

How Religious Were the Founders?

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[00:00:04.8] Tanaya Tauber: Welcome to Live at the National Constitution Center, the podcast sharing live constitutional conversations and debates hosted by the Center in person and online. I'm Tanaya Tauber, the Senior Director of Town Hall Programs. In this episode, we explore the question, how religious were the founders. Joining to discuss this and much more are Jane Calvert, author of *Penman of the Founding, A Biography of John Dickinson*, Vincent Phillip Muñoz, author of *Religious Liberty and the American Founding*, and Thomas Kidd, author of *God of Liberty, A Religious History of the American Revolution*, Jeffrey Rosen, president and CEO of the National Constitution Center moderates. Here's Jeff to get the conversation started.

[00:00:53.0] Jeffrey Rosen: Hello, friends. Welcome to the National Constitution Center and to today's convening of America's Town Hall. I'm Jeffrey Rosen, the president and CEO of the NCC. And before we begin, let's inspire ourselves for the discussion ahead by reciting together the National Constitution Center's mission statement. Here we go. The National Constitution Center's the only institution in America chartered by Congress to increase awareness and understanding of the US Constitution among the American people on a non-partisan basis. I'm so grateful to the Lilly Endowment for supporting tonight's discussion and for their wonderful support of the new First Amendment Gallery at the NCC. Please come to Philly and see it if you haven't yet. It is a marvelous exploration of the five freedoms of the First Amendment, including religious liberty, and I can't wait to share it with you. And I also am so eager to share this discussion.

[00:01:49.8] Jeffrey Rosen: We've convened three of America's great scholars of religious freedom and the founding for a deep and meaningful discussion on the important question, how religious were the founders? Thank you so much for joining Jane Calvert, Thomas Kidd and Philip Muñoz. Thomas Kidd, let us begin with you because of the scope of your book, *God of Liberty, A Religious History of the American Revolution*. You've written about the individual religious views of Benjamin Franklin, Patrick Henry, among others, as well as the broader trends in your book on the God of Liberty. How religious were the founders?

[00:01:41.1] Thomas Kidd: Well, that's a great question, and I think it gets confusing because the major founding fathers were sort of all over the map, at least for 1776, as far as what they believed, what their relation was to institutional Christianity. But a lot of times the discussion does focus on say, five or six of the major founders and what they believed. But they range from deists, skeptics like Thomas Jefferson and Ben Franklin, to more traditional Christians like Patrick Henry. But I still think that despite their diversity of views, there were common

principles that they still agreed on that religious liberty though there were some debates about the details of what religious liberty should entail. The danger of vice, the importance of virtue in a republic, the danger of consolidated power. That God had a providential role in human history, even if that was a very generic kind of providential role. There were these kinds of public religious views that they shared, that I think helped to give ballast to the revolution and the framing of the Constitution, despite the fact that the founding fathers among themselves had deep divisions over their personal religious beliefs.

[00:03:08.3] Jeffrey Rosen: Thank you so much for introducing the topic so well, and in your new book, you do argue that this shared commitment to what you call public spirituality, united founders who had different degrees of religious observance and different private religious views. Philip Muñoz, in addition to your important new book, *Religious Liberty and the American Founding*, you've written a book on *God and the Founders: Madison, Washington and Jefferson*, maybe starting with each of them, how religious were Madison, Washington, and Jefferson, and how religious were the founding fathers in general?

[00:03:41.3] Vincent Phillip Muñoz: Thank you for having me, and I admire the National Constitution Center and your recent book, which is really quite excellent. And Professor Calvert and Professor Kidd, I've learned a tremendous amount from each of them, so I'm really pleased to be a part of this discussion. You asked about how religious the founders were. Well, I'll echo just what Professor Kidd said. Jefferson was probably the most heterodox of the founders, a deist. He seemed to believe in a divine order, but he certainly wasn't an orthodox Christian by any sort. Washington, he's a member of the Episcopalian church. How frequently he attended church services himself. I mean, that, maybe not as frequently as one might expect, a deeply pious, but again, he had a very deep notion of providence, and certainly I think we could say is a believer in a creator God.

[00:04:39.6] Vincent Phillip Muñoz: And Madison is just very difficult to know. He went to Princeton as a young man, and he studied theology. He thought about becoming a member of the clergy, but then, sometime in his college years, he just stopped talking about his religious beliefs. And he says so little, it's hard to know what his personal beliefs are, but Madison, like all of the founders, believed in what we might call an objective moral law. Some of the founders ascribed the creator or the biblical God as the author of that law, but they all believed in an objective moral right and a moral wrong. They all believed that we're endowed by our nature and nature and nature's God, that we have certain rights, moral rights, natural rights by nature. So they believed in a moral order to the universe, if I can use that language. And they saw that as part of the created order that we ought to respect. That's why we're all created equal, and we ought to respect one another's rights.

[00:05:44.8] Jeffrey Rosen: What a powerful way of putting it. They all believed in a creator God and a moral order to the universe that informed their vision of natural rights and equality. Jane Calvert, I've got to enthusiastically recommend your wonderful new biography of John Dickinson. I had the great pleasure of discussing it at Dickinson College recently with a trip founded and tribute to John Dickinson. And was so struck by your insight that Dickinson's Quakerism inspired the fact that he was the founding father who was most fervent in his

opposition to slavery and his devotion to women's rights among other views. Tell us about how religious John Dickinson was and how did his Quakerism inform his constitutional vision?

