



LIBERTY TREE

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JEFFERSON'S WALL

By Dick Greb

As all Americans should know, the Constitution ratified in 1789 established the government of the United States that continues to this day. That government is one of delegated powers, such powers being delegated to it in the Constitution itself. It has no authority to act outside of those delegated powers, and every time that it does so act, it violates the Constitution. The founding fathers expounded on the limited nature of the federal government's authority in order to encourage ratification of the Constitution.¹ Yet, despite these assurances, there were still those who harbored some distrust of the proposed government. As explained in the preamble to the Bill of Rights: "The conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order **to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: ...**"

These restrictive clauses, having become a part of the Constitution, now provide for additional protections from an overreaching government. Not only is the government limited by way of the delegation of its powers, but the Bill of Rights protects vital liberties from infringement, even in the exercise of those enumerated powers. James Madison referred to this aspect of the protections embodied in the Bill of Rights, in his discussion of them in the House of Representatives on June 8, 1789:

It has been said, [by way of objection to a bill of rights,] that in the Federal Government they are unnecessary, because the powers are enu-

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ...

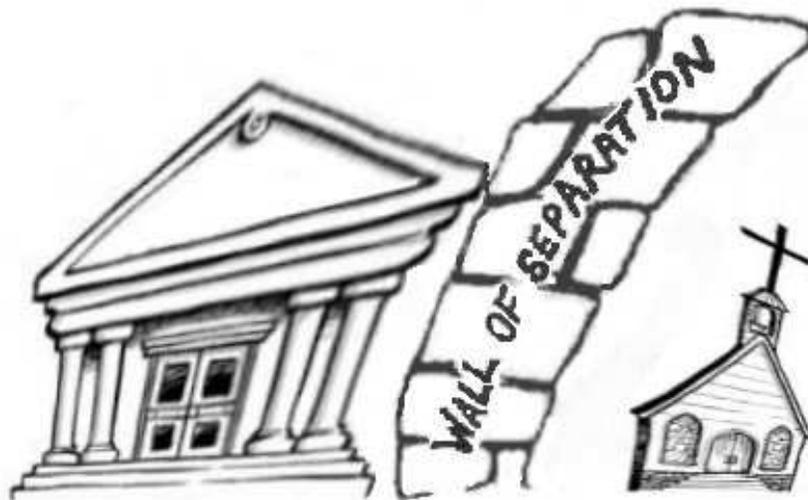
1ST AMENDMENT TO THE U.S. CONSTITUTION

merated, and it follows, that all that are not granted by the constitution are retained; that the constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, ...²

Madison's example of this was the use of general warrants in the collection of taxes. My own example would be the right to keep and bear arms. Even though the government has been delegated no power to restrict ownership of guns, they do so anyway under

their power to "regulate commerce." But since the 2nd Amendment must be given effect along with Article I, §8, any regulation of commerce must be accomplished without infringing the right of the people to keep or bear arms. If only the Supreme Court (as well as the rest of government) would

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1. See for example *Federalist Paper* #39: "In this relation, then, the proposed government cannot be deemed a NATIONAL one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects."
2. *Gales & Seaton's History of Debates in Congress* ("Annals of Congress"), Vol. 1, p. 455 (all references herein to the *Annals* are in Volume 1).

... the legitimate power of civil government extends no further than to punish the man who works ill to his neighbors.

— DANBURY BAPTIST ASSOCIATION

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honor their oaths to uphold the Constitution.

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

A WALL BETWEEN CIVIL AND ECCLESIASTICAL JURISDICTIONS

And so it is with the religious liberty expressed in the 1st Amendment. Even though the federal government was not given any powers to legislate in religious matters, the people thought it necessary to explicitly prohibit it from interfering with their freedom of conscience just to be safe. But what was the nature of this religious liberty they sought to protect? In 1878, the Supreme Court, construing this amendment in *Reynolds v. U.S.*, 98 U.S. 145, referred to a letter written by Thomas Jefferson in 1802, replying to the Danbury Baptist Association. This association was in Connecticut, where Baptists were forced to play second fiddle to the state-supported Congregationalist denomination. Their letter to Jefferson said, in part:

Our sentiments are uniformly on the side of religious liberty — that **religion is at all times and places a matter between God and individuals** — that no man ought to suffer in name, person, or effects on account of his religious opinions — that **the legitimate power of civil government extends no further than to punish the man who works ill to his neighbors**. ... Sir, we are sensible that the president of the United States is not the national legislator, and also sensible that **the national government cannot destroy the laws of each state**; but our hopes are strong that the sentiments of our beloved president, which have had such genial effect already, like the radiant beams of the sun, will shine and prevail through all these states and all the world, till hierarchy and tyranny be destroyed from the earth.

