# A democracy ought to require the separation of church and state.

# Topic Essay

#### Introduction

The separation of church and state is a phrase used to discuss the both practical and philosophical distancing between both government and religious institutions. In a democracy, depending on the nation or state being discussed, there are sometimes legal frameworks in place to mandate this separation, or for others, a blending of secular institutions within the government are the norm. The notion of this doctrine finds its roots deep within ancient history. The following will outline the different terms in the resolution while then highlighting both affirmative and negative arguments focusing on issues like historical framing and intents, constitutionality, and modern-day issues.

#### Definitions

When discussing the topic, it is also important to consider the definitions of the key terms in the resolution. The first term is “democracy.” A democracy can be defined in a multitude of ways. There are many misconceptions about what a democracy is, particularly in modern-day society. Definitions by philosophers like John Locke call democracies governmental institutions where those in power are elected to make and execute the laws, making a perfect democracy. The U.S. however, is technically a democratic republic rather than a perfect democracy in and of itself.

Next, “ought” is an important word, particularly in LD debate, as this activity attempts to show something that should happen, rather than pretending a world in which it actually does happen, like in CX debate. Ought implies that something be deemed mandatory in its context. For this topic, you’d discuss that it is mandatory that church and state be separated. You can discuss that when it is mandatory, you can mention avenues through which that can be possible or it can happen. This can include constitutional mandates, legislative initiatives, or even just cultural norms. Each democracy is different, so each may require a different means to mandate that the separation “ought” happen.

Another definition of ought discusses a moral obligation and duty to determine what should be done. Both the affirmative and negative case below discuss morality in relation to the topic, which is rather central to the topic. The term “require” is an interesting term. For some democracies or democratic institutions, the separation is codified into law, such as is argued in the United States with the first Amendment of the Constitution or defined in Jefferson’s papers early in the history of the U.S. As mentioned earlier in the “ought” discussion, there are different avenues based upon the different variations of democratic policy the democracy in question may need to “require” the separation of church and state happen or not.

The “separation of church and state” is referred to as a term of art. Instead of defining each word individually, it is better to take it as a phrase because it makes more sense in context. In its basic form, this phrase discusses the notion that the state should not interfere in religious institutions and that religion should not interfere in government. The two should be separate in their actions and policies. The debate that ensues is a discussion of whether that is a good thing or a bad thing, and the following two sections discuss the affirmative and negative arguments about the separation.

#### Affirmative Strategies and Arguments

When discussing affirmative arguments, the first thing to understand is the value-criterion debate. For the file below, the value is justice with a criterion of constitutionalism. Even though this debate does not force the affirmative or the negative to discuss the separation of church and state specifically in the United States, many of those arguments are easy to make or understand as they affect us rather directly. For the value, both institutions, governmental and religious, tend to seek out justice both practically and philosophically. In doing so, they aim for morality, virtue, and ethics. The separation between each institution allows for justice to be achieved, and that is evident in each contention. As for constitutionalism, this criterion allows the affirmative to effectively demonstrate why the requirement is both possible and necessary for the separation to be ideal for democracies.

There is a plethora of arguments for the affirmative to prove the resolution true. First, without a separation between state and religious institutions, the state could endorse a particular religion, which would lead to negative consequences like religious persecution, discrimination, and ineffective governance. If the state endorsed one religion, minority religions could cease to exist in that democratic society. Additionally, there is a large set of arguments about why religious interference in elections and the democratic process could be detrimental, comparable to large corporations having influence in elections today. Money already runs politics, especially in the U.S., and adding another layer to that influence is likely a bad idea. Another set of arguments concerns effective governance, which directly links into constitutionality. The Founding Fathers of the United States, as an example, added the establishment clause of the First Amendment of the Constitution to protect religious freedom of expression. This coupled with the framework established by Thomas Jefferson to create a “wall of separation” has led to the notion of separation of church and state being indoctrinated in United States policies. There are other philosophical arguments about why the separation is beneficial, including morality, liberty, and freedom, all of which are contained within the evidence below.

#### Negative Strategies and Arguments

The negative case in this debate lays out self-determination as the value with utilitarianism as its criterion. The case tends to frame religion as a priority and a facet of society that ought not be silenced or ignored. The right to self-determination is an important value that supports the right to autonomy, individuality, and the right to be free from government oppression. Akin to tenets from the social contract theory, the authority of the government must from the governed. People have the right to be free from government oppression, particularly in the realm of religious expression.

For the negative, there is a multitude of arguments that deem that democracies should not require the separation of church and state. One of the first arguments to make is that the separation is not happening now, as the blending of the two is becoming inevitable. Even in western democracies like the United States, there is not a complete division. The words “Under God” find themselves riddled throughout society, despite the “wall of separation” Jefferson had desired when this nation was founded. It is also difficult to win that western democracies are the only ones to discuss. Some Islamic nations are moving towards the incorporation of democracy, and many of those nations utilize many religious tenets in governmental affairs. Requiring these nations to have a separation between church and state would be antithetical to their culture and religious practices. Also, banning religion from politics has the negative consequence of making religion taboo. If the state says religion ought be avoided, then individuals may not practice religion for fear of being persecuted for the practice of that religion. Wars were fought over this notion in the past, and it could happen. Constitutionality and this notion of a “requirement” are also important for the negative to discuss. Constitutionality, though earlier is discussed as an affirmative argument, is also seen as a negative argument. Despite evidence saying the establishment clause is the “wall of separation” Jefferson petitioned for, there is no explicit law saying that there ought not be any influence of religion on the state and vice versa. Also, most democracies, especially non-western democracies do not have an explicit law banning the influence of religion in politics. Lastly, one of the important framing arguments for the negative is to demonstrate that the connection between religious institutions and governments is beneficial for democracies. If you can win that framing argument, that will be very worthwhile for you.

# Affirmative Constructive

#### Value: Justice

#### A just government, one that is worked within, has the ability to promote justice, liberty, and equality, making it an essential mechanism for facilitating public values that are for the good of all of society.

Douglas J. Amy, Professor of Politics at Mount Holyoke College, 2007, “Government as the Champion of Justice, Equality, Freedom, and Security,” Government is Good Project, <http://www.governmentisgood.com/articles.php?aid=12> (accessed 7/23/15)

But do you also realize that if you are an avid supporter of public values like “justice,” “liberty” and “equality,” then you should also be an avid supporter of government? **Government is often the only institution that can make these kinds of core political values a reality. In fact, without an active and healthy public sector, these kinds of public values would be in very short supply. Take justice, for instance. It is not usually something provided by the marketplace or created by the actions of individuals. More often it is something that can only be provided and sustained in the public sphere by the actions of government organizations like the courts and the legislatures. If we want a just society, we must work through government to get it.** This argument – that **government is an essential mechanism for realizing vital public values** – is an important one in making the case for government. **Government is good not simply because it provides us as individuals with certain services and benefits** (such as the ones described in another article on this site, “A Day in Your Life”) **but also because it is the main way to promote important values that are good for us as a whole – values that are in the public interest.**

#### Criterion: Constitutionalism

The Constitution is the law of the land. By violating the Constitution, a government cannot inherently be just. Protecting civil liberties is in line with the intent of a Constitution, particularly the U.S. Constitution. By focusing on the legality of government actions, constitutionalism as a criterion can demonstrate that a just government will serve at the will of the people, supporting what they desire most: civil liberties.