[00:06:34.2] Jane Calvert: Oh, yeah. Dickinson was very religious his entire life. I should make it very clear though, he was not a Quaker. That's a big misconception, and it's sort of a myth I have to constantly correct because he was born into a Quaker family. He was raised a Quaker, and then he married into the most prominent Quaker family in Pennsylvania. And over the years, he gravitated increasingly towards Quakerism, but he never actually joined the meeting. Never actually became a formal Quaker. And that was because he said that every religion had aspects of it that he didn't agree with. And with Quakerism, it was that he believed in the lawfulness of defensive war as he put it. And so, he was a big proponent of militias and citizen militias.

[00:07:32.8] Jane Calvert: And so he never let that go. When he was younger, his faith was still in evidence, especially in his correspondence with his mother, who was a great inspiration to him. And she was a Quaker. And so we start to see his religiosity as early as in his early 20s when he was studying law in England. And we see it in his determination that one of the main reasons, or I would say the main reason he wanted to become a lawyer, was so he could protect the innocent and the injured and defend them. And so this was very, very much a quakerly purpose of being a lawyer, and a lot of the most prominent early lawyers were Quakers. So then as we go along and we start to see him expressing his ideas for resistance to Britain, first during the Stamp Act Congress, we see that he was advocating Quaker methods of resistance.

[00:08:43.5] Jeffrey Rosen: And actually even before that in 1764, he was trying to protect the Pennsylvania constitution, which was the only major, Pennsylvania was the only major colony that had religious liberty built into its written constitution. And when Benjamin Franklin, and Joseph Galloway were wanting to abolish the Pennsylvania government and the Constitution along with it, Dickinson spoke up against that. And on the grounds that if the Quakers, if they gave up that constitution, then religious liberty would go away and they might not get it back. And so, even in his very earliest sort of public activities, we see him coming out and expressing these Quaker values. And then as the revolution, as the resistance to Britain goes forward, and then the revolution begins, at each step, he really became a spokesman, not just for America, but also for the Quakers and in trying to protect their religious liberty, the religious liberty of women, which to his mind and to Quakers also included the freedom of public speech.

[00:10:11.6] Jane Calvert: And so, he wrote the first gender inclusive language in a constitution to protect women's religious liberty and their freedom of public speech. Of course, this was excised from his draft of the Articles of Confederation. But then he went on and at the first opportunity after independence was declared, he conditionally freed his enslaved people. And then over the years, he wrote other manumission deeds that granted them unconditional freedom. And then going on into his later years, his philanthropic endeavors were very much focused on Quaker priorities, not just the abolition of slavery, but also education, and religious education for that matter. But he was actually at odds with Quakers about education, because they wanted what was called a guarded education, which sort of protected children from the influences of the world and sort of sheltered them.

[00:11:23.7] Jane Calvert: Because Quakers didn't believe in original sin, they believed in inevitable sin, but they wanted to protect children as long as possible from the world that would cause them to sin. And Dickinson was very much a proponent of a liberal arts education. So he wanted not just religious education, but also education in science and the classics and so he broke with the Quakers a little bit on that, but they still really saw him as an advocate for their principles and their beliefs. So this was sort of the big picture of his life. And we can, if you want, get into some more specifics later. But yes, he definitely was an exemplar, although an imperfect exemplar of Quaker principles.

[00:12:12.4] Jeffrey Rosen: Perfect exemplar of Quaker principles, such a great way to put it. And so many of those details are wonderful. I noted as you do in your book, that he refused to donate to Dickinson College after they eliminated the classics requirement. And since I was speaking at the invitation of the Dickinson Classics Department, they were all cheering you on for that plug for their own endowment. Thomas Kidd, in your history of religious liberty in America, you begin by saying that the notion that natural rights achieve, among them liberty, derives from God becomes widely adopted in the lead up to the revolution. John Adams is the chief proponent of that view. But then your second chapter examines the work of Jefferson and Madison on freedom of conscience in religion before the revolution. Introduce the idea of natural rights and how Jefferson and Madison viewed them.

[00:13:09.9] Thomas Kidd: Sure. I mean, I think that there was a very broadly shared idea that human equality comes from our common creation by God. I mean this doesn't require even any kind of specific Christian belief, but that there's a created order and that people's rights come from the way that God made us. Most profoundly that we have equal standing together compared to one another because we are all created by God. So, there's a sort of horizontal equality because of our vertical relationship to God. That was very, very widely shared and routinely cited as a sort of common sense principle about equality and rights among the founders. Now, of course, the implications of that were debated obviously on slavery, but also on women's rights that scripture is clear that male and female, he created them.

