RELIGIOUS CONSTITUTIONAL ISSUES DURING THE RATIFICATION DEBATES

Questions to Consider

1. *How would you explain the difference of opinion on the issue of the Constitution's silence on the freedom of religion?*
2. *To what extent, if any, is this debate during the ratification process a continuation of the dilemma about the role of religion in society as seen in the colonial era?*
3. *In your opinion, what is most notable about the recommendatory amendments?*

The Freedom of Religion and the Freedom of Conscience

A Friend of Society and Liberty, *Pennsylvania Gazette*, 23 July 1788 (excerpts)

. . . Blessed circumstance, for which above all others the favored people of these states should ever raise their grateful voices in praise and thanksgiving to the author of every good and perfect gift. The fœderal connexion, established on these liberal and generous principles, will lead to a sort of fœderal union among the various churches which it has pleased God to raise up in the world. Here none can be particularly favored, none can be particularly oppressed, none can be interfered with—all are equal—all independent of each other. They will not render to each other nor to the government, tithes, nor tenths, nor free gifts (as they have been preposterously termed) nor any species of taxes, as religious men or societies. Nothing will be expected, nothing will be required but peace and good will, and brotherly loving kindness. This excellent quality of the new government will warm and expand our bosoms whenever we reflect upon it. The liberality and virtue of America in establishing perfect equality and freedom among all religious denominations and societies, will no doubt produce to us a great reward, for when the news of it shall reach the oppressed dissenters from the established churches of Britain, Ireland, Holland, Germany, France, Spain and Italy, and they shall find that it encourages both protestants and catholics, they will at once cry out, America is "the land of promise." There alone can the sincere votaries of religion enjoy their lives, their civil and religious rights and property, without suffering from their attachment to that church in which they have been born and bred, and which they believe to be right and true. Ye Sovereigns of the European world, continue your religious oppressions at your peril. So sure as you persist, thousands of your present subjects, transplanted to the fertile fields, the healthful villages and populous cities of America, shall remind you of your impiety and error, when it shall be too late for you to retrieve the loss. . . .

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

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*. . . .

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. Their influence in the state of Pennsylvania is fully sufficient to save them from suffering very materially on this account; but in the great vortex of the whole continent, it can have no weight. 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 splender*, by reducing the number of his military? No certainly. There is not probably a military man on earth that could bear the thought. So that such a supposition is absurd. 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.

From the proceedings of the convention, respecting liberty of conscience, foreign politicians might be led to draw a strange conclusion, viz. that the majority of that assembly were either men of no religion, or all of one religion; such a conclusion naturally follows their silence on that subject; they must either have been indifferent about religion, or determined to compel the whole continent to conform to their own. For my own part, I really think, that their conduct in this instance is inexplicable: it is impossible to divine what might have been their intentions.

Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787 (excerpts)

Friend Oswald, As I sometimes (though not very often) read newspapers, and when I do read any, I generally give thine the preference; because if there is any dispute a– going, thee generally has both sides of the question. 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. . . .

. . . The further I went on parusing this constitution the worse I liked it: there was another of which I was informed and which sat very heavy upon my stomach, for thee knows friend Oswald, we Quakers are not flighty men. I was told there was to be a standing army raised, and also that every man who was draughted in the militia, must do his duty as a soldier, for he cannot by this new constitution send a man in his stead, neither will any fine be received as an equivalent for his services–Thinks I this wont do for those of our profession, who are principled against bearing arms; I had rather it had been like the 8th section of the Bill of Rights to the constitution of Pennsylvania.–"That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service, when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent: Nor are the people bound by any laws, but such as they have in like manner assented to, for their common good."

