

# Establishment clause of the first amendment name religion essay



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The first amendment of the American constitution comprise of two clauses. The first one is the establishment clause and the second one is the free exercise clause. All the two clauses are associated with the link between the government and the religion. The intension of the framers of the two clauses was that they will serve common values but with time, some sort of tension is found to exist between the two clauses. The best example of the conflict between the two clauses is where by the free exercise clause will support the provision of overseas stationed military troops with a military chaplain as opposed to the establishment clause i. e. it will be seen as a violation of the establishment clause while failure to provide a chaplain will be supported by the establishment clause and at the same time seen by others as a violation of the same troops' rights according to the free exercise clause (Klinker, 1991).

First amendment's establishment clause

Text of the first Amendment and what it means

The text of the first amendment of the constitution of united states of America states that, " There shall be no law made by the congress that will respect religion establishment, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances (Klinker, 1991, p. 47)." The establishment clause of the religion which is a section of the first amendment means the following. It first encloses the no state or federal government shall set up any kind of religion or church. It can not also pass any law that will aid either one or all religions

and neither will it have a preference of one religion over the other. It has no powers to force any individual or person to either attend church services or remain off the church forcefully against the will of that person. It can't force any one to profess either a belief or if it is a disbelief anywhere in any church or religion. It also prohibits any form of punishments to anybody that will entertain or prophesize either religious disbeliefs or beliefs for attendance or non-attendance of the church. It also prohibits the use of any amount of tax be it small amount or huge amounts of the tax to aid in any activities that are religious or even religious institutions themselves and this not only applies to any kind of religion but also to any form of practice that can be adopted by this kinds of institutions to either practice or teach matters of religion. There should be a distinct separation between the religion and any state of federal government and no any form of interaction should be witnessed between the two arms openly or secretly and this means that each one of them should carry out their own affairs without any form of participation across. They should carry out their activities independently without the influence of one another (Kleeberg, 1986).

### Origins or history of the First Amendment

The founder of the first amendment was called Thomas Jefferson. He was so much concerned and engaged in issues to do with the religious free exercises and freedom of speech. Thomas Jefferson lived in his home state called Virginia and had made effort of implementing religious free exercises and freedom of speech protections in this state's constitution. He later ultimately influenced and persuaded James Madison to make a proposal of the bill of rights. His most top priority agenda in the bill of rights

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amendments were the first amendment's establishment and free exercise clauses (Farish, 1998).

Why did Founders put it in the Bill of Rights - what was the purpose

The establishment clause of the first amendment was at absolute minimum incorporated in the bill of rights with a purpose of prohibiting the declaration as well as financial support of any nation religion by the federal government inclusive of those that existed at a time of founding of the nation in other several countries. However it is not yet clear to whether this clause was also meant to prohibit the federal government from the act of support to Christianity as general religion. The establishment clause was included in the bill of rights to prohibit the congress of any state from establishing a national religion and prevent a situation where by one religion will appear preferred over the other. This clause of the first amendment has been interpreted in various ways. The first approach of the interpretation is known as the separation interpretation where as the second one is known as the accommodation (non-preferential) interpretation approach. According to accommodation or non-preferential mode of understanding, the congress is not supposed to show any favor or preference of one religion compared to the other but at the same time the government entry in the domain of the religion with the purpose of making accommodations is not prohibited and this is because it so happens purposely to adhere to free exercise clause.

How did the individual states behave in regard to the religion in public life at the time?

Since the declaration of the establishment clause and the free exercise clause in regard to religion by the Supreme Court, their incorporation into the system of state governments was not an easy task. It was so tricky accompanied by lots of critique and more so, the establishment clause which was much more subject to critique by individual states. The incorporation of the establishment religion clause was faced by some controversies which root from the idea or fact that this clause was mainly intended to prohibit interference of the religion establishments of the state by the congress which was there at founding time and according to history, at minimum of six individual states had already set up religion. This fact was however conceded by most members including those from the court who argued that the establishment clause was to be applied to individual states by means of incorporation.

Although various religious conflicts had brought a great division in Europe at a time, the motivation of the establishment clause was mainly by the hostility towards it and the suspicion of England's church. It was until 1980s where no bishop of Anglican or Episcopal was found in United States. This implicated that all Anglican tradition priests which was at the time the religion of the states like Virginia, Carolina and also a state of Georgiana (Farish, 1998).

Evolution of establishment clause

Discuss Everson Case and other notable cases that strike down school prayer or 10 Commandment displays, etc., as unconstitutional

The beginning of the interpretation of the first amendment establishment clause was evident in 1940s during which a case cropped between the board of education and Everson. . In this Everson vs. Board of education case, Everson was the petitioner while the board of education was the respondent. The root cause of this case started when a law was enacted by the New Jersey to enable local school districts come up with rules that will allow school children to be transported to school and back home. When this law was enacted, the Ewing township board of education agreed to pay back the parents for any expenditure made by them to transport their children on public buses to either public schools or schools of catholic Catholicism. This amount of money that was to be used in paying back to parents was actually the tax payer's money contributed by all citizens. It is this act that made Everson who was a tax payer and also a resident of Ewing Township to file a case against the board of education. He petitioned that it was a violation of the establishment clause to use tax payer's money to transport children to catholic schools. The agreement and the ruling of the trial court was that both the Ewing Township and the New Jersey law were not in accordance with the constitution. However, this ruling was appealed in the New Jersey's highest court which indeed reversed the decision made earlier on by the trial court and it now ruled that there was no violation of the establishment clause by the new laws. This ruling now made Everson to appeal to the supreme court of the United States (Sherrow, 1997).

