Clanking Chains: Jefferson's "Wall of Separation": Background: Landmark Cases: "Everson," "Engel," & "Walz"

III. Jefferson's "Wall of Separation": Background

1- Those who served on the 1947 Supreme Court were: Chief Justice Fred M. Vinson and Justices Hugo L. Black, Harold H. Burton, William O. Douglas, Felix Frankfurter, Robert H. Jackson, Frank Murphy, Stanley F. Reed, and Wiley B. Rutledge.

2- The question the case resolved is not one that would assist us much in our analysis of church-state relations. My reason for quoting it here is the presence of President Jefferson's "wall of separation" phrase and the subsequent importance it acquired following its reference by Justice Black in his majority opinion.

3- My emphasis on the *Everson* case is not meant to resolve the current debate about the separation of church and state per se. My objective is to demonstrate that the First Amendment was originally intended as a restraint against the federal government becoming involved in the establishment of a national denomination and how the Fourteenth Amendment and subsequent Supreme Court decisions altered its original intent.

4- Again, the states imposed the restriction of the Bill of Rights upon the federal government. They did not impose this restriction upon themselves. For example, Virginia is famous for its Declaration of Religious Rights which codified a very strict separation of church and state. Other states were not so strict. Each state had a right to decide based on "community standards." However, the federal government was so bound by the First Amendment that it was forced to be a disinterested observer.

5- The use of the famous Jeffersonian phrase by Justice Black failed to properly recognize the context of the former President's remark. We are assisted in learning this context from:

> **Barton, David. "The Origin of the Phrase 'Separation of Church and State?'" Chapter 3 in *The Myth of Separation: What is the Correct Relationship between Church and State?* (Aledo: WallBuilders Press, 1992), 41-46.**
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> Most people are surprised when they find that the Constitution does not contain the words "separation of church and state." Since this phrase does not appear in our Constitution, what is its origin?
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> At the time of the Constitution, although the states encouraged Christianity, no state allowed an exclusive state-sponsored denomination. However, many citizens did recall accounts from earlier years when one denomination ruled over and oppressed all others. Even though those past abuses were not current history in 1802, the fear of a recurrence still lingered in some minds.
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> It was in this context that the Danbury Baptist Association of Danbury, Connecticut, wrote to President Jefferson. Although the statesmen and patriots who framed the Constitution had made it clear that no one Christian denomination would become the official denomination, the Danbury Baptists expressed their concern over a rumor that a particular denomination was soon to be recognized as the national denomination. On January 1, 1802, President Jefferson responded to the Danbury Baptists in a letter. He calmed their fears by using the now infamous phrase to assure them that the federal government would not establish any single denomination of Christianity as the national denomination:

> I contemplate with solemn reverence that act of the whole American people which declared that their legislature [Congress] should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State.

6- The "wall of separation" phrase was used as indicated by Jefferson in a letter to a denominational association in January 1802. It was so trivial and innocuous that it was never referred to again until *Everson v. Board of Education* in 1947.

7- Using this quote as justification, Justice Hugo L. Black's majority opinion in *Everson v. Board of Education* concluded with this statement:

> The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.

8- Although this case had to do with public funds used for transporting children to religious schools, it did not address the religious activities of students in the classroom. But it did set the stage for the 1962 decision in *Engel v. Vitale*. Again, Justice Hugo L. Black wrote the majority opinion:

> ***Engel v. Vitale***, 370 U.S. 421 (1962) Because of the prohibition of the First Amendment against the enactment of any law "respecting an establishment of religion," which is made applicable to the States by the Fourteenth Amendment, state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day -- even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited.

9- This initiated a precedent that resulted in a continuing series of Court decisions that over the following 40 years have removed every aspect of Christianity from the classroom, its textbooks, and student assignments. A few examples are provided by Barton (pp. 11-12):

- Freedom of speech and press is guaranteed to students unless the topic is religious, at which time such speech becomes unconstitutional: *Stein v. Oshinsky*, 1965.
- If a student prays over lunch, it is unconstitutional for him to pray aloud. *Reed v. van Hoven*, 1965.
- It is unconstitutional for students to arrive at school early to hear a student volunteer read prayers which had been offered by the chaplains in the House of Representative and Senate, even though those prayers are contained in the public *Congressional Record* published by the U.S. Government. *State Board of Education v. Board of Education of Netcong (NJ)*, 1970.
- It is unconstitutional for the Ten Commandments to hang on the walls of a classroom since the students might be lead to read them, meditate upon them, respect them, or obey them. *Stone v. Graham*, 1980. Here is the excerpt from the Court's majority opinion:

> If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.
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> http://www2.law.cornell.edu/cgi-bin/foliocgi.exe/historic/query=[group+449+u!2Es!2E+39!3A]^[group+citemenu!3A]^[level+case+citation!3A]^[group+notes!3A]/doc/{@21}/hit_headings/words=4/hits_only?

