


# THE RELIGIOUS CLAUSES IN THE UNITED STATES CONSTITUTION

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BRENDAN SULLIVAN, O.P.

## CHAPTER III

### THE RELIGIOUS QUESTION AND THE FEDERAL CONSTITUTION

N THE FEDERAL CONVENTION held in Philadelphia in 1787 for the purpose of framing the Constitution of the United States questions of a religious nature received little attention. The various religious elements were sufficiently represented. The diversity of religious professions prevented the members from introducing any amendments which would cause purely religious controversy as well as enabled or forced the delegates to assume a tolerant point of view when the political-religious powers of Congress were debated.

Benjamin Franklin nearly precipitated a religious controversy by supposing that the convention use the aid of prayer and service of a chaplain. Mr. Sherman seconded the motion. This suggestion found much opposition. Alexander Hamilton was among those who wished it tabled. The opponents of the resolution claimed that such action would lead the people to believe that the convention was experiencing considerable internal dissension.

Mr. Randolph observed that the measure would be more acceptable to the convention as well as to the public if it was introduced under a more favorable light. So he proposed that the convention should request a sermon for the fourth of July and thereafter prayers should be read every morning at the opening of the convention. Although Franklin seconded this motion, adjournment prevented the vote.<sup>1</sup>

Madison writing in 1834 relative to this resolution states: "The proposition was received and treated with the respect due to it; but the lapse of time which had preceded, with the consideration growing out of it, had the effect of limiting what was done, to a reference of the proposition to a highly respectable committee. The Quaker usage, never discontinued in the state, and the place where the convention held its sittings, might not

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<sup>1</sup> Humphrey, *op. cit.*, p. 457.

have been without an influence as might also the discord of religious opinion, within the convention, as well as among the clergy of the spot."<sup>2</sup>

The fourteenth resolution of the Virginia plan also brought the religious question to the forefront. This proposal read: "Resolved, that the legislative, executive and judicial powers within the several states ought to be bound by oath to support the articles of Union."<sup>3</sup>

Although in the beginning the debates on this resolution were purely of a pleasant political nature, they assumed a religious aspect when Mr. Charles Pinckney proposed an addition providing "that no religious test or qualification shall ever be annexed to any oath of office under the authority of the United States."<sup>4</sup>

It was later agreed to insert "or affirmation" after the word "oath." Gouverneur Morris and General Charles Cotesworth Pinckney spoke for the addition. Mr. Sherman argued against it, claiming that it was unnecessary as the liberal spirit of the ties offered a guarantee against such tests.<sup>5</sup> The convention unanimously accepted the amendment of Pinckney.

After much debating and compromising the convention finally agreed on the constitution. The third section of the sixth article provided that "the senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support the Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."<sup>6</sup>

When the Constitution was submitted to the states for ratification, it met with the strongest kind of opposition. The failure to guarantee personal rights was the grounds on which the opponents based their arguments. So the majority of the states only ratified the Constitution because they had received assurance that a bill of rights would be added. Foremost among the new

<sup>2</sup> Max Farrand, *The Records of the Federal Convention*, New Haven 1911, Vol. III, Appendix A.

<sup>3</sup> *Ibid.* Vol. II, p. 22.

<sup>4</sup> *Ibid.* Vol. II, p. 87.

<sup>5</sup> Jonathan Elliot (Ed.) *The Debates in the General States Convention on the Adoption of the Federal Constitution as recommended by the General Convention at Philadelphia, 1907*, Vol. V, p. 498.

<sup>6</sup> Farrand, *op. cit.*, p. 579.

amendments would be the guarantee of religious liberty.

The state ratifying convention indicated that the people had tired of the dominance of the established churches. Six states suggested amendments bearing upon religious questions. Virginia and North Carolina proposed an amendment giving freedom of conscience. New York and New Hampshire offered similar resolutions. Rhode Island pointed out the need of a clause specifically guaranteeing religious freedom. The minority of Pennsylvania at the Pennsylvania convention petitioned for such an amendment.

Yet, it must not be supposed that all the people, still less the delegates of the state convention, were in favor of toleration. The members of the convention were from the conservative, property owning classes, and, therefore, more or less satisfied with the existing conditions. There was a wide difference of opinion regarding the section abolishing religious tests. As a result some rather fierce debates took place over this subject, especially in those states requiring such tests. The idea of either a papist or an infidel holding any office created a spirit of fanaticism in some delegates. A brief resumé of the attitudes on toleration as expressed in the convention will show the part played by religion in the various states.