Larry Alexander, Journalist & Historian, February 26, 2001, Constitutionalism: Philosophical Foundations, p. 17

**First, constitutionalism entails an attempt "to keep a government in order." This requires consideration of what it means for a government to be "out of order," the risks of state power that stir people to create constitutional limits. This, in turn, demands some attention to the ways in which human beings conceive of a good life and, given such conceptions, to what kind of political "order" they would aspire. Second, the means to such a result are the "power of words engrossed on parchment." This element of constitutionalism reflects a conclusion, given our prior judgement about the proper shape of state power, that effective constitutional limits require the promulgation of fixed rules.**

#### Constitutional democracy ensures that liberal democratic justice is achieved - a state that will protect the civil and political rights of its constituents so secession is inherently unnecessary.

Andrei Kreptul, JD Seattle University School of Law and attorney, Fall, 2003, The Constitutional Right of Secession in Political Theory and history, p. 45-46

**According to Rawls, a constitutional democratic state must necessarily be a “just” state because it is the only type of political organization that can secure and protect basic human and political rights equally for all citizens. In addition, a constitutional democracy possesses the institutional structure required to distribute the economic products of society in such a way that the only allowable inequalities are those that result in providing a minimal standard of living to the least well-off members of society.**

### Contention 1: The Separation of Church and State is Critical To Promote Religious Freedom and Prevent Discrimination.

#### A. Since the inception of the United States, Thomas Jefferson wrote about a wall between church and state, allowing for Americans to have access to religious freedom.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 1-2.

**Few of Jefferson’s phrases appear to have had more significance for the law and life of the United States than those in which he expressed his hope for a separation of church and state.** In 1802, in a letter to the Danbury Baptist Association, he quoted the First Amendment and interpreted it in rather different words: “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 & State.**”1 Two centuries later, **Jefferson’s phrase, “separation between church and state,” provides the label with which vast numbers of Americans refer to their religious freedom. I**n the minds of many, his words have even displaced those of the U.S. Constitution, which, by contrast, seem neither so apt nor so clear. Thus refracted through Jefferson’s letter, **the religious liberty guaranteed by the Constitution often appears to be a separation of church and state**.2

#### B. Religious polarization is not inevitable in a democratic society, and having separation between it and the state is crucial.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 275-277.

**But whereas, in a free and democratic society, political controversy is inevi-table, religious polarization is not.** Moreover, **some clergy represent themselves as having, or in any case are generally taken to have, special insight into matters of human conduct; this** (among other factors) **in- creases the chance of polarization if corporate religion enters into politics and public policy debate. Locke commented vividly on dangers of the sort I have in mind: Immediate revelation being a much easier way for men to establish their opinions and regulate their conduct, than the tedious and not always successful labor of strict reasoning, it is no wonder that some have been very apt to pretend to revelation, and to persuade them- selves that they are under the peculiar guidance of heaven in their actions and opinions, especially in those of them which they cannot account for by the ordinary methods of knowledge and principles of reason.** I5 To be sure, however hard we try to avoid basing political positions on religious considerations, there is no sharp distinction between moral and political issues, and certainly an admirable moral sermon on, for example, the duties of charity, could have obvious implications for legislative decisions on welfare policy. But if, in borderline cases, the moral and political intermingle, there is still a generally plain difference between, say, giving a moral sermon and endorsing candidates, political parties, or politically contested public policy positions.'6 **The principle of political neutrality is institutional;** it does not imply that clergy may not take personal and even public positions on topics connected with politics or public policy, or even concerning personalities in government. Granted, in some churches what the clergy say even privately might often be taken for church doctrine; but there is still a great difference between what is so interpreted and what is publicly announced as church doctrine or policy, or paid out from church coffers. **Even in making avowedly personal statements or in giving private coun- sel, however, clergy who believe in freedom and democracy should follow an individual principle of political neutrality to the effect that clergy should (i) observe a distinction between their personal political views and those of their office, especially in making public statements, and (ii) prevent any political aims they may have from dominating their profes- sional conduct.**

#### C. If the state prefers one or more religions, then greater power will accrue for that preferred religion, restricting liberty and impairing democracy.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 266

**The case for the equalitarian principle is more complicated. The (or a) central premise is that if the state prefers one or more religions, people might well find it hard to practice another, or would at least feel pressure to adopt the (or a) religion favored by the state. The degree of pressure would tend to be proportional to the strength of governmental prefer- ence**. The pressure might be as great as requirement of a certain religious affiliation as a condition for holding a government job, or as minor as inviting clergy from just one religion to officiate at certain ceremonies. **Any governmental preference, however, creates some tendency for greater power to accrue to the preferred religion, particularly if it is that of the majority. Such concentrations of power easily impair democracy, under which citizens should have equal opportunities to exercise political power on a fair basis, even if certain disproportionate powers do not actually** (or at least do not directly) **restrict anyone's liberty.**

#### D. When states prefer one religion over another, it changes the outlook on that religion, reducing democracy and promoting discrimination.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 266

**Moreover, when a state establishes or prefers a given religion, it is to be expected** (though it is perhaps not inevitable) t**hat certain laws will significantly reflect the outlook on life associated with that religion. These are among the reasons why a free and democratic society should adopt the equali- tarian principle. Even when the libertarian principle is respected, the equalitarian principle is needed for protection against governmental dis- crimination.**

### Contention 2: The Separation of Church and State is Critical for Effective Governance in a Democracy.

#### A. The separation means the state cannot interfere with religion and vice versa.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 261-262

**The establishment clause seems explicitly addressed to the state, and historically, at least in the United States, the separation doctrine has been conceived mainly, though by no means entirely, as restricting what the state may do vis-'a-vis the church, that is, in relation to religious institutions-'church' here is a generic term.**5 Let us call the doctrine so construed the institutional separation doctrine. By this I mean **the doctrine of separation of church and state as applied to governmental institutions in relation to religious ones and taken to imply that the state should not interfere with the church,** and (though this is usually given lesser emphasis) **the church should not interfere with the state.** The separation doctrine is also intended to apply to the state in relation to religious individuals who are not affiliated with any church.

#### B. Many analysts argue that separation of church and state is fundamental in all democracies, not just western democracies.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 317

There is no agreement **on the link between religion and democracy. Many assume that the two are incompatible**, yet many argue the opposite. Stepan notes that, **when examining democracy outside the West, western "analysts frequently assume that the separation of Church and state are core features not only of Western democracy, but of democracy itself.**"5 **Rawls makes this argument in the form of the normative injunction that one must "take the truths of religion off the political agenda.**"6 T**his type of argument is rooted in modernization theory. This theory posits that factors inherent within the process of modernization, like literacy, economic devel opment, urbanization, and advancements in science and technology, will lead to the demise of primordial factors in politics, including religion.**

#### C. The Impact is Discrimination ---- When the state prefers the religious over the nonreligious, the views will dominate legislation, religious disagreements will arise and polarize government, and social policies will lead to discrimination.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 267-268

There may, however, be further reason for a free and democratic society to adopt the neutrality principle even if such a society need not be committed to protecting the freedom not to be religious. **For once the state favors the religious over the nonreligious, at least three problems arise.** (i) **Where there is a majority affiliation, the views and even the interests of this group are likely to dominate legislation and policy affecting religion, sometimes to the detriment of religious minorities**, for in- stance in the treatment of religious holidays and the celebration of major events, such as inaugurations. (ii) **Religious disagreements are likely to polarize government, especially regarding law and policy concerning religion, say requirements for conscientious objector status or, at the institutional level, for tax exemption.** (iii) **If a government prefers the religious over the nonreligious, then, through the pronouncements and social policies that express the preference, that government will tend to influence churches, and, in deciding what to promote, to begin to set criteria for what counts as being religious in the sense in which that entitles institutions to preferential treatment.** Once there are benefits to be had, there will be stretching to meet the criteria for getting them. **This is a likely way to "entanglement" of the government in religious affairs. On balance, then, freedom and democracy seem best served by principles that keep the state from restricting or influencing the churches any more than is required for enacting laws and policies that are justified on nonreligious grounds.**

