POLITICIANS AND PETITIONS:
PASING THE “BILL FOR ESTABLISHING RELIGIOUS FREEDOM” IN VIRGINIA

A Thesis
submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Master of Arts in Liberal Studies

By

Eleesha Tucker, B.S.

Georgetown University
Washington, D.C.
November 1, 2013
The defeat of Patrick Henry’s general assessment bill in the Virginia legislature, brought about by the mobilization of dissenters in a petition campaign influenced by James Madison, led to the passage of Thomas Jefferson’s “Bill for Establishing Religious Freedom” in 1786. Jefferson proposed his bill in 1779 as part of an effort to revise the Virginia legal code, seeking to bring state law into alignment with the newly inaugurated revolutionary government. But, the Assembly barely addressed the bill. The power of the established church was too strong and the members postponed the reading of the radical religion bill for a day when the legislative session had already closed.

Early on, few religious dissenters lived in colonial Virginia, but the Great Awakening jolted the American colonies, swelling dissenting congregations. The Revolutionary War then ushered in change that emboldened dissenters to reject traditional deference to elites and solicit legal equality. As people across the socio-economic spectrum bore the hardships of the war and shouldered significant responsibility for the support of an infant government, many of the inferior sort thought of themselves as equal to the gentry and sought the legal protection of their right of conscience. When Patrick Henry proposed a general assessment bill, which would require a tax to support instruction by Christian teachers of varied denominations, it ignited the “first truly popular state political campaign” and in 1785 an avalanche of petitions
descended upon the General Assembly, killing the general assessment bill and generating the momentum for James Madison to reintroduce to the General Assembly Jefferson’s “Bill for Establishing Religious Freedom.”

From early in their careers, revolutionary leaders Patrick Henry, James Madison and Thomas Jefferson each defended religious liberty, but they parted ways on the role of government in religion. Patrick Henry fostered the traditional eighteenth-century belief that to maintain a virtuous society that would support a republic, the government must prop up religion. To Henry, individuals could still freely choose their religious expression while the government encouraged broad religious principles. To both James Madison and Thomas Jefferson, any state requirement with regards to religion violated conscience. To protect the inherent right of conscience, the state and the church must be separate.

Thomas Jefferson’s “Bill for Establishing Religious Freedom” passed because of James Madison’s savvy political maneuvering, but he was only one man—an important man—but laws in the United States do not pass because of one voice. The diverse voices expressed in dissenter petitions opposing the general assessment overwhelmed the Assembly and created the circumstances to defeat Patrick Henry’s bill and bring about the protection of the inherent right of conscience in Virginia.

This political achievement marked state protection of liberty of conscience as an inherent right and not a point of toleration from the state. Over two hundred years later, it is easy to assume inevitability of the development of religious freedom in these terms, but at a time when established state religion was the norm, this was an extraordinary contingent event reliant on the choices and actions of Virginia citizens.
To my parents
who always
valued and encouraged
my education
# TABLE OF CONTENTS

ABSTRACT ........................................................................................................................................... ii

INTRODUCTION .................................................................................................................................. 1

CHAPTER I. COERCED CONFORMITY: POWER OF THE ESTABLISHED CHURCH .................................................................................................................. 6

CHAPTER II. REVOLUTION DISRUPTS THE POWER OF THE ESTABLISHED CHURCH ........................................................................................................... 28

CHAPTER III. REVOLUTIONARY ORIGINS OF RELIGIOUS LIBERTY IN VIRGINIA .............................................................................................................. 46

CHAPTER IV. DEFEAT AND VICTORY: GENERAL ASSESSMENT BILL AND “BILL FOR ESTABLISHING RELIGIOUS FREEDOM” .............................................................................. 77

CONCLUSION .................................................................................................................................... 102

BIBLIOGRAPHY .................................................................................................................................... 104
INTRODUCTION

The defeat of Patrick Henry’s general assessment bill in the Virginia legislature, brought about by the mobilization of dissenters in a petition campaign influenced by James Madison, led to the passage of Thomas Jefferson’s “Bill for Establishing Religious Freedom” in 1786. Jefferson proposed his bill in 1779 as part of an effort to revise the Virginia legal code, seeking to bring state law into alignment with the newly inaugurated revolutionary government. But, the Assembly barely addressed the bill. The power of the established church was too strong and the members postponed the reading of the radical religion bill for a day when the legislative session had already closed.

Virginia inherited from England a long tradition of forced conformity to the state religion, reaching back to 312 A.D. when Constantine imposed Christianity on his subjects. In England, it was the monarch’s responsibility to provide for the spiritual care of his people. The state religion was the exclusive source for salvation, so laws criminalized nonconformity to this sole source of truth.

Henry VIII’s separation from the Church of Rome created religious upheaval in England. After his death, the king’s daughter, Mary, tried to reinstate England as Catholic. She horrified her subjects by murdering Protestant leaders and followers in an effort to purify the church. When Mary’s half sister Elizabeth assumed the throne, she used religion to achieve political stability. Under Elizabeth’s direction, Parliament passed the Act of Uniformity in 1558, which required every English subject to attend Anglican Church once a week or be fined. It also revised the Book of Common Prayer. This settled
England as Anglican. The Elizabethan compromise became an integral part of British political structure.

Virginia colonists patterned their New World homestead after the laws and norms of Queen Elizabeth’s England, including the enforcement of conformity to the Anglican Church. Parliament passed another Act of Uniformity in 1662 over 100 years after the first, which required acceptance of more revisions to the Book of Common Prayer and other religious observances to hold public office. Virginia followed with its enforcement.

Later, Parliament passed the Act of Toleration in 1689, which granted freedom of worship to Protestant non-Anglicans in England if they swore an oath of allegiance to the government. This legislation did not grant religious equality in England. It simply decriminalized the failure to conform to the Church of England’s worship practices for Protestants. The dominance of the Anglican Church still made it difficult to be married or buried outside of its administration. The Act of Toleration permitted Protestant dissenters to conduct their own worship services if they registered the location, but it could not be a private home. It also required ministers to secure a license from the state to preach. While the Act of Toleration provided relief, it did not make non-conformists equivalent members of society. The Act of Toleration was only gradually applied in Virginia. Dissenting preachers often languished in jail for preaching without licenses.

Early on, few religious dissenters lived in colonial Virginia, but the Great Awakening jolted the American colonies, swelling dissenting congregations and creating more instances of state oppression in Virginia. When he proposed his “Bill for Establishing Religious Freedom,” Thomas Jefferson meant to overturn for dissenters in
Virginia these “disabilities” as they were called, but the strength of the Anglican Church prevented the bill from receiving serious consideration. Then the American colonies ignited with war and the importance of the dissenters in Virginia society increased.

Virginia led out in the independence movement, declaring separation prior the Continental Congress. As an early leader, the stakes were high for Virginia and it needed men who would fight for its defense against the British military superpower. These changes made the General Assembly more receptive to dissenters’ requests for religious permissions. In 1775, Patrick Henry, in response to Baptist petitions, proposed that dissenting ministers be placed on equal footing in the army. The General Assembly approved.

In the same sweep as its declaration of independence, the Virginia Assembly moved to create a new government with a declaration of rights. George Mason, as the foremost legal scholar of the Assembly, naturally assumed leadership of the drafting committee. With regards to religion, he articulated its current legal state in Virginia, declaring “all Men should enjoy the fullest Toleration.” A young James Madison proposed an amendment that deleted Mason’s “fullest toleration” phrase and replaced it with the promise of “free exercise of religion, according to the dictates of conscience.” In the same amendment proposal, Madison tried to disestablish the Anglican Church with the line: “no man or class of men ought, on account of religion be invested with peculiar emoluments or privileges,” but the Assembly rejected this portion of his amendment. Members of the ruling elite were too closely tied to the power of the established church to
undo it. The Virginia Declaration of Rights passed with the promise of “free exercise” of religion.

From early in their careers, revolutionary leaders Patrick Henry, James Madison and Thomas Jefferson each defended religious liberty, but they parted ways on the role of government in religion. Patrick Henry fostered the traditional eighteenth-century belief that to maintain a virtuous society that would support a republic, the government must prop up religion. To Henry, individuals could still freely choose their religious expression while the government encouraged broad religious principles. To both James Madison and Thomas Jefferson, any state requirement with regards to religion violated conscience. In order to protect the inherent right of conscience, the state and the church must be separate.

The Revolutionary War ushered in change that emboldened dissenters to reject traditional deference to elites and solicit legal equality. As people across the socio-economic spectrum bore the hardships of the war and shouldered significant responsibility for the support of an infant government, many of the inferior sort thought of themselves as equal to the gentry and sought the legal protection of their right of conscience. When Patrick Henry proposed a general assessment bill, which would require a tax to support instruction by Christian teachers of varied denominations, it ignited the “first truly popular state political campaign.”

James Madison anonymously penned the now quintessential document on American religious liberty, *Memorial and Remonstrance*, which defined religious liberty as an inherent right outside of the reach of the state. This document influenced the way
dissenters articulated their grievances in petitions and likely sparked interest in organizing a petition campaign, but it was the dissenters who responded with an avalanche of petitions for the November 1785 legislative session that killed the general assessment bill and generated the momentum for James Madison to reintroduce to the General Assembly Jefferson’s “Bill for Establishing Religious Freedom.”

Thomas Jefferson’s “Bill for Establishing Religious Freedom” passed because of James Madison’s savvy political maneuvering, but he was only one man—an important man—but laws in the United States do not pass because of one voice. The diverse voices expressed in dissenter petitions opposing the general assessment overwhelmed the Assembly and created the circumstances to defeat Patrick Henry’s bill and bring about the protection of the inherent right of conscience in Virginia.
CHAPTER I
COERCED CONFORMITY: POWER OF THE ESTABLISHED CHURCH

In 1779, Thomas Jefferson’s “Bill for Establishing Religious Freedom” died in the Virginia Assembly. If adopted, Bill 82 would have transformed the relationship between the state and religion in revolutionary Virginia. The bill read, “all attempts to influence [the mind] by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion.”¹ If adopted, the Assembly would have legitimized the claim that the state could not compel worship in its established church, the Church of England, also known as the Anglican Church. Further, if adopted, the General Assembly would have ratified the position “That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.”² Approving the proposal would have sanctioned the claim of moral incorrectness in the compulsion of tax support for a state church. Before closing the session that postponed Bill 82, the Assembly voted to again suspend the salaries of the Anglican clergy for another legislative session, as it had done since 1776.³

¹ “82. A Bill for Establishing Religious Freedom,” in The Papers of Thomas Jefferson, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 2:545. This contains a copy of the 1779 version with text that was later deleted upon the 1786 adoption, including a footnote to this quoted section with the claim in Thomas Jefferson’s autobiography that an amendment was proposed to delete the word “God” and insert “Jesus Christ.” Jefferson wrote: “the amendment was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian, and the Mahometan, the Hindoo, and infidel of every denomination.” Boyd writes of this reference: “There is no record in the Journals of this particular amendment.”

² Ibid. The phrase “and abhors” was removed by the Senate when the bill was adopted in 1786.

³ Thomas Buckley, Church and State in Revolutionary Virginia (Charlottesville: University Press of Virginia, 1977), 48.
state funding had more to do with clergy close affiliation with the enemy, rather than the moral reprehensibility of compelling donations to further religion that the giver may oppose.

Bill 82 came as part of the legislature’s directive to revise Virginia law after its declared separation from England. The House heard two readings and voted to postpone the bill’s further consideration to August 1, which was after the close of the legislative session. It was not revisited until the following legislative session in October when its author and best advocate took the governor’s seat and was unable to champion it. The revolutionary Virginians reaffirmed they would no longer support the Church of England with tax revenue, but the delay tactic for Bill 82 showed general resistance among the representatives to overhaul the status quo of the church’s dominance in Virginia.

Virginia inherited from its mother England a deeply rooted tradition of compelled religious uniformity. This practice in Europe began with Constantine who in 312 A.D. united his kingdom under Christianity and began the orthodoxy of the state’s responsibility to persecute dissenters. This practice expanded throughout Europe in the medieval period under the doctrine of exclusive salvation, which entailed that there was only one universal truth for everyone and only one way to salvation. Naturally, the Catholic Church at the time was believed to be the repository of this exclusive salvation. Non-conformism to the doctrines of the church threatened the salvation of those who

---

4 Ibid.

would be exposed to the heresies. This justified suppression and the state was the instrument to impose it.

In the tumult of the Protestant Reformation, the doctrine of exclusive salvation carried on in Europe, but reformers such as John Calvin, Martin Luther, and Ulrich Zwingli believed they were rescuing it from the corruption of “popery.” Calvin inflexibly endorsed the Church of Rome’s belief that the government must use force to suppress heresy. Calvinism gained influence in England and brought with it the belief of the government’s duty to enforce uniformity to the one true religion. According to Calvin and Augustine who preceded him, the Bible provided the injunction of the government’s responsibility to enforce uniformity. In 1680, Anglicans and Presbyterians in England resurrected Augustine’s well worn medieval interpretation of the parable in Luke 14:16-23 where “a certain man” representing God “compels” guests to partake of his feast as justification for the state’s compulsion of dissidents. Roger Williams, the Rhode Island colonial religious liberty advocate, even complained forty years previously of the phrase’s use to persecute religious non-conformists in England.

Calvin also promoted Isaiah’s metaphor describing kings as “nursing fathers” to support government coercion of non-conformists. Calvin dedicated his widely circulated 1551 work Commentary to Edward VI of England, which addressed the writings of Isaiah and included the interpretation. Edward embraced this scriptural phrase as a description

---

6 Ibid., 4.
7 Ibid., 8.
8 Ibid.
9 Isaiah 49:23
of his kingly responsibility for the church and his people. As head of the Church of England after Henry VIII’s separation, Edward VI’s title was Defender of the Faith and Supreme Governor of the Church of England. The metaphor became culturally absorbed into the English expectation of their rulers as James I, Charles I and Charles II publicly reinforced their responsibility as nursing fathers of true religion.\textsuperscript{10}

In addition to the salvation of souls, the English government’s enforcement of religious uniformity provided political stability. Henry VIII’s separation from the Church of Rome created deep and tumultuous religious divisions in England. Henry’s son, Edward VI, made efforts at Protestant reformation to stabilize the country politically. His sister and successor Mary I sought to restore England to its Catholic truth. The years that followed spurred dreadful upheaval.

Mary acquired the moniker of “Bloody Mary” because she reinstated the medieval practice of burning heretics at the stake. She horrified her royal subjects as their families and neighbors perished in the supposed purifying flames. When Mary’s half sister Elizabeth assumed the throne, she highly prioritized religious stability. She could not maintain England as Catholic because the doctrine of the Church of Rome viewed her birth as illegitimate; her father Henry VIII broke from the Catholic Church to divorce his wife and marry the woman who would become Elizabeth’s mother. In Catholic doctrine, divorce is forbidden. Her right to rule rested with England’s retention of Protestantism.

Under Elizabeth’s direction, Parliament passed the Act of Uniformity in 1558, which required every English person to attend Anglican Church once a week or be fined.

\textsuperscript{10} James Hutson, \textit{Church and State in America}, 9-10.
It also revised the Book of Common Prayer. This Act of Uniformity and compulsion of Anglican Church attendance settled England as Anglican and subdued the turbulence of religious strife in England. The Elizabethan compromise became an integral part of British political structure.

State control over religion to maintain stability continued. Some reformers began weekday lectures that drew crowds and “when listeners began asking questions about doctrine and scriptural interpretation, Elizabeth ordered the lectures suppressed for fear that they were encouraging religious radicalism.” More people achieved literacy because of the Reformation’s emphasis on Bible reading; with this brought added challenges to state control as more of the general public formed their own religious opinions, diminishing reliance on the clergy as religious instructors. Also, as printing technology advanced, the physical copies of the Bible grew more readily available.

The first settlers to the Virginia Colony established Jamestown in 1607 in the Chesapeake Bay. The colony’s investors agreed on the importance of spreading the Anglican faith in the New World to both the people in the colony and the natives. This focus was reflected in the settlers immediate celebration of Holy Communion in the Anglican practice upon their arrival. The settlers patterned their New World homestead after the laws and norms of Queen Elizabeth’s England, including the enforcement of conformity.


The oath of supremacy of the Anglican Church was required of all Virginia inhabitants and only conformists could vote. The earliest records of the Jamestown assembly date to 1623 and require conformity and uniformity of inhabitants to “yield ‘readie obedience’ to the canons of the Church of England ‘under pain of censure.’” As the colony’s population grew, the requirement of Anglican conformity continued.

Parliament passed another Act of Uniformity over 100 years after the first in 1662. It required acceptance of revisions to the Book of Common Prayer and other religious observances to hold public office. This led to the Great Ejection where over 2,000 prominent ministers in England refused to conform to the requirements and lost their public positions. This religious test for public office excluded a large segment of the English people from civic service and the concept of non-conformists in England became common, meaning those who would not conform to the Anglican establishment. The state viewed these subjects in need of correction and enforcement. Some of these non-conformists left for the New World, including Presbyterians, Congregationalists, Baptists and Quakers.

Virginia also inherited from mother England a stratified social world that took for granted the use of force for its maintenance. Rather than holding the modern notion of social equality, Virginians and inhabitants of the other American colonies assumed inequality. Differences were believed to be inherent, common people were not capable of higher thought or honor. In his landmark book *Radicalism of the American Revolution*,

---


14 Ibid., 183.
Gordon Wood described these perceived inherent differences to illustrate the radical statement in the Declaration of Independence that all men are created equal.

