Clanking Chains: Ramifications of "Everson": William H. Rehnquist's Polemic against the "Wall" Metaphor in "Wallace v. Jaffree" (1985)

5- Consequently, Black's use of Jefferson's "wall of separation" to determine the meaning of the Establishment Clause is a true *non sequitur*: a conclusion that does not follow from established evidence.

6- By establishing this false premise, Black's **application** of the Establishment Clause to the Fourteenth Amendment caused the clause to then be applied to the states.

7- After determining that the Establishment Clause applied to the states, Black then applied his newly invented "doctrine of separation" to the states.

8- *Everson* thus gave the Supreme Court the authority to rob the states of the very power they had retained for themselves in the Tenth Amendment.

9- *Everson* applied the prohibition against "establishing a religion" to the states, a prohibition originally intended only to be imposed on the federal government yet retained by the states.

10- The result has been the development of a strict "separationist" creed that has dominated Supreme Courts since *Everson* was decided in 1947.

11- "Separationist" justices **determine** the meaning of the First Amendment's Establishment Clause not on internal evidence or the writings of the Framers of the Constitution but draw false conclusions from an external sentence fragment written by Thomas Jefferson.

12- Further, separationist justices then **apply** these false conclusions in ways that go way beyond what the Establishment Clause originally intended to impose even on the federal government.

13- The following quotes indicate the true intent of the First Amendment's restraint on the federal government:

Jipping, 34:

- Joseph Story, Associate Justice of the Supreme Court from 1811-1845:

  The real object of the Amendment was … to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government.

- Thomas M. Cooley, judge and professor of law at University of Michigan from 1859-1898:

  By establishment of religion is meant the setting up or recognition of a state church, or at least the conferring upon one church of special favors and advantages which are denied to others.

14- Thus the *Everson* decision forged a shackle upon the states to which has been added a long series of links forming a clanking chain of judicial tyranny against Christianity, increasing prohibitions against community standards, and Fabian encroachments against general order in the commonwealth.

15- The links in this ever-elongating clanking chain now comprise some of the most bazaar and dumbfounding applications of law ever perpetrated on a free people. Here are a few from:

> ***Wallace v. Jaffree* , 472 U.S. 38 (1985)** , Justice William H. Rehnquist, dissenting:
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> … a State may lend to parochial school children geography textbooks that contain maps of the United States [*Board of Education v. Allen,* 392 U.S. 236 (1968)], but the State may not lend maps of the United States for use in geography class [*Meek v. Pittenger,* 421 U.S. at 362-366 (1975). A science book is permissible, a science kit is not. *See Wolman v. Walter,* 433 U.S. 249 (1977)]. A State may lend textbooks on American colonial history, but it may not lend a film on George Washington, or a film projector to show it in history class. A State may lend classroom workbooks, but may not lend workbooks in which the parochial school children write, thus rendering them nonreusable [*See Meek, supra,* at 354-355, nn. 3, 4, 362-366]. A State may pay for bus transportation to religious schools [*Everson v. Board of Education,* 330 U.S. 1 (1947)], but may not pay for bus transportation from the parochial school to the public zoo or natural history museum for a field trip [*Wolman, supra,* at 252-255]. A State may pay for diagnostic services conducted in the parochial school, but therapeutic services must be given in a different building; speech and hearing "services" conducted by the State inside the sectarian school are forbidden, *Meek v. Pittenger,* 421 U.S. 349, 367, 371 (1975), but the State may conduct speech and hearing diagnostic testing inside the sectarian school. *Wolman,* 433 U.S. at 241.
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> Exceptional parochial school students may receive counseling, but it must take place outside of the parochial school [*Wolman, supra,* at 241-248; *Meek, supra,* at 352, n. 2, 367-373], such as in a trailer parked down the street. *Id.* at 245. A State may give cash to a parochial school to pay for the administration of state-written tests and state-ordered reporting services [*Committee for Public Education & Religious Liberty v. Regan,* 444 U.S. 648, 657-659 (1980)], but it may not provide funds for teacher-prepared tests on secular subjects [*Levitt v. Committee for Public Education & Religious Liberty,* 413 U.S. 479-482 (1973)]. Religious instruction may not be given in public school [*Illinois ex rel. McCollum v. Board of Education,* 333 U.S. 203 (1948)], but the public school may release students during the day for religion classes elsewhere, and may enforce attendance at those classes with its truancy laws [*Zorach v. Clauson,* 343 U.S. 306 (1952)].
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> http://www2.law.cornell.edu/cgi-bin/foliocgi.exe/historic/query=[jump!3A!27472+u!2Es!2E+91!27]/doc/{t96148}/hit_headings/words=4/pageitems={body}?

16- The *Wallace v. Jaffree* decision was rendered in 1985. Mr. Rehnquist was an Associate Justice at the time but the following year in September 1986, he became Chief Justice of the Supreme Court and remains so today.

