
INTRODUCTION

U.S. Constitution, 1st Amendment

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

KEY PRINCIPLES/THEMES

Importance of Religious Freedom:

- Political Arguments:
 - Prevents violence between different groups
 - Useful for political communities (societies that respect religious freedom tend to do better)
- Theological Arguments:
 - Government should not interfere with something that is above it
 - Faith cannot be coerced; it must be freely accepted

Two Theories for Religious Freedom:

- Equality-Based Theory: The government only needs to treat people the same.
 - Under this view, religious freedom is mainly about non-discrimination
 - E.g., neutrality
- Liberty-Based Theory: The government needs to ensure that all groups can exercise their faith.
 - Under this view, it's not enough to just treat everyone the same
 - The government sometimes needs to affirmatively help or exempt certain groups

Relationship Between The Clauses:

- In Tension: Some view the Establishment Clause and the Free Exercise Clause as conflicting
 - Under this view, the Establishment Clause is the “anti-religion” clause and Free Exercise is the “pro-religion” clause
- In Tandem: Some view the Establishment Clause and the Free Exercise Clause as both protecting religion
 - Under this view, the government is prohibited from establishing religion, which benefits religion, and is also prohibited from infringing free exercise.
- Unrelated: Some view the two clauses as two different topics altogether
 - Under this view, the Free Exercise Clause is *our right* to religious freedom, and the Establishment Clause is *the government's obligation* that it has to follow—not a right we have.

Considerations for Interpreting the First Amendment:

- What is religion?
 - Is “religion” in the Establishment Clause different from the Free Exercise Clause?
- What is the “establishment of religion”?
 - The relationship between the religious bodies and the government?
 - The institutional legal arrangements of the government and church?
- What does “respecting” mean?
 - Anything to do with religion, especially in the states?
 - Anything creating religion?
 - Anything benefitting religious groups?
 - “Tending toward”?
 - I.e., It can't do anything that puts us on a slippery slope

- What does “prohibiting the free exercise” mean?
 - “Exercise” seems to mean more than just “belief”
 - This doesn’t say freedom of conscience or belief
 - It also doesn’t say prohibiting religious worship
 - A lot of governments around the world use these terms
- What does “make no law” mean?
 - Government does more than just make laws
 - E.g., funding, government speech, etc.

WHAT IS RELIGION?

Criteria for Defining Religion:

- (1) The definition must be usable by legal actors and citizens
- (2) The definition should track why we have the First Amendment
- (3) The definition should be consistent with other constitutional commitments and rules
- (4) The definition should work for both Free Exercise and Establishment.

Difficulties with Defining Religion:

- (1) We might define it too narrowly and exclude some genuine religions
- (2) We might define it too broadly such that it becomes unstable
 - Rights almost never have *absolute* protection
 - There are always exceptions
 - If the right protects *everything* that we care about, then it will end up protecting very little because the government will not be able to act without interfering with something someone cares about.
 - The correct answer has to be broad enough to include most of what we want to include, but isn’t so broad that it becomes impossible to use

Modern Trends:

- Courts **primarily look at sincerity**
 - Courts do not look at orthodoxy:
 - A belief does not have to be similar or shared by most adherents to the religion to be “religious”.
- Protected religion is not limited to traditional beliefs:
 - A religious belief merely needs to occupy a place in the life of its possessor in a way that parallels what is ordinarily filled by a traditional belief in God (*Seeger*)
 - Courts have created a three-prong test (*Malnak*):
 - (1) **The nature of the religion itself** (most important)
 - It must address issues of “ultimate concern,” which might include the meaning of life, our role in the universe, or moral codes of conduct.
 - (2) **Comprehensiveness**
 - Religion is not confined to answering just one question.
 - (3) **Formalities that may be analogized to currently recognized religions.**
 - These formal signs could include the observation of religious holidays and ceremonies.

Cases:

United States v. Seeger, 380 U.S. 163 (1965) |

- Rule: A religious belief is one that is sincere and occupies a place in the life of its possessor parallel to that filled by the traditional belief in God. It is not dependent on the orthodoxy of the belief.
- Facts: The military grants exemptions to conscientious objectors who are opposed to participation in war because of religious beliefs.
 - Seeger (defendant) did not identify with a particular orthodox religious sect but conscientiously objected to participation in the war based on his own belief.

- He possessed a religious faith in an ethical creed that did not permit his participation in war.
- Takeaways: Seeger qualifies for a conscientious objector exemption because his sincere ethical beliefs play a role in his life similar to traditional religious beliefs.
 - Congress intended the exemption to be broad, using “Supreme Being” to include all genuine religious beliefs—not just belief in a specific deity.
 - The test of belief in a Supreme Being is whether the given belief sincerely and meaningfully occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.
 - Since Seeger's beliefs meet this standard, the lower court’s decision against him was overturned.

Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979) |

- Rule: In our modern context, we can look for three indicators of whether a religion is protected under the First Amendment: (1) The nature of the religion itself (most important); (2) the comprehensiveness of the belief system; (3) the presence of formalities that are analogous to currently recognized religions.
- Facts: Five New Jersey public schools offered an elective course on Transcendental Meditation (TM) using materials claiming TM was the foundation of everything. The course included an off-campus "puja" ceremony involving chants and offerings to a deified figure, though teachers claimed it wasn't religious.
- Takeaways: While religion is traditionally thought of as the relationship between man and his creator, modern views of religion have expanded that definition to include any belief that is of comparable significance to its adherents.
 - There are three indicators of a religion that support the values integrated in the First Amendment:
 - (1) The nature of the religion itself (most important)
 - It must address issues of “ultimate concern,” which might include the meaning of life, our role in the universe, or moral codes of conduct.
 - (2) Comprehensiveness
 - Religion is not confined to answering just one question.
 - For example, the big bang theory might answer the question of how the universe was formed, but it is not a religious idea.
 - (3) Formalities that may be analogized to currently recognized religions.
 - These formal signs could include the observation of religious holidays and ceremonies.
 - However, the absence of these signs is not determinative.
 - Applying these indicators to the facts of this case, it is clear that TM is a religion:
 - (1) the subject matter of TM, which is stated to be the basis of everything, is a matter of “ultimate concern”; (2) TM is comprehensive and not an isolated theory; and (3) TM includes formal ceremonies, such as the puja ceremony.

FOUNDATIONS & HISTORY

Definition of an “Establishment” under the English system:

- (1) Governmental control over doctrine and religious personnel
- (2) Suppression of alternative faiths
- (3) Political connections (Bishops in the House of Lords)
- (4) Compelled attendance or support

Arguments in Favor of Establishment:

- Secular:
 - Hobbes: It’s important to have establishment because it’s dangerous to have rivals to the state
 - It’s important for political stability
 - Important for moral cohesion
- Theological:
 - It’s a divine mandate to promote true religion
 - Important to compel people to believe in God/to evangelize
 - Religious instruction is a public good
- Example: Massachusetts Establishment (*Barnes v. First Parish in Falmouth*)

- Objections to the establishment:
 - (1) It violates freedom of conscience if tax dollars are used for a church that is not yours
 - (2) No benefit obtained by people who aren't a part of that church
 - (3) It is anti-Christian
- Response to objections:
 - (1) Misunderstands the role of money in conscience; we are all bound to contribute to the common good of society, even if we don't directly participate
 - (2) You benefit from good instruction for society, whether direct or indirect.
 - (3) This is not a violation of Christian principles because nobody is being forced to believe; it just gives people an opportunity to be educated
- Other objections:
 - It is best for society to have an open marketplace of ideas, and the Massachusetts's Establishment hinders this by putting funding towards certain churches
 - If a particular church benefits society, this should be demonstrated through argumentation and persuasion, as this will make the belief system stronger, too.
 - Ideas get better when they're discovered through argumentation and debate'

Four Competing Views of Religious Freedom:

- Theological:
 - Puritan View: The separation of church and state is about differentiating two godly authorities rather than the disestablishment of the dominant religion.
 - Proponents of this view were integrationists; the state was meant to support the church and help enforce religious morality.
 - Religious freedom was seen as the freedom to do what was right under God's law—not the freedom to believe whatever one wished.
 - Evangelical View: The separation of church and state should be strict and absolute.
 - Proponents of this view were separationists: the state should never fund or favor religion
 - Religious freedom requires true choice and the absence of coercion.
- Political:
 - Enlightenment View: Religion and government are best upheld and used separate from one another
 - This political theory complimented the evangelical view.
 - Rooted in an emphasis on individual rights and based in skepticism regarding organized religion and a fear of an autocratic state.
 - For Locke, the state only existed to protect people in their enjoyment of life, liberty, and property.
 - Civic Republican View: The church and state should work together to promote civic virtues
 - This political theory complimented the puritan view.
 - Rooted in a utilitarian focus on cultivating common values and religious ethos for the new nation.
 - They believed that religion and morality are the heart of civil society.

Virginia Assessment Controversy

- In 1784, Patrick Henry introduced a bill titled A Bill Establishing a Provision for Teachers of the Christian Religion, which proposed that all taxpayers in Virginia be required to pay a religious assessment (a tax) to support Christian ministers or churches of their choosing.
 - The bill did not establish a single state church but allowed individuals to designate the Christian denomination where their taxes would go—an approach meant to be pluralistic but still supportive of Christianity overall.
 - Supporters, like Henry, argued that religion was essential for public morality and civic virtue, and that government support would help sustain a moral and orderly society.
- The bill faced strong opposition came from James Madison, Thomas Jefferson, and other dissenting religious groups.
- **James Madison - Memorial and Remonstrance** (response to the Virginia Bill)
 - Religion is a natural right of conscience that exists prior to and above civil authority; the state has no legitimate power to coerce religious belief or practice.
 - Government support for religion violates civil equality and sets a dangerous precedent for future religious establishment and coercion.
 - State involvement corrupts both religion and government, weakening sincere faith and entangling the state in divisive theological disputes.