

Lesson Seven: *The Issue of Religious Liberty During Ratification*

BACKGROUND INFORMATION FOR INSTRUCTOR

General Context of Religion in Revolutionary America

The American Revolution led to a significant separation between church and state. Of the nine states that had established religions during the late colonial period, three separated church and state in their new constitutions—New York, North Carolina, and Virginia. For many, a continuing relationship between church and state was still considered important. This was made explicit in Massachusetts, where its Declaration of Rights of 1780 provided that because “the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality,” the legislature was required to provide public revenues to support ministers. In the remaining six states with established churches, concessions were made over several decades allowing public support of more than one church. Often, however, in New England, this concession was nominal because public funds would be given to only one church in a town, which always happened to be the dominant Congregational church. By the end of the eighteenth century, most states that had tax-supported churches, passed legislation increasing the flexibility individuals had by earmarking their taxes for the support of their own minister.

Virginia disestablished the Anglican Church merely by not specifically retaining the church-state relationship. The last provision of the Virginia Declaration of Rights provided “That religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.” But in 1784, when Patrick Henry, Edmund Pendleton, and Richard Henry Lee joined with Anglican ministers in an effort to provide public financial support for all Christian denominations (in essence creating a multiple establishment) James Madison revived Thomas Jefferson's bill for religious freedom which provided for the true separation of church and state. The advocates of the general assessment measure all supported liberty of conscience and toleration, but because they strongly believed that Christianity was needed to support public morality, they supported the general assessment on behalf of all Christian denominations. They also noted that because ministers were woefully underpaid by their congregations, Christian clergy needed the financial support of the state. In the end, Madison's efforts were successful in defeating the general assessment bill and obtaining the passage of an act for religious freedom, thereby extinguishing “for ever the ambitious hope of making laws for the human mind.”

In other state constitutions, like New York's, explicit provision was made that “the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this State to all mankind.” Religious liberty was not unlimited, however. According to the New York constitution, “the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.” Although this form of religious liberty was rare in the world, it existed in several American states.

The Articles of Confederation made only indirect reference to religion. In Article III the states bound themselves together "in a league of friendship" to secure themselves from attacks on

"any of them, on account of religion, sovereignty, trade or any other pretence whatever." In the last article, "the Great Governor of the World" was acknowledged for being pleased with the states' ratification of the Articles. As with all of America's fundamental documents, the Articles were dated "in the year of our Lord. . . ." No specific religious protection was needed under the Articles because the Confederation had only delegated powers none of which touched on religion and, in fact, Congress could pass no measure directed at individuals.

On 13 July 1787—when the Constitutional Convention was meeting in Philadelphia—Congress, meeting in New York City, adopted the Northwest Ordinance which included an abbreviated bill of rights guaranteeing religious freedom in the first article. "No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory." It also acknowledged the necessity of "Religion, morality and knowledge" in promoting "good government and the happiness of mankind" and provided that "schools and the means of education shall forever be encouraged." Two years later the first federal Congress reenacted the Ordinance.

The Debate over Guaranteeing Freedom of Religion

When the delegates to the Federal Convention of 1787 drafted a new Constitution for the United States, the omission of any specific references to God or religion was for many a fundamental flaw. While some Federalists asserted that the Constitution was divinely inspired, Antifederalists responded that God could never have inspired such a flawed document. Some Antifederalists wanted the Constitution explicitly to acknowledge the existence of God and a dependence on Him. William Williams of Connecticut suggested a modification to the Constitution's Preamble formally stating "a firm belief of the being and perfections of the one living and true God, the creator and supreme Governor of the world." A week later Williams was answered by the pseudonymous writer "Elihu." "A low mind may imagine that God, like a foolish old man, will think himself slighted and dishonored if he is not complimented with a seat or a prologue of recognition in the Constitution, but those great philosophers who formed the Constitution had a higher idea of the perfection of that INFINITE MIND which governs all worlds than to suppose they could add to his honor or glory, or that He would be pleased with such low familiarity or vulgar flattery."

