

LESSON 29

Why Does the First Amendment Limit the Government's Power over Religion?

Purpose of Lesson

Two clauses in the First Amendment protect freedom of religion. These are the "establishment" and "free exercise" clauses. In this lesson you examine the Founders' belief that religion and government should be separate. Each clause deals with a different part of this separation. The "establishment" clause prohibits the federal government from establishing one or more official religions or churches for the nation. The "free exercise" clause prevents the government from putting unreasonable restrictions on particular religious practices.

When you complete this lesson, you should be able to explain the importance of freedom of religion, describe the differences between the establishment and free exercise clauses in the First Amendment. You also should be able to explain different interpretations of the establishment clause and the conflicts between the establishment and free exercise clauses. Finally you should be able to explain the issues and considerations involved in limiting the free exercise of religious beliefs.

Terms to Know

compelling state interest
established church
establishment clause
free exercise clause

Great Awakening
religious tests
separation of church
and state

What is the historical background of religious freedom?

At the time of the first settlements in America, Europe was suffering from religious wars that had torn the continent apart since the early sixteenth century. This religious revolt, known as the Reformation, led to more than a century of bloodshed as Catholics and Protestants struggled for political power. Once in power, each group often attempted to eliminate its opponents through banishment, jail, torture or death.

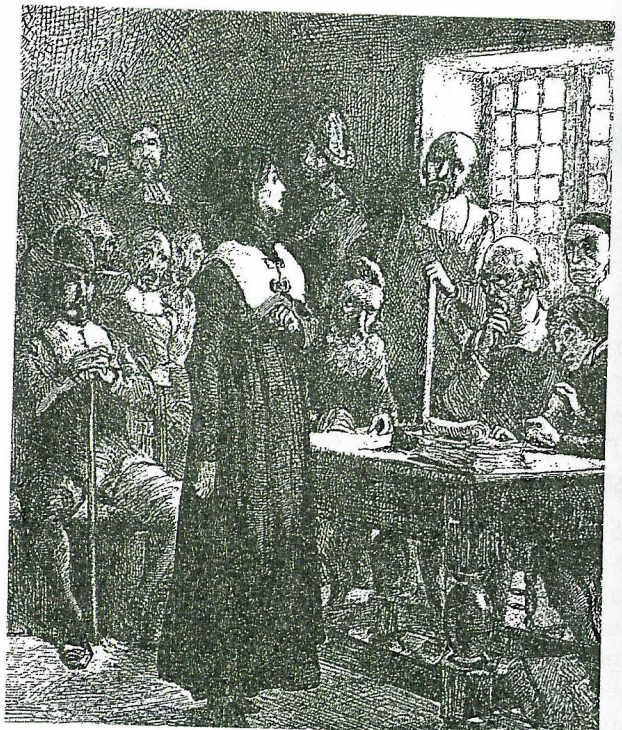
Almost every nation in Europe had a government-sponsored Christian church, sometimes called an **established church**. In each nation there was only one

established church. The established church in England, for example, was the Church of England. In France and Spain, the Roman Catholic Church was established, while in some German states and in Sweden the Lutheran Church was the official church.

People who did not belong to the established church were denied certain rights. They were often excluded from universities and disqualified from civil and military offices. Sometimes they were persecuted or even killed for their beliefs.

Most Europeans in the seventeenth century accepted the idea of an established religion. The idea that several different religions could coexist was not yet widely accepted. In most of the early colonies there was little tolerance for religious differences. Not only did most colonies have an established church, but in many cases there was intolerance for nonmembers.

By the time of the American Revolution, people had become more tolerant. The religious revival of the mid-eighteenth century, known as the **Great Awakening**, drew many away from established religions and into new



How did the colonial experience shape the Founders' views on freedom of religion?

religious groups. This gave rise to the idea that all Protestant groups were equal. Diverse religious groups often existed in the same community, and people became used to living and working with others who had different beliefs. The large number of religious groups made it unlikely that one particular church could dominate all others.

It became increasingly difficult for one church to claim special privileges. As a result, even those colonies that had an established religion did not support only one church. Government assistance was given to several churches in an effort to support religion in general rather than a particular state church. Support, however, usually was given only to the Protestant form of the Christian religion. Catholics, Jews, and other groups were not supported and were sometimes discriminated against.

