MARTIN LUTHER: THE GREAT-GRANDFATHER OF CHURCH-STATE SEPARATION

by

Maggie Burreson

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Project Approved:

Supervising Professor: David Grant, Ph.D.

Department of Religion

Ronald Flowers, Ph.D.

Department of Religion

Samuel Arnold, Ph.D.

Department of Political Science
ABSTRACT

This project explores the doctrines of Martin Luther that contributed to the string of thought which eventually led to the formation of the First Amendment religion clauses. The project follows the development of Martin Luther's theology, European secular thought, the beliefs of other religious thinkers, and the positions of early American political figures. It then looks at the development of the First Amendment clauses by evaluating the important actors and their varying positions throughout the debate surrounding the creation of the Amendment. The project then draws parallels between these positions and Martin Luther's early and late doctrinal positions.
Introduction

Bang.
Bang.
Bang.

The sound of a hammer pounding on a nail as it sinks into the door of the Wittenberg Castle church in Germany. Martin Luther nails the Ninety-Five Theses to the door, unknowingly sparking the upheaval of the entire Catholic Church. Like the sound of that hammer against the nail, Martin Luther’s cries for reform were resounding. With these Ninety-Five Theses, written in 1517, Martin Luther became known as the Reformer. He, with his genuine desire for change within the Catholic Church, was the catalyst for massive transformation, transformation that he likely could not even imagine.

Now, maybe Luther did not literally nail the theses to the Wittenberg Castle church door. History likes to embellish. But no embellishment exists concerning Luther’s lasting effect on the Christian church as we know it today. What is often lost, however, is how Martin Luther affected more than just the church itself. His doctrines, beliefs, and legacy have had an impact on greater society as well. And, most importantly, they have had an indirect effect on church and state relations, particularly in the United States of America.

The United States was unique at its founding. It did not establish a national church, which was commonplace in Europe. The First Amendment of the Bill of Rights of the United States Constitution went even further than that by prohibiting any such establishment in the future. And, although it may not be obvious, Martin Luther’s
thought played a role in the development of the First Amendment. Yes, Martin Luther lived in the early 1500s and the Bill of Rights was written in the late 1700s. So no, he was not there, contributing at the first Congress’s meetings, conversing with James Madison, or penning the amendment itself. But, he did lay crucial groundwork, without which the First Amendment likely would have been severely delayed in its development. Martin Luther's fervor for reform and audacity in achieving it paved the road for the eventual religious and governmental landscapes of the modern world.

Martin Luther’s two most important doctrines for us in this endeavor—to assert Martin Luther’s vital role in the development of the American church-state understanding—are his two kingdoms doctrine and the doctrine of the priesthood of all believers. These two doctrines will be explained in the first and second chapters. Then in the third chapter we will look at how these two doctrines influenced the centuries that followed by tracing Luther’s indirect influence all the way to Madison. In the fourth chapter we will discover that Martin Luther later backtracks on his stances concerning the universal priesthood and the two kingdoms doctrine. In the fifth chapter we will look at the formation of the First Amendment religion clauses and, in the sixth chapter, finish with an analysis of Luther’s later positions concerning his two key doctrines and how they parallel a few dissenting voices concerning the First Amendment.
Chapter One: Martin Luther – The Two Kingdoms Doctrine

Martin Luther (1483-1546) is best known for his catalytic role in the Protestant Reformation. Luther is often remembered as the reformer who, as legend has it, nailed the Ninety-Five Theses to the door of the Wittenberg Castle church. The Ninety-Five Theses were comprised of ninety-five related questions and observations concerning the Catholic Church.¹ Luther, a Catholic monk, wrote the theses in a “remarkably humble and academic tone, questioning rather than accusing.”² Luther genuinely wanted reform within the Catholic Church. Yet, with his Ninety-Five Theses, Luther caused the largest schism of his time, and arguably of all time, within the Church. While many are aware of his role as the reformer, not all are cognizant of the specific doctrines Martin Luther emphasized and developed. Two of his doctrines are central to the development of church-state relations as we know them today. Although not directly influenced by Luther’s positions, the First Amendment religion clauses³ would likely not exist in their current form were it not for Luther’s courage to challenge the Catholic Church and his development of then-unorthodox doctrines. The two main doctrines of Martin Luther that concern us in this study are his doctrine of the two kingdoms and his insistence on the priesthood of all believers. This chapter concerns the former.

To understand the context of Luther’s writings, one must acknowledge the close relationship between the Catholic Church and the secular state in late medieval Europe. Germany, home to the seeds of the Reformation and its chief leader, was part of the Holy

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³ The First Amendment religion clauses are as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”
Roman Empire. The Holy Roman Empire was intricately intertwined with the Catholic Church. The established religion of the Empire at the time of the Reformation was Catholicism.\(^4\) Thus, when Luther raised serious questions about Roman Catholic theological procedure, he also raised serious questions about the relationship of the Catholic Church to the German State. By implicating the Catholic Church he also implicated the German State, making the Catholic Church a formidable power to test.

But test it, he did. In addition to his dissatisfaction with the practice of indulgences and his belief that the average German should be able to read the Scriptures, Luther also took issue with the close relationship of the Catholic Church and the German state. Martin Luther’s doctrine of the two kingdoms elucidates this position. Although this doctrine is central to the development of church-state relations as we understand them today, one must remember that Luther’s position, in its entirety, is not interchangeable with the current concept of separation of church and state in America. As Erwin Gane articulates, Luther was not a political philosopher. He was a preacher and theologian, and his writings on secular authority reflect that.\(^5\) Likewise, no state existed with the “strict separation” that exists in America today. Luther’s cultural and social context likely took for granted the reality of an established religion, because that was all he knew, since the Christian Church had been established in Europe since the fourth

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century. One cannot apply his writings directly to the American context, where no such establishment exists.

Nonetheless, Luther, in his doctrine of the two kingdoms, articulated a position that separates the “left-hand kingdom,” the state, from the “right-hand kingdom,” the church. In Luther’s view, the right-hand kingdom is under God’s jurisdiction and His jurisdiction alone. Thus, the Church is to remain autonomous in regards to issues of doctrine, spirituality, ministers, etc. Likewise, the left-hand kingdom, or kingdom of the world, is to be ruled by secular authorities, not the church. Luther stated, “The temporal government has laws which extend no further than to life and property and external affairs on earth, for God cannot and will not permit anyone but himself to rule over the soul.” However, as Luther understood it, God delegates rulers in the secular realm. The secular government is charged with preserving the world and the physical well being of its inhabitants, and it is to do this through ruling by reason. Although the two kingdoms exist separately, Luther saw both as necessary and complementary. He said, “Neither one is sufficient in the world without the other.” But, Luther argued, they cannot be

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7 Gane, “Luther’s Views of Church and State.”
8 Martin Luther, “Temporal Authority: To What Extent It Should Be Obeyed” in Martin Luther’s Basic Theological Writings, ed. Timothy Lull and William Russell (Minneapolis: Fortress Press, 2012), 441.
10 Luther, “Temporal Authority: To What Extent It Should Be Obeyed”, 434.
intertwined. And, the Roman papacy went against what God intended by mixing the two kingdoms and attempting to influence secular matters.\textsuperscript{11}

Luther insisted that, “faith is a ‘free act’ and cannot be forced.”\textsuperscript{12} Faith is an individual’s free choice, and neither the church nor the state, nor the church working through the state, can force someone to believe something. Luther called such instances of faith coercion “the height of folly.”\textsuperscript{13} He said, “The bishops are to leave God’s word alone and not use it to rule souls...”\textsuperscript{14} This articulation of faith as a free act led Luther to argue that even heretics could not be curtailed or persuaded by force.\textsuperscript{15} Temporal authority ceased in the realm of faith, where only God could be the judge of heresy. He argued, “Heresy is a spiritual matter which you cannot hack to pieces with iron, consume with fire, or drown in water.”\textsuperscript{16} Luther himself was a heretic in the eyes of the church; his position as such an individual likely affected this view concerning heresy.