The Massachusetts convention found many members complaining bitterly over the abolition of the religious tests. Major Lusk who "shuddered at the idea that the Romanists and pagans might be introduced into office, and that popery and the Inquisition may be established in America" was a typical example of the intolerant element.<sup>7</sup>

In the words of Rev. Mr. Backus we have expressed the doctrine of those who for one reason or another desired the complete separation of church and state. Backus claimed: "nothing is more evident both in reason and in Holy Scripture, than that religion is ever a matter between God and the individual; and therefore no man or men can impose any religious tests without invading the essential prerogatives of Our Lord Jesus Christ. . . . Imposing of religious tests has been the greatest engine of tyranny in the world. . . . Some serious minds discover a concern lest if all religious tests should be excluded the congress would hereafter establish popery or some other tyrannical way of worship. But it is most certain that no such way of worship can be

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<sup>7</sup> Elliot, *op. cit.* Vol. II, p. 148.

established without any religious test.”<sup>8</sup>

Some delegates of the old rigid orthodox school agreed with Colonel Jones who “thought that rulers ought to believe in God or Christ; and that, however a test may be prostituted in England, yet he thought if our public men were to be one of those who had a good standing in the church, it would be happy for the United States; and that a person could not be a good man without being a good Christian.”<sup>9</sup>

The sentiments of the liberal school were in accord with Mr. Parsons who observed: “It has been objected that the constitution provides no religious tests by oath; and we may have in power unprincipled men, atheists and pagans. No man can wish more ardently than I do that all our public offices may be filled by men who fear God and hate wickedness, but must remain with the electors to give government this security. An oath will not do it.”<sup>10</sup>

Along with the ratification of the Constitution Massachusetts sent to Congress nine alternatives and provisions none of which include a declaration of religious liberty unless it is implied in the first proposition which proclaims: “that it be explicitly understood that all powers not expressly delegated by the aforesaid constitutions are reserved to the several states to be by them exercised.”<sup>11</sup>

#### CONNECTICUT

In the Connecticut convention the absence of the test law did not go unchallenged. Oliver Wolcott answered the attacks of those arguing for religious restriction by saying: “I do not see the necessity of such tests as some gentlemen wish for. The constitution enjoins an oath upon all officers of the United States. This is a direct appeal to that God who is the avenger of perjury. Such an appeal to Him is a full acknowledgment of His Being and Providence. An acknowledgment of these great truths is all that the gentlemen ask for. For myself, I should be content either with or without that clause in the Constitution which excludes test laws. Knowledge and liberty are so prevalent in this country that I do not believe that the United States would ever be disposed to establish one religious sect and lay all others under legal disabilities. . . . But as we know not what may take place here-

<sup>8</sup> Elliot, Vol. II, p. 148.

<sup>9</sup> *Ibid.* Vol. II, p. 119.

<sup>10</sup> *Ibid.* Vol. II, p. 90.

<sup>11</sup> *Ibid.*

after, and such tests would be exceedingly injurious to the rights of free citizens, I cannot think it altogether superfluous to have added a clause which secures us from the possibility of such oppression."<sup>12</sup>

#### NEW HAMPSHIRE

New Hampshire despite its severe restrictions on religious freedom in the state constitution proposed an amendment to the Federal constitution which read: "Congress shall make no laws touching religion, or to infringe the rights of conscience."<sup>13</sup>

#### RHODE ISLAND

Rhode Island, the last state to adopt the constitution, did not include a request for religious freedom in the seventeen amendments which it offered for the consideration of Congress. It did, however, declare for complete freedom of conscience in the fourth principle of the prefatory declaration.<sup>14</sup>

#### NEW YORK

In New York as the result of exciting debates many amendments and recommendations were born. Among them was one that proclaimed: "That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference to others."<sup>15</sup>

#### PENNSYLVANIA

The minority of the Pennsylvania convention worked unceasingly to add a bill of rights to the constitution, but failed to obtain their objective. The minorities charge "that there is no security for rights of conscience," was answered by Mr. Wilson, who said: "I ask the honorable gentleman, what part of this system puts in the power of Congress to attack those rights? When there is nowhere to attack, it is idle to prepare the means of defence."<sup>16</sup>

<sup>12</sup> *Ibid.* Vol. II, p. 202.

<sup>13</sup> Humphrey, *op. cit.*, p. 470.

<sup>14</sup> Schaff, *Church and State in the United States*, New York, 1888, p. 32.

<sup>15</sup> Elliot, *op. cit.* Vol. I., p. 328.

<sup>16</sup> Elliot, *op. cit.* Vol. III, p. 252.