[00:14:12.3] Thomas Kidd: And so, this is not just a male issue, but the devil was always in the details about, well, if we're equal before God, then what does that mean politically? But certainly when you're talking about the view of the rights of British Americans as Jefferson put it in a pre-declaration writing that he did, I mean, you have to start with the idea that we are all created by God, and that God gave us our inalienable rights as the declaration says. And therefore that that's where you start when there are cases of political oppression or denial of basic human liberties, that this is unjust because of our equal standing before God. And so, that's another one of those ideas that, I mean, if you heard that kind of talk today, you would think, oh, well, this person must be some sort of devout Christian or a devout Jew or something like that, to make these kinds of claims. But even someone like Jefferson took that for granted, despite the fact that he is quite skeptical in his personal beliefs about the details of Christian doctrine.

[00:15:28.5] Jeffrey Rosen: Such an important thing to emphasize that all of the founders accept the idea of natural rights from God or nature, not government. And even Jefferson and Diaz insist that it is central to what makes rights unalienable. Philip Muñoz, you in your marvelous book on Natural Rights and Religious Liberty have the clearest explanation for why

freedom of conscience is an unalienable right, that I've seen. This was a question that just consumed me ever since law school. And you explain that it's because our rights come from God, our nature, and we can't surrender to others the power to control our thoughts, even if we want to. And yet, at the same time, you note that Madison and Jefferson have different views of why conscience is unalienable. Tell us, and I know you can do it so well, what was Jefferson and what was Madison's views about why freedom of conscience is unalienable, right? And what are the consequences of their views?

[00:16:28.0] Vincent Phillip Muñoz: Well, thank you for the kind words. The idea of an inalienable right or unalienable, as the founders would say. They said worship according to conscience is an unalienable right. What they meant by that in simplest terms, and to oversimplify somewhat, is that we owe those obligations or obligations to worship according to conscience to the creator, and therefore we don't have control over how we ought to worship to the government. And so this is why the government cannot legitimately tell us how we must worship or punish us for not worshiping. Government can't license preachers. Government can't say you may or may not be a preacher. And the reason is because we don't give that authority to the government. We don't alienate authority over our religious beliefs and our religious practices or our religious opinions to the government.

[00:17:20.3] Vincent Phillip Muñoz: So the government can't penalize us for those beliefs or practices. So, inalienability is a jurisdictional term. Think about it. What can the government legitimately do? And the founders are saying, we're gonna create a government for our common welfare, for a common defense to foster the common good, the common political good, but not every human good is part of the government. We're not gonna turn over authority over our religious worship to the government. And colloquially, we talk about the separation of church and state. Separation of church and state is really to limit the state and to allow churches and church authorities to be separate from the government, but they have their own authority, which some understand comes directly from God. And so that's what the founders in general, I think they all agreed about the concept of inalienability.

[00:18:09.2] Vincent Phillip Muñoz: And where the differences come in, and I'm not sure if our other scholars would agree with this, but maybe I can put it this way. All the founders thought that moral character was necessary for Republican government. A Republican government requires a moral citizenry. And I think most of the founders thought religion was necessary to help cultivate morality. Where they disagreed was whether government support was necessary to religion? Did religion actually need the help of the government? And some like John Adams and George Washington thought it was perfectly legitimate for the government to aid religion because religion helped cultivate the moral character necessary for good government. But others like Madison and Jefferson thought religion might be necessary for government, but government isn't necessary for religion. And government support actually tended to corrupt or harm religion. That's not a difference in fundamental principles, but a difference in practical application of those principles.

[00:19:10.0] Jeffrey Rosen: Such a powerful and crisp way to put it, the founders agreed that religion was necessary for good government, but disagreed about whether government was necessary for religion. And we'll explore the deep implications of that distinction in a moment.

Jane Calvert, one of our audience members, asked, where does enslavement fit in? And for Dickinson, it fits in as a violation of natural rights and the creator's law. And he, as you explained so powerfully, was among the most committed abolitionists among the founders. Tell us about the relationship between his religious views and his opposition to slavery.

[00:19:50.9] Jane Calvert: I'm glad for the question because it lets me go back to the topic of natural rights, and most people don't know very much about Dickinson, and I hope to change that. But he was actually one of the earliest proponents of natural rights. It was a dangerous proposition early in the resistance to Britain. It was generally assumed that rights came, that Americans by virtue of being English had their rights as Englishmen. And it could be seen as subversive to the government to talk about natural rights things that were coming from God that would maybe take away from the authority of the Crown or Parliament. But as early as the Stamp Act resistance, Dickinson was drafting documents that ended up in the Stamp Act Congress where he was invoking the concept of natural rights and as decrees from Providence, nothing written on parchment but decrees from Providence.

[00:21:04.7] Jane Calvert: And so this meshes very nicely with the Quaker idea of well, I guess right, but it's an extension of how Quakers understood who would be saved or who could be saved. And so most other Anglo-Americans, well, a lot of them, I should say, sort of subscribe to more of a Calvinist view of the world where there was such a thing as predestination. And now that has changed with the advent of evangelicalism. But still there were Calvinist types who believed that God had preordained who would go to heaven and who would go to hell. And Quakers never believed that. They always believed in universal salvation, so that anybody's race, gender, socioeconomic status, anybody could find God in their consciences and be saved.

[00:22:09.8] Jane Calvert: And so this meant that black people, as well as white people, native Americans women, anybody, the criminals, the poor, anybody could be saved. And so the Quakers were then the first group to begin agitating for the abolition of slavery. And first they did it within their own society. And then when they had achieved that, they looked outward and started trying to abolish it in the wider society. And so Dickinson fit very much within this. And early in his life, when he was younger he did inherit a lot of slaves from his father. And he was sort of typical of the slave owners at that time who would say, well, it's a necessary evil. And we don't like it.