### Contention 3: The Separation of Church and State is Crucial To Maintain Morality, Liberty, and Freedom.

#### A. A neutrality principle in the separation of church and state allows for equal treatment, which is an important quality of a free and democratic society.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 267

**A second ground for the neutrality principle is the ideal of equal treatment, an ideal that, like liberty, is an important element in a free and democratic society. Governmental preference for the religious as such is intrinsically unequal treatment of the religious and nonreligious, how- ever minor the material differences involved**. On balance, then, **the neutrality principle seems required to guarantee protection from governmental favoritism, in the sense of preferential treatment of the religious over the nonreligious. Even if this does not involve discrimination in favor of one religious group, nonreligious citizens will tend to feel the preferential treatment as discrimination and not as a legitimate expression of the will of a democratic majority.**

#### B. Freedom in a democracy, and if one's ideals are free, then the government must guarantee these rights, and a democratic society with religious liberty is possible.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 265-266

Supposing the institutional doctrine of separation of church and state comprises mainly the three principles I have described, **why should a free and democratic society endorse the doctrine?** This is a large question, and I shall cite only the most general supporting grounds. I take the principles in turn. **It is plain that a society without religious liberty is simply not adequately free. Moreover, freedom is required for democracy, at least in any sense of 'democracy' relevant here**.9 Thus**, if one's ideal is a free and democratic society, one wants a social** (presumably constitutional **framework to guarantee at least this: (I) freedom of religious belief, understood to prohibit the state or anyone else from inculcating religious beliefs in the general population, where this is taken to exclude or re- strict cultivation of competing religious beliefs; (2) freedom of worship, involving, minimally, a right of peaceable religious assembly, as well as a right to offer prayers by oneself; and (3) freedom to engage in (and to teach one's children) the rites and rituals of one's religion, provided these practices do not violate certain basic moral rights. Clearly, then, a free and democratic society should adopt the libertarian principle. Without the freedom it guarantees, there would be inadequate protection against governmental coercion.**

#### C. In a free and democratic society, normative principles may express moral obligations, and the separation of church and state supports this.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 262

Throughout what follows I leave open whether the normative principles I formulate are moral. I argue only that **they are appropriate given a commitment to a free and demo- cratic society; but if (as seems likely) there is an adequate moral basis for preferring such a society, then the principles may also express (prima facie) moral obligations. For if a free and democratic society is morally preferable to its alternatives, then there is a prima facie moral obligation to adhere to principles that are known, or at least justifiedly believed, to be required for the realization of such a society.** Let me describe, in turn, the basic strands in the institutional doctrine of separation of church and state. First of all, **the institutional doctrine requires that the state permit the practice of any religion, within certain limits**. Call this the libertarian principle. Both the relevant limits, and indeed, religion itself, are difficult to characterize. I shall not propose definitions, but some examples will help. Imagine a religion that permitted sacrificing young girls to appease its gods. A government's outlawing this practice would not violate the separation of church and state. **The freedom of religion it guarantees is limited by certain basic human rights, such as the rights of life, liberty, and the pursuit of happiness.** But there are difficult cases. For instance, is a proper separation of church and state violated by the prohibition of religiously sanctioned polygamy? At least two lines of argument support a negative answer. One is that the prohibition does not violate a proper separation, because polygamy breaches certain important rights, such as the right not to be legally bound in an

# Affirmative Extensions

### The First Amendment Dictates a Separation of Church And State

#### The First Amendment of the Constitution alludes to the wall between church and state as historically denoted and desired by Thomas Jefferson.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 2.

Notwithstanding the authority of Jefferson and those who have followed him, it may be useful to reconsider whether the First Amendment actually guaranteed a separation of church and state and, further, how Jefferson and other Americans came to assume that it did so. Certainly, there is reason to wonder why the religion clauses of the First Amendment differ from the words with which these clauses are most commonly interpreted. **According to the First Amendment, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Yet Jefferson and numerous other Americans, including many judges and scholars, have understood this phrase, especially its establishment clause, in terms of the “separation between church and state”—indeed, a “wall” of separation. The difference between the Constitution’s phrase and Jefferson’s is significant because Jefferson’s has tended to mean much more. Of course, the phrase “separation between church and state” has had a range of meanings. At the very least, it alludes to a differentiation or distinction between church and state. More substantively, it is often used to denote a freedom from laws instituting, supporting, or otherwise establishing religion.**

### A/2 The State and Religious Institutions Are Compatible

#### Religion and the state are incompatible.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 317

While this theory was dominant in political science through the mid 1970s and in sociology through the mid 1990s, it has been increasingly called into question.7 This type of argument also has its roots in **U.S. thinking on liberal democracy, which emphasizes the importance of the separation of religion and state. Another strong trend posits that religious nationalism and liberalism are incom patible. For example, Juergensmeyer argues that religion and secular nationalism, which he defines as all western secular ideologies including liberalism, fascism, communism, and socialism, are incompatible competitors for the minds of the peo ple and for control of state institutions and apparatuses. Religion is experiencing a resurgence, especially in the Third World, because these secular nationalist ideolo gies have failed to provide the promised economic well-being and social justice and because they are perceived as having been imposed from the outside by the colonial West.**

#### Islam is an example of a religion that is not compatible with democracy.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 319

A substantial number of studies also examines **whether Islam is compatible with democracy. Those who say it is not make several arguments. First, Islam makes no separation between religion and state. Second, since Islamic law is the divinely decreed law of the land, there is no room for public participation in lawmaking. Third, not all citizens have the same rights. Non-Muslims are not accorded the same rights as Muslims, and women are not accorded the same rights as men.**

### A/2 The Separation Causes Religious Discrimination

#### If the state prefers one religion over another, it pressures folks to adopt that religion and discriminate against those that don't follow suit.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 266 -267

**What is the rationale for the neutrality principle? Recall that religious liberty, broadly conceived, includes the freedom to reject religious views. If the state shows preference for religious institutions as such (or for religion in general), there may well be pressure to adopt a religion, and quite possibly discrimination against those who do not.** On the other hand, there are kinds of governmental preference that are consistent with religious liberty; hence, the neutrality principle cannot be simply derived from the libertarian principle. There are many domains of possible preference for the religious: prayer sessions in public schools, ex- emptions from combat duty, and eligibility to adopt children are examples. Such preference may also tend toward political domination by the religious. **Thus, even if there is protection both from religious tyranny and from discriminatory exclusions on religious grounds, governmental preference of the religious as such is likely to give them political, economic, and other advantages that threaten a proper democratic distribution of political power. It can also reduce the level of free exercise of liberty, as opposed to its mere legal scope. What is legally permitted, or even solicitously protected by law, may still seem to many people too trouble- some to be worthwhile in day-to-day life.**

### A/2 The Separation is Detrimental to Both Churches and Democratic Institutions

#### The separation of church and state also prevents churches from interfering in government.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 274-275

