



Written by [Rebecca Terrell](#) on April 6, 2020

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## Separation of Church and State: What Did the Founders Intend?

September 17 is Constitution Day, commemorating the adoption of the United States' founding document as supreme law of the land. It is an important date in Boston, which played such a pivotal role during the Colonial period and the U.S. Revolutionary War that it earned the moniker "Cradle of Liberty." The city gave our nation eight of its Founding Fathers. Home of the Boston Tea Party, seat of the Colonial government, and center of trade and commerce in New England, Boston witnessed the onset of the war on its outskirts at Lexington and Concord. It is also the birthplace of one of the oldest existing warships: the USS *Constitution*.



An impressive 305-foot long, wooden-hulled, triple-masted frigate, "Old Ironsides," as she is known, docks in Charlestown Navy Yard in Boston's National Historical Park, surrounded by wartime reminiscences such as Paul Revere's house, Bunker Hill, and the Old North Church. On Constitution Day, amid tours, re-enactments, and historic exhibitions, her rigging is lined with brightly colored pennants, waving gaily in brisk Atlantic gusts. Across the Charles River, where patriots rally on the steps of City Hall to commemorate our nation's founding, American flags flutter in the same breeze, but one banner remains curiously censored: the Christian Flag.

"The flag sends an overt religious message, and could reasonably be construed to be an endorsement of Christianity by the City, which would be a violation of the Establishment Clause," wrote Mayor Martin Walsh in a statement explaining why Boston has refused a civic group's repeated requests to fly the Christian flag during their one-hour rally each Constitution Day. Harold Shurtleff and his Camp Constitution organization filed suit, but a U.S. District Court upheld the city's ban in February.

Boston makes one of its city hall flagpoles available as a "public forum" open to all, according to its application form. Any organization can petition the city to fly its flag for a particular event. Since 2005, around 300 flags have been approved, representing official, cultural, and historical interests. Causes such as the LGBTQ lobby and the transgender movement are welcome. Flags of foreign countries are often seen, including those of the communist governments of China and Cuba, and others which contain religious symbolism. On more than a dozen occasions, the Islamic star and crescent of the Turkish flag have flown over Boston. Yet, Walsh claims, the city has "never" raised a religious flag at City Hall. In a 2019 interview, Shurtleff told *The New American* that Boston claims to have an "unwritten policy" that excludes the display of "non-secular flags," pointing to the U.S. Constitution's Establishment Clause as its primary argument.



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What does the Establishment Clause say about this situation? And what would the Founding Fathers who wrote it have to say about Boston's ban of the Christian flag?

## Congress Shall Make No Law...

The Establishment Clause is part of the First Amendment to the U.S. Constitution and states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This clause, remarkable in its clarity and simplicity, plainly states that *Congress* cannot set up a government-sponsored religion, nor can it prevent people from establishing and practicing their own. It is worth repeating that the law binds the U.S. Congress — not any other entity or person. That point alone reveals the absurdity of a city such as Boston blaming baseless prohibitions on the federal Establishment Clause.

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Nor can Beantown look to the Founders for justification. Debate over the Establishment Clause in the first session of Congress that formulated the Bill of Rights was intense and protracted, covering three months in the summer of 1789. It reveals the indisputable intent of the Founders to protect and promote — not prevent — public exercise of Christianity.

James Madison of Virginia, hailed as the "Father of the Constitution" for his role as one of its primary architects, proposed a rather wordy original draft of the First Amendment:

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

But delegates worried that this would discourage rather than foster morality; libertines could take advantage of the wording, claiming religious freedom to excuse any form of licentious behavior. Various revisions ensued, to be met with such objections as that of Connecticut's Benjamin Huntington: "The words might be taken in such latitude as to be extremely hurtful to the cause of religion." He went on to suggest that "the amendment be made in such a way as to secure the rights of religion, but not to patronize those who professed no religion at all."

Like Huntington, all representatives made it clear that they wanted to defend religious standards. Do their references to "religion" indicate that they supported all creeds indiscriminately? On the contrary, they employed the umbrella term to refer exclusively to Christian denominations. "[None] could hold [Christianity] in more reverence than the framers of the Constitution," wrote Harvard Law School founder Joseph Story, who was nominated to the Supreme Court in 1811 by Founding Father-turned-U.S. President James Madison. In his work *A Familiar Exposition of the Constitution of the United States*, Story declared: "The real object of the First Amendment was not to countenance, much less to advance Mohammedanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among Christian sects and to prevent any national ecclesiastical patronage of the national government." In other words, the Founders intended their nation to adhere to Christian principles without any one particular denomination running things.

In the end, it was one of Massachusetts' sons, Fisher Ames, who provided the final wording of the First



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Amendment. Did he mean it to prevent Christians from expressing their beliefs in the public forum? Not at all. In fact, Ames was an outspoken advocate of the Bible as essential to education. In an article published in 1789 in *Palladium* magazine he complained, “We are spending less time in the classroom on the Bible, which should be the principal text in our schools.”

