire to consume those rejecting him, he responds that he came to save men's lives, not to destroy them. II Corinthians 10:4: the weapons of God's warfare are not carnal. Titus 1:9: by sound doctrine convince those who contradict the Word of God. Proverbs 27:17: as iron sharpens iron, so one person sharpens another. Matthew 15:14: leave the leaders of the blind alone. Matthew 5:44: love enemies and pray for those who persecute. Matthew 10:16, Christ sends his followers as sheep among wolves. Micah 4:3,4: swords will be beaten into plowshares and spears into pruning hooks.]

According to denominationalism, the State has no right to establish a national church, to declare by statute and to enforce by law the religious beliefs of the consciences of people. However, the denominational position does not mean that by law the government must be denied religious expression in its administration, just as Christian art and quotations of Scripture are found within the federal Capitol building, or as the top of the Washington Monument has engraved the words, *Praise be to God*, and the walls of the stairwell are lined with Bible verses. President Roosevelt leading the nation in prayer by radio broadcast to support the D-Day invasion of World War II was

perfectly consistent with the denominational concept of the *First Amendment*, and at the time, there was no official objection.

Religious Neutrality and the French Myth

When the *Bill of Rights* was created, all the states were Christian by their **constitutions or charters**. The purpose of the *First Amendment* was to protect the states from the federal government interfering in their religious practices and faith, or establishing a national church. **The Amendment promoted ongoing debate on beliefs of conscience, to lead to the confirmation of truth.** However, the Court now holds that an intention of the Due Process Clause of *Section One* of the *14th Amendment*, of 1868, was to have the federal government protect the people from the states regarding religious policy. The protection is enforced by the judiciary, in maintaining *religious neutrality* in the nation through a focus on suppressing expressions regarding Christianity or God in any way associated with state or federal government, and on ensuring that public schools are taught only from the perspective of the belief system of Secular Humanism. This calculated neutrality is known by the metaphor of Separation of Church and State, first appearing in any government or court record in the history of the nation in 1947, *Everson*. **However, the judicial position on Separation of Church and State is a historical and legal fiction**, as demonstrated below.

**[Amendment XIV, Section 1. — All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.]*

Advocates of the Supreme Court's position on Separation of Church and State commonly emphasize the Enlightenment through the French Revolution, of 1789-99, as the main influence on America's *Constitution* and *Bill of Rights*. Michael Farris provides an example of this mythology, in *From Tyndale to Madison: How the Death of an English Martyr Led to the American Bill of Rights*: [Nashville, B & H Publishing Group, 2007, p. 383], citing a website by the United States State Department, that notes *The Declaration of the Rights of Man and the Citizen*, of the French Revolution, preceded the American *Bill of Rights* by a month in 1789.

The French Revolution was wrought under the slogan, *Liberty, Equality, Fraternity*, and aspired to create through human reason a supreme society never before achieved in history. However, the Revolution developed a cult of reason to replace Christianity. Church lands were confiscated, as crosses and signs of worship were destroyed. Churches were converted into Temples of Reason. The true character of the Revolution was demonstrated by a magnificent celebration to the Goddess of Reason at Notre Dame Cathedral on November 10, 1793, as the

struggle for human rights was enhanced by killing many thousands of people by guillotine as enemies of the Revolution, in a Reign of Terror from September 1793 to July 1794.

During the Revolution, the French expected support from America in a war with Great Britain, as returned favor. However, America's founding fathers knew exactly what was going on in France, as something very different from their Revolution, when the Continental Congress issued repeated proclamations for prayer, appointed chaplains for the armed forces, or gave instructions to the Committee of Commerce on importing Bibles into the states during the fighting. Rather than supporting the French Revolution, America signed a treaty with Great Britain, and then, fought an undeclared war on the high seas with France.

*[The *Constitution* was influenced by the Enlightenment primarily through John Locke, with his works *Two Treatises on Government*, as well as *A Letter Concerning Toleration*, which followed methods of reasoning developed and promoted by Francis Bacon. Note the subsection, *The New Way*, under *British Background History*.

However, the ideas of Enlightenment scholars from Scotland also influenced America's founding fathers. Many Scots came to the colonies to pursue evangelical success, hoping to enhance the stature in general of their own religious sects. These scholars emphasized that a vibrant commerce was essential in a large republic as a foundation for freedom and virtue, and for the promotion of progress for all humankind. See — *America's Founding Secret: What the Scottish Enlightenment Taught Our Founding Fathers*, by Robert Galvin: New York, Rowman & Littlefield Publishers Inc., 2002.]

The actual foundation for the *Bill of Rights* in America was a statute passed by Parliament in Britain, in 1689, as part of the Glorious Revolution, known as the *Bill of Rights*, formally entitled *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*, a restatement of *The Declaration of Rights*, agreed to by William of Orange in the year he accepted the throne. The Revolution was glorious as a new king was enthroned and the governmental concept of kingship was changed without bloodshed. *The Declaration of Rights* invited Protestant William to take over the monarchy, and to preserve the *ancient and indubitable rights* of the people, in response to the treacherous efforts by King James II to impose Catholicism on the nation.

In America, the *Declaration and Resolves of the First Continental Congress*, passed on October 14, 1774, and known as *The Colonial Bill of Rights*, preserved the *Bill of Rights* of 1689, as legally binding on the colonies, and stipulated specific rights under contention by Great Britain. After the *Declaration of Independence*, all state constitutions were written with a bill of rights conforming to Britain's *Bill of Rights* of 1689. As part of the ratification process for the federal constitution, many state politicians called for adding a bill of rights as a condition of acceptance. However, debate broke out on whether the condition was

necessary, as all state constitutions already had bills of rights, which delayed the passage of a federal version.

Respecting the Supreme Court

There is nothing unique or unusual about the assertion herein that the Supreme Court has been dishonest in interpreting the *First Amendment* and with its use of the metaphor of Separation of Church and State. Perhaps, David Barton in *Original Intent: the Courts, the Constitution, & Religion*: [Aledo, WallBuilder Press, 1997], has been the most thorough in setting out a review of historical facts, which actually demonstrate the dishonesty of the Court. However, there have been others, such as Gary LaMar in *America's Christian History: the Untold Story*: [Atlanta, American Vision Inc., 1995].

Also, in *Wallace v. Jaffree*, 1985, (to be reviewed in this series), **Justice William Rehnquist** in a long dissenting opinion finally **questioned what has gone on** with the Court in *First Amendment* decisions **since the introduction of the metaphor of Separation of Church and State**. Rehnquist only referred to the Court's review of relevant history as being in error, a mistaken understanding, highly simplified, or just bad; as required of him in showing professional courtesy toward the other Justices. However, he also referred to the decisions as a “mischievous diversion of judges from the actual intentions of the drafters of the *Bill of Rights*,” and as deviations leading to unprincipled rulings. **He noted that historical errors are not made into truth by the device of repetition in ensuing cases. And Rehnquist set out a long and detailed review of the true historical basis of the *First Amendment*, (which actually is entirely consistent with the Theory of Denominationalism).** Rehnquist emphasized that the drafters mainly intended that no national church should be established by the federal government; and he pointed out, that there is nothing from the historical record to indicate a requirement of neutrality on the part of the federal government between religion and irreligion. He decried the three prong Lemon Test, *Lemon v. Kurtzman*, 1971, as not having any basis in history, and the *mercurial* (unpredictably changeable) nature of the Court's decisions.

*[The Lemon Test sets three standards to prevent laws from being passed in the nation, which aid religion and do not have a secular purpose.]

Court Devices to Be Reviewed

The struggle for religious liberty in Britain from the time of Henry VIII separating from the Roman Catholic Church, until the Revolution Settlement with William of Orange, just over 150 years, represents, perhaps, the most unique, influential, and complex period of all history, to follow the coming of Christ.

However, the Supreme Court has freed Americans of having to undertake the many years of labor and fatigue necessary to study and master the true historical context for the meaning of the *First Amendment*, by noting that the religious events of the newly formed State of Virginia and the views of James Madison and Thomas Jefferson are all that have to be considered, to have a complete and essential understanding of relevant background. However, narrowing the focus in this manner does more than simplify the circumstances, but permits inventions of interpretation outside of true context. **To understand how the Court actually has schemed the relevant history behind the *Amendment*, there must be an overall and accurate knowledge of the British basis for American ideas on religious liberty.**

To follow, essential British history on the background of the *First Amendment* is set out in a nutshell, and the religious history of the colonies and newly formed nation of America is examined as an extension of what occurred in the United Kingdom. Against this context, the Court's manufactured system of history is summarized, along with outlining how the Justices have mishandled and ignored precedent cases. And finally, the inconsistent and bazaar logic of the Court, the outright dishonesty, are demonstrated by piecing together the reasoning from various cases.

*[Of particular relevance, note the subsection, *The Westminster Dissent: Brothers Searching for Truth*, under *British Background History*, dealing with the Truth Triumphant. The historical review below basically relies on *From Tyndale to Madison*, by Michael Farris, cited above. However, many other sources are noted.]

British Background History

In western Europe during the Middle Ages, the Roman Catholic Church and the State were intertwined. They were two aspects of the same society. The law was understood as being given by God, either through the Church or the State, and both worked enforcement together. However, how the process went on was not always clear. For example, England paid a tax to the Church of Rome, taken from the taxes paid to support the local churches; however, the king had a say on who could be appointed a bishop, and at times Papal review or approval of a candidate was just ignored. And for example, the *Magna Carta* was signed in 1215, reducing the monarchy's power of State in favor of the nobility in England; however, King John appealed to the Pope, who declared the document null and void, while excommunicating the other signatories. Yet, the *Magna Carta* remained in legal force by threat of military action.

Henry VIII

However, Church and State relations in England became more complex after the War of the Roses, more than 30 years of military conflict and social disorder, in a dispute of royal families over the rightful heir to the throne, which Henry VII finally won. After his son, Henry VIII, assumed the throne, he was desperate to have a definitive male heir for succession, to avoid further massive warfare at his death. However, Catherine of Aragon, his wife of 24 years, did not bear him a son, although he was capable of having one by a mistress. He needed a divorce, in order to establish a legitimate male heir, but the Roman Catholic Church would not cooperate, as Catherine's nephew was Charles V, King of Spain and Holy Roman Emperor, whose military forces had their horses stabled in St. Peter's Cathedral and the Sistine Chapel in Rome.

*[The Roman Church routinely had granted divorces for centuries on the pretext of consanguinity, that the spouses had too close a familial relation, up to the level of seventh cousins, which actually was common with all nobility. Most notably, Louis VII divorced on the basis of consanguinity the headstrong Eleanor of Aquitaine, and then, King Henry II of England took her as his wife. Henry VIII had appealed for a divorce on a similar principle, that Catherine first had been his deceased brother's wife, forbidden by Leviticus 20:16, *And if a man take his brother's wife, it is an unclean thing....*]

The Pope ordered Henry to answer Catherine's appeal to Rome on the proposed divorce and to stop seeing his new love interest, Anne Boleyn. Therefore, Henry broke away from the Roman Church, **relying on the principle of *Sola Scriptura* as ultimate authority from the Reformation. In 1534, by the Act of Supremacy, he had Parliament declare himself as the Supreme Head and Sole Protector of the Church of England.** Then, he obtained his divorce and Anne for his wife, who even had shared with him the writings of the outlaw Bible translator, William Tyndale, on the true allegiance of a king. However, **Henry never became an advocate of Protestantism or religious freedom, and the issue arose on just what the Church and religious faith in England would become, now that the king himself would decide what was the will of God by consulting Scripture on his own.**

As a Catholic, Henry had his chancellors, Thomas Wolsey and Thomas More, vigilantly torture and imprison heretics, employing the secret tribunals of the Star Chamber and the Court of High Commission. Translating or owning a Bible in English or any book proclaiming the doctrines of the Reformation were crimes. After the Church of England's succession from Rome, all persons holding public or Church office were required to take the Oath of Supremacy, on pain of death, as refusing was considered treason. Thomas More preferred to lose his head, rather than take this oath, which also affirmed *Sola Scriptura*, as he had put Protestants to death for upholding the

doctrine. Henry had William Tyndale burned at the stake for translating the Bible into English. Then, a few years later, Henry's chief minister, Thomas Cromwell, and the Archbishop of Canterbury, Thomas Cranmer, were able to publish an English Bible, based in large part on Tyndale's translation. **The Bible was placed in churches, but when, how, and by whom it could be read was controlled by statute. Scripture was to be interpreted only by an elite class of clergy.**

Edward VI

Henry's son, Edward VI, was raised a Protestant and assumed the throne as a minor. His Lord Protector, Edward Seymour, and Cranmer moved the Church of England towards the faith of the Reformation, promoting Reformed Scholarship, as well as Bible study and the teaching of sound doctrine in general. Clergy married: the laity had wine in communion: Catholic images were removed from churches: and vestments changed. The Church was Calvinist in regard to predestination, but episcopal in church government.

To uphold England as a Christian State, Edward's government worked on an *Act of Uniformity*, to specify by statute official religious doctrine and practice, which according to the theology of Augustine would be enforced by law, to be reflected by a *Book of Common Prayer* for the Anglican Church. Due to Edward's early death, this *Act of Uniformity* never became law, but the *Book of Common Prayer*, which set out the forms for worship services was put into use in 1549. Persecution of dissenters involved jail sentences, and freedom of the press was repressed moderately.

Bloody Mary

Edward died suddenly at age 15, in 1553. Then, Henry VIII's eldest daughter, **Mary Tudor, returned the Church of England to Catholicism.** Any whisper against Catholic beliefs could lead to imprisonment, torture, or death without warrant of law. Reading or teaching from the Bible was banned, as well as interpreting Scripture after one's own brain. **Home assemblies in particular were considered a main threat to the State Church. Homes and businesses were searched and having a Bible meant being burned at the stake.** The prisons became crowded, and uncounted Protestants were persecuted and killed. Puritans fled to Geneva, creating a new Bible translation with notes refuting the Catholic Church and the divine right of kings. The *Geneva Book of Order* was written as a new standard for worship services, which eliminated the influence of Catholic liturgy. After Mary's reign, many Britons were determined that there never would be another Catholic monarch, nor would the people ever again be denied owning a Bible, which was the very first right of an Englishman.

In 1558, Mary died suddenly and childless at age 42, leaving her sister, Elizabeth, to assume the throne.

*[The condition of Edward's general health is a subject of controversy. There was no investigation over his death, but everyone in London said he was poisoned. See — *The Diary of Henry Machyn, Citizen and Merchant Taylor of London, A.D. 1550 to A.D. 1663*, ed. John Gough Nichols: London, Camden Society, 1848, p. 35. Mary often had health problems, and her death is not considered suspicious. See — M. C. Medvei, *The Illness and Death of Mary Tudor. Journal of the Royal Society of Medicine*, 80 December 1987.]

Elizabeth I

Elizabeth Tudor reinstated Anglicism and the *Book of Common Prayer*, by passing *The Act of Uniformity of 1559*, (supplemented by reinstating *The Act of Supremacy*, and in 1563, the *Thirty Nine Articles*). **Fines were set for not attending Church services or refusing to use, even disapproving of, the *Prayer Book*. Publications required Church approval, and clergy had to be licensed. Elizabeth persecuted groups practicing religion outside of the official Church, beginning with house churches, (note the *Conventicle Act*, of 1593, against unsanctioned worship assemblies). However, Elizabeth used religion primarily to support her monarchy politically, and **her *settlement on religious matters* was known as the *Middle Way* between Catholic and Protestant beliefs**, an effort to avoid the extremes of Edward VI and Bloody Mary. Yet, Elizabeth eventually became more anti-Catholic, with the Pope excommunicating her, with having to execute Catholics involved with raising rebellions against her rule or plotting her assassination, and with an attempted invasion by Spain in 1588, to establish a Catholic monarchy in England and an inquisition against Protestants.**

James I

In 1603, Elizabeth died, and her distant cousin, the King of Scotland, James IV, also became the King of England, then known as **James I. He was married to a Catholic, supported the Anglican Church, and opposed freedom of conscience. He knew the episcopal structure of the Anglican Church was essential to support the concept of monarchy.** He was made King of Scotland, in 1567, at age one, when his mother, Mary Stewart, Queen of Scots, was exiled, due to being implicated in the murder of her husband and James' father; but also as part of establishing Presbyterianism as the State religion, while abandoning political allegiance to France, in favor of being allied with England.