Augustine of Hippo (354-430), the early influential Christian theologian, influenced Martin Luther’s views on the two kingdoms. However, Luther eventually departed from Augustine’s positions. Augustine was one of the earliest theologians to articulate a position on the relationship between the church and state. Augustine talked of an Earthly City and a City of God. His writings were interpreted in medieval times to mean that the City of God, \textit{Civitas Dei}, was superior to the Earthly City, \textit{Civitas Terrena}. This gave the City of God, as ruled on earth by the Pope, power over the Earthly City.

\begin{footnotes}
\item \textsuperscript{11} Ibid., 61.
\item \textsuperscript{12} Bernhard Lohse, \textit{Martin Luther’s Theology: Its Historical and Systematic Development}, trans. and ed. Roy Harrisville (Minneapolis: Fortress Press, 2011), 156.
\item \textsuperscript{13} Luther, “Temporal Authority: To What Extent It Should Be Obeyed”, 442.
\item \textsuperscript{14} Ibid., 447.
\item \textsuperscript{15} Lohse, \textit{Martin Luther’s Theology: Its Historical and Systematic Development}, 156.
\item \textsuperscript{16} Luther, “‘Temporal Authority: To What Extent It Should Be Obeyed’,” 447.
\end{footnotes}
including the secular ruler. Luther clearly departed from this interpretation. Although “Augustine and Luther agree in their ultimately eschatological view of the conflict between the kingdom of the world and the kingdom of God,” Luther departed from Augustine in his belief of how much power the state had over one’s faith, particularly if that faith is deemed heretical. Luther also articulated that God has a role in both kingdoms, as both fall under His divine sovereignty. Augustine did not see that overlap of God’s work in both the Earthly Kingdom and the Kingdom of God.

Although conceptions of the relationship between the church and the state existed before Luther, Luther's ideas were revolutionary and controversial. He did not articulate a position of two entirely separate and unrelated spiritual and secular realms, as Augustine did, but he did articulate a position in which neither kingdom rules the other, despite the apparent overlap. While Luther’s positions on church and state do not directly translate to the pluralistic reality of America today, nor to the pluralistic, yet predominantly Christian, reality of colonial America, they laid important foundations for the development of a separationist understanding. Luther’s understanding of the two kingdoms, in conjunction with his doctrine of the priesthood of all believers, can be seen as the seed that formed the roots which, over many years, grew into the American separation of church and state. We now turn to the second source of this groundbreaking foundation, the priesthood of all believers.

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Chapter Two: Martin Luther – The Priesthood of All Believers

The second, but equally important, doctrine that concerns this study is Martin Luther’s doctrine of the priesthood of all believers. This doctrine, which is seemingly less directly related to the American conception of church and state than the two kingdoms theory, is absolutely essential in the development of that very idea. In chapter three I will emphasize why it is critical to the development of church-state relations and trace its influence throughout time, but for now I turn to the doctrine itself, which Luther first articulated in his “Treatise on the New Testament.”

As established in the previous chapter, the Papacy had a tight hold on Christianity in the 15th century, the time leading up to the Protestant Reformation. The papal church had a hierarchical structure, just as it does today. The Pope was the head of the church. Bishops ranked higher than priests, who in turn ranked higher than the average Christian of that day. The laity, or the aggregate of all believers, existed at the bottom of the Catholic totem pole. As Erwin Gane states, Martin Luther was a threat to this “hierarchical...structure of the papal church.”

Luther posed this threat because of his contention that all who are baptized are “priests, bishops, and popes.” To him, the roles and rights that had so long been reserved for those in power actually belonged to the laity as well. Luther argued, “…we are also priests forever. This is far better than being kings, for as priests we are worthy to appear before God, to pray for others, and to teach one another divine things.” This

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20 Gane, “Luther’s Views of Church and State,” 126.
21 Ibid., 125.
is the doctrine of the priesthood of all believers. Luther, throughout his entire theological writings, envisioned a visible church and an invisible church. The visible church was the physical church on Earth, and it could include those who were not members of the invisible church. The invisible church was composed only of those who were true believers. When one was baptized, he or she was baptized into the invisible church, and, through this baptism, became part of a priesthood.

Lohse articulates that Luther argued for a position which assumed “...that no mediation is required between God and humanity.”23 In other words, when one is baptized into this priesthood, he or she is able to freely access God. As Timothy Lull and William Russell state, “Luther’s startling announcement that we are all priests elevated the laity and gave them the same spiritual status as those who served in the church.”24 This directly contradicted the hierarchy of Rome and the Catholic Church. The church relied on and even abused this hierarchical structure. Luther strongly opposed this, saying “...an injustice is committed when the words priest, cleric, spiritual, and ecclesiastic, are transferred from all Christians to those few who have those titles in the church. The holy Scriptures make no distinction among them.”25

Historically, within the Catholic Church only the priests, bishops, and the Pope were allowed to interpret scripture, and they were essentially the only ones who could read it as well.26 One of Luther’s loudest objections to the Papal State was the fact that

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23 Lohse, Martin Luther’s Theology: Its Historical and Systematic Development, 290.
25 Ibid., 413.
26 This did not necessarily start as a “power grab” by the clergy. There was the mentality of protecting the faithful from error – the church did not want to open itself to
the average German could not read the Bible, because it was only published in Latin, and the average German could not understand what was being said in the mass, because it was only spoken in Latin. Only those trained to be a part of the priestly order could read Latin. Because the average citizen could not engage with the Bible directly, the Papacy was given immense power to dictate doctrine and belief.

Luther took action and translated the New Testament into the German vernacular while he was in hiding in Germany, and then later translated the Old Testament. Although it was not the first translation of the Bible into German, it was of higher quality than previous translations. Luther translated directly from the Hebrew Old Testament and the Greek New Testament, as opposed to early translations, which were translated from the Vulgate, the Latin translation of the Old and New Testaments. Because of the advent of the printing press, Luther’s newly translated Bibles were distributed to the German people more quickly and cheaply than any translation had been distributed before.

Luther’s views of the universal priesthood stemmed from his insistence on faith as a central tenet of Christianity. Luther articulated grace alone, scripture alone, faith alone – *Sola Gratia, Sola Scriptura, Sola Fide* – as the key components of Christianity.
Those were the main themes of Martin Luther’s theology as he continued to drift away from the Catholic Church. Because scripture was so important, Luther believed that every Christian needed to be able to read and interpret the Bible for oneself. That is what motivated him to translate and is directly related to his insistence on universal priesthood. Similarly, because faith is equally central to Luther’s conception of Christianity, one must be able to determine one’s own faith. The church cannot, through hierarchical organization or systematic exclusion, control how or what one believes, as was expanded upon in the previous chapter. Also, according to Luther, faith and grace are the keys to salvation, not works. This was directly contradictory to Catholic doctrine of the time, which taught works righteousness, or salvation through good works.

Luther recognized how the influence of the priests of the Catholic Church interfered with one’s faith and an insistence on grace, which he saw as necessary to the Christian faith. He lamented that the priestly office had become

...preoccupied with displays of power and governs in a tyrannical manner. No foreign or worldly power can even be compared to it. It is as if the laity were something other than Christian people. As a result of this perversion, the knowledge of Christian grace, faith, freedom and even Christ himself has been wholly lost, only to be replaced by human works or laws.30 That statement represents the harsh condemnation that Luther directed at the Catholic Church for its insistence on works and its hierarchical structure that served to exclude the laity. Luther saw these two characteristics that manifested themselves in the Catholic Church as antithetical to the Christian faith he found in the Bible.

