5. The Colonists Unite Church and State

With the complaint and answer filed in the U.S. district court, Ellery Schempp’s protest had started its long way through the American judicial system. Ultimately, it would end up, as with many disputes that divide American society, before the nine justices of the Supreme Court of the United States. They would have to decide how the First Amendment applied to two of the things that citizens hold most dear, their religion and their public schools.

The First Amendment’s terse language said nothing at all about Bible reading in the schools, and the Supreme Court had never before spoken on the question. The Schempp case, though, did not arrive unannounced, like a meteor burning brightly through the atmosphere. Just as the Brown case a few years earlier had bound critical threads of the nation’s history of race relations, so Ellery’s protest promised to tie historical strands that were there if one knew where to look.

The first strand was the nation’s guarantees of religious freedom. It was not so obvious in the 1950s how the guarantees might apply in specific conflicts—the Court had heard only a few religion cases. But it was clear that the framers of the Constitution had regarded the guarantees as a kind of antidote to the excessive zeal that had plunged Europe for more than a millennium into bloody religious conflict. The new nation had experienced its own instances of religious persecution, including riots and death. By the time of Schempp, the prospect of sectarian fights over the public schools was on the minds of many, including the justices.
Another strand concerned the nature of the public schools themselves. They had started centuries earlier as private institutions that taught colonial children a religious curriculum. But they had evolved into public institutions with usually little more than Bible reading and the Lord’s Prayer to remind people of the way things had been done in the past.

Finally, and perhaps most important of all, religious pluralism had placed its foot heavily on the scale of American history, changing everything. If the schools had moved away from their roots in religious teaching, it was because the nation had evolved from homogeneous Anglican and Congregationalist colonies to a rich mix of hundreds of Christian and non-Christian denominations. Pluralism had brought conflict over whose religious tradition should be taught in the schools. Many Americans had learned since the mid-nineteenth century that the only way to live together peaceably in their communities was to employ democratic processes that removed devotional practices from the public schools and transformed them into secular institutions whose “religion” was citizenship and civic responsibility.

At Abington Senior High School and most other public schools in America, Bible readings, recitation of the Lord’s Prayer, and holiday celebrations were about all that was left of a bygone era.

For those who pushed for ratification of the Bill of Rights, the religion guarantees of the First Amendment would help prevent the evils of excessive religious zeal, a concept that would reverberate in the *Schempp* case centuries later. European states had enforced religious conformity by fire and sword. For more than three centuries following the birth of Jesus, followers of the new Christian religion surrendered their lives to martyrdom. Eusebius, the bishop of Caesarea who lived from about 260 to 339 AD, described the horrendous deaths suffered by Christians in cities throughout the Mediterranean region. Eusebius wrote that people were beheaded, crucified, starved to death, and thrown into the sea. “Need I rekindle the memory of
the martyrs at Antioch,” he asked, “who were roasted over lighted braziers, not roasted to death but subjected to prolonged torture?” Their torturers put eyes out, pierced their nails with sharp reeds, and poured molten lead down their backs. Eusebius continued: “Others again were tied to trees and stumps and died horribly; for with the aid of machinery they drew together the very stoutest boughs, fastened one of the martyr’s legs to each, and then let the boughs fly back to their normal position; thus they managed to tear apart the limbs of their victims in a moment.” That wasn’t all, Eusebius reported: “Some of the victims suffered death by beheading, others punishment by fire. So many were killed on a single day that the axe, blunted and worn out by the slaughter, was broken in pieces, while the exhausted executioners had to be periodically relieved.”

In Rome, Nero played the death of Christians as a blood sport, ordering them slaughtered in the arena and often set afire, “so that when darkness fell they burned like torches in the night.” Finally, history changed forever for the Christians when Constantine conquered Rome in 312 AD and proclaimed a year later that Christians and others could worship freely. By 380, Christianity had become the preferred or established faith of the empire. That year, three emperors proclaimed, in what became part of the Theodosian Code, that the people should “practice that religion which the divine apostle Peter transmitted to the Romans.”