Gentlemen and commoners had different psyches, different emotional makeups, different natures. Ordinary people were made only “to be born and eat and sleep and die, and be forgotten.” Like Mozart’s Papageno, they knew “little of motives which stimulate the higher ranks to action, pride, honour, and ambition. In general it is only hunger which can spur and goad them on to labour.” Ordinary people were thought to be different physically, and because of varying diets and living conditions, no doubt in many cases they were different. People often assumed that a handsome child, though apparently a commoner, had to be some gentleman’s bastard offspring. At times the aristocracy thought that common people resembled Jonathan Swift’s Yahoos, having only appetites and being little more than “cattle.”

The state compelled religious conformity to both save this inferior sort from hell and to maintain order in society. State compulsion was not questionable in a world where force was taken for granted to keep order and prevent anarchy. Social betters expected deference from their inferiors and could employ force to receive it without any consequence or even criticism.

To explain how the development of human bondage in America was possible, Peter Kolchin quotes historian Lawrence Stone’s description of force of those who could compel deference in seventeenth century England, “Whips and stocks were used by the Crown upon its lesser subjects, by the nobleman upon his servants, by the village worthies upon the poor, by the dons upon the undergraduates, by the City Companies upon the apprentices.”

---


Kolchin then elaborates on Stone by providing instances of seventeenth century punishment and describes the world where these were routine:

The contemporary equivalent of a shoplifter might be whipped, branded with the letter “T” (for “thief”), pilloried in the stocks, or transported to America. In many ways the world from which early colonists came was a world of pre-modern values, one that lacked the concept of “cruel and unusual punishment,” equal rights, and exploitation; it was a world that instead took for granted natural human inequality and the routine use of force necessary to maintain it. In short, it was a world with few ideological constraints against the use of forced labor.  

The pre-modern world of colonial Virginia reinforced the compulsion of conformity to the Church of England. Even Anglican Church sermons often reinforced the social hierarchy for common people by emphasizing the sacredness of authority and the need to submit to those set above them. By the mid eighteenth century, most Americans, including Virginians, thought of their society “as connected vertically rather than horizontally, and were more apt to be conscious of those immediately above and below them rather than they were of those alongside them.” This social structure reinforced the state’s ability to compel conformity and set the social conditions where royal subjects took this for granted.

In the 1640s, just as the Virginia colony began to thrive, civil war ravaged England. Parliamentarians tried and executed King Charles and exiled his son Charles II. Then, Oliver Cromwell assumed kingly powers as Lord Protector. Many on the side of the king, known as Cavaliers, fled to the New World and settled in Virginia. These faithful subjects carried to the colony their loyalty and expectation of conformity to the

---

17 Ibid.


19 Ibid., 23.
Church of England. They called Virginia “The Old Dominion” to signal their allegiance to Charles II. At this time of tumult, John Locke escaped to the Dutch Republic. His political philosophy through Thomas Jefferson would later significantly influence America’s revolution. Influenced by the political turmoil, Locke developed his political philosophy of religious toleration. His patron anonymously published Locke’s *A Letter Concerning Toleration* without the author’s knowledge.

Locke’s writings on religious toleration span over four decades and *Letter* is now the most famous. In 1685, four years prior to its publication, Louis XIV of France revoked the Edict of Nantes of 1598, which exempted Protestants from the legal requirement of conformity to the Catholic state religion. Locke makes several references to the intolerance these Protestants suffered to illustrate the ineffectiveness of forced conformity by the state. According to scholar Richard Vernon, Locke’s treatment of religious persecution in France suggests he believed his theory transcended national borders.20 While in exile, Locke became acquainted with French refugees fleeing after the revocation of the Edict of Nantes, which required Protestant pastors to renounce their calling or die.21 The Edict of Nantes of 1598 was only a suspension of hostilities; French Huguenots lived uneasily in their delicate respite, expecting the state could reignite its persecution at any time.22 Louis XIV made those fears a reality. Thousands of Huguenots


22 Ibid.
fled France while those who remained behind faced enslavement, torture and death.\textsuperscript{23} In *Letter*, Locke argues for the separation of the church from the state and to end coercion.

In the wake of the English Civil War, James II assumed the throne in 1685. While Charles II did not push the religious question, James II did. His emphasis on the divine right of kings coupled with his Catholicism caused great concern for many of his nobles and subjects. He sought to relax the penal law, the set of laws that forced conformity to the Church of England. He issued the Declaration of Indulgence, which suspended the penal law and by the king’s pleasure permitted non-conformists to worship where they chose. It suspended the oath requirement to the Church of England to hold public office. King James’ reprieve was not true freedom for the dissenters. Suspension of these laws were contingent upon his benevolence and could be revoked. As long as the state could legally compel conformity and persecute unorthodoxy, non-conformists lived in danger.

British establishment ousted King James in 1688 in what would become known as the Glorious Revolution, increasing the power of Parliament. The Protestant William’s ascension to the throne ended the possibility of England again turning Catholic. This overturn of power voided James’ Declaration of Indulgence by limiting the king’s power and absolving the monarch’s ability to suspend law. William’s take over brought the passage of the Act of Toleration in 1689, which granted freedom of worship to Protestant non-Anglicans in England if they swore an oath to the government. Catholics were excluded for fear of their loyalty to a foreign power, the pope. This legislation did not grant religious equality in England. It simply decriminalized the failure to conform to the

\textsuperscript{23} Mark Goldie and Davide Womersley, ed., *A Letter Concerning Toleration and Other Writings: John Locke* (Indianapolis: Liberty Fund, 2013), x.
Church of England’s worship practices for Protestants. Its formal name was “An Act for Exempting their Majestys Protestant Subjects dissenting from the Church of England form the Penalties of certaine Lawes.”24 Some scholars consider the Act as having little significance. In the introduction to *From Persecution to Toleration: The Glorious Revolution and Religion in England*, the editors write to correct this view and emphasize “the Act was a bipartisan measure which meant different things to different people…ambiguity was an essential prerequisite of success. The cost was several decades of uncertainty, only…[ending in] 1714.”25 In the chapter “Legalizing Dissent, 1571-1719” of this compilation of articles, author Nicolas Tyacke calls the Act “remarkable” and “revolutionary.” It did fall short of Locke’s ideals of separation of church and state and the demise of religious tests for public office, but the Act rejected the “old idea of religious unity in favour of a pluralism…”26 This pluralism was limited to a Protestant pluralism. Though the Act legalized Protestant dissenters, it did not repeal the legal codes that made the Church of England the country’s established church with its preeminent position of maintaining the creed in the Thirty-Nine Articles and the Book of Common Prayer. Inhabitants were still required to pay tithes (church taxes) and the Crown appointed bishops of the Church who also sat in the House of Lords. The dominance of


25 Ibid., 16.

26 Ibid., 41.
the Anglican Church made it difficult to be married or buried outside of its administration. The Act of Toleration permitted Protestant dissenters to conduct their own worship services if they registered the location, which could not be a private home. It also required ministers to secure a license from the state to preach. To summarize the power of the established church, the state “retained a panoply of legal jurisdictions over people’s lives and a great body of landed and financial wealth. Citizens… [continued to be] disabled from holding public office unless they were communicant members of the Anglican Church.”27 The Act of Toleration lifted a great burden from dissenters’ shoulders, but it did not remove the established church’s firm grip around the lives of these worshipers.

The Act of Toleration changed the king’s role as a nursing father. Rather than enforcing uniformity by persecuting non-conforming believers, the monarch’s role as nursing father was now to promote the truth of the established church and provide financial support.28 Hence, the Act of Toleration did not lift the requirement for dissenters to pay church taxes.

Would the Act of Toleration apply to the British colonies? At first it was not clear, but in 1699 Presbyterian minister Francis Makemie secured a license as a dissenting preacher in Virginia.29 However, the small number of dissenters in the colony made its effects significant only on an individual basis for the dissenters. It did not reach

to influence greater society. The establishment of the Anglican Church remained predominant. Then the Great Awakening of the 1740s jolted Virginia’s religious landscape.

The Great Awakening sent convulsions through Anglican congregations as many congregants found emotional messages from dissenting preachers more appealing to them spiritually than the status conscious, clergy-centered and hierarchical forms of worship of the established church. “The ministers who preached long, rhetorical, and theologically sophisticated sermons were challenged by new figures like [George] Whitefield, the electrifying young preacher from England, who began dramatically changing people’s expectations of what churchgoing meant.” 30 Whitefield caused “an unprecedented sensation” as droves of people turned out to hear him preach in an emotional style about spiritual rebirth. Religion was an experience of the heart, according to Whitefield, which was a divergence from the cerebral drone of many Anglican clergy untalented in oration. Benjamin Franklin even writes about Whitefield’s persuasive power in his autobiography. 31

Isaac Backus, another Great Awakening luminary, also influenced some nominal Anglican congregants away from the established church in Virginia. “Backus would help launch the Baptists into a religious phenomenon that by the time of the Civil War would make them, along with the Methodists, one of the two largest Protestant denominations in


America.” He resided in Connecticut, but his Baptist co-religionists brought their emerging religion to the South. Their message emphasized personal conversion and public expression of the conversion through adult baptism. They became known as the Separate Baptists for their belief in the ideal of a congregation comprised only of the saved. These enthusiastic believers carried with them Backus’ advocacy for religious liberty or religious independency from the state and therefore especially suffered the ire of the established church.

The Methodists and Baptists were particularly influential in the Virginia backcountry where Anglican parishes were less often staffed with steady clergy. A third dissenter group would also take hold in the Virginia backcountry of Hanover County, the Presbyterians. Members of this denomination carried their religion from New Jersey and Pennsylvania. Samuel Davies came to Virginia from Pennsylvania to minister and spread the Presbyterian message. Unlike other preachers who preached without a license, Separate Baptists believed seeking licensure was sinful because the Holy Spirit bestowed the authority to preach, not the state. The Virginia Separate Baptist Association first met at Blue Run Church in May of 1771 where proposals to censure preachers who secured a license were heard. Davies sought to work within the confines of English law. He claimed the 1689 Act of Toleration in England applied in Virginia and therefore he and preachers like him should be granted permission to preach if they sought for it. In


33 Janet Moore Lindman, Bodies of Belief: Baptist Community in Early America (Philadelphia: University of Pennsylvania Press, 2008), 41.

1752, Davies wrote to the Bishop of London and petitioned for the application of the Act in Virginia to benefit dissenters. He asked, “they may not, according to the true intent and meaning of that Act, obtain as many houses licensed as will render public worship accessible to them all? And whether if this liberty be denied them, they can be said to be tolerated at all?” In the same year as his letter, a British attorney general declared the Act did apply to the American colonies. Through his political savvy and compliance, Samuel Davies was able to secure more freedom for dissenters. This may have been possible because Presbyterians in Virginia often numbered among the upper class. He personally secured preaching licenses in three meeting houses in Hanover and one in a neighboring county and was therefore able to legally spread the message he believed.

Though dissenters were legally able to claim some relief under the Act of Toleration in Virginia, they still suffered from the dominance of the Church of England. Again, the Act of Toleration only decriminalized dissenters’ non-conformity to the established church; they still experienced a “disability” as it was called, meaning they could not hold public office. Further, the legal framework still could exact fines for failure to attend Anglican Church on the Sabbath and required tax payments for the established church. It also required licensure for itinerant preaching and marriages were only recognized if performed by Anglican clergy. The new precedent of the application


37 Janet Moore Lindman, Bodies of Belief, 40. Licenses to preach dissenting Christianity were bestowed to a meeting house, not to an individual and could not be transferred. This was intended to restrain the wanderings of the preachers from place to place, such as Methodist circuit riders.
of the 1689 Act of Toleration in Virginia was to the benefit of colonial dissenters, but they were still left wanting. The Act of Toleration did not make dissenters equivalent members of society.

Virginia was a less desirable post for the clergy of the established church. The Virginia backcountry often went without clergy. In colonial times, it was still frontier land and paled in comparison to the socioeconomic benefits of clergy who lived and served in mother England. They also received truncated salaries when economic woes befell the colony. Also, Virginia had no Anglican Bishop to add prominence to this far reach of the Anglican Church. This heightened the position of the Virginia elite who served as lay ministers in support of the rectors of their parishes. This sociopolitical structure strengthened the Old World view that religious unity brought political stability and positioned these elite to quell dissenters. The new emotive style of the Evangelicals caused members of the establishment to sometimes suspect the dissenters of “madness” and “distemper” and often suspect them of fraud.

---

38 This is what historians have conventionally believed, but recent research may suggest that most parishes at least had a rector and many of these rectors were either Virginia born or lived in Virginia prior to receiving ordination. The College of William and Mary also produced native clergy. See John A. Ragosta, Wellspring of Liberty, 37. He refers the reader to five studies that suggest the Anglican clergy was growing in Virginia at this period, rather than languishing in favor of posts in England.

39 Clergy were regularly paid in tobacco intended for sale to secure their support. The 1758 Two Penny Act fixed the price of tobacco the clergy was compensated with at two pence per pound. The clergy wished to sell it on the market, which often brought a higher price. Several clergy sued for lost wages and Patrick Henry represented the colonial interest as legal counsel.

40 Janet Moore Lindman, Bodies of Belief, 36-37.
In her book *Bodies of Belief*, Janet Moore Lindman relays descriptions of how the establishment viewed various denomination members:

Presbyterians were called “strolling, pretended ministers,” and “enthusiastic freaks,” while Methodists were labeled “scoundrel. . . preachers” who “turned the world upside down.” Baptists were decried as lower life forms. They were “sturgeons. . . wallowing in the sand,” and insects whose intent was to “to tease, to sting, and to torment” nonbelievers.41

The Evangelicals carried on emotive expressions of their faith in their worship meetings, which disturbed the sensibilities of members of the Church of England who usually conducted restrained and private forms of worship. The exclamations, tears and contortions of Baptist worshippers over their fear of divine damnation shocked observers who dared attend and who would spread the salaciousness of what they witnessed among their social networks. What was perceived as uncouth behavior from these social misfits drew mockery and violence from supporters of the Church of England, often in collusion with local authorities.42 Baptists were especially targeted for their zeal and boldness and their ministers’ disregard for securing preaching licenses. Opponents would interrupt meetings and physically abuse the ministers until the local sheriff could arrive to perform arrests for illegal preaching.43 In 1778, aggressors attacked Baptist ministers David Barrow and Edward Mintz. In mockery of the ritual sacred to Baptists, immersion baptism, the gang of abusers performed “dunking” or “dipping” in which they forcefully submerged the minsters in river water. They would repeatedly raise them out again,

41 Ibid., 36.
43 Janet Moore Lindman, *Bodies of Belief*, 39.
asking them “if they believed” and force them again under the water.44 On other occasions, the ministers victimized in this way drowned to death.45 Opponents attacked another Baptist preacher, Samuel Harriss, in the act of preaching in the county of Orange and dragged him away from the meeting by his hair.46 Sometimes opponents threw trash and stones at preachers as they addressed their congregations. These preachers were often arrested for disturbing the peace.

Preachers were not the only targets of attack. Horsemen would sometimes ride into meetings to cause disruption and in one instance tossed a hornets’ nest into a prayer meeting; in another a presumably poisonous snake.47 These occasions dissolved into chaos where serious injury was a possibility. There were many instances of attack and enforcement.48 News of these attacks spread rapidly, so if this persecution was not directly inflicted, the specter of its possibility haunted dissenters. These dissenters likely lived in constant fear of abuse. To say the least, it caused a very negative perception of the established church among the dissenters. This was reinforced by the failure of magistrates to discipline the persecutors.

44 John A Rogasta, Wellspring of Liberty, 30.
45 James Hutson, Religion and the Founding of the American Republic, 71.
48 See Appendix A in Rogasta’s Wellspring of Liberty, which lists 98 men who have documented physical persecution or arrest. Many of the entries have multiple occasions of arrest and persecution. The appendix also lists 71 men and women against whom the state brought suit for failure to attend Anglican service or for attending an unauthorized service.
Maltreatment continued while imprisoned for preaching without license.

Accounts of various incarcerated ministers exist. The most noted is that of James Ireland, likely because he wrote an autobiography very soon before his death.\textsuperscript{49} In it he claims during his five month term in Culpeper County jail his friends were required to pay four shillings and eight pence to visit him. Determined to fulfill his calling to spread his message, he preached to a biracial group from the window of his prison cell. Men on horseback dispersed the group that turned out to hear him, threatening men and women with clubs and whipping the blacks. Ireland was threatened if he continued to preach from his cell window, he would be held in a room with no light. When he continued to preach from the window, a man urinated on his face.

Preaching from jail windows was not uncommon for incarcerated ministers. In Chesterfield County, Archibald Cary who was a magistrate and member of the House of Burgesses erected a wall around the county jail in an attempt to prevent ministers from preaching in their confinement. Ireland also claims that abusers lit brimstone and Indian pepper outside of his cell, which filled his space with smoke. He hardly survived suffocation. In David Tinsley’s incarceration in Chesterfield County jail, brimstone and Indian pepper were lit outside his door and window as well.\textsuperscript{50} Extensive cases of

\textsuperscript{49} James Ireland, The life of Rev. James Ireland [microform] who was for many years pastor of the Baptist church in Buck Marsh, Waterlick and Happy Creek, in Frederick and Shenandoah counties, Virginia (Winchester, VA: J. Foster, 1819) available in microform in Lauinger Library of Georgetown University call number Mcard 3 no. 48348. This author read excerpts of James Ireland’s autobiography from Lewis Peyton Little, Imprisoned Preachers and Religious Liberty in Virginia, 159-166. Though Ireland does not give a date of his incarceration, Little places it at 1769.

\textsuperscript{50} John A Rogasta, Wellspring of Liberty, 34.
persecution of imprisoned preachers exist. James Madison who would become a champion of religious liberty in Virginia wrote his friend William Bradford from Montpelier in January of 1774 about the “diabolical Hell conceived principle of persecution rag[ing].” He writes that he is vexed over the imprisonment of “not less than 5 or 6 well meaning men in close Goal for publishing their religious Sentiments which in the main are very orthodox.” It appears that these persecutions were not kept secret, but were commonly known broadly. No doubt these events turned Madison’s mind to how to remedy these injustices.