As James was raised to be the monarch of Presbyterian Scotland, his arrival as King of England seemed to the local Puritans an opportune time to appeal for the reform of the Anglican Church, and they presented before him the *Millenary Petition*, signed by about 1,000 ministers. They sought changes in Church doctrine

and government according to the Word of God, even objecting to matters such as priestly clothing, music used in services, and how ministers were qualified. James called for a conference at Hampton Court, considering *the chiefest of kingly duties to settle affairs of religion*. However, he actually ridiculed the Puritans during the conference, and he held that no well grounded matter came forth to favor altering established law on religion or changing Church discipline and the *Book of Common Prayer*. However, he did agree with the proposal for a new Bible translation, as the then very popular *Geneva Bible* was a Puritan product, with commentary refuting Catholicism and the divine right of kings.

James told the Puritans he would *make them conform or harry them out of the land*. In 1604, he removed 300 Puritan clergy from the Church. However, in 1611, his execution of the Separatists Bartholomew Legate and Edward Whitman resulted in such a strong negative public reaction, that James decided he would thereafter only imprison dissidents. These men were the last executed in England for their beliefs, but other legal measures of persecution remained in force, as did the threat of the death penalty for religious dissent.

In 1604, Catholics attempted to blow up the Parliament building, during a visit by James, in order to assassinate the King and all members of the legislature, known as the Gunpowder Plot, or the Jesuit Treason. Laws were then passed to exclude Catholics from serving at Court or from holding public office. **With so many acts of sedition carried out through the Jesuits since the time of Henry VIII, Catholicism had become a symbol of treason against the nation, and future debate for religious toleration routinely called for excluding Catholics.**

*[The motive for the Gunpowder Plot may not have been just to reestablish a Catholic monarchy, but also to stop the creation of the King James Bible translation. Guy Fawkes Day is still an official holiday in the United Kingdom, celebrating the survival of James. Fawkes guarded the gunpowder beneath Parliament, waiting for the right time to light it.

However, in modern times, social protests against tyranny include wearing Guy Fawkes masks, and St. Henry II Garnet Rosaries are sold, referring to a Jesuit Superior with prior knowledge of the Plot, convicted as a conspirator. Some entity in society operates to reverse how the public views the Gunpowder Plot. See – *V for Vendetta*, Warner Bros. Pictures, 2006, wherein a heroic Guy Fawkes does manage to have Parliament blown up and the head of State brutally killed, as a vendetta against the tyranny of a futuristic British government. Masses of people also assume the identity of Guy Fawkes to assist the terrorist act, in order that the nation finally may find hope.

Such propaganda is common in the present day. See — *The Other Boelyn Girl*, Columbia Pictures, 2008, wherein Anne Boelyn is portrayed as a kind of scheming whore, an evil witch who causes England to break away from the Roman Catholic Church. Cardinal Wolsey cannot even be found in the made up history from the movie, in a reversal of how her story is related in *Anne of a Thousand Days*, Universal Pictures, 1969.]

Charles I and The English Civil War

James' son, Charles I, became King in 1625. He had a Catholic wife, with a contract to be tolerant of Catholics. When Anglican prelate Richard Montague published *A Gagg for the New Gospel? No: A New Gagg for an Old Goose*, with arguments promoting Catholic theology, Parliament called for his imprisonment, but Charles made him royal chaplain. Charles appointed other Anglican-Catholics to important Church positions, including William Laud as Archbishop of Canterbury. **Montague and Laud vigorously moved the Church of England toward becoming more Catholic, persecuting others with Protestant doctrine through the Star Chamber and the Court of High Commission, while censoring books and outlawing conventicle assemblies.** Popish rituals appeared as a part of worship services, and at times the Roman Catholic Church was upheld as a true church.

As riots became common place, Parliament moved towards the Puritans, although many of them were escaping to America. **Parliament enacted the *Petition of Right*, which addressed abuses by Charles**, requiring legislative consent on taxation, prohibiting imprisonment without due process of law and the billeting of the military on private persons. Resolutions were passed that favored Protestant beliefs, that upheld the Anglican-Catholics were trying to subvert Protestant churches, and that designated those attempting to extend Popery as capital enemies of the kingdom. **Thus, Charles did not reconvene Parliament for 11 years.**

When Charles went to Edinburgh to be crowned King of Scotland in 1633, he was shocked to see how Presbyterian the Scottish Church was, as he had been moved to London at age two. In 1637, he attempted to impose a new prayer book on the Church, reflecting the views of William Laud. The Scots rebelled against this imposition, and Charles sent troops, in 1639, to have episcopacy set in place. However, his troops were defeated in battle within months, and a truce was signed. The next year Charles sent more troops, which again were overwhelmed. In 1640, he signed the *Treaty of Ripon*, and he had to pay indemnities or raise another army, which led to his recalling Parliament.

The Long Parliament

This reconvened legislative session infamously became known as the Long Parliament, passing an act that it could be dissolved only by agreement of its own members. Immediately, more than 1,500 men presented a petition with 15,000 signatures to the House of Commons, expressing frustration over the suppression of Calvinist doctrine in the Church, while pressure was exerted for conformity with Catholicism. 19 other counties outside of London joined the petition, and within months, Parliament imprisoned Archbishop Laud for high treason in

administrative abuse, which led to his being beheaded in 1645. After his imprisonment, debate began in Parliament on what should take the place of episcopacy for the Church of England.

Calvinists in Parliament wanted an alliance with the Scottish Church or some compromise between Presbyterians and Anglicans, to find a middle ground between the abuses of bishops and the anarchy of sects. **The secret royal tribunals of the Star Chamber and Court of High Commission were abolished, which meant that licensing to preach and to print were no longer controlled by the monarchy, while a proper manner to accomplish this censorship by Parliament was debated.**

With Parliament having no effective method to enforce censorship, there was a *de facto* freedom of the press. Between 1640 and 1660, the number of publications increased more than threefold over the prior two decades, from nearly 10,000 works to about 35,000. Many pamphlets argued for religious liberty, based on the universal church's primarily spiritual nature, and a voluntary obedience to Christ out of a love for the truth, according to precepts from the New Testament, as opposed to the concept of forced obedience found in the Old Testament. The focus of debate was no longer on whether common people could have a vernacular translation, but whether everybody had the right to self-understanding of Scripture, and to select their own church ministers. The sectarian churches grew in number. However, until a new national church could be formed, Parliament tried to stop free assemblies and restricted licensing ministers, based on a knowledge of Greek, Hebrew, and Latin, as well as orthodox doctrine.

Initially, Parliament was not sympathetic to raising any army, which Charles would use against the Presbyterian Scots. However, in 1641, Catholics in Ireland rebelled against English government administration, over a primary issue of land confiscation, which turned into a conflict with English and Scottish Protestant settlers. A Catholic Confederation became the *de facto* government of Ireland, which even negotiated with Charles on raising an army against Scotland, in exchange for religious toleration and land security. In 1642, Parliament passed a bill to raise its own army, which Charles denounced. Parliament declared that the royal office was distinct from the person of the King, and that due to his following evil counsel, they had to state the monarch's pleasure on certain matters. After a failed attempt to capture opposition members of Parliament, Charles fled London, recruited troops with the help of loans from noblemen, and sent to the continent for support.

The Westminster Dissent: Brothers Searching for Truth

After fighting between the armies of the King and Parliament began in 1642, both sides sought Scottish military support. The Scots were clear that their assistance required making the Church of England Presbyterian. In 1643, Parliament sent commissioners to Scotland for negotiation, resulting in the *Solemn League and Covenant*, which set the condition that the Church in England and in Ireland would follow the Church of Scotland in doctrine and government. Legislation was passed to begin an Assembly of Divines to establish a new orthodoxy, to meet at Westminster Abbey. **However, as the Assembly of Divines debated the exact details on a new national church, in 1643, and again in 1644, five members published *Apologetical Narration*, directly addressed to Parliament and for consideration by the entire nation, a dissent calling for a reformation of the Reformation, or particularly of Presbyterianism.**

The authors of *Apologetical Narration* formerly were ministers in Independent churches exiled in the Netherlands. **In setting out a different viewpoint from the Presbyterians on church structure and authority, the *Narration* also presents a corollary position that all Christian churches are united spiritually on the basics of the Christian faith, as derived from what is entirely clear in Scripture, and in seeking truth by debating what is more complex. Further, in taking a stance on other issues of varying significance, a church should acknowledge the possibility for revision after continued debate. And the only recourse against heretical views of a particular church should be non-communication. This parallel position of the *Narration* eventually became known as the *Theory of Denominationalism*, which excluded the idea of having a national church.**

The Presbyterians immediately published responses, which even noted that all the principles of *Apologetical Narration* already had been publicly promoted and tried but found inadequate. [W. M. Hetherington, *History of the Westminster Assembly of Divines*, Fifth Edition: New York, Anson D. F. Randolph & Co., 1890, p. 188]. **However, the publishing of *Apologetical Narration*, in 1644, plunged the nation into debate over the many issues concerning a national church** and made obvious the lack of true agreement at the Westminster Assembly of Divines.

Actually, the basic argument of the *Narration* had already been set out in 1611/12 in *The Mystery of Iniquity*, by Thomas Helwys, on returning to England, from an Independent church exiled in the Netherlands, to fight persecution; [Thomas Helwys, *A Short Declaration of the Mystery of Iniquity*, edited and introduced by Richard Groves: Macon, Mercer University Press, 1998, Book II, pp. 31-62]. And Helwys sent a copy to King James with a personal note, that to be in proper obedience to God, a king must recognize he has no spiritual authority over the immortal souls of his subjects. Helwys was imprisoned in 1612. He petitioned Parliament to be released

on the same basis as set for Catholic recusants, which was denied. His wife is referred to as a widow in his uncle's will of 1616.

Another Netherlands refugee, Mark Leonard Busher, published the same basic argument as Helwys in *Religion's Peace, or a Plea for Liberty of Conscience*, in 1614, sending copies to King James and the High Court of Parliament. He noted that a separation of Church and State stopped the government from usurping the rule of God, while not stopping the king to execute the law of God. Kings and magistrates are to rule temporal affairs by the swords of their temporal kingdoms, and bishops and ministers are to rule spiritual affairs by the word and Spirit of God, the sword of Christ's spiritual kingdom, and not to intermeddle one with another's authority, office, and function... But he has not set us free from the moral and judicial law of God; for that the king is bound to execute, and we are bound to obey.... [William R. Estep, *Revolution within the Revolution: The First Amendment in Historical Context, 1612-1789*, Grand Rapids, William B. Eerdmans Publishing Company, 1990, pp. 55-58]. *Religion's Peace* also was reprinted in 1646, when the *Westminster Confession* was published, indicating the influence of the work on the nation.

While the Assembly of Divines was in session, a Roger Williams returned from New England to London, to obtain a charter for the colony of Providence Plantations. At this time, he published *A Key into the Language of America*, giving him instant notoriety as an authority on Indians. When not ministering to the poor, he attended meetings of the Assembly. He wrote to the Dissenting Brethren, and beyond to Parliament, questioning the authority of the Assembly based on the right of freedom of conscience in *Queries of Highest Consideration*. Williams argued that the name and function of the Assembly of Divines was not justified by Scripture, and that *a state-established church polity*, (a political system of church government) was error. Christ did not promote a national covenant as Moses did, but a spiritual one, John 18:36. A national church could not be framed without violent persecution, but Christ taught peace and freedom of conscience, Matthew 13, Luke 9:53-56.

Also at this time in 1644, Williams wrote his defence for freedom of religion, *The Bloudy Tenent of Persecution, for Cause of Conscience*: discussed in a Conference between TRUTH and PEACE, Who, in all tender Affection, present to the High Court of Parliament, (as the result of their Discourse) these, (among other Passages) of highest consideration. This famous work is written for the educated in 17th century high literary style, set in an extended context of a religious debate going back to the time of Calvin. The elegant idiom can be difficult to comprehend, and knowledge of Greek and Latin is assumed, with quotes not translated. The arguments often utilize complex logic and move quickly between two represented positions. [Page references herein to this work utilize the Mercer University Press publication of 2001]

The work begins by setting out 12 tenets on religious freedom and persecution, to be developed and supported further in refuting the answer of John Cotton, a New England minister, to a book written from prison under cover in milk, *An Humble Supplication to the King's Majesty, as it was presented, 1620*, which Williams entitled, *Scriptures and Reasons Written Long Since by a Witness of Jesus Christ, Close Prisoner in Newgate, Against Persecution in Cause of Conscience, and Sent While Since to Mr. Cotton*. Although the *The Bloudy Tenent* is about 250 pages, websites often represent the work in such manner as to create the impression that it consists only of the 12 tenets.

Williams believed the author of *Humble Petition* actually was John Murton, [p. ix], a church associate and possibly at one time a co-prisoner with Thomas Helwys. Williams held that arguments supporting persecution for religious beliefs actually were written in blood. His response to Cotton's arguments for State enforced religion, in the format of a conversation between *Truth* and *Peace*, sets forth an example of finding the truth through debate, which leads to peace, not persecution.

In the initial tenets set out for further review in *The Bloudy Tenent*, Williams maintains that the coming of Christ required giving freedom of conscience and worship to all pagans, Jews, Muslims, or any anti-Christians, to be refuted only by the Word of God; and that no uniformity of religion should be enacted or enforced by the State. Sixthly, it is the will and command of God that, since the coming of his Son the Lord Jesus, a permission of the most paganish, Jewish, Turkish, or anti-Christian consciences and worships be granted to all men in all nations and countries, and they are only to be fought against with that sword which is only, in soul matters, able to conquer, to wit, the sword of God's Spirit, the word of God... Eighthly, God requires not a uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity, sooner or later, is the greatest occasion of civil war... Tenthly, an enforced uniformity of religion throughout a nation or civil state confounds the civil and religious, denies the principles of Christianity and civility, and that Jesus Christ is come in the flesh. Eleventhly, the permission of other consciences and worships than a state professes only can, according to God, procure a firm and lasting peace....

Williams actually was the first person from the religious debate of England and America to use the concept of a *Wall of Separation between Church and State*. He refers to the true church as a spiritual and mystical wall, the false church as a pretended wall, the civil state as a civil wall, and the natural or artificial walls of earth and stone around a city as defensive. He upholds there is no evidence from Scripture that God would be provoked by tolerating many religions, or that the true church within a State must be one only and national. [Pp. 176-178.]

After John Cotton responded to *The Bloudy Tenent*, Williams made another reference to the concept of a Wall of Separation in *Mr. Cotton's Letter Examined and Answered*. Williams states, *First, the faithful labors of many Witnesses of Jesus Christ, extant to the world, abundantly prove, that the Church of the Jews under the Old Testament in the type, and the Church of the Christians under the New Testament in the Anti-type, were both separate from the world; and that when they have opened a gap in the hedge or wall of Separation between the Garden of the Church and the Wilderness of the world, God hath ever broke down the wall itself, removed the Candlestick, etc. and made his Garden a Wilderness, as at this day. And that therefore if he will ever please to restore his Garden and Paradise again, it must of necessity be walled in peculiarly unto himself from the world, and that all that shall be saved out of the world are to be transplanted out of the Wilderness of world, and added unto his Church or Garden.*

*[Williams uses *the world* as a synonym for *civil state* — note *The Bloudy Tenent*, pp. 73, 177. *Type* and *Anti-type* are theological terms, referring to parallel concepts between the Old and New Testaments. Williams constantly relied on a review of Scripture to support his positions.]

The Presbyterian party of Parliament immediately had *The Bloudy Tenent of Persecution* burned, but Williams quickly had it reprinted.

*[The Supreme Court referenced Williams in *McCullum v. Board of Education*, 1948, reviewed previously (note section two of the series), and in a roundabout manner quoted *The Bloudy Tenent*, as if he advocated the legal concept created by Justices in the 20th century for Separation of Church and State, rather than a position consistent with denominationalism, the Truth Triumphant, for the true meaning for the metaphor. However, the Court has never acknowledged the denominational position ever existed anywhere in history, just as the latter 20th century Justices never were aware of precedent cases which completely contradicted their decisions on the Christian character of the nation, reviewed at the subsection, *Vital Precedent Cases Ignored by the Court*, under *The Supreme Court on First Amendment History*.]