17- The comparisons just noted by then Justice Rehnquist in *Wallace v. Jaffree* were intended by him to demonstrate the contradictory labyrinth created by Supreme Court decisions based on the faulty premise that Jefferson's "wall of separation." Rehnquist concludes with the following remark in his dissent in *Wallace*:

> If a constitutional theory has no basis in the history of the amendment it seeks to interpret, is difficult to apply, and yields unprincipled results, I see little use in it. The "crucible of litigation" has produced only consistent unpredictability, and today's effort is just a continuation of "the Sisyphean task of trying to patch together the `blurred, indistinct and variable barrier' …. We have done much straining since 1947, but still we admit that we can only "dimly perceive" the *Everson* wall. Our perception has been clouded not by the Constitution, but by the mists of an unnecessary metaphor.

18- Justice Rehnquist makes reference here to Jefferson's "wall" and in his dissent in *Wallace* presents an excellent case for abandoning the troublesome metaphor in future Establishment Clause cases. The following excerpts are lengthy but are extremely instructive and carry tremendous credibility in view of the fact that Mr. Rehnquist is the current Chief Justice of the Supreme Court of the United States.

NOTE: The link to Justice Rehnquist's dissent:

http://www2.law.cornell.edu/cgi-bin/foliocgi.exe/historic/query=[jump!3A!27472+u!2Es!2E+38+rehnquist!27]/doc/{@96056}/hit_headings/words=4?:

> It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson's misleading metaphor for nearly 40 years. Thomas Jefferson was, of course, in France at the time the constitutional Amendments known as the Bill of Rights were passed by Congress and ratified by the States. His letter to the Danbury Baptist Association was a short note of courtesy, written 14 years after the Amendments were passed by Congress. He would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religion Clauses of the First Amendment.
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> Jefferson's fellow Virginian, James Madison, with whom he was joined in the battle for the enactment of the Virginia Statute of Religious Liberty of 1786, did play as large a part as anyone in the drafting of the Bill of Rights. He had two advantages over Jefferson in this regard: he was present in the United States, and he was a leading Member of the First Congress. But when we turn to the record of the proceedings in the First Congress leading up to the adoption of the Establishment Clause of the Constitution, including Madison's significant contributions thereto, we see a far different picture of its purpose than the highly simplified "wall of separation between church and State."
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> During the debates in the Thirteen Colonies over ratification of the Constitution, one of the arguments frequently used by opponents of ratification was that, without a Bill of Rights guaranteeing individual liberty, the new general Government carried with it a potential for tyranny. The typical response to this argument on the part of those who favored ratification was that the general Government established by the Constitution had only delegated powers, and that these delegated powers were so limited that the Government would have no occasion to violate individual liberties. This response satisfied some, but not others, and of the 11 Colonies which ratified the Constitution by early 1789, 5 proposed one or another amendments guaranteeing individual liberty. Three -- New Hampshire, New York, and Virginia -- included in one form or another a declaration of religious freedom. Rhode Island and North Carolina flatly refused to ratify the Constitution in the absence of amendments in the nature of a Bill of Rights. Virginia and North Carolina proposed identical guarantees of religious freedom:
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> [A]ll men have an equal, natural and unalienable right to the free exercise of religion, according to the dictates of conscience, and . . . no particular religious sect or society ought to be favored or established, by law, in preference to others.
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> On the basis of the record of these proceedings in the House of Representatives, James Madison was undoubtedly the most important architect among the Members of the House of the Amendments which became the Bill of Rights, but it was James Madison speaking as an advocate of sensible legislative compromise, not as an advocate of incorporating the Virginia Statute of Religious Liberty into the United States Constitution.

During the ratification debate in the Virginia Convention, Madison had actually opposed the idea of any Bill of Rights. His sponsorship of the Amendments in the House was obviously not that of a zealous believer in the necessity of the Religion Clauses, but of one who felt it might do some good, could do no harm, and would satisfy those who had ratified the Constitution on the condition that Congress propose a Bill of Rights. His original language "nor shall any national religion be established" obviously does not conform to the "wall of separation" between church and State idea which latter-day commentators have ascribed to him. His explanation on the floor of the meaning of his language -- "that Congress should not establish a religion, and enforce the legal observation of it by law" -- is of the same ilk. When he replied to Huntington in the debate over the proposal which came from the Select Committee of the House, he urged that the language "no religion shall be established by law" should be amended by inserting the word "national" in front of the word "religion."

It seems indisputable from these glimpses of Madison's thinking, as reflected by actions on the floor of the House in 1789, that he saw the Amendment as designed to prohibit the establishment of a national religion, and perhaps to prevent discrimination among sects. He did not see it as requiring neutrality on the part of government between religion and irreligion. Thus the Court's opinion in *Everson* -- while correct in bracketing Madison and Jefferson together in their exertions in their home State leading to the enactment of the Virginia Statute of Religious Liberty [1786] -- is totally incorrect in suggesting that Madison carried these views onto the floor of the United States House of Representatives when he proposed the language which would ultimately become the Bill of Rights.