The Religious Test Clause

A Landholder VII, *Connecticut Courant*, 17 December 1787 (excerpts)

A religious test is an act to be done, or profession to be made, relating to religion (such as partaking of the Sacrament according to certain rites and forms, or declaring one's belief of certain doctrines), for the purpose of determining whether his religious opinions are such that he is admissible to a public office. A test in favor of any one denomination of Christians would be to the last degree absurd in the United States. If it were in favor of either Congregationalists, Presbyterians, Episcopalians, Baptists, or Quakers, it would incapacitate more than three-fourths of the American citizens for any public office; and thus degrade them from the rank of freemen. There needs no argument to prove that the majority of our citizens would never submit to this indignity.

If any test act were to be made, perhaps the least exceptionable would be one requiring all persons appointed to office to declare, at the time of their admission, their belief in the being of a God and in the divine authority of the Scriptures. In favor of such a test, it may be said that one who believed these great truths will not be so likely to violate his obligations to his country, as one who disbelieves them; we may have greater confidence in his integrity. But I answer: his making a declaration of such a belief is no security at all. For suppose him to be an unprincipled man, who believes neither the Word nor the being of a God, and to be governed merely by selfish motives, how easy is it for him to dissemble? How easy is it for him to make a public declaration of his belief in the creed which the law prescribes; and excuse himself by calling it a mere formality? This is the case with the test laws and creeds in England. The most abandoned characters partake of the Sacrament in order to qualify themselves for public employments. The clergy are obliged by law to administer the ordinance unto them; and thus to prostitute the most sacred office of religion, for it is a civil right in the party to receive the Sacrament. In that country, subscribing to the Thirty-Nine Articles is a test for admission into holy orders. And it is a fact that many of the clergy do this; when, at the same time, they totally disbelieve several of the doctrines contained in them. In short, test laws are utterly ineffectual; they are no security at all, because men of loose principles will, by an external compliance, evade them. If they exclude any persons, it will be honest men, men of principle, who will rather suffer an injury than act contrary to the dictates of their consciences. If we mean to have those appointed to public offices who are sincere friends to religion, we the people who appoint them must take care to choose such characters and not rely upon such cobweb-barriers as test laws are.

But to come to the true principle by which this question ought to be determined: The business of civil government is to protect the citizen in his rights, to defend the community from hostile powers, and to promote the general welfare. Civil government has no business to meddle with the private opinions of the people. If I demean myself as a good citizen, I am accountable not to man, but to God, for the religious opinions which I embrace and the manner in which I worship the Supreme Being. If such had been the universal sentiments of mankind, and they had acted accordingly, persecution, the bane of truth and nurse of error with her bloody axe and flaming hand, would never have turned so great a part of the world into a field of blood. . . .

A Friend to the Rights of the People: Anti-Fœderalist, No.I , Exeter *Freeman's Oracle* 8 February 1788 (excerpts)

Remark 9. Upon the discarding [of?] all religious tests, Art. 6. clause 3.—But no religious test shall ever be required as a qualification to any office, or public trust under the United States, according

to this we may have a Papist, a Mahomatan, a Deist, yea an Atheist at the helm of Government: all nations are tenatious of their religion, and will have an acknowledgment of it in their civil establishment; but the new plan requires none at all; none in Congress; none in any member of the legislative bodies; none in any single officer of the United States; all swept off at one stroke contrary to our state plans.—[But?] will this be good policy to discard all religion? It may be said the meaning [is?] not to discard it, but only to show [that?] there is no need of it in public officers, they may be as faithful without as with—this is a mistake—when a man has no regard to God and his laws nor any belief of a future state; he will have little regard to the laws of men, or to the [most?] solemn oaths or affirmations; it is acknowledged by all that civil government can't well be supported without the assistance of religion; I think therefore that so much deference ought to be [paid?] to it, as to acknowledge it in our civil establishment; and that no man is fit [to?] be a ruler of protestants, without he [can?] honestly profess to be of the protestant religion. . . .

Matthias Stone and Samuel Langdon Speeches in New Hampshire Convention
20 February 1788

Among other paragraphs which were debated, none took up more time in the convention, than the article which says, "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 this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States," *Art.* 6. *Sec.* 4.

