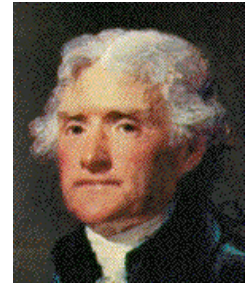


JEFFERSON NOTES



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Statutes at Large

A COLLECTION OF ALL THE
LAWS OF VIRGINIA
By WILLIAM WALLER HENING

After the Revolution, Virginia addressed the lack of a system to maintain the historical record of its laws. From the beginning, in the early 17th century, when amendments were necessary, it had been the practice to include in each new law any portion of the old law intended to survive. Then the manuscripts of the laws that had been superseded or amended would be discarded.

In the 1795 General Assembly session, a committee consisting of George Wythe, John Brown, John Marshall, Bushrod Washington, and John Wickham was appointed “to collect all the laws and clauses of laws” relating to “liens, tenements or hereditaments,” which had been passed since the settlement of Virginia.

At Wythe’s request, Thomas Jefferson furnished the committee with his collection of manuscripts or bound volumes that could be transported, at that time the largest collection in Virginia. For those manuscripts too delicate to be moved, he offered the committee an opportunity to review them at Monticello. Jefferson also suggested that the committee extend its review to collect “all our laws,” and this expanded mission was approved by the General Assembly.

William Waller Hening was appointed as editor of this project and spent the next 25 years compiling all the laws he found available, both in printed editions and in unprinted manuscripts. In 1808, the General Assembly authorized the publication of all of the laws from 1619 to 1792. The first three volumes were published in 1808 and the fourth in 1815, but the publication was interrupted by the war and was not resumed until 1819. The publication of the remaining volumes, which brought the total to 13 in all, was completed in 1823. The proceeds from the sale of the statutes at large would be used to fund what became the Virginia State Library.

Three additional volumes were

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JEFFERSON PLACES

SIGNERS OF THE DECLARATION OF INDEPENDENCE

The 56 signers of the Declaration of Independence were well known in their local communities, but at that time there were few that had a national reputation.

Eight had not been born in America. There was one Roman Catholic and several Deists and the rest were Protestant. Six would later sign the Constitution. About one-third served as militia officers and four were taken prisoner by the British. The signers represented many vocations. Twenty-four were lawyers, fourteen were farmers, four were doctors, one was a minister, one was an educator, three prepared for the ministry, one was a manufacturer and nine were merchants.

All risked death for treason by signing, and affirmed in the closing line of the Declaration that “we mutually pledge to each other our lives, our fortunes, and our sacred honor.”

The Signers of the Declaration of Independence Memorial is set in a semi-circle and for each signer there is a stone block with his name, home town, occupation and a facsimile of his signature. The Memorial was a gift from the American Revolution Bicentennial Commission in 1976.

The Memorial is located on an island in Constitution Gardens Lake on the National Mall at Constitution Avenue opposite 19th Street, Washington, D.C. It is about midway between the Washington Monument and the Lincoln Memorial.

STATUTES AT LARGE

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published by Samuel Shepherd in 1836 covering the laws from 1792 to 1806. A supplement to Henings was published in 1971 by Winfree K. Waverly, based on laws included in manuscripts uncovered in England and unknown to Henings for the period 1700 to 1750.

William W. Hening first practiced law in Fredericksburg before moving to Albemarle County. He held various public offices, including service in the House of Delegates from 1804 until his death in 1828. He was constantly in debt during his final years and died impoverished. It has been suggested that he sacrificed the needs of his family to the financial demands of collecting the materials needed to complete the Statutes at Large. Other legal editions by Henings included *Virginia Justice*, and *Hening and Munford Virginia Reports*.

Hening participated in “codes” that were compiled in 1792 and 1803, which were later replaced by the *Revised Code of 1819*. These efforts should not be confused with the Statutes at Large. The *Revised Code of 1819* was intended to be a current code of all statutes then in force. The special commission appointed for this revision was Spencer Roane, John Coulter, Robert White, William Brockenbrough, and Benjamin W. Leigh.



Monument in Fredericksburg erected in memorial of the meeting of the Committee of Revisers on January 13, 1777 to draft the Act to Establish Religious Freedom

Another effort often conflated with the Statutes at Large, or the *Revised Code of 1819*, was the Committee of Revisers appointed by the General Assembly in October 1776. The Committee consisted of Edmund Pendleton, George Wythe, George Mason, Thomas Ludwell Lee and Thomas Jefferson. The committee met at Fredericksburg to divide the work. It was decided to leave the English common law intact, but to reorganize the statutes as they existed in 1768 to the time of the revolution, and to adopt them to a “republican form of government.” Various bills were passed in 1779 and in 1785, but never as a complete code.

Among the committee members, George Wythe contributed much, but the bulk of this laborious work fell to Jefferson. The revisers submitted 126 bills in 1779. By this time, Jefferson had become governor and some of these bills were quickly passed, but others lingered on the Assembly’s docket, and once Jefferson left for France, he left the task of shepherding them to the “unwearied exertions” of James Madison.