10- The conundrum caused by the "selective incorporation" of the Bill of Rights into the Fourteenth Amendment is responsible for these decisions just cited. That a conundrum existed was also recognized by Justice William O. Douglas in his Dissenting Opinion in:

> *Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664 (1970). In affirming this judgment, the Court largely overlooks the revolution initiated by the adoption of the Fourteenth Amendment. That revolution involved the imposition of new and far-reaching constitutional restraints on the States. Nationalization of many civil liberties has been the consequence of the Fourteenth Amendment, reversing the historic position that the foundations of those liberties rested largely in state law.
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> The process of the "selective incorporation" of various provisions of the Bill of Rights into the Fourteenth Amendment … has been a steady one. The first direct holding as to the incorporation of the First Amendment into the Fourteenth occurred … in 1925 by the Court's opinion in *Gitlow v. New York,* 268 U.S. 652 . As regards the religious guarantees of the First Amendment, the Free Exercise Clause was expressly deemed incorporated into the Fourteenth Amendment in 1940 in *Cantwell v. Connecticut,* 310 U.S. 296. The Establishment Clause was not incorporated in the Fourteenth Amendment until *Everson v. Board of Education,* 330 U.S. 1 , was decided in 1947.
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> Those developments in the last 30 years have had unsettling effects. It was, for example, not until 1962 that state-sponsored, sectarian prayers were held to violate the Establishment Clause. *Engel v. Vitale,* 370 U.S. 421 . That decision brought many protests, for the habit of putting one sect's prayer in public schools had long been practiced. Yet if the Catholics, controlling one school board, could put their prayer into one group of public schools, the Mormons, Baptists, Moslems, Presbyterians, and others could do the same once they got control. And so the seeds of Establishment would grow, and a secular institution would be used to serve a sectarian end.
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> *Engel* was as disruptive of traditional state practices as was *Stromberg* [*v. California,* 283 U.S. 359 (1931)]. Prior to *Stromberg,* a State could arrest an unpopular person who made a rousing speech on the charge of disorderly conduct. Since *Stromberg,* that has been unconstitutional. And so the revolution occasioned by the Fourteenth Amendment has progressed as Article after Article in the Bill of Rights has been incorporated in it and made applicable to the States.
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> http://www2.law.cornell.edu/cgi-bin/foliocgi.exe/historic/query=[group+397+u!2Es!2E+664!3A]^[group+citemenu!3A]^[level+case+citation!3A]^[group+notes!3A]/doc/{@181}/hit_headings/words=4/hits_only?

11- David Barton sums up this sequence of events that has brought us to our present impasse with regard to the First Amendment's guarantees of religious liberty and the contradictions caused by reading the Bill of Rights into the Fourteenth Amendment:

> The Court has now given titles to the two religious portions of the First Amendment. The first portion, which it says contains the separation of church and state, it calls "The Establishment Clause." The second portion it entitles "The Free Exercise Clause." The Court purports the doctrine of separation to be a great American belief, present since the nation's birth. However, in *Walz v. Tax Commission*, 1970, the Court conceded that the separation doctrine is of recent origin. Having been introduced into widespread legal use only through the revolution spawned by the Court's unprecedented use of the Fourteenth Amendment. (p. 14)
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> Prior to [*Engel v. Vitale* in] 1962, there had been over 340 years of recorded history in this country concerning schools—170 of those years had occurred under the First Amendment of the Constitution! What schools and students were doing thought those years had *never* been ruled unconstitutional! (p. 15)

12- The Luciferian Conspiracy is written all over these Supreme Court decisions. If the destruction of this client nation is to be accomplished then its demise must begin with the dismantling of its cultural foundations.

13- The cultural foundation of all client nations in the Church Age is New Testament Christianity. The development of *exoterike harmonia* in succeeding generations requires that the children of each generation agree on foundations principles of order made apparent in biblical teachings from the Laws of Divine Establishment.

14- It is clear that the original intent of the Constitution by the Founders envisioned an environment that would not hinder the transmission of these ideas in any area of the commonwealth.

15- Thus the First Amendment prohibited the national government from designating by law any denomination as a national denomination and from prohibiting by law the free exercise of any denomination.

16- Ratification of the Fourteenth Amendment was the catalyst that led to the destruction of the culture, the heritage, and the ethical and moral foundation of this client nation. Its wording has been used by Lucifer to being this country into complete disorder and the destruction of the vital necessity of national *exoterike harmonia*.

17- The Fourteenth Amendment had several objectives. Its first was to make slaves citizens, an end accomplished in the opening sentence of Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

18- Section 2 takes care of the problem expressed in Article 1, Section 1 of the Constitution which reads:

> Representatives … shall be apportioned among the several States … according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons … three fifths of all other Persons.

19- The Fourteenth Amendment's Section 2 corrected this by making freed slaves full citizens for the purpose of reapportionment:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.

20- The other of the Fourteenth's five sections were crafted to disenfranchise the white men of the Old Confederacy from their right to vote or hold state or local offices. These qualified voters naturally opposed this and thus legal ratification was made impossible. In order to force ratification, Congress imposed upon the South what came to be known as Reconstruction.