

# Approaches to religious liberty have developed over time

**By Liz O'Connor**

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“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” are the first words of the Bill of Rights, ratified in 1791.

Before then, established churches – the Church of England in most colonies – were the rule throughout colonial America. While other beliefs and practices were tolerated in some of the colonies by the time of the founding of the United States, the established churches were supported by taxes, and public officials usually had to swear adherence to the established church.

But the First Great Awakening, a religious revival that swept Britain and the American colonies in the 1730s and 1740s, had greatly increased the numbers of dissenters, especially Baptists and Presbyterians, and it was they who pushed for religious freedom to be enshrined in the Constitution and for disestablishment state by state.

“Catholics were a tiny percentage of the population” in the 18th century, explained Professor Michael McConnell, director of the Constitutional Law Center at Stanford University. Even Maryland, which had been founded as a refuge for Catholics, had about only five percent Catholic residents, and Catholics there faced legal restrictions until disestablishment.

Religious liberty was desirable in the minds of the founders of the republic from the beginning, according to Douglas Laycock, law professor at the University of Virginia in Charlottesville. He said that political conflicts over religion were a part of living memory for many of them, and wars fought over beliefs were chronologically closer than the Civil War is to contemporary Americans. They wanted to be sure, he said,

“that none of that should ever be repeated here.”

He agreed with McConnell that Baptists and Presbyterians were “the political muscle” behind the First Amendment: “Catholics mostly weren’t here yet.”

The first major conflict over the First Amendment came, McConnell said, with the influx of Irish and German Catholic immigrants beginning in the 1830s. It was then that there were riots, McConnell said, over public schools’ use of the King James Version of the Bible.

“Catholic kids were being beaten or expelled” from schools for refusing to read from the King James Version, said Laycock.

A later conflict in the 1870s centered on government funding of schools Catholics were establishing as alternatives to the public schools that were dominated by Protestant teaching and that used the King James Version. While the Blaine Amendment that would have forbidden any state or federal aid to specifically religious schools was narrowly defeated in Congress in 1875, its effect was felt, McConnell said, as 37 states passed “little Blaine” amendments to their state constitutions with the same purpose. Catholics went ahead and established their school system, and eventually argued successfully that limited government aid would be provided students in parochial schools to fund transportation and textbooks for secular subjects.

Other groups such as the Church of Jesus Christ of Latter-day Saints and Jehovah’s Witnesses and other small or unpopular “sects” or “cults” faced more or less blatant persecution in the 19th and 20th centuries.

Laycock listed three clusters of issues regarding religious freedom in the United States. “All are very much alive right now,” he said, and Supreme Court decisions have varied widely concerning them. The result is “very, very mixed body of law.”

The first cluster centers on religious practice and covers a variety of issues, some of which, he said, legislators and prosecutors “have more sense than to meddle with.” These would include such matters as the Catholic Church having a male celibate clergy and allowing children to receive Communion from the chalice. Other issues

include use of hallucinogens in worship by some Native American religious groups and workers right not to work on their Sabbaths. All these, he said, involve Free Exercise clause issues.

The second cluster involves government funding, such as the provision of funds for social and human services or school vouchers. Generally such aid has been found constitutional, but is very politically controversial and laws providing it are hard to enact, Laycock said.

Finally he said there is a cluster of issues around religious speech, both private and government-sponsored. This would include school prayer, Christmas displays, and displays of the Ten Commandments and various monuments on public grounds. "A lot of the conservative justices" on the Supreme Court tend not to think that all these things violate the Establishment Clause as long as there's no coercion involved; others see all of them as proselytizing, he said.

McConnell said fewer arguments now break along Catholic, Protestant, Jewish or Muslim lines. Rather, he said, the most conservative members of all those groups tend to come out on one side of an issue – so that some evangelical Protestant voters are supporting conservative Catholic candidates. In other instances, more moderate or slightly liberal members of religious groups are willing to work together. At the outlying extreme, he said, are liberal members of religious groups and religiously indifferent or anti-religious secularists who strongly oppose any cooperation between government and religious groups as well as any kind of religious observance or display connected with civil events.