[00:23:06.0] Jane Calvert: And it's as bad for the enslaver as it is for the enslaved. Now, we laugh at that today because slavery is so horrible. But there was this idea that slavery tainted the enslaver as well, and debauched him morally. And that one could not believe in equality or enact equality, and also enslave people because the enslaver would be a tyrant to his inferiors and a sycophant to his superiors. And so Dickinson fit within that. But then over the years, he came to see that there was no way that one could own other human beings and also believed that to be a good Christian. And so he joined with Quakers on abolition. But it really stemmed from Quaker's idea that all human beings could be saved regardless of their worldly condition.

[00:24:12.3] Jeffrey Rosen: What a powerful way to put it. All human beings could be saved regardless of their worldly condition. And that led Dickinson to be among the most fervent abolitionists. Thomas Kidd. Many of our questioners are asking about the relationship between

the founder's religious views and their views about religious liberty. And this raises the question of to what degree the government should promote religion. You describe the embrace of a vision of a Christian Sparta by Samuel Adams and others that allowed the founders to reconcile a puritan view for some of original sin with the idea that it's possible for citizens actually to master the self discipline that is necessary for self-government. Tell us about that notion of a Christian Sparta and then the different views among the founders about what kind of public virtue was necessary and possible.

[00:25:10.3] Thomas Kidd: Well, this goes back to what professor Muñoz said a minute ago, that the founders all agreed that good religion is good for a republic. But that left wide open the question about what the relationship is between the state and churches or a denomination. And so people, especially New Englanders among the founders tended to believe that the traditional model that they inherited from England, which was that if religion is important, then it deserves state support. And that's the model that England has carried through today with the Church of England being the established church there. And many of the founders John Adams, Samuel Adams, George Washington believe that there should continue to be at least at the state level a role for the state promoting the interests of religion, hopefully not persecuting anyone but promoting the interests of, and it was widely assumed it would be some Christian Protestant denomination would be the denomination that receives favorable treatment.

[00:26:24.0] Thomas Kidd: But there were others, Madison and Jefferson, most obviously, who believed that religion and Christianity would do better and flourish better if there was no state involvement. And that was coming from traditions out of the Enlightenment, that arguing for religious liberty people like John Locke. But it was also coming from the Council of Religious Dissenters in the American tradition going back to people like Roger Williams, the founder of Rhode Island. And in the revolutionary era, it was definitely coming from Baptists who had been persecuted by many of the state churches, especially in places like Virginia and Massachusetts. And the Baptists were sort of the most fervent evangelicals you can imagine. And they were adamant that they wanted the state to get out of the business of religion because whenever the state got involved with religion, it ended up persecuting dissenters like the Baptists or like the Quakers.

[00:27:33.4] Thomas Kidd: And so they're kind of a free market of religion type of group where they just said, just leave us alone and let us preach the gospel and let us plant churches and do what the Lord is calling us to do, and we'll do fine. We need no government support, just leave us alone. And Madison and Jefferson found in that argument a sort of on the ground sort of gritty version of religious liberty that I think they hadn't quite experienced before. But in the early 1770s, there were dozens of Baptist preachers being put in jail by the Virginia government for illegal preaching. And Madison, in one of my favorite letters to a friend, he writes, will you pray for us this terrible spirit of persecution is abroad in the land here in Virginia against these, okay, maybe these Baptist preachers are nuts, but we shouldn't persecute them just because they have different ideas about Christianity. And so this leads up finally to Madison making his great argument for religious liberty and saying that Christianity will flourish best in freedom, and that that will also be best for the Republic.

[00:28:49.2] Jeffrey Rosen: Oh, that is an inspiring letter. And how illuminating to bring together Madison's views about the importance of keeping the government out of religion with his views about the flourishing of the Republic. Philip, in your really important book, you sum up many of your themes by noting the consensus among the founders all held that the right to worship according to conscience was a natural and unalienable right. And they reached an overlap at consensus about the character of that right. But you say they disagreed about how far the rights extended and you distinguish between narrow Republicans like Washington and Henry who saw the scope of the right as more limited and were more disposed to state funding of religion and expansive liberals like Madison and Jefferson, who took a more expansive view of religious liberty. Does that track the distinction that Thomas just offered between the competing views of Adams in Washington and Jefferson and Madison. And tell us about how those different founders viewed state support of religion?

[00:29:51.6] Vincent Phillip Muñoz: Yes. I think I agree with Professor Kidd. I didn't hear anything I disagreed with. I think well, a couple of things just to note at the outset. The founders thought if the government were to support religion, that should be done at the state level, that this was not the business of the national government. And the logic there is that citizens will have more control over their local governments or state governments, and therefore if the government is going to support religion, it should support the religion of the people locally. So everyone was against a national establishment. No one wanted the national government involved in supporting the church. It was to be at the local level. How was that to take place? There is an interesting shift in the rhetoric of those who advocate for government support.