My concern so far has been governmental activities as they affect religion. **But the institutional separation doctrine has another component, also based on ideals underlying a free and democratic society.** For many of the same reasons why the state should not interfere in religion, churches should not interfere in government. The point is not legal or even constitutional. I am not suggesting, for example, that church donations to political candidates must be illegal in a free and democratic society-though a good case can be made that they should be if churches have tax-exempt status. **My point is that protection of religious liberty, and certainly of governmental neutrality toward religious institutions, is better served if churches as institutions do not take political action.** I suggest, then, an institutional principle of political neutrality: **churches have a prima facie obligation to abstain from supporting can- didates for office or pressing for specific public policies, especially the kind typically included in the platform of a particular party.** I am construing 'political' not in the broad sense of 'contested in the arena of politics' but **rather narrowly, so that moral issues are not in- cluded, even if they enter into political debates.** The separation of church and state does not require, nor do any sound principles demand, that churches should not take moral positions, even if there is political con- troversy about them. There are, to be sure, different ways of supporting moral positions; and some are closer than others to political statements, as when government officials of only one party are cited as offenders despite the prominence of offenders among their counterparts in another party. These matters call for discretion and do not admit of codification. But there is still much conduct that is clearly ruled out by the separa- tionist standard in question. The principle of political neutrality would not, however, prevent churches' encouraging their members' participation in politics; and it certainly does not restrict political participation by religious citizens, or imply that they should not consider such participation an aspect of their religious commitments. The clergy could, under this principle, both op- pose the arms race in public meetings and preach against political apa- thy from the pulpit. It is only taking political positions from the pulpit (and in other institutional ways) that the principle implies would be (prima facie) unjustified. To be sure, there are moral statements which, combined with certain obvious facts about politicians, government offi- cials, or foreign powers, imply condemnation or approval of them. **But there is a crucial difference between affirming moral truths which, with certain facts, imply political judgments, and, on the other hand, making political judgments themselves**.

#### Democracies must enact policies that protect rights while limiting its own.

Fareed Zakaria, Foreign Policy Analyst, November-December 1997, "The Rise of Illiberal Democracy," Council on Foreign Relations, Council on Foreign Relations, <http://www.jstor.org/stable/20048274> (accessed 7/12/17) p. 25-26

 Constitutional liberalism, on the other hand, is not about the procedures for selecting government, but rather government's goals. It refers to the tradition, deep in Western history, that seeks to protect an individual's autonomy and dignity against coercion, whatever the source? state, church, or society. The term marries two closely connected ideas. It is liberal because it draws on the philosophical strain, beginning with the Greeks, that emphasizes individual liberty.3 It is constitutional because it rests on the tradition, beginning with the Romans, of the rule of law. Constitutional liberalism developed in Western Europe and the United States as a defense of the individual's right to life and property, and freedom of religion and speech. To secure these rights, it emphasized checks on the power of each branch of government, equality under the law, impartial courts and tribunals, and separation of church and state. Its canonical figures include the poet John Milton, the jurist William Black stone, statesmen such as Thomas Jefferson and James Madison, and philosophers such as Thomas Hobbes, John Locke, Adam Smith, Baron de Montesquieu, John Stuart Mill, and Isaiah Berlin. In almost all of its variants, **constitutional liberalism argues that human beings have certain natural (or "inalienable") rights and that governments must accept a basic law, limiting its own powers, that secures them.** Thus in 1215 at Runnymede, England's barons forced the king to abide by the settled and customary law of the land. In the American colonies these laws were made explicit, and in 1638 the town of Hartford adopted the first written constitution in modern history. In the 1970s, Western nations codified standards of behavior for regimes across the globe. The Magna Carta, the Fundamental Orders of Connecticut, the American Constitution, and the Helsinki Final Act are all expressions of constitutional liberalism

#### The establishment clause is meant to protect and promote the church's freedoms, so its intent in separation is a necessary element.

Elizabeth Katz, University of Virginia Law School, October 31, 2015, "Founders Designed Establishment Clause to Protect Religion, McConnell Says," UVA Law School Journal, <https://content.law.virginia.edu/news/2005_fall/mcconnell.htm> (accessed 7/14/17)

**The nation's founders included the Establishment Clause of the First Amendment to protect and promote the church's inculcation of public virtue**, rather than to protect the federal government from the influence of religion, said Judge Michael W. McConnell at the Oct. 27 Meador Lecture on Law and Religion. McConnell, who serves on the U.S. Court of Appeals for the 10th Circuit, delivered his speech to an overflowing audience in Caplin Pavilion. He noted that the separation of church and state often has been a provocative issue in American history. "We seem to be at one of those times again in American public life when these questions of how to adjust the spheres are on many people's minds," he said. McConnell challenged popular explanations of the separation of church and state. "The conventional wisdom goes something like this: that **the creation of a liberal democratic order requires or at least presupposes the secularization of the civic culture, and that this secularization is embodied in the establishment clause of the First Amendment, the separation of church, which protects the private practice of religion from government but also, it is said, protects government from the device of any irrational powers of religion," he said. "It's necessary according to this view to base public policy and public affairs on the neutral grounds of reason rather than the superstitious sway of priests and bishops or the fulmination of fundamentalists.**

### A/2 The Establishment Clause is Detrimental

#### The separation of church and state is meant to protect both the state and more importantly religious freedom.

Elizabeth Katz, University of Virginia Law School, October 31, 2015, "Founders Designed Establishment Clause to Protect Religion, McConnell Says," UVA Law School Journal, <https://content.law.virginia.edu/news/2005_fall/mcconnell.htm> (accessed 7/14/17)

McConnell concluded that **the separation of church and state was supported to protect the strength of religion more so than that of the government. "These were the arguments that actually carried the day against establishment of religion, not that religion is deleterious or unnecessary to liberal government but that government support and control are bad for religion,**" he said. **Although disestablishment looked risky, the founders determined it was in the best interest of religion and consequently of the state. "Religion would flourish better if it were left free,"** he said. **"Just as free enterprise is good for the economy, free exercise is good for religion. And the remarkable thing about this experiment is it seems to have worked;** the United States is still one of the most religious countries in the world." From this, McConnell said, it is possible to be left with "a happy, optimistic conclusion. "It wasn't necessary to choose between religion, public virtue and disestablishment; you could have all three," he said. He concluded his lecture with some caveats. "I did not say and I do not believe that all religions are good," he said, explaining that the role of religion in American history has been "a mixed bag just like everything else....But I do believe, **on balance, that Freedom of religion has beneficial civil effects, and that's the point.**" Furthermore, he does not believe nonreligious philosophies are inferior or do not contribute to the public good. "My point is just that our constitutional tradition does not favor the secular over the religious, that religion has a public and not just a private role to play, and that nonestablishment was defended as good for religion, hence good for virtue and hence good for liberal democracy," he said.

#### Government intrusion in religion is antithetical to the establishment of virtue.

Elizabeth Katz, University of Virginia Law School, October 31, 2015, "Founders Designed Establishment Clause to Protect Religion, McConnell Says," UVA Law School Journal, <https://content.law.virginia.edu/news/2005_fall/mcconnell.htm> (accessed 7/14/17)

The modern critique focuses on the first two steps. The first step is flawed, according to many, because **a republican government must be neutral about the definition of virtue, and it is impossible to promote virtue without defining it.** Critics of the second step focus on the possible disassociation of religion and virtue. "Pretty clear, isn't it, that **religion is not necessary for virtue; we all know people who are virtuous without being religious**," McConnell said. "**More damaging to the argument is the opposite; we all know people who are conspicuously religious but not virtuous.** We may even have seen some of them on TV." During the 18th century, however, the third step was the most important and controversial. At the time, the relationship between republicanism and public virtue, the first step, was less problematic, partially for semantic reasons. McConnell explained "virtue" comes from a Latin root for "manly," and its 18th-century meaning was rooted in this definition. **"Above all, 'virtue' meant public spiritedness,**" he said. "We might better use a term like 'voluntary self-sacrifice.'" Unlike common forms of 18th-century government such as monarchies, republics required public virtue because the republican emphasis on personal freedom made a government based on coercion and punishment distasteful.