The lack of an explicit provision protecting freedom of religion created a groundswell of criticism demanding that the freedom of religion be protected. Eleven state constitutions or bills of rights contained such a provision. Consequently, Antifederalists in a majority of the ratifying conventions recommended that an amendment guaranteeing religious freedom be added to the Constitution. Patrick Henry argued in the Virginia ratifying Convention that the "sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction." Without an explicit protection, religion "will be prostituted to the lowest purposes of human policy." Antifederalists in several states demanded specific protections for conscientious objectors noting that without them, the "rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms." Antifederalist writer Philadelphiensis went so far as to suggest without such protections, "the cruelty of the new government will probably be felt sooner in Pennsylvania than in any state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed." Federalists, however, argued that the Constitution would create a federal government of strictly enumerated powers that would never be capable of violating religious liberty. According to James Madison in the Virginia Convention, there was "not a shadow of right in the General Government to intermeddle with religion—Its least interference with it would be a most flagrant usurpation."

Furthermore, with the “multiplicity of sects” throughout America, Madison asserted that no one sect “could oppress and persecute the rest.” Federalists also argued that the protections for religious freedom in state constitutions and bills of rights were sufficient.

The Debate over the a Religious Oath

The prohibition against a religious oath for officeholders was a troublesome issue. Article VI stipulated that “no religious Test shall ever be required as a Qualification to any Office or public trust under the United States.” This was unique because every state had some sort of religious test requirement for officeholders either in their new state constitution or in laws. These oaths included the belief in one God, the Trinity, the divine inspiration of both the Old and New Testaments, and the existence of a world after death. In New York Huguenot-descended John Jay argued unsuccessfully in the provincial convention for a constitutional prohibition against Catholic officeholding. In February 1788, however, the New York legislature approved an act requiring officeholders to swear allegiance to the state and renounce all foreign authorities, “in all Matters Ecclesiastical as well as Civil,” an obvious exclusion of Catholics from holding office. The colonial charters of Connecticut (1662) and Rhode Island (1663), which became their state constitutions, granted broad religious toleration. Subsequent legislation prohibited Catholics and Jews from holding office. Most of these state restrictions were removed by 1800. While most Americans favored requirements for officeholding, such as owning land and religious tests, during the ratification debate, Federalists naturally opted to not object to the clause. Antifederalists, on the other hand, voiced concerns calculating that their objections would resonate enough to defeat the Constitution. In this context, the lack of a religious oath was a significant but not a widespread part of the debate over the Constitution. One Antifederalist concluded that “the Constitution was de(i)stical in principle and in all probability the cumposers had no thought of God in the consultations.” A Federalist argued that religious tests were “useless, tyrannical, and peculiarly unfit for the people of this country.”

At the time, many believed religious oaths were supposed to guarantee honorable public service for fear of incurring the wrath of God. Public officials who violated their oaths might escape punishment here on earth but could not avoid punishment in the hereafter. Federalists argued that the unscrupulous and hypocritical would readily subscribe to oaths and would not hesitate to violate them. Theophilus Parsons in the Massachusetts Convention rhetorically asked, “Will an unprincipled man be entangled by an oath?” Only the conscientious—those who would be the best public officials—would refuse to take a religious oath if they did not believe in its provisions. Thus, test oaths were ineffectual and in fact counterproductive. Antifederalists raised the specter of Jews, Turks, and infidels being elected to key federal positions, while Federalists argued that voters would be knowledgeable enough to select the best people to serve. Isaac Backus, a Baptist pastor from Massachusetts, believed “that religion is a matter between God and individuals.” and that “the imposing of religious tests hath been the greatest engine of tyranny in the world.”

KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

CONCERNS OVER THE FREEDOM OF RELIGION

Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787

Constitution Needs a Statement Affirming Religious Freedom, Pennsylvania's Constitution is a Suggested Model for Religious Liberty

Philadelphiensis II, Philadelphia *Freeman's Journal*, 28 November 1787

Constitution's Lack of a Statement about Religious Liberty Puts Conscientious Objectors at Risk, President Will Force Conscientious Objectors into Military Service

James Madison Speech in the Virginia Convention, 12 June 1788

Religious Diversity will Ensure Religious Liberty, Bills of Rights Containing Protection of Religious Liberty are not Effective, National Government has no Authority to Interfere in Religious Matters of States

Zachariah Johnston Speech in the Virginia Convention, 25 June 1788

Lack of Religious Tests Creates Religious Liberty, Religious Diversity in America Ensures Religious Liberty

