

The Separation Mirage

A Chapter taken from

America's Christian History: THE UNTOLD STORY

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CHAPTER 9

THE SEPARATION MIRAGE

DOES THE FIRST AMENDMENT REQUIRE A SECULAR GOVERNMENT? IS THE First Amendment violated when Christians apply biblical principles to public policy issues? In the simplest terms, separating Church and State means that the *institution* and the ecclesiastical *jurisdiction* of the Church is separate from the *institution* and the civil *jurisdiction* of the State. The Church as an institution cannot mingle in the institutional affairs of civil government. Neither can its officers. In the same way, civil government cannot disturb the ministry and operation of the Church by tampering with the Church's doctrines or courts.

Nowhere, however, does the First Amendment prohibit individuals from applying religious precepts to the legislative and judicial agenda of the State. For example, biblical laws against theft, murder, polygamy, abortion, homosexuality, rape, and perjury have been accepted by civil governments as having a civil application with no transgression of the First Amendment. At the same time, the State does not have the jurisdictional right to compel people to believe the gospel, confess the Christian religion, pay tithes, or attend church. Neither can the civil magistrate declare any single Christian denomination to be the nationally established Church.

Many people incorrectly maintain that the First Amendment was designed to remove any and all religious precepts and considerations from civil affairs. For example, the *Congressional Quarterly's Guide to the U.S. Supreme Court* provides the following definition of the establishment clause of the First Amendment.

The two men most responsible for its inclusion in the Bill of Rights constructed the clause *absolutely*. Thomas Jefferson and James Madison thought that the prohibition of establishment meant that a presidential proclamation of Thanksgiving Day was just as improper as a tax exemption for churches.¹

The historical facts dispute this seemingly authoritative interpretation of the First Amendment. James Madison issued at least four Thanksgiving Day proclamations.² If the *Congressional Quarterly's Guide to the U.S.*

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Supreme Court has accurately captured the meaning of the establishment clause of the First Amendment, then Madison “violated both his oath of office and the very instruments of government that he helped write and labored to have ratified.”³ In the same way, if Jefferson “construed the establishment clause absolutely, he also violated his oath of office, his principles, and the Constitution when, in 1802, he signed into federal law tax exemption for the churches in Alexandria County Virginia.”⁴ Of course, neither Madison nor Jefferson violated the First Amendment by these official State acts. It is the modern day secularist interpreter of Madison and Jefferson who has misread, misinterpreted, and misapplied the First Amendment. This misreading of the First Amendment has come about through “the change in the intellectual climate of the universities, and consequently in the media and the courts. It is these opinion-making centers that have influenced common thinking about law, morality, and religion. These centers have thrown the credibility of religious witness into doubt.”⁵



James Madison evidently did not believe that presidential proclamations of thanksgiving and prayer were unconstitutional. He issued at least four Thanksgiving Day proclamations.

Most of the misunderstanding surrounding Church-State issues arises from relying on secondary sources and misinformation. Most of this accepted misinformation is developed through the academic procedure which constitutional scholar Robert L. Cord calls “history by omission,”⁶ that is, the failure to deal with historical facts that run counter to a strict separationist interpretation of the First Amendment.

What Does It Say?

Too many debates over the meaning and implementation of the First Amendment are confused by a failure to cite it accurately or comprehensively: “Congress shall make no law respecting an establishment of

religion, 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.”



When the Founding Fathers signed the Constitution they had no intention of separating religion from civil life.

An accurate interpretation of the amendment must refer to the following points:

- There is no mention of the words Church, State or separation in the First Amendment or in the body of the Constitution.
- Included in the amendment are additional items which relate to the free exercise of religion. Usually these constitutional protections are narrowly applied so they are not a part of the freedom of religion provision: the right to talk about religion (freedom of speech), the right to publish religious works (freedom of the press), the right of people to worship publicly, either individually or in groups (freedom of assembly), and the right to petition the government when it goes beyond its delegated constitutional authority in these areas (the right of political involvement).
- The prohibition is addressed to *Congress*. Individual states and governmental institutions (e.g., public schools, capitol building steps, national parks, etc.) are not included in the amendment's prohibition. As clear as this is, some try to rewrite the First Amendment in order to fit their misconceptions about its

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meaning and implementation: "The First Amendment to the U.S. Constitution is the direct descendant of Jefferson's Virginia resolution, and its words are quite clear. Congress, *and by extension the states*, 'shall make no law respecting an establishment of religion.'" ⁷ If the constitutional framers wanted to include the phrase "and by extension the states," they would have done so.