# Negative Constructive

#### Value: Self-determination

The right to self-determination is an important value that supports the right to autonomy, individuality, and the right to be free from government oppression. Akin to tenets from the social contract theory, the authority of the government must from the governed. And if the government is oppressing its people, then the people have a right to their sovereignty. People have the right to be free from government oppression.

#### Self-determination includes those needs inherent in human life like competence, relatedness, autonomy, which content for human nature, a sense of community, and motivation for opportunity.

Edward L. Deci, University of Rochester, Robert J. Vallerand, University of Quebec at Montreal, LUG G. Pelletier, University of Ottawa, and Richard M. Ryan, University of Rochester, 1991, Motivation and Education: The Self-Determination Perspective, p. 327-328

Unlike these other theories, **self-determination theory** does address the energization issue as well as the direction issue, and it does so by postulating about basic psychological needs that are inherent in human life. The theory **focuses primarily on three such innate needs: the needs for competence, relatedness, and autonomy (or self-determination). Competence involves understanding how to attain various external and internal outcomes and being efficacious in performing the requisite actions; relatedness involves developing secure and satisfying connections with others in one's social milieu; and autonomy refers to being self-initiating and self-regulating of one's own actions**. **There are several reasons why the concept of needs, when employed in a way that involves a small number of broad, innate needs, is useful** (Deci, in press). **First, it gives content to human nature; in other words, it addresses whether there are motivational universals in human beings. Second, it provides a basis for drawing together and integrating a range of phenomena that might not seem connected at a superficial level. Third,** and most important to this discussion, **it allows one to specify the contextual (conditions that will facilitate motivation, performance, and development.** Simply stated, motivation, performance, and development will be maximized within social contexts that provide people the opportunity to satisfy their basic psychological needs for competence, relatedness, and autonomy. Opportunities to satisfy any of these three needs contribute to people's being motivated (as opposed to amotivated); **however, opportunities to satisfy the need for autonomy are necessary for people to be self-determined rather than controlled.**

#### Criterion: Utilitarianism

#### Cost-benefit analysis is a commonly-used, real world method of determining the benefits and setbacks of an action.

Deborah Stone, Professor of Government at Dartmouth College, 2002, Policy Paradox: The Art of Political Decision Making, p. 235

**Cost-benefit analysis is probably the most widely used in both public policy and private lives. It consists in tallying up the negative and positive consequences of an action to see whether, on balance, the action will lead to a gain or a loss. The decision is then made according to a single criterion or rule: Take the action if its benefits outweigh its costs; or in the mathematical language common to the genre, "Take the action if and only if the net benefits are greater than zero." If the decision concerns not merely whether to take one course of action but which of several possible actions to take, the process is the same and the decision rule is: Take the action that yields the greatest net-benefit.**

### Contention 1: The Separation of Church and State Impedes Religious Freedom.

#### A. Democratic institutions and religious institutions ought be separate so both can have the freedoms necessary to operate effectively.

Alfred C. Stepan, comparative political scientist and Wallace S. Sayre Professor of Government at Columbia University, October 2000, "Religion, Democracy, and the 'Twin Tolerations,'" Journal of Democracy, <http://www.egerabat.com/cresc/wp-content/uploads/2017/03/STEPAN-Religion-Democracy-and-the-Twin-Tolerations.pdf> (accessed 7/12/17) p. 39-40

**Democratic institutions must be free, within the bounds of the constitution and human rights, to generate policies. Religious institutions should not have constitutionally privileged prerogatives that allow them to mandate public policy to democratically elected governments. At the same time, individuals and religious communities, consistent with our institutional definition of democracy, must have complete freedom to worship privately. In addition, as individuals and groups, they must be able to advance their values publicly in civil society and to sponsor organizations and movements in political society, as long as their actions do not impinge negatively on the liberties of other citizens or violate democracy and the law. This institutional approach to democracy necessarily implies that no group in civil society—including religious groups—can a priori be prohibited from forming a political party.**

#### B. The idea of separation was not desired historically, and instead hurt religious liberty.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 9-10.

A**ccording to the myth, the idea of separation of church and state was widely accepted by the time of the nation’s establishment and was the freedom desired by religious dissenters and protected by the Constitution. Yet the idea of separation of church and state was very different from the religious liberty desired by the religious dissenters whose demands shaped the First Amendment, and it had its own quite distinct path of development.** The dissenters were the adherents of minority denominations that refused to conform to the churches established by law. These **established churches** (Episcopal in the southern states and Congregationalist in most New England states) **were established through state laws that, most notably, gave government salaries to ministers on account of their religion. Whereas the religious liberty demanded by most dissenters was a freedom from the laws that created these establishments, the separation of church and state was an old, anticlerical, and, increasingly, antiecclesiastical conception of the relationship between church and state. As might be expected, therefore, separation was not something desired by most religious dissenters or guaranteed by the First Amendment. Indeed, it was quite distinct from the religious liberty protected in any clause of an American constitution, whether that of the federal government or that of any state.**

#### C. The First Amendment and the doctrine of separation of church and state has limited religious liberty in ways that forbids contact between religion and government in negative ways, reducing freedom and liberty.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 13-14.

On account of all three of these lines of reasoning, **the First Amendment has often been understood to limit religious freedom in ways never imagined by the late eighteenth-century dissenters who demanded constitutional guarantees of religious liberty. For example, the dissenters who campaigned for constitutional barriers to any government establishment of religion had no desire more generally to prevent contact between religion and government. Yet separation has seemed to forbid contact**. Moreover, these dissenters and their allies sought to prohibit laws establishing religion, and in making such demands, they did not attempt directly to limit religion. **Yet the conception of the First Amendment in terms of separation directly constrains church as much as state.** Not least, the dissenters sought the First Amendment and other constitutional provisions to prevent government from discriminating on account of religious differences. Yet these guarantees have increasingly been interpreted on the basis of an idea that typically has seemed more applicable to members of churches than to persons who merely have an individual religiosity. **This last point—that separation discriminates among religions—is evident in the expectations that government should deny secularly defined benefits to religious groups and that clergymen should not speak about politics on behalf of their churches.** As these examples illustrate, **the principle of separation limits religious groups and individuals within them more severely than other types of religion, thus transforming the constitutional guarantees against discrimination on grounds of religious differences into provisions that necessitate it. To some Americans, the various implications of separation may seem reassuringly familiar and not necessarily invidious. Nonetheless, in all of the ways outlined here, separation has had a severe effect, particularly upon individuals whose religious beliefs lead them to worship and otherwise act as part of a religious group. The federal and state constitutional provisions designed to protect religious liberty have, ironically, come to be understood in terms of an idea that substantially reduces this freedom.**

### Contention 2: The Separation of Church and State Does Not Have the Constitutional Backing That Proponents Argue It Does.

#### A. Constitutionally, historical arguments say that separation lacks support to be doctrine.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 7-8.