Eighteenth-century Americans generally thought that religion was important in developing the character needed to maintain a free society. Yet by the time the Constitution was written, most Americans also thought that freedom of belief was an essential right that needed protection. Americans considered freedom of religion to be something that strengthened both “church” and “state.”

Why did the Founders believe in the separation of church and state?

There are two basic reasons why early Americans argued for the **separation of church and state**:

- to protect religion from being corrupted by the state
- to protect good government from corruption caused by religious conflict

People such as Roger Williams, the founder of Rhode Island, believed separation was essential so that religion would be safe from corruption by the state. He insisted that there should be a “wall of separation between the garden of the Church and the wilderness of the world.” Thomas Jefferson thought that separation was important in keeping religious conflicts from corrupting government. James Madison combined these two views in his opposition to a religious establishment. He, of course, wrote the First Amendment.

Madison, like Jefferson, believed that individuals in a free society should have freedom of conscience—the right to decide for themselves what to believe. He worried that freedom of conscience would be threatened if government supported some religions but not others. Government should do only what is necessary to keep the peace and prevent one religious group from violating the rights of others. He concluded that to achieve this goal government should not interfere with religion in any way.

What do you think?

1. What experiences in England and the colonies contributed to the Framers’ emphasis on the need to protect religious freedom?
2. What might be some common problems in protecting religious freedom? Explain how you think they should be dealt with.
3. What are the advantages and disadvantages of religious diversity in society?

How was religious freedom protected in the Constitution?

Before the Bill of Rights, the only mention of religion in the Constitution was the ban placed on **religious tests** for holding public office in the federal government stated in Article VI. This was a significant step in protecting religious freedom. In 1787, most states still had established religions or religious tests for office. Many Americans did not believe that non-Protestants could be trusted with public office. The Constitution opened the door to people of all religions.

Most but not all states followed the example of the federal government and abolished religious tests for holding state office. It was not until 1868 in North Carolina and 1946 in New Hampshire that such tests were abolished. A 1961 Supreme Court case held Maryland’s religious test unconstitutional, and since then they have been prohibited entirely.

At the same time, a number of states still supported Protestant Christianity as an established religion. It was not until 1833, when Massachusetts changed its constitution to separate church and state, that established religion in America was eliminated.

How does the Bill of Rights prohibit state establishment of religion?

The First Amendment says “Congress shall make no law respecting an establishment of religion,…” It is clear that Madison wanted to end the practice of having the federal government declare an established church—a practice still prevalent in Europe at the time.

Some people supported the adoption of the First Amendment because they thought it would prevent Congress from interfering with their **state** religious establishments. Once the Fourteenth Amendment incorporated the First Amendment, however, the establishment clause was understood to prevent state establishment of religion as well.

How have the courts interpreted the establishment clause?