The priesthood of all believers is an important doctrine as it closely relates to all of Martin Luther’s other theological positions, including his doctrine of the two kingdoms. These two doctrines, combined, set the stage for later developments of theological thought that eventually lead to the American articulation of the separation of church and state. The two kingdoms doctrine articulated a position that allowed for the coexistence of, but also ensured the autonomy of, both the state and the church. The universal priesthood emphasized the equality of the laity with the leaders of the church. The priesthood of all believers, combined with Luther’s idea of faith as voluntary, contributed to the notion of each person having a freedom of conscience, which permeated secular thinking in the following centuries. We turn to this connection and its development now.
Chapter Three: From Luther to Madison

The central thesis of this paper is that Martin Luther’s collective theologies – particularly his theologies of the two kingdoms and the priesthood of all believers – serve a foundational role in the development of church-state relations in the United States. In order to prove this thesis, one must be able to track Luther’s influence from his time until the creation of the First Amendment religion clauses. Fortunately, Nicholas P. Miller in *The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State* undertook a similar endeavor. While his focus was not directed at proving Martin Luther as a foundational actor but instead was at exploring the broad development of church-state thought, Luther still serves as his starting point. Miller scoured the past and found how Luther’s theology affected many religious and secular thinkers and their ideas. He traces Luther from the time of the Reformation to John Milton. He continues the journey from Milton to both philosopher John Locke and Quaker William Penn, who serve undeniably important roles in the American context. Miller then examines religious leaders Elisha Williams and Isaac Backus. After studying their writings and impact, he covers William Livingston. And, finally, he discusses John Witherspoon and James Madison, both of whom were fundamental in the development of American governance. Miller’s study takes him from Germany, throughout Europe, and finally to America.

These individuals and their ideas serve as the link between Martin Luther and the separation of church and state in America. Through them, one is able to see the indirect yet crucial impact that Martin Luther’s theologies had for years to come, as eventually

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manifested in the church-state relationship in the United States. While Miller was not attempting to prove that Luther served a foundational role, he essentially did just that. This was a beneficial discovery for this study. I will now follow Miller’s path and articulate the link that exists between Martin Luther and the other prominent figures.

We turn first to Martin Luther and John Milton. Miller explores Luther’s positions on the two kingdoms and the priesthood of all believers, devoting more time to the latter. These two topics have been dissected thoroughly already, so I move to their impact now. A group that was influenced by the two doctrines of Luther relevant to this paper were the Anabaptists.

Other groups, including Lutherans, mightily persecuted the Anabaptists, a splinter group of the Reformation, during the time of the Reformation. They, in terms of church and state, held very closely to Luther’s early views. However, as will be discussed later in this paper, Luther seemed to rethink his views of the two kingdoms, allowing more interaction between the two kingdoms. The Anabaptists, however, never backtracked. Hans Guggisberg emphasizes this, saying, “The German reformer later ignored and attempted to suppress [“Temporal Authority: To What Extent it Should Be Obeyed”], but it was repeatedly cited by proponents of religious tolerance, who saw it in confirmation of their convictions.”

32 Anabaptists held onto their belief in the two separate kingdoms and were one of the first groups to speak out against any establishment of religion. Many Anabaptists were Lutherans before becoming

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Anabaptists, and Martin Luther’s writings and theologies influenced them. The Anabaptists, and Martin Luther’s writings, later had a strong presence and influence in Holland, which is important as I plan to discuss William Penn, John Locke and the English Baptists later in this paper. The Anabaptists took a strong position on toleration and religious freedom due to their persecution.

Sebastian Castellio, a former Calvinist, spoke out against John Calvin, another reformer, and, more specifically, the persecution of the Anabaptists. In Castellio’s discussion with Calvin, he relied heavily on early Luther. Hans Guggisberg points to the fact that Castellio spent significant time in Basle, a Swiss city profoundly influenced by Luther and his works. Although Castellio never met Luther, he did meet others who had met Luther. And, importantly, Castellio emphasized the link between religious freedom and the right of each person to interpret scripture for him or herself. Castellio’s famous work, *De haereticis* – the original long title of which included Luther’s very name – was an important book in the development of toleration and religious freedom thought. This book included writings from contemporary sources using pseudonyms, several of whom had been in contact with Luther’s works. Luther himself was also quoted within the book. Although this work was a compilation of many voices, it is clear that Castellio was both the primary creator and editor of the work.

Hans Guggisberg argues that Luther influenced Castellio in relation to the translation of Scripture into the languages of the people. He states that Castellio was.

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33 Miller, *The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State*, 27
34 Ibid., 29
36 Ibid., 81 – 93
aware of Luther’s work “An Open Letter on the Translation and Intercession of the 
Saints.” 37 This work by Luther addressed the translating of scripture and the importance 
of capturing the spirit and purpose of the text. 38 Yet it is important to note that Castellio 
primarily seems to have read early Luther, based on the works he cites within his own 
publications. 39 Nonetheless, Castellio is an important figure because his works, including 
his works that relied heavily on Luther, circulated prominently around Holland. 40

Holland is an important country in the transformation of Luther’s ideas from 
Germany to America. Holland became known for its religious toleration, and many of 
Luther’s and Castellio’s writings were frequently circulated there. Guggisberg goes so far 
as to say, “Nowhere apart from the seven United Provinces... did Castellio’s conception of 
toleration, as well as his attack upon the theology of John Calvin, so clearly form an 
essential part of the evolving national and religious identity of a people.” 41 An important 
group that came into contact with these writings, or the ideas contained in them, were 
the English Anabaptists, who published versions of Castellio’s works. These English 
Anabaptists were dissenters from the Anglican Church who came to Holland to escape 
persecution. While in Holland, these dissenters encountered the Dutch Mennonites, a

37 Ibid., 71
38 “Luther’s Works,” The Gruber Rare Books Collection, accessed March 15, 2016, 
39 Guggisberg, Sebastian Castellio, 1515-1563: Humanist and Defender of Religious 
Toleration in a Confessional Age, 126.
40 Miller, The Religious Roots of the First Amendment: Dissenting Protestants and the 
Separation of Church and State, 32-33.
41 Guggisberg, Sebastian Castellio, 1515-1563: Humanist and Defender of Religious 
Toleration in a Confessional Age, 238.
group of Dutch Anabaptists named after Menno Simmons. These Dutch Mennonites influenced the English Anabaptists greatly.

Early leaders of the English Baptist Church, which formed from the English Anabaptists, were John Smyth, Thomas Helwys and Leonard Busher. All of these men came into contact with the Mennonites and began changing their theological views. Miller articulates:

Prior to their [Helwys’s and Busher’s] time in Holland, the English separatists did not view the civil magistrate as being separate from spiritual matters. They certainly did not use language of personal judgment in religion or the two kingdoms metaphor. Suddenly, after contact with Mennonites…in a country where Castellio’s works were also known to be widespread, three of their leaders published prominent works echoing both Castellio and early Luther in language and metaphor. The reasonable explanation is that they encountered versions of Castellio and early Luther during their stay in Holland through their contact with the Mennonites.

These men then influenced their fellow Baptists, and conceptions of freedom of religion, separation of church and state, and the individual believer’s right to interpretation were solidified.