[00:30:44.7] Vincent Phillip Muñoz: Again, these are figures like Washington and John Adams. And you see this in the Massachusetts constitution of 1780 maybe most famously. The rhetoric in support of government supportive religion is that they take a civic rationale. It's the language where we need a good character, and we're gonna be a free people, and a free people must be able to govern themselves. They must respect the rights of others, and that religion will help cultivate the good character of the people. It's not because this is the one true religion and the state must support the one true religion. Even the arguments for government support of religion are not like the old establishment. We must establish the one true, correct religion. And therefore in practice what you see is even at the town level in New England the towns will pick whatever pastor they want to support, and the government will support the religion of the local community. I mean, really at the town level.

[00:31:49.7] Vincent Phillip Muñoz: So even when you have a government supportive religion, it's different from the old throne and altar, or there must be one denomination and only one denomination. It's much more mild and democratic type of establishment. Now, Madison and Jefferson thought even that was too much. But again, this is a practical difference, a difference in public policy. Maybe the closest equivalent today would be we can all be in favor of education, but do we do it through public schools, traditional public schools, state sponsored schools, or do we do it through school choice? I mean, that's sort of the type of argument that's going on. We can all support religion, but we should keep the government out or let the people support it themselves, or, well, we can do it, but let's support schools at the local level. I think maybe that's the closest equivalent in our contemporary politics.

[00:32:45.7] Jeffrey Rosen: Absolutely fascinating. Jane tells us about John Adams and Calvinism. I know you've studied the relationship there, and you note that Adams was not a Puritan 'cause there weren't any left, but Reformed Calvinist ethos did shape his thinking. In what way was Calvinist thinking relevant to Adams in the way that Quakerism was for Dickinson?

[00:33:10.0] Jane Calvert: Yeah, so it's a really interesting relationship between John Adams and Calvinism and Dickinson and Quakerism. So it's a big theme. So basically it comes down to the major question at the time of the American Revolution was what is a people supposed to do if the government is oppressive? And the decade before the Declaration of Independence was Americans trying to figure that out. And they had three models in front of them. One was Toryism which was sort of the small sea conservative approach. And that was sort of based on the established church of England, Anglicanism. And the idea was that the king was God's vice-regent on earth, and he should protect the people's rights. But if he didn't, it was his prerogative to do what he saw fit as God's vice-regent on earth.

[00:34:31.0] Jane Calvert: So if he oppressed the people, the people only had the right to pray and petition as they put it. So they would send petitions to him and beg for relief, and hopefully he would grant it. But that was as far as things could go. On the other extreme were the Whigs and these were sort of the radicals. And they said, well, yes, we start with praying and petitioning. Theirs was sort of a secular version of Calvinism. And so they said that, yes, you begin with praying and petitioning, but if that doesn't work and the oppression continues, then eventually the people have the right and the duty to overthrow the government and put a new government in place. And so that's what ended up being dominant in the American Revolution.

[00:35:35.1] Jane Calvert: But Quakers presented a third way that was kind of in between those extremes. And Quakers said, well we don't believe that there should be oppression, but we also don't believe that the king should be able to do whatever he wants. Nor do we believe that he should be overthrown. They believed in protecting the unity of the polity, the small sea constitution of the people. And so they invented a new theory and practice of resistance that we now call civil disobedience. There wasn't a name for it when they invented it and it didn't really get a name until the early 20th century. But it was basically where you break the unjust laws, but you do so peacefully with love in your heart, and you accept whatever consequences come at you from the government.

[00:36:38.0] Jane Calvert: And thereby you raise public awareness for the injustice and all the better if you are executed, because then you are a martyr for your cause. And if this sounds extreme, it's exactly what Martin Luther King preached during the Civil Rights Movement. And he wrote the best, most succinct explanation of Quaker civil disobedience in a letter from a Birmingham jail in 1963. He did so at the behest of Quakers, and Quakers published the first 50,000 copies of it. So this is what Dickinson offered, and it's one of the reasons that he and John Adams clashed so mightily during the founding. And if I could just continue for a moment one of the major reasons Dickinson did not want independence and refused to sign the Declaration of Independence was that he was very afraid that the Quakers would be denied their religious liberty and persecuted. And so Dickinson did not. So he went off and he joined the battalion. He found it after independence was declared, and then a year later, exactly what he feared happened

did happen. And so after Americans basically excised his provision for religious liberty in the Articles of Confederation they then turned on the Quakers.

[00:38:10.0] Jane Calvert: And instituted the most severe persecutions Quakers had endured since the 17th century. And it was at the behest of John Adams, by the way, and that a group of Quakers in Philadelphia were rounded up. They were denied habeas corpus and held without charge and shipped off to Virginia for nine months. And some of them died. Their livelihoods were destroyed. Much of their property was destroyed. And this is exactly what Dickinson worried about if independence went forward, that there would be no protection anymore for religious dissenters.

[00:38:47.3] Jeffrey Rosen: It is an amazing story that you tell that Dickinson so principled in his devotion to religious liberty that he refuses to sign the Declaration knowing that he'll be tainted in history and yet in a principled way enlists, serves with great courage, and is persecuted by John Adams, also the author, of course, of the Alien and Sedition Act. It's an amazing story. Well, Thomas Kidd, lots of our audience are asking what is the relevance of the divisions we've been talking about among the founders for Supreme Court doctrine today. You've told us that Washington and Adams, on the one hand, disagreed with Madison and Jefferson about the circumstances under which state support for religion was appropriate. What does that tell us about the Supreme Court's approach to the free exercise of religion, maybe taking one concrete example the rights of religious dissenters to get exemptions from generally applicable laws.

