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**Balancing Freedom of Religion and the Establishment Clause in the First Amendment**

Catherine Nolan-Ferrell, an associate professor at the University of Texas at San Antonio, had a problem. In her article, *Balancing Free Speech and Classroom Civility*, she asked the question: “How do faculty members draw the line between free speech and disruptive behavior?” (Nolan-Ferrell). This is an incredibly fine balance between the First Amendment and a productive classroom. Almost all Americans understand the importance of the First Amendment, but not everyone can appreciate the individual parts of the First. The concept of the Establishment Clause has been an integral part of the First as well. However, it must be balanced with Freedom of Religion. This idea is called the separation of church and state. The historically blurry line separating church and state was defined clearer by Supreme Court case Everson v. Board, where a precedent was set that would be the basis of other Supreme Court cases regarding the Establishment Clause.

 The historical purpose behind the First Amendment has been up to debate for centuries. One perspective tries to attribute the purpose of the First to the origins of the American people. In the 17th century, many groups fled to the Americas to escape violent religious theocracies all around the European continent. The Lutherans in 1731 were expelled from Austria, where many of them either froze to death in the harsh winter or migrated to more neutral places such as the Americas (Lib. of Cong.). A more specific example, Roger Williams, the founder of Rhode Island, came to the Americas because he was banished from a Puritan community for having diverging opinions. His sentence was final when he stated that “the civil magistrates may not intermeddle to stop a church from apostacy and heresy” (Strous 51). This phrase, according to Strous, makes Williams a pioneer of religious liberty. Roger Williams’ ideas would form the basis of religious liberty for Rhode Island and other communities for decades. (Strous)

David Böecklin’s Engraving displayed in an exhibit on the Library of Congress website.

Another common perspective derives the meaning of the First Amendment from the words of the founding fathers. In the *Letter to the Danbury Baptists*, Thomas Jefferson expressed is belief that “religion is a matter which lies solely between Man & his god.” This shows some of the motivations behind the establishment clause, that the government shouldn’t be involved in a relationship meant for only “Man & his god.” The first significant discussions over the meaning of the Establishment Clause and how it interacts with Freedom of Religion was in Reynolds v. U.S. In summary, there was a federal statute that banned polygamy. Reynold, a Christian whose doctrine compels him to marry multiple women, challenged the law. He claimed that the law not only violated his right to religion, but also establishes other forms of Christianity as superior to his. In making the majority opinion, Justice Waite had to consider some of the original words of the framers of the constitution. He quoted from Thomas Jefferson: “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.” Reasoning with this, the court eventually decided unanimously that Reynold cannot use religious convictions as a reason to disobey law. Here, the Justice Waite established the “wall of separation between church and state” analogy that would be used for centuries come. Reynolds v. U.S. 98 U.S. 145 (1878)

This key analogy would eventually come to be cited in *Everson v. Board of Education,* a landmark Supreme Court case. In this case, the justices had to determine if a state law that subsidized bus fees for the transportation of children to parochial schools is permissible under the First Amendment. To reach a conclusion, the majority opinion had to consider The Wall analogy used by Thomas Jefferson and *Reynolds v. U.S*. One of the main questions was whether the Establishment Clause of the First applied to the states, considering that the constitution was written for the federal government. Under the Fourteenth Amendment Equal Protection Clause, they determined that the Establishment Clause applied to states. Despite ruling in favor of the state law, Justice Black set a precedent that would be used for countless court cases in the future. In summary, no public institution should establish a church, pass laws that support or aid any religion, and create policies than penalize anyone for their belief or non-belief. Also, public institutions should never participate in the affairs of religious groups or vice versa. This case facilitated the formal incorporation of the Establishment Clause by the Fourteenth Amendment Equal Protection Clause. This along with the precedent, would make *Everson* a landmark case cited by many court cases with related issues. The Supreme Court cases in the following decades further defined the line between Freedom of Religion and the Establishment Clause. Everson v. Board of Education of the Township of Ewing (No. 52) 330 U.S. 1 (1947)

*Everson* provided a definition and purpose of the Establishment Clause, but there was still no reliable method to determine if cases violated constitutional law. *Lemon v. Kurtzman*, another landmark Supreme Court case, helped resolve this issue. Two laws in Pennsylvania and Rhode Island permitted the expenditure of tax-payer money to help private, religious schools pay the tuition for teachers teaching secular subjects. There was a conundrum. On one hand, the subsidy was meant to promote minimum secular education levels in all schools. On the other hand, it directly provided religious schools with monetary support. The definition of the Establishment Clause could not immediately decide this case. To help decide the case, Justice Warren E. Burger created a three-part test to determine if a law violated the Establishment Clause. The first part required that the legislative purpose must be secular. The second stated that the effect of the statute must not promote or inhibit religion. The third provision was a little more complicated, but it provides that a law must not cause “excessive government entanglement with religion.” The court decided that the laws in question passed the first test but failed the third. They could not come to a decision on the second prong of the test. They concluded that the direct funding of the school created a dialogue between the government and religious institutions that could lead to “excessive government entanglement with religion.” The *Lemon* Test would become an efficient way for lower courts to determine if a law breached the wall separating church and state. It was so useful that the Supreme Court still utilized it in future cases, which further fine-tuned the balance of Freedom of Religion and preventing government establishment of religion. Lemon v. Kurtzman 403 U.S. 602 (1971)

One line that had to be drawn was religion in public schools. Could schools write and recite prayers? Although it may seem obvious today that public schools must maintain a secular style of education, it was not obvious in the decades before the end of the millennia. There were many cases with similar situations, but each had a significant difference. Two of these were *Engel v. Vitale* and *School District of Abington v. Schempp*. Both dealt with prayer in schools. In the case of *Engel*, the prayers were drafted by the government funded school. A concerned parent sued, and Justice Black delivered the opinion that the prayer violated the Establishment Clause. Justice Black cites that the wall separating church and state prohibited the school from creating and reciting formal prayers for any group of students, whether it is compulsory or not. They reasoned that the daily prayer coerced students to participate because they would otherwise have to step out of class. Here, Justice Black also created the Coercion Test. This is like a supplement to the Lemon Test. For a statute to pass, it must not coerce students in any way to participate in religious activities such as a school sponsored prayer. *Abington v. Schempp*, was very similar to *Engel*. It was essentially the same situation, but the prayer was required every day. This case directly cited *Everson v. Board of Ed.* as a criterion in making a decision. In both cases, a line was drawn between church and state. Engel v. Vitale 370 U.S. 421 (1962). School District of Abington Township, Pennsylvania v. Schempp 374 U.S. 203 (1963)

[Conclude]

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