Thus Christianity and the state were joined for the first time in a marriage of faith to secular power. But the special privileges that might come from this union—financial support, for example, or exemptions from various public duties—proved too poor a reward. Christians wanted more than privilege; they believed their faith was the only true way and that it was right and wise to use the power of the state to punish those who raised their voices to a different God. Christians would do unto others what had been done to them. The new union of the state and Christianity, adopted all over Europe, unleashed a fury of intolerance on those who dared worship by their own conscience. Now it was time to root out heretics. On his consecration as bishop of Constantinople in 428, Nestorius made it clear
that the newly ascendant church welcomed the assistance of the state. He directed his sermon at Emperor Theodosius II: “Give me, my Prince, the earth purged of heretics, and I will give you heaven as a recompense. Assist me in destroying heretics, and I will assist you in vanquishing the Persians.”

The pagans and Jews suffered first under the new union of church and state. Under the Theodosian Code, those who did not become Christians were adjudged “demented and insane.” The Roman government denied all privileges to “heretics and schismatics.” If the persecution of heretics had been lethal but haphazard through the twelfth century, it became a relentless and systematic pursuit early in the thirteenth, with the start of the Inquisition. Most medieval European states provided in their penal code for the burning alive of criminals. Until then, the church had officially frowned on executions as a punishment for heretics. But it would soon itself slide into the abyss of capital punishment, for what it defined as breaches of faith as the Catholic Church itself defined faith. In 1231, Pope Gregory IX expanded the definition of heresy to include opposition to papal declaration, blasphemy, and sacrilege. Finally, Innocent IV declared in 1252 his approval of torture. In his empowerment of the Inquisition judges, he said that “bodily torture has ever been found the most salutary and efficient means of leading to spiritual repentance.”

Heretics, though, were not the biggest problem for the church. It was the distribution of copies of the Scriptures to the common man, a new challenge to the pope’s and the clergy’s grip on exclusive possession of God’s word. These copies, wrote historian Brian Moynahan, “were profoundly dangerous weapons” that revealed the gap between the actual text and the interpretation provided by church leaders—interpretations used to validate persecutions. With a Bible in their hands, literate people could look for meaning in the text themselves without having to accept the interpretation of church elders. What readers found missing from the Scriptures was any provision for the existence of a church hierarchy, for the papal treasures, or even for the papacy itself.

When Martin Luther nailed his ninety-five theses to the church
door at Wittenberg in 1517, the Reformation was under way in earnest. The ideas of Luther, John Calvin, and other reformers spread throughout Europe, gaining millions of adherents as they challenged the church at every turn. As Protestants and Catholics faced off against each other, religious wars and persecutions swept Europe with a ferocity that put religion, the state, and intolerance in a fatal embrace. In Germany, the forces of Catholicism and Lutheranism reached a temporary truce with the Peace of Augsburg in 1555. Each of the German princes assumed the right to declare which of the two faiths would become the religion established by his state.9

The lethal cocktail of religious intolerance and political machinations continued unabated elsewhere and indeed returned later to Germany. Centuries of conflict devastated the continent of Europe. The madness reached its peak in the Thirty Years’ War, fought from 1618 until the Peace of Westphalia in 1648. Armies roamed Europe like a plague of locusts, exacting some of the worst destruction—pillaging, raping, and killing—not on opposing armies but on innocent civilians. The population of some cities and countries declined by a third or more by war, disease, and deprivation. In the end, as Europe bled to exhaustion, the secular princes were left to decide which religion would reign supreme in their land.10 The rulers of France and Spain chose Roman Catholicism. The rest chose a denomination of Protestantism: Germany and the countries of Scandinavia chose the Lutheran Church; and Scotland, Switzerland, and the Low Countries officially adopted Reformed Protestantism.11

England under King Henry VIII rejected the papacy by law in 1534 in favor of the Church of England and later adopted the Book of Common Prayer, which everyone in the country was bound to follow. Eventually, Parliament declared that no Catholic could ever ascend to the English throne.12 Meanwhile, however, for many religious dissenters, especially Protestants who felt that England had not fully divorced itself from the Catholic Church, memories of burnings and beheadings hung too heavily in the air. They feared
that they would persist indefinitely as a persecuted religious minority under the thumb of an established national church whose doctrine and ceremonies they could not tolerate.