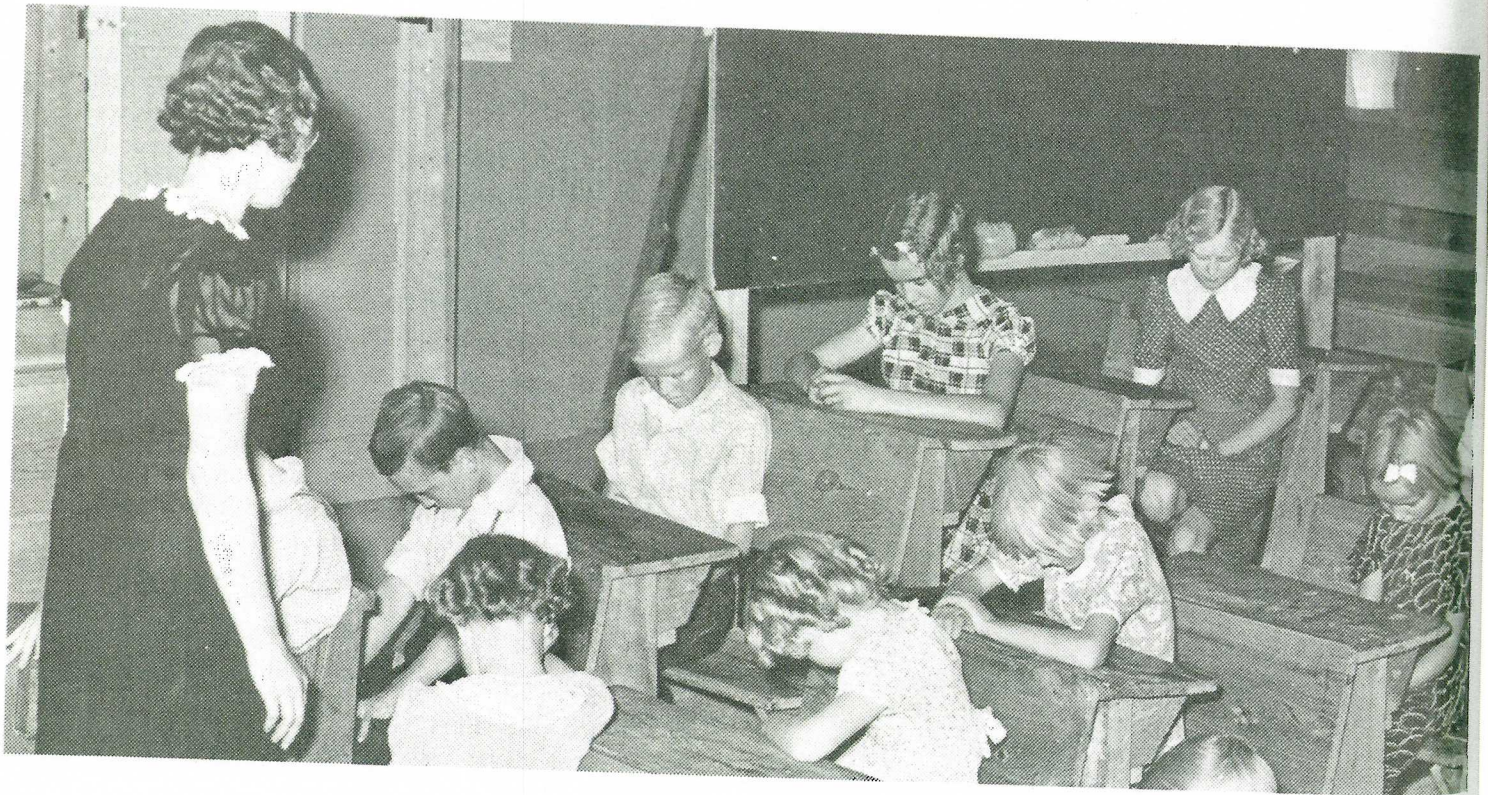
There is general agreement that the establishment clause means that government may not sponsor an official church. There is considerable disagreement, however, about the meaning of the **establishment clause** of the First Amendment. The disagreement can be summarized as follows:

1. The **broad interpretation**. People holding this position argue that the First Amendment prevents the government from providing any aid to any religion whatsoever. They believe that no tax money can be used to support any religious activity, practice, or institution. The government, however, may give religious groups the same services everyone else receives, such as police and fire protection. The government may provide assistance that makes it easier for people to exercise their religion. For example, schools may excuse students from classes during religious holidays.
2. The **narrow interpretation**. People holding this position argue that government is prohibited from giving one religious group preferential treatment. They believe the First Amendment does not prohibit government from supporting religion, as long as it does so impartially. This group supports placing the words "In God We Trust" on money and allowing
3. The **literal interpretation**. People holding this position suggest that the First Amendment only prohibits the establishment of an official government religion. They would not prohibit the government's participation in particular religious practices. For example, the government may participate in Christmas celebrations as long as Christianity is not declared an official established religion.

nondenominational school prayer. People using a broad interpretation of the First Amendment often oppose these kinds of actions.

People who hold either the broad or narrow interpretation agree, however, that the First Amendment prohibits government acknowledgment of Christmas as a holiday if the holidays of other religious groups are not recognized.

In 1947 the Supreme Court made the establishment clause of the First Amendment applicable to the states through its incorporation into the Fourteenth Amendment. Since that time, the Court has heard many cases involving freedom of religion. These have involved such issues as prayer in schools, Christmas displays of Nativity scenes, and various kinds of support for religious education. While most people agree that church and state should be separate, we are no closer today to defining that separation than we were in 1791.



*Does prayer in public schools violate the establishment clause?
Does a moment of silence violate the free exercise clause?*

Critical Thinking Exercise

TAKING AND DEFENDING A POSITION ON THE ESTABLISHMENT CLAUSE

Each of the four situations below is based on a case that reached the Supreme Court. Your class should be divided into four groups. Each group should read one situation and answer the questions that follow. Be prepared to present and defend your position to the class.