- There is no mention of a freedom *from* religion. The First Amendment offers no support of a position that would outlaw religion just because it offends those of a different religion or those who have no religion at all (agnostics or atheists).

An interpreter of any written document must also consider historical circumstances, the author's purpose in writing, and the intended audience. With these considerations in mind, it would be wise, therefore, to follow the method suggested by Thomas Jefferson in understanding the *meaning* of the First Amendment: "On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." ⁸

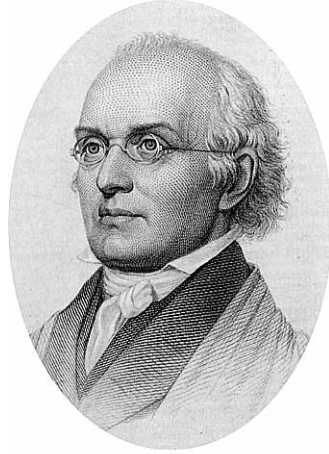
The Amendment's History

With this brief introduction, let's look into the history behind this much referred to but often misquoted, misunderstood, and misapplied amendment. When the Constitution was sent to the states for ratification, there was fear that the new national government had too much power. It was then proposed that additional prohibitions should be listed in the Constitution to restrict further the national government's power and jurisdiction.

The area of religion was important since a number of the states had established churches. Some of the framers were concerned that the federal government would establish a *national* Church (e.g., Anglican, Presbyterian, or Congregational) to be funded by tax dollars. The concern was that this national Church would disestablish the existing state churches. So then, the First Amendment was designed to protect the *states* against the national (federal) government. The amendment was not designed to disestablish the Christian religion as it found expression in the state constitutions. Justice Joseph Story, a Supreme Court justice of the nineteenth century, offers the following commentary on the amendment's original meaning:

The real object of the First Amendment was not to countenance, much less to advance Mohammedanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among Christian sects [denominations] and to prevent any national ecclesiastical establishment which would give to an hierarchy the exclusive patronage of the national government.⁹

Joseph Story stated that the purpose of the First Amendment was not to debase Christianity “but to exclude all rivalry among Christian [denominations].”



Story's comments are important. He states that the amendment's purpose was “to exclude all rivalry among *Christian* sects.” This presupposes that Christianity was the accepted religion of the colonies but that no single denomination should be supported by the national government. The amendment was not designed to make all religions equal, only to make all *Christian* denominations (sects) equal.

The word “establishment,” as used in the First Amendment, means recognition by civil government of a single denomination as the official Church. The amendment does not prohibit *the* establishment of religion in general, but rather *an* establishment of a particular Christian denomination, which our founders called a “sect.” Furthermore, there is nothing in the First Amendment restricting the states. The restriction resides solely with Congress. Writing the minority opinion in the *Wallace vs. Jaffree* case (1985), Supreme Court Justice William Rehnquist stated, “The Framers intended the Establishment Clause to prohibit the designation of any church as a ‘national’ one. The clause was also designed to stop the Federal government from asserting a preference for one religious denomination or sect over others.”¹⁰

If the amendment were constructed to prevent religion from having an impact on civil governmental issues, then it would seem rather strange