There was a 5-4 voting by the Supreme Court to uphold laws of Ewing Town and New Jersey. The justice of the Supreme Court R. Black wrote for the court discussing the history of American and Europe colony's religious

prosecution. He elaborated on how such prosecutions were to be avoided by designation of the first amendment by keeping separate the government and the religion. This discussion made it appear that may be the court will make a ruling that will be against the laws of New Jersey. In any case, the argument by Everson was that the utilization of the money collected from tax to take children to school and more so catholic schools was a form of an aid to the religion. The court's judge argued that the transportation offered to children both to public and catholic schools was not in any way a misuse of tax payers money but rather a public service which was meant to benefit the society as a whole in terms of education. He added that when this service is only given to public schools, it will be like discrimination for children attending catholic schools and this by itself will violate the free exercise clause. He said that the first amendment requires equal treatment of religions without any fear or favor by the government. The court's majority decision was not welcomed by other four justices two of which raised dissenting opinions. Jackson said that the act of giving help to enable catholic school children attend school was like giving them a push to be adult Catholics in future. In this way, the law was seen to aid religion and the same time seen to violate the church and state separation. Jackson also believed that the laws of Ewing Township were discriminating against religions. This means that only children from catholic or public schools were to benefit from the transportation system totally forgetting those that attend private schools or any other non catholic religious schools. To him, this was a protection of public and catholic school children as opposed to protestant schools (Sherrow, 1997).

Another dissenting statement came from Justice W. Blount who analyzed that the historical fight by Madison against support of religion by the state. He argued that the writing of the first amendment by Madison was with an aim of prohibiting the law that supported the use of tax payer's cash in support religion. He made a statement that this new law of Ewing town and New Jersey of support to religion using tax payer's cash was a violation to the establishment clause of the first amendment and was like simply sending children indirectly to Sunday school. He feared that this decision by the court was likely to erase the wall of separation that exists between the church and the state. Fifty years of more after the decision on this case of Everson by the court, there is still a struggle by the school districts to separate the church and the state. There has been several issues including creation of voucher program that will enable poor children to school in private schools and can also allow them attend religious schools. Not because of the use of money from tax to cater for this vouchers, still issues are raised that this program is a violation of establishment clause (Klinker, 1991).

Subsequent decisions by the courts now made it clear that the barrier between the religion and the state was now being omitted if not being seen as porous or shifting with fluctuations and differences in cases leading to different outcomes. A good illustration is where the court ruled that invitation practice of religion instructors to schools especially public ones to deliver religious instructions to children is a violation of the establishment clause. Also in the case of *Zorach v Clauson* in the year 1952, the court ruled by upholding the act of release time given to public school children in order to enable them attend church programs in synagogues. The courts justice



Douglas wrote for the court and said that is not the requirement of the constitution to allow “ callous indifference to religion (Gay, 1992, p125).”

The issue of school sponsored prayers also is one of the questions that have highly proven to be controversial. This was shown in the land mark case that was between the Engel and Vitale in the year 1962. The ruling of the court on the practice in the New York that all the schools should begin with prayers at the state of school days as meditated by the school officials was a violation of the establishment clause. In it is case, the court declared this practice a violation of the establishment clause in any situation be it where it is not compulsory for the students to be involved or participate in the prayer session. After this case, the court was faced with several filed cases relate to prayer especially in the context of public schools. This has cropped up issues like holding of prayers in special occasions or circumstances like during the ceremony of graduations in schools. Others include silent meditation periods also known as silent prayers and also prayers initiated by students. In short, court has all along tried to show its willingness to turn down any acts or practices which are likely to be seen as endorsement of the religion by state or simply as coercive (Hirst, 1997).

Movement away from separationist interpretation into a more permissive interpretation of what government can do with regards to religion since the 1980s

According to separationism interpretation of the establishment clause, the government of any state was prohibited from engaging in matters concerning religion be it any form of support or endorsement. But since

1980s, a more permissive interpretation of what the government can act in regard to religion has been enlightened by both interpretations by the accommodationism and preferentialism. According to accommodationism interpretation, the government can now endorse or provide any form of support to various religions but only on condition that it equalizes the treatment across all religions without evidence of any form of discrimination or preferential treatment. The interpretation by the preferentialism holds that the first amendment establishment clause prevents creation of American literal church but this does not prohibit the endorsement of Christianity by the government (Moskin, 1980).

Where the Supreme Court should go in the future

As the debate goes on what is the true interpretation of the establishment clause, the Supreme Court is now getting itself in a position where it is not able to give an American stand on the establishment clause of the degree of separation of religion and the state government. But according to the modern interpretation, there is room for interaction between the church and the government bringing in a total contradiction between the old and the modern interpretation. Following this trend, in future, it seems the Supreme Court will stretch the meaning of the clause to be completely different from the original interpretation or intent and most likely, it will come to an interpretation that will suit to American society as a whole compared to the present and past interpretation (Evans, 1990).

Conclusion

Literally, it is only the establishment clause that enlightens the link between the religion and the government I the whole American constitution based on the first written constitution article without any more documentation, this clause would be the sole information source which highlights the church's relationship to the government. However although further documentations has brought different interpretation of the clause between the old and modern society, we expect that the fire of his extended argument or debate can only be fueled by finding and providing such separation documentary evidence between the government and the religion.