Ames was referring to all schools, not just religious institutions. Though public schools were the exception to the norm until well into the 19th century, public education had been around since 1635, Boston being home to the first public school in the Colonies. Still operating today fewer than five miles from the Old North Church, the Boston Latin School brags on its website of its founders’ “belief that the only good things are the goods of the soul.” In the founding era, the Bible was its primary text; among its famous graduates are John Hancock, Benjamin Franklin, and Samuel Adams. The latter is known as the “Father of the American Revolution” and later became governor of Massachusetts. In that office he proclaimed a public day of fast in 1797, asking his constituents to humbly beg God that the kingdom “of our Lord and Savior Jesus Christ may be everywhere established, and the people willingly bow to the scepter of Him who is the Prince of Peace.” (Boston’s current Mayor Walsh may well see that as “an endorsement of Christianity” by a former governor of his state. Would he therefore ban the governor’s words as he did the Christian flag?)

Unlike today, Christianity permeated society at the birth of our nation. After 1776, all 13 American Colonies required religious oaths as prerequisites for holding public office, and most required that officeholders be Christian. One of the first acts of the U.S. Congress was a bill designating resources to be used “for civilizing the Indians and promoting Christianity.” Through 1807, Congress made several treaties with various Indian tribes, including provisions from the federal treasury for either Catholic or Protestant missionaries to them.

Christian verbiage also filled civil documents of the day. Samuel Adams opened his Last Will and Testament with the words: “Principally, and first of all, I resign my soul to the Almighty Being who gave it, and my body I commit to the dust, relying on the merits of Jesus Christ for the pardon of my sins.” George Mason, known as the “Father of the Bill of Rights” for his insistence that amendments be added to the Constitution to curb federal power, wrote in his will, “My soul, I resign into the hands of my Almighty Creator ... humbly hoping from His unbounded mercy and benevolence, through the merits of my blessed Savior, a remission of my sins.”

That the new country promoted Christian morals was also evident in its public laws. For example, despite its modern institutionalization, “Sodomy was a criminal offense at common law and was forbidden by the laws of the original 13 states when they ratified the Bill of Rights,” wrote Chief Justice Warren Burger in 1986. “In fact, until 1961, all 50 states outlawed sodomy... provid[ing] criminal penalties for sodomy performed in private and between consenting adults.”

Cohabitation offers another illustration. The Sexual Revolution of the 1960s legitimized this practice — once considered a reprehensible vice. In an 1889 Supreme Court case condemning polygamy, Justice Stephen Field also warned that, should a man and woman live together outside of marriage, “swift punishment would follow ... and no heed would be given to the pretense that [they] could be protected” by the Constitution. He noted that freedom “shall not be construed to excuse acts of licentiousness.”

Yet even in 19th-century America there was pushback against legislating morality. In 1854, the House Judiciary Committee cautioned against licentious behavior, noting that Christianity “must be considered



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as the foundation on which the whole structure [of the United States] rests.... There can be no substitute for Christianity.... That was the religion of the founders of the republic, and they expected it to remain the religion of their descendants. There is a great and very prevalent error on this subject in the opinion that those who organized this Government did not legislate on religion."

Fewer than 100 years later, that error went on the offensive by way of an unprecedented Supreme Court ruling that redefined the Establishment Clause and bound states under it for the first time in history. The 1947 case *Everson v. Board of Education* introduced the novel concept: "The First Amendment has erected 'a wall of separation between church and state.' That wall must be kept high and impregnable."

The court took its referenced quote out of context from an obscure letter written by President Thomas Jefferson in 1801 to the Danbury Baptist Association in Connecticut, answering their concerns about a rumor that Congress was preparing to establish the Congregationalist denomination as a national religion. Jefferson wrote back with assurances that churches were protected from government control by the First Amendment, and offered the metaphor of "a wall of separation between church and state." Absolutely nothing in Jefferson's message conveyed hostility toward religion, or that states should be bound by the Establishment Clause. But that is exactly how the Court applied his wording. Thus, from a simple missive with no force of law sprang the nefarious phrase which, from that point, courts began to cite so often that in 1958, New York Supreme Court Judge Elbert T. Gallagher complained that people were going to think it was part of the Constitution. Associate Justice William Rehnquist further protested in 1985, "The establishment clause had been expressly freighted with Jefferson's misleading metaphor for nearly forty years.... There is simply no historical foundation for the proposition that the framers intended to build a wall of separation.... Recent court decisions are in no way based on either the language or intent of the framers."

Today, "separation of church and state" is routinely used as an excuse to rob America of its godly heritage, and a once-beneficent government is now fanatically hostile to the religion of its Founders. It is forbidden to pray in schools, to display the 10 Commandments in public buildings, and even to fly the Christian flag at city hall on Constitution Day. What would the Founders say about all this? The Father of this Country and our first president, George Washington, wrote an effective reply to that question in a letter dated March 11, 1792:

I am sure that never was a people, who had more reason to acknowledge a Divine interposition in their affairs, than those of the United States; and I should be pained to believe that they have forgotten that agency, which was so often manifested during our Revolution, or that they failed to consider the omnipotence of that God who is alone able to protect them.

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