The most famous of the revision laws was Jefferson’s Act to Establish Religious Freedom passed in 1786.

The Madison Hemings interview with a newspaper reporter occurred about forty-five years after he left Monticello. This interview is important to the paternity believers, because it is the only declaration by a Jefferson relative, acquaintance, or slave, that Jefferson fathered children by Sally Hemings. We will continue in Jefferson Notes, to examine it.

The Phantom Paris Baby

Those who believe that Thomas Jefferson began an affair with Sally Hemings in Paris and that she returned pregnant are in conflict over the fate of the baby. About 20 years ago, slave studies academics began to pressure Monticello to concede that the baby grew into Tom Woodson. This was the slave son “Tom” created by James Callender in his articles in the *Richmond Register* attacking Thomas Jefferson.

The descendants of a Tom Woodson are a large and accomplished family who have long promoted that their origin was from the union of Jefferson and Hemings. They have been very supportive of Monticello and Monticello has been sympathetic to their paternity claim. Some members have unsuccessfully sought permission to be buried in the Monticello family plot.

There is no evidence that a son was born to Sally Hemings about 1790 and was living at Monticello at the time of Callender’s articles in 1802. In 1999, DNA testing on some of the Woodson family established that they were not descendants of Jefferson.

In 1974, Fawn Brodie’s book, *Thomas Jefferson: An Intimate History*, resurrected a 1873 newspaper interview of Madison Hemings, in which he claimed that his mother became pregnant in Paris by Jefferson, but the baby died shortly after she returned to Monticello. This would have occurred about 15 years before Hemings’ birth, but he offers no comment on the source of this information. Other than this claim by Hemings, there is no evidence that his mother was pregnant when she returned from Paris and gave birth to a baby who “lived but a short time.”

Faced with the dilemma of the DNA testing, the paternity believers have now shifted from the Tom Woodson story to the dead baby story. This ignores the possibility that Tom Woodson was indeed the son of Sally Hemings, but his father would not have been Jefferson. Of course, Tom Woodson does not appear anywhere in the Monticello records, nor is he mentioned by any contemporaneous witness. But then, the same absence of evidence surrounds the dead baby.

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

Memorial and Remonstrance Against Jefferson Paternity Claim

We, the Thomas Jefferson Heritage Society, having taken into serious consideration a program shown on the History Channel, made in cooperation with Monticello, and concerning an advance and perpetuation as historical fact a false conclusion that Thomas Jefferson fathered slave children, we do remonstrate against it and declare the reasons by which we are determined.

Because Thomas Jefferson declared, "We are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it," we are alarmed that the selected commentators from Monticello and their like minded fellows declared as historical fact that Thomas Jefferson fathered a child with Sally Hemings in France, which is unsupported by any direct or circumstantial evidence or any contemporaneous observer.

Because these commentators stated as historical fact that the relationship with Sally Hemings then lasted for the remainder of Jefferson's life, and that he fathered other children by her, and although these commentators admit that Monticello was crowded with guests and family, some of whom later wrote denials of these allegations that such a relationship could have existed without notice, these commentators did not hesitate to assert in the face of reason and logic, their false and defamatory allegation.

Because these commentators related the newspaper calumny of James Callender, without comment that Callender had no identified sources for his information, nor have any ever been identified, and that his frenzied claim that Jefferson had a son by Sally Hemings was disproved by the DNA evidence, but that this scurrilous rumor, which launched the entire paternity legend was an act of revenge by Callender, has now been offered as truth.

Because Jefferson was one of the greatest of the Founding Fathers, whose ideals have shaped the world, and has earned the right to be fairly judged in any allegations brought against him, and the failure to present all facts and argument in refutation of this claim of fathering slave children, is a usurpation of the historical record, and an affront to the citizens who hear it.

Because Monticello is the product of Jefferson's genius, putting thousands in touch with his thoughts, it is a property uniquely American, and those who work in its service, serve on its boards, and donate to its perpetuation, must not permit Jefferson to be maligned without cause, to be accused without a defense, and to be convicted without evidence.

*Because it is proper to take alarm at this revision of our history, we, the **Thomas Jefferson Heritage Society** say, that the commentators from Monticello and the History Channel have omitted and withheld all evidence that would show Sally Hemings had no children by Thomas Jefferson, and no effort shall be omitted on our part against so dangerous a usurpation.*

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By William D. Hyland Jr

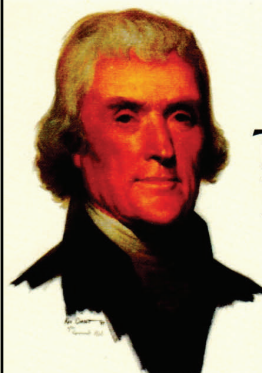
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and discussions on the Hemings paternity claim and exactly what the DNA tests proved.