These men recognized that Jefferson could not directly help their situation. They wrote to congratulate him on his election as president, and to express their hopes that his endorsement of religious liberty, such as was established with his help in Virginia,³ would ultimately help convince their fellow Connecticut citizens to reject the idea of using the force of the civil government to give preference to one denomination over another. In his response, Jefferson makes the comment that has now come to be the standard for those who want to prevent religious expression of any kind:

Believing with you that religion is a matter which lies solely

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.

Justice Waite, writing for the majority in *Reynolds*, quotes Jefferson’s letter and concludes: “Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were *in violation of social duties or subversive of good order*.”⁴ And yet, there are other expressions of the meaning of this provision which are closer to being “an authoritative declaration” of its scope and effect, coming as they do from members of Congress debating the amendments.⁵

Madison, who drafted the text of the original amendment offered in the House, spoke directly on this point. “Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and **enforce the legal observation of it by law**, nor **compel men** to worship God in any manner contrary to their conscience.”⁶ Madison had earlier expounded on this in *Memorial and Remonstrance against Religious Assessments* (1785), where he said:

Religion or the duty which we owe to our Creator and Manner of discharging it, can be directed only by reason and conviction, not by force or violence. ... It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. ... We maintain therefore that in matters of Religion, no man’s right is abridged by the institution of Civil Society, and that **Religion is wholly exempt from its cognizance**.

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3. See “An Act for establishing religious Freedom,” which he drafted, at <http://www.pbs.org/jefferson/archives/documents/ih195802z.htm>

4. Of course, this opinion creates the problem of who gets to decide one’s social duties and what is subversive of good order, especially when it comes to actions based on someone’s religious beliefs. For example, who decides whether it is subversive of good order to proselytize the unsaved with the Gospel of Jesus Christ, or to preach in public against abortion or homosexuality?

5. Justice Rehnquist, dissenting in *Wallace v. Jaffree*, 472 U.S. 38 (1985), presents an interesting exposition on “wall of separation” jurisprudence.

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The thrust of these statements concerns the use of legal force. This is the nature of Jefferson's "wall of separation." It is a wall between civil and ecclesiastical jurisdictions, if you will. It's wrong to use the force of government to compel men to profess, adhere to, or otherwise to support any religious belief or practice. Jefferson goes as far as to say "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."⁷ In *Remonstrance*, Madison reminds us to see the consequences in the principle, and thus avoid the consequences by denying the principle. In arguing against "A Bill establishing a provision for Teachers of the Christian Religion," he writes: "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?" Indeed, what would stop them from establishing some religion other than Christianity?

On the other hand, it's also tyrannical to use government's force to prevent any man from discharging his duties to God in the manner he deems right and proper. This is the side of the wall that government ignores today, virtually unchecked. In its supposed quest to eradicate all "establishments" of religion, the government instead is working towards the eradication of religion itself. And that is precisely what some Congressmen predicted all the way back in 1789. New York Representative Peter Silvester, making the first comment about the proposed amendment, "feared that it might be thought to have a tendency to abolish religion altogether." Connecticut Representative Benjamin Huntington agreed, fearing "that the words might be taken in such latitude as to be extremely hurtful to the cause of religion." He "hoped, therefore, the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, **but not to patronize those who professed no religion at all.**"⁸

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TESTING FOR TRUTH AT OKTOBERFEST



ANNAPOLIS — Liberty Works Radio Network exhibited once again at Oktoberfest on October 3rd. Festival-goers were encouraged to take an 11-point civics quiz to test their basic knowledge of the Constitution and law. The quiz opens people up to discussing the principles of Liberty one-on-one.

The booth seemed to elicit stronger reactions in attendees than in any previous year. Many were receptive, clearly worried about the overreaching of government, and glad to see LWRN's focus on taking America back for the people.

But the festival also attracts those who depend on the existing regime for their living. Several passers-by were overheard calling LWRN members "nutcases" and "crazy people." One government-trained lawyer and professor was so incensed by the civics quiz that he gruffly stomped off before completing half. Even a hint of the truth hurts!

Two men, about 20 years old, took the quiz together, and their reactions provide a glimpse of the deep split in the American psyche. As the answers were given, a pained expression crossed one's face: "I don't think I should be listening to this. ... This feels bad. I'm in the military, and this sounds anti-government." The staff member explained that LWRN and SAPF are not against government; instead, members want government officials to obey the law, and want Americans, especially military personnel, to understand the law. This failed to convince. But even as he abruptly left, his friend said: "I'm not leaving. I think this is important, and I want to learn as much as I can, so keep going."

Never give up. Oktoberfest taught us once again that receptive and teachable Americans who care about our freedom ARE out there, and that's why Liberty Works Radio Network exists.



6. Madison's original draft: "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." (*Annals*, p. 451.) The amendment as it came out of committee for debate by the House read: "no religion shall be established by law, nor shall the equal rights of conscience be infringed."

7. *Act for establishing religious Freedom*.