Dissenters petitioned for relief. In 1768, over a decade after Samuel Davies secured precedent of the application of the Act of Toleration in the American colonies, a group of 66 Separate Baptists in Amelia County petitioned for license to their own meeting place. The petition was rejected. The petition still exists and is kept in the Colonial Papers at the Amelia County Courthouse.

In 1772, the Baptists petitioned the House of Burgesses for protection and clarification of their permissions under the Act of Toleration. The burgesses used this as an opportunity to tighten control of these religious groups causing social disruption. The

---


53 The rejection may have been because the Act of Toleration forbade the meeting place for dissenters to be a private home and the petition requested George Walton’s home as the location for licensure. In any event, the petition was rejected. The Separate Baptists continued to meet illegally and were subject to persecution.

The proposed bill was amended to no longer require compliance to all of the Thirty-nine Articles that historically defined the Church of England, which appealed to the Baptists, but it forbade night meetings and the preaching to slaves without permission from their masters. The fear of slave revolt is a constant undercurrent in all of Virginia history leading up to the Civil War. The theology the Baptists preached of equality before God and the social interaction that grew out of that theology threatened the establishment. After a third reading in the legislative body, the burgesses unusually presented the bill for public consideration. This showed that at least some of the burgesses were unsettled about how to deal with the rising religious conflict. But, the content of the bill showed a majority of the burgesses wanted to deal with the issue of religious dissent swiftly and clearly. The bill never passed. Two years later James Madison wrote to his friend William Bradford that the Assembly would hear business about religious dissenters, “Petitions I hear are already forming among the Persecuted Baptists and I fancy it is in the thoughts of the Presbyterians also to intercede for greater liberty in the matters of religion.” It seems the Baptists did not give up after their 1772 request to the House of Burgesses for redress. Madison continues to write that he is “very doubtful” their efforts will prove successful. He refers to a similar petition from the previous year and the “extravagant stories were told in the House of monstrous effects of Enthusiasm prevalent among [dissenters].” To Madison’s disappointment, his colleagues in the Assembly


56 As Madison hoped, the Presbyterians did petition. They drew up a memorial by November of that year that the House would hear on June 5, 1775. It outlined the principle objections of the bill that failed. For that list of grievances see Wesley Gewehr, *The Great Awakening in Virginia, 1740-1790* (Durham: Duke University Press, 1930), 202-203.
“greedily swallowed” up these tales. The smearing stories darkened the character of the dissenters, according to Madison, and made their current business unlikely to pass. Madison continued about his colleagues who were “too much devoted to the ecclesiastical establishment to hear of the Toleration of Dissentients.”57 The hold of the Church of England was strong among the elite who were the gatekeepers to legislative approval.

Virginia’s laws positioned the state to enforce conformity to the Church of England and its political and religious tradition justified this coerced uniformity. This was the sociopolitical environment in which Thomas Jefferson’s Bill for Establishing Religious Freedom failed in 1779. It is not surprising it did not pass. At this moment, suffering dissenters could not even secure the protections of the Act of Toleration passed in England over one hundred years prior and which was since applied in Virginia. What changed to accomplish the passage of this revolutionary bill? Virginia transformed in the midst of the broader American Revolution. The Revolutionary War disrupted the established forms of authority in Virginia as the gentry relied heavily on the lesser classes to share in the sacrifices of the war. Bearing the hardships of the conflict emboldened dissenters to legally seek equal treatment and protection of their rights. This combined with James Madison’s political maneuvering to defeat Patrick Henry’s 1784 general assessment bill, which would renew a state tax for the support of religion, created the right moment to pass Thomas Jefferson’s “Bill for Establishing Religious Freedom” in 1786.

57 James Madison to William Bradford, April 1, 1774, in The Papers of James Madison, 1:112.
CHAPTER II

REVOLUTION DISRUPTS THE POWER OF THE ESTABLISHED CHURCH

The American Revolution disrupted the power of the established church in Virginia. “Suffer not yourselves to be betrayed with a kiss,” Patrick Henry warned his fellow delegates in his now iconic speech to persuade support of his resolution to arm troops in Virginia.”¹ The Virginia Royal Governor, Lord Dunmore, dissolved the House of Burgesses the previous year for its sympathetic prayer call in Boston’s honor. The Crown responded with a heavy hand to the Destruction of the Tea, as the colonists called it, and what is now known as the Boston Tea Party. It closed the economic lifeline to the city, Boston Harbor, but still required repayment of the vandalized East India Tea Company goods. It suspended the Massachusetts colonial representative government and replaced it with a royal charter, enforced by an occupying military force. Massachusetts was not the only site of protest and discontent. Prior to the tea’s destruction in Boston Harbor, Pennsylvania legislators denied ships loaded with East India tea entrance to its ports. Seven hundred Philadelphians turned out to observe passage of eight resolutions in the State House, which became the basis of resistance in every other colony.² Months after Bostonians dressed as Indians pitched the controversial tea into their harbor, fifty-one ladies in North Carolina publicly declared their refusal of tea. Uncommon for the time, the women organized themselves and published their sentiments: “determined to

¹ Patrick Henry’s March 23, 1775 speech, which contains the famous final line “Give me liberty or give me death!” was first published in 1816 by William Wirt. Wirt obtained written accounts of eyewitness recollections of the occasion, including Judge St. George Tucker’s. Excerpts from the speech quoted here come from William Wirt Henry’s Patrick Henry: Life, Correspondence and Speeches (New York: Charles Scribner’s Sons, 1891), 262-266.

give memorable proof of their patriotism...it is a duty that we owe, not only to our near and dear connections...but to ourselves.”

The Edenton Tea Party was mocked in London because they were only women, but in America they were praised. This protest among advantaged women indicated disapproval of the 1773 Tea Act within the elite in a southern colony.

Virginia’s support for Massachusetts demonstrated rebellion. In spite of Lord Dunmore’s efforts, the burgesses later defiantly met as a body anyway, reorganized themselves as the Virginia Convention, recognized the sufferings of its sister colony Massachusetts and called for a meeting with representatives from each colony, which would eventually become the Continental Congress. The Destruction of the Tea escalated tensions and drove the colonies toward independence. From St. John’s Church in the second Virginia Convention, Patrick Henry called for the arming of Virginia militia one month before the first shots of the Revolution fired in Lexington and Concord. “It is natural to man to indulge in the illusions of hope,” Henry began. He asked the delegates to look to the past for evidence to justify hope in reconciliation with the Crown. In response to those who wished to wait longer before armed resistance against so powerful an enemy, he asked when would be a more suitable time, “Will it be next week or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house?” Tradition has it that he began in a slow deliberate manner and intensified as he continued. An old Baptist clergyman remembered the “tendons of his

---

neck stood out white and rigid like whipcords.”  

Henry roared hope was lost, “There is no retreat, but in submission and slavery! Our chains are forged, their clanking may be heard on the plains of Boston! The war is inevitable—and let it come!! I repeat, sir, let it come!!!” Patrick Henry was already famous for his oratorical skills and this moment added upon his fame. His closing words are now part of the cultural memory of Americans: “I know not what course others may take; but as for me give me liberty, or give me death!” The Virginia Convention rousingly passed Henry’s resolution to arm the militia.  

Patrick Henry even personally recruited volunteers. Hostilities ignited the following month at Lexington and Concord. The Battle of Bunker’s Hill quickly followed and delivered significant losses to the British, demonstrating the Americans as determined rebels. Congress then appointed Virginia planter George Washington as commander-in-chief of the army; he assumed the monumental responsibility to prevent the annihilation of his inexperienced army against a world-class elite professional military force.  

---


5 Ibid., 274. The convention adopted a plan for arming and equipping the militia. Each county was to form a company. The lower counties were responsible for cavalry units and the upper counties were to prepare infantry. A committee was formed to recruit support for destitute counties.  

6 Ibid., 251-252.  

7 Congress unanimously elected George Washington as commander-in-chief of the army, but he felt unprepared for the appointment. During the French and Indian War, he rose to the rank of colonel in the Virginia militia, commanding hundreds of men. The commander-in-chief assignment would require him to direct thousands of ill trained and short-term committed independent minded troops. It was a tremendous challenge even for a seasoned commander, which Washington was not. In a June 18, 1775 letter to his wife, Martha, he called the honor “too great a trust” that brought him great “inexpressible concern.” He explains to her that he did not seek the appointment, but used “every endeavor in [his] power to avoid it.” Washington felt the weight of his responsibility from the moment of his appointment. Simply keeping his army intact until foreign support intervened would become his strategy later in the war, but in Boston he would see success when the British evacuated the region to occupy Manhattan.
These dangerous changes increased the importance of dissenters. Virginia needed men who would fight for its defense. Therefore, the Assembly was more inclined to accommodate dissenter requests. In the convention that followed Henry’s rousing speech, still in 1775, the Assembly agreed to set dissenting ministers on equal footing with Anglican ministers in the army. The convention journal on August 16, 1775 records the text of the Baptist appeal. In it, these dissenters set themselves apart from the pacifist Quaker tradition, “in some cases it was lawful to go to war,” and positioned themselves as loyal to the Patriot cause by calling Great Britain’s treatment “tyrannical oppression.” They would permit their brethren to enlist “without incurring the censure of their religious community.” With this affirmation of the cause, many Baptist men enlisted or would soon enlist. Now they appointed four representatives to “make application” to the convention because their brethren desired their ministers to preach to them while in the field. They petitioned for “the liberty of preaching to the troops at convenient times, without molestation or abuse, and praying the same may be granted them.” Patrick Henry wrote the resolution that the convention passed in the Baptists’ favor:

*Resolved,* That it be an instruction to the commanding officers of the regiment or troops to be raised, that they permit dissenting clergymen to celebrate divine worship, and to preach to the soldiers, or exhort from time to time, as the various operations of the military service may permit, for the ease of such scrupulous consciences as may not choose to attend divine service as celebrated by the chaplain.  

---


9 Ibid., 53.
Only a short time prior, dissenting ministers suffered persecution and languished in prison because of insubordinate practices motivated by their religious conviction. Now within the army, they were permitted the same authorization as the established church clergy. The American War for Independence would usher in tragic loss of life and property, but it would also deliver opportunity for triumphant religious rights protection in Virginia.

In January of 1776 Thomas Paine’s pamphlet, *Common Sense*, galvanized support from a previously undecided American public to the merits of separation. He published anonymously to avoid prosecution for his treasonous act of delegitimizing the British monarchy. Wildly popular in part because of its accessible style that read like a church sermon rather than in the Enlightenment political tones of many pamphleteers, Paine replaced the authority of the monarch with a higher authority—that of God. His religious references would have appealed to dissenters in Virginia, especially to Baptists who rejected the power of the state to license their preaching and looked to God for the endowment of authority. Paine argued the New World had been the “asylum for the persecuted lovers of civil and religious liberty from every part of Europe,” and now that these religious refugees have fled from this persecution “the same tyranny which drove the first emigrants from home pursues their descendants still.” This described well the situation facing the Virginia religious dissenters. As Paine infused the American colonies with the case for separation, he inspired many dissenters to involve themselves in the cause. Paine assured his readers that “No man was a warmer wisher for reconciliation than myself, before the fatal nineteenth of April 1775,” the day of Lexington and
Concord, but once he received the news of the skirmish he rejected the “Pharaoh of England.” In biblical tones familiar to many Americans, and especially to Virginia dissenters, Paine incited Americans to cut ties with England.

On March 6, 1776, in a treasonous act with the consequence of death, the convention in Williamsburg declared Virginia’s independence from England. Royal Governor Lord Dunmore had long since fled for the safety of a British man-of-war and Patrick Henry would soon be elected governor of the independent state. The representatives, elected by the freeholders of the various counties, resolved to create a republican government with a declaration of rights and constitution. It also directed Virginia delegates in Congress to vote for independence. When Congress passed Virginian Richard Henry Lee’s proposal to dissolve political connection with the British Crown on July 2, 1776, Virginia was already operating under its new revolutionary government.

The body organized a committee “to prepare a declaration of rights, and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people.”

---


11 The text of Richard Henry Lee’s resolution reads as follows: “Resolved, That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved. That it is expedient forthwith to take the most effectual measures for forming foreign Alliances. That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.”

Madison accepted positions, but Madison was a junior member and not expected to contribute significantly. Mason’s colleagues regarded him highly for his legal skills and knowledge of republican governments, so he naturally assumed the leadership role of crafting a first draft.\(^\text{13}\)

After some discussion in committee, Mason’s draft declaration of rights came before the body on May 27. The report was printed in broadside form for the review of the committee of the whole. Thomas L. Lee quickly sent a copy of this draft to his brother, Richard Henry Lee, in the Second Continental Congress at Philadelphia and another post-rider immediately set out to deliver it to delegates in Philadelphia. This draft was broadly published in newspapers in Philadelphia, then across America and even reached Europe. Benjamin Franklin copied it for the Pennsylvania rights declarations while Thomas Jefferson, also in Philadelphia, drew from its articles to write the United States Declaration of Independence the following month. Four years later, John Adams modeled the Massachusetts Declaration of Rights after Virginia’s. The Virginia Declaration of Rights would become one of the most influential documents in American history. Unfortunately, its broad dissemination would precede the Assembly’s finalization, which would include a significant amendment by James Madison regarding religious liberty.\(^\text{14}\)

\(^{13}\) In Ralph Ketcham’s biography of James Madison he writes, “Madison and Jefferson always deferred to [George Mason] as their mentor in matters of political theory.” *James Madison* (Charlottesville: University Press of Virginia, 1990), 71.

The first section of Mason’s draft ignited debate. Many of these Virginia planters feared this new form of government would grant slaves their freedom, based on the first section, which stated:

That all Men are born equally free and independent, and have certain inherent natural Rights, of which they can not by any Compact, deprive or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursuing and obtaining Happiness and Safety.¹⁵

Edmund Pendleton, who often struck the chord of compromise, suggested inserting the phrase “when they enter into a state of society” following the word “which.” Because in the political thought of the time slaves existed outside of society, the new Declaration of Rights would not apply to them.¹⁶ The Revolution in Virginia did not cause a dramatic turnover in the ruling elite.¹⁷ Though these ruling gentry radically restructured their government to dissolve connection with the British Crown, they would not undermine their own powerful sociopolitical positions. This is evident in the concern over slave emancipation and the resistance to change the established church’s position.


¹⁶ Ralph Ketcham, James Madison, 72.

The ninth article of Mason’s draft addressed religion. He articulated the current legal interpretation of religious rights by his use of the phrase “all Men should enjoy the fullest Toleration.” The full article reads as follows:

That as Religion, or the Duty which we owe to our divine and omnipotent Creator, and the Manner of discharging it, can be governed only by Reason and Conviction, not by Force or Vio-lence; and therefore that all Men should enjoy the fullest Toleration in the Exercise of Religion, according to the Dictates of Conscience, unpunished and unrestrained by the Magistrate, unless, under Col-our of Religion, any Man disturb the Peace, the Happiness, or Safety of Society, or of Individuals. And that it is the mutual Duty of all, to practice Christian Forbearance, Love and Charity towards Each other.18

Madison’s extensive reading and knowledge of imprisoned Baptist ministers in his home county’s proximity led him to conclude religious liberty was a natural right. It was not, as toleration suggested, the state’s benevolent bestowal.19 Virginians generally accepted toleration as the appropriate norm. On his copy of the broadside with Mason’s draft declaration of rights, James Madison prepared an amendment to establish religious liberty and overturn the current legal precedent of toleration. Beginning a pattern that would recur throughout his political career, Madison asked an influential leader to be the voice of his ideas.

18 George Mason, “Virginia Declaration of Rights.”

19 Historian James Hutson writes that twentieth-century scholars have scorned the Toleration Act for falling dramatically short compared to modern concepts of religious freedom, but this would have “dumbfounded the seventeenth- and eighteenth-century beneficiaries of the Toleration Act, who were profuse in public expressions of gratitude, . . .[for it].” Church and State in America: The First Two Centuries (New York: Cambridge University Press, 2008), 50. This point highlights the importance of historical thinking—understanding the context and norms of a particular period by their own understanding—as crucial in studying the past. However, in revolutionary Virginia, the latter part of the eighteenth century, toleration would begin to pale. Relief from criminal charges for failure to religiously conform to the established church began to be questioned.
Committee member Patrick Henry previously defended imprisoned preachers and as the most persuasive orator in the Assembly, he was a natural choice. He presented to the body the following amendment:

That Religion or the duty we owe to our Creator, and the manner of discharging it, being under the direction of reason and conviction only, not of violence or compulsion, all men are equally entitled to the full and free exercise of it according to the dictates of Conscience; and therefore that no man or class of men ought, on account of religion to be invested with peculiar emoluments or privileges; nor subjected to any penalties or disabilities unless under &c.  

Delegates directly asked Henry if the implication of this amendment was to disestablish the Church of England, referring to the phrase “therefore that no man or class of men ought, on account of religion to be invested with peculiar emoluments or privileges.” Henry responded with a firm no. However, it was Madison’s intent to disestablish the established church, but the Assembly would not comply. Historian Thomas Buckley wrote of the failure of this amendment, “The Revolutionary convention could accept the concept of freedom of conscience, but it would not sever the special relationship which bound Virginians to the church of their fathers.” This article retained the preferential treatment for members and clergy of the Church of England. As a consequence, dissenters remained second-class citizens because of their religion. These “disabilities,” as they called them, continued in spite of their military mobilization. Madison followed up with a second proposed amendment. This time Edmund Pendleton acted as its sponsor.


