

# ★ The First Amendment ★

## **Purpose**

Students will examine the freedoms and rights provided for in the First Amendment.

## **Objective**

The student will explore activities in which he or she participates daily that are guaranteed under the First Amendment.

## **Theme-Unity**

The First Amendment to the Constitution was written to provide for unity among the people and to prevent the persecution and disharmony that occurred when the king supported only one religion.

## **NCSS Standards**

Ia. analyze and explain the ways groups, societies, and cultures address human needs and concerns.  
IIf. apply ideas, theories, and modes of historical inquiry to analyze historical and contemporary developments, and to inform and evaluate actions concerning public policy issues.  
Vd. identify and analyze examples of tensions between expressions of

individuality and efforts used to promote social conformity by groups and institutions.

Vg. analyze the extent to which groups and institutions meet individual needs and promote the common good in contemporary and historical settings.

IXf. analyze or formulate policy statements demonstrating an understanding of concerns, standards, issues, and conflicts related to universal human rights.

Xb. identify, analyze, interpret, and evaluate sources and examples of citizens' rights and responsibilities.

## **Time**

60 minutes

## **Materials**

- ★ American Heritage handouts
- ★ Dictionaries & Art Supplies
- ★ National News Magazines
- ★ First Amendment Supreme Court decisions
- ★ "School House Rocks" song
- ★ Website - [www.americanheritage.org](http://www.americanheritage.org)

## **Preparation**

- ★ Copy handouts
- ★ Gather supplies (as needed).

## **Focus**

Students list their rights as citizens as expressed in the Bill of Rights and where they learned about these rights. Remind them of the video infomercial, "School House Rocks," and how their sources of information might have been from television. The teacher may discuss any of the other rights. Show or play Bill of Rights song from "School House Rocks." Discuss. Evaluate and think about our rights and how they affect our lives.

## **Activity**

1. Introduce the terms and readings associated with the First Amendment. Review main points and significance of rights addressed. Discuss and answer questions. What do they mean? (See Links page on [www.americanheritage.org](http://www.americanheritage.org) for additional resources on the First Amendment.)
2. Divide class into groups and pass out supplies to each group. Each group will create a collage displaying the rights the First Amendment guarantees them. Share and discuss.
3. Students review court cases examining First Amendment freedoms. What is the meaning of separation of church and state? Why is it important? What are examples representing the action, benefit, and possible misinterpretation of this idea? What about freedom of press, etc.?

# The First Amendment—Religion Clauses

## Historical Background

**AMENDMENT I:** *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.*

### Early Roots for a Bill of Rights and Religious Liberty— “Toleration”

Many of the colonists settling in the New World during the seventeenth and eighteenth centuries were refugees from religious oppression. Puritan, Catholic, Quaker, and other dissenters who emigrated to the Colonies had often suffered bitterly at the hands of the law—“Ruler’s Law.” Upon arrival in America, the religious dissenters tended to be particularly sensitive to the threat of ecclesiastical and judicial tyranny. Whenever they had the opportunity, they sought to protect their civil and religious liberties through legal codes—man-made laws protecting themselves from government. These early codes established a tradition of “bills of rights” in America that eventually led to the Bill of Rights, the first ten Amendments to the U.S. Constitution.

Early bills of rights were deeply influenced by the principle of a “higher” or fundamental law that the religiously persecuted maintained came from God. They argued that man is called by God to obey a higher law than men can make. This further led them to believe that no magistrate had the power to deny this “higher law” to the people.

The Puritans were the first English Protestants to adopt this revolutionary creed—and they suffered for their disobedience. When they arrived in Massachusetts Bay, the Puritans were determined that the civil government would not subvert their fundamental religious freedom.

#### **dissenters**

The refusal to conform to the authority or doctrine of an established or national church, esp., a Protestant who differs with the Church of England

#### **ecclesiastical**

Of or pertaining to a church, esp., as an organized institution

### Quotations Regarding “Religious Toleration”

“At length, sailing from this place [England], we reached the *cape*, which they call *Point Comfort*, in Virginia, on the 27th of February, full of apprehension . . . . On the day of *the Ascension of the Most Holy Virgin Mary* in the year 1634, we celebrated the mass for the first time, on the island. This had never been done before in this part of the world.” (italics in the original)

**Fr. Andrew White, S.J., “English America’s First Mass,”  
Gaustad, *A Documentary History*, pp. 113-14**

“That there is such a thing as conscience, and the liberty of it, in reference to faith and worship towards God, must not be denied, even by those that are most scandalized at the ill use some seem to have made of such pretenses.”