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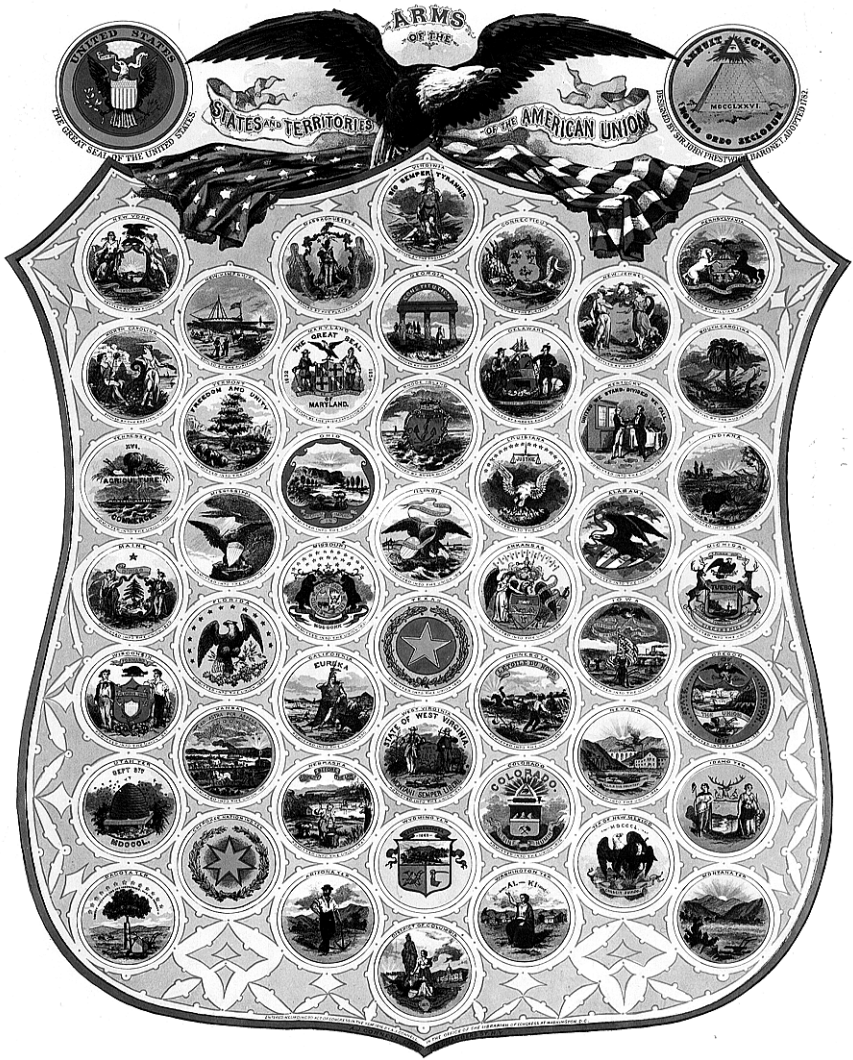
that on September 24, 1789, the same day that it approved the First Amendment, Congress called on President Washington to proclaim a national day of prayer and thanksgiving. The first Congress resolved:

That a joint committee of both Houses be directed to wait upon the President of the United States to request that he would recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness.¹¹

This proclamation acknowledges “the many signal favors of Almighty God, especially by *affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness.*” This is odd language for a group of men who supposedly just separated religion from government at all levels. In fact, this resolution uses devoutly religious language to acknowledge that they would not even have a government without God’s blessing.

The first Congress also established the congressional chaplain system by which official daily prayers to God are still offered. During the initial debate on the First Amendment, not one word was said by any congressman about a “wall of separation between Church and State.” In addition, as was stated above, at the time of the drafting of the First Amendment, a number of the states had established churches. This arrangement was not seen as a violation of the First Amendment. State churches and the First Amendment coexisted for some time with no perceived violation of the Constitution.

At the beginning of the Revolution established churches existed in nine of the colonies.... The first amendment in large part was a guarantee to the states which insured that the states would be able to continue whatever church-state relationship existed in 1791. Maryland, Virginia, North Carolina, South Carolina, and Georgia all shared Anglicanism as the established religion common to those colonies. Congregationalism was the established religion in Massachusetts, New Hampshire, and Connecticut. New York, on the other hand, allowed for the establishment of Protestant religions. Only in Rhode Island and Virginia were all religious sects disestablished. But all of the States still retained the Christian religion as the foundation stone of their social, civil, and political institutions. Not even Rhode Island and Virginia renounced



The United States Constitution was never intended to usurp authority from the states. The establishment of churches was left the prerogative of the individual state governments.