CONCERNS OVER THE RELIGIOUS TEST CLAUSE

Samuel, Boston *Independent Chronicle*, 10 January 1788

National Survival Necessitates an Official Religion, Religion Necessary for Stability of Nation

Theophilus Parsons Speech in the Massachusetts Convention, 23 January 1788

The Limits and Ineffectiveness of a Religious Test, A Religious Test Will Lead Dishonest Men to Lie about Their Religious Beliefs, The Narrowness of a Religious Test is a Problem Due to Diversity of Christian Beliefs

Elihu, Hartford *American Mercury*, 18 February 1788

Religious Tests are Outdated, God does not Need Human Affirmation, Founders Praised for Excluding a Religious Test

William Lancaster Speech in the North Carolina Convention, 30 July 1788

State Religious Tests Should be a Model for National Constitution, Fear of Catholics and Mahometans Serving in Office

PRIMARY SOURCE DOCUMENTS

Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787

I have also read the new constitution which is offered to us, and I am very sorry to inform thee that I don't altogether like it.

I have searched it from beginning to ending, and I don't find a protection for the liberty of conscience, and that all men shall worship god agreeable to their own dictates. I should have liked the constitution much better if our friends of the Convention had inserted the 2d article of the Bill of Rights prefixed to the Constitution of Pennsylvania.—“That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own conscience and understanding: And that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.”

Philadelphiensis II, Philadelphia *Freeman's Journal*, 28 November 1787

In regard to religious liberty, the cruelty of the new government will probably be felt sooner in Pennsylvania than in any state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed. In the new constitution there is no declaration in their favour; but on the contrary, the Congress and President are to have an absolute power over the *standing army, navy, and militia*; and the *president*, or rather *emperor*, is to be commander in chief. Now, I think, that it will appear plain, that no exemption whatever from militia duty, shall be allowed to any set of men, however conscientiously scrupulous they may be *against bearing arms*. Indeed, from the nature and qualifications of the president, we may justly infer, that such an idea is altogether preposterous: he is by profession a *military man*, and possibly an old soldier; now, such a man, from his natural temper, necessarily despises those who have a conscientious aversion to a military profession, which is probably the very thing in which he principally piques himself. Only men of his own kind will be esteemed by him; his fellow soldier he will conceive to be his true friend, and the only character worthy of his notice and confidence.

Since, in the new constitution no provision is made for securing to these peaceable citizens their religious liberties, it follows then by implication, that no such provision was intended. . . . How can we expect that a special law will be made by the new Congress merely on their account; and yet it will be absolutely necessary that such a law shall be made, before this privilege is secured to them? Can any man rationally suppose that the president will give his assent to a law in favor of the men whom he heartily despises; a law also, that in its operation must curtail his own *dignity* and *splendor*, by reducing the number of his military? No certainly. . . . The friends of this scheme of government may possibly attempt to say, that this religious liberty is sufficiently secured by the constitution of the state. But I say not; for, this is a case in which the United States are a party, and every case of this kind, according to the new plan, must be determined by the *supreme law of the land*; that is, by the Congress and president, who are to have the sole direction of the militia. This will be a matter then, in which a particular state can have no concern.

James Madison Speech in the Virginia Convention, 12 June 1788

The honorable member has introduced the subject of religion.—Religion is not guarded—There is no Bill of Rights declaring that religion should be secure.—Is a Bill of Rights a security for religion? . . . If there were a majority of one sect, a Bill of Rights would be a poor protection for religion. 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. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this Commonwealth, a majority of the people are decidedly against any exclusive establishment—I believe it to be so in the other States. There is not a shadow of right in the General Government to intermeddle with religion.—Its least interference with it would be a most flagrant usurpation.—I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom.—It is better that this security should be depended upon from the General Legislature, than from one particular State. A particular State might concur in one religious project.—But the United States abound in such a vast variety of sects, that it is a strong security against religious persecution, and is sufficient to authorise a conclusion, that no one sect will ever be able to out number or depress the rest.