The fundamental principle of the Truth Triumphant, implicit in the concept of denominationalism, that in a free and fair debate the truth will win, was brought to the attention of the entire nation by the renowned poet, John Milton, in his famous unlicensed pamphlet set out as a speech before Parliament, *Areopagetica*. In 1643, Parliament passed the *Licensing Order*, reinstating censorship over all publishing, to be controlled by granting a printing monopoly to the Stationers' Company. In protest, in 1644, **Milton argued before Parliament that God brought the Reformation to England, that the search for truth would be confirmed by a review of all facts and every argument.** *Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making. Under these terrors of sect and schism, we wrong the earnest and zealous thirst after knowledge and*

understanding which God hath stirred up in this city... A little generous prudence, a little forbearance of one another, and some grain of charity might win all these diligences to join and unite in one general and brotherly search after truth... so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter? (However, Milton may be best known by his place in the history of English literature, due to his epic poem, *Paradise Lost*, written in reverence of the Bible, which at the 12th book advocates freedom of conscience).

*[In ancient Athens, *Areopagus* was a hill where an acclaimed high court of appeal met, and where the apostle Paul preached Christ to the Greeks, Acts 17. The King James Version refers to the location as *Mars Hill*, its Roman name.]

Others had already put forward Milton's argument, such as Thomas Goodwin in *Imputato Fidei, or A Treatise on Justification*, published in 1641, and arising from a theological debate with George Walker on justification. Goodwin argued that justification comes from an increasing endeavor to learn the truth, which requires religious toleration and the widest intellectual freedom, with encountering and overcoming error an essential part of the process. *The only art and method of raising an estate of honour and peace out of our errors is by sacrificing them upon the honour and service of the truth. This is a way to circumvent the Divell, and to turne his weapons upon himselfe. He sends errors out of Hell to curse the truth: but by this meanes you shall cause them to bless her altogether. Truth never gets up into her throne with that advantage as when her enemy (the opposite error) is made her foote-stoole.* [William Haller, *The Rise of Puritanism: Or, The Way to the New Jerusalem as Set Forth in Pulpit and Press from Thomas Cartwright to John Lilburne and John Milton, 1570-1643*: Philadelphia, University of Pennsylvania Press, 1938, pp. 199-203].

In 1641 Lord Robert Brooke put forward in the press the argument for toleration and the right to pursue truth, during a recess of Parliament, in *A Discourse Opening the Nature of That Episcopacie, Which Is Exercised in England* based on his work from 1640, *The Nature of Truth, Its Union and Unity with the Soule, which is One in its Essence, Faculties, Acts; One with Truth*. Brooke's *Discourse* was a response to a tract by Bishop Joseph Hall, which asserted that after the few tenets of the Christian faith that are clear and universally agreed upon by all churches of Christendom, other matters must be resolved by bishops in the interest of peace, order, and safety. Brooke argued for liberty of thought, unlicensed preaching and printing. No one person had complete possession of the truth, but it shines where it will, even among the humble and ignorant, as everyone is moved to inquiry and discussion. The search for truth goes on without ceasing, but when it becomes known entirely, all people will become one with God. [Haller, pp. 331-338.]

Actually, these arguments on religious toleration, which eventually became known as denominationalism and the Truth Triumphant, had their origins from William Tyndale through the Reformation from the European continent in the 16th century. From 1529 to 1533, Tyndale and Lord Chancellor Thomas More engaged in a debate of over a million words with a primary focus on the role of Scripture and the right to own a Bible translation. Tyndale relied heavily on Scripture to support his positions. The debate covered many related issues, and Tyndale argued for the ideas that became the foundation of democracy in England, not just freedom of conscience, but equal protection under the law with due process for all, rule by the consent of the governed, evenhanded justice, fair trails, and religious equality, with the freedom to speak, publish, and to decide for one's self the truth. [Farris, pp. 21-30.]

After John Calvin had Michael Servetus executed, in 1553, for his religious beliefs, French reformer Sebastian Castellio wrote a series of books attacking the death penalty for heresy. **Castellio's *Concerning Heretics* may be the most significant work arguing for religious toleration in the 16th century.** Calvin and his successor, Theodore Beza, wrote defenses for the Servetus execution. The 17th century writings in England on religious toleration often quote from the celebrated debate between Castellio and Calvin.

William Haller, in *The Rise of Puritanism*, summarizes succinctly Castellio's argument for religious toleration. **Castellio claimed “room for the widest diversity of opinion within the limits set by the few essential tenets universally accepted by Christians.” The sword could not make truth prevail. “The toleration of religious differences was the only condition that could lead to the progressive discovery of truth.”** [Haller, pp. 194,195.]

Haller cites **Jacob Acontius as having reached an intellectual position similar to Castellio.** Fleeing persecution in Italy, going to Geneva, Germany, and elsewhere, he finally settled in England, received the favor of Queen Elizabeth, and **wrote *Stratagems of Satan*, first published in 1565, in Latin and French. It was only translated incompletely into English in 1648, but long before so, Englishmen were familiar with the work.**

Haller also summarizes succinctly Acontius' argument. Satan's assault on the soul has one principle object, to have obedience rendered not to conscience but to some claim of infallible authority in other men, or conversely, to assert such authority over others, which comes from pride and arrogance. Thus, **Acontius asserts that no one is free from error, and that no human can declare what is truth absolutely.** The few indispensable tenets of faith acknowledged by all Christians and essential to salvation are revealed directly to the heart of a person. However, the endless distinctions of doctrine commonly the subject of disagreement among people contribute nothing to salvation. **The fact that no one**

can hope to attain perfect knowledge of truth does not mean that it does not exist or cannot be known. Everyone must search Scripture for light and is entitled to be heard, tailors, fishermen, butchers, cooks, silly women. “Who knows by whom God will chuse to discover the truth?” Mistakes, scandals, vexations may come forth, but error is an essential part of the process of seeking to know, and by detecting the false we find truth. To overcome error, no sword is necessary, but truth only requires a free field for argument. [Haller, pp. 196-199.]

Haller notes **these arguments on toleration and the pursuit of truth primarily were forwarded by many sects through the preaching of the time and the writings of many religious leaders, both on the European continent and in England.** Some historians attempt to claim priority for their own denomination in originating and promoting the ideas, but the individual sect had less significance than the sects as a whole. [Haller, p. 177.]

Cromwell and the Ongoing Cry for Religious Freedom

In 1644, Oliver Cromwell led a surprising victory over a Royal Calvary unit. Soon thereafter, Parliament formed the New Model Army, with Cromwell second in command. In 1645, Cromwell defeated Charles at the battle of Naseby. Under siege at Oxford, Charles escaped to the Scots hoping to negotiate for assistance in exchange for making the Church of England Presbyterian. However, Parliament agreed to Presbyterianism for the Church of England, and Charles was handed over to the New Model Army.

Presbyterians then presented arguments against religious toleration as unreasonable and preposterous, which only could lead to lawlessness and social chaos. George Gillespie attempted to answer the arrogant Roger Williams in *Wholesome Severity reconciled with Christian liberty*. However, **the New Model Army was dominated by Independents and supported by the Levellers and the sects. The Levellers were a political movement best known for *An Agreement of the People*, a manifesto, with different versions from 1647 to 1649. This declaration called for constitutional reform in England, to include the prohibition of laws compelling or penalizing religious beliefs, and disallowing government restraint on conscience, the practice of faith, or the free exercise of religion.** Universal voting rights also were affirmed, as well as equality for all under the law, and commensurate legislative constituencies. Many Leveller army recruits carried a copy of the document in their uniforms.

Sir Henry Vane, an Independent, promoted the interests of the sects and religious toleration in Parliament, as did Oliver Cromwell for the army. **Cromwell argued that the example of the army proved toleration did not lead to chaos, but peace and harmony when united with Christian love. Note the pamphlet, *Strong motives, or Loving and modest advice, unto the petitioners for***

Presbyterian government. That they endeavour not to the compulsion of any in matters of religion, then they wish others should endeavour to compel them. But with all love, lenitie, meekness, patience, & long-suffering to doe unto others, as they desire others should doe unto them, authored either anonymously or by Cromwell in 1645. The pamphlet quotes a letter by Cromwell to the army — *Presbyterians, Independents, all had here the same Spirit of Faith and prayer, the same presence and answer, they agree here, know no names of difference; pity it is, it should be otherwise anywhere. All that believe, have the real Unity which is most glorious, because inward and spiritual in the body and to the head. As for being united in forms (commonly called uniformity) every Christian will for Peace's sake, study and do as far as Conscience will permit; And from brethren, in things of the mind, we look for no compulsion, but that of Light and reason.*

The Westminster Confession of Faith was completed in 1646. Parliament made disagreeing with the Confession illegal and changed two articles to keep the Church under its own control. A bill for freedom of worship was introduced in Parliament but was defeated by the Presbyterians. Parliament then passed a bill on penalties for heresy and blasphemy, which never were enforced due to popular opposition.

In 1648, Parliament negotiated with Charles I for his restoration with limited powers, with the army to be placed under its control. In response, Cromwell's forces under Colonel Pride prevented 121 members of the Commons from taking their seats, known as Pride's Purge, leaving 60 members to comprise a Rump Parliament. With the Presbyterian and Royalist members of Parliament gone, the Independents were in control of the government. From January to May in 1649, **the Rump tried and executed Charles, abolished the monarchy and the House of the Lords**, established a Council of State, (which controlled the press through the courts), and **declared the nation a Commonwealth under the supreme authority of Parliament.** Charles was charged with levying war against the people for the upholding of his personal interest of will.

***[The primary power of government in Britain was transferred from king to Parliament under the slogan, *No Taxation without Representation*, the principle behind the *Magna Carta* in establishing a limited monarchy. Samuel Rutherford set out the justification for the English Civil War in *Lex Rex*.]**

The Scots declared the son of Charles I, Prince Charles, King of Scotland, England, and Ireland. A royalist coalition began forming in Ireland, raising troops to place Charles on the throne. Parliament sent military forces to crush the Irish revolt, with Cromwell giving up being chairman of the Council of State to take command. As the Scots negotiated with Charles to make him king in exchange for a Presbyterian State Church, Cromwell's forces moved into Scotland, subduing the country by the end of 1651. Charles fled to France.

The Rump established no national church. It made atheism illegal, required everyone to attend some place religious on Sunday and holy days, but repealed former acts of Parliament suppressing toleration. Then, a Committee of Propagation of the Gospel was appointed to find a solution on national uniformity of religion. As Cromwell had returned from his campaign in Scotland and again was involved in government, he became a prominent member of the Committee. Debate ensued on what should be required in regard to religion by law. Independents mostly argued for citizens having to recognize basics on faith from the Bible, without external adherence to doctrinal tests of an institutional church. Cromwell advocated a national church, but without the right to persecute non-adherents, and with liberty of conscience maintained for all. However, a threat of war with the Dutch and the demands of foreign policy brought the negotiations to a standstill.

As the nation prepared for war, Cromwell and officers of the army petitioned the Rump Parliament to return to the consideration of domestic reforms. The petition was set aside. **Then, the Rump proposed a bill for *New Representation* in Parliament, with existing members retaining their seats without reelection**, while determining eligibility for additional members and placing all powers of State under the control of one permanent chamber. Cromwell proposed instead, that the Parliament appoint a provisional government and dissolve. Parliament refused and continued work on the the bill for *New Representation*. **When the bill was put to a vote, Cromwell called in musketeers and had the Rump Parliament disassembled.**

A small Council of Officers from the Rump then served as an interim governing body. They decided that congregational churches throughout the nation should recommend persons to be selected for a representative assembly. The army drew up a written constitution, the *Instrument of Government*, which included making Cromwell king. He refused, and the constitution was revised, with his accepting a position as Protector. Power was distributed between the Protector and a Parliament.

The *Instrument of Government* stipulated that Christianity should be held forth and recommended as the public profession of faith, but with guarantees that no one would be forced into orthodoxy. Those professing faith in God by Jesus Christ, but differing with specifics on a doctrine to be publicly proclaimed, were to be protected in the free exercise of their religion, except for Popery and Prelacy. Doctrinal error was to be won over through the teaching of “sound doctrine and the example of good conversation.”

The first Parliament elected under the Protectorate immediately tried to claim sovereignty, to which Cromwell objected based on fundamental principles — that the government should be a single person and Parliament, not

the latter alone and supreme; that Parliament could not be perpetual; and that as the supreme magistrate had liberty of conscience, so did every person. However, the Independents compromised with the Presbyterians to form a majority in Parliament, then setting restrictions on religious toleration. **When members indicated intent to take sole control of the army, Cromwell had Parliament dissolved, which the *Instrument* permitted after five months.**

In 1656, a second Parliament was elected, which drafted the *Humble Petition and Advice*. This written constitution confirmed Christianity and called for an agreement on a confession of faith to be held forth and recommended to the people, not to be maliciously or contemptuously reviled, but not to be compelled by penalties. The constitution provided protection for the free exercise of religion for those confessing faith in Christ, the Trinity, and Scripture as the Word of God, but with differing doctrine from the public profession of faith. However, at this point the nation mainly craved stability.

In September 1658, Cromwell died prematurely. By the constitution he was empowered to choose a successor, and he had selected his son, Richard. In May, 1659, his conflicts with army generals resulted in recalling the Rump Parliament, which immediately voted to end the Protectorate. Then, **Major-General John Lambert dissolved the Rump; and General George Monck, a royalist governing in Scotland, marched to London with 6,000 troops and restored the Long Parliament.** The *Westminster Confession* was made the official statement of faith for the nation and new elections were held. **In April 1660, the new Parliament declared Prince Charles the rightful King.**

*[The death of Cromwell should be considered suspicious, actually consistent with poisoning, in a plot to reinstate Charles II as king, carried out by a State physician, an apothecary member of Parliament, and two priests, later to become bishops. See — H. E. McMains *The Death of Oliver Cromwell*: Lexington, University Press of Kentucky, 2000.]

Charles II and The Restoration

In May, **Charles** returned to London from Holland, where from Breda he had **issued a declaration of intent to promote religious toleration and to uphold liberty of conscience**, promised essentially as a condition for his restoration to the monarchy, on first hearing Cromwell was near death. Before his coronation, he reached a Restoration Settlement with Parliament, basically reinstating the status of government to its role before the Puritan takeover, but with the king no longer able to use prerogative courts, with discretionary powers and privileges, to try his enemies.

By the end of the year, 700 Puritan ministers were replaced by Anglicans. However, Charles made assurances that Presbyterian ministers were not enemies

and proposed making minor concessions to them, such as some slight modifications to the *Book of Common Prayer*, which was rejected by Parliament.

The bodies of Cromwell and three of his associates were taken from their coffins and hung in infamy for a day; and then, their heads were placed on spikes for display above Westminster Hall. Persecution of Separatists resumed. **John Bunyan was imprisoned for maintaining unlawful assemblies and not conforming to the worship of the Church of England.** Coercive Church courts began operating, and the *Solemn League and Covenant* was burned in public.

Between 1662 to 1665, Parliament passed a series of acts known as the Clarendon Code, designed to crush religious dissent by punishing those not conforming to the Church of England. The *Corporation Act* required public officials to take communion in the Anglican Church and to swear the *Solemn League and Covenant* was unlawful. A new *Act of Uniformity* required clergy to assent to a revised *Book of Common Prayer*, upon which all ceremonies had to be based. Preachers, teachers, even private tutors were to be approved and licensed by ecclesiastical authorities. The *Licensing Act* prohibited printing of books or pamphlets contrary to the doctrine of the Church of England, with government officials empowered to search houses and shops. The *Five Mile Act* forbade nonconformist ministers from coming within five miles of an incorporated town or the place of their former service. **The Conventicle Act made an assembly of five or more persons for the exercise of religion illegal, and officials could brake into any suspected meeting. Up to 15,000 Quakers may have been imprisoned for meetings and refusing to go to public worship. Armed bands commonly made raids on illegal assemblies,** which represented most of the state religious persecution, rather than punishment for heresy.

Charles saw all inquisitiveness in religion as mischievous to the State, according to his intimate associate Gilbert Burnett, theologian and cleric. **However, in December, 1662, Charles requested Parliament to ease the burden on dissenters and to permit worship by nonconformists through licensing, including Catholics. Parliament rejected the proposal as endangering the peace of the kingdom. In 1672, he issued a Declaration of Indulgence, asserting that dissenting preachers should be licensed.** Two days later he declared war on the Netherlands, as part of the terms of the secret *Treaty of Dover* with Catholic France. According to the *Treaty*, **he agreed to announce his conversion to Catholicism at a time set by his own discretion, when he would receive two million gold crowns to assist returning the nation to the Roman Church. The Treaty only became public after his death.** In 1673, Parliament passed the *Test Act*, requiring that office holders of the government or the military take sacrament according to the rules of the Anglican Church.