John Milton used these arguments furthered by the Baptists to make the case for religious toleration in Britain. Milton wrote the Treatise of Civil Power, which echoes

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43 Miller, The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State, 35.
44 Ibid., 36.
many of the arguments made by the Baptists and by Martin Luther. Milton makes four arguments, three of which are: the centrality of scripture, the believer’s right to interpret it, and the inability of the civil authorities to interfere in religious interpretation.\(^45\)

Milton states:

\[\ldots\text{in regard that your power being but for a time, and having in yourselves a Christian libertie of your own, which at one time or other may be oppressed, thereof truly sensible, it will concern you while you are in power, so to regard other mens consciences, as you would your own should be regarded in the power of others.}\]^46

In making these arguments Milton insists that his arguments are made from Scripture, and thus have true authority.\(^47\) Milton continues, mirroring arguments made by the Baptists by applying limitations to both governmental and religious rulers, all the while emphasizing the importance of Scripture, just as Luther did when he insisted on \textit{sola Scriptura}. Milton states, “Seeing then that in matters of religion, as hath been proved, none can judge or determine here on earth, no not church-governors themselves, against the consciences of other believers…”\(^48\) For Milton’s argument against the civil government stepping into the realm of religions, he argues on the basis of Luther’s two kingdoms doctrine.\(^49\) Miller argues that Milton:

\(^{45}\) Ibid., 42.
\(^{47}\) Ibid., 1.
\(^{48}\) Ibid., 7.
\(^{49}\) Miller, \textit{The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State}, 42-43.
is the prism, or lens, that takes the thought of early Luther, the story of the German princes of Speyer, the ideas of Castellio (whose writings are a part of Milton’s library), the arguments of the English Baptists...and focuses them into a single, whole, forceful package of a dissenting Protestant view of church and state.\textsuperscript{50}

Although Milton was writing with Britain in mind, his articulated principles of religious freedom truly took hold in the English colonies. The dissenting views on church and state supported by Milton and the Baptists became well known through two important figures – John Locke and William Penn.

John Locke, an Englishman, spent a portion of his life in exile in Holland. He was well aware of the lack of toleration within European governments. In the 1680s many governments were threatening religious peace. This prompted Locke and others to write concerning the issue of toleration. Locke’s writing, \textit{Letter Concerning Toleration}, is perhaps the most famous and widely read of these responses.\textsuperscript{51}

But, an important connection must be made before delving into Locke’s \textit{Letter}. When in exile in Holland, William Penn assisted Locke by requesting for King James to pardon Locke so that he could return to England. William Penn – a Quaker and the founder of Pennsylvania, a bastion of religious freedom – had connections to the royal family through his father, who was an Admiral and eventually was knighted. It was through these connections that Penn obtained the land for what became Pennsylvania. Penn also used these connections toward the betterment of the Quaker cause.\textsuperscript{52}

\textsuperscript{50} Ibid., 44.
\textsuperscript{51} Ibid., 50.
\textsuperscript{52} Ibid., 51.
Although there is no record of Locke and Penn interacting while at Oxford, both men were there at the same time. Curiously, while in exile, Locke lived with a Quaker – Benjamin Furley. There is record of Penn’s visiting Furley while Locke was living there, and Locke had multiple works by Penn in his library. Similarly, Furley had many of Penn’s works. Locke worked on the Letter while staying with Furley, which meant he had access to Penn’s writings while composing his own work on toleration.\textsuperscript{53}

This connection between Locke and Penn is an important one because it shows the confluence of Enlightenment ideas with Protestant thought. Many people claim that it was purely Enlightenment thinking that ensured the separation of church and state in America. However, this is plainly false, and the influence of Penn and Locke on one another evidences this.\textsuperscript{54}

Penn wrote \textit{The Great Case of Liberty of Conscience} in 1670, which predates Locke’s Letter.\textsuperscript{55} Similar themes exist in both, and so we turn first to Penn. William Penn was raised in a wealthy, prominent family in England. He received his education from Oxford and eventually also studied law. He was working in the family business when he encountered Quakers in Ireland and converted. Because of his background, Penn became an advocate for the Quakers.\textsuperscript{56}

Penn wrote \textit{The Great Case of Liberty of Conscience} in 1670. In this writing he “showe[d] that freedom of conscience flows from central Protestant theological commitments, as well as from views of natural philosophy and law also shared by the

\begin{footnotes}
\item[53] Ibid., 52.
\item[54] Ibid.
\item[55] Ibid., 54.
\item[56] Ibid., 54-56.
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great Protestant thinkers." He echoed sentiments of early writers in regards to freedom of conscience and interpretation. Penn stated, “...we say that Imposition, Restraint, and Persecution, for Matters relating to Conscience, directly invade the Divine Prerogative, and Divest the Almighty of a Due, proper to none besides himself.” Penn also articulated a position that mirrored Luther’s two kingdoms doctrine in relation to God’s authority over the spiritual kingdom. He used logic to support his arguments on Biblical authority, which was later also asserted by Locke, perhaps by coincidence. He stated, “We farther say, That Imposition, Reason, and Persecution are also destructive of the great Priviledge [sic] of Nature and Principle of Reason...” Whether by coincidence or not, the addition of reason to Protestant dissenting thought is important to Penn, to Locke, and in the context of American separation of church and state.

William Penn then went on to found Pennsylvania, and established religious freedom from the start. It was the broadest reaching form of freedom of religion in colonial America at the time. Pennsylvania was seen as an example of the success of a government that ensured religious freedom. This was important in convincing later founders of the fact that a country without an establishment could thrive.

57 Ibid., 56.
60 Miller, The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State, 59-60.
61 Although this freedom of religion was not total. It only applied to those who believed in God.
We now turn to Locke and his role in this development of freedom of religion and disestablishment. Locke, from early on, was in contact with Protestant dissenters, such as Sir Henry Vane the younger and his associate Henry Stubbe. Locke was close with these men, both of whom held Baptist views on church and state. The influence of these men is evident, as Locke’s views on church and state evolved and broadened over time. It is not surprising, due to these interactions and relationships, that “when Locke fashioned his broader views on toleration, they bore distinctive similarities to those dissenting Protestant arguments.”

These views manifested themselves in Locke’s *Letter Concerning Toleration* (1689), in which he understood a dramatically limited role of government in religion. Locke went further than even Milton had gone, “extending his toleration beyond the ‘clear teachings’ of scripture” and “invoking the right of private conscience.” Also, Locke makes an argument against governments’ interfering in spiritual matters that mirrored Luther’s arguments concerning the two kingdoms doctrine, as well as the priesthood of all believers. Concerning civil authorities, Locke said:

> Now that the whole jurisdiction of the magistrate reaches only to these civil concernsments, and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor

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63 Ibid., 67.
64 Miller uncovers these changes, but it is unnecessary for me to do the same. More information regarding Locke’s evolution of thought concerning church and state can be found in Miller, *The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State*, 63-90.
66 Ibid., 76.
67 Ibid., 77.
ought in any manner to be extended to the salvation of souls, these following considerations seem unto me abundantly to demonstrate...the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God.  

There is no evidence of Locke owning any of Luther's works, but he did have works by Castellio that quoted Luther heavily in his library. Miller articulates that “Locke had become familiar with a dissenting line of Protestantism that kept Luther’s early thought on the two kingdoms alive.” This shows, that even years later, and through different channels, Luther’s original theologies were still relevant and influential.

While Locke’s Letter and views on separation of church and state are arguably some of the most well-known articulations of such positions, they were not novel arguments. Miller posits that Locke’s main arguments had existed in dissenting Protestant thought for years beforehand. Miller articulates that:

...it is not necessary to prove that Locke copied or depended on the views of the Mennonites, Penn, the Quakers, or other religious dissenters. Rather, Penn’s writings (along with Milton....as well as Castellio, and the early Luther himself), show what other devoutly religious thinkers were writing in relation to epistemology and religious freedom prior to Locke – writings of which Locke was well aware.