[00:39:47.1] Thomas Kidd: Right. Well, that is a big ticket issue, it's how we live in a different world now and circumstances have changed in terms of religious pluralism and rise of more public role for secularism and all that but I do still think that the principle of free exercise of religion on the question of dissent and controversial religious views still will do a lot of work for us. And I think that you do have even built into the Constitution sort of instances of exemptions for cases of clear religious conscience. And this is, for instance, when the Constitution allows people to swear or affirm if they have conscience issues with oaths, which Quakers and certain other groups did. And so the framers of the Constitution following long standing precedent knew that the way to get around this is that oaths are really important because most people believe that if you promise to do something before God, you better do it. But the Bible also literally says you should not swear oaths.

[00:41:09.8] Thomas Kidd: So what do you do for people with scruples about this? Well, it's really simple. You just make an exemption for people who have those kinds of conscience issues. And I think that is something that is transferable to today. Not that you allow people, certainly we've always drawn the line at clearly criminal acts done in the name of religion. That gets no exemption. But if you have questions that come up where people could clearly have a sincerely held religious belief that would prevent them from complying with a law or a regulation, I think that the founders would certainly say that the government should give strong consideration to giving exemptions when possible, and assuming that they're not just some flaky claim made up in the moment, but that this is an actual belief that people have held sincerely for a long time. I think that there's a sort of generous spirit in the constitution, the affirmation of free exercise of religion. And even in the case of the oaths or affirmations, making an exemption within the body of the constitution itself.

[00:42:29.4] Jeffrey Rosen: There's a presumption that We should create religious exemptions when possible is a powerful and subtle way to put it. Philip, you argue famously, you've got a lot of attention for it, that although the founders believed in creating religious exemptions as a statutory matter, exempting Quakers, for example, from religious service, they did not believe that the Constitution required religious exemptions. Tell us about that and then tell us more about your conclusion that the framers designed the free exercise clause to recognize and protect the principle of religious liberty. How does that apply in practice?

[00:43:14.4] Vincent Phillip Muñoz: Yeah, well, it's a very big issue. And I should say there are many very distinguished, far more distinguished scholars and justices on the Supreme Court for that matter who disagree with me on this. So I don't presume to be the be-all and end-all on this issue. I don't, as you correctly summarized, I don't think the Constitution was meant to guarantee a constitutional right to exemptions, religious exemptions from burdensome laws. I do agree with what Professor Kidd said that the founders were deliberate about trying to craft the laws that they did pass in such a way that they could be more inclusive to use our own language today. So you didn't have to swear an oath. You could swear or affirm an oath. That was clearly meant to be inclusive of Quakers. Quakers and a few others at the time thought we can't, for religious reasons, swear an oath, but we can affirm. And this is a way you don't have an exemption because you draft a law more broadly or more inclusively. And so I fully agree. The founders also did say for military service, for pacifists such as Quakers, legislatively, there could be exemptions made. But there was no right to an exemption. And the reason why is, well, there's an obligation to follow the law. That's one of the primary, if not the primary, obligation of citizenship. We create a government together and we agree to follow the laws and to be an equal citizen means I'll follow the laws of being part of this government.

[00:44:48.5] Vincent Phillip Muñoz: And so there can be no right to be exempt from the laws, though the lawmakers and the people should try to be as generous as they can be when framing the laws. And if they legislate an exemption, well, then the law provides an exemption. The second part of your question. Well, what then what? It's the purpose of the Free Exercise Clause. The purpose of the Free Exercise Clause is to make sure to refer back to something Professor Kidd said earlier about Madison and the Baptists and these Baptists being arrested in colonial Virginia. You know what their crime was? They were preaching without a license. You had to have a license to preach, and they were itinerant preachers, so they were preaching without a license. And what the Free Exercise Clause was meant to do is that the government can't issue things like preaching licenses. Government can't pass a law saying you must, I'm Catholic, so you must go to confession once a month, or you must attend this religious service, or you're penalized if you don't attend that religious service.

[00:45:53.8] Vincent Phillip Muñoz: To take these questions, these theological questions, where people have long disagreed, off the political table, that you can be a believer or you can be a non-believer. But we can all be friends and fellow citizens under the same law. The Free Exercise Clause was meant to take those theological questions and legislate certain theologies and religious practices. The Free Exercise Constitution was meant to say, no, the government's not going to do that. And so it's narrower, but fundamentally important what the Free Exercise Clause does.

[00:46:33.9] Jeffrey Rosen: I'm going to repeat it because it's so important. The government can't say you must attend this religious service and be penalized if you don't attend. You can be a believer or a nonbeliever, but the government is not going to put its thumb on the scales. Jane Calvert, do you agree with that notion of the free exercise clause as being neutral between believers or nonbelievers and prohibiting the government from coercing behavior or belief in any kind? Was there a connection between that and Quaker constitutionalism and the Quaker notion of religious liberty and the light within? And to pick up on a question a lot of our audience is asking about, how would John Dickinson have viewed deists and other religious Jews and other non-Christian Americans?