Zachariah Johnston Speech in the Virginia Convention, 25 June 1788

We are also told, that religion is not secured—that religious tests are not required.—You will find that the exclusion of tests, will strongly tend to establish religious freedom. If tests were required—and if the church of England or any other were established, I might be excluded from any office under the Government, because my conscience might not permit me to take the test required. The diversity of opinions and variety of sects in the United States, have justly been reckoned a great security with respect to religious liberty. The difficulty of establishing an uniformity of religion in this country is immense.—The extent of the country is very great. The multiplicity of sects is very great likewise.—The people are not to be disarmed of their weapons—They are left in full possession of them. The Government is administered by the Representatives of the people voluntarily and freely chosen. Under these circumstances, should any one attempt to establish their own system, in prejudice of the rest, they would be universally detested and opposed, and easily frustrated. This is a principle which secures religious liberty most firmly.—The Government will depend on the assistance of the people in the day of distress. This is the case in all Governments. It never was otherwise.

Samuel, Boston *Independent Chronicle*, 10 January 1788

Was there ever any State or kingdom, that could subsist, without adopting some system of religion? Not so much as to own the being, and government of a Deity; or any acknowledgment of him! or having any revelation from him! Should we adopt such a rejection of religion as this, the words of Samuel to Saul, will literally apply to us,—*Because thou hast rejected the word of the Lord, he hath also rejected thee from being king.* We may justly expect, that God will reject us, from that self government, we have obtained thro' his divine interposition: Or being able to keep up government and order among us; for he has commanded the rulers of the earth, to kiss the son, lest he be angry, and they perish from the way.

If civil rulers won't acknowledge God, he won't acknowledge them; and they must perish from the way. And there can be no rational doubt, that the prevailing neglect of acknowledging God in the time of the revolution, and since, is the cause of our having such convulsions as have been among us; we are perishing from the way.

Theophilus Parsons Speech in the Massachusetts Ratifying Convention, 23 January 1788

It has been objected, that the Constitution provides no religious test 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 publick offices may be filled by men who fear God and hate wickedness; but it must remain with the electors to give the government this security—an oath will not do it: Will an unprincipled man be entangled by an oath? Will an atheist or a pagan dread the vengeance of the christian's God, a being in his opinion the creature of fancy and credulity? It is a solecism in expression. No man is so illiberal as to wish the confining places of honour or profit to any one sect of christians: But what security is it to government, that every publick officer shall swear that he is a christian? For what will then be called Christianity? One man will declare that the christian religion is only an illumination of natural religion, and that he is a christian; another christian will assert, that all men must be happy hereafter in spite of themselves; a third christian reverses the image, and declares, that let a man do all he can, he will certainly be punished in another world; and a fourth will tell us, that if a man use any force for the common defence, he violates every principle of Christianity. Sir, the only evidence we can have of the sincerity and excellency of a man's religion, is a good life—and I trust that such evidence will be required of every candidate by every elector. That man who acts an honest part to his neighbour, will most probably conduct honourably towards the publick.

Elihu, Hartford *American Mercury*, 18 February 1788

The mind is free; it may be convinced by reasoning, but cannot be compelled by laws *or constitutions*, no, nor by fire, faggot, or the halter. Such an acknowledgment is moreover useless *as a religious test*—it is calculated to exclude from office *fools* only, who believe there is no God; and the people of America are now become so enlightened that no fool hereafter (it is hoped) will ever be promoted to any office or high station. . . .

Making the glory of God subservient to the temporal interest of men is a wornout trick, and a pretense to superior sanctity and special grace will not much longer promote weakness over the head of wisdom.

A low mind may imagine that God, like a foolish old man, will think himself slighted and dishonored if he is not complimented with a seat or a prologue of recognition in the Constitution, but those great philosophers who formed the Constitution had a higher idea of the perfection of that INFINITE MIND which governs all worlds than to suppose they could add to his honor or glory, or that He would be pleased with such low familiarity or vulgar flattery.

The most shining part, the most brilliant circumstance in honor of the framers of the Constitution is their avoiding all appearance of craft, declining to dazzle even the superstitious by a hint about grace or ghostly knowledge. They come to us in the plain language of common sense and propose to our understanding a system of government as the invention of mere human wisdom; no deity comes down to dictate it, not even a God appears in a dream to propose any part of it.