Rather than take the anti-Catholic oath of the *Test Act*, Charles' brother, James, Duke of York, resigned his governmental and high admiralty offices, making known his Roman faith. His wife had converted to Catholicism just after their marriage in 1660, and he became a member of the Roman Church about eight years later, although due to Charles' insistence, he continued to take sacraments and attend the services of the Anglican Church. James was heir to the throne, as Charles' wife was barren, and any son of James' marriage was in line of succession. The fear of a return of Catholic dominance reached national hysteria and was the bases of much opposition to religious toleration. To bolster his Protestant image, Charles chose the Earl of Danby as a chief minister, who was anti-toleration, anti-dissenter, anti-Catholic. In 1675, Charles ordered all English born Jesuits and Catholic priests to leave the country. In 1678, the *Popish Plot* was uncovered by an Anglican clergyman, a Jesuit plan to assassinate Charles and place his more Catholic brother, James, on the throne, while having Protestants massacred. Anti-Catholic sentiment became even more severe, subjecting them in general to suspicion of treason. However, upon investigation, the Plot was determined to be fiction.

On February 2, 1685, at age 54, Charles suffered a convulsion and died suddenly on the 6th, confessing Catholicism and receiving sacrament.

*[Charles even foamed at the mouth. He was bled, given strong laxatives, induced to vomit, but none of many remedies availed. Again, the King's death was not investigated, but at the time, many suspected he was poisoned.]

James II

As Charles did not endorse any of his illegitimate children for succession, **his brother became King James II.** He promised to uphold and preserve the government and Church as established by law. However, **he attended Catholic mass daily, and his favorite advisors were French Jesuit priests.** He released from prison 12,000 Catholics, who had refused the oath of allegiance of the *Clarendon Code*, as well as 1,200 Quakers and other dissenters. However, there was no real public objection to this action, as the people were sympathetic to religious prisoners.

James asked Parliament to repeal the *Test Act*, which was refused. **Many feared James wanted to fulfill Charles II's plan to make England Catholic.** Two rebellions arose, which James easily defeated, but he insisted on using Catholic officers in the military, contrary to the *Test Act*.

In 1687, James issued a *Declaration of Indulgence*, wishing all people of the dominion to be members of the Catholic Church, but suspending penal laws for nonconformity to the established Church, and upholding free exercise of religion. The *Declaration* permitted all people to have meetings and assemblies in private homes or elsewhere for serving God in their own manner, open to

everyone freely admitted and on giving notice to a justice of the peace of a designated place. Supremacy oaths and religious tests for holding civil or military office were revoked, and all dissidents were pardoned of any crimes committed by violating former religious penal laws.

James appointed Catholics to important government, military, and university positions and began building his army with Irish Catholic soldiers. He devised a strategy to bring about a Catholic nation, by assuming control of the courts and by making Parliament submissive. He had judges not sympathetic to him dismissed, with replacements coming from his supporters. Then, he used the courts to bully Protestant church and government officials. By appointing electoral agents and through his power over the charters of communities, he manipulated candidates for local government office, intending to establish a political organization for taking over Parliament. In response, Anglicans and Puritans from Parliament united to foil his plans.

James wrote letters to his two daughters, Mary and Anne, to have them convert to Catholicism. Both refused. Their mother had died in childbirth, and they were raised by a governance, and as Anglicans by the insistence of Charles II. They were the heirs to the throne. Mary, the elder daughter, was married to William of Orange of the Netherlands, known as a champion of the Protestant faith due to his role in wars against Catholic France.

In 1688, James ordered his *Declaration of Indulgence* to be read in all churches by clergy on specified dates. Seven Anglican bishops signed a petition refusing to comply with the order, and the great majority of clergy did not undertake the reading. James had the bishops arrested and tried for inciting rebellion. The jury returned a verdict of not guilty, and crowds in the streets celebrated through the night, lighting bonfires. Weeks before the trial, James' second wife gave birth to a son, who would displace his daughters in line of succession to the throne. Protestant leaders felt the time was right to invite William of Orange to invade England.

William of Orange and The Glorious Revolution

William agreed to the invasion of England, with setting out the objectives of eliminating arbitrary power, restoring laws dating back to the *Magna Carta*, and reestablishing the authority of a freely elected Parliament. As William made military preparations, the commander in chief of James' army conspired to have the troops change sides. The coming invasion had the support of the entire nation. By November, William's forces landed, and soldiers from James' army began deserting. By December, as William marched toward London, James ordered his army to disband, while he escaped to France.

William set up a temporary government, and a new Parliament was elected. Parliament set aside divine right as the authority of the monarchy. Human authority was upheld as the bases of both Parliament and the monarchy. **The crown was offered to William and Mary, on the condition of their accepting the *Declaration of Rights*,** which listed rights to be restored and protected, and which clarified the powers of the monarchy and Parliament.

Initially, the crown was offered to Mary, but she refused, unless William also was made king, not a prince or consort. William and Mary accepted the *Declaration of Rights*, which Parliament changed in name to the *Bill of Rights*. **The nation's judicial system was set up as independent of both Parliament and the monarchy, in reaction to the manner in which James II had packed the courts in his favor. A central bank was chartered under William of Orange in 1694, which the descendant kings of Mary Stuart, Queen of Scots, always had refused.** The insurance company, Lloyd's, was set up in 1688, and the London Stock Exchange was originated in 1698.

*[Conspiracy theorists find significance in William of Orange agreeing to establish the Central Bank of England, actually privately owned, which included ceding sovereignty over a square mile of territory in the middle of London, known as The City of London, the main center of international banking today.]

The New Way

In 1620, **Francis Bacon published *The New Organon or True Directions Concerning the Interpretation of Nature*, known as *The New Way*,** referring to a scientific method and the discovery of principles of nature through empiric observation. Eventually, **the authority of rational thought derived from experimental study began to take hold of English society,** and by 1687, Sir Isaac Newton's *Principia Mathematica* represented a new era of science. **The method of reasoning developed through science caused people to question the authority of government and the Church and assisted movement toward new political ideas in society.**

In 1688/89, **in *Two Treatises on Government*, John Locke set out the justification for the Glorious Revolution,** reviewing extensively “the true original extent and end of civil government,” **based not on Scripture alone, but examining the laws of nature appointed by God, according to a method of reasoning as emphasized by Bacon.** Locke held that all people are born free and equal, that God did not place any person above another, and that everyone has the natural right to life, liberty, and property, which is inalienable and sacred. As no superior force compels the laws of nature in human relations, government is necessary to guarantee equal opportunity and people's rights. Government arises out of an agreement between the people and a regulating social authority, which

is binding for both sides. The people must obey the law, but government must not violate personal rights. However, the people actually rule and can replace the government, when human rights are violated. In order to constrain the excess of power in government, three branches should function separately, the executive, legislature, and judiciary. Locke's position achieved wide acclaim and greatly influenced the American Constitution.

*[The concept of separation of powers in government actually originated in English law from the example of the constitution of Calvin's church in Geneva, which was based on the New Testament. Church government was conceived as consisting of an executive (the pastor), a legislature (the board of elders), and the voting membership of the congregation (the priesthood of all believers). Judicial matters were to be resolved by meetings between representatives of the executive and legislature.]

In *A Letter Concerning Toleration*, published in 1689, Locke sets out that civil government and religion have different functions. The government is constituted to procure, preserve, and advance the civil interests of the citizens, the things of this world. However, salvation concerns the world to come, and the care of souls is committed to God. **Life and the power of true religion consist in the inward persuasion of the mind. Every believer is commissioned to draw others to the truth through reasoning. The power of the magistrate consists only of outward force, which is not acceptable to God for establishing the Church.** The magistrate cannot impose articles of faith on the people, and the Church does not have jurisdiction in worldly matters. The Church cannot deprive anyone of civil goods, property, or liberty, but its only remedy to deal with errant believers is separation from the community, excommunication. The Church must be free, and private conventicles should be allowed for all Christians, and even pagans, Muslims, and Jews. Private religious assemblies are not clandestine machinations, but the oppression of religious groups causes sedition. However, Catholics and atheists cannot be tolerated, as the former deliver themselves to the service and protection of a foreign prince, the Pope being as much a political figure as religious, and as the latter take no hold of promises, covenants, and oaths, which are the bonds of society.

Locke's *A Letter Concerning Toleration* is rich in content and well worth reading. The following is a sample quotation, taken from the William Popple translation. The letter originally was written in Latin, but immediately translated.

Every man has an immortal soul, capable of eternal happiness or misery; whose happiness depending upon his believing and doing those things in this life, which are necessary to the obtaining God's favour, and are prescribed by God to that end. It follows from thence, first, that the observance of these things is the highest obligation that lies upon mankind; and that our utmost care, application, and diligence ought to be exercised in the search and performance of them; because there is nothing in this

world that is of any consideration in comparison with eternity. Secondly, that seeing one man does not violate the right of another, by his erroneous opinions, and undue manner of worship, nor is his perdition any prejudice to another man's affairs; therefore, the care of each man's salvation belongs only to himself. But I would not have this understood, as if I meant hereby to condemn all charitable admonitions, and affectionate endeavors to reduce men from errors, which are indeed the greatest duty of a Christian. Any one may employ as many exhortations and arguments as he pleases, towards the promoting of another man's salvation; but all force and compulsion are to be forborne. Nothing is to be done imperiously. Nobody is obliged in that matter to yield obedience unto the admonitions or injunction of another, further than he himself is persuaded. Every man, in that, has the supreme and absolute authority of judging for himself. And the reason is, because nobody else is concerned in it, nor can receive any prejudice from his conduct therein.

In 1689, Parliament passed the Toleration Act, which ended religious wars in England. The punishments of the *Clarendon Code* were revoked. Freedom of public worship was given to all groups accepting the Trinity and the divine inspiration of the Bible, and rejecting papal supremacy and transubstantiation. Thus, Catholics and Unitarians were excluded. However, non-Anglicans were banned from universities. **With this Act as a first major step, eventually absolute toleration came to the United Kingdom, consistent with the Theory of Denominationalism and the Truth Triumphant, the position set out during the English Civil War by the Protestant sects dissenting against the Church of England, as Anglican or Presbyterian.**

The Colonies in America

The American colonies were settled under British law, and church practice reflected an extension of religious positions and views established from 150 years of conflict, war, and debate from the mother country, as reviewed above. The relation of Church and State from the time of the Act of Supremacy, under Henry VIII, until the Revolution Settlement, under William of Orange, revolved around two primary theories under contention in British society. The Roman Catholic position, later adopted by Anglicans and Presbyterians, was formulated under Augustinian theology, requiring uniformity of religion enforced by civil magistrates. Dissenting sects, (such as Independents, Quakers, Baptists), and other prominent individuals and social groups advocated what came to be known as denominationalism, based on the Bible, and calling for absolute religious liberty; with the government excluded of any authority to establish by law church institutions or doctrines.

Eventually, variant forms of denominationalism became law in the United Kingdom and the American colonies. After Henry VIII's separation from Rome, **when Anglicans or Presbyterians assumed control of the State Church, at times limited toleration of dissenting sects was enacted by statute, controlled by license. In the colonies, variations of religious liberty were mandated by law, either absolute, or in the form of limited toleration, which might be controlled by license. Catholics were excluded from toleration initially in the United Kingdom and in some colonies, as well as atheists, or people who denied God or Christ, the inspiration of Scripture or the Trinity.** Catholicism was not tolerated, that never again would the English be denied owning a Bible on pain of death; and due to the allegiance of Catholics to a foreign prince, the Pope as a political figure; and as the historical experience under Catholic leadership had led to so much violent persecution, intrigue, and tyranny. Atheism, or denying God or Christ, the Bible or the Trinity was considered an offense against heaven, with a presumed lack of morality that would undermine the social structure.

However, the Supreme Court has never reviewed the actual conflict and debate that took place in the mother country while the colonies were being settled as having influence on how the *First Amendment* was understood when framed. Instead, the Court changed the relevant background for the meaning of the *Amendment* to a focus on Virginia, James Madison, and Thomas Jefferson; and the Justices set out a particular interpretation of selected events, to establish an official history on what came to be a final position on religion for the federal government, as reviewed below, under *The Supreme Court on First Amendment History*. The Court also eliminated the other colonies from real consideration and significance, in averring how Americans supposedly accepted some new way of thinking on religion from Virginia. Nevertheless, as British historical background *in reality* should be considered extremely pertinent to the conception of the *First Amendment*, what was happening in the other colonies must be viewed as most relevant as well.

Founding Documents of the Colonies

The founding document of the colony of **Georgia** can serve as an interesting example of setting out a variation of the Theory of Denominationalism in the new world. King George II issued the **charter, in 1732**, and made explicit provision for religious liberty. *And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of their*

religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.

Joel A. Nichols, Assistant Professor of Law at Pepperdine University, notes that the above language first grants freedom of conscience to all, even Catholics, and then denies the latter free exercise of religion. This exclusion may reflect not just the general fear of Catholicism by the English, but the fact that Georgia was created as a buffer zone against incursions from Spanish and French settlers to the south who were Catholic. Nichols also notes that in 1758, Georgia made the Church of England the *official* religion of the colony, which was only a *weak* or *soft* establishment, without objection from dissenting groups, and “with little real ecclesiastical presence.” The “law did not interfere with dissenting congregations and did not provide for ecclesiastical courts or jurisdictions.” [*Religious Liberty in the Thirteenth Colony: Church-State Relations in Colonial and Early National Georgia*: New York University Law Review, Volume 80, December 2005, pp. 1693-1772.]

The province of **Carolina**, established by royal charter in **1629**, but divided into two colonies in 1729, attempted to establish the Church of England, without any actual success, lacking support by the settlers, and large populations of many dissenting sects arose. **By necessity, the Carolinas recognized and became known for religious toleration.**

The colony of **Maryland** was the dream of Sir George Calvert, a favorite advisor to James I, to be a haven for Catholics in British North America. After Calvert's death, a charter was granted, in 1632, to his son by Charles II. The colony's first settlement and capital was St. Mary's City. In 1639, the Maryland General Assembly passed *An Act for the Liberties of the People*, preserving the rights of Englishmen by virtue of English law, essentially a paraphrase of entry 39 of the *Magna Carta*. (After the Glorious Revolution, the Maryland Assembly was disallowed from adopting the *Magna Carta* outright, as inconsistent with the use of prerogative by the king of England). [*The Great Rights of Mankind: A History of the American Bill of Rights*, Bernard Schwartz: Lanham, Rowman & Littlefield, 1992, pp. 33-40]. **In 1649, the Assembly passed An Act Concerning Religion, known as the Maryland Toleration Act, requiring toleration for all Trinitarian Christians, in the form of freedom of conscience and from being troubled or molested in respect to the exercise of religion. Thus, although founded as a Catholic colony, Maryland by law adopted a form of denominationalism.**

In **1681**, Charles II granted William Penn territory in North America to settle a debt. Penn established the colony of **Pennsylvania** as a holy experiment, promoting freedom of conscience. **The Charter of Liberties and Frame of Government** reads at Article 35 — *That all persons living in this province, who confess and acknowledge the one Almighty and eternal God, to be the Creator,*

Upholder and Ruler of the world... shall, in no ways, be molested or prejudiced for their religious persuasion, or practice, in matters of faith and worship, nor shall they be compelled, at any time, to frequent or maintain any religious worship, place or ministry whatsoever....

In 1701, **Delaware** separated from Pennsylvania, with its colonial charter **providing the same religious freedom.**

When the English took over New Amsterdam from the Dutch in **1664**, renaming the colony **New York**, the population was mostly of the Dutch Reformed Church, but many faiths were represented, including Lutherans, French Calvinists, Presbyterians, Separatists, Baptists, Anabaptists, Quakers, other Protestant sects, Jews, Catholics. **The Anglican Church was established nominally, but freedom of conscience was granted to all Christians and Jews**, to be enjoyed without punishment or disquiet. [Paul Finkelman, Assistant Professor of Law, Albany Law School, *The Roots of Religious Freedom in Early America: Religious Toleration and Religious Diversity in New Netherland and Colonial New York*. Working Papers Series, No. 6, for 2013-2014.]