**Most emphatically, in 1985 Justice William H. Rehnquist, in a dissent, argued that separation is a standard that lacks historical support and has “proved all but useless as a guide to sound constitutional adjudication.” Some academics agree. For example, Sidney E. Mead suggests that “Jefferson’s words have been the source of much confusion and conflict because they have helped to perpetuate thinking about the situation in the United States with the traditional concepts of ‘church’ and ‘state’ which are really not applicable to the experienced order of Americans.”** He also observes that “the reference to a ‘wall’ conjures up the image of something quite tangible and solid, which was built once and for all in the beginning.” Adding to these scholarly doubts, some popular authors bluntly challenge separation as a myth.

#### B. Historically, the conventional account of separation between church and state as established by Jefferson has found itself appropriately in jurisprudence in both the executive and judicial branches.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 3

**The conventional account of separation emphasizes the heroic role of Jefferson by suggesting that he employed a previously obscure phrase to illuminate the First Amendment’s establishment clause.** Apparently drawing upon ideas first enunciated by an earlier giant, Roger Williams, **Jefferson in 1802 gave currency and constitutional significance to the phrase about separation, which was later employed in 1875 by President Grant, in 1878 by Chief Justice Waite, and in 1947 by Justice Black, whose opinion that year in Everson v. Board of Education of Ewing made Jefferson’s separation the foundation of subsequent establishment clause jurisprudence**. In this spare, bold account of the utterances of great men, Jefferson’s influence exerts itself in leaps and bounds across the centuries. An ancient phrase to which Jefferson gave new life, his statement about separation seems both venerable and original, both authoritative and a creative act of genius. **According to the proponents of this conventional account, Jefferson’s phrase has not only been immensely influential but also appropriately so—his views being the profoundly thoughtful conclusions of a philosopher-president who devoted himself to the cause of religious liberty**.

#### C. The separation of church and state goes beyond the establishment clause.

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 260

**The doctrine of separation of church and state** antedates the United States Constitution and **goes well beyond what is implicit in the Constitution's establishment clause, which says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.**" There is a vast legal literature on the doctrine, including many pertinent court decisions. Philosophers, theologians, and others have also addressed the subject. In speaking of the separation doctrine, then, I am not referring to something codified for our scrutiny, but **to the general view that in a free and democratic society the state should neither establish a church nor impair religious liberty.**

### Contention 3: The Separation of Church and State Is Unnecessary As Religious Institutions and Democratic Governments Truly Are Compatible.

#### A. Most democracies do not have full separation of church and state.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 326-327

**First, on the question whether liberal democracy is compatible with religion, the majority of western democratic states do not have anything near full separation of religion and state. Of them, 80.8 percent support some religions over others either officially or practically; half restrict at least one minority religion or give benefits to some religions and not others; 61.5 percent engage in some form of religious dis crimination. Every western democracy except the U.S. legislates at least some aspect of religion. The only type of religious practice eschewed by most western democra cies seems to be the regulation of the majority religion,** and a minority (15.4 percent) of western democracies also engage in this practice. **Thus, it is fair to argue that religion can play a role in a liberal democracy.** The only way to argue otherwise would be to say that there existed no liberal democracies among the western democracies analyzed here in 2001, except perhaps the U.S.

#### B. Even religions like Islam are compatible with democracy, which shows there need not be a separation of church and state.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 319

**Many argue that Islam can be compatible with democracy. First, like other reli gions, there are diverse interpretations of Islam, many of which are compatible with democracy. These interpretations focus on Islamic principles like consultation, con sensus, the equality of all men, the rule of law, and independent reasoning as a basis for Islamic democracy.16 Second, while there are no democracies within the Arab world, about half of all Muslims live in democratic and semidemocratic states.17 Third, Islamic parties have successfully used parliamentary systems to their benefit and even pushed for democratic reforms.18 Fourth, while the doctrine of Islam may inhibit democracy, in practice there has rarely, if ever, been true unity between Islam and ruling regimes.19 Clearly, this vision of Islamic democracy does not include the separation of reli gion and state.**

#### C. Religion is an important component of politics, both nationally and internationally.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 317

**While religion has often been ignored as an important political factor, it is becoming increasingly clear that it plays a substantive role in world politics, both international ly and locally.**1 **Fundamentalist movements, such as the religious right in the U.S. and the numerous Islamic movements in Islamic states, have had a significant impact on domestic politics. Many localized disputes with religious elements have had international implications due to the spread of conflict across borders and increasing international involvement in solving local disputes. They include conflicts in Israel, Chechnia, Afghanistan, Kashmir, and Sri Lanka**. In addition, the interna tional network of Al-Quaeda has demonstrated the potential international impact of religious movements, though it is likely an extreme example.

# Negative Extensions

### A/2 The Separation of Church and State is Indoctrinated in Legal Policy

#### The notion of separation of church and state is on the wane, with society questioning the intentions of the First Amendment.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 8-9.

 **Generalizing about the developments of the past few decades**, Ira C. Lupu notes that “**separationism is on the wane” and that there is a “strong trend away from the separationist ethos . . . that prevailed . . . after the end of the Second World War.**” Yet even those who have questioned whether the First Amendment really required separation of church and state have had difficulty escaping this concept. For example, as already seen, although Justices Douglas and Burger doubted there could be a thorough separation of church and state, they nonetheless analyzed the religion clauses of the First Amendment in terms of “separation”—**Burger attempting to soften the conventional phrase by substituting a “line of separation,” which he borrowed from one of Madison’s letters.1**7 **More typically, the commentators who question separation do not even attempt to dislodge the phrase “separation of church and state.**” For example, in interpreting the First Amendment, Mark DeWolfe Howe merely contrasts two versions of separation, that of Roger Williams and that of Jefferson, arguing that **Williams and Jefferson each was ahead of his time, and that Williams’s “figure of speech luminously reflects the political theory of the eighteenth century”—indeed, that the First Amendment was then “generally understood to be more the expression of Roger Williams’s philosophy than of Jefferson’s.”**18 **As will be seen, it is misleading to understand either eighteenth-century religious liberty or the First Amendment in terms of separation of church and state, whether the separation be that of Williams or that of Jefferson.**

#### Despite intent to prevent secularization, the establishment clause has failed.

Elizabeth Katz, University of Virginia Law School, October 31, 2015, "Founders Designed Establishment Clause to Protect Religion, McConnell Says," UVA Law School Journal, <https://content.law.virginia.edu/news/2005_fall/mcconnell.htm> (accessed 7/14/17)

**Although McConnell said he believes the issue is overblown on both sides, he thought it was advantageous to rekindle interest in the role of religion in a democratic republic. "The founding was quite different and in many ways more interesting than this conventional wisdom." Although the First Amendment prohibited the Federal establishment of religion**, he said, **approximately half of the founding states had some form of religious establishment when the amendment was ratified and others were exploring the possibility. "**The 1780s were actually a time of renewed interest in and support for state religious establishments," McConnell said. Founding fathers such as John Adams, George Washington, Patrick Henry, and John Marshall were among those who supported some kind of establishment of religion, according to McConnell.

#### The Tenacity of Separation of Church and State has seen negative implications in the Supreme Court.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 6-7.