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69 Miller, The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State, 81.
70 Ibid., 82.
But, Locke still played a unique role. Neither the Baptists nor the Quakers had the prominence or respect to influence the masses into agreeing about freedom of religion and disestablishment ideas. However, Locke did. By the time Locke’s writing became known, rationalism and deism were already in full force in America. This meant Locke resonated with many American readers. Locke exerted an incalculable amount of influence over the most prominent colonial and early American thinkers.

Locke was relevant from his time and into the Revolutionary period. Miller cites Steven Dworetz, who says that many Americans “absorbed' Lockean political ideas with the gospel.” Many religious leaders of the time read and understood Locke, and preached Lockean ideas to their congregations. Also, Locke had influence beyond the pulpit. He likely conferred with William Penn on the Pennsylvania constitution and also helped draft constitutions for the Carolinas. Locke pushed for greater religious freedom in these constitutions, as we know through his objection to a clause that allowed the Anglican Church to be the only church to receive tax money.

Miller concludes by articulating that by studying Locke and Penn, “it is apparent that the predominate church/state philosophy of America in its colonial and early republic phases...was really the ‘early Luther moment.’” Luther’s ideas of the priesthood of all believers, the authority of scripture, and the separation of the two kingdoms had a lasting effect on religious and secular thinkers alike. Both Locke and Penn’s contributions in Pennsylvania and the Carolinas, which were shaped by Luther’s

71 Ibid., 86.
72 Ibid., 87.
73 Ibid., 89.
early theologies, were indispensable in preparing America to accept disestablishment and religious freedom.\textsuperscript{74}

By the 1730s, toleration – albeit in different forms – was a widespread principle. Both Enlightenment and religious conceptions contributed to this development of a more accepting view of toleration. However, the religious side is sometimes denied recognition for its contributions. Miller seeks to prove the impact of religious thinking, citing both Elisha Williams, a Congregationalist, and Isaac Backus, a Baptist preacher, as examples of the religious influence and acceptance of toleration and private judgment. The two represent opposite sides of the religious spectrum, yet both advocated for the same ideas.\textsuperscript{75}

Elisha Williams, in \textit{A Seasonable Plea for The Liberty of Conscience}, used both reason and the Bible to argue for religious liberty. Reason was an important aspect of Williams’s defense of the individual’s right to make religious decisions, referring to personal judgments in one’s faith as “the Exercise of private Reason.”\textsuperscript{76} Also, he articulated a position similar to Luther’s view of \textit{sola Scriptura} – that scripture is the only authority of faith for a Christian. That means that neither the church nor the state can take on that role. Williams said:

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\textsuperscript{74} Ibid., 90.
\textsuperscript{75} Ibid., 94.
That the SACRED SCRIPTURES are the alone Rule of Faith and Practice to a Christian, all Protestants are agreed in; and must therefore inviolably maintain, that every Christian has a Right of judging for himself what he is to believe and practice in Religion according to that Rule: Which I think on a full Examination you will find perfectly inconsistent with any Power in the civil Magistrate to make any penal Laws in Matters of Religion.”

Williams articulated support for Locke and had read dissenting Protestants as well, echoing positions of Luther concerning the two kingdoms. He mixed secular and religious thought, but it is clear that the religious underpinnings of his writings were undeniably important.

Isaac Backus wrote *A Seasonable Plea for Liberty of Conscience*, which, by the title, suggests he knew of Williams’ work. In this plea Backus writes favorably of Locke, just as Williams did. Backus also followed in Locke’s footsteps in articulating a view of the church and the government based off the two kingdoms doctrine of Luther. Backus articulated a position that implied that placing “an earthly power between God and man…is to usurp the role and place of God.” This sounds like something Luther himself could have written.

Elisha Williams’s outspokenness on the issue was unique for a Puritan, but Isaac Backus, as a Baptist, was not alone in his cries for religious freedom. Baptists were strong opponents of Patrick Henry’s bill for taxes in Virginia to support Christian work. The most famous rebuttal, James Madison’s “Memorial and Remonstrance,” will be

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discussed later. However, few emphasize that Baptists, too, submitted many petitions against Henry’s bill. The Baptists played a vital role in rallying support for disestablishment and religious freedom, harkening back to their early roots in Holland supporting similar ideals.\(^{80}\)

While Backus and Williams both represent the more religious aspect of the arguments for toleration, freedom of religion, and disestablishment, William Livingston represents more of the social elite who was drawn to Enlightenment ideas. However, these Enlightenment ideals had strong theological undertones.\(^{81}\) Livingston, a lawyer, argued against the establishment of King’s College, which was to be an Anglican, as a sectarian yet publically supported, college. He wrote articles in the *Independent Reflector* in which he exhibited an overlap of dissenting Protestant thought and Enlightenment approaches. Miller articulates that, by doing this, Livingston added “to the chain of arguments that stretch from Luther and the Anabaptists in the 1520s to the Virginia Baptists in the 1770s.”\(^{82}\) Livingston, using both dissenting Protestant and Enlightenment understanding, created a “common American nonsectarian language of disestablishment...”\(^{83}\)

Both John Witherspoon and James Madison also played instrumental roles in the development of American church-state relations. Witherspoon played more of a religious role, Madison a secular one. Yet their lives were intertwined. Madison studied under Witherspoon, and thus was influenced by his conceptions of religious freedom.

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\(^{80}\) Ibid., 109.
\(^{81}\) Ibid., 113-114.
\(^{82}\) Ibid., 116.
\(^{83}\) Ibid., 132.
Witherspoon articulated, throughout his important works, ideas that were tied to early Protestant thought and applied them to pressing American concerns.

Witherspoon gave a sermon, “The Dominion of Providence over the Affairs of Men,” which talked about the threat that an Anglican bishop posed to “religious liberties” and “conscience” in America. This Anglican bishop represented, to the colonists, full English rule and establishment.84 Witherspoon emphasized this, stating, “There is not a single instance in history in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage.”85 Many prominent figures besides Witherspoon, including Livingston, were vehemently opposed to this. Witherspoon emphasized an individual’s right to private judgment in religious matters and focused on the threat that an Anglican bishop posed to this.86

James Madison took these ideas of religious liberty and freedom of conscience and put them into a political context. Madison, while studying with Witherspoon at Princeton, came into contact with ideas surrounding church and state. However, Madison’s zeal for religious freedom as a fundamental right – the idea for which he is most well-known – did not become completely evident until the creation of the Virginia constitution. He helped move the constitution from simply toleration to religious freedom as a fundamental right.87

84 Ibid., 137-138.
86 Miller, The Religious Roots of the First Amendment: Dissenting Protestants and the Separation of Church and State, 140.
87 Ibid., 141.
Madison’s most famous work is his *Memorial and Remonstrance against Religious Assessments*. He wrote this in rebuttal to Patrick Henry’s bill for a religious tax in Virginia. Madison included arguments from the right of private judgment, Enlightenment ideas of reason, and dissenting Protestant – although arguably now not dissenting in America – views of a Christian’s freedom before God.\textsuperscript{88} Madison argued:

The Religion then of every man must be left to the conviction and conscience of every man.... Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man....\textsuperscript{89}

Madison’s *Memorial and Remonstrance* was successful in persuading the people of Virginia and Patrick Henry’s bill was struck down. This laid important groundwork for the inclusion of freedom of religion and disestablishment clauses in the United States Constitution, in which Madison also played a crucial role. That is where we turn now.

\textsuperscript{88} Ibid., 145-147.