21 Thomas Buckley, *Church and State in Revolutionary Virginia 1776-1787* (Charlottesville: University of Virginia, 1977), 19.
on Madison’s behalf. As a committed churchman of the established church, Pendleton’s advocacy indicated the acceptability of the revised amendment. The new language reads as follows:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, that all men are equally entitled to enjoy the free exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, Unless the preservation of equal liberty and the existence of the State are manifestly endangered; And that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.22

The Assembly approved Madison’s revised amendment along with the rest of the Declaration of Rights on June 12, 1776. In the final version, the article addressing religion turned out to be number 16. The final language left out the phrase “unpunished and unrestrained by the magistrate, Unless the preservation of equal liberty and the existence of the State are manifestly endangered.” Removing this language preserved the state’s ability to regulate religion as it deemed appropriate.

The Virginia Gazette published the Virginia Convention’s adopted Declaration of Rights on June 14, 1776 in a postscript and again the next morning. This final version did not circulate widely as did George Mason’s first draft the previous month. Therefore, toleration as a feature of the new republic spread broadly, rather than the principle of religious liberty, which aligned more fully with the spirit of the Revolution. In James Madison’s papers, the editors write these circumstances denied Madison the acclaim to which he was justly entitled. This story continues in subsequent chapters of this writing to include Madison’s maneuvering to pass Thomas Jefferson’s “Bill for Establishing

Religious Freedom” while Jefferson fulfilled ambassador duties in France. The editors write that the credit for the achievement of legal protection of religious liberty in Virginia should be laid more on Madison than Jefferson.

By [James Madison’s] first important public act, he sought to assure complete religious freedom to all Virginians. Unable to gain the support of a majority in the Convention for so advanced a measure, he at least won a significant victory by replacing George Mason’s words, “fullest Toleration in the Exercise of Religion,” with his own, more liberal, “free exercise of Religion.” Continuing to strive for the goal he failed to reach in 1776, he attained it a decade later when the legislature of Virginia [passed the “Bill for Establishing Religious Freedom”]. This memorable reform, however, became identified with Jefferson’s name, even though [Madison] mainly deserved to be credited with its achievement.23

James Madison’s work to include the free exercise of religion as a natural right in the Declaration of Rights set legal precedent for the subsequent disestablishment of the Church of England in Virginia. Historian Rhys Isaac describes this amendment in this way: “Article 16 proved immediately to be a breach in the hitherto impregnable political defenses of the establishment.”24 To this point, many dissenters were deferential to the power of the established church in Virginia when seeking relief from lawmakers. Now, they could pressure delegates by pointing to the core document of their new revolutionary government to claim greater religious freedom than was ever previously available to them.

In the following legislative session, still in 1776, a petition with 10,000 names pointing to article 16 of the Declaration of Rights came before the Assembly. Emerging from the Baptist community, the petition expressed their hopes that they may secure

23 Ibid., 170-171.

equal liberty and that “the oppressed may go free.”

In this session an exemption passed that relieved dissenters from a tax to support the Church of England. Again, here the dissenters benefited from war-time circumstances. Because of the Church of England’s close ties with the Crown, the convention also suspended the payment of clergy salaries. It would simply renew the suspension each year until 1779, rather than officially discontinuing it immediately. Under these circumstances came the formal exemption for dissenters from the tax to pay clergy salaries. The preamble to the exemption bill left open the possibility of a general assessment in the future, meaning a tax requirement to support the Christian religion of their choice.

In 1776, the Virginia Convention ordered an update to the Virginia legal code to align it with the new revolutionary government. The convention’s appointed committee included Thomas Jefferson, Edmund Pendleton, George Wythe, George Mason and Thomas L. Lee. Jefferson, the now famous author of the Declaration of Independence, declined a continued position in Congress to return to his native Virginia for the reform work. Jefferson led the revisions from the beginning, envisioning a sweeping reform that unseated the establishment and transformed the laws into a republican form government. His proposal for religious reform came before the body in June of 1779, the same month Jefferson was newly elected to the governor’s seat and therefore removed from significant influence in the Assembly. His colleague and friend, John Harvie, presented

\[25\text{ Ibid.}\]

\[26\text{ Lee would not participate in the revision because he died and George Mason resigned from the committee. Thomas Buckley, } Church and State in Revolutionary Virginia 1776-1787, 46.\]
Bill 82 “A Bill for Establishing Religious Freedom” on his behalf, but without the persuasive skills of the author to advocate, the bill predictably stalled.

Jefferson’s proposal was radical. He designed it to overturn the long entrenched power of the established church, to transform Virginia religious tradition set forth at the colony’s genesis, an inheritance with deep European roots. Historian Thomas Buckley writes of the “Bill for Establishing Religious Freedom” that Jefferson meant to create a new establishment: “The title was deliberate. Jefferson sought to replace an established church with an establishment of complete religious freedom, the most sweeping guarantee of conscience rights in America.”

Jefferson asserted in the bill’s preamble that God made the mind independent: “Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint” therefore, attempts to regulate it with “temporal punishments, or burthens, or by civil incapacitations beget[s] habits of hypocrisy and meanness.” Compulsion was not God’s method, Jefferson argued, though he had the power to compel “being lord both of body and mind.” Instead he extends “it by its influence on reason alone…” If God would not compel, it was certainly not the place of “fallible” and “uninspired men” to assume “dominion over the faith of others.” An established church compelled obedience to its policies. Further, the

---


28 Seven years after its proposal, the “Bill for Establishing Religious Freedom” passed. The Senate removed much of the language quoted here. The original 1779 bill no longer exists, but for text of the 1779 broadside see Julian P. Boyd, ed., The Papers of Thomas Jefferson, 2:545, 552.

29 The quoted section here was also removed before the bill was passed in 1786. See Ibid.
requirement of a tax to perpetuate this scene was both “sinful” and “tyrannical,” Jefferson declared. Continuing with Enlightenment principles, he explains religion is a private exploration. A man’s private religious opinions are no more the entitlement of the state than his opinions on physics. Jefferson sought to remove the government’s involvement in religious opinions completely: “the opinions of men are not the object of civil government, nor under its jurisdiction.”\(^{30}\) He proclaimed the Enlightenment ideal “that truth is great and will prevail if left to herself.” After this long preamble laying the philosophical foundations of his proposal, he presents the practical aspects. Under this proposed Act: (1) no man would be compelled to worship, (2) no man would receive suffering because of his religious belief, and (3) religious belief would have no influence over civic participation. Jefferson closed with a paramount Enlightenment ideal: religious belief was a natural right. If the Assembly voided this Act, it would be a violation against nature.

Bill 82 survived two readings and proved the religious question in Virginia was too complicated to resolve easily. Finally, it was postponed to August 1, after the legislative session would adjourn. A private printer published the text of Jefferson’s bill, which was renewed with great interest by the public.\(^{31}\) When the Assembly convened again in October, it was clear public sentiment opposed radical reform of religion as Jefferson proposed it. More petitions from the public rejected the bill than supported it and many of the opposing petitions called for a general assessment to support religion.

\(^{30}\) The quoted section here was also removed before the bill was passed in 1786. See Ibid.

\(^{31}\) An extensive historical analysis on why it is believed the broadside was published by a private printer may be found on pages 548-549 of volume 2. Julian P. Boyd, ed., The Papers of Thomas Jefferson.
Rather than renewing debate on Bill 82 the following session, the Assembly organized a new committee and charged it to propose a bill “concerning religion.” Jefferson’s proposal was too radical for the mostly Anglican delegates. They sought to generate a solution to keep the state’s fostering of religion ongoing. On October 25, 1779, ten days after their appointment to the committee, James Henry, Carter Braxton, George Mason and John Tyler presented their solution. Their proposal sought to backtrack from Article 16 of the Declaration of Rights to its first draft concept of toleration. It also sought to set a combination of several Christian religions as the state religion, allowed for their incorporation and required an assessment to provide for their financial support. Historian Thomas Buckley connected this proposal to the South Carolina Constitution adopted the previous year for its identical requirements of toleration, establishment, incorporation, and assessment. He writes, “The drafting committee obviously utilized [the South Carolina constitution], as the proposed bill repeated practically verbatim its provisions on toleration, establishment, and incorporation. However, where the South Carolina Constitution explicitly instituted the voluntary system of support, the Virginia bill provided for an assessment.”

The committee states the bill’s purpose in the opening line: “For the encouragement of Religion and virtue, and for removing all restraints on the mind in its inquiries after truth....” Echoes of the legacy of the state’s responsibility as a nursing father sounded here. Article 16 of the Declaration of Rights permitted the free exercise of religion, which removed the restraints on the mind to seek after truth. But, many of the

---

32 Thomas Buckley, *Church and State in Virginia, 1776-1787*, 56.
delegates believed in the state’s responsibility to guide citizens to correct paths, as a loving father does for his children. The bill outlined these correct paths in a required religious declaration:

First, That there is one Eternal God and a future State of Rewards and Punishments.
Secondly, That God is publickly to be Worshiped.
Thirdly, That the Christian Religion is the true religion.
Fourthly, That the Holy Scriptures of the old and new Testament are of divine inspiration, and are the only rule of Faith.
Fifthly, That it is the duty of every Man when thereunto called by those who Govern, to bear Witness to the truth. 33

To be a recognized minister among one of the established Christian religions, one must witness the above before the court. The bill would also outlaw criticism of the state:

“No Person whatsoever shall speak any thing in their Religious Assemblies disrespectfully or Seditiously of the Government of this State.” It empowered the sheriff to gather “Tithables” and provided instructions for likely variables of collection. Lastly, the committee proposed to repeal the 1748 legislation that supported clergy of the Church of England, “An Act for the Support of the Clergy, and for the regular Collecting and paying the Parish Levies.” The bill survived a reading and then the delegates discussed it in the committee of the whole. It was postponed until the next session. Because of protests against it from the public and the general difficulty in resolving religious issues, it was never to be readdressed.

Though the bill concerning religion was short lived, it demonstrated a resistance to Thomas Jefferson’s “Bill for Establishing Religious Freedom” among the General

33 For the full text of the bill see Daniel L. Dreisbach and Mark David Hall, ed., The Sacred Rights of Conscience (Indianapolis: Liberty Fund, 2009), 247-249.
Assembly. It indicated the continued belief in the state role in encouraging religion. The body did repeal the 1748 Act regarding state support of clergy salaries. Rather than renewing the suspension of clergy salaries every year, the Assembly finally officially demolished the direct tax support of exclusively the Church of England clergy. But efforts to fund a variety of Christian religions through a tax would return. However, the controversial question of the state’s role in religion would be delayed until after the war’s end.
CHAPTER III
Revolutionary Origins of Religious Liberty in Virginia

Like most wars, the American War of Independence ignited with enthusiasm, but quickly delivered disillusionment. After the British evacuation from Boston in 1776, George Washington expected to soon return to his plantation at Mount Vernon, but this home front war lasted eight years. Both the British and American armies confiscated and consumed the limited resources of a war-weary populace. Loved ones often came home from battle disabled and maimed, if they returned at all. Women—old, young, free and enslaved—faced the possibility of rape.¹ Through the course of the war, Virginia contributed twenty-five thousand Continental Army soldiers, an effort surpassed only by Massachusetts.

Virginia also carried a heavy burden to fund the army during the war, which created deep-seated resentment toward other states in the union that did not meet requirements. This fostered paternalistic tones among Virginian politicians at the confederation level.² Early in the war, most of the battles unfolded in the Mid-Atlantic states, but conflict shifted south in 1778 when British General Henry Clinton left New York City with 8,500 troops to invade Georgia, the Carolinas and Virginia. British leaders believed the southern states contained more subjects loyal to the king. In the South, the Continental Army suffered humiliating defeats at Camden and Charleston—

¹ Carol Berkin, Revolutionary Mothers (New York: Vintage Books, 2005), 39-41. Congress requested a collective report on instances of rape in 1777, but could not gather enough data because most women would not report the crime due to perceptions about female sexuality at the time.

where nearly the entire southern army was captured. But the tide of the war turned in Virginia and brought a decisive victory to Franco-American allied forces at Yorktown in October of 1781, which convinced Parliament to cease hostilities and eventually accept the independence of the United States of America.

The Revolutionary War ushered in social change in Virginia. Prior to the war, small farmers rarely made demands of the gentry, but war-time hardships produced egalitarian thinking that emboldened small farmers to pressure the elite for the improvement of their circumstances. It was “new” and “radical” for smallholders to make egalitarian demands of gentleman. Historians Michael McDonnell and Woody Holton write, “it is important to note that the Virginia farmers did not usually go into the independence movement with egalitarian demands. Rather, these demands emerged as responses to the sacrifices required of them by movement leaders.”

Economic trouble, in part caused by nonimportation agreements, and the constant demand for new and continuing volunteers for the militia and Continental Army spurred yeomen to increasingly believe in political ideas of equality between the gentry and themselves. They organized to air their grievances, developing a democratic ideology. These changes would drive a petition campaign that would eventually defeat a general assessment bill and pass Thomas Jefferson’s “Bill for Establishing Religious Freedom.”

---


4 Ibid.
Victory at Yorktown did not end Virginia’s pains. Slaves fleeing to the British army reduced the state labor force. This disruption, coupled with burned fields and loss of trade, led to economic instability. The bankrupt legislature could not enforce the collection of taxes; sheriffs and other public officials normally charged with collection profited from inflation and pocketed sorely needed revenue. By failing to enforce collection, George Mason believed the legislators “corrupted & depraved the Morals of the People.” Anxiety about the decline in public morals during this period of unrest was intense and widespread. Newspapers published jeremiads concerned for the “degeneracy of the times” and private correspondence included grief over “ignominy and disgrace” of the decline of morals.

Mason wrote to Patrick Henry in similar worried tones. He first congratulated Henry on the accomplishment of independence, then warned of the precarious position of their newly won liberty, “We are now rank among the Nations of the World,” Mason wrote, “but whether our Independence shall prove a Blessing or a Curse, must depend on our own Wisdom or folly, Virtue or Wickedness; judging of the future from the Past, the Prospect is not promising.”

Elite English educational practices of the eighteenth-century, which included curriculum in the classics, led to “classical conditioning,” to borrow

---

5 Carol Berkin, *Revolutionary Mothers*, 133.


Revolutionary leaders internalized the imperatives of classical virtues. Therefore, they knew well the revered virtues of the ancient Roman Republic and the narrative of its rise and fall. The ancient republic began vigorously, emphasizing and promoting specific virtues for its maintenance. However, as the people failed to be virtuous, its strength declined and disappeared.

George Mason’s references to virtue and the past point to the Roman Republic’s fall. He feared their infant country was already in danger of failure like Rome’s demise. Revolutionary leaders thought about the classics as a tool for republican governance, “Throughout their lives, the founders continued to believe that the classics provided an indispensable training in virtue which society could abandon only at its own peril.” Mason’s uneasiness about Virginia’s moral decline sprang from his familiarity with the classics, a trait also common among his colleagues. Many of the Virginia elite viewed the decline in public morals as a threat to their newly won liberty. George Mason, in his May 6, 1783 letter to Patrick Henry, used the word virtue in the classical sense. It is not a private quality as a modern mind would conceive it. To the ancients, virtue is an attribute

---


10 Dr. Joseph Warren actually wore a toga while delivering the Boston Massacre oration in 1775. Gordon Wood, *Radicalism of the American Revolution* (New York: Vintage Books, 1991), 204. Further, in Founding Era newspaper debates such as the Constitution’s ratification debates, writers often chose pseudonyms from antiquity, demonstrating a broad familiarity with the classics in American literate society.

developed for the public’s benefit, subordinating personal interests for the public good. This form of virtue is now commonly referred to as civic virtue.  

In the same letter, Mason continues expressing his concern over lack of virtue in Virginia and its relationship to their new government, “Justice & Virtue are the vital Principles of republican Government; but among us, a Depravity of Manners & Morals prevails, to the Destruction of all Confidence between Man & Man.” Virtuous living requires deliberate cultivation. A man must be disciplined to develop the kind of subordination of personal interest vital in a republican citizen. With a perceived decline of manners and morals among the general public, confidence eroded that a sufficient amount of civic virtue existed to preserve their liberty.

George Washington provided in his person the quintessential symbol of civic virtue in America. He consciously cultivated a public image of the legendary classical leader Cincinnatus who relinquished his dictatorial powers to the Roman Senate at the close of crisis to return to his plow. At the end of the American War of Independence, as the victorious commander-in-chief, Washington willingly resigned his commission to Congress to retire from public service. King George III supposedly told American painter Benjamin West if Washington returned to his farm after winning independence “he will be the greatest man in the world.” Washington wrote a public statement from army

12 More than the political elite valued civic virtue. Evidence of civic virtue’s importance to the Revolutionary generation can be seen through its educational institutions, material culture, art and music. For descriptions of specific cases with high resolution images of materials see Jennifer D. Keene, Saul Cornell, and Edward T. O’Donnell, Visions of America: A History of the United States (New York: Pearson, 2013), 1:132-135.

headquarters in Newburgh he titled “Circular to the States,” which newspapers broadly published in every state. In it, he purposefully emphasized Cincinnatus traits.  