**William Penn, “Liberty of Conscience,”  
Gaustad, *A Documentary History*, p. 119**

Although the Puritans disliked the established Church of England, it was the *nature* of the established religion, not the fact that it was established, that they deplored. When the opportunity arose in the Colonies, these Puritans established their own faith and persecuted all others—once again becoming a government over man. Interestingly, few of the first colonists valued the principle of “religious toleration.”

Others persecuted, such as the Quakers, suffered far worse than the Puritans for their beliefs. Although they had “no ministry, no sacraments, no liturgy, no structure, no weapons,” a number of unusual practices—greetings of “thee” and “thou,” honoring neither man nor law, and taking no oaths against their conscience—made them obvious targets for persecution in an age of intolerance. Hundreds of Quakers, including William Penn, suffered trial and imprisonment for exercising their religious beliefs. When Penn set out to frame the government and laws of Pennsylvania, he was careful to include a fully developed bill of rights.

In 1636, Penn issued “A Persuasive to Moderation to Church Dissenters in Prudence and Conscience,” wherein he pleads against the prejudices of the times.

“Penn’s Holy Experiment [Pennsylvania, a Quaker refuge] rested upon the conviction that men and women were not to be coerced in matters of religion, for true religion flourished best where force was found least. . . . —he continued to argue that religious persecution was a costly as well as a bloody business” (Edwin S. Gaustad, ed., *A Documentary History of Religion in America: to the Civil War*, William B. Eerdmans Publishing Company, Grand Rapids, 1982, p. 119).

Catholics were the most despised religious group in English society. Toleration was soon established by Lord Baltimore in Maryland, which was initially a refuge for Catholics. Knowing that not enough Catholics would come to establish the new Colony and that others would come, Baltimore made religious liberty and toleration a basic part of Maryland’s civil law.

“Recognizing their minority status, Catholics under Baltimore invited Protestants to settle there; in 1649, the former even passed an ‘Act of Toleration’ to guarantee religious liberty to such Protestants. Unhappily, when Protestants later seized control of the colony, similar guarantees were not extended to Catholics” (Gaustad, *A Documentary History*, pp. 112-13).

The first Colony to establish religious tolerance was Rhode Island.

### **Quakers (Society of Friends)**

Seemed to the vast majority of their seventeenth-century English countrymen an example of religion gone mad. They originated in England in 1651 under the ministrations of George Fox. When the opportunity came in 1681 to establish a refuge in the New World, William Penn seized the opportunity and founded Pennsylvania.

### **sacraments**

Formal Christian rites, such as baptism, esp., one considered to have been instituted by Jesus as a means of grace

### **liturgy**

The prescribed form for a religious service; ritual

### **oaths**

A declaration or promise to act in a certain way, made with God as witness

“Massachusetts saw itself as pursuing a grand ‘errand into the wilderness,’ creating there a model community and a pure church. *No one* was to be allowed to frustrate that errand. When some tried, they were either exiled (Roger Williams in 1635, Anne Hutchinson in 1638) or hanged (four Quakers in Boston, 1659-61). Roger Williams, exiled for contending that the puritans must separate themselves from the impure Church of England and must separate their civil from their ecclesiastical estates, left Massachusetts to found Rhode Island in 1636. That beleaguered little colony was to become a religious refuge for religious liberty, with Williams himself continuing to be (for nearly half a century) that liberty’s leading advocate” (Gautstad, *A Documentary History*, p. 114). (italics added)

### **Anne Hutchinson**

A Massachusetts dissident. Because she was a threat to the local ministers for claiming that only grace gained by faith brought salvation, an idea called Antinomianism, they brought charges against her claiming her a threat to local ministerial authority. She was first exiled and then excommunicated. After initial jailing, Hutchinson fled with her husband and seven children to Williams’ Rhode Island and founded a new settlement.

## **Early American Roots for the “Separation of Church and State”**

The origins, development, and practice of “separation of church and state” in the New World during the seventeenth and eighteenth centuries are important for at least two primary reasons. First, the practice of “separation” was an anomaly in that this had never occurred in England, in other European countries, or on any other continent. These institutions, church and state, had usually been mutually supportive, except when one attempted to control the other. Countries having “established churches,” that is, churches approved of, sponsored, funded, and protected, *to the exclusion of others*, by the host government, always demanded sworn allegiance to the national church. The radical American “experiment” became something much different.