Parts of the land acquired from taking over New Amsterdam were granted to Lord Berkeley and to Sir George Carteret, who promised religious freedom to attract settlers. Later, Quakers purchased their charters, creating **East and West New Jersey.**

The **Fundamentals of West New Jersey**, the founding document of the colony of **1681**, stipulates — ***That liberty of conscience in matters of faith and worship towards God, shall be granted to all people within the Province aforesaid; who shall live peaceably and quietly therein; and that none of the free people of the said Province shall be rendered incapable of office in respect of their faith and worship.***

The **Fundamental Constitutions for East New Jersey of 1683** reads — ***All persons living in the Province who confess and acknowledge the one Almighty and Eternal God, and holds themselves obliged in conscience to live peaceably and quietly in a civil society, shall in no way be molested or prejudged for their Religious Persuasions and exercise in matters of Faith and Worship; nor shall they be compelled to frequent and maintain any religious worship, place or ministry whatsoever; Yet it is also hereby provided, that no man shall be admitted a member of the great common Council, or any other place of publick trust, who shall not profess faith in Christ Jesus....***

These colonies were later joined together by the crown in 1702.

Initially, New England was settled by the Plymouth Colony, and then the Massachusetts Bay Colony, which developed into the Commonwealth of **Massachusetts. Connecticut** and **New Hampshire** later split from Massachusetts to become separate colonies. **These colonies established the**

Congregational Church by law. Congregationalism was another form of Puritanism, also Calvinist and very similar to Presbyterianism, but placing authority in the leadership of local congregations. These pilgrims considered the Church of England their mother but sought ecclesiastical reform, to exclude all influence of Popery, to increase the intensity of spiritual commitment, and to eliminate episcopal church structure and prelacy. They viewed the church as a people in covenant, and they were on a mission to be a model to the world, *a city on a hill*. They sought to uphold a visible community of saints pure in doctrine and practice. They refused to tolerate doctrinal heresy, through the church with excommunication, and through civil magistrates by corporal punishment. **They believed in liberty of conscience, but not liberty of error.** Religious liberty was completely contrary to the covenant, which at times brought the settlers in contention with authorities in England.

However, it appears the New England position on religious intolerance was at odds with the primary statement of the tenets of Congregationalism, the Savoy Declaration of 1658, made in response to the *Westminster Confession*. Note Chapter 21, No. 2 — *God alone is lord of the conscience, and hath left it free from the doctrines and commandments of men which are in any thing contrary to his Word, or not contained in it; so that to believe such doctrines, or to obey such commands out of conscience, is to betray true liberty of conscience; and the requiring of an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience, and reason also.*

The Laws and Liberties of Massachusetts, of 1647, a collection of records from the General Court, which essentially served as a constitution, provides an example of how Catholicism was feared in the new world, as well as England, primarily for its political treachery. In the section *Jesuits*, it is stated — ***THIS court taking into consideration the great wars, combustions and divisions which are this day in Europe: and that the same are observed to be rayased and fomented chiefly by the secret underminings, and solicitations of those of the Jesuiticall Order, men brought up and devoted to the religion and court of Rome; which hath occasioned divers States to expell them from their territories; for prevention whereof among our selves, It is ordered and enacted by Authoritie of this Court, That no Jesuit, or spiritual or ecclesiastical person [as they are termed] ordained by the authority of the Pope, or Sea of Rome shall henceforth at any time repair to, or come within this jurisdiction....***

The creation of the colony of **Rhode Island** actually began due to a conflict between Massachusetts Bay Colony authorities and a young church minister, Roger Williams. In London, Williams received a scholarship to attend Pembroke College at Cambridge, after being noticed for his shorthand ability and intellect by Edward Coke, a famous jurist as accomplished in law as his contemporary William Shakespeare was in drama. At first Williams studied law, but he

transferred to theological studies, receiving a bachelor's degree in 1627, probably at age 24, and having learned by then French, Dutch, Latin, Greek, and Hebrew. At college he became a Puritan and Separatist, and with William Laud as Archbishop, Williams decided to move to New England. On arrival in 1631, he was invited to become a minister in Boston, which he refused on the grounds that the church was not Separatist and as he advocated absolute freedom of conscience. However, he did take ministry positions at Salem and Plymouth, but he earned his income from trading with the Narragansett Indians.

As a minister, Williams persisted in making declarations which disturbed authorities. He held that civil magistrates had no power over the inner beliefs of men. He denied the King had the right to grant land actually owned by the Indians to form the colony. He denounced required government loyalty oaths as forced worship on the unregenerate. Charges were brought against Williams for having heretical opinions, which led to a hearing, and an order of banishment was issued in 1636, calling for his deportation to England. Former governor John Winthrop warned Williams of the order, and he fled into the wilderness, eventually surviving with help from the Indians. He went south to found the settlement of Providence, and others eager for religious liberty joined him, forming nearby communities.

Before charges were brought against Williams, John Cotton, a prominent minister from Boston, requested time to deal with him in a church way. In London, Williams was a friend to Cotton, who admired his giftedness, although often disagreeing with him.

In 1643, Williams traveled to London to acquire a charter for the new colony, which states — *...by the Authority of the aforesaid Ordinance of the Lords and Commons, give, grant, and confirm, to the aforesaid Inhabitants of the Towns of Providence, Portsmouth, and Newport, a free and absolute Charter of Incorporation, to be known by the Name of the incorporation of Providence Plantations, in the Narraganset-Bay, in New-England. — Together with full Power and Authority to rule themselves, and such others as shall hereafter inhabit within any Part of the said Tract of land, by such a Form of Civil Government, as by voluntary consent of all, or the greater Part of them, they shall find most suitable to their Estate and Condition; and, for that End, to make and ordain such Civil Laws and Constitutions....*

In Providence Plantations, no State church was established, and all residents enjoyed absolute freedom of conscience. **In 1647, Providence Plantations passed Acts and Orders, which served as a constitution.** It notes the office of Assistant held by Roger Williams and grants him 100 pounds in currency for his work in obtaining the colony's charter. **Acts and Orders sets out basic laws, notwithstanding our different consciences, touching the truth as it is in Jesus, and with noting that the the Doctor of the Gentiles, (a reference to the apostle Paul),**

once said, that the Law is made or brought to light, not for a righteous man, who is a law unto himselfe, but for the Lawless and disobedient in the Generall.... In making homosexuality illegal, the document states, It is a vile affection, whereby men given up thereto, leave the natural use of woman, and burne in their lusts, one toward another; and so men with men worke that which is vnseemly, as that Doctor of the Gentiles in his letter to the Romans once spake, i. 27. [Referring to Romans 1:27].

After the Restoration in England, **in 1663, Charles II granted a charter for Providence Plantations and Rhode Island**, which states specifically — *And whereas, in their humble address, they have freely declared, that it is much on their hearts (if they may be permitted) to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained, and that among our English subjects, with a full liberty in religious concernments and that true piety rightly grounded upon gospel principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyalty... Have therefore thought fit, and do hereby publish, grant, ordain, and declare, that our royal will and pleasure is, that no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and do not actually disturb the peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments....*

The Acts and Orders, of 1647, also served as the constitution of Rhode Island, remaining in force until 1842.

**[The claim that Roger Williams founded the first Baptist church in America in Providence appears to be mere legend, which was investigated as early as 1850, by S. Adlam, as reported in The First Church in Providence, Not the Oldest of the Baptists in America, Attempted to be Shown: Newport, Cranston & Norman's Power Press. Adlam notes, ...the general opinion of Roger Williams being the founder and pastor of that church is modern theory; the farther you go back the less generally it is believed; till coming to the most ancient times, to the men who knew Williams, they are such entire strangers to it, that they never heard he formed the Baptist Church there. The first, and the second, and the third and almost the fourth generation must pass away, before men can believe that any others than Wickenden, Brown &c., were founders of that church. In 1639, Williams was part of a baptism ceremony in Providence, when he was baptized by immersion, and then he baptized ten others. However, a few months later he questioned the validity of the baptisms, and he never knew the event could be construed as the founding of a Baptist church. See — Harold J. Schultz, Roger Williams: Delinquent Saint. Baptist Quarterly 19.6 (April 1962), pp. 253-269.*

Williams believed the true church was known only to God, but all churches possessed truth while also being corrupted.]

The First Great Awakening

In the 18th century, a major spiritual revival swept the colonies, now known as **The First Great Awakening**, which changed how people thought about religion. A significant increase in church membership occurred, but in general the sense of being religious intensified. Missionary efforts escalated, and many new Bible colleges were established. The revival reached a climax around 1730-40. It began with the preaching of Jonathan Edwards in New England and Theodore Frelinghuysen in the Middle Colonies; while Methodist circuit preachers moved about the south and the frontier, often holding large camp meetings on revival, with people traveling many miles to attend. However, the Awakening was set to flame by the itinerant preacher from England, George Whitefield.

Benjamin Franklin noted in his autobiography the effect of the Awakening. *In 1739 arriv'd among us from England the Rev. Mr. Whitefield, who had made himself remarkable there as an itinerant Preacher... The Multitudes of all Sects and Denominations that attended his Sermons were enormous... It was wonderful to see the Change soon made in the Manners of our inhabitants; from being thoughtless or indifferent about Religion, it seem'd as if all the World were growing Religious; so that one could not walk thro' the Town in an Evening without Hearing Psalms sung in different Families of every Street.*

The Awakening enhanced the concept of religious liberty and toleration in the colonies. Due to Whitefield's broad appeal, the denominations focused on cooperation and Christian brotherhood. There was a new focus among the different churches on accomplishing God's work together, rather than emphasizing theological distinctions.

The Influence of Philip Furneaux

***An Essay on Toleration by Philip Furneaux*, published in 1773, was the leading work of its time in the United Kingdom and the American colonies on religious liberty. James Madison borrowed a copy of the book from a friend,** [Morris, p. 322]. Quotations are set out below to represent the essence of Furneaux' work. (The full title of the book is — *AN ESSAY ON TOLERATION: With a particular View to THE LATE APPLICATION OF The Protestant Dissenting Ministers TO PARLIAMENT, FOR Amending, and rendering Effectual, the Act of the first of WILLIAM and MARY, commonly called the ACT of TOLERATION*).

Whensoever the magistrate, therefore, presumes to enforce any particular system or mode of religion by penal laws, under pretense of promoting true religion, or the profession of what he supposes to be true religion; he doth that, which tends to weaken at least, if not entirely to destroy, the genuine principle of all true religion; I mean, obedience to the authority of God. [P. 10.]

Absolute liberty, therefore, in the affair of religion, belongs to us, as reasonable creatures, dependent on, and subject to, the universal Sovereign and Judge. It is a right essential to our nature: whatsoever other rights, therefore, we are supposed to resign on entering into society, this we cannot resign, we cannot do it, if we would, and ought not, if we could. [P. 13.]

If with Filmer, and others, who have asserted an absolute power in the Magistrate, we suppose him to derive that power, not from the consent of the people, but immediately from God; it follows, that the object of it must be determined by express communication from heaven. And, provided God hath not given the Magistrate directly or indirectly authority over the consciousness of man, hath not commissioned him to suppress religious errors, or prevent the spread of them, by the temporal sword, whatever else may be supposed to belong to his office, and to be the object of that absolute power which he is presumed to profess, there cannot be the least reason to conclude, that matters of religion are comprehended therein. [Pp. 18,19.]

For if, in all human societies, the religious rights of all men ought to be preserved to them inviolable, if it be a maxim too certain to be denied and too important to be given up, that every man, in the choice of his religion, is to consider himself as accountable to God, and bound to worship him according to HIS will, and not according to the commandment of men, if these are truths, it can be no difficulty to discern, that all forceable methods of bringing persons to comply with religious establishments are absolutely unwarrantable. [Pp. 28,29, quoting *Inquiry into Principles of Toleration*, by an anonymous dissenting minister]

Furneaux holds that waiting for the judgement of children to develop before making decisions on religion is surely persecution, as parents have the right to bring up their children according to their own religious persuasion. This viewpoint is **quite contrary to the position set out in *Abington v. Schemp*, 1963,** that an individual is better fitted to choose a religion after being inculcated with worldly knowledge and instructed in worldly wisdom.

That, if to deprive parents of the right of educating their children, in the way they thought best, was not persecution; he knew not what was.... [p. 58, quoting Fleetwood.]

Is it then objected, that a master, of a different religious profession from that by law established, may possibly form young and tender minds to his own sentiments, before they are capable of judging for themselves? That is a matter of consideration with the parents, with whom it lies to direct the children's education. If they choose to place them with such a master, that they may be educated in the same religious profession with himself, those who would prevent it, invade their undoubted right. **For, being the natural guardians of their children, an attention to the affair of their education becomes their peculiar duty; and accordingly, in reason and equity, they have full as much right to place their children under that instruction which they approve, as to attend on such instruction themselves.** [Pp. 66,67.]

However, Furneaux's work primarily advocates in essence the Theory of Denominationalism and Truth Triumphant. And Furneaux does not limit ongoing debate to Christian denominations alone, but he points out the necessity of the participation of all religions and points of view, just as Roger Williams and other Truth Triumphant advocates had reasoned.

...it is an essential branch of Toleration, for a man to be permitted to avow, explain, and, if he be so inclined, support by arguments, the religious sentiments which he professes, and thinks important: for if he do not think them important, it is most likely, I suppose, in general, that the world will not be troubled with them. [P. 26.]

It is owing to the genuine doctrines of Christianity and Protestantism not being allowed to be promulgated in Popish countries, that their inhabitants remain, in general, perfectly satisfied in the belief and practice of such enormities, as would shock an enlightened heathen. If things are upon a better footing in our country, it is to be ascribed to the spirit of enquiry, and to the degree of freedom with respect to public profession, and public instruction, both from the pulpit, and the press, which the lenity and moderation of the times, more than the law, have allowed, and which the bigotry of a few have not been able to suppress. [P. 45.]

As for Christianity and Protestantism, they appeal to reason, they invite enquiry, they claim to be heard for themselves, and are as ready to hear what can be said against their reasoning and arguments; and they allow to all persons, the right of judging and determining, upon the merits of every religious question for themselves... it is the glory of Christianity, that it appeals to men's understandings and consciences; that it needs no human power, no penal laws, for its support, that it requires not of any Christian Magistrate the suppression, in its own favor, of any other religion whatsoever. And should any such Magistrate, by penal laws, prohibit the public profession, or teaching, of any particular species or mode of the christian religion, in places of public worship, appropriated to the use of its professors, it deserves to be considered, upon what principles his conduct can be vindicated, which will not alike vindicate a Mahometan, or a heathen Magistrate, in prohibiting the Christian religion in every form. If the judgment and conscience of the Magistrate ought to be the standard, the consequence will inevitably be as fatal to the Christian religion in general, in one country; as to any particular mode of the Christian religion, or even as to the Mahometan or Pagan religion, in another. [Pp. 46-48]

The First State Constitutions, 1776-1780

When American independence was declared in 1776, state constitutions were written and enacted, (although Connecticut and Rhode Island merely depended upon their original colonial charters). Quotations from these constitutions reflect how the new nation viewed religious liberty. The state

constitutions affirm the Christian religion or a belief in God, but grant freedom of conscience, and confer all denominations equal protection. Rhode Island, New York, New Jersey, Pennsylvania, and Delaware never had an established church, but **all the constitutions represent variant forms of the Theory of Denominationalism. The constitutions were enacted many years prior to the Virginia Bill for Religious Liberty, which brings into question the Court's view on its significance, as an example of a new concept of religious liberty,** set out under *The Supreme Court on First Amendment History*. However, the *Constitution of Virginia*, of 1776, does not reference God or faith, but the Anglican Church already was established by law, which continued through the Legislature, but with religion placed on a voluntary basis, as reviewed under *What Really Happened in Virginia?*.

August 27, 1776, Delaware — *Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation... " I, A B. do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration...' There shall be no establishment of any one religious sect in this State in preference to another....*

Like Delaware, most states required an oath affirming Christianity for holding public office.

September 26, 1776, Pennsylvania — *That all men have a natural, and unalienable right, to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought, or of right, can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, CONTRARY TO, OR AGAINST, his own free will and consent: NOR can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that NO AUTHORITY can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship.*

November 11, 1776, Maryland — *That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil,*

or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county:...

Maryland, though founded as Catholic, by its Constitution again affirmed a form of denominationalism as law.

July 2, 1776, New Jersey — That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor, under any pretence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform...

That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects....

December 18, 1776, North Carolina — That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences... That freedom of the press is one of the great bulwarks of liberty and therefore ought never be restrained....

February 5, 1777, Georgia — All persons whatever shall have the free exercise of their religion; provided it be not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher or teachers except those of their own profession.

April 20, 1777, New York — And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession

and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: Provided, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Noting the intolerance and tyranny of wicked priests and princes actually references the schemes of Jesuits with government authorities.

March 19, 1778, South Carolina — That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges....