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Christianity, and both states continued to respect and acknowledge the Christian religion in their system of law.¹²

The pluralism of the colonies was a pluralism among the numerous *Christian* sects. They shared a fundamental agreement on the basics of the Christian faith and the ethical system outlined in Scripture.

Historical Fiction

The “separation between Church and State” phrase has two sources. The first is in the writings of Roger Williams, founder of Rhode Island. The most noted reference, however, is a letter Thomas Jefferson wrote to a group of Baptist pastors in Danbury, Connecticut, in 1802. In that letter Jefferson wrote:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and state.¹³

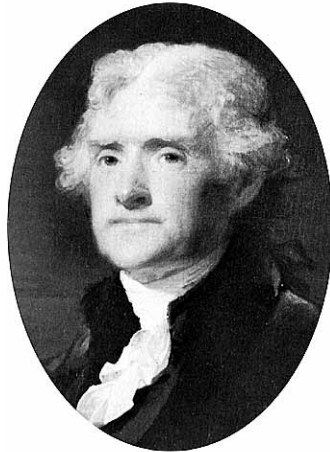
Jefferson had no hand in the drafting of the Constitution or the Bill of Rights. He was in France at the time. While Jefferson's opinions are instructive, they remain opinions. His personal correspondence, even as president, has no legal standing. In addition, Jefferson's use of the phrase “separation between church and state” is “a mere metaphor too vague to support any theory of the Establishment Clause.”¹⁴ Yet, it is Jefferson's vague “metaphor” that has been adopted as the standard interpretation of the First Amendment.

But what did Jefferson mean? His doctrine of separation cannot be compared to today's absolutist position. According to Jefferson, “opinions” and what a person believes about God—“faith or worship”—are outside the jurisdiction of the State. The State, however, does have jurisdiction over what a person does. As Jefferson wrote to the Danbury Baptists, “The legislative powers of government reach actions only.” Can civil governments appeal to religious precepts in the governance of actions? According to Jefferson's *official* acts as governor of Virginia and as president of the United States, civil government must have a religious basis.

When he was governor of Virginia, Jefferson readily issued proclamations declaring days of “public and solemn thanksgiving and prayer to Almighty God.”¹⁵ Jefferson’s Virginia “Bill for Punishing Disturbers of Religious Worship and Sabbath Breakers,” was introduced by James Madison in the Virginia Assembly in 1785 and became law in 1786. The section on Sabbath desecration reads:

If any person on Sunday shall himself be found labouring at his own or any other trade or calling, or shall employ his apprentices, servants or slaves in labour, or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall forfeit the sum of ten shillings for every such offence, deeming every apprentice, servant, or slave so employed, and every day he shall be so employed as constituting a distinct offence.¹⁶

Jefferson’s statement that the First Amendment is “a wall of separation between church and state” is vague and has no force of law.



As president, Jefferson included a prayer in each of his two inaugural addresses. He signed bills appropriating money for chaplains in Congress and the armed services, and signed the Articles of War, which not only provided for chaplains but also “earnestly recommended to all officers and soldiers, diligently to attend divine services.”¹⁷ In 1803, Jefferson signed an appropriation of funds to be paid to the Kaskaskia Indians who “in part, called for the United States to build them a Roman Catholic Church and pay their priest.”¹⁸

Jefferson advocated that the tax-supported College of William and Mary maintain “a perpetual mission among the Indian tribes” which included the instruction of “the principles of Christianity.” Jefferson’s proposed curriculum for the University of Virginia included a provision

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for a “professor of ethics” who would present “the Proofs of the being of God, the Creator, Preserver, and Supreme Ruler of the universe, the Author of all the relations of morality, and of the laws and obligations these infer.”¹⁹ While Jefferson was against ecclesiastical control of education, he was not against the teaching of religion.