And second, Supreme Court decisions to this day are supposed to reflect and interpret the *intended meanings* of statements and extant documents including letters, pamphlets, the Constitution with the Bill of Rights (the first ten Amendments) of the “Founding Fathers” and “Framers” and other eminent earlier men, laws of the individual states, and the “customs of the people.” Following the establishment of earlier Supreme Court decisions, the Court Justices, interpreting the above tradition and law, then began to place a much stronger emphasis on “precedence”—previous Court decisions.

### **extant**

Still existing, such as documents

Further, the concept and convention of the “separation of church and state” had its beginnings in colonial America long before the Founding Fathers penned the Constitution and the Bill of Rights in the late eighteenth century. But it was usually rejected as heretical or as the wailing of nonconforming dissidents such as Roger Williams.

Paradoxically, many of those who had fled Europe and come to America to escape the established and intolerant religions believed deeply that it was natural for religion and state to embrace each other. They established institutional relations much like those they had left behind, including religious intolerance. The church and state were likewise intertwined in the new American Colonial settlements. With few exceptions (such as Penn and Baltimore, noted above), those that fled European persecution were no more tolerant of religious dissenters than those from whom they had fled. These dissenters were seen as heretical—a threat to both the state and religious orthodoxy—and were shunned, banished, and/or excommunicated. The result was that established churches became the norm in early colonial British America.

But America’s religious history is not quite so simple. Although establishment was the standard practice, there were aberrations. The first was that brought about by Roger Williams. He had accepted an appointment as minister at the Puritan Boston Church. He then immediately admonished church members that there must be a radical separation between the church and the material world. He had little success in Boston. Williams thought that he might fare better at Plymouth because these Puritan “separatists” (Pilgrims) had stressed and adhered to an *absolute* separation from the Church of England. He discovered upon arrival that the Pilgrim separation was not as clear-cut as he had thought. Williams retreated back to Massachusetts.

For the next two years, Roger Williams was in one predicament after another with the General Court in Boston. For Williams, the difference between the church and the world was absolute, one pure, one impure, with every part of worship kept separate from the world. He was so uncompromising about the principle of separation that he was deemed a liability and threat to the civil order. This threat could not be tolerated. Boston pastor John Cotton voiced thoughts of various colonial authorities regarding Williams, and referred to Williams’

“violent and tumultuous disposition; his condemnation of the Puritan State—Church system; his conscientious objection to certain oaths; his statement that the civil authorities had no power to

**heretical**

Of, or relating to, an opinion or doctrine at variance with established religious beliefs

**excommunicated**

Excluded from membership in a church by ecclesiastical authority

enforce the religious injunctions of the ten commandments;" (Anson Phelps Stokes, *Church and State in the United States*, Harper & Brothers, New York, 1950, p. 195).

After being charged and confronted by the General Court, Roger Williams responded with his own opening salvo and charged that when God's people open

"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 . . . and made his garden a wilderness, as at this day. And that there fore if He will eer please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world . . ." (John Eidsmore, *Christianity and the Constitution: The Faith of the Founding Fathers*, Baker Books, Grand Rapids, p. 243). (italics added)

He further told the Court, more pointedly Rev. John Cotton, that the whole of the dispute was that they had "allowed the world to invade and corrupt the church." Roger Williams was ordered exiled from the New World and back to England.

After banishment on October 9, 1635, Roger Williams slipped away and founded a new colony, Providence (Rhode Island). He wanted a colony which would shelter all "distressed in conscience"; Although Williams' authority for the doctrine of "separation of church and state" was based on various biblical texts, Cotton Mather, another Bay Colony minister, nevertheless claimed that Williams was the "first rebel against the divine church-order established in the wilderness [Colonial America]."

Williams' theory of the church was that of a "voluntary association" and in which civil government, which rested on the consent of the people, ought only concern itself with civil affairs because any attempt by the state to force uniformity of religion caused civil wars. For him, *religious liberty and freedom of conscience had never been surrendered to the state but was something retained by the people when they formed their government—not a gift of the government*. And regardless of the fact that reactionary contemporaries referred to Williams' colony of Rhode Island as "Rogues Island," history has recorded his vital contribution to American freedom (Eidsmore, pp. 196-97).

