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The Monument Removed: Separation of Church and State?

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This is all the more remarkable given the public support for Judge Moore, the Ten Commandments, and the monument. The plain fact is that most Americans find any argument that such a monument is unconstitutional to be flatly wrong. A CNN-USA Today-Gallup poll indicated that only one in five Americans wanted the monument removed. [read CNN coverage] Americans overwhelmingly support the monument and the public role of the Ten Commandments.

So, how did this happen? How could a coterie of liberal special interest groups force their agenda through the federal court? The answer to that question requires a serious look at ideas—and comes with a reminder that those ideas have consequences.

Public confusion and anger over the Ten Commandments ruling—and so many similar denials of religious speech or symbolism—are not lessened by reference to the First Amendment of the U. S. Constitution. When it comes to religion, the amendment simply states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” Nothing there about the Ten Commandments. In fact, there is no reference to a state’s potential violation of the amendment by erecting a monument—and no reference to the states at all.

Something must explain the intellectual jump from the First Amendment to Judge Thompson’s order. Looking back over the last two centuries and more, we can trace the victory of one powerful idea—the separation of church and state—and its transformation of the constitutional ideal.

In *Separation of Church and State*, University of Chicago law professor Philip Hamburger explains how the idea of strict separationism won its ascendancy in the federal courts, and especially the U. S. Supreme Court. Hamburger’s work, published just last year by Harvard University Press, is a massive project of intellectual and legal history. It should be required reading for anyone concerned about the erosion of our religious liberties.

The framers of the Constitution were concerned for the rights of religious dissenters and minorities, Hamburger explains, and the First Amendment’s prohibition on a national church was intended to prevent those dissenters from being sidelined as national outsiders. The “free exercise” clause protected their right to the integrity of their own religious beliefs and practices.

Nevertheless, Hamburger recounts, some called for a more restrictive arrangement. The First Amendment does not

even mention the separation of church and state. Who came up with this? As most Americans know, it was Thomas Jefferson, who in a now-famous 1802 letter to the Danbury Baptist Association of Connecticut stated, "I contemplate with sovereign reverence the 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."

With one letter, Jefferson set the course for a reinterpretation of the First Amendment. His terminology of a wall of separation between church and state, once widely adopted, would become the catalyst for a legal and political revolution at the intersection of government and religion. Generations of judges came to understand their role to be the protectors of Jefferson's wall. The historical sequence that leads from Thomas Jefferson's letter to Judge Myron Thompson's order is clear and undeniable.

As Hamburger notes, "separation has historically gone much further in implying limits on government than did the liberty sought by dissenters and protected by the First Amendment." Over time the U. S. Supreme Court gave this idea the force of law. Eventually, separationism came to be "an expansively antiecclesiastical principle that limited all distinct groups."

In successive decisions of the high Court, justices shifted from the simple and rather uncomplicated vision of the constitutional framers to a form of hostility toward organized religion—especially the religion of the majority. The Court began to restrict any connection, however indirect or unintentional, between government and organized Christianity.

The result, of course, is that the "free exercise" clause was forced to take a back seat to this new notion of separationism. The wall, above all, must be protected.

Professor David Lowenthal of Boston College complains that the Court "swallowed up 'free exercise' within the ban on establishment." In *No Liberty for License: The Forgotten Logic of the First Amendment*, Lowenthal complains that "The Court has willfully abandoned constitutional tradition, made erroneous historical claims, substituted its own shallow understanding for that of the founders and framers, and emerged with a novel view of the place of religion in American public and private life."

The Court finally made the separation of church and state its official doctrine in 1947, in the case of *Everson v. Board of Education*. Writing for the majority, Justice Hugo Black argued that "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa . In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" Using the incorporation clause of the Fourteenth Amendment, the Supreme Court declared that the states were also bound by the First Amendment as now reinterpreted by the Supreme Court to match Jefferson's ideal. Jefferson's "wall of separation" became the law of the land.

Subsequent Court decisions have basically extended and built upon the logic of *Everson*. The inevitable results have included the restriction of religious liberty and the increasing secularization of America's public life. As Hamburger laments, "The separation of church and state not only departed from the religious liberty guaranteed by the U. S. Constitution but also undermined this freedom." Thus the mess in *Montgomery*.

The secularists are winning the battle, and their most effective weapon is the myth that strict separation was the ideal of our constitutional founders. This logic drives the worldview of the federal courts and the media elite, who share a common fear of Christian influence.

Thinking Christians must see the problem for what it is—not an isolated controversy over a Ten Commandments monument in Alabama—but a worldview clash over the meaning of the constitution. The only way to regain lost ground is to change the direction of the federal courts and ensure that federal judges are held to the logic of the Constitution's framers.

We must reject any claim that one clause of the First Amendment [free exercise] must be limited in the favor of the other [no establishment]. If not, religious freedom will be restricted into irrelevance.

Those driving the separationist bandwagon claim that all who reject their arguments really want a theocracy or a state-

established religion. This is patent nonsense. No one should argue that the United States, or state of Alabama, has the right to establish a state church. But the vast majority of Americans know that the people of Alabama have every right to place a monument to the Ten Commandments in their courthouse. Americans do not believe in the separation of the Constitution and common sense.

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