Washington’s choice to subordinate his own interest to the public good made him fabulously famous around the world because such a gesture was rare. Men like Washington are few. How could Virginia’s leaders protect themselves from a decline in morals and promote behavior more like what Washington modeled? To restore confidence in preservation of the new republican government, Mason suggested to Patrick Henry a revision of laws. He may have been referring to the implementation of laws similar to his proposed 1779 bill to restrain the “Nuisance” of “Idleness, Drunkenness, and all manner of Vice and Immorality.” The state of public virtue weighed heavily on more than Mason. In September of 1783, the Virginia Gazette called on the General Assembly to address “public virtue, being the public care.” The state of public morality also concerned Patrick Henry. What good would the achievement of independence be if it led to public immorality and vice? Certainly Virginia could not

14 George Washington, “Circular to the States,” June 8, 1783, in The Writings of George Washington from the Original Manuscript Sources, 1745-1799, ed. John C. Fitzpatrick (Washington: United States Government Printing Office, 1931), 26: 486-497. The following excerpt contains Washington’s allusions to the Cincinnatus ideal: “With this conviction of the importance of the present Crisis, silences in me would be a crime; I will therefore speak to your Excellency, the language of freedom and of sincerity, without disguise; I am aware, however, that those who differ from me in political sentiment, may perhaps remark, I am stepping out of the proper line of my duty, and they may possibly ascribe to arrogance or ostentation, what I know is alone the result of the purest intention, but the rectitude of my own heart, which disdains such unworthy motives, the part I have hitherto acted in life, the determination I have formed, of not taking any share in public business hereafter, the ardent desire I feel, and shall continue to manifest, of quietly enjoying in private life, after all the toils of war, the benefits of a wise and liberal Government, will, I flatter myself, sooner or later convince my Countrymen, that I have no sinister views in delivering with so little reserve, the opinions contained in this Address.”


16 Kevin R. C. Gutzman, Virginia’s American Revolution: From Dominion to Republic, 1776-1840, 53.
maintain its independence without virtue, Henry believed. To Patrick Henry, the church was the institution that could sufficiently promote virtue in society.

The Fall 1784 legislative session opened and closed addressing the issue of religion in Virginia. During the war, many of the Anglican clergy died or fled, leaving some parishes vacant. Funding for the established church ceased and the institutional church reflected this loss. As the legislative session began, several petitions came before the body requesting a general assessment, a tax collected for the support of religions beyond the established church in which citizens could choose which church received their donation.

This differed from recreating an established church, like the Anglican Church, renamed the Protestant Episcopal Church at the close of the war, in that choice respected the freedom of conscience. From Isle of Wight County came a request for the general assessment arguing that religion benefited the whole community, therefore all should be required to sustain it. An Amelia County petition argued that state support for religion operated on “the principles of public utility” and government survival relied on it. The delegates referred these petitions and others to the committee for religion and soon addressed it in the committee of the whole. Thomas Mathews of Norfolk proposed: “the people of this Commonwealth, according to their respectful abilities, ought to pay a moderate tax or contribution, annually, for the support of the christian religion, or of some christian church, denomination or communion of Christians, or of some form of

17 Thomas Buckley, Church and State in Revolutionary Virginia 1776-1787 (Charlottesville: University Press of Virginia, 1977), 90.

18 Ibid.
christian worship.” The body approved Mathews’ resolution 47 to 32 and organized a committee to draft the bill. For Patrick Henry and the general assessment’s many supporters, this multidenominational approach to promoting virtue in society “honored both the public importance of religion and the realities of Christian pluralism in the state.”

As this resolution passed and the committee to draft a bill formed, a Hanover Presbytery petition arrived indicating strong support of a general assessment. It argued that religion did not need the state for support, but that the state needed religion to survive. A general assessment would assist the state, not the church. It then outlined the terms in which a general assessment would be acceptable. Frustrated, Madison wrote to James Monroe summarizing the Hanover petition: “The Presbyterian Clergy have remonstrated against any narrow principles, but indirectly favor a more comprehensive establishment.”

Momentum favored a general assessment. Historian Daniel L. Dreisbach suggests if the committee had prepared a proposal quickly, it likely would have passed both bodies

---

19 Ibid., 92. Buckley writes that Madison told Jefferson that Patrick Henry made the motion, but the legislative journal indicates Mathews presented the resolution. Buckley suggests that Madison may have been referring to Henry as the chair of the committee, though he did not personally present the motion.

20 Ibid. Each of the ten committee members voted for the assessment resolution.


22 For a numbered summary of the terms acceptable to the Presbyterian leaders see Thomas Buckley, Church and State in Revolutionary Virginia 1776-1787, 95-96.

of the General Assembly because of little organized opposition and Patrick Henry’s effective advocacy.  

Thomas Jefferson, while in France as United States ambassador, wrote to Madison with a sarcastic solution to their roadblock: “What we have to do I think is devoutly to pray for [Henry’s] death.” Patrick Henry soon left the legislature, but not because his mortal life ended. James Madison coordinated Henry’s uncontested election to the governor’s seat. On November 17, Patrick Henry began his second term as governor of Virginia. Henry was the general assessment’s driving force; his removal from the legislature significantly slowed the movement’s energy.

On December 2, Francis Corbin, delegate from Middlesex County, presented a motion that Patrick Henry shaped before his departure: “A Bill Establishing a Provision for Teachers of the Christian Religion.” This bill differed from its failed 1779 predecessor, “A Bill Concerning Religion,” which sought to prescribe generalized public requirements for the public worship of Deity. This new bill addressed religious instruction and enabled the citizen to indicate which Christian denomination ought to

---


26 The potency of Patrick Henry’s influence often frustrated Madison. In the same legislative year, Henry proposed an incorporation bill that would strengthen the Protestant Episcopal Church. If passed, state owned and governed church property would shift more under the oversight of the Episcopal clergy and away from state management. Madison strongly opposed the bill, which struggled to gain support in the Assembly. He described the bill’s success to Jefferson: that “extraordinary as such a project was, it was preserved from a dishonorable death by the talents of Mr. Henry.” James Madison to Thomas Jefferson, July 3, 1784, in The Papers of James Madison, 8:92-95.

receive their tax. “Teachers” meant ministers of religion. The bill did not declare Christianity as the new state religion and did not require a creed for civic participation as its predecessor aimed to achieve. It even provided a clause for those who did not want their tax to go toward religion, they could direct it to support public education. The designers crafted it to shape public morality using religion. Its preamble declared the purpose of the bill:

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society, which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principles heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies or communities of Christians.

The general assessment demonstrated the dominant belief common in Revolutionary America that instruction in Christian knowledge would preserve public peace by modifying poor behavior. Teachers dedicated to this end must be procured to accomplish the correction of the morals in society. According to the bill, it was the responsibility of the legislature to create such laws and this law did not violate previous legislation regarding religion, such as the Virginia Declaration of Rights.

The next day the House debated the bill in the committee of the whole. The complicated nature of administering the bill’s parameters emerged in debate. Without Patrick Henry to champion the cause, it met resistance. To James Monroe, Madison wrote about the discouragement pro-assessment supporters experienced with Henry’s absence: “The bill for the Religious Asst. was reported yesterday and will be taken up in a Come.
of the Whole next week. Its friends are much disheartened at the loss of Mr. Henry. Its fate is I think very uncertain.”

Debate continued. Madison reported to Jefferson who remained in France of an attempt to de-Christianize the bill by changing the word “Christian” to “Religious” and allowing all “who profess the public worship of the Deity” to be eligible to receive tax revenue. This was possibly to accommodate the small groups of Jews living in Virginia at the time. The amendment failed by a margin of “7 or 8.” On December 25, the legislature voted to postpone action on the bill until the next legislative session, which passed 45 to 38. Additionally, it voted to print hand-bills with the bill’s text for distribution throughout the commonwealth to gauge public opinion on the matter. It also included a voting roll of how each member voted on the question.

Many historians view Patrick Henry’s general assessment proposal as a rearward step on his otherwise forward moving revolutionary path. At this historical moment, he is often characterized as a religious conservative feebly groping to restore the position of the established church that the American Revolution forever transformed—a revolution he led as an early Patriot and as Virginia’s first governor under its new government. But this interpretation comes downstream of over fifty years of United States Supreme Court jurisprudence interpreting the meaning of the United States Constitution’s First Amendment religion clauses in a supposed Jeffersonian lens.

---


30 In an article about George Washington’s church and state views, historian Vincent Phillip Munoz’s writes “Most scholars assume that on matters of religious liberty Thomas Jefferson and James Madison speak for the founding generation. The near-exclusive concern with Jefferson and Madison can be traced to the landmark 1947 Establishment Clause case *Everson v. Board of Education*. In *Everson*, the
Correct understanding of the general assessment’s context requires historical thinking, removed from twentieth- and twenty-first century interpretations. Religion was in the air of the American Revolution generation. The Revolution gave opportunity to redefine church-state relations in Virginia, but Americans did not believe an impenetrable wall divided religion from government in and around the year 1785. Historian Thomas Kidd explains it in this way: “The notion that government agencies could totally disengage from religion simply did not occur to most Revolutionary-era Americans. Churches were seen as the moral bulwark of the republic.”

Henry’s general assessment proposal was a reform in sync with the forward movement of the Revolution, rather than apart from it. It would redesign the tradition of a state enforced tithe for the established church—a tradition that reached back hundreds of years. It would restructure how religion propped the morals of society by decentralizing required tax support away from one dominant church.

It was not that Patrick Henry opposed religious liberty and Thomas Jefferson and James Madison stood for it. Patrick Henry was a champion of religious liberty and he valued religious pluralism. These founders were in the same religious liberty camp. Where Henry differed from Jefferson and Madison was on government’s role in religion. To Henry, like many other Revolutionary leaders, religion fostered the required civic

---


virtue to support the maintenance of the new republic and therefore the government ought to encourage it. To Jefferson and Madison, support of religion must be voluntary and therefore government should not use its universal reach to compel or persuade participation.

Patrick Henry’s emergence on the public scene began with a church-state issue. Tobacco dominated Virginia’s colonial economy and planters rarely diversified their production. To acquire goods, planters usually maintained a relationship with a creditor in England and shipped their tobacco in turn for household goods, clothing, equipment and other desired products. This bartering system supported the payment of clergy of the then Anglican Church in tobacco. In the 1750s, inflation hit clergy salaries as poor harvests increased the price of tobacco. In response, the House of Burgesses passed a law, popularly called the Two Penny Act, which allowed debts in tobacco to be repaid at the rate of two pence per pound, rather than in the current higher rate of tobacco poundage. This disadvantaged the clergy who argued that because their salaries fluctuated with the market, they needed the high payment to recover from times when tobacco prices were low.

Many of the clergy protested by taking their case to the king who vetoed the Two Penny Act. In Hanover County, Reverend James Maury sued for back pay. Because the king’s veto invalidated the Act, the only question was the amount of back payment Reverend Maury would receive. A young attorney, Patrick Henry, represented the colonial interests in the case. Eyewitness accounts of Henry’s speech summarize it in part this way: “He maintained that government was a conditional compact, composed of
mutual and dependent covenants, the king stipulating protection on the one hand, and the people stipulating obedience and support on the other. He declared that the violation of these covenants by either party discharged the other from obligations."32 Henry then argued that the 1758 Two Penny Act met the qualifications of a good law and could not be annulled by the king because he had “degenerated into a tyrant, and forfeited all right to his subjects’ obedience.”33 Murmurs of “Treason! Treason!” rose from behind the bar, but Henry continued.

He argued the role of the clergy was to encourage obedience to civil law and criticized the ministers in question for being more interested in securing their payment than serving in the works of the gospel to feed the hungry and clothe the naked. In other words, to Patrick Henry, the role of the clergy was to be examples of virtue themselves so they (supported by state funds) could help maintain order in society by promoting virtue. When arguments closed, the jury deliberated for five minutes and awarded the plaintiff one penny in damages.34 The seeds of Henry’s revolutionary political views first became public amongst questions about the role of state supported clergy and their promotion of virtue in Virginia society.

Patrick Henry championed religious liberty by supporting dissenters. On several occasions, he defended Baptist preachers imprisoned for preaching without a license and it was usually at his own expense. Family oral tradition records about Reverend John


33 Ibid., 40.

34 Ibid., 42.
Weatherford from 1871 hold that the reverend was imprisoned in Chesterfield jail in 1773 and heard about a young lawyer who “had become distinguished as a friend of persecuted Baptists.”\textsuperscript{35} From prison, he raised five pounds in gold and sent the money with a messenger to the lawyer with the request to advocate on his behalf. Patrick Henry appeared in court on the specified date and won Reverend Weatherford’s release. Afterwards, Henry returned five pounds “wrapped up in the same handkerchief” to the reverend.\textsuperscript{36}

Another source from the records of Reverend Weatherford relays the story of the reverend’s would be release on bond, but the jailer would not release him without payment for his stay in the jail. Because he was held for a considerable amount of time, it was a large sum and therefore he remained in jail unable to pay it. Soon, an anonymous benefactor sponsored his release. Twenty years later Mr. Weatherford learned it was Patrick Henry who supplied the necessary funds.\textsuperscript{37} Henry may also have defended a John Waller in Fredericksburg.\textsuperscript{38} Also, in the Assembly, when promoting ways to encourage


\textsuperscript{36} Ibid.

\textsuperscript{37} Ibid., 346.

\textsuperscript{38} Ibid., 107-108. Some accounts report John Waller defended himself and others state that Patrick Henry acted as counsel. Little places first reports of a supposed speech Henry delivered on Mr. Waller’s behalf to 1845. Some text from that supposed speech reads as follows: “May it please your worships, in a day like this,—when truth is about to burst her fetters,—when mankind are about to be aroused to claim their natural and inalienable rights,—when the yoke of oppression that has reached the wilderness of America, and the unnatural alliance of ecclesiastical and civil power, are about to be dissevered,—at such a period when liberty,—liberty of conscience—is about to wake from her slumberings, and inquire into the reason of such charges…May it please your worships, there are periods in the history of man, when corruption and depravity have so long debased the human character, that man sinks under the weight of the oppressor’s hand,—becomes his servile, his abject slave; he licks the hand that smites him; and in this state of servility he receives his fetters of perpetual bondage. But may it please your worships, such a day has passed away.
immigration to Virginia, Henry argued that religious liberty would boost new arrivals and pointed to Pennsylvania to illustrate his point: “The free exercise of religion hath stocked the Northern part of the continent with inhabitants.” James Madison would argue the same point later in his anonymous petition *Memorial and Remonstrance* to persuade the defeat of Henry’s general assessment.

Revolution in Virginia provided opportunities for Patrick Henry to fight for religious liberty. As previously mentioned, he drafted and presented the resolution the Assembly would approve to place dissenting preachers on equal ground as Anglican clergy in the army. Henry also worked on the committee of religion the Assembly created in 1776 to address dissenter petitions. This and his history with supporting dissenters sets the context for Henry’s likely drafting of the religion articles in the Declaration of Rights as a member of the committee. Historian Thomas Buckley notes that Edmund Randolph’s account of drafting the Declaration of Rights in *History of Virginia* written in the 1780s credits Henry for what would eventually number Articles 15 and 16, the religion articles.

Who actually drafted the articles is contested ground among historians, but Buckley suggests given Henry’s background in defending dissenters, to be silent on the

From that period when our fathers left the land of their nativity for these American wilds,—from the moment they placed their feet upon the American continent, from that moment despotism was crushed, the fetters of darkness were broken, and the heaven decreed that man should be free,—free to worship God according to the Bible.” On pages 388-390 of the same work, Little writes it was “well confirmed tradition in the Moore family” that Patrick Henry defended Jeremiah Moore in Alexandria, but Little could not find any contemporary evidence to support the claim.


issue would have been completely out of character for him.\textsuperscript{41} Regardless of who authored the religion articles of the Virginia Declaration of Rights, the two articles reflect the promotion of civic virtue in the new republic and the philosophy that rights must be coupled with citizen responsibilities.\textsuperscript{42} Article 15 of the declaration reads as follows:

\begin{quote}
That no free Government, or the Blessings of Liberty can be preserved to any People, but by a firm adherence to Justice, Moderation, Temperance, Frugality, and Virtue and by frequent Recurrence to fundamental Principles.\textsuperscript{43}
\end{quote}

This article preceded the article that outlined the right to religious toleration, which Madison’s amendment revised. The author of this article, who may be Patrick Henry, declared that free government could not be maintained without virtue and discipline. The author of Articles 15 and 16 of the Virginia Declaration of Rights closely tied civic virtue to religion in society.

Further indication that Henry advocated for religious liberty includes his willingness to act as the voice for Madison’s amendment to change the original draft phrase of “all men should enjoy the fullest Toleration in the Exercise of Religion” to “all men are equally entitled to the full and free exercise of [religion].” As previously mentioned, in debate delegates directly asked Henry if the amendment clause “no man or class of men ought, on account of religion to be invested with peculiar emoluments or privileges” was intended to disestablish the Anglican Church to which Henry responded

\begin{quote}
\textsuperscript{41} Ibid.
\textsuperscript{42} Many of the states in the new union wrote into their state constitutions the need for virtue for the maintenance of a free government.
\end{quote}
emphatically no. To Henry, free exercise did not exclude government support of religion. His advocacy for dissenters did not eliminate the government’s prerogative to promote religion to prop up society with virtue.

To understand Patrick Henry as both an advocate for religious liberty and the sponsor of the general assessment one must understand the religious pluralism of his upbringing. Patrick Henry’s family valued both the position of the established church and the conscience of the dissenter. Both shaped his religious views. Henry was baptized an Anglican as an infant and was named after his uncle, the rector of the Anglican parish in Hanover County. His father was a vestryman for the parish. Samuel Davies who was the first preacher in Virginia to secure a dissenting preacher’s license under the Act of Toleration settled in Hanover County. Davies’ preaching persuaded Patrick Henry’s mother and maternal grandfather to convert. Young Patrick regularly listened to the dissenter preacher’s sermons because he drove his mother and grandfather to services. Almost all historical accounts describe Patrick Henry’s childhood home as a loving environment, which was maintained among a religious division between the established church and the dissenting congregation.