For Williams, the chief function of the State was the protection of the individual in all his natural and civil rights and

liberties. Williams thought that the realms of Church authority and State authority belonged in, and must remain in, two separate spheres: "All Civill States with their Officers of justice in their respective constitutions and administrations are proved essentially Civill, and therefore not Judges, Governors or Defendours of the Spirituall or Christian State and Worship" (Eidsmore, pp. 196-97). Roger Williams was the most radical and critical intellect in the early Colonies. He was the first to found a colony upon the principle of "separation of church and state."

Regardless, 140 years later at the beginning of the American Revolution in 1776, nine of the thirteen colonies had "established" churches. The Anglican Church had been first established in the New World in Virginia in 1609, later in New York's lower counties in 1693, in Maryland in 1702, in South Carolina in 1706, and nominally in North Carolina and Georgia in 1711 and 1758, respectively. The Congregational Church was established in Massachusetts, Connecticut, and New Hampshire upon settlement.

But a new mood was developing by the time of the Constitutional Convention in Philadelphia in the summer of 1787. Eleven years later, only five states still retained religious "establishment": Connecticut, Georgia, Massachusetts, New Hampshire, and South Carolina. The Anglican Church had been disestablished in Virginia, New York, and North Carolina during the Revolutionary War and then in Maryland in 1786. The continuing elimination of established churches after ratification of the Federal Constitution in 1789 culminated in the disestablishment of the Anglican Church in Georgia in 1789 and the Congregational Church in Connecticut in 1818, in New Hampshire in 1819, and finally in Massachusetts in 1833, the last hold-out (Richard B. Morris, *The Encyclopedia of Modern History*, Harper and Row, New York, Bicentennial Edition, 1976, p. 82).

After two hundred years of "established" churches in America, with the first in Virginia in 1609 and for those claiming a "separation of church and state," beginning with Rhode Island in 1636, the nation was free of formal establishment of religion, and liberty of conscience was in place. Or was it?

### **Anglican Church**

The Church of England and the churches in other nations that are in complete agreement with it as to doctrine and discipline and are in communion with the Archbishop of Canterbury

### **Congregational Church**

The autonomous churches formed in New England by the non-separatist Puritans who sought to reform the Church of England

## **Additional Reading**

- ★ Ball, William Bentley. *Mere Creatures of the State?: Education, Religion, and the Courts: A View from the Courtroom*. Notre Dame, IN: Crisis Books, 1994.
- ★ Curry, Thomas J. *The First Freedoms: Church and State in America to the Passage of the First Amendment*. New York: Oxford University Press, 1986.
- ★ Gaustad, Edwin. *Liberty of Conscience: Roger Williams in America*. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1991.
- ★ Goldwin, Robert A. *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution*. Washington, D.C.: The AEI Press, 1997.
- ★ Lowenthal, David. *No Liberty for License: The Forgotten Logic of the First Amendment*. Dallas: Spence Publishing Company, 1997.

## Purpose of Amendments

Because of the opposition to the adoption of the Constitution by anti-Federalists, several states proposed amending the document to better protect the states as well as individuals from the incursions of the newly proposed centralized federal government. The people were frightened and suspicious of new and untried national control. This anti-Federal sentiment was particularly strong in Rhode Island. This state did not bother to send a delegate to the Constitutional Convention.

The Rhode Island government refused to call for a ratifying convention until the spring of 1790, more than one year after the Federal government had begun operating in New York. As citizens of the smallest state, Rhode Island saw little advantage in a consolidated government in which the views of the larger states would naturally dominate. But its chief objection was the lack of a “bill of rights.” When the state government finally called for a ratifying convention, several amendments were attached. Protection of the right of religious liberty was most prominent among the other proposals. Rhode Island finally ratified the U.S. Constitution and became the last of the original thirteen states to enter the Union.

Thus, ten additional Articles were drafted, debated, and eventually adopted. They became the first ten Amendments to the Constitution and were finally ratified on December 15, 1791. We will examine the First Amendment, in part.

## Article I (First Amendment—Religion Clauses)

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

The American civil “experiment” is indeed radical. Its citizens have not only created a democratic republic but have built into the Constitution through the First Amendment not only freedom of religion but freedom from religion. Eventually the Supreme Court gave a title to each of these clauses—“The Establishment Clause” and “The Free Exercise Clause.”