Group 1. Under a Pennsylvania law, the state reimbursed private schools for teachers' salaries, textbooks, and instructional materials in math and science. Although the law generally applied to private schools, 96 percent of the money went to religious schools. Opponents argued that this kind of public support was unconstitutional. They felt it amounted to a subsidy for the schools' whole program, including religious instruction.

Group 2. New York City arranged a voluntary program permitting its public schools to release students during school hours to receive off-campus religious instruction. Opponents complained that this violated the establishment clause.

Group 3. The New York State Board of Regents required teachers to begin each school day by leading their class in a nondenominational prayer written by state officials. Students who did not wish to participate were permitted to remain silent or be excused from the classroom. The parents of ten students claimed the prayer was against their religious beliefs and violated the establishment clause.

Group 4. The city of Pawtucket, Rhode Island, put up a Christmas display that included a Santa Claus house, reindeer pulling Santa's sleigh, a Christmas tree, and a large banner reading "Season's Greetings." It also contained a creche with the figures of the infant Jesus, Mary, Joseph, angels, shepherds, kings, and animals. Opponents complained that this violated the establishment clause.

1. What position would people who hold the broad interpretation of the establishment clause take on this issue? The narrow interpretation? The literal interpretation? Explain your answers.
2. What arguments can you make for permitting the government to do what it did? What values and interests are involved?
3. What arguments can you make for prohibiting the government from doing what it did? What values and interests are involved?
4. Be prepared to evaluate the other positions presented.

What rights are protected by the free exercise clause?

The establishment clause prevents the government from requiring citizens to practice a particular religion. The **free exercise clause** is intended to make sure that people who want to practice their religion will be permitted to do so.

There are two parts to freedom of religion: the freedom to believe and the freedom to practice religious beliefs. The Supreme Court has said that individuals have an absolute right to freedom of belief or conscience. The government may not interfere with this right. Under certain conditions, however, the right to practice one's beliefs may be limited to protect other important values and interests. The problem is deciding which religious practices should be protected by the First Amendment and which practices government may limit.

What are the conflicts between the free exercise and establishment clauses?

There are times when the free exercise clause and the establishment clause of the First Amendment come into conflict. For example, consider the following situations:

- If the government pays to provide for chaplains in the armed forces and in prisons, is it violating the establishment clause? If the government failed to provide chaplains, would it be limiting the free exercise of beliefs by persons in the armed forces or in prison?
- If public school officials excuse Jewish students from attending classes on Yom Kippur to attend religious services, are they creating a preference for a particular group that violates the establishment clause? If they deny students the right to be absent, are they prohibiting the free exercise of their religion?
- On August 11, 1984, President Reagan signed into law the Equal Access Act. It requires secondary schools to allow student religious groups to hold meetings in school buildings if other groups or social clubs are given the same opportunity. If schools do not provide meeting facilities for student religious groups, are they limiting their free exercise? If they do, are they violating the establishment clause?

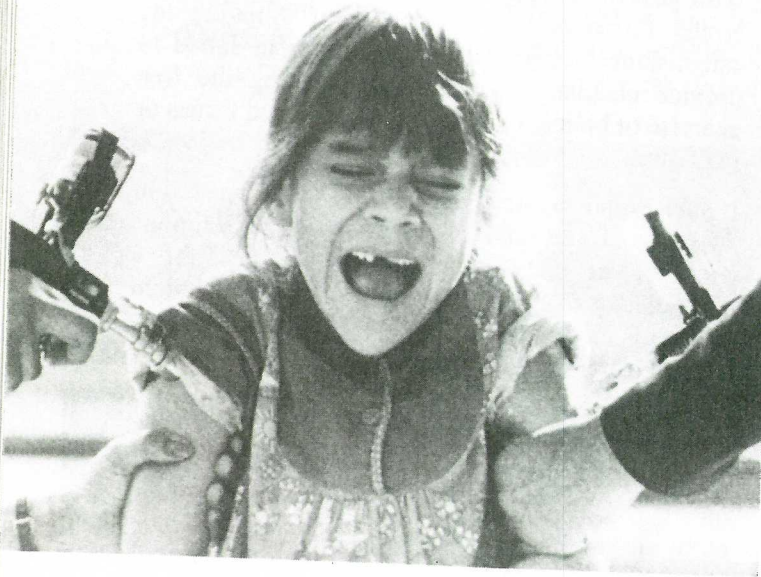
Is it possible to balance the rights of "free exercise" against other interests of society?