And that whenever fifteen or more male persons, not under twenty one years of age, professing the Christian Protestant religion, and agreeing to unite themselves in a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned,) be, and be constituted a church, and be esteemed and regarded in law as of the established religion of the State, and on a petition to the legislature shall be entitled to be incorporated and to enjoy equal privileges... each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon presence of religion shall entitle them to be incorporated and esteemed as a church of the established religion of this State: 1st. That there is one eternal God, and a future state of rewards and punishments. 2d. That God is publicly to be worshipped. 3d. That the Christian religion is the true religion. 4th. That the holy scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice. 5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this State, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this State may forever enjoy the right of electing their own pastors or clergy... no person shall officiate as minister of any established church who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz: 'That he is determined by God's grace out of the holy scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation but that which he shall be persuaded may be concluded and proved from the scripture; that he will use both public and private admonitions, as well to the sick as to the whole within his cure, as need shall require

and occasion shall be given, and that he will be diligent in prayers, and in reading of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace, and love among all people, and especially among those that are or shall be committed to his charge. **No person shall disturb or molest any religious assembly;** nor shall use any reproachful, reviling, or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities.... No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely join in, or has not voluntarily engaged to support.

October 25, 1780, Massachusetts — It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. **And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments,** provided he doth not disturb the public peace or obstruct others in their religious worship... And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any sect or denomination to another shall ever be established by law.

As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of the public instructions in piety, religion, and morality...

That the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall at all times have the exclusive right of electing their public teachers and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship and of public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination....

Like the political philosophy of John Locke, the Massachusetts Constitution reflects how the concept of *the pursuit of happiness*, in the 18th century, referred to finding the will of God. Therefore, by the Constitution, the state was to encourage worship of God.

On January 1, 1776, **New Hampshire** passed a temporary constitution pending resolution of the dispute with Great Britain. A constitution in comprehensive form was passed on **June 2, 1784** — All men have certain natural, essential, and inherent rights. among which are the enjoying and defending life and

liberty acquiring; possessing and protecting property and in a word, of seeking and obtaining happiness.

Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the RIGHTS OF CONSCIENCE... **Every individual has a natural and unalienable right to worship GOD according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained in his person, liberty or estate for worshipping GOD, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship... And every denomination of christians demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.**

As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the DEITY, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of this state have a right to empower, and do hereby fully empower the legislature to authorize from time to time, the several towns, parishes, bodies corporate, or religious societies within this state, to make adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion and morality:

Provided notwithstanding, That the several towns, parishes, bodies-corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no portion of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

The New Hampshire Constitution also reflects how the concept of the pursuit of happiness, in the 18th century, referred to finding the will of God and encourages worship.

The Supreme Court on *First Amendment* History

The historical events affecting America's struggle for religious freedom set out to this point have never been acknowledged by the Supreme Court. The Justices have imagined a much more simplistic version of the past to create the basis and meaning of the *First Amendment*. They are not cognizant of the founding charters and constitutions of the American colonies and states, the significance of their religious clauses, or any historical facts reflecting the

religious view of denominationalism and the Truth Triumphant. The Court has never shown any awareness of over 200 years of religious debate brought about by the English Reformation, between Catholic, Anglican, and Presbyterian churches attempting to establish by law, according to Augustinian theology, a single church, set of beliefs and ritual practice, verses a denominational theory of religious freedom advocated by dissenting Protestant groups. Instead, the Court has found a completely distinct version of background history, reviewed below, which in reality, must be considered a fabrication, something crafted, a rearrangement and corruption of the facts. However, this official legal history even could be described as something more than just a subtle form of a grand lie, more than illusion, but as outright *magical*.

The Court's Official History for the *First Amendment*

The background history of the *First Amendment* set forth by the Court is summarized as follows according to *Everson v. Board of Education*, 1947, with one quotation from *Engel v. Vitale*, 1962, as indicated.

In Europe there had been centuries of persecution against people not adhering to a State supported Church, according to “whatever religious group happened to be on top and in league with the government of a particular time and place.” Thus, “Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief persecuted Catholics of another shade of belief.” **Many people settled in the colonies to escape the bondage of government supported churches. They understood that any attempt by the government to support or influence religion was evil and had to be stopped. However, “these practices of the old world were transplanted to, and began to thrive in, the soil of the new America.”**

Then, **“the successful Revolution against English political domination was shortly followed by intense opposition to the practice of establishing religion by law. This opposition crystallized rapidly into an effective political force in Virginia,”** (*Engel*), and reached its dramatic climax in 1785-86, when the legislature was about to renew tax support for the established church. **Thomas Jefferson and James Madison led the fight against the tax. Madison wrote his great *Memorial and Remonstrance*, which received strong support throughout the state.** He argued that true religion did not need the support of law, that society is best served when the minds of men are completely free, and that “cruel persecutions were the inevitable result of government-established religions.” The tax bill died in committee, and **the legislature enacted the famous *Virginia Bill for Religious Liberty*, written by Thomas Jefferson.**

The *Preamble* of the *Bill* reads that Almighty God created the mind free, and all attempts to influence it *by compulsion, punishments, or burdens* only leads to hypocrisy. Because James Madison and Thomas Jefferson played such leading roles in the drafting of the *First Amendment*, “the provisions... had the same objective, and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute,” (as found in *Reynolds v. United States*, 1878, *Watson v. Jones*, 1871, and *Davis v. Beason*, 1890). Thus, the *First Amendment* “reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and their posterity.” Even though, “their goal has not been reached entirely,” soon after the *First Amendment* was enacted, most of the other states provided similar constitutional protections on religious freedom, with some persisting with restraints for about 50 years.

Therefore, the Court concluded that the *First Amendment* prohibited the federal government from passing laws which establish a church or which *prefer one religion over another*, (changing the meaning of *influence by compulsion, temporal punishments, or burdens*), as “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,’ *Reynolds v. United States*.... That wall must be kept high and impregnable. We could not approve the slightest breach.”

[The Court repeatedly has distorted the context, meaning, and influence of Madison’s *Memorial and Remonstrance*. As reviewed below in the subsection, *The Court Speaks for James Madison*, in the *Memorial*, he actually condemns directing religion *by force or violence*, rather than reason or conviction. Then, he argues against Virginia passing a law supporting the Christian religion with taxes, although minimal, for the stated purpose of promoting proper morals. He makes no reference to stopping the State government from influencing religion in any way, and he only upholds State enforcement of religious beliefs as wrongful.

In setting out the background history of the *First Amendment*, the Court also has changed the reading of the *Virginia Bill for Religious Liberty* from forbidding influence by compulsion, temporal punishments or burdens, and from stopping compelled religious support, to prohibiting laws preferring a religion. And the Court version has ignored the conclusion of the *Bill* on what actually was made into state law, an upholding of the Truth Triumphant, the Theory of Denominationalism. *Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion... Be it enacted by the*

General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities.

The Court asserted that Thomas Jefferson and James Madison led the fight against a proposed religious tax bill, which resulted in passing the *Virginia Bill for Religious Liberty*. The tax bill was introduced to the Legislature in December 1784, and enacted into law in January 1786. However, Jefferson had moved to Paris in August 1784, and returned to Virginia in September 1789. He was out of the country when the *Bill* was debated and passed. The Court also noted that Madison and Jefferson played leading roles in the drafting of the *First Amendment*. However, a motion for a bill of rights was first made at the Constitutional Convention in September 1787. The first ten amendments were passed by Congress in September 1789. While in Paris, Jefferson was only able to influence the debate on the *Bill of Rights* through letters. Actually, the Justices have exaggerated the roles of Jefferson and Madison on religious freedom to suit a preferred version of events. However, attaching celebrated historical names to support and promote a favorite argument based on a particular account of past events, as a substitute for factual accuracy, has always been very effective in America, and even has created popular legends.

In citing *Reynolds v. United States*, 1978, the Court partially repeated a quote from a letter by Jefferson to the Danbury Baptist Association on the meaning of the *First Amendment*, the one reference to a Wall of Separation between Church and State in government or judicial records before *Everson*, 1947, when the Court found the metaphor referred to the prohibition of any preference on religion by government. In holding that making polygamy a crime did not violate the Free Exercise Clause, the *Reynolds* decision noted the letter was *almost* authoritative in declaring the scope and effect of the *First Amendment*, as Jefferson was a leading advocate of the law, although in France when it was debated and enacted. However, in quoting Jefferson's words, the Court has never reviewed the purpose of the letter, in *Reynolds* or later cases, as a response to a request for support in sentiment over the prospect of the State of Connecticut passing laws to govern the Kingdom of Christ. (Note the below subsection, *Precedent Cases Cited by the Court*.)

Most states already had identical or similar protections for religious freedom as the *Virginia Bill for Religious Liberty*, when enacted, as a number of the colonies previously had in force. When states refined the language of the

protection for religious liberty by law after the *First Amendment* was passed, they actually were realizing the Theory of Denominationalism in a more complete sense of absolute freedom. They were not following some new concept of absolute separation, prohibiting any allusion to religion or a belief in God by the State. The *First Amendment* only served as one example of an expression of denominationalism, as proclaimed since the time of William Tyndale in the 16th century.

The Court has never reviewed any evidence on Madison and Jefferson upholding the meaning on the *Virginia Bill* and the *First Amendment* as the same, of prohibiting the federal government from influencing religion in any way, or on the Constitutional delegates and state ratification committees understanding that the two laws represent this identical position, and without considering other possibilities on the intent of the language of the bills from the historical debate on religious freedom. However, in reality, the *First Amendment* and the *Virginia Bill* do reflect the same position in law, of being an expression of the Theory of Denominationalism. In that sense, the *Virginia Bill* did set an example to be reviewed by the entire nation, with the support of Madison's *Memorial and Remonstrance*. However, the *Bill* was only one expression of denominationalism in more than 200 years of history.]

Precedent Cases Cited by the Court

In *Everson*, the Court cited *Reynolds, 1878, Watson, 1871* and *Davies, 1890*, as already having established, that the *First Amendment* had the same objective as the *Virginia Bill for Religious Liberty* written by Thomas Jefferson. Thus, it was not necessary or even appropriate to consider the mass of history on the struggle for religious freedom from the United Kingdom and in the other colonies and states, having occurred for 200 years previously, all of which could be dismissed readily as not having real significance. The Court version on the views of Madison and Jefferson on religious freedom was definitive on the meaning of the *First Amendment* with the relevant evidence for review.

In *Watson*, the earliest case, the word *Virginia* never appeared in the decision, and there was no review of the the religious history of the colony or of the State.

In *Davis*, the prior Court made no assertion whatsoever that the *Virginia Bill for Religious Liberty* had the same objective as the *First Amendment*. The Court noted that criminal acts could not be permitted in society on the basis of religious freedom "by the general consent of the Christian world in modern times." Then, the Court cited *Reynolds* in setting out the example of the State of Virginia having made bigamy and polygamy criminal offenses, as marriage is not

just a sacred obligation, but a contract regulated by law; and holy matrimony is “the sure foundation of all that is stable and noble in our civilization.”

However, in *Reynolds*, a prior Court actually did assert that Virginia was most significant in background history on the *First Amendment*, with James Madison and Thomas Jefferson as primary leaders in a fight for religious liberty. However, this Court did not find that the *Virginia Bill for Religious Liberty* or Jefferson’s letter to the Danbury Baptists referred to prohibiting a state government from influencing religion in any way, rather than from penalizing personal beliefs by force of law, or from being an expression of denominationalism.

This Court considered issues on whether religious belief can justify an act made criminal by law; and more specifically, whether the Free Exercise Clause forbids passing legislation against polygamy, which required determining historically what freedom was guaranteed. The Court noted, that in the colonies, controversy arose “not only over the establishment of religion, but in respect to its doctrines and precepts as well.” People were taxed for the support of religion, punished for not attending worship services and even having heretical opinions. “The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia,” when consideration of a tax bill to support Christian teachers was postponed, to invite the people to express their opinion on the proposal. “This brought out a determined opposition. Amongst others, Mr. Madison prepared a *Memorial and Remonstrance*, which was widely circulated and signed, and in which he demonstrated ‘that religion, or the duty we owe the Creator,’ was not within the cognizance of civil government.” The tax bill was defeated, and the *Virginia Bill for Religious Liberty*, written by Thomas Jefferson, was passed.

The Court found the definition of religious freedom in the Preamble of the Bill, which sets out the “true distinction between what properly belongs to the Church and what to the State” **in two sentences** — *that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principle on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty... that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.* (This quote from the *Preamble* notes that in religious matters, **force cannot be used by the magistrate to stop the expression of doctrinal opinion**, but only to maintain the peace).

In further quoting Jefferson, the Court in *Reynolds* made the one reference to the phrase *Separation of Church and State* in the historical records of colonial, state, and federal government or judicial review in the United

States before *Everson*, 1947. This Court quotes from Jefferson's letter to the Danbury Baptist Association on the meaning of the *First Amendment*.

*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 man to all his natural rights, convinced he has no natural right in opposition to his social duties. (As reviewed in the subsection, *The Court's Official History for the First Amendment*, Jefferson's letter responded to the prospect of Connecticut passing laws to govern the Kingdom of Christ).*

Although Jefferson was in France when the *First Amendment* was debated and passed, **the Court noted** he was an “acknowledged leader of the advocates of the measure,” and **the letter “may be accepted almost as an authoritative declaration of the scope and effect of the amendment** thus secured.”

The Court in *Reynolds* then noted that polygamy had always been upheld as a crime against society. **The colonies enacted a statute against polygamy which originated with King James I, and which Virginia passed after the *Virginia Bill for Religious Liberty* and recommendations by State officials for a similar amendment to the federal *Constitution*.** Thus, a law against polygamy was not unconstitutional according to the Free Exercise Clause.

Hostility toward Religion Denied

In *McCullum v. Board of Education*, 1948, the Court was asked to overturn *Everson* on the basis “that, historically, the *First Amendment* was intended to forbid only government preference of one religion over another, not an impartial government assistance to all religions,” to include the reversal of the ruling that the *14th Amendment* makes the Establishment Clause applicable as a prohibition against the states. In response, the Court curtly stated that — “after giving full consideration to the arguments presented, we are unable to accept either of these contentions,” which does not reflect hostility toward religion, as the *First Amendment* guarantees the free exercise of religion and “rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.”

[In the decision the Court reviewed no facts of history on why neither contention was acceptable.]

In *Engel v. Vitale*, 1962, the Court noted that nothing could be more wrong than to argue, that interpreting the *Constitution* in a manner as to prohibit religious services in public schools indicates hostility toward religion or prayer. According to the Court, men who truly believed in the great power of prayer fled living in conflict with State established religion and persecution in Europe, to come to America in hope of finding a place to pray when they pleased, to the God of their faith, using language they chose. And there were men with the same faith in the power of prayer who led the fight for the adoption of the *Constitution* and *Bill of Rights*, with guarantees of religious freedom that forbid even a government sponsored school prayer as brief as — "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

The men of faith upheld by the Court as endorsing the *First Amendment* knew its intent was not to destroy religion or prayer; but to quiet the fear nearly all of them felt, of having to speak only the religious thoughts and to pray only to the God that the government wanted. The Court noted that the *First Amendment* intended to put an end to State controlled religion and prayer; and therefore, it was not anti-religious to say that the separate governments of the country should stay out of the business of writing official prayers, but should leave that function to the people. Although the small prayer under contention in *Engel* seemed insignificant and did not favor a particular religious sect, the Court quoted James Madison, the author of the *First Amendment*, from his *Memorial and Remonstrance*, noting that alarm should be taken at even a three pence tax in support of the Christian religion, which could lead to conforming to any other case of establishment.

[Actually, nothing could be more wrong than to manufacture history in order to change the meaning of the *First Amendment*, to reverse a tradition of hundreds of years of children praying in school in the colonies and the nation of America, and to cover up hostility toward religion in declaring the law. In *Memorial and Remonstrance*, James Madison argued that a proposed bill that supported Christianity through tax dollars, even in a small amount, with the stated purpose of having the government promote proper morals, was establishment of religion *by force of law*. He did not argue that the State must be prohibited from making the slightest preference for religion, as reviewed below in the subsection, *The Court Speaks for James Madison*. When the *First Amendment* was enacted, the states constitutions affirmed Christianity or a belief in God, continuing the tradition of the founding colonial charters, and

the schools of the nation primarily focused on instruction in reading, in order to further the study of Scripture.

