

"Hamburger wrong about founders' and early Baptists' view of separation"

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Reflections

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In a new book titled *Separation of Church and State*, Philip Hamburger tries to debunk what he calls the "modern myth" of church-state separation. He peddles the wrong-headed thesis that our nation's founders and early religious dissenters consciously avoided using the word "separation" and never intended to ensconce even the concept of separation in the First Amendment. Rather, he contends separation was popularized in the 19th and 20th centuries as an anti-Catholic polemic and as a tool of secularists to segregate religion from public life. Hamburger concludes that this view of separation has militated against the full flowering of religious liberty in this country.

Hamburger could not be more wrong.

While Roger Williams advocated for the "wall of separation between the garden of the church and the wilderness of the world," during the 17th and 18th centuries, the words "separation of church and state" were not widely used or well known. It is also true that 18th-century Baptists, like Isaac Backus and John Leland, probably did not use the word "separation." But they certainly supported the principle. Backus, for example, argued that church and state should "never be confounded together" and Leland opined that attempts by "the magistrate to foster Christianity has done it more harm than all the persecution ever did." They both fervently opposed the use of taxes to support the advancement of religion.

Although there is no evidence that Thomas Jefferson or James Madison used the word "separation" in the 18th century, how could anyone read Jefferson's "Bill Establishing Religious Freedom" in Virginia and Madison's "Memorial and Remonstrance Against Religious Assessments" without concluding that they unequivocally supported the concept? They both used the word explicitly in the early 19th century.

The fact that the separation of church and state has been supported by some who exhibited an anti-Catholic animus or a secularist bent does not impugn the validity of the principle. Champions of religious liberty have argued for the separation of church and state for reasons having nothing to do with anti-Catholicism or de-sire for a secular culture. Of course, separationists have opposed the Catholic Church when it has sought to tap into the public till to support its parochial schools or to argue for on-campus released time in the public schools. But that principled debate on the issues does not support a charge of religious bigotry.

Hamburger's gravest error comes when he creates a straw man of his caricatured view of church-state separation — one in which religion is segregated from public life. In his view, "separation" harms religious liberty, when a proper understanding of the concept suggests the opposite.

For some of us, religious liberty is bound up in the notion of "soul freedom" that all receive as a gift of God; for others, it is intimately tied to freedom of conscience. Church-state separation is only the political/constitutional means of protecting the end of religious liberty.

Moreover, the separation of church and state serves both religion clauses in the First Amendment. It operates not only to insist upon non-establishment, but also to ensure the free exercise of religion. In fact, the Supreme Court's first use of the words "separation of church and state" came in a free exercise case in 1879. Properly understood, separation calls for "neutrality" — even, to use Chief Justice Warren Burger's words, "benevolent neutrality" — toward religion, not in any sense hostility.

Finally, the separation of church and state does not require a "segregation" of religion from public life. In fact, even Leland and Backus, for all of their insistence upon the principle of separation, were thoroughly involved in public policy debates and attempts to influence legislation in their day. I know of few separationists today who would endorse Hamburger's hard-edged characterization of separation as hostile to religion.

Separation has been good for both church and state. For each to do its work, there must always be a decent distance, between the two — some "swingin' room," to use Gardner Taylor's phrase. The institutional and functional separation of church and state has resulted in a vibrant religion, a lush pluralism and a vital democracy. History teaches and contemporary geo-politics reveals that nations that abjure a healthy separation of church and state wind up with tepid, attenuated, majoritarian religion, at best, or a theocracy, at worst.

I, for one, will cast my lot with my Baptist forbears Williams, Leland and Backus, and founders like Jefferson and Madison, not with misguided historical revisionism.