

Religious freedom in the Constitution

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BY THE SUMMER of 1787, there was a clamor from a broad spectrum of religious dissenters — Baptists, Methodists, Presbyterians, Jews, Quakers and Catholics — for religious freedom, which, to them, meant there would be a separation between the church and the state. Only then would all religions be respected.

It was a novel idea. No country, at that time, guaranteed religious equality. In 1776, Thomas Jefferson introduced a bill in the Virginia legislature decimating the Anglican church, guaranteeing the freedom of religion and allowing members of all faiths to hold public office. It was soundly defeated.

America of 1787 was a place with a plethora of religions, most seeking regions where they had the freedom to dominate the government and discriminate against the others.

"In our history from 1607 to 1868 there was anything but religious freedom in the 13 colonies," said James Wood, director of the Baylor University J.M. Dawson Institute of Church State Studies in Waco. "There was religious persecution, religious intolerance and the absence of religious liberty."

It was an irreligious time, in the modern sense, since only 6 percent of America's residents belonged to any organized religion. But nine of the colonies had established state churches. Public tax monies went to support these official religions and theirs were the only recognized clergy, permitted to publicly preach and perform marriages.

"The assertion that our country was founded for religious liberty is contrary to our actual experience," said Wood, a Southern Baptist minister and professor of religious history. "Persecution was rampant here. It was all over the colonies. In Massachusetts, the Puritans persecuted the Anglicans, and in Virginia, the Anglicans persecuted the Puritans."

Anglicans ruled in Maryland and, after a brief period of Catholic majority, reasserted themselves and outlawed Catholicism. Anglicans ruled in North Carolina, though they were outnumbered in those days by Quakers, and there were years

in which there were no Anglican clergymen in the state. Judaism was outlawed in all colonies in 1619, and Catholicism soon followed. Members of neither group could hold public office, and their lives were otherwise constricted.

"Many people came here for religious reasons, but it was freedom for themselves, not for anyone else," said Wood.

"In 1787 (Jefferson's Virginia declaration) was overwhelmingly accepted, and it became the most influential single document for bringing about religious freedom."

Similar laws eventually were passed in most state legislatures — the notable exceptions being the Puritan strongholds.

It was not until August, however, that the issue would come up for discussion at the convention. South Carolina's Charles Pinckney asserted the new Constitution should prohibit the use of religious tests for public office. The majority of delegates agreed with his sentiments, but not his proposal.

"They felt the subject was outside the province of government and the Constitution should say nothing about it," said Wood. For that reason, the Constitution to that point was religiously neutral: There was no mention of God or religion. But at Pinckney's insistence, the delegates relented.

"That was remarkable," said Wood. "America was the first nation in the history of the world to make the free exercise of religion a matter of national law, and the first to say that the federal government had no say over religion."

It was no accident, he added, that freedom of religion was the first guaranteed in the subsequent Bill of Rights. "The religion clauses were the cornerstone of what would become the American way of life," Wood explained. "Without the freedom of conscience, all other rights are in peril."

But that did not guarantee religious freedom. Connecticut didn't legally permit Catholicism until 1820. Massachusetts maintained the official Puritan Church till 1833. It wasn't until 1868, when the 14th Amendment asserted the primacy of the Bill of Rights over all states, that the discriminatory state practices legally ended. Only then could Jews, for example, hold public office in North Car-



olina.

The Supreme Court did not deal with church-state relations until 1872, when it was asked to settle a dispute between rival factions in the Presbyterian Synod of Kentucky. The high court refused to settle the issue, declaring "the law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

There followed a spate of state laws formalizing the split between church and state. All states passed laws or amendments to their constitutions prohibiting religious exercises in public schools and denying state funds to parochial schools. The schism between church and state would erode in the latter part of the 20th century, fueled not by a hostility toward religion, but an increase in the influence of organized religion.

By 1900, 35 percent of America's 75 million people belonged to an organized religion; by 1940, more than half did. With the growth in membership, financial power and political influence, the split enforced by state laws was eroded.

In 1947, the Supreme Court ruled on the first church-state case, permitting the use of public funds to transport children to parochial school, but insisting there be a "wall of separation" between public safety concerns outside the school and anything happening inside. A year later, in its most influential decision, the court held Champaign, Ill.,

could not provide religious training in the public schools for members of organized religions, while non-religious students attended study halls.

In the court's view, non-religious people have equal rights that are infringed upon when the state fosters the practice of religion. That equal protection is important today, in a nation where 100 million citizens are not affiliated with any organized religion but deserve the full rights of citizenship.

In 1963, the Supreme Court combined a series of cases involving prayer in public schools — a practice banned in every state until 1900 — and ruled 8-1 that the public school is a place for learning, not prayer.

The ruling has been excoriated by politicians ever since; President Reagan being the most prominent to assert "the courts threw God out of the public schools." In fact, prayer was never widely used in American schools. The ruling affected only 38 percent of the nation's school systems, ranging from 90 percent of the schools along the Atlantic seaboard to only 4 percent of those on the West Coast.

Religion was a central, if unstated feature of the Constitutional Convention, for the document the 55 delegates crafted was unique, establishing a nation based on ideas and ideals, rather than a dominant religion.

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