However, the Court now wants Americans to believe that a purpose of the *First Amendment* was to stop the states from letting prayer happen in schools, as men of faith in the 18th century were in fear over what God to pray to and what words to use, which could be influenced by the states. In *Engel*, the Court did not reference the real purpose of the *Amendment*, of providing protection against the federal government from imposing a church or uniform religious doctrine on the states. Actually, the Supreme Court intended to put an end to religion and prayer in America's schools through the *Engel* ruling. Even though the Court acknowledged that prayer really is powerful, the hostility toward religion in *Engel* is demonstrated by the Court just ignoring the true background of the *Amendment* and setting forth a preposterous and dishonest version of history.]

The Court Speaks for Roger Williams

In *Engel*, the Court noted that when “the power, prestige, and financial support of government is placed behind a particular religious belief,” such as prayer sponsored by a public school, there is a violation of the Establishment Clause equivalent to establishing a State religion by law. By footnote, **the Court cited Roger Williams, the “truest Christian” among sincere believers, in support of this concept of Separation of Church and State, that any interference in religious matters by a civil magistrate must be denied. The Court quoted three sentences from the 263 pages of *The Bloudy Tenent* to demonstrate Williams' position.**

The unknowing zeale of Constantine and other Emperours did more hurt to Christ Jesus his Crowne and Kingdome, then the raging fury of the most bloody Neroes. In the persecutions of the later, Christians were sweet and fragrant, like spice pounded and beaten in morters: But those good Emperours, persecuting some erroneous persons, Arrius, etc, and advancing the professours of some Truths of Christ (for there was no small number of Truths lost in those times) and maintaining their Religion by materiall Sword, I say by this meanes Christianity was ecclipsed, and the Professors of it fell asleep. [W]hat imprudence and indiscretion is it in the most common affaires of Life, to conceive that Emperours, Kings and Rulers of the earth must not only be qualified with politicall and state abilities to make and execute such Civile Lawes which may concerne the common rights, peace and safety (which is worke and businesse, load and burthen enough for the ablest shoulders in the Commonweal), but also furnished with such Spirituall and heavenly abilities to governe the Spirituall and Christian Commonweale....

[As the Court has never in any decision acknowledged the existence of the Theory of Denominationalism, again in *Engel*, **no consideration was given to the context of *The Bloudy Tenent*, written by Williams in London, as part of a debate on religious freedom during the English Civil War**, as demonstrated in the subsection, *The Westminster Dissent: Brothers Searching for Truth*, under *British Background History*. **Williams condemned enforcement by law of uniform religious doctrine**, consistent with the above quoted language by the Court. **However, he upheld defending Christianity for every social entity and permitting the expression of all religious viewpoints, in a general pursuit of the truth in society.**

And the Court has never indicated any awareness that the *Acts and Orders of Rhode Island*, the serving constitution of the State, which Williams was fundamentally a part of forming, endorses a belief in Christ, and the authority of the Apostle Paul in making homosexuality illegal, as reviewed in the subsection, *Founding Documents of the Colonies*, under *The Colonies in America*. **As Williams was extremely influential in the debate on religious freedom in the colonies, and the first to use the concept of Separation of Church and State, the Court could not continue with case after case without noting his existence, but their review of his position is completely truncated and misrepresented.]**

The Court Speaks for James Madison

Also in *Engel*, the Court quoted James Madison from his *Memorial and Remonstrance* to demonstrate how even an official but denominationally neutral school prayer was outside the intent of the *First Amendment*.

[I]t is proper to take alarm at the first experiment on our liberties.... Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

[The Court distorted the context of the above quote, which is reviewed below under *What Really Happened in Virginia?*. The bill under consideration and protested in the *Memorial* by Madison required a tax supporting Christianity, with a stated purpose of promoting proper morals. The first principle advocated by Madison in the *Memorial* asserts — *Because we hold it for a fundamental and undeniable truth, 'that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence*, quoting Article XVI of *The Declaration of Rights*. Eight years earlier, Madison had played a significant role in the writing of this

Article, which affirms Christianity while upholding the free exercise of religion according to dictates of conscience, to serve as a guiding principle on religion for the legislature, as reviewed under *What Really Happened in Virginia?*. In the *Memorial*, **Madison argued that supporting Christianity through a tax, even as small as three pence a year, or the promotion of proper morals by the State was the equivalent of establishing a religion *by force of law*, a cause for alarm. He made no argument on prohibiting the State from making reference to prayer or a faith in God, or upholding that even the slightest preference for religion by the government is establishment.**

However, the language quoted by the Court from Madison's *Memorial* actually reflects a viewpoint advocated in the social debate over denominationalism and the Truth Triumphant, such as Roger Williams set out in the introductory premises of *The Bloudy Tenent*, reviewed in *The Westminster Dissent: Brothers Searching for Truth*; or as also maintained by Philip Furneaux in *An Essay on Toleration*, the most popular and influential work on religious freedom of the 18th century, a copy of which Madison borrowed from a friend, as noted in the subsection, *The Influence of Philip Furneaux*, under *The Colonies in America*. **This position of absolute religious liberty, the broadest expression of denominationalism, calls for permitting all faiths to be considered by the individual in a quest for truth, not for prohibiting the State from making reference to the faith of Christianity or another religion. Thus, a civil magistrate cannot mandate religious standards by penalty of law.]**

Vital Precedent Cases Ignored by the Court

The Court found the precedent of *Reynolds*, 1878, very significant in how *First Amendment* history should be viewed. However, as noted previously in this series, **since 1947, the Court has never acknowledged the precedent of *The Church of the Holy Trinity v. United States*, 1892, which decided that a law cannot have a purpose of action against the United States being a Christian nation, although without an established church and tithes and spiritual courts.**

It is appropriate to quote from *Holy Trinity* a second time in this series on the *First Amendment*. After a review of the historical background on the Christian nature of America, this Court stated —

*There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. While, because of a general recognition of this truth, the question has seldom been presented to the courts, yet we find that in *Updegraph v. Commonwealth*, 11 S. & R. 394, 400, it was decided that 'Christianity, general Christianity, is, and always has been, a part of the common*

law of Pennsylvania; ... not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men.'

And in *People v. Ruggles*, 8 Johns. 290, 294-295, Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said: **'The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice,** and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order.... The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the Constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama, and for this plain reason, that **the case assumes that we are a Christian people, and the morality of the country is deeply engrafted upon Christianity,** and not upon the doctrines or worship of those impostors....'

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where a clear recognition of the same truth. Among other matters, note the following: the form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;' the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. **These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.**

In Holy Trinity, the Court cited as precedent two cases decided by the Supreme Courts of Pennsylvania and New York. However, there are additional state supreme court cases which could have been cited, having the same conclusion on the United States being a Christian nation, *Runkel v. Winemiller*, 1799, Maryland; *City of Charleston v. Benjamin*, 1846, South Carolina; *Commonwealth v. Nesbit*, 1859, Pennsylvania; *Lindenmuller v. People*, 1860, New York. However, the Court has noted that *Stare Decisis*, (the doctrine making precedent rulings core to the foundation to the American judicial system), has

less significance in cases involving the Religion Clauses of the *First Amendment*, which by necessity must be inconsistent, *Committee for Public Education v. Nyquist*, 1973. Actually, there is no basis for finding occasions to deviate from *Stare Decisis* with cases on religion, other than outright dishonesty on the part of the Supreme Court. However, merely ignoring the existence of *Holy Trinity* and its cited precedents is not finding these cases less significant but constitutes legal *malfeasance*, wrongful conduct on the part of the Justices, which was done in order to manufacture a new legal concept imposed on the metaphor of Separation of Church and State.

What Really Happened In Virginia?

The Charter for the Colony of Virginia, granted by King James I in 1606, had a stated purpose of propagating Christianity. **Virginia was not settled for the sake of religious liberty, but as a sanctuary for the one religious position of the Church of England.** The Indians were to be converted through observing the beauty of English culture, which included uniformity of religious doctrine and practice, and by having the children of the tribes attend colonial schools.

When the Indians refused to turn over their children to attend English schools, whole families were invited to live within the colony, which only had limited success. In 1622, when the Indians realized that the English wanted to change their way of life and reduce tribal land, they responded by massacring one-fourth of the settlement. As a result, Virginia was made a royal colony, under laws to protect the people, which required armed watches. A room for worship also was required at plantations, to follow the cannons of the Church of England.

By 1632, uniformity was required by law, which entailed punishments as in England. However, Virginia had no bishops, and Church laws were made by elected officials of the people, subject to the approval of the governor, with day to day affairs presided over by congregational leaders.

At first, because the main goal of the colony was survival, there was no focus on the divide between Anglicans and Puritans. However, by 1642, under Governor John Harvey, Puritans were no longer endured, and ministers were obliged to hold to the purity of doctrine of the Church of England. In 1643, Governor William Berkeley enforced religious conformity through whippings and branding, which drove out Baptists and Quakers.

After the Protectorate government under Oliver Cromwell was established over Britain, control of religious matters in Virginia was placed under local vestries, rather than the General Assembly. The Church of England still dominated, but the *Book of Common Prayer* was banned. After the Restoration, the Church of England again became the official religion of the colony, but **the people still primarily focused on overcoming the harsh conditions of**

settlement life. There were few ministers, who were of questionable character and poorly paid. Although fines were set to stamp out religious dissent, real orthodoxy was not followed.

A clergy report to the Bishop of London, in 1661, noted enforcement of uniformity of religious practice was difficult. A commissary was sent to Virginia to enforce ecclesiastical practice. However, the people were not concerned with religion, and measures taken were largely ineffective. The College of William and Mary was founded to educate pastors, and in 1699, the Virginia General Assembly extended the *Act of Toleration* from England to the colony, which permitted dissenting ministers to obtain a license, but itinerant preaching was denied. In 1738, toleration was granted to a group of Presbyterians. Toleration was given to anyone settling the “Valley of Virginia,” a buffer zone protecting the colony.

After the Restoration in England, fear of French Catholics in Louisiana and the need to raise militia during the French and Indian War led to the acceptance of religious dissenters. As Baptist membership grew, beginning in 1770, they began petitioning the House of Burgesses for relief from persecution, and as the Revolutionary War commenced, toleration was granted for troops of dissenting beliefs.

The Great Awakening, which preached toleration of all Christian groups, had little effect on Virginia. However, by the 1740s, Samuel Morris began house meetings based on reading George Whitefield's sermons. Toleration was granted for these meetings, until a “New Light” minister was brought in, who denounced the degeneracy of the clergy. Other ministers were found, while the group was pressured to accept the doctrine of the Church of England.

The *Virginia Gazette*, which began printing in 1736, included coverage on religious dissenters in the colony and England. **The legal dispute known as *The Parson's Case*** in Virginia became prominent in the public eye. Anglican clergy were paid in tobacco, but the price spiked in 1758, due to a poor harvest, and the legislature then allowed payment in currency at the former rate. King George III vetoed the legislation, but in an initial court action for back wages for ministers, the jury set damages at a penny. The King's veto was nullified, which **was seen as a victory for colonial rights and dissenting ministers.** Patrick Henry was the lawyer for the defense, and his father, John Henry, was the judge.

In 1776, when the Virginia Convention met to declare independence, a committee also was formed to prepare a *Declaration of Rights*, and James Madison was appointed a member. George Mason was dominant and wrote the article on religion. Madison proposed several changes to the wording, which were accepted. Article XVI of the *Declaration of Rights* reads in final form —
That religion, or the duty which we owe our CREATOR, and the manner of discharging

it, can be directed only by reason and conviction, not by force or violence; and therefore, that all men are equally entitled to the free exercises of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other. The Article passed on June 12th and was not considered a rule of law, but a guiding principle to be followed by the Legislature. On June 29th, the Convention adopted the first constitution for Virginia, which did not reference religion, but the Anglican Church was already established by law through the Legislature.

James Madison graduated from the College of New Jersey, later known as Princeton University. By the college's charter, “no person of any religious denomination could be denied free and equal liberty and advantage of Education.” Madison took courses and attended services under the college president, John Witherspoon, who taught that all people must judge for themselves on matters of religion. From the 469 graduates during Witherspoon's tenure as president of the college, there became one president of the United States, one vice-president, six members of the Continental Congress, 20 Senators, two members of the House of Representatives, 13 state governors, and three Supreme Court Justices, (not considering many other prominent positions in society). After receiving his degree, Madison was tutored by Witherspoon in Hebrew and theology.

The day after the passage of the *Declaration of Independence*, the Virginia Convention reorganized into the Virginia House of Delegates. James Madison and Thomas Jefferson were on the Committee of Religion, which reviewed petitions from religious dissenters. The first petition received, from Prince Edward County and probably Presbyterian in origin, **pled for the full realization of Article XVI of the Declaration of Rights.** As the committee was swamped with petitions within the next two weeks, others referenced *Article XVI*, including a Baptist petition of 10,000 signatures. However, advocates of the established church also presented petitions.

The debate became so contentious that the matter of religion was transferred to a committee of the whole House for review. The arguments for a State established Church were based on tradition and noted benefits derived for all of society. Jefferson argued against an established Church based on Scripture — that the church was wherever two or three were gathered in the name of Christ; that the gates of hell could not prevail against the church; that Christ did not resort to temporal punishment; that the apostles did not have dominion over the faithful, per II Corinthians 1:24. He noted that decisions on religion must be a matter of individual reason based on conscience for which a person was responsible only to God. He argued that religious taxes forced people to pay for

what they considered heresy; that religious uniformity was not unity; and that history affirmed the fallibility of government established religions.

Finally, a bill was passed that gave special rights and privileges to the established Anglican Church, as well as regulating public assemblies, the conduct and succession of clergy, the public expression of worship. However, religion was placed on a voluntary basis, repealing the requirement of religious duties, such as church repairs, and the designation of certain beliefs as criminal. Religious tax exemptions could be acquired for dissenters. The bill was severely condemned by dissenters and strongly supported by the Anglican Church.

In June 1779, Jefferson introduced bill No. 82, the *Virginia Bill for Religious Liberty*, which actually forms another expression of The Truth Triumphant from the Theory of Denominationalism, as reviewed at the subsection, *The Court's Official History of the First Amendment*, under *The Supreme Court on First Amendment History*. Action on the bill was delayed, and Jefferson went on to Paris in August 1784.

**[In October 1779, Jefferson framed A Bill for Appointing Days of Public Fasting and Thanksgiving, introduced to the Virginia Legislature by James Madison. This proposed bill called for setting days of fasting or thanksgiving by the State government. Every minister of the Gospel was required to have a service and preach a sermon on the appointed day, subject to a fine of fifty pounds. However, the bill was not enacted.]*

In November 1779, the House passed a tax resolution to support the Christian religion, which also required subscription to doctrine. **In December 1784, a bill was introduced requiring a religious tax, for the purpose of promoting proper morals.** However, the tax could be designated by the payers for a Christian teacher of their choice. A vote on the bill was postponed until November 1785, and **petitions against it came forth. 11,000 signatures on more than two dozen opposing petitions included 1,552 on James Madison's *Memorial and Remonstrance* of June 1785.** The bill was allowed to die, and Madison brought Jefferson's bill No. 82, the *Virginia Bill for Religious Liberty*, to a vote, which passed, 74 to 20, in January 1786.

In November 1786, Virginia enacted A Bill for Punishing Disturbers of Religious Worship or Sabbath Breakers, which was framed by Thomas Jefferson and introduced to the legislature by James Madison in October 1785. Sect. III of the Bill imposes a fine of ten shillings for laboring on Sunday.

Final Note on the Scheme of the Court

Through the English Reformation, Christian unity stopped being an institutional concept and became a spiritual process. Religious wars and persecution, originated by the Roman Catholic Church through Augustinian

theology, were abandoned, through a long and complex history, **as dissenting sects promoted the biblical way of seeking truth through gentle and peaceful debate. This pursuit of truth within a Christian society through general debate required freedom of speech, of the press, and the right of the people to assemble and to petition the government over grievances.** To ensure objectivity and neutrality in the social discourse, by necessity every possible viewpoint had to be allowed for consideration. Even arguments by atheists and advocates of every religion assisted finding the truth, in the process of detecting what is false. No threat was posed to society from completely open debate that was free and fair, as the truth would triumph because Jesus Christ was Lord.

An Old Metaphor with a New Meaning

Yet, the United States Supreme Court has never demonstrated any awareness that a Theory of Denominationalism ever existed, that the invention of the printing press and the spreading of the Reformation to England made the concept of Truth Triumphant crucial, as the controlling factor over an emerging and explosive new social dialogue.