The dissenting minority issued an address to their constituents called *The Reason of Dissent*. The first of the fourteen amendments proposed in this document demanded religious freedom. The amendment stated: "The rights of conscience shall be held inviolable, and neither the legislative, executive, nor the judicial power of the United States shall have the power to alter, abrogate, or infringe any part of the constitution of the several states, which provided for the preservation of liberty in the matters of religion."<sup>17</sup>

#### VIRGINIA

In Virginia the champions of religious freedom gathered forces to prevent any interference with religious liberty already gained. Before the convention, much discussion took place as to whether or not the constitution restricted this freedom. The general committee of the Baptists in session March Seventh, 1778 at William's Meeting House, Goochland County condemned the constitution because it failed to protect religious liberty.<sup>18</sup>

Madison writing to Edmund Randolph held a different opinion than the Baptists. He wrote on April 10th, 1787: "As to the religious tests, I should conceive that it can imply at most nothing more than that without that exception, as were would have been given to impose an oath involving a religious test as a qualification for office."<sup>19</sup>

All the delegates to the convention desired religious freedom. Washington and Henry along with the other outstanding representatives favored a tax to support the church of the tax payers. A few citations from various addresses will illustrate how some of the leaders regarded the constitution relative to its protection of religious freedom.

Randolph who at one time felt that dangerous powers respecting the regulation of religion had been conferred on Congress, changed his mind by the time the convention opened. In one session he established his position by making the following speech: "It has been said, that if the exclusion of the religious tests were an exception from the general power of Congress, the power over religion would remain. I inform those who are of this opinion, that no power is given expressly to Congress over religion. The senators and representatives, members of the state

<sup>17</sup> Schaff, *op. cit.*

<sup>18</sup> Humphrey, *op. cit.*, p. 7.

<sup>19</sup> Farrand, *op. cit.* Vol. III, p. 297.

legislative and executive and judicial officers, are bound by oath, or affirmation, to support this constitution. This only binds them to support it in the exercise of powers constitutionally given it. The exclusion of a religious test is an exception from this general provision, with respect to the oath or affirmations."<sup>20</sup>

Patrick Henry scored the constitutions for not making ample provision for religious liberty. According to him "that sacred and lovely thing, religion, sir, will be prostituted to the lowest purpose of human policy. What has been more productive of mischief among mankind than religious disputes? Then here, sir, is a foundation for such dispute, when it required learned and logical deduction to perceive religious liberty is secure."<sup>21</sup>

Mr. Madison answering Henry's objection said: "The honorable member has introduced the subject of religion. Religion is not guarded—there is no bill of rights declaring that a religion should be secure. Is a bill of rights security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such a sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. . . . There is not a shadow of right in the general government to meddle with religion. Its least interference with it would be a most flagrant usurpation. . . . But the United States abounds in such a variety of sects that it is a strong security against religious persecution, and is sufficient to authorize a conclusion, that no one sect will ever be able to out number or depress the rest. . . . I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude, that uniformity of government will produce that of religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it—the least reflection will convince us there is no danger to be feared on this ground."<sup>22</sup>

Virginia accompanied its ratification with a list of proposed amendments. The twentieth made the following declaration: "That the religion, or the duty, which we owe to our Creator, and

<sup>20</sup> *Ibid.* p. 310.

<sup>22</sup> *Ibid.* pp. 93, 330.

<sup>21</sup> Elliot, *op. cit.* Vol. III, p. 318.

the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural, and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others."<sup>23</sup>

#### NORTH CAROLINA

In the North Carolina convention the last clause of the sixth article caused a most protracted debate. Henry Abbot summed up the fears of many when he said: "Some are afraid, Mr. Chairman, that should the constitution be received, they would be deprived of worshipping God according to their consciences, which would be taking from them a benefit they enjoy under the present constitution. They wish to know if their religious and civil liberties be secured under this system, or whether the General Government may not make laws infringing their religious liberties. The worthy member from Edenton mentions sundry political reasons why treaties should be the supreme law of the land. It is feared by some people, that by the power of making treaties, they might make a treaty engaging with foreign powers to adopt the Roman Catholic religion in the United States, which would prevent the people from worshipping God according to their own consciences. The worthy member from Halifax has in some measure satisfied my mind on this subject. But others may be dissatisfied. Many wish to know what religion shall be established. I believe a majority of the community are Presbyterians. I am for my part against any exclusive establishment. But if there were any, I would prefer the Episcopalian. The exclusion of religious tests is by many thought dangerous and impolitic. They suppose that if there be no religious tests required, pagans, deists and Mahometans might obtain offices among us, and that the senators and representatives might be all pagans. Every person employed by the general and state government is to take an oath to support the former. Some are desirous to know how, and by whom they are to swear, since no religious tests are required. . . . Whether they are to swear by Jupiter, Juno, Minerva, Proserpine or Plato. . . . I would be glad if some gentleman would endeavor to obviate these objections in order to satisfy the religious part of the society."<sup>24</sup>

<sup>23</sup> *Ibid.* p. 659.