Patrick Henry never joined his mother’s church, remaining an Anglican. It is likely that attending dissenter meetings and hearing dissenter sermons humanized the dissenter experience for him and led him to be an advocate. Most of his colleagues in the

44 The morning of the Parson’s Cause case, Patrick Henry saw his uncle and namesake Reverend Patrick Henry on his way to the courthouse. The young attorney asked his uncle, who was affected by the law in question, not to attend the proceedings telling him “I am engaged in opposition to the clergy, and your appearance there might strike me with such awe as to prevent me from doing justice to my clients.” The reverend responded saying “I will not only absent myself from the court-house, but will return home.” William Wirt Henry, Patrick Henry Life, Correspondence and Speeches, 1:36-37. This exchange indicates Patrick Henry respected his namesake uncle.
Assembly, usually members of Virginia’s elite ruling families, only experienced the established church, so they did not have exposure to the ability to have a harmonious home with plural churches. To Henry, government could prop up religion in society to foster virtue while still respecting the religious liberty of the people to attend the church of their choice.

Patrick Henry was a democratic revolutionary vested in the maintenance of the new republic. He was one of the most effective revolutionary politicians of his time and much of his power rested in his ability to respond to the requests of the people. During the war, as people complained of tax burdens, Henry persuaded the General Assembly to delay collection and then eventually to cancel collection for a year. Historian Kevin R. C. Gutzman suggests Henry’s democratic power in Virginia drove Madison to look nationally and plot the creation of a more powerful federal government because he could not win against Henry and believed his responsiveness to the people was to the detriment of the long-term stability of the new republic.\(^\text{45}\) In 1784, many of the petitions before the Assembly asked for a general assessment and Henry’s well-practiced response was to meet the demand.

Along with being responsive to the requests of the people, Henry was also a practical man. At the close of the war, religion did not look like it did prior to the war’s outbreak. The now Protestant Episcopal Church limped along due to the halt in funding and many of the clergy, those who would be teachers of virtue, died or fled. Laws still required dissenters to marry in the Episcopal Church and obtain preaching licenses, both

\(^{45}\) Kevin R. C. Gutzman, *Virginia’s American Revolution: From Dominion to Republic, 1776-1840*, 49.
sources of revenue for the struggling church. The general assessment was a practical way to teach virtue in society while diversifying which churches received tithes.

In the Founding Era, it was common to view religion as a means to promote societal virtue, which would maintain social order. This belief was commonly held by elites who wished to preserve the status quo. Patrick Henry was not unique in this perspective. Prominent revolutionary leaders, like George Washington, Richard Henry Lee and Edmund Randolph all held this view and therefore supported the general assessment. As president of the Continental Congress in Philadelphia, and with regards to the general assessment, Richard Henry Lee wrote that “the experience of all times Shows Religion to be the guardian of morals.” In an acknowledgement of the tension between religious liberty and government’s promotion of religion for society’s security, he interpreted the Declaration of Rights as contending “against forcing modes of faith and form of worship, than against compelling contribution for the support of religion in general.” In short, to Richard Henry Lee, the Declaration of Rights with its protection of free exercise did not preclude a religious tax.

46 Washington’s Farewell Address at the close of his second term as president of the United States demonstrates his views on religion as a tool to promote societal virtue: “Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports...Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion...reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle. ‘Tis substantially true, that virtue or morality is a necessary spring of popular government.” George Washington Farewell Address, September 19, 1796, in The Writings of George Washington from the Original Manuscript Sources, 1745-1799, 35: 229. Benjamin Franklin also believed religion secured morals in society. For an excellent book about how Franklin used the printing press to disseminate virtue, viewing it as a means of doing God’s work, see Ralph Frasca, Benjamin Franklin’s Printing Network (Columbia: University of Missouri Press, 2006).

Washington felt similarly. In a letter to George Mason regarding the general assessment, he acknowledged his commitment to religious liberty: “no mans sentiments are more opposed to any kind of restraint upon religious principles than mine are.”\textsuperscript{48} He then continues to express why he is not opposed to the tax, “yet I must confess, that I am not amongst the number of those who are so much alarmed at the thoughts of making people pay towards the support of that which they profess, if they of the denomination of Christians; or declare themselves Jews, Mahomitans or otherwise, and thereby obtain proper relief.” To Washington, it did not violate conscience to require a tax that allowed citizens to choose what educational instructor received their support, Christian or not. From Washington’s perspective, government could both promote religion to maintain virtue in society without violating an individual’s freedom of religion.

After sharing his sentiments with his friend, Washington wrote he wished the assessment was never proposed and that it could “die an easy death” because though there is a “decided majority for it” on the other side, a “respectable minority” oppose it. To Washington, the general assessment was “impolitic” and stirred more trouble than it was worth.

Patrick Henry, along with many of the American founders in Virginia and other states, viewed religious engagement as duty to God and community. Religion propped up the government of the new republic by forming a moral people. Therefore, the government should encourage religion by law to maintain their precarious liberty. To Thomas Jefferson, religious views were private matters of opinion, beyond the purview

of government and not the business of the broader community. With Patrick Henry, Thomas Jefferson supported religious liberty, but to Jefferson and James Madison the meaning of religious liberty differed from Henry and many of the other leading founders. To Jefferson and Madison, laws requiring religious participation violated the right of conscience.

Thomas Jefferson’s world influenced his religious views. His Virginia inherited the British religious tradition of forced conformity to the Church of England. He knew well the colonial coercion laws. As dissenter numbers in Virginia increased, it fostered state moderation and the legislature passed the Declaration of Rights in May 1776 with James Madison’s amendment for the free exercise of religion. The following legislative session, Thomas Jefferson informed his reader in his *Notes on the State of Virginia*, the Assembly repealed all the acts of parliament, which “rendered criminal” acts of religious opinion contrary to the established church. With statutory laws wiped away, Jefferson turned his attention to reform of existing common law and acts of the General Assembly that violated conscience.

In the common law, heresy was still a capital offense punishable by burning. Jefferson acknowledged in *Notes* it was unlikely the current state administration would exact this form of punishment. Then he emphasized the spirit of the times could change and therefore the law must be changed to protect citizens. Jefferson also highlighted in *Notes* the 1705 Virginia law that required those raised as Christians to declare the truth of

---


50 Ibid., 209.
Christianity, the validity of the Trinity and the authority of the scriptures. If such a person denied this or “assert[ed] there are more gods than one,” the first line of punishment was denial of public office and other forms of civic service. Jefferson’s political opponents would later use his critique of this law to attack him, but it demonstrated his belief in religious liberty as a natural right and his belief that free inquiry was a necessary prerequisite to arriving at truth. About it, he wrote:

But our rulers can have authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.51

To Jefferson, religious coercion laws did not correct error. The man who believes in many gods, compelled to conform to the state religion was made into a hypocrite and it would not correct the error of his religious notions. It would only set him in his belief, not draw him out of it. Rather than compelling state religious views, Jefferson thought free inquiry cured misunderstanding: “Reason and free inquiry are the only effectual agents against error.”52 His neighbor’s freedom to explore ideas without state punishment, in Jefferson’s view, did not damage his own freedom.

Further, government power included only that which the people surrendered to it; the right of conscience was a natural right beyond the scope of government. It could not be transferred. This echoed John Locke’s social contract and natural right political philosophies, which Jefferson clearly absorbed as demonstrated in the Declaration of

---

51 Ibid., 210.
52 Ibid., 211.
Independence. The state’s trespass on conscience with coercion laws never achieved uniformity. Jefferson asked in *Notes* the results of coercion. He answered with: “To make one half the world fools, and the other half hypocrites.” He also asked if uniformity, which coercion laws aimed to achieve, was even attainable. To this he answered: “Millions of innocent men, women, and children since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch toward uniformity.” These tyrannical laws, which caused great terror and blood-shed did not even achieve their purpose. To Jefferson, they should be eliminated all together.

Because the search for religious truth is worked out in the hearts and minds of individuals, Jefferson believed Virginia’s laws should not criminalize their expression, so the errors may be worked through. He had great confidence that the inquiry process would lead searchers to truth. In his “Bill for Establishing Religious Freedom,” Jefferson declared “that truth is great and will prevail if left to herself.” Jefferson believed if free inquiry was not penalized, sincere searchers would arrive at true religion. In *Notes*, he wrote if thoughts are given loose, “they will support the true religion, by bringing every false one to their tribunal, to the test of their investigation.” Therefore, contrary religious opinion was not a threat to the state.

---

53 Ibid., 212.

54 Ibid.


56 Thomas Jefferson, *Notes of the State of Virginia*, 211.
Thomas Jefferson was not anti-religion, but anti-church establishment. Many modern Americans mildly familiar with Jefferson’s religiosity view him as a secularist or an atheist. Thomas Jefferson’s world shaped his religious views and he lived in a world that operated in a Christian paradigm. To view him as a secularist is to place a twenty-first century worldview on an eighteenth-century man. A republic in which religion is sequestered to only private moments was beyond the conception of the American founders. These modern assumptions spring from the legacy of Jefferson’s political opponents in the 1800 presidential campaign and from his “wall of separation” letter, which the Supreme Court elevated to authoritative interpretive status in modern religious liberty jurisprudence in the cases Reynolds v. United States (1879) and Everson v. Board of Education (1947).

Modern Americans inherit the legacy of Jefferson’s false atheist label from his political opponents in the 1800 presidential election. George Washington served for two presidential terms without political parties, but as he exited office, parties emerged and generated some of the most bitter presidential election attacks in American history. John

---

57 Modern organizations such as the Freedom From Religion Foundation (http://ffrf.org/) interpret Jefferson’s religious philosophy in this way. This foundation also often quotes John Adams to support its mission. In both cases, these founders are usually speaking against dogmatism and coercion when the foundation uses their words to prove them as anti-religious.

58 After the bitter 1800 presidential election in which Jefferson’s opponents vilified him as an infidel and an atheist, Baptists in Connecticut, which was dominated by the established Congregationalist church, wrote to Jefferson praising him for his defense of religious liberty and reprimanded those who disparaged him. Jefferson responded with a statement reassuring his religious political supporters that he supported religion in society. It was not a legal pronouncement on church-state relations in the United States. For an excellent and brief article describing the context of the letter and how the Supreme Court elevated it to authoritative interpretive status in modern religious liberty jurisprudence, see Daniel Dreisbach, “The Mythical Wall of Separation: How a Misused Metaphor Changed Church-State Law, Policy and Discourse,” First Principles Series Report 6 (June 23, 2006), The Heritage Foundation, http://www.heritage.org/research/reports/2006/06/the-mythical-wall-of-separation-how-a-misused-metaphor-changed-church-state-law-policy-and-discourse (accessed October 3, 2013).
Adams won the first presidential election after Washington’s departure and Adams and Jefferson faced off again for the 1800 election. Jefferson’s attackers included influential Presbyterian pastor of New York City, John Mason, who aggressively cast Jefferson as an atheist in his widely consumed writing *The Voice of Warning to Christians, on the Ensuing Election*. To prove his case, he used Jefferson’s *Notes on the State of Virginia*, highlighting his “twenty gods” lines. Mason argued if Jefferson’s assertion is true, “then religion is not one of the constituent principles of society” and if religion is not the basis of society, “that is perfect atheism.”

As discussed, it was a dominant belief in eighteenth-century America, to which Patrick Henry and others subscribed, that religion supported republican government with virtue. Jefferson also believed in the value of religion to support American society. He differed on the government’s prerogative to prescribe religious belief or behavior. Historian Thomas Kidd described Jefferson’s views of religion in society in this way:

> Although he defended freedom of religion, Jefferson still believed that Christianity undergirded American virtues and liberty. Even though he himself felt little spiritual affinity for Christianity’s theological tradition, he saw its public effects as essential to the life of the Republic.

Though modern strict separationists interpret him otherwise, Jefferson valued religion in society. During his presidency, he would attend religious meetings and events held in government buildings. He interpreted religious liberty as a natural right and he believed society benefited from the search for true religion. In his “twenty-gods” passage,

---


Jefferson attempted to distinguish between the individual’s search for truth and why the government had no place prescribing creeds of belief. But to John Mason, and many of those he would persuade to his interpretation, considering it no injury for a neighbor to believe in twenty gods or no god was to “untie all the cords which bind you to the God of heaven” and invite America to turn atheistic. Jefferson did not publicly respond to this attack or others like it, but he privately expressed revulsion. Some of Jefferson’s supporters, including religionists, defended him as a champion of religious liberty who opposed religious establishments and not Christianity. 61

Thomas Jefferson was personally authentically religious. He believed in a creator God who moved in an orderly universe and endowed every person with a moral compass. He believed in the God of nature whose truth was self-evident. Jefferson’s early life tied him to Virginia’s established church and he continued paying it donations into late adulthood. Historian Thomas Buckley writes of eighteenth-century Anglicanism that it did not require confessional belief, but outward modes of worship. Anglican sermons usually emphasized morality and Christian living, not dogma or theology. “The church did not command one how or what to think about God, and Jefferson made full use of that latitude.” 62 Jefferson developed his own belief about Jesus, centered in reason. He accepted the moral teachings of the New Testament, but rejected the claims of miracles and divine authority. He believed himself to espouse a primitive form of Christianity, which preceded the adulteration of later Christian leaders who would defile the original

61 Ibid., 237.

message of Jesus, creating irrational theologies like the Trinity and claims of divine sonship and abuse their political position. It is understandable he would want the liberty to explore and develop his religious views freely without the intrusion of state law when the state could not suit his unorthodox views. Paul Conkin describes Jefferson’s religiosity in this way:

In his age, when so many people were indifferent to religion, not willing to devote the time and effort and thought that Jefferson gave to the subject, he stands with that small cadre of religious seekers, of innovative but warm and sentimental and not always rigorous thinkers, who have graced each period of human history.63

Jefferson’s personal religious pilgrimage shaped his views of religious liberty and the government’s role in religion. Though the American cultural memory often characterizes him as an atheist or secularist, Jefferson is better described as an unorthodox religious seeker frequently engaged in rigorous inquiry. Often when Jefferson is interpreted as anti-religion, it is because in actuality he was opposed to dogma.64 Adherence to dogma required unquestioning obedience. To Jefferson, this handicapped individuals from finding truth through free inquiry.

Jefferson’s belief in religious liberty as an inherent right, beyond the reach of government coupled with his opposition to dogma and value for free inquiry led him to

---


64 When Jefferson was governor if Virginia, he eliminated two divinity positions at the College of William and Mary, replacing them with law and science positions. Edwin S. Gaustad, *Sworn on the Altar of God* (Grand Rapids: William B. Eerdmans Publishing Company, 1996), 153. When proposing reforms for the College of William and Mary, the only religion-oriented subject Jefferson suggested for the curriculum was church history. “He found such a history confusing enough to be liberating; the messy episodes would lead students to question received dogmas.” Paul K. Conkin, “The Religious Pilgrimage of Thomas Jefferson,” 26. In reference to Jefferson’s University of Virginia design, which included the removal of sectarian religious instruction, Edwin Gaustad writes: “By studiously eliminating all sectarian dogmas and all teaching about religion on which denominations disagreed, Jefferson honestly did not think he had eliminated religion from his curriculum.” *Sworn on the Altar of God*, 165.
support disestablishment of the Church of England. Disestablishment stirred controversy because it altered the responsibility the legislators held their whole lives as the ruling elite. Before disestablishment, the Assembly administered both the state and the church. The ruling elites were “separatists, not revolutionaries,” writes Thomas Buckley, “They desired freedom from Great Britain for the sake of maintaining life as it has always been.”65 Disestablishment threatened the status quo of their position. The war transformed Virginia’s relationship to the established church and as discussed, the legislature in 1779 voted to officially cease funding the clergy. To Jefferson, religious liberty meant equality among all religions with complete freedom of belief and practice that eliminated government religious requirements. To Patrick Henry and George Washington, religious liberty meant freedom to choose one’s religious group without punishment while the government fostered general religious participation to generate virtue among the people.

Because Jefferson’s interpretation of religious liberty removed the state as a religious instructor, he placed public education as the new mentor in public morality. As part of Jefferson’s effort to revise Virginia law, he introduced Bill 72 the year prior to his “Bill for Establishing Religious Freedom.” This 1778 bill, titled “More General Diffusion of Knowledge,” set to ambitiously reconstruct the Virginia schooling system, funded by public revenue. Jefferson imagined dividing the state into “hundreds” or “wards” similar to New England townships. In this plan, all male and female children could attend

primary school on state sponsorship where they would learn morals and the dangers of tyranny through history lessons.

In the plan, twenty grammar schools comprised the middle level, to which wealthy families would send their children. The most promising pupil from impoverished conditions in each of the twenty wards would attend on a state scholarship. After grammar school, some students could receive state sponsorship to attend college. This way, Virginians would receive lessons in morality or virtue without the entanglement with dogma. Public education did not eliminate religion’s influence in society. It equipped citizens with the skills to analyze religion for truth. Jefferson’s education system was designed to input virtue in the leaders of the rising generation. Historian Edwin Gaustad describes Jefferson’s belief in the indispensability of virtue to the new republic in this way: “Indeed, morality could not be divorced from the American experiment itself…all citizens bore a moral responsibility, but especially so the leaders of a democracy who must serve as public examples of dedication to virtue.” Jefferson believed public education could effectively cultivate morality in future leaders.

The Assembly doubtfully received Jefferson’s proposal. It was an expensive project. To this, Jefferson argued “that the tax that will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests, and nobles who will rise up among us if we leave the people in ignorance.” Jefferson believed Virginia’s

---


67 Ibid., 152.
fate relied on the success of an effective state education system. Through education, students would learn virtue and morality and preserve their new republic. The bill failed.