The Court has made some dramatic decisions during these past five decades, since its decision in *Everson v. Board of Education* (1947). Lawyers, educators, jurists, and others have written many volumes about the first sixteen words of Article I and the Court’s interpretations.

**Note:** Because of the breadth and depth of work, especially by the Supreme Court, this discussion regarding the “Religion Clauses” of the First Amendment can be divided into three parts as follows:

- Part I      The “wall of separation between church and state”
- Part II     The Establishment Clause
- Part III    The Free Exercise Clause

A discussion of Part I is included here.

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## The “wall of separation between church and state”

This phrase is so common that it is usually thought to be part of the First Amendment. This phrase is found nowhere in the U.S. Constitution. The Supreme Court has so often used this phrase and attributed it to Thomas Jefferson that many Americans think they know its origin and meaning. There are at least three different meanings for this phrase: the Supreme Court’s, Thomas Jefferson’s, and Roger Williams’.

The Supreme Court has explained in part:

“[It] means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbelief, for church attendance or nonattendance. No tax, in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state or the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. *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.” . . . That wall must be kept high and impregnable. We could not approve the slightest breach*” (*Everson v. Board of Education*, 330 US 1, 91 L ed 711 (1947), pp. 15-16). (italics added)

In this case, the Court has taken only a few words of Jefferson’s—keeping them out of context—and twisted this short phrase to mean something entirely different than what he intended or would have imagined. These words were taken from a once obscure letter written in 1802 by Jefferson to the Danbury Baptist Church. This letter was written to inform the Baptists that he would not proclaim a national church, imposing it on the citizenry. Jefferson used language that he knew they would be familiar with, the words of the first American Baptist Roger Williams:

“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 . . . and made His garden a wilderness, as at this day. And that there fore if He will eer please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world . . .” (Eidsmore, p. 243). (italics added)

Seventy years before the *Everson* (1947) decision, in *Reynolds v. United States* (1878), the Supreme Court used this same letter to support an *opposite* decision. The Court claimed that Jefferson’s letter made it clear that he was not claiming a strict “separation of church and state.”

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“Using Jefferson’s letter, the Court showed that while the government was *not* free to interfere with opinions on religion, which is what frequently distinguishes one denomination from another, it *was* responsible to enforce civil laws according to general Christian standards. In other words, separation of church and state pertained to denominational differences, not to basic Christian principles” (David Barton, *The Myth of separation: What is the correct relationship between Church and State?*, WallBuilder Press, Aledo, Texas, 1992, p. 43). (emphasis in the original)

There are still other reasons to believe that Thomas Jefferson was not a strict-separationist, and therefore his meaning for the “wall of separation” is different than that of the Supreme Court that ruled for complete separation. Another part of his letter states:

“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 . . . ” (Merrill D. Peterson, ed., “Reply to the Danbury Baptist Association, in Connecticut, January 1, 1802,” *The Political Writings of Thomas Jefferson*, Thomas Jefferson Memorial Foundation, 1993, p. 145).

In an earlier document written by Jefferson, *Kentucky Resolutions*, he stipulates that the U.S. Constitution delegates “no power over the freedom of religion” and that the First Amendment guards the freedom of religion” (Peterson, “Draft of the Kentucky Resolutions (1798),” p. 127).

In a later letter to Reverend Samuel Miller, January 23, 1808, Jefferson claims that the federal government is prohibited by the Constitution from “intermeddling with religious institutions, their doctrines, disciplines, or exercises.” His argument is against a nationally prescribed “day of fasting & prayer”:

“But it is only proposed that I should *recommend*, not prescribe a day of fasting & prayer [Jefferson was the President of the U.S.]. That is, that I should *indirectly* assume to the U.S. an authority over religious exercises which the Constitution has precluded them from” (Peterson, “Religious Freedom,” p. 159). (italics in original)

But it was not only Jefferson that thought that the *church was to be protected* from the government. Others did not view the “separation” as the contemporary Supreme Court does. To wit: the armed forces have always had chaplains, “In God We Trust” is still on all U.S. currency, “One nation under God” is still a part of “The Pledge of Allegiance,” and every session of Congress is opened with prayer. Even at the beginning of the Constitutional Convention, *five hours* of prayer came first.