\textsuperscript{89} James Madison, “Memorial and Remonstrance against Religious Assessments,” in *Religious Freedom and the Supreme Court*, (Waco: Baylor University Press, 2008), 1133-4
Chapter Four: Martin Luther Backtracks – Martin Luther and the Peasant Revolt

Before exploring the debate surrounding the creation of the First Amendment religion clauses, we must explore Martin Luther’s later theology. In the previous chapters, when referencing Luther’s work, I always referenced Luther’s early work, such as “The Freedom of a Christian” (1520) and “Temporal Authority: To What Extent It Should Be Obeyed” (1523). This is because Luther, like many other theologians, evolved doctrinally as time went on. However, Luther’s transition minimalized his emphasis on the autonomy of the two kingdoms and the priesthood of all believers. That is why his later works are less influential in the development of thought concerning church and state separation. This does not diminish the importance of Luther’s early positions, but recognizes that he took a less forceful stance on such issues later in his life.

Luther, considered a heretic by the Catholic Church, carved out protection for heresy and those deemed heretical in his early writings. As discussed in Chapter One, Luther articulated a position that purported that heresy could not be controlled or stopped by force. It was antithetical to Luther’s ideas of the two kingdoms and the priesthood of all believers. However, Luther seemed to hold loosely to this ideal when the heresy involved was different from his own.

Luther himself ardently spoke out against the Anabaptists and his followers perpetrated acts of violence against them. Anabaptists, who used much of Luther’s early writings as support for their positions, took their ideas too far in the eyes of other reformers. Anabaptists’ insistence on complete disestablishment was unheard of in the 1500s, thus causing quite a ruckus among Christians, even those that were seeking to redefine the church in other ways. Luther himself said, in “Against the Antinomians”
(1539), that “…Anabaptists reminded us forcefully enough how mighty and how close to us the lovely devil is…”\(^90\) He was not tolerant of their beliefs, even though they considered themselves to be Christians, and, essentially, his followers. Apparently, the universal priesthood did not include the Anabaptists.

Similarly, Luther did not include Jews or non-believers in the universal priesthood, as baptism is a requirement to be considered part of that group. The universal priesthood extended only to Christians that were deemed to actually be Christian by Luther. And, Luther had quite negative things to say about the Jews. Although Luther's seemingly anti-Semitic point of view is often over-emphasized, as it was not a major part of his theological doctrine, it is still important to discuss. Luther, in “On the Jews and Their Lies” (1543), is decidedly intolerant of any view that is not Christian or, more specifically, any view that is not compatible with his own. He recommends the burning of synagogues, the confiscation of Jewish books and writings, and the prohibition of any type of Jewish worship or Jewish recognition of God.\(^91\) He harshly states that:

…it would be wrong to be merciful and confirm them in their conduct. If this does not help we must drive them out like mad dogs, so that we do not become partakers of their abominable blasphemy and all their other vices and thus merit God’s wrath and be damned with them.”\(^92\)

\(^90\) Martin Luther, “Against the Antinomians” in Martin Luther’s Basic Theological Writings, ed. Timothy Lull and William Russell (Minneapolis: Fortress Press, 2012), 181.
\(^92\) Ibid., 504.
Although these suggestions are undoubtedly appalling, Lull and Russell emphasize that these proposals were “marginal” to the theological whole of Luther and they mirror the overarching sentiments of the times. The importance of this writing for this paper is to show how Luther’s ideas of the two kingdoms extended only so far. Luther encouraged state interference with the Jews, who are non-Christians. So the two kingdoms were not religion and the state, but instead, the narrowly defined Christian church and the state. This meant that many groups fell outside of the protection of the two kingdoms doctrine in Luther’s eyes.

One can also see Luther’s apparent watering down of his earlier stated beliefs when looking at his reaction to the Peasants’ Revolt. Although Luther may not have drastically changed his theoretical positions on the priesthood of all believers and the two kingdoms doctrine, his practical application of the two to real life situations uncovered a less staunch understanding of those two theologies.

The Peasants’ Revolt began in 1524 and lasted for approximately one year. It was an uprising that occurred in Germany that stemmed from Reformation ideals. The peasants’ could now read Scripture, thanks to the efforts of Martin Luther, and they found notions of equality and respect when they read the Bible for themselves. This caused them to question the feudal system of which they were a part and they began to see it as oppressive. This phenomenon, coupled with Luther’s various writings

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93 Ibid., 497.
condemning the Catholic Church and the German secular state, contributed to emotions rising and eventually boiling over.\textsuperscript{94}

The Peasants’ Revolt involved hundreds of thousands of peasants throughout southern Germany. Violence and destruction ensued. However, the peasants lacked strong organization or training, and were thus quickly subdued by the secular authorities.\textsuperscript{95} Approximately 100,000 peasants lost their lives during the revolts, and many people and cities lost rights after the revolt was put down.\textsuperscript{96}

While the revolt had support from other reformers, such as Huldrych Zwingli\textsuperscript{97} and Thomas Müntzer,\textsuperscript{98} Martin Luther condemned the revolt.\textsuperscript{99} Luther thought that, because the peasants had taken up arms against the state, that they had nullified any right they had to take action in the name of their grievances.\textsuperscript{100} Luther discussed the

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\textsuperscript{96} Graves, “German Peasant Revolt.”
\textsuperscript{97} Huldrych Zwingli was a Protestant reformer in Switzerland around the same time as the Reformation in Germany. He had similar positions to Martin Luther but focused even more thoroughly on the authority and centrality of Scripture. Bromiley, Geoffrey W., “Huldrych Zwingli: Swiss religious leader,” Encyclopaedia Britannica, http://www.britannica.com/biography/Huldrych-Zwingli.
\textsuperscript{98} Thomas Müntzer not only supported but also participated in the peasants’ revolt. He was a reformer from Germany. His approach was defined by an apocalyptic and spiritual emphasis not found in Luther’s approach. Bensing, Manfred, “Thomas Muntzer: German religious reformer,” Encyclopaedia Britannica, http://www.britannica.com/biography/Thomas-Muntzer.
\textsuperscript{100} Bernhard Lohse, Martin Luther’s Theology: Its Historical and Systematic Development, trans. and ed. Roy Harrisville (Minneapolis: Fortress Press, 2011), 158.
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Peasants’ Revolt in *Against the Robbing and Murdering Hordes of Peasants* (1525). He asserted that the peasants merited death for three reasons:

In the first place they have sworn to be true and faithful, submissive and obedient, to their rulers, as Christ commands... Because they are breaking this obedience, and are setting themselves against the higher powers, willfully and with violence, they have forfeited body and soul, as faithless, perjured, lying, disobedient knaves and scoundrels are wont to do... In the second place, they are starting a rebellion, and violently robbing and plundering monasteries and castles which are not theirs, by which they have a second time deserved death in body and soul, if only as highwaymen and murderers... In the third place, they cloak this terrible and horrible sin with the Gospel, call themselves ‘Christian brethren’, receive oaths and homage, and compel people to hold with them to these abominations. Thus they become the greatest of all blasphemers of God and slanderers of his holy Name, serving the devil, under the outward appearance of the Gospel, thus earning death in body and soul ten times over.  

Because of this revolt, Luther began to articulate a position that limited subject’s rights and avenues for action against the government. Luther said, also in *Against the Robbing and Murdering Hordes of Peasants*, that the rulers of the government should remember that they are “God’s minister[s] and the servant[s] of his wrath (Romans XIII), to whom the sword is committed for use upon such fellows, and that he sins as greatly against God, if he does not punish and protect and does not fulfill the duties of his office...”

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102 Luther, *Against the Robbing and Murdering Hordes of Peasants*. 
Lohse articulates that Luther, very early on, stopped strictly adhering to his doctrine on the priesthood of all believers, and also emphasized less the two kingdoms doctrine. This shift in emphasis is evident in the fact that the Lutheran church, which developed later on in Luther’s life, did not adopt such principles as central to its theology.\(^\text{103}\)

Understanding that the early Luther was stricter in his articulation of the priesthood of all believers and the autonomy of the two kingdoms than the later Luther enables us to move forward to the development of the First Amendment religion clauses. I will first articulate how the clauses developed and who the important players were. I will next explain how these First Amendment clauses stem from the line of thought that has been developed in the previous chapters of this paper. Then, I will discuss how the limitation of the First Amendment clauses to the Federal government, which allowed establishments to exist within individual states, mirrors more closely later Luther and his arguments.