<sup>24</sup> Elliot, *op. cit.* Vol. IV, pp. 189-190.



Mr. Iredell obliged Mr. Abbot by explaining that "Under the color of religious tests the utmost cruelties have been exercised. . . . America has set an example to mankind to think more modestly and reasonably; that a man may be of different religious sentiments than our own, without being a bad member of society. . . . I think the clause under consideration as one of the strongest proofs that could be adduced; that it was the intention of those who formed this system, to establish a general religious liberty in America. . . . I confess the restriction of the power of congress in this particular has my hearty approbation. . . . The power to make treaties can never be supposed to include the right to establish foreign religions among ourselves, though it might authorize a toleration for others.

"But it is objected that the people of America may perhaps, choose representatives who have no religion at all, and that pagans and Mahometans may be admitted into offices. But how can it be possible otherwise to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for. . . . This is the foundation on which persecution has been laid in every part of the world. The people in power are always right, and everybody else wrong. If you admit the least difference, the door to persecution is opened. . . .

"It has been asked . . . what is the meaning of that part, where it is said . . . that the United States shall guarantee to every state in the union a republican form of government, and why a guarantee of religious freedom was not included. . . . Had congress undertaken to guarantee religious freedom, or any particular species of it, they would then have had a pretence to interfere in a subject they have nothing to do with. Each state, so far as the clause in question does not interfere, must be left to the operation of its own principles. . . .

"This article is calculated to universal religious liberty by putting all sects on a level, the only way to prevent persecution. I thought nobody would have objected to this clause, which deserves in my opinion the highest approbation. This country has already had the honor of setting an example of civil freedom, and I trust it will likewise have the honor of teaching the rest of the world the way to religious freedom also."<sup>25</sup>

A certain Mr. Spencer brought forth an intelligent objection

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<sup>25</sup> Farrand, *op. cit.* Vol. IV, pp. 195-196.

to a religious test by pointing out that "tests would not keep unscrupulous men out of office but would exclude some truly conscientious and religious men. This would be a great cause of objection to a religious test."<sup>26</sup>

Other gentlemen could not agree with Mr. Spencer. According to some the omission of the test made it possible to establish ecclesiastical courts; others wished that popish priests had been excluded from office, because as Mr. Wilson expressed it: "As there was no test required, and nothing to govern them but honor, when their interests clashed with their honor the latter would fly before the former."<sup>27</sup>

North Carolina also asserted a declaration of rights to the constitution. . . . One of the resolutions agrees literally with the religious liberty amendment of Virginia's Bill of Rights.

When the first congress met, it found within its folds much opposition to the many amendments suggested by the various states. The grounds for the opposition was the claim that such were unnecessary in a free country. A committee of representatives was appointed "to take subject of amendments to the Constitution of the United States generally into their consideration, and to report thereon to the house."<sup>28</sup>

Having discussed and amended the report of the committee, the house adopted a series of amendments which they sent to the senate. The senators accepted some; rejected others. The two houses then reached an agreement on the twenty-fifth of September, 1789.<sup>29</sup> As a result congress sent twelve amendments to the legislatures of the several states.<sup>30</sup>

Ten of the twelve were ratified by all the states except Massachusetts, Connecticut and Georgia, whose silence was rightly interpreted as consent. The amendments became a part of the basic laws, by the proclamation of Washington to the effect then made on December 15, 1791. The first of these amendments guarantees religious liberty.

#### CONCLUSION

By the religious clauses in the United States Constitution, the genesis of which has been considered in these pages, no

<sup>26</sup> *Ibid.* p. 200.

<sup>27</sup> *Ibid.* p. 212.

<sup>28</sup> Joseph Gales, *Annals of Congress*, Vol. I, p. 400.

<sup>29</sup> *Ibid.* p. 448 ff.

<sup>30</sup> Elliot, *op. cit.* Vol. V, pp. 338-339.

church or religious society as such is recognized by the Federal Constitution. Furthermore, a religious test as a qualification for any office under the United States is expressly prohibited by the basic national law.

The import of these provisions is the safeguarding of religious freedom and the impossibility of establishing a State Religion. By these provisions of the Constitution, the existing religious establishments of individual states were left unmolested. Nevertheless an example was set for the new states subsequently to be admitted to the confederation as well as to the original thirteen states in framing or remodeling their own state constitutions.

It is well to note that the idea of a separation of Church and State guaranteed by fundamental national statute was not an ideal of the century which witnessed the framing of our Constitution. It was a result of compromise.

Finally, the Constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties. This is left to the State Constitutions and laws. Nor is there any inhibition imposed by the federal Constitution in this respect on the States.

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