

## Historical Separation of Church and State

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The news media frequently uses the term “separation of church and state” when discussing the relationship between religious institutions and the government. While many commentators place their own spin on this terminology, “separation of church and state” has a long history and its meaning frequently varies from its common understanding. This article will provide a historical perspective on that terminology.

### CREATION OF THE IDEA

Before the colonization of American, Europe was dominated by state dominated churches. The Church of England was supported by tax dollars and was subject to the control of the English monarchy. The Church of Sweden was controlled by the Swedish government and supported by tax dollars until the 1990s. The Lutheran Church was controlled by the German government and supported by tax dollars. Many of the early settlers in America were fleeing from these governments controlled churches.

Their vision for America is very different from the European models. The evidence shows that the founding fathers sought to create two independent and equal sovereignties: one for religious activities and one for political activity. They believed this arrangement would avoid the constant struggle between the “Prince and the Pope.” Roger Williams, the Baptist founder of Rhode Island to whom the metaphor of the wall is traced, stated that there should be a “hedge or wall of separation between the garden of the church and the wilderness of the world.” He believed that this wall was necessary to protect the church from the government, to prevent the government from interfering with the church's sovereignty. Accordingly, if the wall broke down, the government would corrupt the church.

At least 10 of the 13 colonies had government established churches at the time the Bill of Rights was passed. All of the colonies supported churches with tax revenue in one manner or another. Sometimes the colony would authorize cities to establish and support a particular denomination with tax dollars. Other times the colony would allow a citizen to direct a portion of his tax revenues to a church that he selected.

Disestablishing these state-supported churches took different paths and occurred on different timetables. By 1787, Virginia, New York, Maryland and North Carolina had separated their state created church from the state government. In the other states, state-supported churches remained longer. The last one separated from the state in 1833 (Massachusetts). One curious fact stands out: most states had a tax-supported church long after the passing of the Bill of Rights. No state considered it mandatory to separate the churches from the government under the Constitution.

The widespread practice of state established churches in colonial America and the disestablishment of those churches from the 1780s and 1830s suggest that the First

Amendment was designed to protect religious liberty from interference by the federal government. The Constitution was never applied to protect the federal government from religion.

## MODERN USAGE OF THE TERM

Since the 1940s, the United States Supreme Court has changed its interpretation of the term, “separation of church and state.” For the first 150 years of American history, the Supreme Court used the historical meaning of the term. This is called the strict constructionist theory of Constitutional interpretation. Stated another way, the Constitution formed an agreement between the government and the governed. Using classical contract theories, one looks at the intent of the parties at the time the contract was formed to interpret the contract to fulfill the original intent of the parties. Based on the earlier discussion, the Supreme Court uniformly protected religion from the government. At same time, the Supreme Court considered it constitutional for the state and local governments to sponsor religious activity using tax dollars.

Starting in the 1940s, the Supreme Court began selectively using a new theory of constitutional interpretation. Called the “living document” theory of Constitutional interpretation, this theory disregards the historical intent of the parties and focuses on interpreting the Constitution in light of current conditions. Stated another way, the intent of the founding fathers in drafting Constitution is irrelevant to Constitutional interpretation. In contrast with the first 150 years of American history, the Supreme Court has shifted its focus from protecting religion from government to protecting the government from religion. According to the current Supreme Court, any form of religious expression by any level of government now violates the wall of separation.

## PRACTICAL APPLICATION

The concept of separating church and state is defined differently depending on the theory applied and the context of the application. For example, if one applies a historical meaning theory, it is constitutional to have a chaplain pray over Congress every day because that was an accepted practice for the last 200 years. On the other hand, if one applied the living document theory, it is unconstitutional to have a chaplain pray over Congress because it breaches the wall of separation between church and state.

When examining the law of tax exemption for churches, the theory chosen to apply becomes critical. Under the strict constructionist theory, the church should be exempt from all taxation because it is a co-equal sovereign of the government. However, under the living document theory, since the church receives some benefits from the government, it should pay its fair share of taxes to support the government. Since there is no constitutional right to tax exemption, the only way to continue the church’s tax exempt status is for the Supreme Court to apply the strict constructionist theory.