**The concept of religious liberty employed by Jefferson has been tenacious. So strongly has it become part of American understandings of religious liberty that even the twentieth-century commentators who question the idea of separation often have difficulty dislodging it from their own thought. The doubts about separation have been long-standing. Only five years after the Supreme Court’s adoption of Jefferson’s phrase in 1947 in Everson, Justice William O. Douglas, in Zorach v. Clauson, declared his adherence to the idea of separation but expressed concern about the length to which its implications could be taken. He opined that the First Amendment reflected the “philosophy” of separation and that “the separation must be complete and unequivocal” but added that the First Amendment did “not say that in every and all respects there shall be a separation of Church and State.”** If it had said this, “the state and religion would be aliens to each other”: on the one hand, “[c]hurches could not be required to pay even property taxes”; on the other, “[m]unicipalities would not be permitted to render police or fire protection to religious groups.”10 Similarly, although Justice Warren Burger in 1971 enforced the principle of separation with vigor in Lemon v. Kurtzman, he also equivocated: **“The line of separation, far from being a ‘wall,’ is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship.**”11 Indeed, in 1984, in Lynch v. Donnelly, Burger acknowledged that “[n]o significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government.”

### A/2 The Separation of Church and State Leads to Peace

#### The separation of church and state has both limited government actions but also implied negative implications on religions.

Philip Hamburger, J.D. Yale Law School & Maurice and Hilda Friedman Professor of Law at Columbia Law School, 2002, Separation of Church and State, Harvard University Press, <http://www.thedivineconspiracy.org/Z5242V.pdf> (accessed 7/12/17) p. 13.

Second, **unlike the liberty sought by dissenters, separation of church and state has often implied limitations not only upon government but also directly upon religions**. As already observed, **separation is often understood to suggest that churches cannot receive government benefits, even if the benefits are distributed on the basis of entirely secular qualifications. In addition, for almost two centuries separation has seemed to imply that clergymen and religious organizations ought not attempt to influence voters or governments, and thus separation has implied that these individuals and groups ought not fully exercise the rights of political speech and association held by other Americans. Indeed, for at least 150 years separation has frequently been understood to imply doubts about the legitimacy of otherwise secular laws enacted with vigorous or partisan support based on religious views, especially if from religious organizations. Thus separation has suggested limits on religion and religious groups—constraints not sought by dissenters.** Both of these developments—limiting government and limiting churches—have been magnified by a third, more general, implication of separation that if church and state are to be separate, they should not have too much contact. For example, it is said that these institutions should avoid close relations or any substantial involvement in each other’s activities. In the parlance of its advocates, separation bars “entanglements” between church and state.22

#### Forcing secularism in non-western democracies leads to nations like Turkey utilizing military encroachments as an enforcement mechanism.

Alfred C. Stepan, comparative political scientist and Wallace S. Sayre Professor of Government at Columbia University, October 2000, "Religion, Democracy, and the 'Twin Tolerations,'" Journal of Democracy, <http://www.egerabat.com/cresc/wp-content/uploads/2017/03/STEPAN-Religion-Democracy-and-the-Twin-Tolerations.pdf> (accessed 7/12/17) p. 40

**When discussing the prospects for democracy in non-Western, “nonChristian” civilizations, analysts frequently assume that the separation of church and state and secularism are core features not only of Western democracy, but of democracy itself. For such analysts, a religious system such as Eastern Orthodoxy—where there is often an established church— poses major problems for the consolidation of democracy. Similarly, when an Islamic-based government came to power in Turkey in 1996, there were frequent references to the threat that this presented to Western style secular democracy. Indeed, military encroachments on the autonomy of the democratically elected government in Turkey have frequently been viewed as an unfortunate necessity to protect secular democracy.**

### A/2 Secularism and Democracy are Mutually Exclusive

#### We must be wary of saying secularism is necessary, as religious institutions are not anti-democratic.

Alfred C. Stepan, comparative political scientist and Wallace S. Sayre Professor of Government at Columbia University, October 2000, "Religion, Democracy, and the 'Twin Tolerations,'" Journal of Democracy, <http://www.egerabat.com/cresc/wp-content/uploads/2017/03/STEPAN-Religion-Democracy-and-the-Twin-Tolerations.pdf> (accessed 7/12/17) p. 40

**Empirically, we should beware of simple assertions about the actual existence of “separation of church and state” or the necessity of “secularism.” Doctrinally, we should beware of assuming that any of the world’s religious systems are univocally democratic or nondemocratic. Methodologically, we should beware of what I will call the “fallacy of unique founding conditions.” And normatively, we should beware of the liberal injunction, famously argued by the most influential contemporary political philosopher in the English language, John Rawls, to “take the truths of religion off the political agenda.”**6

#### Governments are becoming more secular now.

N. J. Demarath **III**, Sociologist & Professor Emeritus, Summer 1991, "Religious Capital and Capital Religions: Cross-Cultural and Non-Legal Factors in the Separation of Church and State," American Academy of Arts & Sciences, <http://www.jstor.org/stable/20025386> (accessed 7/12/17) p. 21-22

 The separation of church and state is a major component of the American political system and its civil religious mythology. As an article of faith, it is widely regarded as a unique American heritage, constitutionally created and legally sustained. This paper challenges both its singularity and its legal dependence by placing the United States in comparative and cross-cultural perspective. Even within such nominally religious states as Indonesia, Pakistan, Sweden, and Thailand, there is far more separation than is widely supposed, as **religion provides more political piety than governing influence.** Since the similarities with the United States are at least as important as the differences, and since "separation" in these contexts is not a legal phenomenon, a more general sociopolitical explanation seems in order. Hence, this paper offers a series of reasons for the gap between religion and government, drawing both on the politics of the state and on the societal position of religion itself. Not to put too fine a point on the matter, **religion's capital is frequently maximized when it is not a capital religion.** COMBATTING PROVINCIALISM Every society is an enterprise of faith, and often the faith endures despite reality. It is precisely in this civil religious nexus of interpretations and idealizations that societies shape their futures while concerns a "separation of church and state"1 that is generally portrayed as a mythically inviolable and quintessentially American product of our constitutional heritage. Against such a background, this paper may be seen as impious and heretical. But in questioning some of the basic shibboleths of separation, it falls within the time-honored Weberian tradition of exposing "ideal types" to empirical assessment.2 The separation of church and state is a construct of political theory rather than a description of governing reality. To what extent does the two-hundred-year-old theory coincide with a still developing reality, not only in the United States but in other nations around the globe? Max Weber himself offered a beginning point for this assessment. In discussing the "relations between ecclesiastic and secular power," he delineates three major types: hierocratic, theocratic, and caesaropapist.3 In the first, secular power is dominant but cloaked in religious legitimacy; in the second, ecclesiastic authority is preemi nent; and in the third, secular power holds sway over religion itself. Note that the possibility of actual separation looms as a possible fourth category but is not mentioned by Weber, presumably because it lacks even the minimal empirical credibility necessary to qualify in ideal-typical terms. Of course, Weber was writing in a quite different political and religious context. But recent American legal scholars have also expressed skepticism on the point. As Samuel Krislov has recently put it: " **'Separation' of church and state is an artificial concept not really capable of easy implementation or logical achievement.**"4 Certainly any myth of absolute separation is scotched quickly in examining the American experience,5 and it would be unfair to compare our shibboleths to other societies' realities. American politics have often come wrapped in religious piety. The list of exceptions to both the "free exercise" and the "establishment" clauses of the Constitution's First Amendment defies brief summary. Some reflect a lack of compliance with court decisions (for example, persistent prayer in the public schools), and others have been recently endorsed by the Supreme Court itself (for example, legislative chaplains or Christmas creches on public property).

#### The separation of church and state doesn't need to be inevitable; the two can connect to create beneficial governmental policies and vice versa.