In his Second Inaugural Address (1805), Jefferson stated, “In matters of religion I have considered that its free exercise is placed by the Constitution independent of the powers of the General Government. I have therefore undertaken on no occasion to prescribe the religious exercises suited to it, but have left them, as the Constitution found them, under the direction and discipline of the church or state authorities acknowledged by the several religious societies.”²⁰ According to Jefferson, the federal (“General”) Government has no jurisdiction over churches or state governments. “Many contemporary writers attempt to read back into the past a ‘wall of separation’ between church and state which in fact never has existed in the United States.”²¹

The Northwest Ordinance

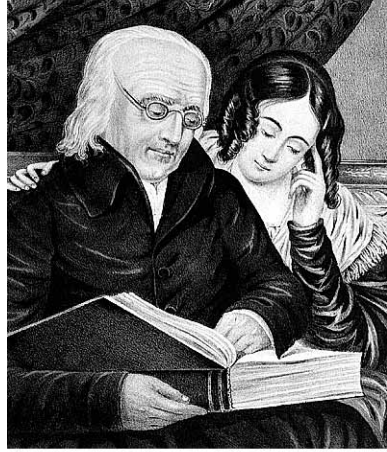
The meaning of the First Amendment, as history will attest, has nothing to do with separating the moral aspects of the Christian religion from civil affairs. The Northwest Ordinance of 1787, enacted by the Continental Congress and reenacted by the newly formed federal government in 1789 after it had agreed on the final wording of the First Amendment, stated that “good government” must be based on some moral foundation: “Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.”

The First Congress did not expect the Bill of Rights to be inconsistent with the Northwest Ordinance of 1787, which the Congress reenacted in 1789. One key clause in the Ordinance explained why Congress chose to set aside some of the federal lands in the territory for schools: “Religion, morality, and knowledge,” the clause read, “being necessary to good government and the happiness of mankind, schools and the means of learning shall forever be encouraged.” This clause clearly implies that schools, which were to be built on federal lands with federal assistance, were expected to promote religion as well as morality. In fact, most schools at this time were church-run sectarian schools.²²

Constitutional scholar Leo Pfeffer writes, “[F]or all practical purposes Christianity and religion were synonymous.”²³ It is clear that our

founders never supposed that moral precepts founded on the Christian religion should be excluded from policy making even though they worked diligently to keep the institutions and jurisdictions of Church and State separate.

The Founding Fathers believed that without the precepts of the Christian religion there could be no morality — for individuals as well as for nations.



Strict separationists do not see the Northwest Ordinance as convincing evidence that the constitutional framers regarded religion, politics, and morality as an acceptable mix. Robert Boston, an absolute separationist, asserts that if the founders had wanted to support religion the Northwest Ordinance would have ended, “...schools *and churches* shall forever be encouraged.”²⁴ Boston assumes that since the delegates did not call for the support of churches that this meant they were opposed to mixing religion and politics. The source of Boston’s confusion comes from the “tendency to employ the words ‘Church’ and ‘religion’ as synonyms. To maintain that there must be a separation between Church and State does not necessarily mean that there must be a separation between religion and State.”²⁵ I wonder how the ACLU would react to the Northwest Ordinance if its principles were applied to today’s public schools? Lawyers would be immediately dispatched to assert that the Ordinance was unconstitutional because it mixes religion and morality with public education. Those in Jefferson’s day did not find a problem with this combination, either constitutionally or practically.

Today’s Christian political activists are not calling on the State to establish churches. They are simply maintaining that we cannot have good government without religion, the very principle the Northwest Ordinance declares.

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Conclusion

The First Amendment “provides a *legal* separation between Church and State: *not a moral nor a spiritual* separation.... There is no reason, under the Constitution of the United States, why the principles of Christianity cannot pervade the laws and institutions of the United States of America.”²⁶ Indeed, without the principles of Christianity, these United States will fall.