\(^\text{103}\) Lohse, *Martin Luther’s Theology: Its Historical and Systematic Development*, 159.
Chapter Five: The First Amendment Debate

We left off the discussion of the development of American church-state interaction with James Madison and his *Memorial and Remonstrance against Religious Assessments*. This document was important groundwork for the later articulation of the formal relationship – or lack thereof – between church and state in America, as found in the Bill of Rights to the Constitution. However, we cannot discuss the Bill of Rights until we look at the Constitution that came before it.

After declaring independence from the British government, the Articles of Confederation served as the first constitution of the United States from 1777-1789. However, it was a weak document that formed an even weaker government. Since it was ineffective, it was decided by the Continental Congress that revisions should be made. Instead, a whole new Constitution was drafted by the Constitutional Convention, which met in Philadelphia in the hot summer of 1787. The Constitution created a stronger, but still limited, Federal government than had been established by the Articles of Confederation. Yet, interestingly, while the Constitution covered many important issues, it was almost entirely silent on the topic of religion.

Religion, along with other issues like slavery, was considered a contentious issue. It could have easily divided the Convention, as well as the states that had to ratify the Constitution. This is because the various states took quite different approaches to

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religion in their own constitutions. John Wilson emphasizes this point, saying, "had the framers of the draft Constitution chosen to stipulate more fully the role(s) to be accorded to religion, it is altogether likely that their entire effort to supersede the Articles of Confederation would have collapsed."\(^{107}\)

The states were vastly different in their formalized understandings of church and state interaction. Some states, like South Carolina, established “Christianity” and seemed to elevate Protestant religions over others early on, even though religious support through a tax was not required. A later version of South Carolina’s constitution ensured free exercise for all. North Carolina and Georgia did not have a preference of church nor require any religious affiliation from their citizens. Georgia also eliminated religious restrictions for holding office in its later constitution. These southern states followed a similar trajectory of less establishment and more religious freedom.\(^{108}\)

Other states, however, did not. Virginia represents a markedly different case. There was a wide-range of contrasting religious approaches in the state. The Church of England was the established church in Virginia, but Baptists and other religious groups were pushing back against the establishment. Until approximately 1786 the Church of England had a privileged position and was able to determine who was able to dissent within Virginia. It was in this context that James Madison wrote his “Memorial and Remonstrance” to counter Patrick Henry’s proposed bill for religious assessments. Because of Madison’s work, and the work of the Baptists, as previously noted, Virginia eventually took a stance that included both disestablishment and freedom of religious

\(^{107}\) Ibid., 33
\(^{108}\) Ibid., 23
exercise, which was created by Thomas Jefferson’s bill for “Establishing Religious Freedom.”

Maryland, which early on had the broadest establishment of the Church of England, restricted public office to Christians and understood worshiping God as a civic duty. Massachusetts, while guaranteeing a limited amount of free exercise of religion, gave the legislature the power to require the attendance of church services by citizens and kept Roman Catholics from holding office. The remaining states, such as Delaware, Pennsylvania, and New Jersey, did not include many provisions concerning religion and tended to exclude it as a form of governmental or political requirement.

As is evident, a variety of viewpoints about religion and its interaction with government existed. This serves to explain why religion was almost wholly kept out of the Constitution. The only mention of religion is in Article VI of the Constitution, in which one sentence bans any religious test in order to hold public office. The absence of religion served to ensure the ratification of the Constitution by the newly formed states. Quickly, though, states demanded that religious rights, as well as others, be articulated, as a way to limit the proposed federal government even more. Ronald Flowers, Melissa Rogers, and Steven Green articulate this very point, saying that the states “held the Constitution hostage, refusing to ratify it unless the authors agreed to produce a bill of particulars about civil rights.” The states were assured that the first

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109 Ibid., 24
110 Ibid., 25-26
112 Ronald Flowers, Melissa Rogers, and Steven Green, Religious Freedom and the Supreme Court (Waco: Baylor University Press, 2008), 22.
Congress would tackle such a bill. James Madison ran for Congressional office in Virginia with the stance that, if elected, he would work to create a Bill of Rights and to specifically address religion. He won, beating out Patrick Henry.\textsuperscript{113}

The Bill of Rights was written and passed by the new Congress. However, this proved to be a cumbersome task. There was much debate about how the religious protections should be worded and where the protections should be located in the Constitution. Madison originally wanted amendments to the Constitution, which the Bill of Rights would be, to appear within the text itself, at the relevant locations, as opposed to being tacked on at the end. However, his view lost out and amendments were, and still are, added to the end.\textsuperscript{114} Madison also took a radical position and proposed that the Bill of Rights be applied to the states. He also did not succeed in that regard.\textsuperscript{115}

The proposed religion clauses went through numerous changes and debates. Notes from various meetings exist that show us the different changes and wordings. While specific persons’ rationales for various wordings will be discussed more thoroughly in the next chapter, it is worth noting some of the more general disagreements here. A few wordings included rights of conscience while others did not. Some wordings spoke in terms of non-preference between religions, while others spoke in terms of not favoring religion, as a whole, over non-religion. The biggest debate seemed to center around establishment, not free exercise. Steven Waldman notes, “The discussion ignored the free-exercise clause...this revolutionary concept was now so

\textsuperscript{114} Wilson, “The Founding Era (1774-1797) And The Constitutional Provision for Religion,” 34.
\textsuperscript{115} Waldman, \textit{Founding Faith}, 145.
noncontroversial as to need no debate.” Eventually the wording decided upon was “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” These two clauses – the establishment clause and the free exercise clause – limited only the power of the federal government. At the time of their composition, no limits were placed on the states and their rights to regulate religion.

While there is evidence of debate in the wording of these clauses, it is unclear what exactly the Congress meant by “respecting an establishment of religion.” In fact, it has caused contentious debate to this very day. Some, who are generally termed accommodationists or nonpreferentialists, believe that this means the government cannot set up a national, government sanctioned religion. But, government can support religion, as long as it does not prefer one religion to another. The opposing camp, called the separationists, sees the First Amendment as articulating a strict separation of church and state. They contend that the Bill of Rights, as a whole, served as a restriction on federal power, not an expansion. To separationists, restricting the power of the government to meddle in religion, which includes governmental support, was the purpose of the establishment clause.

We can likely never uncover exactly what the members of Congress meant, especially since they all probably meant different things and since the context in which we apply their formulation is so vastly different from the one in which they found themselves. Sure, we can look to some of the more prominent framers, such as James Madison, to see their personal opinions. But more people than just Madison helped write the First Amendment religion clauses. A lot of different voices and opinions took part in

that process, many of which had vastly different ideological opinions about the
intersection of church and state than Madison. We turn now to those individuals and
what we know about their ideas.
Chapter Six: Martin Luther and the Dissenters

As has been previously articulated, the push for religious freedom and disestablishment that seemed to win out in the early years of the United States can be traced back to the early Luther. The agreed upon First Amendment religion clauses followed the path originally drawn by early Luther, more strongly emphasized and developed by the Anabaptists, widened by figures like John Locke, and solidified by individuals such as James Madison. The force of Luther’s early works is important in this regard.