A knowledge of human nature, the aid of philosophy, and the experience of ages are seen in the very face of it; whilst it stands forth like a magnificent STATUE of gold. Yet, there are not wanting FANATICS who would crown it with the periwig of an old monk and wrap it up in a black cloak—whilst *political quackery* is contending to secure it with fetters and decorate it with a leather apron!!

William Lancaster Speech in the North Carolina Convention, 30 July 1788

It hath been asserted, by several worthy gentlemen, that it is the most excellent Constitution that ever was formed. I could wish to be of that opinion if it were so. . . . As to a religious test, had the article which excludes it provided none but what had been in the states heretofore, I would not have objected to it. It would secure religion. Religious liberty ought to be provided for. I acquiesce with the gentleman, who spoke, on this point, my sentiments better than I could have done myself. For my part, in reviewing the qualifications necessary for a President, I did not suppose that the pope could occupy the President's chair. But let us remember that we form a government for millions not yet in existence. I have not the art of divination. In the course of four or five hundred years, I do not know how it will work.

This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it. There is a disqualification, I believe, in every state in the Union—it ought to be so in this system.

THE LESSON PLANS—Should We or Shouldn't We?

OBJECTIVES OF THE LESSONS

- * Students should be able to identify Federalist and Antifederalist viewpoints in primary source materials.
- * Students will consider how religious rhetoric was used both in favor and in opposition to the Constitution.
- * Students will evaluate the legitimacy of religious beliefs being used to advocate for and against the Constitution.

THE LESSONS

LESSON ONE

1. Divide the class into groups of 3-5 students.
2. Half of the groups should be given “Timothy Meanwell,” “Philadelphiensis,” James Madison, and Zachariah Johnston. The other half should be given “Samuel,” Theophilus Parsons, “Elihu,” and William Lancaster.
3. All groups should be given the graphic organizer below. Give groups time to read their documents and discuss the central religious issue in each item.

<u>Document</u>	<u>Federalist or Antifederalist?</u>	<u>Religious Issue</u>	<u>Argument</u>
Group 1			
Timothy Meanwell			
Philadelphiensis			
James Madison			
Zachariah Johnston			
Group 2			
Samuel			
Theophilus Parsons			
Elihu			
William Lancaster			

4. After students have read through their documents, they should record their findings in the appropriate section of the graphic organizer. Each group should come to a consensus regarding three things.
 - a) Are their items written by a Federalist or Antifederalist?
 - b) What is the central religious issue being addressed in each document?
 - c) How they would summarize the argument of the writer.
5. After groups have completed their discussions, have the groups report their findings to the class.
6. You can conclude the lesson by leading a discussion using the following questions.
 - * Of these two religious issues discussed, which would you consider more important? The less important?
 - * What does it suggest about the culture at that time, when individuals use religious beliefs in their support or opposition to the Constitution?
 - * In your view, are individuals justified in using their religious beliefs in their arguments in support of and in opposition to the Constitution?
 - * Do you think that the diversity of religious beliefs that Madison and Johnston pointed out in their speeches has proven to be adequate in protecting religious liberty?

LESSON TWO

1. Display or distribute the religious oath contained in the Delaware 1776 Constitution. Remind students that elected officials in Delaware had to agree and swear or affirm by it if they wanted to hold office.

Delaware, 1776

Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit: "I, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

2. Divide the class into seven groups and distribute the graphic organizer below. Note that each group will be assuming the role of an individual belonging to a particular sect who wants to run for office in the state of Delaware. Each group will need to consider if in fact they can hold office or whether the required oath would prevent them from holding office. To do this, groups may need to do some simple research as the basic beliefs of their assigned religious group.

Religious Sect	Beliefs	Objectionable Clauses	Acceptable Clauses
1. Anglicans			
2. Baptists			
3. Catholics			
4. Jews			
5. Protestants			
6. Quakers			
7. Atheists			

3. After the groups have researched the views of their particular sect, have them discuss the Delaware oath. Have them note clauses that would be objectionable and acceptable to them as a member of their particular group.
4. After groups have completed their discussions, you can have them report their findings to the class.
5. You can conclude the lesson by leading a discussion using the following questions.
 - * What does the diversity of religious beliefs suggest about the challenges associated with religious oaths?
 - * Does the diversity of the American religious landscape necessitate writing a religious oath that satisfies all religions or is not having a religious oath at all a better option?