While the Puritans had always tried to reform the Anglican Church from within, another group wanted to start all over by building their own church from the ground up. These Separatists, or Pilgrims, felt that the Anglican Church would never fully purify itself. In 1620, Separatists boarded the Mayflower and set sail for northern Virginia. Their boats caught a wind that carried them instead to the rocky shores of Plymouth, Massachusetts, and to the freedom they required to build their own church, safe from persecution by any civil authority. So began the American story of church and state. America's founding generation would feel the tremors of European intolerance underfoot many years later and half a world away.

When the Puritans themselves settled north of Plymouth and started the Massachusetts Bay Colony a decade later, they modified the Anglican faith to forge something different enough to become their own Congregationalist Church. The power of the church lay, they believed, in its congregation and ministers, not in an archbishop and king. They rejected the Book of Common Prayer and subscribed to a rigid piety taken, they said, from God as revealed in the Bible. They believed in a strict observance of the Sabbath and a moral discipline that tolerated weakness neither of the flesh nor of the mind.13

The framers of the First Amendment understood that the dissenters from the Church of England founded the Massachusetts Bay Colony for their own religious liberty, not for anyone else's. Their frontier colony, like England and the rest of Europe, united church and state and attempted to impose religious uniformity on all its citizens. Looking unfortunately backward toward the land they had left, the Puritans even hanged a few of their own dissenters on the Boston Common. One Quaker, Mary Dyer, was expelled from
Boston and told she would be executed if she returned. When she returned in 1660, she was hanged for both her impertinence and her apostasy.\textsuperscript{14}

This zeal that marked the union of church and state in Europe now followed most of the colonists who settled up and down the Atlantic seaboard. Five of the thirteen colonies—Maryland, Virginia, Georgia, North Carolina, and South Carolina—grew from the genetic rootstock of European unions of church and state, which involved elevating one denomination to the status of official church within their realm and requiring citizens to belong to that church and to support it. In the same way, each of the five colonies established the Anglican Church as its exclusive state church, discriminating against citizens of all other faiths. Maryland, at least, did pass its Act of Toleration of 1649, possibly the first law protecting religious freedom—at least religious freedom for all Christians. But an Anglican establishment soon followed.

In the other eight American colonies, though, citizens and politicians chose a more diverse approach to church and state. Leonard W. Levy, one of the most prominent First Amendment historians, has pointed out that rather than elevating one religious denomination to the status of state church, four colonies gave preferred status to multiple churches or even to Protestantism in general, and four others provided broad religious freedom.\textsuperscript{15}

Though overwhelmingly Congregationalist, Massachusetts was one of the colonies with a complex relationship between church and state. In 1692, an act of the General Court did not formally establish the Congregationalist Church as the official church of the colony. Instead, it required each town’s voters to choose a minister who would be supported by all taxpayers—the local town option. Theoretically, at least, this local option could produce government support for a minister of whatever faith controlled each town and, thus, was potentially an establishment of multiple churches throughout the colony. In fact, as Leonard Levy found, Baptists formed the majority in the small town of Swansea and thus established their two Baptist churches as the recipients of taxpayer money there. Since Congrega-
tionalists dominated the colony, though, they knew that the practical consequence of the law’s passage would be widespread state support of their faith. The state’s largest city, Boston, stood exempt from the law, so minority faiths there did not have to support the dominant Congregationalist Church.¹⁶