8. These representatives' and Madison's quotes pertaining to the debate over the 1st Amendment can be found in *Annals*, pp. 757-758.

NO LEGAL COMPULSION FOR OR AGAINST RELIGIOUS PRACTICE

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When Madison argued against the employment of chaplains for Congress, he argued that “the law appointing Chaplains establishes a religious worship for the national representatives, to be performed by Ministers of religion, elected by a majority of them, and these are to be paid out of the national taxes.” He goes on: “If Religion consist in voluntary acts of individuals, singly, or voluntarily associated, and it be proper that public functionaries, as well as their Constituents should discharge their religious duties, let them like their Constituents, do so at their own expence. How small a contribution from each member of Congress would suffice for the purpose? How just would it be in its principle? How noble in its exemplary sacrifice to the genius of the Constitution, and the divine right of conscience?” So, Madison obviously didn’t believe the Constitution prohibited prayer, even in the seat of the legislature, only that enacting laws which prescribed prayer (or any other type of worship), and paid for it out of public funds, violated the amendment.

The bottom line is that *laws* are what are prohibited by the amendment; that is, legal compulsion for or against religious beliefs and practices. Congress has no more power to enact legislation proclaiming the United States to be a Christian nation as it does to proclaim it a Catholic one, or a Baptist one, or even a Muslim one. Likewise, it has no power to restrain anyone from praying anywhere, at any time whatsoever. Psalms 34:1 says, “I will bless the Lord at all times; his praise shall continually be in my mouth,” and Psalms 103:22 says, “Bless the Lord, all his works in all places of his dominion: bless the Lord, O my soul.” Thus, the Bible teaches that it is right to praise God in all places and at all times. Any effort by the government to use force (such as imprisonment or threat thereof) to prevent such expressions of one’s religious duty is as much an assault on religious liberty as is forcing them to follow the tenets of some other religion.

Government doesn’t establish a religion by allowing prayers in schools or in federally owned buildings, or anywhere else, but it does by mandating them, or by forcing anyone to pay for it through enforced exactions. The same goes for any law that would favor one religion over another, whether through special exemptions, appropriations of public funds, or any other

means of creating any legal inequality between them. The fact is that Christianity has no need of government support. As Madison aptly said in *Remonstrance*:

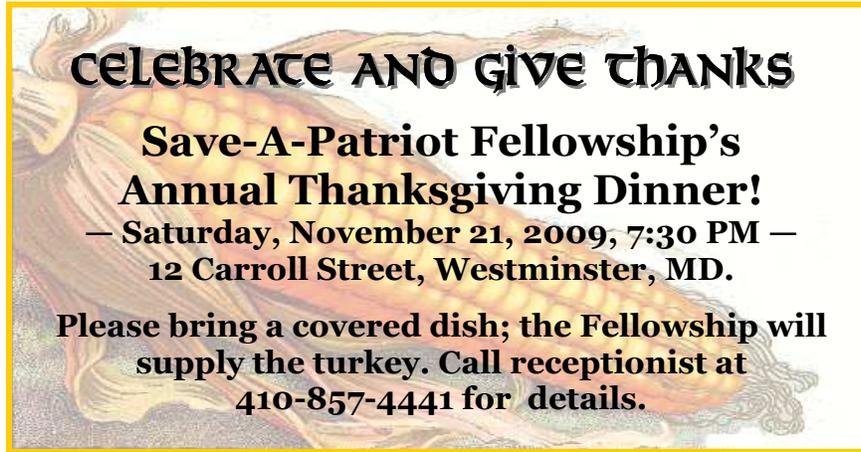
[To say that the Christian Religion needs government support] is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world. It is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence. ... It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

Along those same lines, Jefferson, in Virginia’s *Act for establishing religious Freedom*, said:

[T]ruth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

On an even playing field, truth will prevail; lies and false doctrine, on the other hand, cannot. It is the latter that must fear from the conflict, and so hobbling the spread of truth is its only chance. Can this, then, be what’s behind the government’s malevolent attitude towards Christian evangelism and prayer? Is it an attempt by Satan’s iniquitous workers in positions of power to prevent another Great Awakening, and the healing of our nation? Remember, 2 Chronicles 7:14 tells us: “If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then will I hear from heaven, and will forgive their sin, and will heal their land.”

To live up to the ideal he envisioned, Jefferson’s wall of separation has to guard against infringements of both aspects of our religious liberty — establishment, and *free exercise*. But, instead we have an outright assault on our free exercise, and so, we move farther away from that liberty, and that much closer to tyranny. It’s way past time to start moving back the other way.



CELEBRATE AND GIVE THANKS
Save-A-Patriot Fellowship's
Annual Thanksgiving Dinner!
— **Saturday, November 21, 2009, 7:30 PM** —
12 Carroll Street, Westminster, MD.
Please bring a covered dish; the Fellowship will
supply the turkey. Call receptionist at
410-857-4441 for details.