Notes

1. *Congressional Quarterly's Guide to the United States Supreme Court* (Washington, DC: Congressional Quarterly, Inc., 1979), 461. Quoted in Robert L. Cord, “Church-State Separation and the Public Schools: A Re-evaluation,” *Educational Leadership* (May 1987), 28.
2. The four proclamations in their entirety are published in Robert L. Cord, *Separation of Church and State: Historical Fact and Current Fiction* (Grand Rapids, MI: Baker Book House, [1982] 1988), 257–60.
3. Cord, “Church-State Separation and the Public Schools,” 26.
4. 2 *Statutes at Large* 194, Seventh Congress, Sess. 1, Chap. 52. Quoted in Cord, “Church-State Separation and the Public Schools,” 28.
5. Jude P. Dougherty, “Separating Church and State,” *The World & I* (December 1987), 683.
6. Cord, “Church-State Separation and the Public Schools,” 28.
7. Editorial Page, *Atlanta Constitution* (November 15, 1994), A18.
8. Jefferson in a letter to William Johnson (June 12, 1823). In Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York: The Library of America, 1984), 1475.
9. Quoted by Judge Brevard Hand, in *Jaffree vs. Board of School Commissioners of Mobile County*, 544 F. Supp. 1104 (S. D. Ala. 1983) in Russell Kirk, ed., *The Assault on Religion: Commentaries on the Decline of Religious Liberty* (Lanham, NY: University Press of America, 1986), 84.
10. *Wallace v. Jaffree*, 472 U.S., 113. Quoted in Dougherty, “Separating Church and State,” 686.
11. *The Annals of the Congress, The Debates and Proceedings in the Congress of the United States*, Compiled From Authentic Materials by Joseph Gales, Senior (Washington, DC: Gales and Seaton, 1834), 1:949–50.
12. Quoted by Hand in Kirk, *The Assault on Religion*, 22–23.
13. Quoted in Charles E. Rice, *The Supreme Court and Public Prayer: The Need for Restraint* (New York: Fordham University Press, 1964), 63.
14. Peter J. Ferrara, *Religion and the Constitution: A Reinterpretation* (Washington, DC: Free Congress Foundation, 1983), 34–35.
15. Quoted in Rice, *The Supreme Court and Public Prayer*, 63.

16. "A Bill for Punishing Disturbers of Religious Worship and Sabbath Breakers," in Julian P. Boyd, ed., *The Papers of Thomas Jefferson* (Princeton, NJ: Princeton University Press, 1950), Vol. 2, 1777 to June 18, 1779, Including the Revisal of the Laws, 1776–1786, 555. Quoted in Cord, *Separation of Church and State*, 217.
17. Act of April 10, 1806, C. 20, 2 Stat. 359, 360. Quoted in Rice, *The Supreme Court and Public Prayer*, 63–64.
18. Cord, "Church-State Separation and the Public Schools," 28.
19. "Bill for the Establishment of District Colleges and University" (1817). Quoted in Charles Wesley Lowry, *To Pray or Not to Pray!: A Handbook for Study of Recent Supreme Court Decisions and American Church-State Doctrine* (Washington, DC: University Press of Washington D.C., 1963), 38–39.
20. Thomas Jefferson, "Second Inaugural Address," in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents, 1789–1902*, 12 vols. (Washington, DC: Bureau of National Literature and Art, 1907), 1:379–80.
21. Franklin Hamlin Littell, *From State Church to Pluralism: A Protestant Interpretation of Religion in American History* (Chicago, IL: Aldine Publishing Co., 1962), 99.
22. Michael J. Malbin, *Religion and Politics: The Intentions of the Authors of the First Amendment* (Washington, DC: American Enterprise Institute for Public Policy Research, 1978), 14–15.
23. Leo Pfeffer, *Church, State and Freedom* (Boston, MA: Beacon Press, 1953), 98.
24. Robert Boston, *Why the Religious Right is Wrong about Separation of Church and State* (Buffalo, NY: Prometheus Books, 1993), 80.
25. J. Marcellus Kik, *Church and State: The Story of Two Kingdoms* (New York: Thomas Nelson & Sons, 1963), 124.
26. Kik, *Church and State*, 116.

