

THE JEFFERSON IMAGE

JEFFERSON AND THE ACT TO ESTABLISH RELIGIOUS FREEDOM

Religion in Colonial Virginia

Backed by Parliament, Henry VIII defied the pope and established the Anglican Church in England. Briefly deposed by the English Civil War, the church returned as the established religion with the restoration of Charles II in 1660.

Most of the Virginia planter class, which occupied the legislature and the public offices, were Anglican. Public officials swore to uphold the thirty-nine articles of Anglican faith. State and religion were intertwined, and the Anglican Church was established as Virginia's official religion. From the beginning of the Virginia colony, the General Assembly had taken church rules and turned them into laws, making it a crime to violate church doctrine. A 1705 statute required belief in the tenets of the Christian church "to hold and enjoy any office or employment, ecclesiastical, civil, or military." The Anglican church was supported by taxes which everyone was required to pay.

After 1750, there was increasing tension between the Anglican Church and the expanding appeal to the working-class in the message of the Baptist and Presbyterian ministers. They did not believe in the ceremonies that were reminiscent of the former Catholic Church in England, or in the hierarchy which dominated the Anglican Church and set the rules by which one could reach heaven. They were known as "dissenters," and were part of a wave of revivalism which swept through the colonies in the middle of the 18th century. This spirit of revivalism emphasized religious experience rather than doctrine and challenged the authority of the state to require all citizens to follow the dictates of the Anglican Church.

However, all ministers were required to be licensed. Many of the Baptist and Presbyterian ministers were unlicensed "street preachers," who did not have a regular church, and were often impoverished. Those who sought to be licensed were opposed by the Anglicans in the legislature. Many continued to preach and were jailed. Monuments remain throughout Virginia today at various courthouses, as evidence of their opposition.

Mason's Declaration of Rights

As the defiance of the colonies to Parliament and the Crown escalated through the 1770s, the dissenters saw this as an opportunity to challenge the Anglican Church as the "established church" in Virginia.

The first step occurred when the Virginia Convention of Delegates on June 12, 1776 adopted George Mason's Declaration of Rights which granted the right of every man to choose his church.

That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Mason had proposed "the fullest toleration in the exercise of religion," but a young delegate from Orange County, James Madison, went further. It is his phrase that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience" that was inserted. Madison intended to free man's religious belief from control by the state.

Both Mason and Madison were greatly influenced by John Locke, who saw toleration as the answer to religious persecution. Locke did not include Catholics in the ambit of his protection, and generally the protection intended by the Declaration of Rights was limited to Christians.

Jefferson's Act to Establish Religious Freedom

Thomas Jefferson believed that it was not a function of government to support the churches or to enforce church law. He held that religion was personal, and not dictated by clerical authority. He wrote in the Declaration of Independence that "life, liberty and the pursuit of happiness," came directly to man from the "creator."

The toleration of Locke and Mason implied an established religion, but it accepted man's right to choose a different church. Jefferson was moving to a dynamic new concept that government and the church must be separate, that neither had a place in the function of the other.

Although the Declaration of Rights contained a "free exercise of religion" clause, Jefferson submitted to the Convention a draft for a new constitution which contained the following provision for religious liberty:

All persons shall have full and free liberty of religious opinion; nor shall any be compelled to frequent or maintain any religious institution



Jefferson wanted his tombstone to show he was the author of the Statute for Religious Freedom

Jefferson's constitutional proposal was ignored and a constitution prepared by George Mason, which did not contain a religious freedom provision was adopted by the Assembly.

One of the first acts of the new General Assembly was to adopt Thomas Jefferson's proposal to repeal the ancient right of the Anglican Church to receive tax funds. Jefferson estimated that more than half of Virginians were dissenters. The 1776 law provided that "all dissenters, of whatever denomination, from the said church, shall, from and after the passing this act, be totally free and exempt from all levies, taxes, and impositions whatever." This exemption was made permanent in 1779.

In October 1776, the General Assembly appointed a Committee of Revisers to determine what laws from the colonial era would survive. Jefferson would become its most important member, and he included in the committee report an Act to Establish Religious Freedom. It was prepared in 1777 but was not presented to the General Assembly until 1779, after Jefferson had become governor.

He proposed a law "that Almighty God hath created the mind free" and that the "religious opinions and beliefs" of all men should be free from any control by the state, that to compel contribution of money is tyrannical, and

that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

But many in the legislature still supported the Anglican Church as a state church and the bill languished.

After Jefferson left for France in 1784, a powerful coalition in the General Assembly, led by Patrick Henry, which included John Marshall, Edmund Randolph, and Richard Henry Lee, proposed to make Christianity the official religion of Virginia. The Anglican ministers desperately needed funds. Henry crafted his bill so that taxes would support "teachers of the Christian religion." The taxpayer could designate the denomination to receive its payment. Henry succeeded in passing a resolution in favor of a general assessment, but he was elected governor which removed him from the legislative battle. Several attempts were made to change the bill to cobble together majority support. When this failed, the bill was tabled until the following year.

During the summer of 1785, James Madison wrote *Memorial and Remonstrance Against Religious Assessments*, which George Mason had printed and distributed as a petition for signatures. It was not known for 40 years that Madison was the author.

Opening with the words from the Virginia Declaration of Rights that "religion or the duty which we owe to our Creator and the manner of discharging it, can be di-

rected only by reason and conviction," Madison wrote that religion "must be left to the conviction and conscience of every man"-that civil power is not needed to provide support for a particular religion – and that the legislature should sweep away all our laws and rights which seek to control our religion.

When the General Assembly reconvened in 1786, momentum had shifted and Madison brought Jefferson's Act to Establish Religious Freedom to a vote. This time it passed. Although he noted there were "some mutilations in the preamble," Jefferson included the authorship of the Act to Establish Religious Freedom as one of his greatest achievements.

Religious Freedom a Natural Right

Jefferson did not view religious freedom as part of the civil compact with the government, but as a natural right of the people. Jefferson's Act ends with the admonition that "we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind." Jefferson believed it was the function of government to protect this right.

The influence of Jefferson's concept of religious freedom can be seen in Article VI Section III of the Constitution, known as the Separation Clause:

but no religious test shall ever be required as a qualification to any office or public trust under the United States

and in the first amendment to the Constitution, adopted in 1791, which provides that

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof

Letter to the Danbury Baptists

After Jefferson became president, he was urged to establish a day of thanksgiving to commemorate the Treaty of Amiens, which ended the hostilities between the United Kingdom and the Republic of France. He declined to do this on the basis that such declarations were religious and that a government mandated day of celebration was an intrusion into solely a religious event.

This was the reason behind Jefferson's now famous letter to the Danbury Baptists in 1802, in which he quotes the language of the First Amendment, that "government should make no law respecting an establishment of religion, or prohibiting the free exercise thereof." He then continues, "thus building a wall of separation between Church & State." This letter, and Jefferson's metaphor, was little noted until the 1947 Supreme Court decision in *Everson v. Board of Education*. The Court's "wall of separation" has since become the constitutional test for maintaining a secular policy in church-state relations.

by Richard E. Dixon