[00:47:26.5] Jane Calvert: Yeah, I do agree with Professor Muñoz's characteristic of the free exercise clause. And well, it's a little bit, well, difficult to talk about Quaker constitutionalism because that existed in a particular historical moment. And that moment is gone. And what I mean by that is so Quakers, they built religious liberty into the Pennsylvania Constitution. But for Quakers, religious liberty, basically what they believed was that if people had religious liberty, they would eventually find their way to Quakerism. And they didn't have to become Quakers. The Quakers who controlled the government wanted the people of Pennsylvania simply to act like Quakers. So even though they did not have an established church, they actually had the most robust theocracy in the colonies. And what I mean by that is that the government was controlled by the Quaker meeting and the Quakers controlled the economy and they controlled the society. And so they didn't actually need laws. They could basically control society sort of from the top down and the bottom up.

[00:48:57.0] Jane Calvert: And they sort of thought, well, we'll just sort of guide people to at least act like Quakers. So as far as Dickinson is concerned about this, there are a couple of things that are interesting. One is that I wanna just sort of also agree with what Professor Kidd was talking about with that you couldn't build an exemption into the Constitution. In fact, the Quakers really wanted Dickinson, when he was the president of the Delaware Constitutional Convention in 1791-92, really, really wanted him to get religious exemptions for Quakers serving in the militia written into the Delaware Constitution. And he said, no, that is for a statute. That's not for a constitution. And that also echoes what James Madison initially had a conscientious objector clause in the Second Amendment. But there was a lot of pressure to take it out because, among other reasons, people just sort of thought, well, if you have that, everyone's gonna become a Quaker. And they didn't trust people in that regard. But apart from that, when Dickinson was president of first Delaware and then Pennsylvania, in the beginning of both presidencies, he put out a presidential proclamation that was called a proclamation on suppressing vice and immorality. And in it he called for basically a reformation of manners.

[00:50:46.2] Jane Calvert: And this is something he'd been thinking of since he was in his 20s. And he said in these proclamations that every person, every inhabitant, every citizen of the state should be attending some religious service. So he's kind of hearkening back to the days of early Quakerism in Pennsylvania and wanting to sort of shape the populace and inculcate a sense of morality and respect for God and generosity and love towards one's neighbors. And he said every person should be going to some religious service. He didn't care what service, as long as they were going to some service. And I think he would have also been okay with people who didn't go

to a service as long as they were moral persons and were living good lives that took into account the well-being of their neighbors and those less fortunate. But it's just interesting that he sort of really became much more about education and moral reformation that put religion at the center than he had been when he was younger.

[00:52:14.3 Jeffrey Rosen: That is such an interesting point, and all of them focusing on that emphasis on civic education, playing a role that religion for some of them had played in different contexts. It's time for closing thoughts in this superb discussion, which is just as deep and rich as I knew it would be. There's so much to ask Thomas Kidd, but in summing up the points on which the founders agreed. You note several points of agreements, including agreement of a creator God, belief in human sinfulness, a belief in the necessity of a republic being sustained by virtue, the belief that God was raising America for special purposes. But the first of your principles was the alliance about the disestablishment of state churches. So I think I'll just close by asking you to tell us. What was the alliance between Leland and Jefferson about the disestablishment of state churches? And what does that have to tell us about what the Establishment Clause of the First Amendment means today?

[00:53:18.1 Thomas Kidd: John Leland was one of the really most radical Baptist evangelists, and he was operating in Virginia and got to know Jefferson and Madison. And Leland is not only a great evangelist and committed to preaching the Christian gospel, but he is an inveterate foe of the state establishments of religion, certainly in Virginia, but then he spent a lot of his later career in New England. And a lot of people don't know that Connecticut and Massachusetts and New England states outside of Rhode Island kept an official state church after the adoption of the First Amendment, which shows again that the First Amendment and the Bill of Rights applied to the national government at first, not the states. And so again, the Baptists are clamoring for an end to the state establishments of religion. They found it obnoxious even to have to sign exemptions from religious taxes. They could get exemptions, but they had to do paperwork to get it. And they thought this is still a violation of our religious liberty to even have to do that. And so, one really illustrative moment is when Jefferson writes to Baptists in Connecticut about the wall of separation between church and state.

[00:54:42.0 Thomas Kidd: And he's talking about the established church in Connecticut and the Baptists had said to him as president in 1801, 1802, can't you do anything to get rid of this staking establishment? And Jefferson said, well, I'm just the president of the United States. I can't touch the state churches, but aren't we glad that the First Amendment builds a wall of separation between church and state. Now, that's been interpreted in different ways since then, but that is so important to understand. Jefferson is writing to a group of Baptists when he makes that point, and that shows the ongoing alliance between these kinds of evangelical dissenters and Jefferson the deist. It's really fascinating.