Thomas Jefferson’s advocacy for freedom of conscience, detached from government intrusion, produced his “Bill for Establishing Religious Freedom” in 1779, but the Assembly let the bill fade out without seriously addressing it. The Revolutionary War transformed church-state relations in Virginia by the passage of the 1776 Declaration of Rights and the termination of government support of Protestant Episcopal Church clergy. But, the voluntary system of support did not sufficiently sustain the clergy after the war. Religion appeared to be in decline, along with the morality of the people. Patrick Henry introduced his general assessment proposal, which did not violate his principles as an advocate of religious liberty. However, it did violate Thomas Jefferson’s conception of religious liberty, but he now resided in Paris to fulfill responsibilities as the United States Ambassador to France. James Madison remained in the Assembly and shrewdly orchestrated the delay of the general assessment until the next legislative session. He then moved into action.
CHAPTER IV

DEFEAT AND VICTORY: GENERAL ASSESSMENT BILL AND “BILL FOR ESTABLISHING RELIGIOUS FREEDOM”

James Madison’s commitment to separate the church from the state has often been viewed as hostile toward religion. Madison’s work is sometimes seen as an effort to immunize the effect of religion in the public sphere, but this misinterprets the historical record. Madison demonstrates his belief on multiple occasions, including in his great work *Memorial and Remonstrance*, that the removal of government from religion would infuse society with religious vitality and therefore produce the kind of citizenry necessary to support a free republic. But, foremost in his efforts, he saw the separation of church and state as protection of the inherent right of conscience.

It is difficult to know conclusively Madison’s personal religious views. Like most of the Virginia gentry at his time, he and his family participated in the Anglican Church where his father was a vestryman. Madison produced little content for the historical record on his own religious thoughts, but the instruction of his formative years made him conversant in Christian thought and he frequently referenced church history and religious thinkers in his campaign for the protection of conscience from the state. Each instructor of significant influence in his life taught Madison through the lens of Christianity. His father’s mother, an intellectual and pious Christian woman, provided his primary education. He soon attended boarding school in the charge of a strict Scottish Calvinist Christian, Rev. Donald Robertson, from whom he learned theology, French, science, mathematics and classics. “Reverend Robertson’s curriculum included Thomas a
Kempis’s *Imitation of Christ*, Montesquieu’s *Spirit of the Laws*, Justinian’s *Institutes*, and the doctrinal masterpiece of English Calvinism, the *Westminster Confession.*”¹

For college, Madison chose the College of New Jersey, present day Princeton University. It is possible his father encouraged young Madison to attend the New Jersey college because of its more fervent religious climate. Historian Garrett Ward Sheldon suggests he did not attend the more likely choice for Virginia elite, the College of William and Mary, because of its reputation for “moral decadence and religious skepticism” while the College of New Jersey on the other hand was a “lively and orthodox Christian college.”² Princeton college president Rev. Dr. John Witherspoon mentored Madison, teaching him “law, politics, ethics, and philosophy from a Christian perspective, always subordinating the truths of pagan thinkers to the truth of Christ.”³ Dr. Witherspoon sought to minister the gospel of Jesus Christ to his students and did so by subjecting his views to thinkers who criticized his perspective and then confidently countered them. Madison biographer, Ralph Ketcham, in an article specifically about Madison’s religious beliefs, claims that notes taken by Witherspoon’s students do not support the charge that Witherspoon limited free inquiry at Princeton.⁴


² Ibid.

³ Ibid., 89.

Madison viewed Witherspoon fondly. The reverend’s instructional methods during this malleable time for the young statesman at least built the foundation for Madison to understand and sympathize with various perspectives about religion. His schooling in a colony far from his home also introduced him to varied ideas and customs foreign to him. These factors, mixed with his absorption of Enlightenment ideals of rationality and reason led Madison to value free inquiry.

It is commonly speculated that Madison considered entering the clergy, usually supported by his completion of the usual coursework at Princeton ahead of schedule and remaining on campus for another six months to complete graduate work in Hebrew and theology. However, Ketcham claims there is weak evidence Madison intended to enter the ministry. The author instead suggests Madison was likely concerned with theological questions because of his poor health. He studied scripture and prayed with family, but these practices were common of the time and did not indicate an intention to a religious career. Rather, Ketcham describes Madison as a “serious and systematic layman of wide curiosity, rather than that of the professional student of divinity.”

Later in life, Madison on occasion revealed some personal unorthodoxy in private conversation. At seventy-five years old, he responded in an 1825 letter to a question about proof of the existence of God. Madison responded thus:

…The belief in a God All Powerful, wise and good, is so essential to the moral order of the World and to the happiness of man, that arguments which enforce it cannot be drawn from too many sources…

---

5 Ibid., 181.

6 Ibid., 182.
But whatever effect may be produced on some minds by the more abstract train of ideas which you so strongly support, it will probably always be found that the course of reasoning from the effect to the cause, “from Nature to Nature’s God,” will be the more universal and more persuasive application.

The finiteness of the human understanding betrays itself on all subjects, but more especially when it contemplates such as involve infinity. What may safely be said seems to be, that the infinity of the time and space forces itself on our conception, a limitation of either being inconceivable; that the mind prefers at once the idea of a self-existing cause to that of an infinite series of cause and effect, which augments, instead of avoiding the difficulty; and that it finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom and goodness, than to the self-existence of the universe, visibly destitute of these attributes, and which may be the effect of them. In this comparative facility of conception and belief, all philosophical reasoning on the subject must perhaps terminate.7

From this passage written late in Madison’s life, it can be seen its author believed in a God of goodness and virtue whose existence was necessary for an ordered and moral world. However, he approaches this claim with humility. Others may view this God of nature in different terms, especially because the mind is limited when it comes to considering the infinite. Hence, there is the need to respect the freedom of conscience. Further, this passage reveals Madison believed in the freedom to explore the concept of God, but he did not adhere to specific dogma as a means of salvation.

Early on, James Madison doubted the assumption that government must support religion. In his early twenties, he wrote to Pennsylvanian William Bradford, asking that he send reading materials on his country’s practice of “religious Toleration.”8 In the same line of thought in the letter, Madison questions if an ecclesiastical establishment was necessary to support civil society and further questioned if the establishment actually

7 Ibid., 176.

damaged the dependent state. As discussed, the Revolutionary generation inherited from England a long tradition of government support of religion originating in 300 A.D. with Constantine’s kingdom wide imposed conversion to Christianity. Madison wrote this letter prior to the outbreak of hostilities with England, so his world had yet to be consumed with resistance to British rule. In this instance, like in many others, Madison acted as an independent and innovative thinker. He explored the overturn of long accepted societal assumptions about religion without the catalyst of social rebellion.

In another letter to Bradford, Madison bitterly reported the imprisonment of Baptist preachers nearby, condemning the spirit of persecution that oppressed them as conceived in “diabolical Hell.” He also decried the “Pride ignorance and Knavery among the Priesthood.” It appears that he juxtaposed the humility of the imprisoned ministers with the offenses of the clergy. His witness of the imprisoned Baptist preachers no doubt contributed to his questioning mind about the necessity for an establishment. In the editor’s note of his papers regarding this letter, it describes Madison at this point “already conspicuous in his own locality as a defender of religious dissenters.” This was not an instance in which Madison’s attention was first brought to the plight of dissenters, as some have suggested, but he was already involved with their defense. Religious questions captured his attention, even more so than other issues. Further in the editor’s note: “Apparently it was religious issues, more than tax and trade regulation disputes with England, which were rapidly luring [Madison] away from his beloved studies and

\[9\] Ibid.

\[10\] James Madison to William Bradford, January 24, 1774, in The Papers of James Madison, 1:106.
arousing his interest in contemporary politics.” The issue of religious freedom in his community laid the early foundation for Madison’s later activism as constitutional architect in his infant nation.

In a 1774 Assembly term, Madison again writes to William Bradford with criticism about the established church. In the letter, he describes how rumors tell that the Baptists were preparing petitions for their protection, but Madison was “very doubtful” they would succeed in accomplishing their purpose. The Assembly entertained some grievances the previous session, but the legislators heard “extravagant stories” about the “monstrous effects of the Enthusiasm,” meaning dissenter religion, which they “greedily swallowed” that made it very unlikely the dissenters would receive a fair hearing. Madison determined his colleagues were “too much devoted to the ecclesiastical establishment to hear the Toleration of Dissentients” and they would reject again their requests. Madison’s sympathy for dissenters and criticism of the effects of the established church preceded his friendship with Thomas Jefferson. The two rising statesmen did not become personally acquainted until 1776. Therefore, Jefferson did not find in Madison a convert to his own ideas about government’s role in religion; he found a like-minded equal.

In the current definitive biography of James Madison, Ralph Ketcham writes the following in response to interpretations that Madison, like Jefferson is sometimes viewed, was antagonistic toward religion:

There is no evidence that Madison’s defense of religious liberty reflected any hostility to religion itself or to its social effects. On the contrary, he argued

---

11 James Madison to William Bradford, April 1, 1774, in The Papers of James Madison, 1:112.
repeatedly that freedom of religion enhanced both its intrinsic vitality and its contribution to the common weal. He believed that attitudes and habits nourished by the churches could and did help importantly to improve republican government. He believed just as strongly that complete separation of church and state saved the church from the inevitably corrupting influences of civil authority. From his early reading of the Memoirs of Cardinal de Retz and the observation of religious persecution in Virginia, he had gained firm impressions of the ill effects of any connection between church and state. Throughout his long public career he received cordial support from Protestants, Catholics and Jews who admired his forthright stand on religious liberty. In turn he respected the constructive contribution unfettered, variegated religion made to the well-being of society. Madison bespoke fully and cogently what came to be the characteristically American attitude toward the relation between religion and politics.¹²

Madison’s work to defeat Patrick Henry’s general assessment bill was not antagonistic toward religion. He believed that removing government prescription in religious matters protected the inherent rights of individuals to express their religion as they chose. This expression without punishment would spawn a robust religious environment in which genuine competition would generate better religious teachers. This climate of vigorous competition with better teachers would then produce virtue necessary to sustain a republic. Therefore, both Patrick Henry and James Madison fought for religious liberty, but Madison’s innovation of removing government involvement in religion, a concept Jefferson espoused as well, parted from Henry’s traditional belief of the necessity of government to prop up religion.

Madison rarely offered speeches in the Assembly. His timid demeanor did not add power to his carefully conceived ideas. Reflective in his invitation to Patrick Henry to propose his Declaration of Rights religion amendment, Madison often chose an

influential orator to act as voice for his ideas.\textsuperscript{13} But in the House of Delegates in 1784 when the general assessment’s momentum signaled its likely passage, Madison took to the floor with a speech advocating delay of the bill’s third reading.\textsuperscript{14} Such an important measure must first be taken to the people for consideration, he argued. He outlined the complicated nature of the legislature’s task to determine which sects were Christian and therefore would receive the tax revenue received for Christian teachers. Would it matter which translation of the Bible the teacher used? The various sects disagreed on basic points of doctrine and scripture. Did the legislature believe it could quell these controversies? He notes that the true remedy for their post-war ills is not to establish a church, but to enact laws that cherish virtue, administer justice, and educate youth. On Christmas Eve, the legislature voted to postpone the final reading of the bill until the following Fall legislative session, November 1785. It also voted to print hand-bills for the people’s consideration.\textsuperscript{15} Each member received twelve for distribution. The prints included the bill’s text and a list of members’ names that indicated their vote on the assessment.

The time between the closing of this session and the opening of the next in November saw what historian Kevin Gutzman calls Virginia’s “first truly popular,

\textsuperscript{13} In the 1787 Philadelphia Convention, Madison asked Virginia governor Edmund Randolph to present the Virginia plan, which proposed the delegates lay aside their authorized purpose to revise the Article of Confederation and consider Madison’s crafted redesign. This proposal drove the discussion of the convention and after significant compromise, generated the proposed United States Constitution that went to the states for ratification.


statewide political campaign.”

Petitions on both sides of the general assessment issue spread broadly. Gutzman identifies the need for the petition campaign. Virginia’s new constitution retained the colonial apportionment for the legislature, leaving the historically powerful Tidewater elite overrepresented in the House. These elite members were usually Episcopalian. This meant that though a large portion of the population may oppose the general assessment, without a petition campaign, it would not likely influence its defeat.

George Nicholas, representative from Jefferson’s Albemarle County, recognized this dynamic and encouraged Madison to write his opposition in petition form to influence the public’s reception of the general assessment bill. In an 1826 letter to George Mason’s grandson, Madison writes that Mason and George Nicholas “and some others, thought it advisable, that a Remonstrance against the Bill should be prepared for a general circulation & signature, and imposed on me the task of drawing up such a paper.” Madison went to work.

While among his books at Montpelier in June 1785, Madison crafted what would become the most brilliant discourse in religious liberty thought in American history. As it circulated among the people, Madison purposefully remained anonymous as its author and continued so until his 1826 letter to George Mason’s grandson in which he identified himself as the author. He opened his Memorial and Remonstrance by addressing the General Assembly in the collective voice of subscribers who would attach their names to

16 Ibid.

the petition. These signatories considered carefully the general assessment bill, “A Bill establishing a provision for Teachers of the Christian Religion,” and must declare it a “dangerous abuse of power.” In a logical manner, Madison outlined the reasons for their protest in rational and pious tones. Summaries of his 15 points follow.

1. Article 16 of the Declaration of Rights, declares the duty of discharging religion to God as an “inalienable right,” meaning it cannot be transferred. God sits at the top of the line of authority to which allegiance must be rendered: “Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe.” Civil society usually must operate on the will of the majority and while religion is a severely divisive force, citizens and lawmakers must be cognizant that the “majority may trespass the rights of the minority.”

2. Society ought not to encroach on religion and the legislature is the creature of the people, then religion is not subject to the legislature’s power. Members of the legislature who intrude on religion “exceed the commission from which they derive their authority, and are Tyrants.” This makes the people slaves.

3. The principles of the late won Revolution show it is the duty of citizens to jealously protect their liberties. The government which can prefer one sect to another and can require payment to support religion is a government that can force conformity: “Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?”

4. The social contract through which civil society is formed shows the bill violates the new republic’s foundational principle of equality. Upon entrance into civil society, citizens relinquish no more and therefore retain no less than their natural rights. Equality means respecting the freedom of others to search for truth. While

---

18 For the full text of Madison’s Memorial and Remonstrance, including a lengthy editor’s note, see The Papers of James Madison, 8:295-306.

19 Irving Brant writes that the three pence referred to here is not a reference to the general assessment tax, but the tax on tea that led to the American Revolution. Brant considers Madison’s greatest contribution to the cause of religious liberty that he always looked beyond the specific action of the state, such as the proposed assessment, and saw the state’s inappropriate reach to deny liberty. Irving Brant, James Madison: The Nationalist 1780-1787 (New York: The Bobbs-Merrill Company, 1948), 351.
the subscribers of this memorial may profess and observe what they believe as the true religion, they must respect others’ search for truth: “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 offense against God, not against man: To God, therefore, not to man, must an account of it be rendered.”

5. When supporters approve the general assessment, they indicate agreement that the bill implies government authorities are competent judges of religious truth, which is an “arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world.” The bill implies that government authorities can use religion as civil policy, which is an “unhallowed perversion of the means of salvation.”

6. Primitive Christianity flourished independent of government involvement and even in the face of great opposition. To say it now cannot flourish without government support “weakens confidence…in the patronage of the Author” and suggests Christians are “too conscious of its fallacies to trust [their religion] to its own merits.”

7. History proves the assessment would be detrimental. Fifteen centuries of government supported Christianity produced “pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.” Most respondents to the question about the time of the purest form of Christianity would point to the primitive church in which government was not involved in its support.

8. Since religion is a natural right and outside the stewardship of government, government cannot be responsible for the maintenance of religion. A just government protects religion and property with an equal hand. Rather than administering religion, government’s role is to protect equal rights of sects and prevent the invasion upon the rights of others.

9. Many dissenters came to Virginia to escape religious persecution, but this general assessment imposes the legislature’s will on the consciences of these people. Under the bill, the legislature establishes an “Inquisition” that would deter immigration to the state.

10. To reverse the progress of religious freedom in Virginia is to behave like the countries from which these dissenters flee. The bill makes lawful government’s imposition on religious conscience.
11. The bill’s passage would disrupt the level of religious harmony currently achieved in Virginia. Government in the Old World spawned violence by imposing requirements on religion. Relaxation of these laws decreased the blood-shed. Simply considering the bill has stirred jealousies among the sects in Virginia.

12. Implementing the general assessment would dampen the ability to proselytize Christianity. Those who enjoy the “precious gift” of Christianity want to share it with others. In Virginia, there are many false religions and few Christians. The bill’s policy discourages those not in the light of Christianity from its exploration.

13. The complicated nature of implementing the bill’s policies would weaken the power of the government when the law will likely be ignored.

14. The bill would affect a large portion of citizens and must not be passed without first accurately hearing their voice on the matter.

15. Article 16 of the Declaration of Rights reads: “the equal rights of every citizen to the free exercise of his Religion according to the dictates of conscience.” The freedom of religion is equal to that of other rights. The government either has the power to control the press, trial by jury, the right to vote, can overcome the separation of powers and impose religious practices on citizens or it has no such power. “We the Subscribers say, that the General Assembly of this Commonwealth have no such authority to enact into law the Bill under consideration.” The subscribers are “earnestly praying…that the Supreme Lawgiver of the Universe” that the legislators considering the bill will rather “establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.”

Madison likely drew inspiration for his *Memorial and Remonstrance* from John Locke’s *Letter Concerning Toleration.* Both employ social contract theory where citizens start on an equal basis, transferring some rights to empower the government to protect life, liberty and property; however, to both philosophers, natural rights cannot be transferred. Conscience, including the free expression of religion, ranks among these inalienable

---

20 For analysis of the similarities and differences between Locke and Madison’s *Letter Concerning Toleration* and *Memorial and Remonstrance*, see Thomas Buckley, *Church and State in Revolutionary Virginia 1776-1787* (Charlottesville: University Press of Virginia, 1977), 131-133.
Locke argues that the state’s effort to achieve uniformity, rather than encouraging religious pluralism, was detrimental to civil society. Madison agreed, but went farther.