In neighboring Connecticut, the Congregationalists also dominated politics and religion. A 1697 law provided, as in Massachusetts, a local town option for using taxes to support the leading church. In 1727, though, the legislature created a dual establishment by enabling Anglicans to have their taxes rebated to support their own clergy under certain conditions. The expanding Anglican population built fourteen churches by the middle of the century. This dual establishment of religion by the state, a departure from the experience in Europe, nonetheless carried forward some of the key characteristics of European establishments—mandatory attendance at services and mandatory taxes to support the churches themselves. New Hampshire, too, enacted a law in 1693 that put into place the local town option, enabling Protestants of whatever denomination to establish the town church. Congregationalists dominated the colony, but eventually the Presbyterians established their church in Bedford and Londonderry. In several other towns, there were dual establishments.¹⁷

Colonial New York was another colony with multiple establishments of religion. After their conquest in 1664, the English ended the exclusive establishment of the Dutch Reformed Church and empowered townships to support any Protestant church. Instructions from the English crown that only the Church of England be established began decades of bickering between Anglicans and other Protestants over taxpayer support of churches. In the end, a provincial court ruled in a dispute in 1731 that the Presbyterians could raise taxpayer money for their own church and minister in Jamaica, Queens, thereby confirming the multiple-establishment model by judicial fiat.¹⁸

The other four of the original thirteen colonies—Rhode Island, Pennsylvania, New Jersey, and Delaware—separated church and state and extended religious liberty to their inhabitants from the
beginning. These colonies thus embraced a model that, if not perfect in its protection of the liberty of conscience, at least foreshadowed the religious liberty that would spread in the years ahead.19

With the Puritans of the Massachusetts Bay Colony cracking down hard on religious dissenters, the most significant exile from Boston was Roger Williams. A Puritan minister who arrived in Boston in 1631, Williams became one of the first to challenge Puritan authority in the Massachusetts Bay Colony. Williams had many complaints about the Puritan way. He believed that the Puritans had diverged too sharply from the Church of England to remain within its ambit and that it was unwise to repeat the mother country’s union of church and state that had unleashed so much misery for so long. The reward for Williams’s dissent was his banishment from the colony in 1635 by the General Court. So Williams walked south from his home in the dead of winter to what would become Rhode Island and there founded the city of Providence.

The banishment of Williams proved to be one of the great turning points for religious freedom in America. Unlike almost all of the dissenting Protestants who came before him both in Europe and the New World, Williams actually believed in religious freedom not only for himself but also for others. In his treatment of other dissenters was a glimpse of a new idea about church and state that would help define liberty in a new nation.

Williams started a new church in Providence, apart from the Church of England, and initiated a “livelie experiment” in religious freedom that involved the separation of church and state. Williams believed that Christians breached their faith if they persecuted others for their religious beliefs. In 1644, he published his *Blody Tenent of Persecution*, boldly stating that “the blood of so many hundred thousand souls of Protestants and Papists, spilt in the wars of present and former ages, for their respective consciences, is not required nor accepted by Jesus Christ the Prince of Peace.”20

Like Rhode Island, Pennsylvania was another haven of religious liberty. William Penn joined the Society of Friends, or Quakers, in 1667 and became a minister, preaching for converts and attacking the
Anglican Church. Imprisoned for his beliefs, Penn developed a deep commitment to religious freedom and wrote a treatise on the subject in 1670. He negotiated for a large tract of land west of the Delaware River (in discharge of a debt that King Charles II owed to his father) and established a colony there in 1682. Not only did Penn’s colony immediately become a refuge for Quakers; he pledged freedom for all in matters of faith.21

Immigrants of many persuasions soon accepted Penn’s invitation to enjoy the liberty of conscience. Nowhere else in colonial America was there such quick development of the diversity of faiths and cultures that would later indelibly mark the entire nation. In addition to the Quakers, German Lutherans and German Reformed Protestants poured into Philadelphia and the surrounding area. The Amish and Mennonite people settled Lancaster County. Moravians, Scotch-Irish Presbyterians, Seventh-day Baptists, and Welsh Baptists found refuge there. Into this Protestant mix came Jews and Roman Catholics as well.22 America had planted the seeds for a future much different than Europe’s.