[00:55:25.2 Jeffrey Rosen: Fascinating and inspiring. Absolutely. Philip Muñoz, you have so much rich insight on the establishment clause in your book. You have two rules that you derive from history. Congress will make no law erecting a religious establishment and Congress will make no law concerning state level religious establishments. You have a really helpful chart which helps us think through how what you call the natural rights construction would deal with questions ranging from state chaplains to state supported religious displays and how the Supreme

Court justices would approach it. It's now time for a three-minute closing statement, so I'm asking you to do a lot, but what are the big lessons of history that you want our listeners to take away from about the establishment of religion, and how do you think that the establishment clause should be interpreted in light of that history?

[00:56:12.5 Vincent Phillip Muñoz: Yeah, that's a big question. Well, maybe I can condense it this way and also answer a few of the questions that have been coming in on the chat. I tried to answer some directly. The state can't act like a church. State can't say this is what you must believe. These are official religious tenets. You must believe that God must be worshipped in this way on this day in this form. So the state can't act like a church. And then the state can't delegate its power to churches. This is actually part of the Establishment Clause, the original understanding that we missed today. Really what an establishment was the state giving its power, delegating its power to churches, who then could collect taxes using the law as a course of mechanism. Thankfully, that doesn't happen too much today. But it doesn't happen too much today because the Constitution prohibits it. So that's a short answer to a very broad question. It doesn't really answer too many of the difficult questions of Ten Commandments and public schools and things, which are tough questions. One thing I might include in my summing up, and this reflects a lot of the questions that have come in, a lot of questions, what about Jews? What about non-Christians? Does religious freedom, did the founders' understanding of religious freedom include non-Christians as well?

[00:57:29.7 Vincent Phillip Muñoz: And here I would point the viewers to Washington's letter to the Hebrew congregation of Newport, Rhode Island. This is August 1790. To my mind, one of the most beautiful and important letters in American history. And this is Washington, and he knew what he was doing. He was writing a letter to this Congress, just to the Jews. But writing a letter, he knew that it was really to all Americans for all Americans to see. And it says, look, for all those of any religion who will abide by the principles of human equality, government by consent, we can all be fellow citizens. So America is the home, and can be a home for the Jewish people. And this is the spirit of the founding. And that goes for non-Christians as well. We can agree on the principles of human equality, on natural rights. And then, as I said before, that makes us fellow citizens. We can agree on the principles of religious freedom. And I think that's the very best of America. And it really is inclusive.

[00:58:31.4 Jeffrey Rosen: Jane, last word to you in this great discussion. What can our listeners take from the legacy of John Dickinson and how can he inspire them in their learning about religious freedom?

[00:58:46.1 Jane Calvert: Well, maybe the biggest takeaway is that Dickinson was very much in keeping with the Quaker spirit as someone who tried his best to live his faith. He, like other Quakers or like actual Quakers, would really walk in the way of Christ. And he did this by always trying as a lawyer to defend those who were the weakest and the poorest. As a legislator, he did the same, passing laws to protect the weakest and the poorest. And he stood up for America as weak against British oppression. And then in his philanthropy, he did the same thing, founding schools and giving money to all kinds of different religions and founding the first prison reform society and that kind of thing. And so, he is really, I think, inspirational as someone who just tried to try to live his faith as honestly and as thoroughly as he possibly could

without believing that God demanded that man be happy. And the way man would be happy would be by serving others and taking care of the least among us.

[01:00:26.1 Jeffrey Rosen: Beautifully put. Thank you so much, Jane Calvert, Philip Muñoz, and Thomas Kidd for an inspiring discussion of religious liberty and the founding and the question of how religious the founders were. And thanks to you, great NCC and C-SPAN viewers for joining us and taking an hour to learn about American history and our founding principles. It is so important in these challenging times for all of us to be lifelong learners and to read the primary sources and to continue your learning. Begin by reading the books of our great panelists, which are so full of learning and light. Read the ones we've discussed and others, including Thomas Kidd has a whole source book on religious liberty primary text, then go to the National Constitution Center's interactive constitution, read documents from the Founders Library, listen to the We the People podcast, and check out the amazing new Constitution 101 course that we've launched with Khan Academy, which brings together America's greatest constitutional scholars, including several of them who are here today, to teach about the Constitution.

[01:01:33.2 Jeffrey Rosen: The Founders believe that we all have not only a right, but a duty to learn so that we can make up our own minds to think for ourselves and speak as we think. And that's exactly what we're doing together. Thank you all. Jane Calvert, Philip Muñoz, Thomas Kidd. Thanks to all of our friends. Good night, and we'll see you soon.

[01:02:47.1 Tanaya Tauber: This episode was produced by Lana Ulrich, Samson Mostashari, Bill Pollock and me, Tanaya Tauber. It was engineered by Kevin Kilbourne and Bill Pollock. Research was provided by Samson Mostashari, Cooper Smith, Guha Li, Matthew Sparrow, and Yara Derese. Check out our full line of exciting programs at [constitutioncenter.org/town hall](https://constitutioncenter.org/town-hall). There you can register to join us in person or online. As always, we'll publish these programs on the podcast, so stay tuned here as well or watch the videos. They're available in our media library at [constitutioncenter.org/media library](https://constitutioncenter.org/media-library). Please rate, review, and subscribe to Live at the National Constitution Center on Apple Podcasts or follow us on Spotify. On behalf of the National Constitution Center, I'm Tanaya Tauber.