However, we also know that Luther later backtracked from his original opinions concerning his two fundamental doctrines related to church and state interaction – the two kingdoms doctrine and doctrine of the priesthood of all believers. In Luther’s later writings, explicated in a previous chapter, those two doctrines became severely limited. What Luther implicitly argued, by limiting the priesthood of all believers and two kingdoms doctrine essentially to exclude Anabaptists and Jews respectively, was a privileged position for Christianity, or even a privileged position for certain types of Christianity. This is supported by the fact that Germany went on to allow certain regions to establish Lutheranism as the state-sponsored religion instead of Roman Catholicism.\(^\text{118}\)

The understanding of Luther to support establishment or give preference to Christianity was not uncommon for his day. The general understanding of his time was that an established church was the proper, and perhaps the only, way to set up a church.

\(^{118}\) The Peace of Augsburg legitimized this practice, of the state prince deciding whether to establish Lutheranism or Catholicism, in 1555. “Peace of Augsburg,” *Encyclopaedia Britannica*, http://www.britannica.com/event/Peace-of-Augsburg
or a nation. The Christian church had been the established church of the Roman Empire since the Edict of Thessalonica, in 380.\textsuperscript{119} The church was seen as necessary for civil order and stability. Except for the Anabaptists, all the groups that had their roots in the Reformation seemed to be in agreement that the need for an established church of some kind was undeniable. Thus, we cannot necessarily fault Luther for what now seems to be, through an American perspective, an antiquated view. But, we can draw parallels between Luther’s later writings and opinions, and some of the contributors to the First Amendment debate.

Although James Madison was unquestionably influential in the development of American church-state thought, he was not the only one whose opinion mattered. Steven Waldman makes an excellent point, one that should not be ignored, when he says:

The Framers of the Constitution were not contemplating the role of “government” in religion. They were debating the role of the \textit{national} government in religion. Remember this, and the story of the US Constitution – the drafting, the ratification, the Bill of Rights – suddenly looks very different. Some have asserted that since Madison was a staunch supporter of strict separation of church and state, and he helped shape the Constitution, therefore it must embody his view on the matter. But Madison often lost at the Constitutional Convention, and the one feature he felt was most important for guaranteeing religious freedom, he did not get.\textsuperscript{120}

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Madison wanted parts of the Constitution, as well as the Bill of Rights, to apply to the states. But, that is a battle that he could not win. And he lost it because many people involved in ratifying the Constitution and writing the Bill of Rights wanted the states to have control of religion within their own borders.

At the time of the writing of both the Constitution and the Bill of Rights, most states, as discussed previously, did not have the protection for religious freedom and disestablishment that was later adopted for the national government.¹²¹ Eleven states had a religious test for holding office; multiple states used taxes to support religion; and some states limited who could vote based on religious beliefs.¹²² These state-by-state practices influenced the participants in the debate surrounding the creation of the First Amendment’s religion clauses.

The *Annals of Congress*, which document, in a paraphrased manner, the discussion that occurred in Congress throughout the formation of the establishment and free exercise clauses of the First Amendment, lend insight into the debate concerning the First Amendment. Waldman points to different Congressional members who expressed opinions of concern that the First Amendment would limit states’ rights to conduct religious affairs. Peter Sylvester of New York feared that the First Amendment would allow the federal government to dissolve state establishments of religion. Benjamin Huntington of Connecticut held a similar point of view, articulating that the First

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Amendment could actually harm religion by allowing the courts to prevent state establishments, which Connecticut had at the time.123

The debate surrounding the First Amendment and its relevance to the states becomes clear when looking at the different wordings that both the House of Representatives and the Senate considered during the debate. One of the proposed versions stated, “...nor shall any national religion be established...”124 This proposed wording shows the importance, to some people, that it be quite clear that the First Amendment apply strictly to the national government, and not the states. While the word national was eventually taken out, its inclusion as a draft points to this crucial matter in the debate.

Although state establishments did not last long after the passage of the Constitution and Bill of Rights, the dissenting voices at the time of the formation of the First Amendment played an important role in drawing attention to those groups of individuals that still valued the state establishments that existed. In these state establishments, Christianity was given preference. Even if these states were tolerant—meaning that people of other religious groups were allowed to live within the state —Christianity was given a higher sense of protection and support. Religious tests for office and religious assessments, or taxes, for support of the church existed to formally ensure this. Even if there was not an established faith, these practices often still existed within the state. This strand of thought, which gave root to the modern nonpreferentialist or accommodationist approach discussed in the last chapter, can also be seen in various

123 Ibid., 146-147.
124 Ronald Flowers, Melissa Rogers, and Steven Green, Religious Freedom and the Supreme Court, 23.
attempts at wording the First Amendment. One wording read, “Congress shall make no law establishing one religious sect or society in preference to others...” and another said, “Congress shall make no law establishing any particular denomination of religion in preference to another...” These wordings could have easily lent themselves to greater state interaction in religion, whether through establishing religion or Christianity in general, or allowing religious taxes, etc. These wordings mirrored approaches that were already taken within the most of the states, Pennsylvania and Rhode Island excepted. But, none of these approaches were adopted at the Federal level.

These state approaches seem to echo the later Luther, who reflected the societal understanding of his time. Even though Luther was a pioneer in his contention, through the two kingdoms and the priesthood of all believers doctrines, that the state should not interfere with religious belief, he was still willing to give Christianity, even particular types of Christianity, a seat of privilege within society. To his credit, this was taken for granted during the time of the Protestant Reformation. His writings on the two kingdoms and the priesthood of all believers are still profound, even though he was willing to accommodate an establishment. Yet still, these doctrines spurred even greater reform, as seen in the Anabaptists. And, although we cannot know how Luther would have approached the American context, we can draw parallels between his later works and the thought of those concerned individuals in the First Congress who wanted to protect the establishments within their states.

This is not to diminish the impact of Luther’s early writings and beliefs, which have been defended throughout this paper as the starting point for the developing

\[\text{\textsuperscript{125}} \text{Ibid., 23.}\]
thought that led to the creation of both the free exercise of religion clause and establishment clause of the First Amendment. Instead, these realizations only support that Luther, a complex and dynamic influence on both secular and religious topics, echoed the greater sentiments of his time—sentiments that lingered on to early America. His similarities with the “dissenters” in the First Amendment debate are definitely less original and likely less profound, yet it is still fascinating that Luther, in some form or fashion, can be seen on both sides of the arguments.
Conclusion

This project explored the doctrines of Martin Luther that contributed to the string of thought which eventually led to the formation of the First Amendment religion clauses, namely the two kingdoms doctrine and the universal priesthood doctrine. This project then followed the development of Martin Luther’s theology through figures like Castellio and the Anabaptists, European secular thought including thought from individuals such as John Locke, the beliefs of other religious thinkers such as Elijah Williams and Isaac Backus, and the positions of early American political figures like James Madison. We then looked at the development of the First Amendment clauses by evaluating the important actors and their varying positions throughout the debate surrounding the creation of the Amendment, and what that implied about early American thinkers’ theological underpinnings. The project then drew parallels between these positions and Martin Luther’s early and late doctrinal positions.

Through this study one is able to uncover the indirect yet foundational role that Martin Luther played in the development of American church-state thought. Although Luther was neither sitting in a stuffy room during that hot Philadelphia summer drafting the Constitution nor was he debating in Congress over the language of the First Amendment, his presence in American church-state rhetoric is discernable if one only looks hard enough. Luther’s early doctrines served as the starting point for the ensuing strain of thought that culminated in the creation of the First Amendment religion clauses. Regardless of whether or not Luther held onto his early positions throughout his theological career, and regardless of whether or not he would have supported the First Amendment if he had been alive, his early influence is nonetheless important. One
need only open his or her ears enough to hear the faint, distant echoes of that “bang, bang” of Luther’s hammer against the Wittenberg Castle Church door, starting the Reformation, and opening the eventual pathway to the American understanding of the roles of church and state.
Bibliography