This paragraph being read, Deacon [Matthias] *Stone*, (from Claremont) rose, and wished to know whether a religious test was not necessary for the security of our religious rights—he thought it was—it had ever been practised by our forefathers—and was considered by them as their inestimable privilege—their pearl of great price—He called upon the reverend Clergy and the friends to religion to rise and support the cause of religion:—he tho't, in the present day, when iniquity was abounding, it was highly necessary that there should be some restraint laid upon wicked and designing men. He thought it was necessary, at least, that men, previous to their entering into any office of state, should acknowledge their belief in the being of a God, &c. He did not know but, if this constitution was adopted, that Congress might deprive the people of the use of the holy scriptures—that *pearl of great price*—that *inestimable jewel*—he said, he was not for confining men's consciences, but he tho't, as we were now establishing new government, it was the only time to secure our religious rights, or it might hereafter be too late. He said, he did not, for his part consider the connecting the civil power with the ecclesiastical in so novel a manner as the Rev. Gentlemen present.—The scriptures hold up the idea—"*Kings shall be their nursing fathers, and Queens their nursing mothers*["]—where then was the harm—he believed the Rev. Gentlemen present, had often received their salary in consequence of this support, and would be glad to receive it again in the same way.

He was answered by the Rev. Dr. *Langdon*, who took a general view of religion as unconnected with and detached from civil power—that it was an obligation between God and his creatures, and the civil authority could not interfere without infringing upon the rights of conscience. He said, the paragraph as it stood, was the greatest security that could be expected. He took a short review of the christian history, and with admirable ingenuity traced the various steps by which the civil power became connected with the ecclesiastical, and by which the ecclesiastical became the supreme head, dispensing laws to kings and emperors, dictating their councils, &c. He said, this connecting the civil power with the ecclesiastical was the cause of all the persecutions which had taken place. Religion must stand upon its own ground—if it could not, he should never think of calling upon the civil arm for its support—It would be arguing that its great author was insufficient. He said our

state constitution guarantied to us the free exercise of our religion, of which the new constitution was no infringement—that he should not have objected, if a paragraph had been inserted agreeable to the gentlemen's wishes, but had rather it should be omitted, because it would be acknowledging a power which he did not think the government ought to possess, that of dictating in matters of conscience. He venerated the concern which the gentlemen expressed for the cause of religion, but thought the zeal a mistaken one.—He was fully sensible of the importance of having religious men for our rulers, honest men, men hating covetousness—but, says he, where shall we draw the line? Religion does not consist in outward appearances; a man may make fair pretensions, and yet be a hypocrite at heart. A test will never be binding upon an atheist, a man of no religion. He reprobated the idea of the roman catholic religion gaining ground in this land; "the kings of the earth, said he, who formerly united in building up the kingdom of that whore, are now busily employed in pulling her down; and the period is not far distant, when she will sink like a mighty millstone, never to rise again." He was decidedly in favour of the paragraph as it stood, and considered it as one of the greatest ornaments to the new Constitution.

The Issue of Slavery

Moses Brown to James Pemberton, Providence, 17 October 1787 (excerpts)