Locke believed toleration stopped short of permitting atheists and Catholics their religious expression. To Locke, atheists could not be trusted to contribute to civil society because oaths sworn to God maintained civil relationships; atheists did not have the fear of God to deter their deviation from these pledges. Catholic loyalty to the Pope as a foreign power compromised their fealty to their own state. In Madison’s conception of religious liberty, each person must be free to search truth, even if they are in error, “we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.” Because the right of conscience and its duty to God predate entrance into civil society, Madison believed the legislature could not justly make laws dictating its expression and society could not rightly impose a dominant religion on all citizens. It is true the “majority may trespass on the rights of the minority,” but it offended God.

Government’s proper role in religion was to be the “guardians of the rights of the people” and intercede at the invasion of those rights. This redesigned the church-state relationship Patrick Henry and so many of the Revolutionary generation embraced. Rather than actively promoting religion, the government’s role was to protect individuals in the expression of their religious liberties. Anything beyond that violated inherent rights and offended God.

James Madison’s *Memorial and Remonstrance* is a brilliant demonstration of his persuasive abilities and political reasoning. He used both Christian and rationalist tones
to appeal to varied readers for his principled appeals and political aims. George Mason printed the anonymous memorial and circulated it in Virginia’s Northern Neck, even sending a copy to George Washington with an accompanying letter. George Nicholas circulated broadsides within the central Piedmont and Shenandoah Valley. Madison was pleased with its eventual momentum. However, though Memorial and Remonstrance gained a significant amount of subscribers, its reasoned tones acquired only one-fifth of the 10,929 signatories to petitions opposing the general assessment. Twenty-one Ninety petitions in opposition to the general assessment poured into the Assembly in the Fall of 1785 in comparison to the 11 petitions supporting it. One in particular carried 4,899 signatures, in which the still anonymous author argued more zealously than Madison’s reasoned approach, declaring the general assessment in conflict with “the Spirit of the Gospel.”

Madison’s pen in this instance gained influence as he revealed his authorship later in his life and as he transformed into the icon of “Father of the Constitution.” The editors of his papers write, “With the passing of time, history tended to forget the other protests of 1785-1786 and focused upon Madison’s.” Like the Federalist Papers, the significance of Memorial and Remonstrance increased as the United States Supreme Court used it to interpret the meaning of the United States Constitution. The Supreme Court first cited it in the espionage case Abrams v. United States (1919) and for the first

21 Editor’s note, The Papers of James Madison, 8:298.
22 Ibid.
23 Ibid.
time in religious liberty jurisprudence in *Everson v. Board of Education* (1947). Subsequent cases cite it.\(^{24}\)

It is likely that Madison’s labor over religious liberty in Virginia generated his *Federalist 10* solution for the problem of faction. As previously discussed, American Revolutionary leaders concerned themselves with the development and maintenance of civic virtue to support their new republic. The Virginia Declaration of Rights, along with constitutions in other states, coupled responsibilities for citizen virtue with the recognition of their rights. However, given human nature, it is not possible for every legislative body to consistently act in a virtuous manner.

Hence, the predominant belief in eighteenth-century America that government must encourage religion because it was uniquely positioned to broadly impute virtue in citizens, mitigating their selfish human nature. In *Federalist 10*, Madison argues that political systems must be set up around actual human nature, rather than an idealized version. This countered a deeply rooted assumption about establishing political systems based on virtuous players, which reached back to Aristotle. Madison’s innovation in political structures sets interest against interest. In Madison’s time, political thinkers also thought that a democratic republic only worked if a republic was small. This fostered homogeneity and kept the elected leaders close to the people. Madison argued for the opposite. More competing factions acted as a check on corruption and tyranny. With competing factions that frequently realigned according to their interests, the majority was

less likely to oppress the minority. With regards to Madison’s development of this solution as a result of competition among religious sects in Virginia, historian Lance Banning writes:

On several occasions, [Madison] was quite explicit in suggesting that the struggle for religious freedom, not the clash of different economic interests, was the fundamental prototype for his solution of the democratic riddle, the model he had most in mind when he envisioned how the great republic would “control the violence of faction.”

To illustrate his point, Banning uses Madison’s October 17, 1788 letter to Jefferson in which he explains why he did not initially advocate for a bill of rights to the federal constitution. Madison’s experience in Virginia with Episcopalians, Presbyterians, Baptists, Methodists and rationalists in the contest for defining the government’s role in religion most certainly shaped his views on faction, even if it did not generate the ultimate epiphany articulated in Federalist 10. The contest over the general assessment is an excellent case study in understanding factions.

James Madison played a critical role in the defeat of the general assessment and the passage of Jefferson’s “Bill for Establishing Religious Freedom.”

---


26 “Repeated violations of these parchment barriers have been committed by overbearing majorities in every state. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that state if the legislative majority had found, as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power in a government lies, there is the danger of oppression. In our governments the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the majority number of constituents.” The Papers of James Madison, 11:297-298.
absence, he coordinated Patrick Henry’s removal from the General Assembly to the
governor’s seat, which dispelled the potency of Henry’s aid to the general assessment’s
cause. He successfully effected the postponement of the final reading of the general
assessment bill to the following legislative session so the question may be guided by the
voice of the people. He influenced a response from the people by crafting *Memorial and
Remonstrance*, which articulated the principle of liberty of conscience that would become
integral to America’s creed.

Madison is a key actor in the story, however, he is only one actor. He did not
bring about the legal protection of conscience in Virginia on his own. In fact, it was the
political pressure generated by dissenter petitions that defeated the general assessment
bill and created the circumstances to pass Jefferson’s “Bill for Establishing Religious
Freedom.”

When the November 1785 legislative session opened, an unprecedented avalanche
of petitions descended on the Assembly. In a letter to Jefferson about the number of
petitions, Madison writes, “The table was loaded with petitions & remonstrances from all
parts against the interposition of the Legislature in matters of Religion.” Ninety
petitions opposed the general assessment while 11 favored it. The total number of
signatures attached to anti-assessment petitions numbered upwards of 10,000. Some


29 Thomas Buckley, *Church and State in Revolutionary Virginia 1776-1787*, 147.

30 James Eckenrode, *Separation Of Church And State In Virginia*, 111.
petitions measured over a foot in length, while others, such as some Baptist petitions, came in the form of a book that could easily be passed along.\textsuperscript{31}

As the chief archivist at the Library of Virginia, James Eckenrode set out to write a brief monograph on religious petitions in the library’s holdings and the project expanded. In his published 1910 report, he names forty counties that produced petitions and writes there were others.\textsuperscript{32} His work verifies Madison’s claim that the petitions came in “from all parts.” The petitions reflect a diversity of thought on religious liberty and the role of the state in the church. But, the strongest opposing voices came from the Presbyterian and Baptist denominations while the Episcopalians generally supported the assessment.

The Presbyterians supported the general assessment bill in the form of a submitted petition to the Assembly the previous legislative session. The Fall 1785 session opened with their reverse in position. During the interim, Presbyterian leaders gathered in convention at Bethel Church and demanded an explanation for the submitted support of the general assessment. They then voted “unanimously” to oppose it.\textsuperscript{33} Soon, a larger convention was convened with invitations for representatives from each of the congregations to join. This body drafted a petition, which called the general assessment

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{32} James Eckenrode, \textit{Separation Of Church And State In Virginia}, 111.
\item \textsuperscript{33} Thomas Buckley, \textit{Church and State in Revolutionary Virginia 1776-1787}, 137.
\end{itemize}
\end{footnotesize}
“a direct violation of the Declaration of Rights.”³⁴ It also called for the passage of Thomas Jefferson’s “Bill for Establishing Religious Freedom.”

Next to Episcopalians, Presbyterians in Virginia were the most socially and economically established in Virginia. The Incorporation Act, which Patrick Henry proposed before he departed the Assembly, threatened their position. The Incorporation Act would have given ownership of church property to the Episcopal Church leadership and allowed it to conduct its business more independently of the legislature. The Presbyterians feared the re-empowerment of the Episcopal Church through this legal favoritism.

Historian Rhys Isaac describes the expressions of the Presbyterian petitions as “constitutional and social contractual.”³⁵ They viewed civil leaders as only having authority delegated to them. Prior to Madison’s release of Memorial and Remonstrance, the Presbyterians subscribed to Lockean theory to define the relationship between church and state.³⁶ These petitioners expressed their sentiments in the language of rational religion, rather than scriptural rhetoric.³⁷ Many Presbyterians at this moment in time would have been comfortable with the rational and pious tones of Madison’s Memorial and Remonstrance. They are likely among some of the signatories.

On the other hand, the Baptist petitions usually used the language of the “Gospel” to protest the general assessment, along with Article 16 of the Declaration of Rights.

³⁴ Ibid., 138.


³⁶ Ibid., 150.

³⁷ Ibid.
This denomination also met in convention in the legislative interim. Gathered in Powhatan, attendants were charged with returning to their counties to generate petitions in opposition to the assessment. While 13 copies of *Memorial and Remonstrance* circulated and garnered 1,522 signatures, 29 copies of the still anonymous author’s Westmoreland County petition spread and amassed 4,899 signatures.³⁸ This petition, the most popular of those that weighed down the Assembly’s table, opposed the general assessment with religious rhetoric. In addition to violating the Declaration of Rights, the general assessment would not check “that Deism with its baneful Influence [which] is spreading itself over the state.”³⁹ The Baptists believed in a church-state relationship that removed government imposition on religion, but still enabled the work of salvation for individuals in society.

Following the Powhatan meeting, the Baptist General Association met in Orange County on September 7, 1785 and adopted a remonstrance. Several of its points sound similar to Madison’s *Memorial* and come after it circulated for several months. It declared that civil power had no right to declare a tax. Second, the fear religion would die without state support is not supported by church history. Third, the Assembly would be poor judges of religious principles. Fourth, the “Assembly which established all sects had the power to establish one.”⁴⁰ These points were accompanied by religious rhetoric, such

³⁹ Ibid.
⁴⁰ James Eckenrode, *Separation Of Church And State In Virginia*, 198.
as describing their ministers as “those whom divine grace hath called to that work.”

These souls would revive religion in the community, not the state. Though *Memorial and Remonstrance* did not compile the most numerous names, it was influential in denominational articulation of opposition to the general assessment.

The flood of petitions to the Assembly included pro-assessment support. Eleven of these petitions contained 1,200 names. Many of these supporters were Episcopalians who practiced their religion in the formerly established church of Virginia. These petitions reflected the common assumption of the time that government support of religion fostered virtue necessary for maintenance of the republic. These petitions expressed the view that clergy ought to be learned men and the voluntary contributions during the war were not sufficient to support the careers of worthy clergy. Lack of funding would deter talented men from choosing the ministry to employ their abilities. In turn, religion and society would suffer.

A petition from Surry county states: “Should the great work of inculcating religious and moral truths be neglected, or in great measure confined to the most illiterate of mankind, the influence of religion must daily be impaired, and infidelity, enthusiasm and superstition with all the attendant follies and vices will proportionately increase among us.” Societal stability relied on good teachers of religion and the proposed bill, “A Bill Establishing a Provision for Teachers of the Christian Religion,” provided the means to regain and maintain that stability.

---


42 James Eckenrode, *Separation Of Church And State In Virginia*, 112.

43 Ibid.
The anti-assessment petitions overwhelmed the Assembly and the general assessment bill did not even came to a vote. It would never be resurrected for reconsideration. Prior to the war, dissenters petitioned the Assembly with little success. The war disrupted the traditional relationship between church and state in Virginia, producing the climate to bring about legal change. It created the circumstances to pass the Declaration of Rights, including Article 16 with its recognition of free exercise of religion as an inherent right.

Then, on the question of a general assessment, more people than ever expressed their sentiments to the legislature on a single issue. This organized mobilization is what changed the momentum of the church-state relationship in Virginia. If this movement did not occur, it is likely Virginia would have established a system of state supported Christian multi-denominationalism. Despite James Madison’s best efforts.

These streams of influences created the culminating moment for James Madison to reintroduce Jefferson’s “Bill for Establishing Religious Freedom.” The Presbyterians requested its passage in petition. Madison as the chairman of the committee on the courts of justice had already set the agenda to address the revision of the legal code tabled from before the war; the law that would reform religion lay among the stack. The members of the Assembly were freshly impressed with the tide of petitions opposing a religious tax. The moment to legally redefine the church-state relationship in Virginia had arrived.

Madison presented Jefferson’s “Bill for Establishing Religious Freedom” to the House on December 14, 1785. In committee of the whole, an amendment was proposed

\[44\] Thomas Buckley, *Church and State in Revolutionary Virginia 1776-1787*, 155.
to strike the words “holy author” from Jefferson’s preamble and insert “Jesus Christ.” Madison saw this as an attempt to narrow the bill’s scope to only allow freedom of conscience to Christians.\textsuperscript{45} The amendment failed.

On December 16, 1785, the House heard another amendment proposal. It was to strike out Jefferson’s deistically toned preamble and insert Article 16 of the Declaration of Rights. This amendment failed 38 to 66.\textsuperscript{46} The next day, the House defeated an amendment to postpone consideration of the bill until the following legislative session and passed the bill by a vote of 74 to 20.\textsuperscript{47} The Senate then removed much of Jefferson’s rationalist preamble and inserted Article 16 of the Declaration of Rights and sent it back to the House, which rejected the amendment 36 to 56.\textsuperscript{48}

The Senate took it up again, repeated its changes and sent it back to the House with a request for a conference. After several volleys, on January 16\textsuperscript{th} the House deleted Jefferson’s phrase: “the religious opinions of men are not the object of civil government, nor under its jurisdiction.” The amendment passed and even Madison voted for it. He likely thought the phrase could prevent passage of the whole bill.\textsuperscript{49} After accepting more of the Senate’s adjustment to the preamble, the House approved the bill and the “Bill for Establishing Religious Freedom” became the “Virginia Statute For Religious Freedom.”

\begin{itemize}
\item \textsuperscript{45} Ibid., 157-158.
\item \textsuperscript{46} James Eckenrode, \textit{Separation Of Church And State In Virginia}, 114.
\item \textsuperscript{47} Ibid.
\item \textsuperscript{48} Ibid.
\item \textsuperscript{49} Thomas Buckley, \textit{Church and State in Revolutionary Virginia 1776-1787}, 163.
\end{itemize}
The following is the text of some of the preamble. The italicized words were removed before becoming law.

Well aware that the opinions and belief of men depend not on their own will, but follow involuntary the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of the thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and throughout all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness.… 50

The General Assembly, influenced by a landslide of petitions, redrew the relationship between church and state as Thomas Jefferson proposed. Conscience was legally protected. The state could not coerce forms of worship or impose belief. It could not require a tax for religious purposes and religious test for public office was no longer permitted.

---

In an uncharacteristic burst of enthusiasm, Madison wrote to Jefferson saying: “I flatter myself that the enacted bill has in this country extinguished forever the ambitious hope of making laws for the human mind.”\textsuperscript{51}

\textsuperscript{51} James Madison to Thomas Jefferson, January 22, 1786, in The Papers of James Madison, 8:474.
CONCLUSION

With its passage in the General Assembly, the “Bill for Establishing Religious Freedom” turned into the Virginia Statute for Religious Freedom. This political achievement marked in Virginia the state protection of liberty of conscience as an inherent right, not as a bestowal of toleration from the government. Over two hundred years later, it is easy to assume inevitability of the development of religious freedom in these terms, but at a time when established state religion was the norm, this was an extraordinary contingent event reliant on the choices and actions of Virginia citizens.

From Constantine to Queen Elizabeth and from Queen Elizabeth to colonial Virginia, leaders—ecclesiastic and state—assumed religious uniformity from the top to the bottom of the population provided the necessary stability for the maintenance of a peaceful society. This was taken for granted and it culturally fortified forced conformity to the state church. The Virginia Statute for Religious Freedom overturned this assumption and redirected the Western world’s relationship between church and state.

True, Pennsylvania and Rhode Island from their beginnings boasted government structures that supported plural religions, showing society could be stable without forced conformity, but Virginia’s political forms were more influential for the broader American union. It was the strongest of the established churches in the new United States because of its close ties to the Crown and Virginia’s land claims and population size far exceeded the rest of the states. Many of the states patterned their rights declarations after Virginia’s and many of the top tier American revolutionaries came from Virginia, such as Richard Henry Lee, Patrick Henry, Thomas Jefferson, James Madison and most especially George Washington. Revolutionary Virginia led the infant United States and disestablishment
signaled a redirection.

To fulfill his campaign promise for a seat in the First Federal Congress, James Madison synthesized each of the state recommendations for a federal bill of rights. He authored what would become the First Amendment of the Bill of Rights in the United States Constitution. With regards to religion, he wrote “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof…” The Virginia Statute for Religious Freedom would provide the background for the meaning of the religion clauses of the First Amendment, indicating that the federal government would not establish a religion and the free exercise of religion would be legally protected. This was revolutionary. For more than one thousand years in the Western world, the church was an arm of the government. That connection was severed in the United States federal government.

Dissenters in Virginia redesigned the relationship between church and state. In a flood of petitions expressing religious liberty as an inherent right outside of the realm of government stewardship, they generated the circumstances to institutionalize their interpretation of freedom of conscience into Virginia law. This struggle in Virginia transformed the colonial view of full toleration of religion by the state into the free exercise of religion with no establishment affiliation. Without these dissenters mobilizing to fight for their freedom, Virginia religious liberty norms would likely have taken on the form of the general assessment, a state-sponsored multi-denominational Christian establishment.
BIBLIOGRAPHY


Pestana, Carla Gardina. *Liberty of Conscience and the Growth of Religious...*