Rev. Dr. Serene Jones is President of Union Theological Seminary in the City of New York, where she also holds the Johnston Family Chair in Religion and Democracy. She is Vice President of the American Academy of Religion, an ordained minister in the United Church of Christ and the Christian Church (Disciples of Christ) and author of Trauma and Grace: Theology in a Ruptured World, January 27, 2017, "Separation of Church and State is Important, But So is Faith in Congress," TIME Magazine, <http://time.com/3684353/separation-of-church-and-state-is-important-but-so-is-faith-in-congress/> (accessed 7/14/17)

**Many people think when politics and religion mix, the consequences are disastrous. It simply doesn't have to be that way. We can and must draw a distinction between the imposition of specific religious prescriptions, and the drive and motivation that comes from the bedrock values of our great faith traditions which can move our policy agenda to a better, more just, and inclusive place.** Union was founded in 1836 by those "deeply impressed by the claims of the world upon the church." We follow in the footsteps of Dietrich Bonhoeffer, Reinhold Niebuhr, and Paul Tillich, as current professors like Cornel West and Gary Dorrien speak prophetically on issues of race and economics. **We know from our experience that progressive organizing like the March from Selma can be rooted in the healthy soil of sincere religious conviction.** This week, **we hope to broaden the conversation on faith and politics. As the years go on, we hope more members of both parties join us so that we have a Congress with a deeper appreciation of the relevance of faith and the broad range of public policy convictions that come from it. In such a fractured and polarized Washington, maybe a little faith will help raise the level of public discourse. That would count as an answered prayer for the American people.**

#### **The separation of church and state has much importance, and the injection of religion into politics is becoming inevitable.**

Robert Audi, American Philosopher & Professor at the University of Notre Dame, 1989, "The Separation of Church and State and the Obligations of ," Philosophy & Public Affairs, <http://www.jstor.org/stable/2265345> (accessed 7/12/17) p. 259

**The issue of separation of church and state has great moral, legal, and political importance, and the subject currently holds special interest. An unprecedented number of people are injecting religion into politics; pressures are mounting both to have religious observances in public schools and to support sectarian education through tax revenues; and the United States Supreme Court may soon be reinterpreting constitutional constraints on the relation between religion and public life.**

### A/2 The State And Religious Institutions are Incompatible

#### Religion is not incompatible with democracy.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April 2005, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 318-319

**First**, Anthony Smith links **many particular nationalist ideologies in democratic states to religious origins.** These **religiously inspired nationalisms include those of France, Greece, Ireland, the U.S., and the U.K. Religious national ism and democracy are, therefore, compatible.**10 **Second, many western European democracies have established churches and engage in a number of religious activities, especially support for religious education.**11 **Third, Tocqueville argued that "suc cessful political democracy will inevitably require moral instruction grounded in religious faith."**12 **Fourth, religious groups often support democracy if they feel that they have a strategic interest in doing so. It has been argued that they did so in Belgium and a number of Catholic states**.13 **Also, liberation theology, a movement among Catholics in Latin America, has precisely the goal of increasing democratic participation by the populace.**14

#### The separation of church and state in the U.S. is the exception, not the rule for democracies, yet the separation is not as inherent as it would deem it to be.

Jonathan Fox, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, and Shmuel Sandler, Department of Political Studies and BESA Center for Strategic Studies at Harvard University, April , "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," Comparative Politics, <http://www.jstor.org/stable/20072892> (accessed 7/12/17) p. 328

**Thus, U.S. democracy's strict adherence to separation of religion and state is the exception, not the rule. This conclusion has an interesting implication for U.S. foreign policy. While many in the U.S. assume that the U.S. shares nearly identical values with regard to democracy with its western European allies, this assumption is not completely true, at least with regard to the concept of separation of religion and state. It may also not be true of other values. If so, these differences in values can explain the many dis agreements between the U.S. and western Europe over a number of foreign policy issues.** However, is the U.S. really an exception? Most surveys show that the population in the U.S. is more religious than the populations of western Europe.37 Other survey data show strong support for prayer in public schools and government protection of the U.S. religious heritage.38 Survey data also link religion in the U.S. to party affiliation and voting behavior.39 Furthermore, religious issues like abortion have a continuing impact on U.S. politics. Religion is also important historically, as religious activists were key elements of the abolitionist movement, the early women's rights movement, and the civil rights movement.40 **Hence it is clear that religious attitudes continue to influence the U.S. political agenda, but the United States' political regime seems to limit the ability of these atti tudes to infringe on the constitutional separation of religion and state. This conclu sion is not surprising, given that in western democracies the structural separation of religion and state variable has a strong correlation** of .495 ( p = .1) **with the religious legislation variable,** but it is unrelated to the other religion variables. T**hus, it can be said that the U.S. is the exception on two counts. First, it is the only western democ racy with nearly total separation of religion and state on the measures used here. Second, it has the most religious populace of the western democracies.** This contrast between the structural and legal separation of religion and state in the U.S. and the importance of religion in civil society highlights the strengths and weak nesses of the RAS data. The data are the most detailed to date on the structural, legal, procedural, and policy aspects of religion's influence on the state. However, they do not account for civil society and informal aspects of religion's influence on the state. For instance, the role of influential individuals and lobby groups on policy is not.

# Other Resources

Audi, Robert. *Democratic authority and the separation of church and state*. OUP USA, 2011.

Brathwaite, Robert, and Andrew Bramsen. "Reconceptualizing church and state: A theoretical and empirical analysis of the impact of separation of religion and state on democracy." *Politics and Religion* 4.2 (2011): 229-263.

Butts, Robert Freeman. *The American tradition in religion and education*. Beacon Press, 1950.

Cross, Frank B. *Constitutions and Religious Freedom*. Cambridge University Press, 2015.

Dreisbach, Daniel. *Thomas Jefferson and the wall of separation between church and state*. NYU Press, 2002.

Driessen, Michael D. *Religion and Democratization: Framing Religious and Political Identities in Muslim and Catholic Societies*. Oxford University Press, 2014.

Feldman, Stephen M., ed. *Please don't wish me a merry Christmas: A critical history of the separation of church and state*. NYU Press, 1998.

Fox, Jonathan. "Religious Freedom in Theory and Practice." *Human Rights Review* 16.1 (2015): 1-22.

Henne, Peter S. "The Domestic Politics of International Religious Defamation." *Politics and Religion* 6.3 (2013): 512-537.

Kuru, Ahmet T. "Passive and assertive secularism: Historical conditions, ideological struggles, and state policies toward religion." *World Politics* 59.4 (2007): 568-594.

Minkenberg, Michael. "The policy impact of church–state relations: family policy and abortion in Britain, France, and Germany." *West European Politics*26.1 (2003): 195-217.

Minkenberg, Michael. "Religion and public policy: institutional, cultural, and political impact on the shaping of abortion policies in Western democracies." *Comparative Political Studies* 35.2 (2002): 221-247.

Mirilovic, Nikola, and David S. Siroky. "Two States in the Holy Land?: International Recognition and the Israeli-Palestinian Conflict." *Politics and Religion* 8.2 (2015): 263-285.

Monsma, Stephen V., and J. Christopher Soper. *The challenge of pluralism: Church and state in five democracies*. Rowman & Littlefield, 2009.

Owen, J. Judd. *Religion and the Demise of Liberal Rationalism: The Foundational Crisis of the Separation of Church and State*. University of Chicago Press, 2001.

Scherer, Matthew. *Beyond Church and State: Democracy, Secularism, and Conversion*. Cambridge University Press, 2013.

Sorauf, Frank Joseph. *The wall of separation: The constitutional politics of church and state*. Princeton University Press, 2015.

Van Kersbergen, Kees. *Social capitalism: A study of Christian democracy and the welfare state*. Routledge, 2003.