. . . I observe in the Proceedings of the Federal Convention Two Articles which according to the Construction of friends here Millitate against Our Testimony in Support of Liberty, or against Slavery.–It is with Reluctance I say any thing against the doings of that respectable Body, but observing in the publick papers that friends in your City with others are United in Approving the Constitution, and apprehending under Our Construction of it, friends will not be Clear without bearing Testimony against those parts which give Countenance to if not directly Incourage Slavery, I thought best to Write thee on the subject. . . . On my reading the Doings of the Convention, the 3d paragraph of the 2d Seen of the 4th Article Sensibly affected me with an apprehention that it was designd to Distroy the Present Assylum of the Massachusets from being as a City of Refuge for the poor Blacks, many of whom had resorted there on Acct of their Constitution or Bill of rights declaring in the first Article "That all men are born free & Equal &c," and there being no Laws in that State to support slavery, the Negroes on Entering that state are as free as they are on Entering into Great Brittain and the southern people have not been able by Applycation to the Governour, Judges or other Authority to Recover those they had held as Slaves, who chose to Stay there. I have Considerd it a great favour to that people, and an Opening in Wisdom in that State, for the Exaltation of Truth, Testimony over the Opressors of the African race. . . . But the Poor Devoted Africans seems in the 9th. Seen, of the 1st Article, tho the subjects of Unrighteous Revenue to be left out of the power of Congress to Consider them as Men & so Entituled to Liberty and their protection, nor yet are they yielded by the States to Congress as Commerce, but Left to the Averice or Oppression of the Subjects of any State, with the concurrance of the Convention, the Usage of Importing them being so far Acknoledged by them as a right, that the Constitution is not to Admit of being mended in that particular, by which Countenance or Establishment of Slavery for 21 years, the Incouragement of a Reformation is obstructed and the states may fall back from their present Light into great Darkness on this Subject, and the Recovery from this Gross Evil, for which this Land Mourns be long Obstructed. . . .

Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787 (excerpts)

Friend Oswald, As I sometimes (though not very often) read newspapers, and when I do read any, I generally give thine the preference; because if there is any dispute a– going, thee generally has both sides of the question. 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 also heard a story going that the importation of slaves was allowed for twenty– one years, I thought now I certainly had in my power to catch them in telling untruths; I took up the constitution once more, and went to searching again, (for I was sure my friend ——, whose character I very much respect, would never attempt to encourage or connive at slavery, he who is famed throughout the world as the champeon of liberty, nor friend ——, who is one of the members of our society for the abolition of slavery, would never agree to so inhuman a traffic as that of carrying on a trade in the human species) but to my mortification, I found that this assertion was too true; for in the 9th section of the new constitution, this traffic is allowed: however, I thought this part would never do at any rate, and I was in hopes that some well disposed people would petition and have this article erased and abolished as a disgrace to the annals of America–But methinks I wont be too censorious but examine further, perhaps I shall find some method by which this clause may be evaded or repealed, but to my mortification, the further I went the worse I liked it–I had been told that there was a clause reserving a right to amend the constitution.–Ah thinks I, here is a hole in which the importation of slaves will be thrust out of the constitution; I pushed on in search of the clause, I found it, but what was my surprise when I found it, for in the 5th article, I find that there are two clauses which cannot in the new constitution be repealed till after the year 1808, and perhaps never will after that time, one of which, is that of allowing the importation of slaves for 21 years. . . .

Amendments by Recommended by State Conventions Related to Religion, 1787-90

Pennsylvania, 12 December 1787 (From the Dissent of the Minority of the Convention)
1.The right of conscience shall be held inviolable; and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

Maryland, 26 April 1788 (William Paca Proposed, not Accepted by the Convention)
That there be no National Religion established by Law; but that all Persons be equally entitled to Protection in their religious Liberty.

South Carolina, 23 May 1788
Resolved that the third Section of the Sixth Article ought to be amended by inserting the word "*other*" between the words "*no*" and "*religious*"

New Hampshire, 21 June 1788
11th. Congress shall make no laws touching religion, or to infringe the rights of conscience.

Virginia, 27 June 1788
19th. That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

20th. 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 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 favored or established by law in preference to others.

New York, 26 July 1788
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 favoured or established by Law in preference of others.

North Carolina (Hillsborough), 2 August 1788
20[th]. 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 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 favoured or established by law in preference to others.

Rhode Island, 29 May 1790
4th. 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, and 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 favoured, or established by law in preference to others.

18th That any person religiously scrupulous of bearing arms, ought to be exempted, upon payment of an equivalent, to employ another to bear arms in his stead.