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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 its individual parts. The concept in the Establishment Clause has been an integral part of the First. However, it must be balanced with Freedom of Religion. This idea is called the separation of church and state, which is explored in depth in *Reynolds v. U.S.* and later in *Everson v. Board*. In the decades after, this idea would be expanded in three more landmark cases involving schools. The historically blurry line separating church and state was defined clearer by *Reynolds v. U.S.* and later in *Everson v. Board*, where a precedent was set that would be the basis of three more landmark 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 (Library of Congress). 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)

A depiction of the Lutheran Exile from Austria by David Böecklin

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 his belief that “Religion is a matter which lies solely between Man & his god.” This a justification Thomas Jefferson provided for establishment clause, that the government shouldn’t be involved in a relationship meant for only “Man & his god.” The first significant discussion over the Establishment Clause and how it interacts with Freedom of Religion was in *Reynolds v. U.S.* In summary, Reynolds, a Christian, claimed that a federal law outlawing polygamy directly inhibited his ability to practice his religion, which compelled him to marry multiple women. He argued that the law violated his right to religion and established other forms of Christianity as superior. In the majority opinion, Justice Waite considered 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*. The first big question 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. Everson v. Board of Education of the Township of Ewing 330 U.S. 1 (1947)

Despite ruling in favor of the state law, Justice Black set the *Everson* 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. The precedent set from Justice Black and the formal incorporation of the Establishment Clause made *Everson* a landmark case cited by many future court cases. Everson v. Board of Education of the Township of Ewing 330 U.S. 1 (1947)

Religion in public schools would soon become a question for supreme court cases after *Everson.* Two of these cases were *Engel v. Vitale* and *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 majority opinion that the prayer violated the Establishment Clause. He cited 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. 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 deciding. In both cases, a clear 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)

Nearly two and a half decades after setting the *Everson* precedent, the Supreme Court finally developed a method to apply the precedent in *Lemon v. Kurtzman*. 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 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 agree 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 a lasting method for state and federal courts to determine if a law breached the wall separating church and state. Lemon v. Kurtzman 403 U.S. 602 (1971)

In conclusion, five Supreme Court cases created a lasting impact in American constitutional law. *Reynolds* and *Everson* both considered several primary sources to find the original intent of the First Amendment. Eventually, the *Reynolds* acknowledged the “wall” that was meant to divide church and state. Then *Everson* built this wall, carefully defining a precedent of what was not permitted of public institutions. This precedent would be essential in the next two cases, *Engel* and *Abbington,* where prayer in public schools was forbidden. The simple coercion test was conceived from those cases, settling dozens of similar cases.Howeve*r*, the *Everson* precedent was still too broad, and the justices of the Burger court developed the *Lemon* test to clarify what constituted a violation of the Establishment Clause. Finally, the Supreme Court achieved some resolution on balancing Freedom of Religion and the Establishment Clause.

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