The first state constitutions, enacted between 1776 and 1784, affirmed the Christian religion or a belief in God, but allowed freedom of conscience, continuing with religious liberties set out in the colonial charters. However, Virginia had placed religion on a voluntary basis and established the Anglican Church through the Legislature, not the *Constitution*. However, **according to the Court, James Madison's *Memorial and Remonstrance*, of 1785, made Americans realize that any influence on religion by government had to be stamped out.** Then, in 1791, the *First Amendment* was passed with precisely this same meaning as the *Virginia Bill*, as an initial step to accomplish this objective eventually throughout the nation.

Thus, when the Court ruled in *Engel v. Vitale*, 1962, and in *Stone v. Graham*, 1980, that having prayer or posting the Ten Commandments in public schools were unconstitutional, the Justices were only protecting the children of the nation from what is evil about religion. Originally, the *First Amendment* protected the states from the federal government interfering in matters of religion. Then, the *14th Amendment* was passed after the Civil War, to establish citizenship for African-Americans, and to prevent hostile discrimination and the denial of equal protection before the law against former slaves. However, decades later, the Court decided that another purpose of the *14th Amendment* was to have the federal government protect all American citizens from the states on the basic rights of the the first ten amendments, (which are based on Natural Law, according to the legal heritage of English and American jurisprudence, or what the *Declaration of Independence* refers to as inalienable rights endowed to all

people by their creator). Then in *Cantwell v. Connecticut*, 1940, the Court abruptly ruled that the rights of the *First Amendment* were fundamental to liberty and under the federal protection extended to the citizens of the nation through the *14th Amendment*. (See — *14th Amendment Incorporation*, at section three of the series, which reviews in detail this legal development by the Court).

Therefore, an intent of Congress in passing the *14th Amendment* has become to protect not just black children from hearing prayers or reading the Ten Commandments in public schools, but all students. **Although religion may be evil, the nation can depend on the virtue of the Court to protect the children. Thus, students in public schools are prohibited from praying to their creator, according to the rights endowed to them by their creator. When public schools function as Secular Humanism Youth Groups, religious neutrality is achieved, as children are isolated from what is wicked about the church.**

According to *McCullum v. Board of Education*, 1948, “the public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny.” Therefore, public schools “must be kept scrupulously free from the entanglement of the strife of sects.” **However, cleaning religion out of the public schools “was not imposed on unwilling States by force of superior law,” but due to the basic event of the *Memorial and Remonstrance* by James Madison, causing the new nation to review the issue of eternal separation of Church and State. Then, the public schools went on to become a symbol of the nation's secular unity.** Though not achieved suddenly, the separation of the State from religion was firmly established in the conscience of the people by 1875, when “President Grant made his famous remarks to the Convention of the Army of Tennessee,” that public schools must be unmarred by sectarian doctrine. This principle on the separation of religion from public education was actually a presupposition to the federal *Constitution*, which is illustrated by the fact, that after 1876, all states admitted to the union were required by Congress to keep their school systems free from sectarian control.

The Supreme Court Has Lied

However, there never was a movement or common understanding among colonial settlers on stopping all government influence on religion. Such a viewpoint never intensified following the Revolutionary War. The colonial and early statehood historical events regarding religion in Virginia, in reality, were nothing more than a repetition of what occurred in the England and America since the time of Henry VIII. Virginians did not develop or legalize a new concept of Separation of Church and State, to prohibit the government from influencing in any way how people might think about religion. The Court's version of religious history in America never happened.

Historically, the concept of *Separation of Church and State* in England and America always referred to denying the establishment of a State Church or the enactment of uniform religious doctrine, as compelled by penalty of law. As reviewed above, the true historical meaning of Separation of Church and State was upheld by men such as Thomas Helwys, Mark Leonard Busher, Sebastian Castellio, Jacob Acontius, Thomas Goodwin, Lord Robert Brooke, the dissenting brethren of the *Apologetical Narration*, John Milton, the Levellers, or John Locke, but originating with William Tyndale. Yet, the Court does not know of these men.

The word *Church* from the metaphor referred to an institution, with designated places and practices of worship, and with uniform theological doctrine. The *Separation of the State* from the Church institution meant prohibiting civil magistrates from enforcing religious practices and doctrine by penalty of law. The religious toleration of diverse doctrines, brought about through Separation of Church and State by law, extended to benefit all faiths, and even anti-Christian and atheist beliefs. However, **the metaphor never referred to completely constraining the State from any association with Christianity, or a belief in God, nor to suppressing any consideration of religion, thereby transforming the language to mean a *Separation of God and State*.**

As reviewed above, **Roger Williams**, from Rhode Island but a main participant in the debate on religious liberty in London during the English Civil War, **also maintained the concept of Separation of Church and State as the prohibition of a government established Church or uniform doctrine as enforced by law, as clearly set out in the introductory tenets to his famous work, *The Bloudy Tenent of Persecution for Cause of Conscience*:** (note the subsection, *The Westminster Dissent: Brothers Searching for Truth*, and the subsection, *Founding Documents of the Colonies*). **Yet, the Court merely lied about Williams, by imposing their new meaning for the metaphor on three sentences from *The Bloudy Tenent*, and by ignoring the vast volume of his writings and what actually occurred in the government of Rhode Island.**

The Court lied about the meaning and significance of James Madison's *Memorial and Remonstrance*. This one petition had only 1,552 signatures, out of two dozen with more than 11,000, as reviewed under *What Really Happened in Virginia?*. **The quote by the Court from Madison's *Memorial and Remonstrance*, on the possibility of other religions being established as easily as Christianity, must be set in the context of reviewing a proposed legislative bill supporting the Christian religion by a tax for the purpose of advancing proper morals, as reviewed in the subsection, *The Court Speaks for James Madison*. In noting the proposed tax amounted to only three pence, Madison was not arguing that even the slightest preference for religion must be prohibited, but that the effect still was establishment *by force of law*. The quoted sentence does not prove that**

Virginians were moving forward with a new concept on Church and State, but the language is entirely consistent with the prevailing view historically on the broadest and most true form of denominationalism, calling for absolute religious liberty, as demonstrated by Roger Williams in the introductory tenets to *The Bloudy Tenent*, or by Philip Furneaux in *An Essay on Toleration*. **Williams and Furneaux held that all faiths must be included for consideration by the individual in order to find truth, not that all religious expression must be excluded. Actually, excluding all reference to Christianity or any belief in God by law endorses atheism, implicitly establishing Secular Humanism as the national belief system.**

Nothing from the *Memorial and Remonstrance* can be demonstrated as novel or as an appeal for a new legal concept on government and religion. **The Memorial is entirely consistent with Article XVI of Declaration of Rights of 1776, which Madison had a significant role in creating. The Article states that religion cannot be directed by force or violence, that all men are entitled to the free exercise of religion, and that all have the duty to practice Christian love towards each other.**

The Court lied that Jefferson's Virginia Bill for Religious Liberty denied government from influencing religion in any way. Although the introduction to the *Bill* does use the word *influence*, it specifies by temporal punishments or burdens, noting such is contrary to the plan of “the Holy author of religion,” as reviewed under *The Supreme Court on First Amendment History*. **The Bill enacts as actual law the prohibition of enforcing support of any religious worship or ministry by restraint, burden in body or goods, or otherwise suffering, and grants to all men freedom to profess and maintain by argument their opinion on matters of religion.** The *Bill* is no different in any way from the denominational position advocated by the dissenting sects in the debate for religious liberty during the English Civil War, or by others previously or thereafter. **And the Court lied concerning Jefferson's letter employing the metaphor, by failing to note that he was responding to the possibility of Connecticut establishing by law religious uniformity.**

The Court lied in maintaining that by requiring public schools to be secular, religious neutrality is achieved. The value system of Secular Humanism is a contradiction of a belief in God. The Court lied when it upheld that public schools must be a symbol of America being secular to promote our common destiny. The nation was founded with every state constitution affirming Christianity. The Court lied when it asserted that there was a presupposition to the *Constitution* on excluding religion from public education, as demonstrated by how states were admitted to the union after President Grant's speech of 1875. This scant proffering of evidence for the exclusion of God from schools is not real.

There is no evidence that the *First Amendment* was ratified with the intent to have it eventually nullify the religious provisions of the state constitutions, according to a meaning imagined for the *Virginia Bill for Religious Liberty*. The first state constitutions enacted religious toleration according to forms of the Theory of Denominationalism, based on the Truth Triumphant, which was followed by the *Virginia Bill* as a late variant. The *First Amendment* was an example of the broadest expression of the Theory of Denominationalism, to promote the pursuit of truth in American society, and to protect the states from the federal government interfering with matters of religion. The *Virginia Bill* and the *First Amendment* express the same position of absolute religious liberty. There is no evidence that the *Virginia Bill* and the *First Amendment* have an identical meaning of prohibiting any preference on religion by the government, due to the influence of James Madison and Thomas Jefferson.

Further, there is no evidence that the *14th Amendment* was passed to transfer power to the Supreme Court to stop states from influencing religion in any way.

Was the *First Amendment* Poorly Written?

If the *First Amendment* is accepted as an expression of the Theory of Denominationalism, all of the clauses function in unity, and the overall legal meaning can be applied to the circumstances of society consistently and without complication. Then, the wording of the *Amendment* must be considered a work of art.

However, the new meaning imposed on the *Amendment* and the metaphor of Separation of Church and State, has created a perplexing struggle for the Court, causing considerable inconsistency in rulings, as admitted in quotations from cases set out below. The Court necessarily has found problems were created by the *Amendment* being poorly written. Apparently, the founding fathers somehow went dumb in forming the language of the clauses and were not able to write a law, but only an objective. Thus, even though according to *Everson, 1947*, the Wall of Separation must be kept high and impregnable, later cases found — it is blurred: it bends: it can only be dimly perceived: it is not sanitary. And eventually, the Court had to recognize that it is not possible or even desirable to have total separation.

The Court has discovered that there is an internal tension between the Establishment and Free Exercise Clauses of the *Amendment*. However, the Court has held that the Free Exercise Clause cannot erode the limitations of the Establishment Clause, which takes precedence. Thus, it seems at times the Free Exercise Clause can be rendered unconstitutional by the Establishment Clause.

Further, the Establishment Clause takes precedence over the Equal Protection Clause of *Section One* of the *14th Amendment*, nullifying religious citizens from obtaining benefits the non-religious receive from a state. Thus, it seems that the Establishment Clause can render the Equal Protection Clause unconstitutional. However, the Establishment Clause is enforced against the states through the Due Process Clause of the *14th Amendment*, which is always constitutional.

**[Amendment XIV, Section 1. — ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.]*

However, the Court has made assurance that cases on the Religion Clauses have been decided by the thorough scholarship of the most respected Justices. They have refused to be entangled by precedent, but their decisions do not bend as much as Thomas Jefferson's famous serpentine wall surrounding the University of Virginia.

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• **Everson v. Board of Education, 1947** — “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.”

• In **Abington v. Schemp, 1963** — the Court reaffirmed that the purpose of the *First Amendment* was to “to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion,” which has been “long established, recognized, and consistently reaffirmed,” and any contention otherwise, “in the light of the consistent interpretation in cases of this Court, seem entirely untenable....”

• **Walz v. Tax Comm'n, 1970** — “The Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution. The sweep of the absolute prohibitions in the Religion Clauses may have been calculated, but the purpose was to state an objective, not to write a statute. In attempting to articulate the scope of the two Religion Clauses, the Court's opinions reflect the limitations inherent in formulating general principles on a case by case basis. The considerable internal inconsistency in the opinions of the Court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases, but have limited meaning as general principles. The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other. For example, in *Zorach v. Clauson*,³⁴³ U. S. 306 (1952), MR. JUSTICE DOUGLAS, writing for the Court, noted: “The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State.”

• **Tilton v. Richardson, 1971** — “Numerous cases considered by the Court have noted the internal tension in the First Amendment between the Establishment Clause and the Free Exercise Clause...

“Every analysis must begin with the candid acknowledgment that there is no single constitutional caliper that can be used to measure the precise degree to which these three factors are present or absent. Instead, our analysis in this area must begin with a consideration of the cumulative criteria developed over many years and applying to a wide range of governmental action challenged as violative of the Establishment Clause.

“There are always risks in treating criteria discussed by the Court from time to time as ‘tests’ in any limiting sense of that term. Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics. The standards should rather be viewed as guidelines with which to identify instances in which the objectives of the Religion Clauses have been impaired. And, as we have noted in *Lemon v. Kurtzman* and *Earley v. DiCenso*, ante at 403 U. S. 612, **candor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication.**”

• **Committee for Public Education v. Nyquist, 1973** — “Yet, despite Madison’s admonition and the ‘sweep of the absolute prohibitions’ of the Clauses, this Nation’s history has not been one of entirely sanitized separation between Church and State. It has never been thought either possible or desirable to enforce a regime of total separation, and as a consequence cases arising under these Clauses have presented some of the most perplexing questions to come before this Court. Those cases have occasioned thorough and thoughtful scholarship by several of this Court’s most respected former Justices, including Justices Black, Frankfurter, Harlan, Jackson, Rutledge, and Chief Justice Warren.

“As a result of these decisions and opinions, it may no longer be said that the Religion Clauses are free of ‘entangling’ precedents. Neither, however, may it be said that Jefferson’s metaphoric ‘wall of separation’ between Church and State has become ‘as winding as the famous serpentine wall’ he designed for the University of Virginia. *McCormack v. Board of Education*, 333 U. S. 203, 333 U. S. 238 (1948) (Jackson, J., concurring). Indeed, the controlling constitutional standards have become firmly rooted and the broad contours of our inquiry are now well defined. Our task, therefore, is to assess New York’s several forms of aid in the light of principles already delineated. [Footnote 5]

“[Footnote 5] — **The existence, at this stage of the Court’s history, of guiding principles etched over the years in difficult cases does not, however, make our task today an easy one. For it is evident from the numerous opinions of the Court, and of Justices in concurrence and dissent in the leading cases applying the Establishment Clause, that no ‘bright line’ guidance is afforded.** Instead, while there has been general agreement upon the applicable principles and upon the framework of analysis, **the Court has recognized its inability to perceive with invariable clarity the ‘lines of demarcation in this extraordinarily sensitive area of constitutional law.’** *Lemon v. Kurtzman*, 403 U. S. 602, 403 U. S.

612 (1971). And, **at least where questions of entanglements are involved, the Court has acknowledged that, as of necessity, the 'wall' is not without bends, and may constitute a 'blurred, indistinct, and variable barrier** depending on all the circumstances of a particular relationship.'

"The State must maintain an attitude of 'neutrality,' neither 'advancing' nor 'inhibiting' religion, and it cannot, by designing a program to promote the free exercise of religion, erode the limitations of the Establishment Clause."

• In **Sloan v. Lemon, 1973**, when the Court was asked to hold that parents of children attending religious schools should receive the same State aid as those whose children did not attend church related schools, according to the Equal Protection Clause of the *14th Amendment*, the Court stated — **"The Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution."**

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• In **Abington v. Schemp, 1963**, Justice Stewart Potter, in dissenting, stated — "For a compulsory state educational system so structures a child's life that, **if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage.** Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. **And a refusal to permit religious exercises thus is seen not as the realization of state neutrality, but rather as the establishment of a religion of secularism,** or, at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private."

• **Lemon v. Kurtzman, 1971** — "Political division along religious lines was one of the evils at which the First Amendment aimed... Ordinarily, political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect."

• **Adolf Hitler, Speech to a Party rally, September 11, 1935** — "Neither in earlier times nor today has the Party the intention of waging any kind of war against Christianity. The Nazi State will however not tolerate under any circumstances any new or any continued political activity of the denominations. Let there be no misunderstanding about the resolve of the Party and the State on this matter." See — J. S. Conway, *The Nazi Persecution of the Churches 1933-45*: New York, Basic Books, Inc., Publishers, 1968, pp. 104, 105.

Losing the Soul of the Nation

The Declaration of Independence states, *...that all men are created equal, that they are endowed by their creator with certain unalienable rights....* William Tyndale knew all people were created equal, as everyone was capable of interpreting the Bible. He knew that every person had a right to own a Bible; that once every citizen had the scriptures, the pursuit of truth could go forward; and that the

views of the commoner could prevail in a free and fair debate as well as those of the nobility or church prelates. When his dream of an English translation of the Bible was accomplished, the search for truth led to freedom, in England and in America. However, the United States Supreme Court has separated the nation from God, through deception and by the law. Since 1947, the truth in America has been disappearing, along with the liberty of the people and the soul of the nation.