The justices of the Supreme Court often have held differing opinions on the issues you have been discussing. Sometimes they have overruled earlier decisions. The justices have continually attempted to refine the "tests" or considerations used to make a decision.

The Court has considered some issues several times. For example, when the health of the community must be balanced against the religious beliefs of an individual or group, public health is considered to be more important.

By contrast, when the life, health, or safety of individuals, rather than the community, is involved, the Court has upheld the right of mentally competent adults to make their own decisions based on their religious beliefs. For example, an adult may refuse to receive a blood transfusion even if his or her life is at risk. Parents, however, may not refuse a transfusion for their children, and the courts may step in to protect the rights of minors.

The Court also has protected the right of students to refuse to salute the flag or attend high school if this is against their religious beliefs. In deciding such cases, the Court asked whether the government had a **compelling state interest**, one that was great enough to justify limiting the individual's free exercise of religion. For example, the justices considered the government's requiring a student to salute the flag to be an unreasonable attempt to force a student to accept a belief.



Should public school officials be allowed to require inoculations against communicable diseases for students whose parents argue against them on religious grounds?

What do you think?

1. How might the establishment and free exercise clauses come into conflict, and what criteria do you think should be used to ease this conflict?
2. In cases involving the right of individuals to freely exercise their beliefs versus the common good, which interests should be given preference and why? Give examples to support your work.
3. How can individuals help protect freedom of belief and the exercise of those beliefs?

Critical Thinking Exercise

EVALUATING THE FREE EXERCISE CLAUSE

Read the following selection dealing with an attempt by Santeria practitioners to build a new church in a Florida city. After discussing the issues involved in the case, your class will be divided into groups of three so that you can hold a simulated court hearing. One person in each group will present the case of the Santeria congregation, one will present the city's argument, and one will act as judge. Answer the questions following the selection, then be prepared to explain and defend your arguments and decisions.

The Santeria religion is practiced by the descendants of enslaved Africans in Cuba, and was brought to the United States by Cuban exiles. Santeria practices animal sacrifice in some of its rituals, including rites for birth and marriage, for healing, and for the initiation of new members and priests. Animals sacrificed include chickens, goats, sheep, and turtles; in most rituals the animals are cooked and eaten.

When a congregation of Santeria adherents announced plans to build a church in a Florida city, the city responded by passing ordinances forbidding the unnecessary or cruel killing of animals. The city explicitly prohibited killing or slaughtering an animal if the killing is part of a ritual and the animal is to be eaten. Members of the Santeria congregation sued the city, arguing that the ordinances were specifically directed at their religious practices and interfered with the free exercise of their religion.

Reasonable people may differ on the following questions. It is the right of each person to develop his or her own answers. Under our system of government, the Supreme Court determines if a government action has violated a person's religious liberty. Such laws would not be passed in the first place if at least some people did not want them. Therefore, it is important for each of us to recognize the importance of the religious liberty protected by the First Amendment. If we insist that everyone's religious liberty needs to be respected, laws that violate the First Amendment are less likely to be passed.

1. What interests of society might be promoted by a ban on animal sacrifice for religious purposes?
 2. What principles might be promoted by permitting the church to continue its rituals?
 3. If you were a member of the Supreme Court, how would you have decided this case? Explain your reasoning.
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Reviewing and Using the Lesson

1. What is an "established church"? What was the "Great Awakening" and what effect did it have on established churches?
2. How would you explain the principle of "separation of church and state"? What reasons can you identify to support this principle?
3. What are "religious tests" for public office? What does the Constitution say about them?
4. What is the "establishment clause"? What disagreements have arisen over how courts should interpret it?
5. What is the "free exercise clause"? How have courts tried to balance the individual's right to free exercise of religion with the interests of society?
6. What examples can you give of situations in which the free exercise clause and the establishment clause seem to come into conflict?
7. Interview a spiritual leader about whether he or she supports legislation permitting prayer in public schools. Ask for reasons supporting his or her position. Report your findings to the class.